

KATE SNYDER (MAYOR)
ANNA TREVORROW (1)
VICTORIA L. PELLETIER (2)
TAE Y. CHONG (3)
ANDREW ZARRO (4)

MARK N. DION (5)
APRIL FOURNIER (A/L)
PIOUS ALI (A/L)
ROBERTO RODRÍGUEZ (A/L)

CITY COUNCIL MEETING - JANUARY 19, 2022 AT 5:00 PM

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

To submit written public comment on an agenda item, email publiccomment@portlandmaine.gov. Submissions must be received by 12:00 pm the day of the Council meeting to guarantee their inclusion in the agenda packet. All submissions must include the commenter's name and legal address. To help ensure your comment is submitted for the correct item, please include the order number (see below).

ZOOM INFORMATION:

This meeting will take place remotely using Zoom.

Virtual meetings are allowed using emergency legislation approved by LD 2167; 1 M.R.S. §403A, that authorizes cities and towns to conduct meetings online. Allow your computer to install the free Zoom app to get the best meeting experience. If you are not able to attend live, a recording will be uploaded to portlandmaine.gov/livestream the next day.

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

Please click the link below to join the webinar:

<https://us02web.zoom.us/j/81813936988?pwd=V0FJNk51cEtwNEs1ZTNMUUdGMG5adz09>

Passcode: 112769

Or One tap mobile :

US: +19292056099,,81813936988#,,,*112769# or
+13017158592,,81813936988#,,,*112769#

Or Telephone:

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

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

Webinar ID: 818 1393 6988

Passcode: 112769

International numbers available: <https://us02web.zoom.us/j/81813936988>

PLEDGE OF ALLEGIANCE:

ROLL CALL:

ANNOUNCEMENTS:

APPROVAL OF MINUTES OF PREVIOUS MEETING:

Approval of the draft January 3, 2022 City Council Meeting Minutes

LICENSES:

Order 133-21/22 Granting Municipal Officers' Approval of Mack Bar Inc, dba Blackstone's. Application for Class A Lounge with Indoor Entertainment at 6 Pine Street - Sponsored by Danielle West, Interim City Manager

Application was filed on 12/27/21. New City and State applications. Existing establishment changing liquor classification.

Five affirmative votes are required for passage after public comment.

Order 134-21/22 Granting Municipal Officers' Approval of HTLV Portland TRS LLC, dba The Press Hotel. Application for Class IA Inn (41+ rooms) with Indoor Entertainment at 119 Exchange Street - Sponsored by Danielle West, Interim City Manager

Application was filed on 12/27/21. New City and State applications. New owner of an existing business.

Five affirmative votes are required for passage after public comment.

COMMUNICATIONS:

COM 12-21/22 Homelessness and Emergency Shelter Update by Kristen Dow, Health & Human Services Director

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

UNFINISHED BUSINESS:

Order 88-21/22 Amendment to Portland City Code Chapter 15 Re: Emergency Shelter License Requirements - Sponsored by the Health & Human Services and Public Safety Committee, Tae Chong, Chair

The Health & Human Services and Public Safety Committee met on September 28, 2021 and voted 2 - 0 (Ray absent) to recommend passage to the full Council. The Council voted in favor of passage (7-1, Zarro) on November 15, 2021.

The amendment would establish licensing requirements and enforcement provisions for emergency shelters to ensure the safety of clients and staff. These include a two-tier fee structure for small and large emergency shelters, a bed density cap of 300 beds within a one-mile radius, a 1,000-foot buffer zone between shelters, a day space requirement, and exemptions for pre-existing emergency shelters.

This item must be read on two separate days. It received its first reading on November 1, 2021. On November 15, 2021, it was approved by a vote of 7-1 (Zarro). On December 6, a motion to reconsider passed 9-0, and this item was also postponed to January 19, 2022

to accommodate a workshop on this topic. Public comment has already been taken on this item. Five affirmative votes are required for passage.

Written Public Comment on Order 88-21/22

Order 132-21/22 Amendment of Portland City Code Chapter 14 Re: Eastern Waterfront Port Zone Marina Food Service - Sponsored by the Planning Board, Brandon Mazer, Chair

On November 23, 2021, the Planning Board voted 4-1 that the proposed zoning text amendment was consistent with the Comprehensive Plan for the City of Portland.

Portland Foreside Development Company is requesting to amend the Waterfront Chapter (Article 10) of the Land Use Code to permit limited restaurant and food service uses where associated with a marina within the EWPZ. The proposed amendments would limit the overall floor area of such use to 1,000 square feet, and limit any outdoor components of the use to within 100 feet of the marina office building. This amendment would also remove the existing prohibition on restaurants and food service uses within 25 feet of the pier edge.

This item must be read on two separate days. It received its first reading on January 3, 2022. Five affirmative votes are required for passage after public comment.

Written Public Comment on Order 132-21/22

ORDERS:

Order 135-21/22 Adopting the 2022 Cumberland County Hazard Mitigation Plan - Sponsored by Danielle P. West, Interim City Manager

Cumberland County's Hazard Mitigation plan must be approved by all municipalities by February 25th in order for the plan to gain final approval from the Federal Emergency Management Agency. There is no cost to the communities by adopting this Plan. If a municipality does not adopt this Plan, however, it will lose access to valuable pre-disaster mitigation funding that could save money on mitigation projects. A town would not be eligible for that funding until the next Five Year Plan is approved in 2027.

Cumberland County wrote the 2022 Cumberland County Hazard Mitigation Plan with input from several City of Portland departments throughout the process. The Plan identifies natural disaster risks and vulnerabilities that are common in Cumberland County and outlines long-term strategies for protecting people and property from natural disasters. Mitigation plans are crucial to breaking the cycle of disaster damage and reconstruction.

The County releases a new Plan every five years; the Portland City Council adopted and signed the 2017 Hazard Mitigation Plan in December 2016.

Five affirmative votes are required for passage after public comment.

Order 136-21/22 Accepting the 2021 Annual Land Bank Report - Sponsored by Danielle P. West, Interim City Manager

The Portland Land Bank Commission is required by City Ordinance to submit an annual report that details the commission's activity over the past year, its yearly budget, and a registry of conservation properties.

Five affirmative votes are required for passage after public comment.

Order 137-21/22 Approving and Appropriating a Federal Aviation Administration Airport Improvement Program Federal Fiscal Year 2022 Entitlement and Discretionary Grant - Sponsored by Danielle P. West, Interim City Manager

The Federal Aviation Administration issues grants to fund eligible safety and capacity projects at airports nationwide through the Airport Improvement Program (AIP). This program is funded through federal taxes on commercial air fares and on aviation fuel. The amount of entitlement funding allocated to each airport is based on the annual number of enplaned commercial passengers the airport handled in the prior calendar year. Due to the pandemic, the FAA is allowing entitlement funds to be based on 2019 passenger enplanements since for most airports, including the Jetport, 2019 passenger enplanements were significantly higher than 2020. For federal fiscal year 2022, the Portland International Jetport will be allocated AIP entitlement funding totaling \$4.15 million based upon 1,088,728 enplaned passengers in calendar year 2019. In addition to entitlement funding, the Jetport is also seeking AIP discretionary funding of \$8.24 million in federal fiscal year 2022. The full AIP grant of \$12.39 million combined with \$1.38 million in matching funds split equally between the Jetport and the state of Maine will fund the total \$13.77 million cost to rehabilitate the Jetport's primary runway 11/29.

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

AMENDMENTS:

Order 138-21/22 Amendment to Portland City Code Chapter 17 Re: Sale of Flavored Tobacco Products Prohibited - Sponsored by the Health & Human Services and Public Safety Committee, Councilor Tae Chong, Chair

The Health & Human Services and Public Safety Committee met on November 9, 2021 and voted 3 - 0 to recommend passage to the full Council.

The amendment would define and ban the sale of flavored tobacco and nicotine products, including natural, synthetic, and menthol tobacco products, with the ban enforced by the City's Public Health Director.

The Health & Human Services Committee also voted that the amendment should be effective June 1, 2022 to be consistent with one approved by the Bangor City Council. Bangor, Maine is the first municipality in the state of Maine to adopt a full flavor ban ordinance. Additionally, this will give ample time for the Portland Public Health's Tobacco Prevention Team to develop and disseminate a retailer campaign and other educational resources.

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

Written Public Comment on Order 138-21/22

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



**CITY COUNCIL WORKSHOP
MEETING TO BE HELD REMOTELY**

January 3, 2022

5:00 PM

ZOOM INFORMATION:

This meeting will take place remotely using Zoom.

Virtual meetings are allowed using emergency legislation approved by LD 2167; 1 M.R.S. §403A, that authorizes cities and towns to conduct meetings online. Allow your computer to install the free Zoom app to get the best meeting experience. If you are not able to attend live, a recording will be uploaded to portlandmaine.gov/livestream the next day.

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

Please click the link below to join the webinar:

<https://us02web.zoom.us/j/82805568760?pwd=b3N6azJHZldnSVNSUXBvYU9mSzYxUT09>

Passcode: 535147

Or One tap mobile :

**US: +19292056099,,82805568760#,,, *535147# or
+13017158592,,82805568760#,,, *535147#**

Or Telephone:

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

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

Webinar ID: 828 0556 8760

Passcode: 535147

International numbers available: <https://us02web.zoom.us/j/82805568760>

PLEDGE OF ALLEGIANCE:

ROLL CALL:

Mayor Snyder called the meeting to order at 5:00 PM (Dion arrived before Order 124).

ANNOUNCEMENTS:

Councilor Ali announced that he moved to Portland exactly 20 years ago today. He also announced that the Housing and Economic Committee meeting is January 4, 2022 at 5:30 PM. Lastly, he announced that, because of lighting issues, he balances between his camera being on and his camera being off. He wanted the community to know this is the reason for his camera being off at certain times during the meeting.

APPROVAL OF MINUTES OF PREVIOUS MEETING:

Approval of the December 20, 2021 City Council Minutes

Motion was made by Councilor Ali and seconded by Chong for approval of the December 20, 2021 meeting minutes. Passage 8-0.

PROCLAMATIONS:

Proclamation 12-21/22 Recognizing January 17, 2021 as Martin Luther King, Jr., Day - Sponsored by Kate Snyder, Mayor

LICENSES:

Order 126-21/22 Granting Municipal Officers' Approval of Mitr LLC, dba Mitr. Application for Class I FSE at 1281 Congress Street - Sponsored by Danielle West, Interim City Manager

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

Order 127-21/22 Granting Municipal Officers' Approval of ZEL & Co., dba The Chadwick Bed and Breakfast. Application for Class IV/V at 140 Chadwick Street - Sponsored by Danielle West, Interim City Manager

Motion was made by Councilor Fournier and seconded by Councilor Zarro for passage. Passage 8-0.

Order 128-21/22 Granting Municipal Officers' Approval of 425 Fore St Suite 500 LLC, dba Paper Tiger. Application for Class I FSE with Outdoor Dining on Private Property at 425 Fore Street, Suite 104 - Sponsored by Danielle West, Interim City Manager

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

UNFINISHED BUSINESS:

**Order 124-21/22 Repealing the Declaration of an Emergency -
Sponsored by Danielle West, Interim City Manager**

Motion was made by Councilor Ali and seconded by Councilor Pelletier to suspend the rules and allow public comment on this item. Which already had public comment at the December 20 2022 City Council Meeting. Passage 7-2 (Dion, Chong).

Motion was made by Councilor Ali and seconded by Councilor Fournier for passage. Passage 8-1(Pelletier).

Written Public Comment for Order 124-21/22

**Order 125-21/22 Accepting and Appropriating a \$9,940 grant from the State of Maine Department of Agriculture, Conservation and Forestry -
Sponsored by Danielle West, Interim City Manager**

Motion was made by Councilor Fournier and seconded by Councilor Zarro for passage. Passage 9-0

ORDERS:

Order 129-21/22 Accepting the Charlotte Meaney-Bleier Award for Service at Portland High School Trust Agreement - Sponsored by Danielle P. West, Interim City Manager

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

Order 131-21/22 Amendment to Portland City Code Chapter 17 Re: Face Covering Mandate - Sponsored by Councilor Andrew Zarro

Mayor Snyder took Order 131 out of order. Order 130 is unnecessary if Order 131 does not pass.

Motion was made by Councilor Ali and seconded by Councilor Chong to waive the second reading. Passage 9-0.

Motion was made by Councilor Rodriguez and seconded by Councilor Ali to remove section C 117.40. Motion failed 3-6 (Fournier,Dion,Zarro,Pelletier,Chong, Snyder).

Motion was made by Councilor Zarro and seconded by Councilor Chong to amend Order 131 by "providing definition of vaccination by current CDC guidelines and by making the effective date of the mask mandate midnight of January 5, 2022" for passage. Passage 9-0.

Motin was made by Councilor Ali and seconded by Councilor Zarro for passage as an emergency. Passage 9-0.

Written Public Comment for Order 131-21/22

**Order 130-21/22 Appointing Local Health Officer Bridget Rauscher
Constable - Sponsored by Councilor Andrew Zarro**

Motion was made by Councilor Ali and seconded by Councilor Fournier for passage as an emergency. Passage 9-0.

AMENDMENTS:

**Order 132-21/22 Amendment of Portland City Code Chapter 14 Re:
Eastern Waterfront Port Zone Marina Food Service - Sponsored by the
Planning Board, Brandon Mazer, Chair**

This is its first reading.

Motion was made by Councilor Ali and seconded by Councilor Zarro to adjourn. Passage 9-0 at 10:02 PM.

A TRUE RECORD

Katherine L. Jones, City Clerk

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

MEMORANDUM
City Council Agenda Item

FROM:

DATE: December 30, 2021

SUBJECT: Order 133-21/22 Granting Municipal Officers' Approval of Mack Bar Inc, dba Blackstone's. Application for Class A Lounge with Indoor Entertainment at 6 Pine Street - Sponsored by Danielle West, Interim City Manager

SPONSOR: The Mayor, City Manager, City Clerk, Corporation Counsel, the Planning Board, or up to three (3) members of the Council shall sponsor any orders or other items. If sponsored by a Council Committee, please include the date the committee met and the results of the vote.

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

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st Reading

Final Action

Can action be taken at a later date: No If action cannot be taken at a later date, please explain why

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

I. SUMMARY

II. AGENDA DESCRIPTION

Application was filed on 12/27/21. New City and State applications. Existing establishment changing liquor classification.

Five affirmative votes are required for passage after public comment.

III. BACKGROUND

Background information that will not appear in the Agenda Description

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

V. FINANCIAL IMPACT

Please indicate whether or not there is a financial impact. Please note that per Council Rule 12, this form must have "a separate fiscal impact statement memo attached if the impact of the item is \$50,000 or more in a given fiscal year. This memo shall include details and information describing the fiscal impact including, but not limited to, projected costs, revenues or savings over a three (3) year period and/or any potential impacts on the City tax levy."

VI. STAFF ANALYSIS AND BACKGROUND

Staff Analysis that will not appear in the Agenda Description.

VII. RECOMMENDATION

VIII. LIST ATTACHMENTS

1. Blackstones
2. Blackstones_council packet

Prepared by:

Date: 12/30/2021

KATE SNYDER (MAYOR)
ANNA TREVORROW (1)
VICTORIA L. PELLETIER (2)
TAE Y. CHONG (3)
ANDREW ZARRO (4)

**CITY OF
PORTLAND**
IN THE CITY COUNCIL

MARK DION (5)
APRIL D. FOURNIER(A/L)
PIOUS ALI (A/L)
ROBERTO RODRÍGUEZ (A/L)

ORDER
GRANTING MUNICIPAL OFFICERS'
APPROVAL OF:

**Mack Bar Inc, dba Blackstone's. Application for Class A Lounge with Indoor
Entertainment at 6 Pine Street**

MACK BAR INC

Blackstones

December 8, 2021

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

Dear City Council Members ,

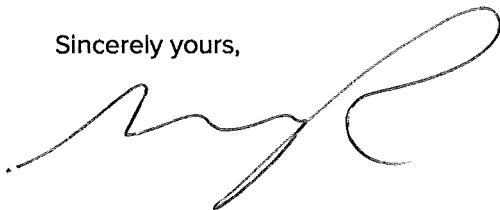
This letter of intent is submitted for your approval of the Blackstones licensing documents, to return us to a Class A Lounge License. The proper sections for our entertainment and sound mitigation have also been completed, and included. We have also included the fee for our Mechanical Pool Table.

We have contacted all listed departments to schedule inspections, and have confidence that this process should go smoothly. As we have operated since 1987, and I went through this process when I purchased the bar in 2014, I believe the business is at the expectations of the City to operate safely and cleanly, and will continue to be so.

Blackstones is the last "flag-flying" Gay bar in Portland, and surviving the pandemic took the assistance of the City to relicense us, the staff to change up our format to fulfill that licensing change, and to our loyal patrons, whom donated financially, throughout 2020, to make sure our doors would reopen. The relicensing to our formal Lounge status will be the final step for us, in moving past this difficult period for the Portland Service industry.

Thank you for your consideration of this application, and we look forward to continuing to serve the Portland community, as we have since 1987, for decades to come.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Matthew Pekins', with a stylized, flowing script.

Matthew Pekins

Owner - Blackstones

BLACKSTONES 6 PINE STREET PORTLAND MAINE 04102



CITY OF PORTLAND
Permitting and Inspections Department
Application for Food Service Establishment with Alcoholic Beverages License

Business Information			
Business Name (d/b/a):	Blackstones	Phone:	775 2885
Location Address:	6 Pine St Portland ME,	Zip:	04102
If new, what was formerly at this location:			
Mailing Address:	6 Pine St Portland ME	Zip:	04102
Contact Person:	Matthew PEKINS	Phone:	400-4544
Contact Person Email:	Blackstones2014@gmail.com.		
Manager of Establishment:	Matthew PEKINS	Date of Birth:	10.18.79
		Phone:	400 4544
Owner of Premises (Landlord):	Geoff. Rice		
Address of Premises Owner:	658 Congress St Portland ME,	Zip:	04102

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

Name of Owner(s)	Date of Birth	Residence Address
Matthew PEKINS	10.18.79	180 High St #45 Portland ME 04101

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

Corporate Name		Corporate Mailing Address	
Mack BAR INC.		180 High St #45 Portland ME Zip: 04101	
Contact Person:	Matthew PEKINS	Phone:	400 4544
Principal Officers	Title	Date of Birth	Residence Address
Matthew PEKINS	President	10.18.79	180 High St #45 Portland ME 04101
Class of Liquor License:		Class A Lounge	



CITY OF PORTLAND
Permitting and Inspections Department

Type of food served:	<u>Small Plate</u>	
Please circle all that will be served:	<u>Beer</u> <u>Wine</u> <u>Liquor</u>	
Projected percentage of sales:	Generated from Food: <u>15</u>	Generated from Alcohol: <u>85</u>
Hours & days of operation:	<u>11am - 1am Sunday through Saturday.</u>	

QUESTIONS

Will full-course meals, only capable of consumption with the use of tableware, be served the entire time the establishment is open?	Y/N Y/ <u>N</u>
If No, please explain:	
Is the establishment less than 300 feet from a school, dormitory, church or parish house, or similar establishment?	<u>N</u> /N
If yes, give the distance:	
Will you have entertainment on the premises? (If yes, a Supplemental Application for Entertainment is required.)	<u>N</u> /N
Will you permit dancing after 1:00 a.m.?	Y/ <u>N</u>
Will you have outside dining? (If yes, an Outdoor Dining Application is required)	Y/ <u>N</u>
If yes, will the outside dining be on PUBLIC or PRIVATE property (circle one).	
Will you have any amusement devices (pinball, video games, juke box)?	<u>N</u> /N
If yes, please list: # of pinball machines: _____ # of amusements: _____ # of pool tables: <u>1</u>	
What is your targeted opening date? <u>Immediately</u>	
Does the Issuance of this license directly or indirectly benefit any City employee(s)?	Y/ <u>N</u>
If Yes, list name(s) of employee(s) and department(s):	
Have any of the applicants, including the corporation (if applicable), ever held a business license with the City of Portland?	<u>N</u> /N
If Yes, please list business name(s) and location(s):	
<u>Blackstones Portland ME.</u>	
Is any principal officer under the age of 21?	Y/ <u>N</u>
Have applicant, partners, associates, or corporate officers ever been arrested, indicted, or convicted for any violation of law?	<u>N</u> /N
If Yes, please explain: <u>OUI in January 2009</u>	

I, Matthew Perkins do hereby swear and affirm that every employee in my establishment that serves alcohol to the public has attended server training, or will attend server training within 90 days of their hire. I also understand that at any time the City license administrator can, upon request, require me to produce Server Training certificates for each employee that serves alcohol to the public in my establishment. Failure to meet the training requirement imposed by section 15-41 may result in the denial of a liquor license pursuant to 28-A M.R.S.A. § 653 (2) (G).

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

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

Signature [Signature] Title President Date 10.8.22



CITY OF PORTLAND
Permitting and Inspections Department

Application for an Entertainment License

☒ Indoor Entertainment \$500.00	☐ Outdoor Entertainment \$700.00	☐ Combined Entertainment \$800.00
☐ Sound Mitigation Fee \$150.00		

Business Information	
Business Name (d/b/a):	Blackstones Phone: 775-2885
Location Address:	6 Pine St Portland ME Zip: 04102
Owner Name:	Matthew Perkins Phone: 402-4544
Owner Email:	Blackstones2014@gmail.com
Contact Person responsible for Entertainment:	Matthew Perkins Phone: 400-4544
Contact Person Email:	Blackstones2014@gmail.com
Manager of Establishment:	Matthew Perkins Phone: 400-4544
Manager Email:	Blackstones2014@gmail.com

About Your Establishment

Describe in detail the type and nature of the business and proposed entertainment:

Class A Lounge selling Beer, wine, liquor, and sm plates. Floor Performance Drag Shows.

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

Signature [Signature] Title President Date 10.8.12

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

Sound Engineer

Andrew Roseman

Phone: 203-464-0272

Novemebr 9th, 2021

Requested Sound Mitigation Plan Report

This report has been prepared at the behest of Matthew Pekins, the owner of Blackstones, in the interest of providing a detailed Sound Mitigation Plan as required for the new Entertainment License Application for said Bar.

Blackstones currently utilizes a sound system designed to provide simple, straight-forward operation typical of most bars and restaurants. The system, updated in 2018, was set-up by Owner Matthew Pekins, with input from professionals at a local audio-systems store. This system primarily consists of (one) Art MX822 8 channel Mixer, (one) Behringer FBQ1000 Feedback Eliminator, and (one) QSC GX7 1000w amplifier, powering (two) Peavey 15" standard PA Speakers in the main bar room, and (two) JBL 12" Standard PA Speakers in the adjacent pool room. The system also features a dual wireless Shure Microphone system for announcements and Karaoke. Audio is introduced via a direct-wired Apple iPad, and a dedicated channel from the projected Television.

Sound mitigation measures are confined to the construction of the bar itself, which exists in a space designed for commercial use. The street facing facade consist of seven 38" by 84" double-paned insulated glass Windows and an insulated steel entry door. The other exterior wall is a 12" thick brick wall adjacent a

driveway, with a standard fireproof 36"x80" emergency exit door. The remaining walls all intersect with other interior units, and consist of brick or plaster construction. The construction inherently reduces sound to levels well below the acceptable decibel range of Portland, as demonstrated by the establishments 34 year history. Blackstones has used the current system since installation, for events described below, as well as being its dedicated sound system for music, television and announcement.

As the speakers are located to provide even disperse of sound throughout the building, the primary direction of the sound projection is towards the interior of the building. Speaker locations are illustrated on the provided diagram. Blackstones events primarily consist of Drag Performances, Karaoke, Bingo, and licensed film presentations. All of these events utilize the currently in-place sound system, and Blackstones does not allow additional amplification or audio devices. Sound levels are maintained to the same volume employed for the consistent in-house music, which should indicate that these events and performances should have no impact on decibel levels via the sound system.

Blackstones does keep a portable on-premise sound reading device, in the event of a noise complaint. Staff has informed me this sound level meter, manufactured in accordance to standards prescribed by the American Standards Association, has not been required to be presented during the 7 years of current ownership, as no formal sound complaint have been responded to by the Portland Police Department. Tests have demonstrated that all exterior sound levels have read

below the City of Portland guidelines of 50 to 60 Decibels from within 8 feet of any exterior wall.

While Blackstones has received no formal sound complaints since Matthew Pekins ownership, they inform me they have addressed some noise concerns with residents of the neighborhood, due to loiters outside the establishment. In response, the services of Maine Guardsafe, a private hospitality security firm, have been employed since 2019, to reduce this issue. As such, said issue does not relate to Blackstones construction or sound system, and lies outside the purview of this report.

In conclusion, Matthew Pekins will be maintaining the current system in place, which has been used successfully and without issue for all outlined events, prior to the submission of this application. as no additional equipment is permitted for performers at Blackstones, it is of my opinion that this system, and the buildings construction, should suffice for the expectations of the City of Portland.

With your Consideration,

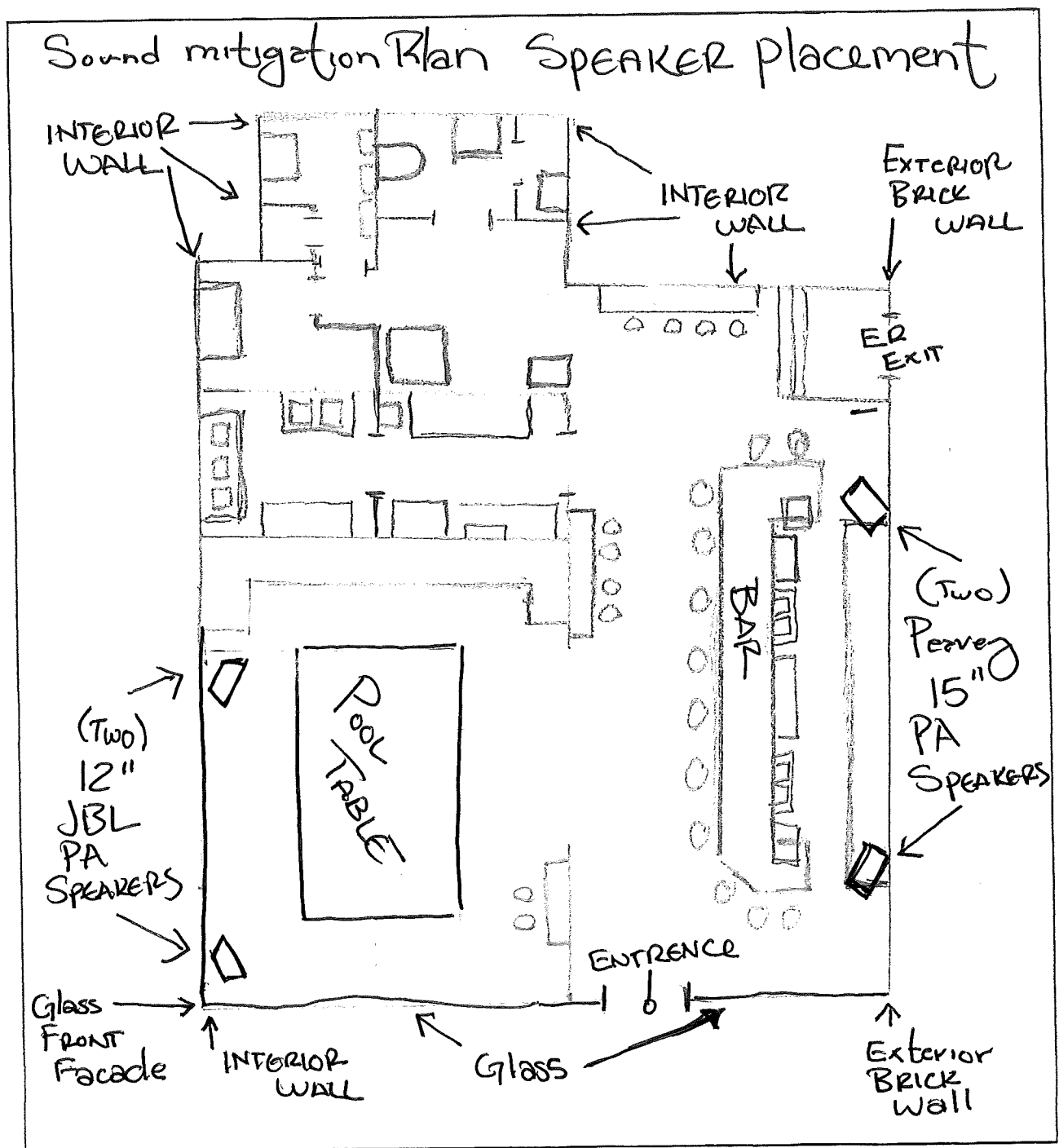
A handwritten signature in black ink, appearing to be 'AR' or 'Andrew Roseman', written in a cursive style.

Andrew Roseman

Section VI Premises Floor Plan

In an effort to clearly define your license premise and the areas that consumption and storage of liquor authorized by your license type is allowed, the Bureau requires all applications to include a diagram of the premise to be licensed.

Diagrams should be submitted on this form and should be as accurate as possible. Be sure to label the following areas: entrances, office area, coolers, storage areas, display cases, shelves, restroom, point of sale area, area for on-premise consumption, dining rooms, event/function rooms, lounges, outside area/decks or any other areas on the premise that you are requesting approval. Attached an additional page as needed to fully describe the premise.



City of Portland

Sound Mitigation Review

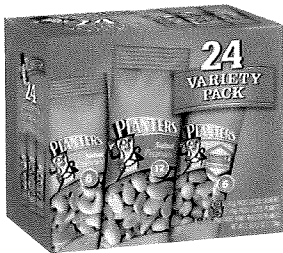
Date: 1/6/2022

Business Blackstone's

Applicant Mathew Perkins

DESCRIPTION		yes	no
Sound system appropriate for the size venue			Yes
Performance space located in an appropriate location			Yes
Performance space facing in an appropriate direction to control sound			Yes
Surrounding surfaces appropriate to control sound			Yes
Additional sound absorbing features			
additional notes			
Approved			Yes
DIRECT ALL INQUIRIES TO:			
Kevin Schneck			
(207) 756-8433			
kschneck@portlandmaine.gov			

We've Got Snacks!



Hot Pockets* \$5.00

*Hot Food Item, Rotating Flavors Please Ask

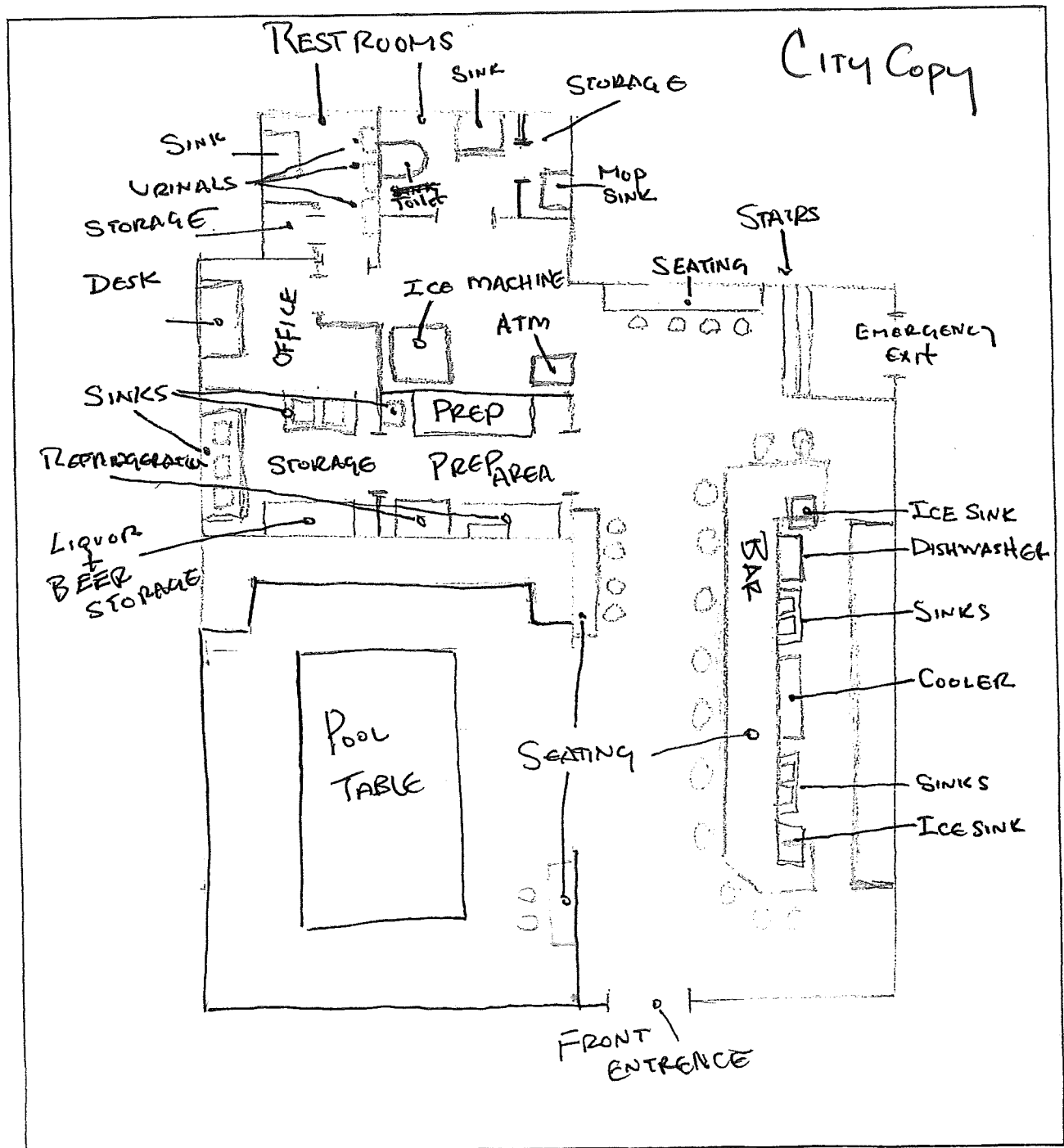
Peanuts	\$1.00
Chips	\$0.50
Crackers	\$0.50
Slim Jim's	\$0.25
Gum	\$0.25



Section VI Premises Floor Plan

In an effort to clearly define your license premise and the areas that consumption and storage of liquor authorized by your license type is allowed, the Bureau requires all applications to include a diagram of the premise to be licensed.

Diagrams should be submitted on this form and should be as accurate as possible. Be sure to label the following areas: entrances, office area, coolers, storage areas, display cases, shelves, restroom, point of sale area, area for on-premise consumption, dining rooms, event/function rooms, lounges, outside area/decks or any other areas on the premise that you are requesting approval. Attached an additional page as needed to fully describe the premise.



Blackstone's

Thu, Dec 30, 2021 at 11:57 AM

Glen McGary <glenm@portlandmaine.gov>

To: Adam Behnke <behnke@portlandmaine.gov>

Cc: Benjamin Pearson <bnp@portlandmaine.gov>, Christina Stacey <cstacey@portlandmaine.gov>, Eric Cobb <ecobb@portlandmaine.gov>, Eric Nevins <erick@portlandmaine.gov>, Fire Prevention <fireprevention@portlandmaine.gov>, Jason Grant <jgrant@portlandmaine.gov>, Kevin Schneck <kschneck@portlandmaine.gov>, Laurie Carlson <lac@portlandmaine.gov>, Ron Kelton <rkelton@portlandmaine.gov>, Tom Williams <tw@portlandmaine.gov>, Treasury Division <treasury@portlandmaine.gov>, Zachary Lenhart <zlenhart@portlandmaine.gov>, Zoning <zoning@portlandmaine.gov>

PPD approves

[Quoted text hidden]

--

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

Blackstone's

amachado <amachado@portlandmaine.gov>

Thu, Dec 30, 2021 at 12:53 PM

To: Zoning <zoning@portlandmaine.gov>

Cc: Zachary Lenhert <zlenhert@portlandmaine.gov>, Zoning <zoning@portlandmaine.gov>

Blackstones is located in the B-1 zone. Although under the current ordinance (12/01/2020) under Table 6-C a lounge (bar) is not a permitted use, except for 2020, the business has been licensed as a Class A Lounge since 2014. In 2020, under the State's Emergency Orders the license was changed to a Class XI (Restaurant/Lounge). The business license is now reverting back to its license as a Class A Lounge.

The property is not located in the Downtown Entertainment Overlay zone, so there are no zoning restrictions regarding the license for indoor entertainment.

Ann Machado
Zoning Administrator

[Quoted text hidden]



CITY OF PORTLAND
Permitting and Inspections Department

December 29, 2021

Mack Bar Inc
6 Pine Street
Portland, ME 04102

Re: Mack Bar Inc, dba Blackstone's. Application for Class A Lounge with Indoor Entertainment at 6 Pine Street

Mack Bar Inc:

This letter shall serve as a reminder of the public hearing before the Portland City Council on **Monday January 19, 2022 at 5:00 p.m.**, for the review of application for Class A Lounge with Indoor Entertainment at 6 Pine Street. The meeting will take place virtually. The link can be found on the Meeting Agenda which will be posted on the City Website on January 14, 2021.

You or a representative of the business must be present at this meeting in the event that the city council has questions regarding the license application. If there is no representation and questions arise, the item may be postponed.

Please contact our office directly with questions at (207) 874-8557 or at bl@portlandmaine.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Z Lenhert".

Zachary J. Lenhert
Licensing and Housing Safety Manager

Legal Advertisement

Notice of Public Hearing City of Portland

A Public Hearing will be held on January 19, 2022 at 5:00 P.M., virtually, Mack Bar Inc, dba Blackstone's. Application for Class A Lounge with Indoor Entertainment at 6 Pine Street - Sponsored by Danielle West, Interim City Manager

MEMORANDUM
City Council Agenda Item

FROM:

DATE: December 30, 2021

SUBJECT: Order 134-21/22 Granting Municipal Officers' Approval of HTLV Portland TRS LLC, dba The Press Hotel. Application for Class IA Inn (41+ rooms) with Indoor Entertainment at 119 Exchange Street - Sponsored by Danielle West, Interim City Manager

SPONSOR: The Mayor, City Manager, City Clerk, Corporation Counsel, the Planning Board, or up to three (3) members of the Council shall sponsor any orders or other items. If sponsored by a Council Committee, please include the date the committee met and the results of the vote.

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

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st Reading

Final Action

Can action be taken at a later date: No If action cannot be taken at a later date, please explain why

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

I. SUMMARY

II. AGENDA DESCRIPTION

Application was filed on 12/27/21. New City and State applications. New owner of an existing business.

Five affirmative votes are required for passage after public comment.

III. BACKGROUND

Background information that will not appear in the Agenda Description

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

V. FINANCIAL IMPACT

Please indicate whether or not there is a financial impact. Please note that per Council Rule 12, this form must have "a separate fiscal impact statement memo attached if the impact of the item is \$50,000 or more in a given fiscal year. This memo shall include details and information describing the fiscal impact including, but not limited to, projected costs, revenues or savings over a three (3) year period and/or any potential impacts on the City tax levy."

VI. STAFF ANALYSIS AND BACKGROUND

Staff Analysis that will not appear in the Agenda Description.

VII. RECOMMENDATION

VIII. LIST ATTACHMENTS

1. Press Hotel
2. Press Hotel_council packet

Prepared by:

Date: 12/30/2021

KATE SNYDER (MAYOR)
ANNA TREVORROW (1)
VICTORIA L. PELLETIER (2)
TAE Y. CHONG (3)
ANDREW ZARRO (4)

**CITY OF
PORTLAND**
IN THE CITY COUNCIL

MARK DION (5)
APRIL D. FOURNIER(A/L)
PIOUS ALI (A/L)
ROBERTO RODRÍGUEZ (A/L)

ORDER
GRANTING MUNICIPAL OFFICERS'
APPROVAL OF:

**HTLV Portland TRS LLC, dba The Press Hotel. Application for Class IA Inn (41+ rooms)
with Indoor Entertainment at 119 Exchange Street**

November 29, 2021

City of Portland
389 Congress Street
Portland, ME 04101

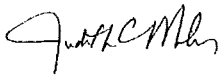
To the Mayor and Members of City Council.

Please use this letter as our letter of intent for application for a liquor license. We are under contract to acquire The Press Hotel on 390 Congress Street from an affiliate of the Fathom Companies. The Fathom Companies have obtained a liquor license in the years past under HOT-2020-12685 for the Press Hotel LLC. The Fathom Companies will continue to manage the day-to-day operations at the hotel with the same management team in place.

The Press Hotel is a full-service property and features a food and beverage operation along with a separate bar and banquet and conference space.

We appreciate your consideration in this process and look forward to working with the City.

Best Regards,



Judith C. Miles
Secretary
HTLV Portland TRS LLC
101 California Street, Suite 980
San Francisco, CA 94111

Jon Benoit
VP, Finance
Fathom Companies
The Press Hotel
119 Exchange Street
Portland, ME 04101



CITY OF PORTLAND
Permitting and Inspections Department
Application for Food Service Establishment with Alcoholic Beverages License

Business Information			
Establishment Name (d/b/a):	The Press Hotel	Phone:	207-808-8800
Location Address:	119 Exchange Street, Portland, ME	Zip:	04101
If new, what was formerly at this location:			
Mailing Address:	119 Exchange Street, Portland, ME	Zip:	04101
Contact Person:	Jonathan Benoit	Phone:	207-590-1761
Contact Person Email:	jbenoit@fathomcompanies.com		
Manager of Establishment:	Karl McElligott	Date of Birth:	03/01/1973
		Phone:	480-433-6682
Owner of Premises (Landlord):	HTLV Portland TRS LLC		
Address of Premises Owner (Landlord):	101 California Street, San Francisco, CA, Suite 980 Zip: 94111		

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

Name of Owner(s)	Date of Birth	Residence Address

Corporate Name	Corporate Mailing Address	Zip:
HTLV Portland TRS LLC		

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

Contact Person:	Judith C. Miles	Phone:	415.205.7577
Principal Officers	Title	Date of Birth	Residence Address
Judith C. Miles	Secretary	7/19/1960	345 Birchwood Dr., Moraga, CA 94556
Benjamin Rowe	Executive Member & Treasurer	3/3/1974	9 Madrone Way, Kentfield, CA 94904
Joseph Long	Executive Member	4/9/1961	8262 E. Hoverland Road, Scottsdale, AZ 85255
Class of Liquor License:		Class 1-Hotel- Malt, Liquor & Wine	

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

bl@portlandmaine.gov • www.portlandmaine.gov



CITY OF PORTLAND
Permitting and Inspections Department

Type of food served:	Upscale New American		
Please circle all that will be served:	Beer	Wine	Liquor
Projected percentage of sales:	Generated from Food: 70%	Generated from Alcohol: 30%	
Hours & days of operation:	7:00AM - 11 PM, 7 Days a week		
QUESTIONS			
Will full-course meals, only capable of consumption with the use of tableware, be served the entire time the establishment is open?			Y/N
If No, please explain:			Y/N
Is the establishment less than 300 feet from a school, dormitory, church or parish house, or similar establishment?			Y/N
If yes, give the distance:			
Will you have entertainment on the premises? (If yes, a Supplemental Application for Entertainment is required.)			Y/N
Will you permit dancing after 1:00 a.m.?			Y/N
Will you have outside dining? (If yes, an Outdoor Dining Application is required)			Y/N
If yes, will the outside dining be on PUBLIC or PRIVATE property (circle one).			
Will you have any amusement devices (pinball, video games, juke box)?			Y/N
If yes, please list: # of amusements: _____ # of pool tables: _____			
What is your targeted opening date?			
Does the issuance of this license directly or indirectly benefit any City employee(s)?			Y/N
If Yes, list name(s) of employee(s) and department(s):			
Have any of the applicants, including the corporation (if applicable), ever held a business license with the City of Portland?			Y/N
If Yes, please list business name(s) and location(s):			
Is any principal officer under the age of 21?			Y/N
Have applicant, partners, associates, or corporate officers ever been arrested, indicted, or convicted for any violation of law?			Y/N
If Yes, please explain:			

I Jonathan Benoit do hereby swear and affirm that every employee in my establishment that serves alcohol to the public has attended server training, or will attend server training within 90 days of their hire. I also understand that at any time the City license administrator can, upon request, require me to produce Server Training certificates for each employee that serves alcohol to the public in my establishment. Failure to meet the training requirement imposed by section 15-41 may result in the denial of a liquor license pursuant to 28-A M.R.S.A. § 653 (2) (G).

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

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

Signature [Signature] Title VP of Finance Date 11/29/2021



CITY OF PORTLAND
Permitting and Inspections Department

Application for an Entertainment License

☒ Indoor Entertainment \$500.00				☐ Outdoor Entertainment \$700.00		☐ Combined Entertainment \$800.00	
☒ Sound Mitigation Fee \$150.00							
Business Information							
Establishment Name (d/b/a):		The Press Hotel			Phone:		207-808-8800
Location Address:		119 Exchange Street, Portland, ME				Zip: 04101	
Owner Name:		HTLV Portland TRS LLC			Phone:		415.205.7577
Owner Email:		judy.miles@khpcp.com					
Contact Person responsible for Entertainment:		Fathom Management - Jonathan Benoit			Phone:		207.590.1761
Contact Person Email:		jbenoit@fathomcompanies.com					
Manager of Establishment:		Fathom Management - Karl McElligott			Phone:		480.433.6682
Manager Email:		kmcelligott@fathomcompanies					

About Your Establishment

Describe in detail the type and nature of the business and proposed entertainment:

The Press Hotel is a full service hotel, including food and beverage operations along with a separate bar, lounge, banquet and conference space. Indoor entertainment such as accoustical banks would service the banquet facilities upon customer requests and the Inkwell Bar.

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

Signature [Signature] Title VP of Finance Date 11/29/2021

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

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

bl@portlandmaine.gov • www.portlandmaine.gov

Press Hotel
Sound Mitigation Plan

December 21, 2021

Facility Overview

The Press Hotel contains the following entertainment spaces:

1. **Union Restaurant** (1st Floor) – This area is approximately 3200 sf, with windows along Exchange, Congress, and Market Streets at sidewalk level.
2. **Inkwell** (1st Floor) – This area is a bar/coffee bar located within the lobby with windows along Exchange and Federal Streets about 10 ft above the sidewalk.
3. **Meeting Rooms** (Basement) – There are several multi-purpose meeting rooms on the basement level with small, fixed windows along Exchange, Market, and Federal Streets.

Potential Impacts on Surrounding Uses

There are no potential impacts outside of the building. Interior sound levels are low and windows remain closed under normal circumstances. It is unlikely that activities within the spaces listed would be audible, even at the sidewalks.

Sound System Details and Anticipated Sound Readings

Any music playback and speech reinforcement will be by means of installed sound systems in each space. These consist of ceiling mounted loudspeakers. There will be no use of portable sound systems. Any live performance would include only unamplified acoustic instruments.

The anticipated maximum interior sound level in any space resulting from the sound systems is 70 dBA. The resulting exterior level at the sidewalk would be less than 50 dBA. This is lower than typical sound levels in an urban environment during the hours of operation.

The hotel is surrounded by commercial and government buildings. There is no potential for residential impacts.

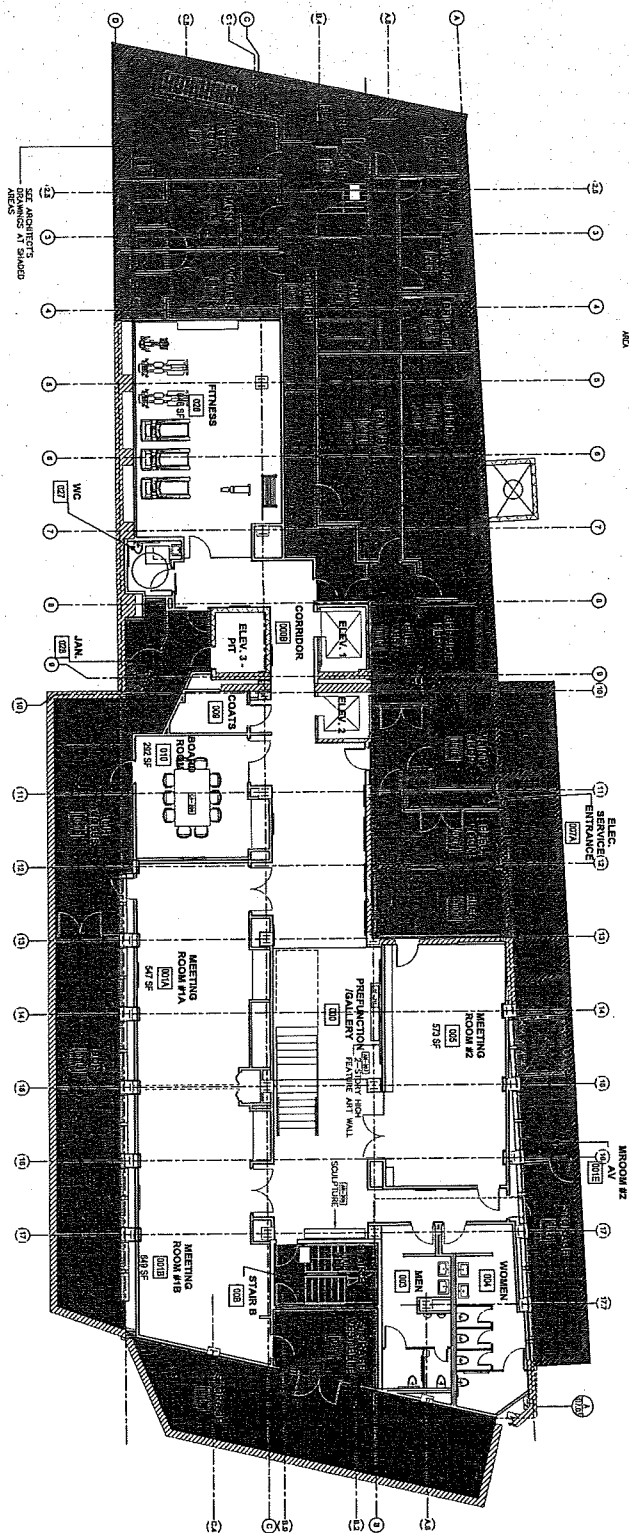
On-Site Monitoring

None of the entertainment spaces has a capacity of 250 people. Therefore, no monitoring will be necessary.

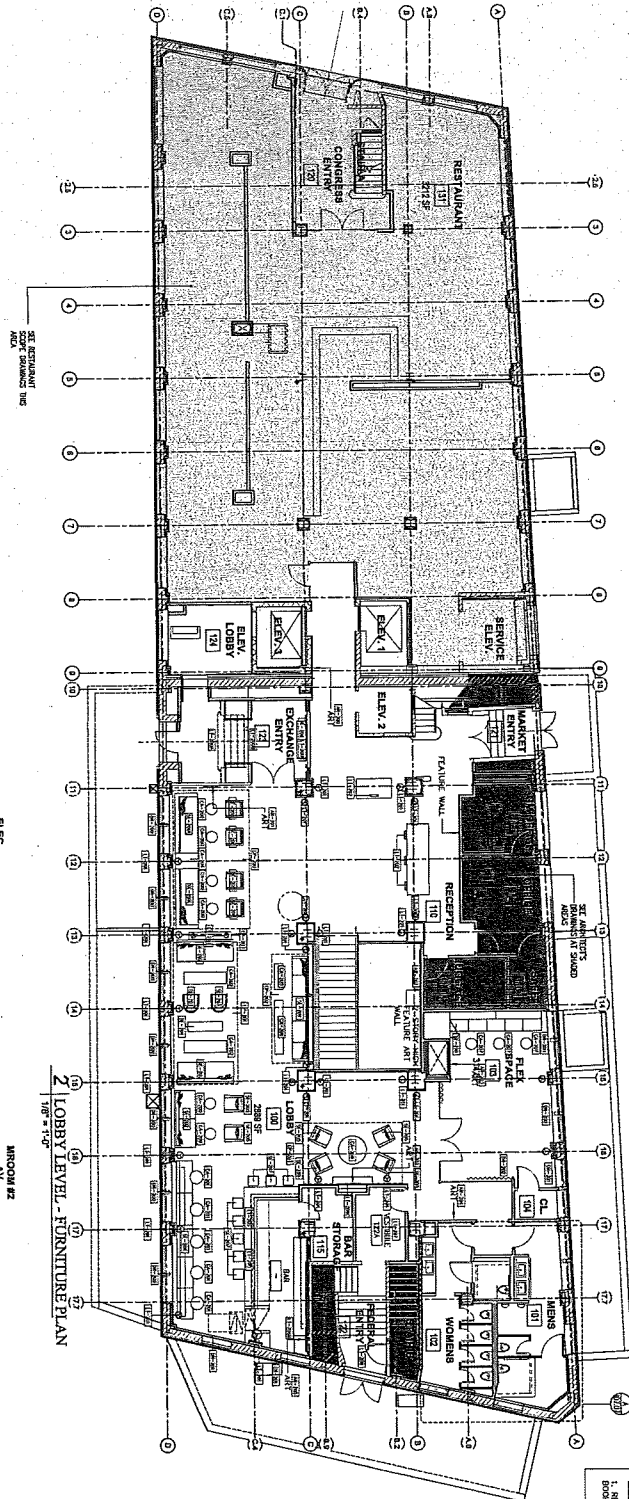
Prepared by



Eric L. Reuter, FASA, INCE Bd. Cert.



1 LOWER LEVEL - FURNITURE PLAN



2 LOBBY LEVEL - FURNITURE PLAN

GENERAL NOTE:
1. REFER TO SPECIFICATIONS
BOOK FOR DET.

ID-5.01

Date: 06 SEPT, 2013
Scale: 1/8" = 1'-0"
LOWER LEVEL &
LOBBY LEVEL
FURNITURE PLANS

Revisions:
1 13 07-01 30% Mariott Substation
2 13 09-09 60% Mariott Sub. & Pric.
3 13 10-14 Issue for Bid & Mariott Review

Project: Press Hotel
119 Exchange
Portland, ME 04101

Architect: ARCHETYPE
architects
48 Union Wharf Portland, Maine 04101
(207) 772-6022 Fax (207) 772-4056

Consultant: STONEHILL & TAYLOR
ARCHITECTS AND PLANNERS
31 W. 27th Street New York, NY 10001
(212) 226-8896 Fax (212) 941-1874

Prepared For: 119 Development,
LLC
P.O. Box 7468
Portland, ME 04112

City of Portland

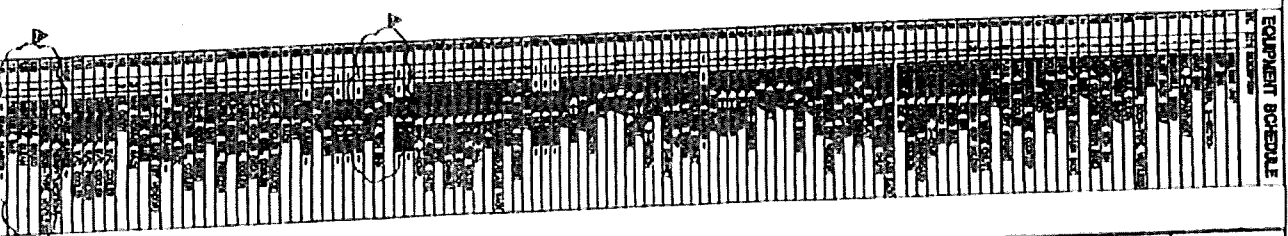
Sound Mitigation Review

Date: 1/6/2022

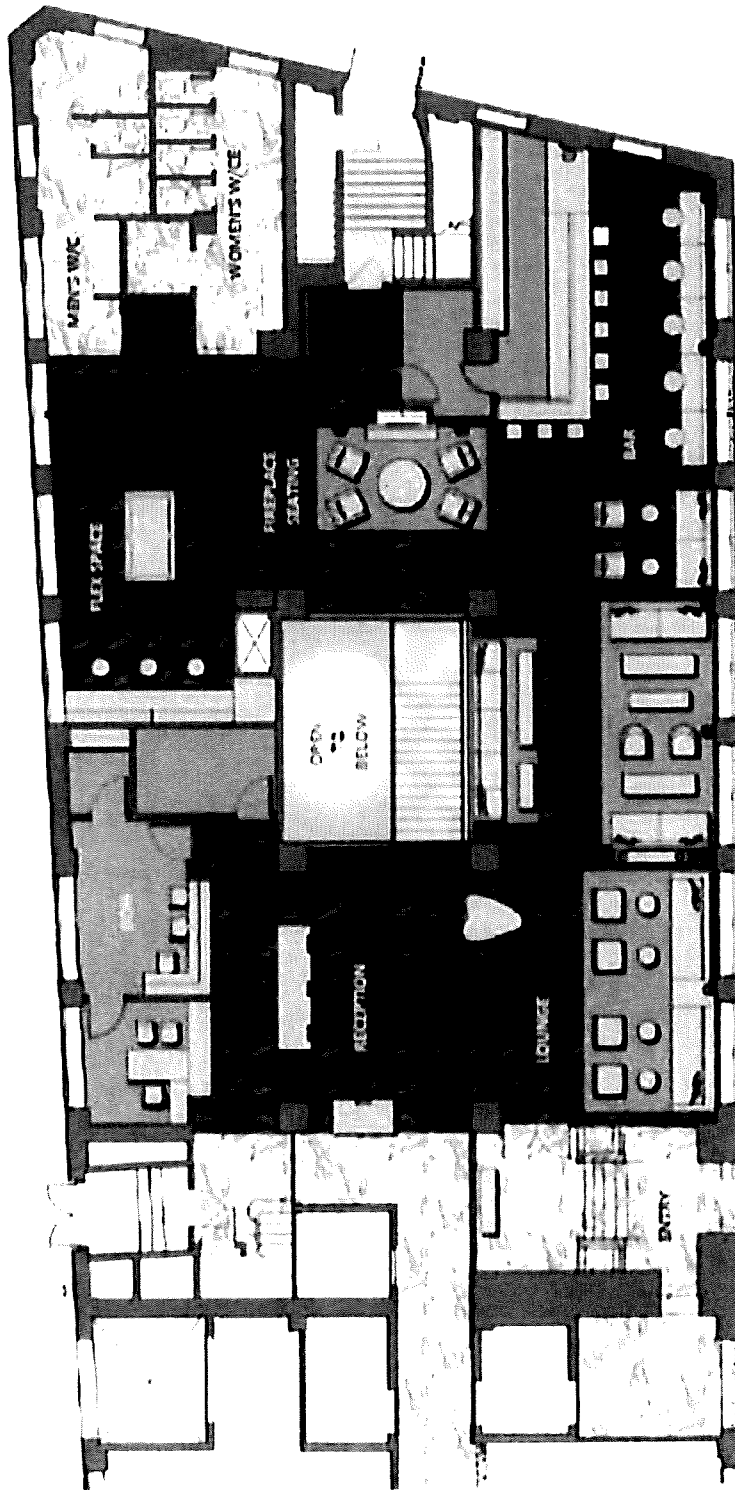
Business Press Hotel

Applicant Jonathan Benoit

DESCRIPTION	yes	no
Sound system appropriate for the size venue	Yes	
Performance space located in an appropriate location	Yes	
Performance space facing in an appropriate direction to control sound	Yes	
Surrounding surfaces appropriate to control sound	yes	
Additional sound absorbing features		
additional notes		
Approved	Yes	
DIRECT ALL INQUIRIES TO:		
Kevin Schneck		
(207) 756-8433		
kschneck@portlandmaine.gov		

[illegible]
$$\underline{\text{SCALE} - 1/4" = 1' - 0"$$

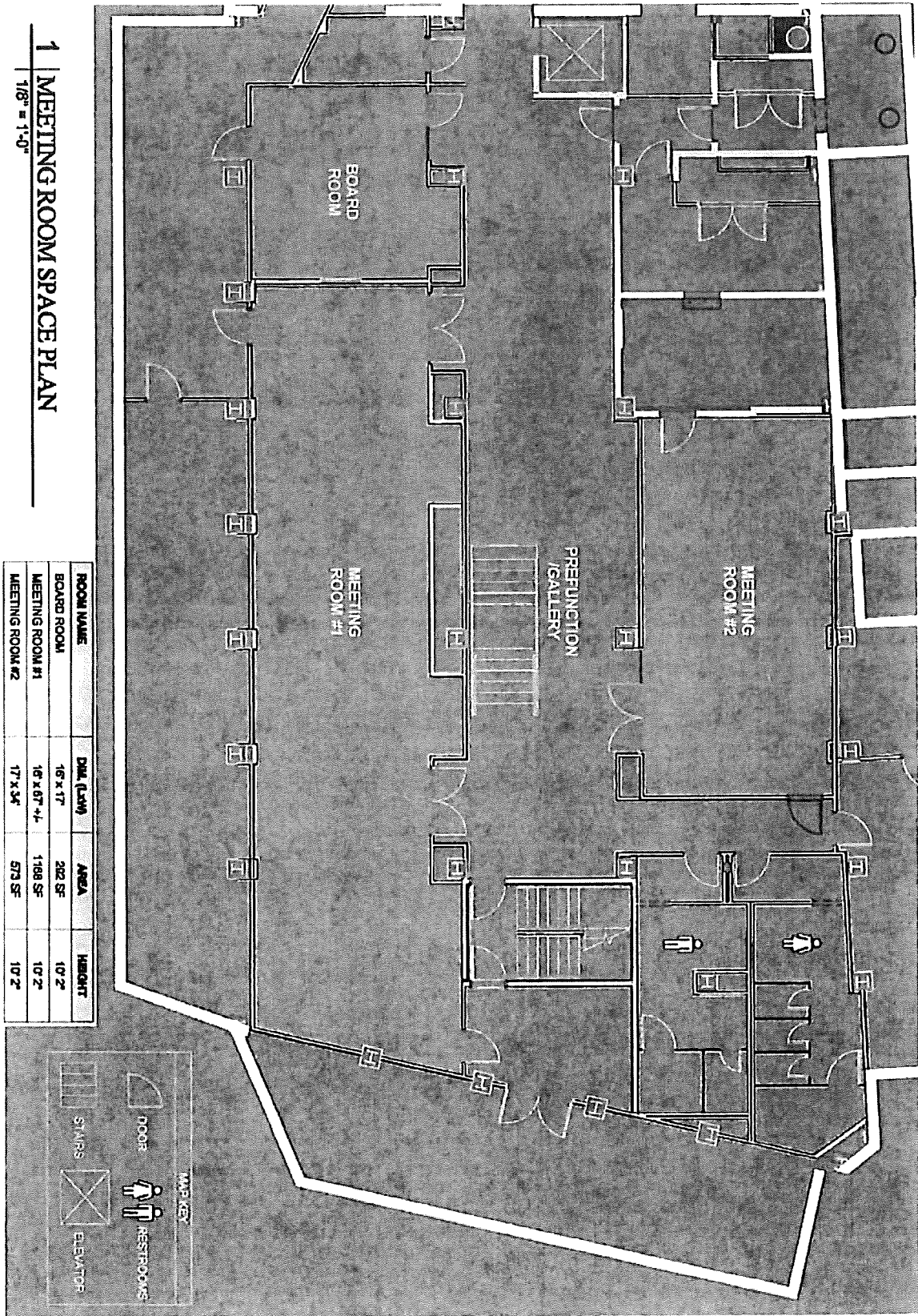
**119 Development,
LLC**



1 | MEETING ROOM SPACE PLAN

1/8" = 1'-0"

ROOM NAME	Dim. (LxW)	AREA	HEIGHT
BOARD ROOM	16' x 17'	282 SF	10' 2"
MEETING ROOM #1	16' x 67' +/-	1168 SF	10' 2"
MEETING ROOM #2	17' x 34'	573 SF	10' 2"



MR-1

PRESS HOTEL
350 CONGRESS STREET
PORTLAND, ME 04101

Date: 04 FEB 14
Scale: As indicated
Project: MEETING ROOM SPACE PLAN

ARCHETYPE
architects
48 Union Wharf Portland, Maine 04101
(207) 772-6022 Fax (207) 772-4036

Starters

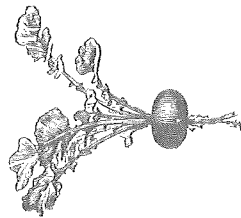
CRISPED BRUSSELS SPROUTS — 9
charred lemon, aioli, toasted walnuts

CRAB PASTA — 17/26
campagnele pasta, spring peas,
light cream, shaved smoked scallop

SPRING PANZANELLA SALAD — 15
grilled focaccia, torn mozzarella, panache of seasonal
vegetables, truffle vinaigrette

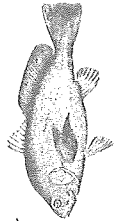
SALT ROASTED BEET SALAD — 14
toasted fennel hummus, whipped feta,
pickled onions, pistachio, crispy chickpeas

CRISPY POLENTA FRIES — 14
braised lamb sugo, cippolini onions, mint, parmesan



Mains

SMOKED HALF CHICKEN — 17
miso-rooftop honey, pan sauce
ricotta gnocchi, brown butter powder



PAN ROAST HALIBUT — 26
spring herb chimichurri, roasted potatoes
chili oil, lemon zest

BRINED & BONE IN PORK CHOP — 19
sweet soy sauce
mushroom fried brown rice, local egg



SEARED HANGER STEAK — 26
soft polenta, local cheddar,
mushroom Worcestershire

FAROE ISLAND SALMON — 25
caper crème friche, pea tendrils

Vegetables & Sides

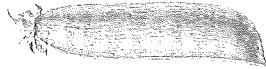
GLAZED ASPARAGUS — 7
crispy shallots

COFFEE ROAST CARROTS — 7
glazed with beurre monté

SWEET PEAS & ONIONS — 7
smoky bacon

RICOTTA GNOCCHI — 7
brown butter powder

MUSHROOM FRIED BROWN RICE — 7
local egg



SOFT POLENTA — 7
local cheddar

ROASTED POTATOES — 7
chili oil, lemon zest

Please practice social distancing and wear your mask when not seated at your table. Please advise us if you have any dietary concerns or food allergies. Consuming raw or undercooked meats, poultry, seafood, shellfish, or eggs may increase your risk of foodborne illnesses, especially if you have certain medical conditions.

© 2019 UNION



Breakfast

STANDARD — 16

two farm fresh eggs, smoke house bacon or
maple sausage, breakfast potatoes, choice of toast

RED FLANNEL HASH & POACHED EGGS — 16

corned beef, onions, fingerling potatoes, local beets,
slow-poached eggs, choice of toast

AVOCADO TOAST — 14

avocado, whole wheat toast, poached egg,
chili & lime marinated tomatoes, grains of paradise

PORK BELLY BLT BREAKFAST SANDWICH — 14

farm fresh egg, seared pork belly, sliced tomato,
arugula pesto, grilled english muffin

FRESH START — 12

local yogurt, fresh berries, rooftop honey,
bee pollen, house-made toasted almond granola

OVERNIGHT OATS & CHIA SEEDS — 9

coconut milk, Maine blueberry compote, puffed quinoa

Drinks

DETOX SMOOTHIE — 9

banana, apple, pear, spinach, kale, celery

KICK-STARTER CLEANSE — 6

organic apple cider vinegar, fresh ginger & turmeric,
honey, lemon, cayenne



Brunch

SUMMER PANZANELLA SALAD — 14

grilled focaccia, torn mozzarella,
panache of seasonal vegetables, truffle vinaigrette

CRISPED BRUSSELS — 9

toasted walnuts, charred lemon, aioli

FRIED CHICKEN SANDWICH — 15

gochujang aioli, pea greens, pickled onions

CALDWELL FARMS BEEF BURGER — 16

press sauce, LTO, smoke house bacon,
cheddar cheese

UPPER EXCHANGE LOBSTER ROLL — MP

lemon mayonnaise,
bibb lettuce, snipped chives, two split-top rolls

Sides

TOAST — 3

ENGLISH MUFFIN — 4

FRUITWOOD-SMOKED BACON — 5

MAPLE SAUSAGE — 5

RED FLANNEL HASH — 7

TOASTED ALMOND GRANOLA & MILK — 7

DAILY FRESH-BAKED MUFFIN — 4

SEASONAL BERRIES — 9

LOCAL FARM FRESH EGGS (ONE/TWO) — 3/4

PLAIN LOCAL YOGURT — 6

BREAKFAST POTATOES — 4

Please practice social distancing and wear your mask when not seated at your table.
Please advise us if you have any dietary concerns or food allergies. Consuming raw or undercooked meats, poultry, seafood, shellfish, or eggs may increase your risk of foodborne illnesses, especially if you have certain medical conditions.

spring 2020

Press Hotel

Eric Nevins <erich@portlandmaine.gov>
To: Zachary Lenhart <zlenhart@portlandmaine.gov>

Thu, Dec 30, 2021 at 1:28 PM

Approved

[Quoted text hidden]

--

Eric Nevins
Lieutenant
Portland Police Department
(207) 874-8513

Press Hotel

Zoning <zoning@portlandmaine.gov>

Mon, Jan 10, 2022 at 9:28 AM

To: Zoning <zoning@portlandmaine.gov>

Cc: Adam Behnke <behnke@portlandmaine.gov>, Zachary Lenhart <zlenhart@portlandmaine.gov>, Benjamin Pearson <bnp@portlandmaine.gov>, cstacey <cstacey@portlandmaine.gov>, Eric Cobb <ecobb@portlandmaine.gov>, Eric Nevins <ericn@portlandmaine.gov>, Fire Prevention <fireprevention@portlandmaine.gov>, Jason Grant <jgrant@portlandmaine.gov>, Laurie Carlson <lac@portlandmaine.gov>, Ron Kelton <rkelton@portlandmaine.gov>, Tom Williams <tw@portlandmaine.gov>, Zoning <zoning@portlandmaine.gov>, Treasury Division <treasury@portlandmaine.gov>

Zoning has approved this within EnerGov.

A Class A Restaurant (Class 1 Liquor License) for a hotel is a permitted use in the B-3 Zone, per Table 6-C of Chapter 14.

Thanks,

Jonathan

[Quoted text hidden]



CITY OF PORTLAND
Permitting and Inspections Department

December 30, 2021

HTLV Portland TRS LLC
119 Exchange Street
Portland, ME 04101

Re: HTLV Portland TRS LLC, dba The Press Hotel. Application for Class IA Inn (41+ rooms) with Indoor Entertainment at 119 Exchange Street

HTLV Portland TRS LLC:

This letter shall serve as a reminder of the public hearing before the Portland City Council on **Monday January 19, 2022 at 5:00 p.m.**, for the review of application for Class IA Inn (41+ rooms) with Indoor Entertainment at 119 Exchange Street. The meeting will take place virtually. The link can be found on the Meeting Agenda which will be posted on the City Website on January 14, 2021.

You or a representative of the business must be present at this meeting in the event that the city council has questions regarding the license application. If there is no representation and questions arise, the item may be postponed.

Please contact our office directly with questions at (207) 874-8557 or at bl@portlandmaine.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Z Lenhert".

Zachary J. Lenhert
Licensing and Housing Safety Manager

Legal Advertisement

Notice of Public Hearing City of Portland

A Public Hearing will be held on January 19, 2022 at 5:00 P.M., virtually, HTLV Portland TRS LLC, dba The Press Hotel. Application for Class IA Inn (41+ rooms) with Indoor Entertainment at 119 Exchange Street - Sponsored by Danielle West, Interim City Manager



Health & Human Services Department
Kristen Dow, Director

MEMORANDUM

To: Mayor Snyder and Members of the Portland City Council
cc: Danielle West, Interim City Manager
From: Kristen Dow, Director of Health & Human Services
Date: January 14, 2022
Re: HHS Homelessness and Emergency Shelter Update

Over the past several months we have continued to see a steady increase in the number of asylum seeking families arriving from the southern border. As of the date of this memo, we are providing shelter to 225 families for 735 individuals, and we have seen a total of 30 new families arrive since January 3, 2022.

In addition to newly arriving families, as other temporary shelters around the state close, we have also continued to see new intakes coming to the Oxford Street Shelter (OSS) from outside of Portland. In the first thirteen days of January, OSS has had 29 new intakes. Of those intakes, 17 were from outside of Portland, accounting for 59% of our intakes.

These increasing numbers have pushed us to the highest nightly average of those in emergency shelters that we have seen to date. With these growing numbers, we continue to have to utilize a combination of shelter beds and hotel placements to shelter both individuals and families. We are now using ten different hotels in five municipalities in addition to our two 24-hour shelters.

City management and HHS leadership continue to notify State officials of the increasing numbers that we are experiencing and urge for assistance with a state and/or regional approach for both resettlement and emergency sheltering. With the continued support of our community partners, we are actively working to ensure the needs of all those in emergency shelters are met. However, as we have stated multiple times over the past several months, the resources of our community are being stretched to the point where the families and individuals we serve will not have access to the resources they need to be successful.

We wanted to make the City Council aware of the current situation and hereby request continued support and advocacy with local, county, state and federal appointed and elected officials for the following: a regional approach to emergency homelessness; the state to take the lead on resettlement efforts; and for uniform General Assistance administration across the state.

MEMORANDUM
City Council Agenda Item

FROM: Adam Harr, Social Services

DATE: December 30, 2021

SUBJECT: Order 88-21/22 Amendment to Portland City Code Chapter 15 Re: Emergency Shelter License Requirements - Sponsored by the Health & Human Services and Public Safety Committee, Tae Chong, Chair

SPONSOR: Sponsored by the Health & Human Services and Public Safety Committee, Tae Chong, Chair

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

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st Reading 10/18/2021

Can action be taken at a later date: Yes Yes.

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

I. SUMMARY

The Health & Human Services and Public Safety Committee met on September 28, 2021 and voted 2 - 0 (Ray absent) to recommend passage to the full Council.

II. AGENDA DESCRIPTION

The Health & Human Services and Public Safety Committee met on September 28, 2021 and voted 2 - 0 (Ray absent) to recommend passage to the full Council. The Council voted in favor of passage (7-1, Zarro) on November 15, 2021.

The amendment would establish licensing requirements and enforcement provisions for emergency shelters to ensure the safety of clients and staff. These include a two-tier fee structure for small and large emergency shelters, a bed density cap of 300 beds within a one-mile radius, a 1,000-foot buffer zone between shelters, a day space requirement, and exemptions for pre-existing emergency shelters.

This item must be read on two separate days. It received its first reading on November 1, 2021. On November 15, 2021, it was approved by a vote of 7-1 (Zarro). On December 6, a motion to reconsider passed 9-0, and this item was also postponed to January 19, 2022 to accommodate a workshop on this topic. Public comment has already been taken on this item. Five affirmative votes are required for passage.

III. BACKGROUND

To address the inequitable distribution of emergency shelter beds in the city and the unsafe environments created by their concentration, such as those in the Bayside neighborhood, the committee asked staff to research shelter licensing requirements in other communities. On November 10, 2021, staff brought examples to the Health & Human Services and Public Safety Committee and presented a first draft of emergency shelter licensing requirements at the next meeting, January 12, 2021. Public comment was taken at the February 9, 2021 and the June 8, 2021 meetings. At the September 28, 2021 meeting, the committee voted 2-0 (Ray absent) to recommend passage by the City Council.

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

The amendment addresses the Council goals to reduce homelessness and make human dignity a top priority by insuring emergency shelters are safe and meet or exceed a minimum quality of service, such as having adequate space for clients during the day.

V. FINANCIAL IMPACT

While licensing fees will support the basic administrative implementation of this new program, there will be significant costs associated with applicant engagement, as well as ongoing oversight of and inspections related to performance standards. These inspections will require subject matter expertise that we do not currently have, along with significant staff time; as a result, a new staff member would need to be hired. The salary for this employee classification is \$65,770, plus \$23,723 for fringe benefits. In addition, this type of new position requires new equipment and resources totaling approximately \$7,000. In total, we estimate this program to carry a cost of approximately \$96,493.00, which is not currently included in the City budget.

VI. STAFF ANALYSIS AND BACKGROUND

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

VII. RECOMMENDATION

Passage.

VIII. LIST ATTACHMENTS

1. Amendment Chapter 15 Re Emergency Shelter License Requirements 11.1.2021
2. Amendment 1 to Order 88-FY22 Mayor Snyder and Councilor Zarro Re Domestic Violence Shelter Exemption 1.19.2022
3. Amendment 2 to Order 88-FY22 Councilors Dion and Ali Re Enforcement 1.19.2022
4. Amendment 3 to Order 88-FY22 Councilor Fournier Re Metro Services 1.19.2022
5. Amendment 4 to Order 88-FY22 Councilor Fournier Re Monthly Meeting Deleted 1.19.2022
6. Amendment 5 to Order 88-FY22 Councilor Fournier Re Access to Public Transit 1.19.2022
7. Fiscal Impact Note - Order 88 - Fiscal Impact Note (1)
8. Shelter Licensing Q&A
9. Shelter License Requirements
10. Shelter Spacing (1 Mile) (1)
11. Staff Recommendations on Shelter Licensing
12. Reporting and Operational Requirements Memo April.13.2021
13. Committee Request for Staff Recommendations on Shelter Licensing
14. Sec. 15-8
15. Shelter hypothetical buffers
16. Shelter hypothetical spacing
17. Licensing Examples for Emergency Shelters Memo for November 10 HHS & PS Committee Meeting
18. Shelter Licensing Public Comment
19. HHS Memo (buffers and enforcement)
20. Shelter Licensing June 8 2021 HHSPS
21. 2022 ESHAP Program Guide (1)
22. 2022 Monitoring Schedule with PO (1)
23. HQS 2022

Prepared by:

Adam Harr, Social Services

Date: 12/30/2021

Order 88-21/22

Passage: 7-1 (Zarro) on 11/15/2021

Motion to reconsider: 9-0 on 12/6/2021

Motion to postpone to January 19, 2022: 9-0 on 12/6/2021

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

CITY OF PORTLAND
IN THE CITY COUNCIL

MARK DION (5)
APRIL D. FOURNIER(A/L)
PIOUS ALI (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

AMENDMENT TO PORTLAND CITY CODE
CHAPTER 15

Re: EMERGENCY SHELTER LICENSE REQUIREMENTS

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

1. *That Section 15-12 of the Portland City Code is hereby amended and a new Article IV. Is hereby added to read as follows:*

Sec. 15-12. Fees and expiration dates.

Sec. 15-12. Fees and expiration dates.

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

Location in Code	Description	Fee	Expiration Date
. . .			
<u>Ch. 15,</u> <u>Art.</u> <u>IV.</u>	<u>Small Emergency</u> <u>Shelter (1-40 beds)</u>	<u>\$250.00</u>	<u>July 1</u>

	<u>Large Emergency Shelter (41+ beds)</u>	<u>\$500.00</u>	<u>July 1</u>
--	---	-----------------	---------------

...

Sec. 15-44-46. Reserved.

ARTICLE IV.

15-47. Definitions.

Emergency Shelter: A facility providing temporary overnight shelter to individuals experiencing homelessness in a dormitory-style or per-bed arrangement.

15-48. Licensing Requirements.

(a) Chapter 15 to apply. Except as otherwise provided in this Article, the provisions of Chapter 15 shall apply to all licenses applied for and issued under this Article.

(b) Operating without a license is prohibited. No individual or entity may operate an emergency shelter within the City without first obtaining a license from the City, except that any emergency shelter in operation as of the effective date of this Article must apply for and receive a license within 90 days of the effective date.

(c) Burden of proof. The applicant for any license under this Article bears the burden of proving that all qualifications for licensure have been satisfied.

(d) Current information. Any applicant or licensee must keep all information disclosed in their application current and must notify the City of any change in information within ten business days of any such change.

(e) No vested rights. No person shall have any entitlement or vested right to a license under this Article, and operating an emergency shelter is a privilege and not a right in the City.

15-49. Licensing Authority

(a) All new license applications shall be reviewed by the City Council. After a public hearing, the Council shall grant, grant with conditions, or deny the license.

(b) Except as provided by Subsection (c) below, all renewal applications shall be reviewed by the Permitting and Inspections Department. The Permitting and Inspections Director shall grant, grant with conditions, or deny the license. Except that, at the request of the City Manager or designee, or at the request of any member of the City Council or the Mayor, a renewal application shall be reviewed by the City Council in accordance with Subsection (a) above.

(c) All renewals of shelter licenses held by the City of Portland shall be reviewed by the City Council in accordance with Subsection (a) above.

15-50. Review Procedures.

The following review procedures shall apply to both initial and renewal applications:

(a) Applications shall be made in writing using a form prepared by the City for the purpose and must include all information required by this Article and by the form. Applications shall be submitted to the Permitting and Inspections Department.

(b) If the Permitting and Inspections Department determines that a submitted application is not complete, they shall notify the applicant of the additional information required to process the application. If such additional information is not submitted within thirty (30) days of the Permitting and Inspections Department's request, the application may be denied administratively with no further action.

(c) Before the City Council issues its decision on an initial or renewal application, the Police Department, Fire Department, Permitting and Inspections Department, and the

Health and Human Services Department shall review the application and recommend to the City Council whether to issue, issue with conditions, or deny the license. The Departments shall review the application for the following standards:

- (1) Whether the shelter has complied with its approved operations and security plans;
- (2) Whether the operations and security plans are more likely than not to protect the public health, safety, and welfare;
- (3) Whether the operations and security plans are more likely than not to meet all performance standards and requirements in this Article; and
- (4) Whether there are any outstanding code violations at the shelter.

(d) In reviewing license applications, the City Departments and the City Council may consider the approval standards under this Article as well as other applicable local, state or federal laws and, for license renewals, the licensee's record of compliance with the same.

(e) Applications for renewal licenses shall be submitted at least thirty (30) days prior to expiration of the existing term. Any Licensee who fails to submit a renewal application by the applicable deadline shall not have authority to operate until a license is granted.

(f) The City Council shall have the authority to impose any conditions on a license that may be reasonably necessary to insure compliance with the requirements of this Article, to address concerns about operations, or to protect the health, safety, and welfare of the public. Failure of any Licensee to comply with such conditions shall be considered a violation of the license and this Article.

15-51. Application Submission Requirements

Each applicant for an Emergency Shelter license shall complete and file an application on the form provided by the City, together with the applicable license fee as well as the following supporting materials:

(a) Attested copies of any articles of incorporation, bylaws, operating agreement, management plan, partnership agreement or articles of association that govern the entity that will own and/or operate the emergency shelter.

(b) A corporate supplement form that identifies all owners, officers, members, managers, partners, and/or board members of the Applicant, and their ownership interests, if applicable.

(c) A description of the population to be served by the shelter.

(d) A description of the premises for which the license is sought, including a floor plan of the premises.

(e) The name and contact information for a community relations liaison, who shall be responsible for receiving and responding to inquiries from, and reasonably addressing concerns raised by, members of the public and other individuals.

(f) The name and contact information for an emergency contact, who shall respond to all non-emergency contacts by the City within 72 hours of contact, and to any emergency contact by the City within two hours of contact.

(g) Whether the applicant has experience running a shelter in Portland or elsewhere and a description of that shelter, including size, location, and population served.

(h) An operations plan describing the following:

(1) The experience and qualifications of shelter management and staff, sufficient to demonstrate that the shelter can meet its obligations under this Article, including providing appropriate services to shelter guests;

- (2) How the shelter will meet the performance standards and other requirements of this Article;
- (3) Management responsibilities;
- (4) A process for effectively resolving neighborhood concerns;
- (5) Staffing;
- (6) Controls for resident behavior and noise levels; and
- (7) Security, safety and protective measures:
 - i. On-site surveillance;
 - ii. Provisions to provide access to recordings of exterior public ways by city staff upon request;
 - iii. Safety measures;
 - iv. Access restrictions;
 - v. Environmental design, engineering or procedural measures to reduce crime, loitering and disorder in and around the facility;
 - vi. Emergency and response protocols, including but not limited to:
 - a. Medical emergencies, including overdoses;
 - b. Intruder response;
 - c. Criminal trespass guidance;
 - d. Recovery of weapons;
 - e. Recovery of illicit drugs; and

f. Incidents involving violence, serious injuries or death;

(i) The most recent MaineHousing annual monitoring report shall be provided to the City with any renewal application; and

(j) A description of the strategies to be implemented to help residents utilize public transit, as required by 15-52(d).

15-52. Performance Standards

In order to obtain a license pursuant to this Article, the Licensee shall demonstrate to the City Council that the following requirements will be met, and must maintain compliance throughout their licensure.

The Licensee shall comply with all of the following standards:

(a) Display of License. The current License shall be displayed at all times in a conspicuous location within the Premises.

(b) On-Site Supervision. On-site supervision shall be required for any non-apartment style emergency shelter, whenever clients are present.

(c) Maine State Housing Authority Monitoring. Any Emergency Shelter shall participate in the MaineHousing monitoring program.

(d) Adequate access to and from METRO service shall be provided. The facility must implement strategies to help residents utilize public transit.

(e) The facility must provide indoor space to permit shelter guests day shelter.

(f) The facility must have centralized shelter operations on each level of the emergency shelter providing for sight lines to sleeping areas. However, a pre-existing emergency shelter, as defined in Section 15-56(a) below, shall not be required to

meet this requirement, so long as alternative measures are provided to ensure resident safety while sleeping. This requirement shall also not apply to apartment-style shelters.

(g) The facility must provide on-site services to support residents, such as case management, life skills training, counseling, employment and educational services, or other programs.

(h) Maximum Density of Beds. The total bed capacity for individual residents within emergency shelters in the City shall not exceed 300 beds within a 1 mile radius. Distance shall be measured between property lines of the emergency shelters in a straight line.

(i) Proximity to Other Facilities. There shall be a 1,000-foot buffer between emergency shelters. Distance shall be measured from the nearest property line of each shelter in a straight line.

(j) Monitoring Reports. Each shelter shall quarterly file a management report with the Department of Health and Human Services, which shall share the report with the other responsible City agencies, including the Police Department. The report shall contain, at a minimum, the following information:

- (1) Number of unique individuals served at the shelter;
- (2) Total number of bednights accessed at the shelter;
- (3) Number of intakes during that reporting period;
- (4) Total number of individuals who had previously been unsheltered and staying outside in Portland;
- (5) Total number of individuals who are defined as having long time stayer status;
- (6) The average length of stay;

- (7) Number of housing placements;
- (8) Record of neighborhood concerns and resolutions;
- (9) Summary of meetings with individual neighbors, neighborhood associations and businesses;
- (10) Number of Criminal Trespass Orders ("CTO") issued, the reasons for those CTOs, the length of those CTOs, and whether the person issued the CTO has been issued a CTO previously;
- (11) Record of police calls for service related to mental health, substance use, crime or other reasons and outcomes; and
- (12) Any additional information requested by the Department of Health and Human Services.

(k) Shelter management will meet with and communicate monthly with neighbors and other stakeholders, that will include the Police Chief or designee, to prevent and/or respond proactively to public safety and quality of life concerns.

15-53. Review Process for Domestic Violence Shelters

(a) Due to the need for confidentiality for safety reasons, a shelter serving solely survivors of domestic violence may request a waiver of any of the provisions of this Article that may jeopardize the confidentiality of the shelter, including, but not limited to, the following:

- (1) The requirement to provide a description of the premises for which the license is sought, including a floor plan of the premises;
- (2) The limitations on the number of beds; and
- (3) The limitation on the distance between shelters.

(b) A shelter applying for this exemption must provide its request for a waiver in writing, including the reasons why a waiver is required, and how the shelter will ensure that the public health, safety, and welfare will not be negatively impacted by that waiver.

(c) At its sole discretion, the City Council may grant a requested waiver if it finds that the waiver is required to protect the confidentiality and safety of the shelter and its guests and that the public health, safety, and welfare will not be negatively impacted by the waiver.

15.54. Enforcement and Penalties

(a) This Article shall be enforced by the City Manager's designee(s).

(b) Any municipal official with authority to enforce this or other municipal ordinances regulating Emergency Shelters shall have authority to enter the premises of an Applicant or Licensee without notice to make inspection reasonably necessary to ensure compliance with this Article, the applicant or licensee's application or license, or other applicable provisions of the City Code.

(c) Upon finding a violation of this Article, of an application, license or permit, or of any other provision of the City Code, the inspecting municipal official shall issue a notice of violation and provide a reasonable opportunity to correct that violation before issuing civil penalties, taking action to suspend or revoke a licensee's license, or taking court action against the licensee. However, there shall be an exception to this requirement where a violation poses an imminent threat to health or safety, or if the violation is a repeat violation.

(d) Each day that a violation of this Article exists shall be a civil violation subject to civil penalties. Each violation of this Article shall be subject to civil penalties in the minimum amount of \$100 and the maximum amount of \$2,500 per day that the violation has existed. However, the maximum amount of

civil penalties may be increased where: (i) There has been a previous violation or judgment against the same party within the past two years for a violation of this Article, except that the maximum civil penalties may not exceed \$25,000 per day; or (ii) The economic benefit resulting from the violation exceeds the applicable penalties, except that the maximum civil penalty may not exceed an amount equal to twice the economic benefit resulting from the violation.

(e) The City Manager or his or her designee is authorized to cause to be instituted by the corporation counsel, in the name of the City, any and all actions, legal or equitable, that may be appropriate or necessary for the enforcement of the provisions of this Article.

(f) If the City is the prevailing party in any legal action to enforce this Article, the municipality must be awarded reasonable attorney fees, expert witness fees and costs, unless the court finds that special circumstances make the award of these fees and costs unjust.

15-55. Appeals.

(a) Appeals of the suspension or revocation of a license, or of a notice of violation issued pursuant to this Article, shall be to the City Manager within 30 days .

(b) Appeals from the grant or denial of a license by the City Council shall be taken to Superior Court.

(c) Appeals from the grant or denial of a renewal license by the Permitting and Inspections Department shall be taken to the City Council within 30 days of the decision.

15-56. Pre-existing Emergency Shelters

(a) For purposes of this Section, "pre-existing emergency shelter" shall mean (i) an emergency shelter that, as of January 31, 2021, is lawfully operating with all required permits and approvals; (ii) an emergency shelter that, as of January 31, 2021, has received conditional use approval that has not expired, or

(iii) the consolidation of the operations of the Joe Kreisler Teen Shelter at 38 Preble Street and the Preble Street Teen Center at 343 Cumberland into one 24/7 emergency shelter facility for teens at 343 Cumberland Avenue provided that there is no expansion of the number of individuals served or beds currently provided between the two existing locations.

(b) Pre-existing emergency shelters shall comply with all of the requirements of this Article, except as provided in this section.

(c) Applicability of bed density requirements in Sec. 15-52(h) :

(1) A pre-existing emergency shelter's inability to meet the maximum density of beds requirement in Sec. 15-52(h), shall not operate to disqualify that pre-existing emergency shelter from obtaining a license.

(2) However, any expansion of a pre-existing emergency shelter shall be required to meet the maximum density of beds requirement in Sec. 15-52(h).

(3) The number of beds at any pre-existing emergency shelter shall still be counted for purposes of determining whether any proposed new shelter is eligible for licensure.

(d) Applicability of proximity requirements in Sec. 15-52(i) :

(1) A pre-existing emergency shelter's inability to meet the proximity to other facilities requirement in Sec. 15-52(i), shall not operate to disqualify that pre-existing emergency shelter from obtaining a license.

(2) However, a pre-existing emergency shelter may not expand unless it meets the proximity to other facilities requirement in Sec. 15-52(i).

(3) Any new emergency shelter must still meet the proximity to other facilities requirement in Sec. 15-52(i) with respect to any pre-existing emergency shelter.

(e) Applicability of indoor space performance standards in Sec. 15-52(e):

(1) A pre-existing emergency shelter is not required to provide indoor space as required in Sec. 15-52(e) if it did not have such indoor space at the time of original approval.

(2) However, if there is any expansion of a pre-existing emergency shelter, that emergency shelter shall be required to add indoor space sufficient to meet the requirements of Sec. 15-52(e).

15-57. Severability

The provisions of this Article are severable, and if any provision shall be declared to be invalid or void, the remaining provisions shall not be affected and shall remain in full force and effect.

15-58. Reasonable Modifications

The City of Portland may make reasonable modifications to the requirements of this Article to accommodate the needs of persons with disabilities as defined in Title VII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988.

**AMENDMENT 1 TO ORDER NUMBER 88-21/22
PREPARED BY CORPORATION COUNSEL
FOR MAYOR SNYDER AND COUNCILOR ZARRO
RE: SHELTER LICENSING EXEMPTION FOR DOMESTIC VIOLENCE SHELTERS**

15-47. Definitions.

...

15-53. ~~Review Process~~Exemption for Domestic Violence Shelters

Shelters serving solely survivors of domestic violence with 25 beds or fewer are exempt from the provisions of this ordinance.

~~(a) Due to the need for confidentiality for safety reasons, a shelter serving solely survivors of domestic violence may request a waiver of any of the provisions of this Article that may jeopardize the confidentiality of the shelter, including, but not limited to, the following:~~

~~(1) The requirement to provide a description of the premises for which the license is sought, including a floor plan of the premises;~~

~~(2) The limitations on the number of beds; and~~

~~(3) The limitation on the distance between shelters.~~

~~(b) A shelter applying for this exemption must provide its request for a waiver in writing, including the reasons why a waiver is required, and how the shelter will ensure that the public health, safety, and welfare will not be negatively impacted by that waiver.~~

~~(c) At its sole discretion, the City Council may grant a requested waiver if it finds that the waiver is required to protect the confidentiality and safety of the shelter and its guests and that the public health, safety, and welfare will not be negatively impacted by the waiver.~~

15.54. Enforcement and Penalties

...

**AMENDMENT 2 TO ORDER NUMBER 88-21/22
PREPARED BY CORPORATION COUNSEL
FOR COUNCILOR DION AND COUNCILOR ALI
RE: SHELTER LICENSING ENFORCEMENT**

Sec. 15-12. Fees and expiration dates.

...

15.54. Enforcement and Penalties

(a) ~~This Article shall be enforced by the~~The "enforcement authority" for this Article shall be the Permitting and Inspections Department. City Manager's designee(s).

(b) ~~Any municipal official with authority to enforce this or other municipal ordinances regulating Emergency Shelters~~The enforcement authority shall have authority to enter the premises of an Applicant or Licensee with 48 hours prior~~hout~~ notice to make inspection reasonably necessary to ensure compliance with this Article, the applicant or licensee's application or license, or other applicable provisions of the City Code.
Notwithstanding the foregoing, where the enforcement authority has a reasonable belief that an imminent threat to health or safety exists, the enforcement authority may enter the premises of an Applicant or Licensee without notice to make an inspection for violations of this Article.

(c) Upon finding a violation of this Article, of an application, license or permit, or of any other provision of the City Code, the inspecting municipal official shall issue a notice of violation and provide a reasonable opportunity to correct that violation before issuing civil penalties, taking action to suspend or revoke a licensee's license, or taking court action against the licensee. However, there shall be an exception to this requirement where a violation poses an imminent threat to health or safety, or if the violation is a repeat violation.

(d) Each day that a violation of this Article exists shall be a civil violation subject to civil penalties. Each violation of this Article shall be subject to civil penalties in the minimum amount of \$100 and the maximum amount of \$2,500 per day that the violation has existed. However, the maximum amount of civil penalties may be increased where: (i) There has been a previous violation or judgment against the same party within the past two years for a violation of this Article, except that the maximum civil penalties may not exceed \$25,000 per day; or (ii) The economic benefit resulting from the violation exceeds the applicable penalties, except that the maximum civil penalty may not exceed an amount equal to twice the economic benefit resulting from the violation.

(e) The ~~City Manager~~enforcement authority or his or her designee is authorized to cause to be instituted by the corporation counsel, in the name of the City, any and all actions, legal or equitable, that may be appropriate or necessary for the enforcement of the provisions of this Article.

(f) If the City is the prevailing party in any legal action to enforce this Article, the municipality must be awarded reasonable attorney fees, expert witness fees and costs, unless the court finds that special circumstances make the award of these fees and costs unjust.

...

**AMENDMENT 3 TO ORDER NUMBER 88-21/22
PREPARED BY CORPORATION COUNSEL
FOR COUNCILOR FOURNIER
RE: METRO BUS SERVICES**

...

15-52. Performance Standards

In order to obtain a license pursuant to this Article, the Licensee shall demonstrate to the City Council that the following requirements will be met, and must maintain compliance throughout their licensure.

The Licensee shall comply with all of the following standards:

(a) Display of License. The current License shall be displayed at all times in a conspicuous location within the Premises.

(b) On-Site Supervision. On-site supervision shall be required for any non-apartment style emergency shelter, whenever clients are present.

(c) Maine State Housing Authority Monitoring. Any Emergency Shelter shall participate in the MaineHousing monitoring program.

(d) ~~Adequate access to and from METRO service shall be provided. The facility must implement strategies to help residents utilize public transit~~ Adequate access to and from METRO service shall be provided. The facility shall be within a 1/4 mile of a METRO line, or shall be within 1/2 mile of a METRO line and provide adequate indoor space to permit all shelter guests day shelter, as well as implement strategies to help residents utilize transit.

(e) The facility must provide indoor space to permit shelter guests day shelter.

...

(k) Shelter management will meet with and communicate monthly with neighbors and other stakeholders, that will include the Police Chief or designee, to prevent and/or respond proactively to public safety and quality of life concerns.

...

**AMENDMENT 4 TO ORDER NUMBER 88-21/22
PREPARED BY CORPORATION COUNSEL
FOR COUNCILOR FOURNIER
RE: MONTHLY MEETING DELETED**

...

15-52. Performance Standards

In order to obtain a license pursuant to this Article, the Licensee shall demonstrate to the City Council that the following requirements will be met, and must maintain compliance throughout their licensure.

The Licensee shall comply with all of the following standards:

(a) Display of License. The current License shall be displayed at all times in a conspicuous location within the Premises.

...

(j) Monitoring Reports. Each shelter shall quarterly file a management report with the Department of Health and Human Services, which shall share the report with the other responsible City agencies, including the Police Department. The report shall contain, at a minimum, the following information:

- (1) Number of unique individuals served at the shelter;
- (2) Total number of bednights accessed at the shelter;
- (3) Number of intakes during that reporting period;
- (4) Total number of individuals who had previously been unsheltered and staying outside in Portland;

- (5) Total number of individuals who are defined as having long time stayer status;
- (6) The average length of stay;
- (7) Number of housing placements;
- (8) Record of neighborhood concerns and resolutions;
- (9) Summary of meetings with individual neighbors, neighborhood associations and businesses;
- (10) Number of Criminal Trespass Orders ("CTO") issued, the reasons for those CTOs, the length of those CTOs, and whether the person issued the CTO has been issued a CTO previously;
- (11) Record of police calls for service related to mental health, substance use, crime or other reasons and outcomes; and
- (12) Any additional information requested by the Department of Health and Human Services.

~~(k) Shelter management will meet with and communicate monthly with neighbors and other stakeholders, that will include the Police Chief or designee, to prevent and/or respond proactively to public safety and quality of life concerns.~~

...

**AMENDMENT 5 TO ORDER NUMBER 88-21/22
PREPARED BY CORPORATION COUNSEL
FOR COUNCILOR FOURNIER
RE: ACCESS TO PUBLIC TRANSPORT**

...

15-52. Performance Standards

In order to obtain a license pursuant to this Article, the Licensee shall demonstrate to the City Council that the following requirements will be met, and must maintain compliance throughout their licensure.

The Licensee shall comply with all of the following standards:

(a) Display of License. The current License shall be displayed at all times in a conspicuous location within the Premises.

(b) On-Site Supervision. On-site supervision shall be required for any non-apartment style emergency shelter, whenever clients are present.

(c) Maine State Housing Authority Monitoring. Any Emergency Shelter shall participate in the MaineHousing monitoring program.

(d) ~~Adequate access to and from METRO service shall be provided.~~ The facility must implement strategies to help residents utilize public transit.

(e) The facility must provide indoor space to permit shelter guests day shelter.

...

(k) Shelter management will meet with and communicate monthly with neighbors and other stakeholders, that will include

the Police Chief or designee, to prevent and/or respond proactively to public safety and quality of life concerns.

...

Formula for New Program Costing on Tax Rate

1) FY22 Valuation:	14,629,000,000	\$14,629,000
2) FY22 Tax Rate (Total City & School): $\text{Levy} / (\text{Valuation}/1000)$		\$12.99
(a) FY21 Tax Rate (City):		\$6.22
(b) FY21 Tax Rate (School):		\$6.77
3) FY22 Value of \$0.01 of Tax Rate (Total City & School):		\$146,290

FISCAL IMPACT NOTE	Year 1		Year 2		Year 3	
New Program Cost Data:	City Rate	City / Sch Combined Rate	City Rate	City / Sch Combined Rate	City Rate	City / Sch Combined Rate
Example:						
ADD: NEW ITEM ANNUAL EXPENDITURES		\$97,000		\$100,880		\$104,915
LESS: TOTAL NEW ITEM ANNUAL REVENUES		\$0		\$0		\$0
=NEW ITEM NET TAX RATE IMPACT PROJECTION	\$97,000	\$97,000	\$100,880	\$100,880	\$104,915	\$104,915
New Program Impact to the Tax Rate	\$0.0066	\$0.0066	\$0.0069	\$0.0069	\$0.0072	\$0.0072
New Program % Impact on Tax Rate	0.1066%	0.0510%	0.1109%	0.0531%	0.1153%	0.0552%
Tax Rate Including New Program	\$6.23	\$13.00	\$6.23	\$13.00	\$6.23	\$13.00

Notes: While licensing fees will support the basic administrative implementation of this new program, there will be new costs associated with applicant engagement and ongoing oversight of / inspections related to performance standards. These inspections will require expertise that we do not currently have, along with significant staff time; as a result, a new staff member would need to be hired. Salary estimate is approximately \$66k, plus \$24k for fringe benefits. In addition, this type of new position requires new equipment and resources totaling approximately \$7k. In total, we estimate this program to carry a cost of approximately \$97k which is not currently included in the City budget. This will add \$0.01 to the mill rate in perpetuity.

|



Below, please find answers to questions asked at and following the Council workshop regarding shelter licensing (January 5, 2022). If any additional information is needed, please contact Danielle West, Interim City Manager.

1. Reason for Brunswick shelter licensing

From Brunswick Town Manager: “Despite there being two small shelters in town operated by Tedford Housing, our zoning ordinance didn’t specifically address shelters. The Council established a task force of three Councilors to address the lack of zoning language and to consider concerns being voiced publicly about the possible construction of a new, much larger shelter. As the process unfolded, it became clear that some of the concerns being addressed were not zoning issues (i.e. land use issues). This led to the creation of the licensing ordinance, essentially to address operational issues. Near the conclusion of the task force’s work, the regulations being considered were split into 1) land use regulations (i.e. lot size, density, zoning district, setbacks, etc.) and 2) operational regulations (i.e. hours of operation, on-site supervision, total beds, etc). Amendments were drafted for the zoning ordinance and the licensing ordinance was created.”

2. List of current shelters in the state

Organization Name	Project Name
Bangor Area Homeless Shelter	BAHS
Bread of Life Ministries, Inc.	Bread of Life Shelter- Augusta
Bread of Life Ministries, Inc.	HCHV/EH VA Contract Beds
Caring Unlimited Inc.	Caring Unlimited Shelter ES (DV)
City of Portland	Family Shelter
City of Portland	Oxford Street Shelter and Family Shelter
Family Violence Project	Augusta Shelter ES (DV)
Family Violence Project	Somerset Shelter ES (DV)

HOME, Inc.	Dorr House - ES
HOME, Inc.	Duplex - Orland (Sister Marie)
HOME, Inc.	Emmaus House
HOME, Inc.	St. Francis Inn
Homeless Services of Aroostook	HSA - Aroostook Bridge
Homeless Services of Aroostook	Sister Mary O'Donnell Shelter
Hope and Justice Project	Hope and Justice Project - Central Aroostook ES (DV)
Hope and Justice Project	Hope and Justice Project - Northern Aroostook ES (DV)
Hope and Justice Project	Hope and justice Project - Southern Aroostook ES (DV)
Hope Haven Gospel Mission	Hope Haven Gospel Mission
Knox/Waldo Homeless Coalition	Hospitality House
Maliseet Domestic Violence and Sexual Assault Program	Nukomiss Wig Shelter ES (DV)
Mid-Maine Homeless Shelter	Mid-Maine Homeless Shelter
Milestone Foundation Inc.	Substance Abuse Shelter
New Beginnings	New Beginnings ES
New Hope Church	New Hope Shelter - Solon
Next Step	Machias Shelter ES (DV)
Partners for Peace	DV Shelter ES (DV)
Penobscot Community Health Center Inc.	Hope House Emergency Shelter
Preble Street	Florence House - ES
Preble Street	Joe Kreisler Teen Shelter
Rumford Group Homes, Inc.	Monier Family Center
Rumford Group Homes, Inc.	Norway Family Center
Rumford Group Homes, Inc.	Rumford Family Center

Rural Community Action Ministries	Rural Community Action Ministries Homeless Shelter
Safe Voices	Annie Pearl Shelter ES (DV)
Safe Voices	Safe Voices - Trafficking Safe House (DV) (ES)
Shaw House	Youth Shelter
St. Martin de Porres	St. Catherine of Siena Women's Shelter
St. Martin de Porres	St. Martin de Porres Residence
Tedford Housing	Adult Shelter
Tedford Housing	Family Shelter
Through These Doors (formerly Family Crisis Services)	Domestic Violence Shelter ES (DV)
Trinity Evangelical Free Church	Trinity Men's Shelter - Skowhegan
Trinity Evangelical Free Church	Trinity Women and Family Shelter
Western Maine Homeless Outreach	Western Maine Homeless Outreach - Emergency Shelter
York County Shelter Programs, Inc.	York County Adult Shelter- Alfred
York County Shelter Programs, Inc.	York County Family Emergency Shelter

This information was provided by MaineHousing using the 2020 Emergency Shelter Housing Inventory Chart.

3. What reporting requirements do we already have?

City Staff (Oxford Street Shelter and Family Shelter and Family Shelter and Family Shelter) Response:

The data points listed below are already submitted in quarterly reports required by MaineHousing, the Maine State Housing Authority:

- (i) Number of unique individuals served at the shelter
- (ii) Total number of bednights accessed at the shelter
- (iii) Number of intakes during that reporting period
- (iv) Total number of individuals who had previously been unsheltered and staying outside in Portland
- (v) Total number of chronically homeless individuals accessing the shelter
- (vi) Total number of individuals who are defined as having long time stayer status
- (vii) The average length of stay

(viii) Number of housing placements

These data points can be pulled through Service Point reports, the Consolidated Annual Performance and Evaluation Report (CAPER) and Participation Reports for MaineHousing funded shelters. Domestic Violence Shelters use a separate but comparable database in order to protect confidentiality and complete the CAPER in that database. Criminal Trespass Orders are currently collected monthly for report out at Emergency Shelter and Assessment Committee (ESAC) meetings. Minimum operational requirements align with MaineHousing's eligibility requirements that emergency shelters must currently meet to receive Emergency Shelter and Housing Assistance Program (ESHAP) Funds.

Through These Doors Response:

TTD's shelter is not licensed. We have reporting requirements already for DHHS (through the Maine Coalition to End Domestic Violence/MCEDV) and MSHA. We also must adhere to MSHA quality assurance standards. We share ESAC numbers each month as well.

Milestone Response:

Milestone Recovery falls under state funding/licensing for the shelter as it is a specialized SUD shelter. This means critical incident reporting, following guidelines from them and being funded through contract as well as the possibility to bill MaineCare under the right circumstances.

Milestone is also funded and adheres to Maine Housing guidelines which align with Federal requirements from HUD.

Preble Street Response:

The Monitoring Report specified in the licensing language, I have noted/highlighted below the items we already track:

- (1) Number of unique individuals served at the shelter; ESAC monthly; CDBG quarterly
- (2) Total number of bed nights accessed at the shelter; ESAC monthly; CDBG quarterly
- (3) Number of intakes during that reporting period; ESAC monthly
- 6) The average length of stay; ESAC monthly
- (7) Number of housing placements; ESAC monthly; New starting January, ESAC requests move in date as well as total bed nights for each placement
- (10) Number of Criminal Trespass Orders ("CTO") issued, the reasons for those CTOs, the length of those CTOs, and whether the person issued the CTO has been issued a CTO previously; ESAC monthly (the total # issued but no other info); also tracked internally for agency purposes
- (11) Record of police calls for service related to mental health, substance use, crime or other reasons and outcomes; frequently tracked in daily log notes but not reported
- (12) Any additional information requested by the Department of Health and Human Services. For the quarterly DHHS report, we record the total overall number served by Teen Services and goals completed by exiting youth who have completed a Service

plan. Also, DHHS has a number of requirements that we need to keep up on to maintain our license: monthly fire drills, nightly sign ins, medication protocols, etc.

4. How many beds and how many shelters in the current proposal?

556 beds across 6 emergency shelters.

5. Estimates on cost of licensing

Licensing fees in the ordinance are \$250 for a small emergency shelter (1-40 beds) and \$500 for a large emergency shelter.

6. Are other non-profits who must apply for a license required to pay a fee?

Yes. Licenses and fees are based on the activity not the corporate form of the entity. Preble Street already has an FSE, YMCA has registered their rental units, many churches, etc. have permits for various activities, etc.

7. I would like more information about the monthly meeting expectations for shelter management with the neighborhood. To me this puts an even larger burden on the shelter operators to try and find time to coordinate with multiple parties for what purpose? As suggested by one of the shelter operators I think a clear way for stakeholders, neighbors, etc to communicate praise or issue makes more sense and is more efficient with everyone's time. Meeting for the sake of meeting is not productive in my opinion.

City Staff (OSS & FS) Response:

The City of Portland's Land Use Code requires all new emergency shelters to provide a detailed Management Plan when applying for site plan approval. The Management Plan must address the following: "adequately outlining the following areas shall be provided: management responsibilities; process for resolving neighborhood concerns; staffing; access restrictions; on-site surveillance; safety measures; controls for resident behavior and noise levels; and monitoring reports." As a way to address neighborhood concerns, the two most recent management plans submitted to the City for approval (Preble Street Wellness Shelter and the Homeless Services Center) includes monthly neighborhood meetings. It is important to note that this is not currently a requirement for existing shelters.

Through These Doors Response:

These meetings are one of the areas about which I am most concerned. My specific concerns were included in my public comments shared prior to the workshop: The lack of clarity of this item (monthly meetings with neighbors and stakeholders) will make it very difficult to comply. For instance: Are shelters required to seek out neighbors

and convene a meeting? If requested, are shelters required to meet separately with neighbors and stakeholders on their schedule? What is the purpose of the meetings? What authority do neighbors have over shelter operations? If dispute happens, who determines resolution? What constitutes resolution? Who is considered to be a stakeholder? Will the Portland Police Chief or designee attend a monthly meeting of each shelter in Portland? We know that all shelters are likely to have at least a few neighbors that are unhappy that a shelter exists at all in their neighborhood. It seems that the unhappy neighbors will be the attendees at the meetings and those who have no issue with the shelter will not be likely to attend a monthly meeting.

Milestone Response:

Milestone recovery already attends the India Street Neighborhood Association and communicates regularly with neighbors. It's unclear if the meeting within licensing has to have a specific structure or composition. Does it need to be a formal additional meeting or if the meetings already attended, such as a neighborhood association, type of response would suffice. To my knowledge this idea is modeled after a meeting that took place at 5 Portland Street between Preble, City of Portland, DA's office, and the neighborhood association. That meeting was often just information sharing and updates.

I believe that quarterly check-ins with PD, and meetings over specific issues with the community policing team would be ideal from the PD side, rather than a standing meeting. Also, what happens when/if a community partner/neighbor doesn't attend? Is the agency responsible for stating the meeting happened and the party was absent? I believe the spirit is to foster collaboration and I think that will look different depending on the community. We support collaboration and think it is essential, just have concerns about the prescriptive nature of this.

Preble Street Response:

In terms of the expectations to meet regularly with neighborhood stakeholders, I would say that Preble Street already complies with this. That being said, I think the provider referenced in one of the Councilor's emails was right in saying that "a clear way for stakeholders, neighbors, etc. to communicate praise or issue makes more sense [than a monthly meeting] and is more efficient with everyone's time."

- 8. For the DV shelter license, how much of this is public and how much is private. The shelter location has to be disclosed to someone at the city I would imagine, how is that kept confidential throughout the process?**

They would have to request a waiver from disclosing their location. (As an alternative, the Council could consider exempting DV shelters under a certain size altogether.)

- 9. Under Enforcement and Penalties, section b, could we have a clearer understanding of "any municipal official with authority to enforce this or other**

municipal ordinances regulating emergency shelters shall have authority to enter the premises..."

HHS and Business Licensing. Fire, building inspectors, and housing safety inspectors already have the right to enter.

10. For what purpose would someone be entering with less than 24hrs notice?

To inspect for healthy and safety violations, usually based on complaints (by shelter clients, for example). (As an alternative, the Council might consider requiring 24 hours notice for all but emergencies.)

11. Can we have more specific roles identified for who would have these powers? If they are granted I would request a narrower definition of specific roles. If there is a specific purpose for why they should be allowed to do this, naming the role should not be difficult.

Code enforcement officers, who already have the right to enter and inspect for housing and building code violations, would now also inspect to ensure compliance with new licensing requirements.

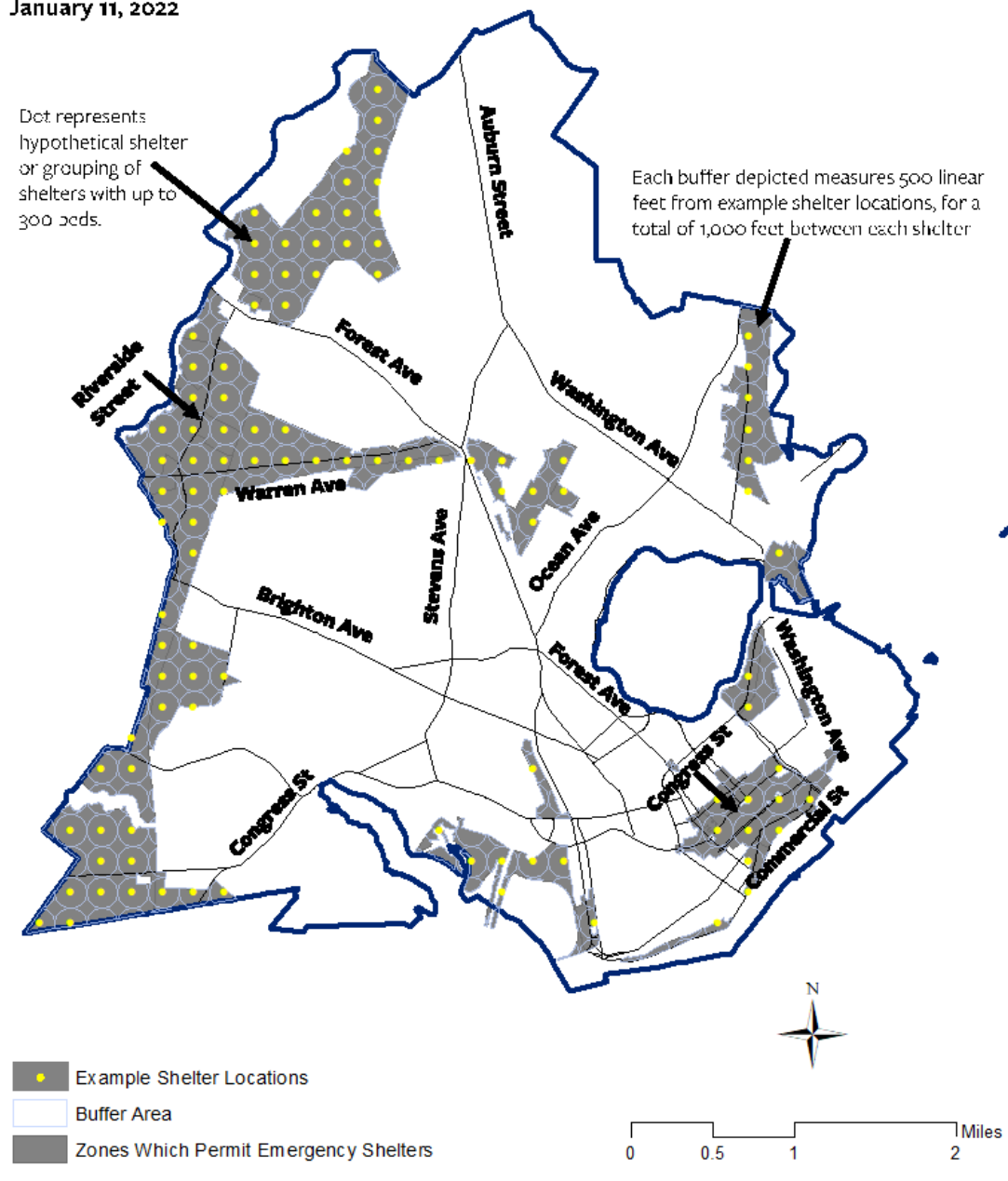
12. Under this same section, because the city operates an emergency shelter, how would this apply to our own operations?

Oxford Street would need to be licensed and comply with the same requirements.

13. Initially I believe the proposed bed max was 250 beds within a 500ft radius, what is being proposed tonight is 300 beds within a 1000ft radius, how many shelters would that allow for given the area we have currently, the existing emergency shelters and what would be allowed should this pass? (is there a map of this and how it applies on and off peninsula?) (Will be answered above by Aaron/Adam)

Emergency Shelter Spacing (1,000 Feet)

January 11, 2022



**** Finding:** Map depicts a maximum of **105** sites based upon area zoned for emergency shelters. This map does not account for existing uses, accessibility, or other site limitations.

14. We talked briefly about this in the last meeting, but I don't feel like there was a clear response. there are proposed reporting requirements, I am curious what of these requirements are already being reported by shelters for:

a) State funding and licensing?

City Staff (Oxford Street Shelter and Family Shelter and Family Shelter) Response:

See ESHAP Program Guide, the 2022 Monitoring Schedule, and Housing Quality Standards inspection annual Inspection Checklist attached.

Through These Doors Response:

TTD's shelter is not licensed. We have reporting requirements already for DHHS (through the Maine Coalition to End Domestic Violence/MCEDV) and MSHA. We also must adhere to MSHA quality assurance standards. We share ESAC numbers each month as well.

Milestone Response:

Milestone Recovery falls under state funding/licensing for the shelter as it is a specialized SUD shelter. This means critical incident reporting, following guidelines from them and being funded through contract as well as the possibility to bill MaineCare under the right circumstances.

Milestone is also funded and adheres to Maine Housing guidelines which align with Federal requirements from HUD.

Preble Street Response:

The Monitoring Report specified in the licensing language, I have noted/highlighted below the items we already track:

- (1) Number of unique individuals served at the shelter; ESAC monthly; CDBG quarterly
- (2) Total number of bed nights accessed at the shelter; ESAC monthly; CDBG quarterly
- (3) Number of intakes during that reporting period; ESAC monthly
- 6) The average length of stay; ESAC monthly
- (7) Number of housing placements; ESAC monthly; New starting January, ESAC requests move in date as well as total bed nights for each placement
- (10) Number of Criminal Trespass Orders ("CTO") issued, the reasons for those CTOs, the length of those CTOs, and whether the person issued the CTO has been issued a CTO previously; ESAC monthly (the total # issued but no other info); also tracked internally for agency purposes
- (11) Record of police calls for service related to mental health, substance use, crime or other reasons and outcomes; frequently tracked in daily log notes but not reported
- (12) Any additional information requested by the Department of Health and Human Services. For the quarterly DHHS report, we record the total overall number served by Teen Services and goals completed by exiting youth who have completed a Service

plan. Also, DHHS has a number of requirements that we need to keep up on to maintain our license: monthly fire drills, nightly sign ins, medication protocols, etc.

b) What sort of hardship would this create for the shelter staff (as it would take away from direct service time)?

City Staff (Oxford Street Shelter and Family Shelter and Family Shelter) Response:

As the majority of what is required to be monitored must already be tracked for MaineHousing to receive ESHAP funding, our reporting requirements are expected to have a small impact on the workload of existing administrative staff and are not anticipated to supplant shelter or housing services.

Through These Doors Response:

We are more than happy to share reports with the City that we are already preparing for other funders. That would not create an additional burden. Any new reports would take time from direct service as there is no money to add staff hours to create such reports, even if we take the information provided to another agency and re-format it for the City.

Milestone Response:

Milestone's shelter is already operated by a tight crew. Our current staffing model is 1 supervisor and 2 shelter attendants for 34-41 clients. There are times where we only can cover with 2 staff. We don't always have capacity to pull a staff to do "extra". Any extra time is utilized to support the rest of the organization by assisting with cleaning, laundry and meal services for shelter and detox clients.

Much of the data is already collected and would mean the shelter administrator sending the report to two different places instead of one. Any additional information could create challenges in data collection from the direct care staff but also for the admin staff.

Preble Street Response:

Much of what is asked for in the Monitoring Report would be redundant and is already reported or available in other ways. Ultimately, complying with any additional reporting would create some added hardship for staff. Even though we often have Program Administrators completing these types of reports (who do not provide direct service to clients), much of their time is spent working on scheduling/programming and supporting client services. The more reporting they have on their plate, the less time they have to support the client-facing side of the work. Additional reports would also require the oversight of Management, which would detract from their ability to do other things.

That being said, some of the items we don't track would be much easier for us to gather info on than others. Quantifying the number of individuals served who have Long Term Stayer status, for instance, would be fairly easy to do and just involve some cross referencing with HMIS. Other things, like recording police calls, could be much more

likely to have a negative impact on our ability to serve clients and would most likely fall upon direct service staff working in the shelter milieu. Also, calls for service (as well as CTOs) are already tracked by PPD, so it seems that if anyone wanted this information PPD could easily provide it. I do think a request like this would place unnecessary burden upon providers.

c) And how is this data used?

These data will be used to better understand the landscape for individuals experiencing homelessness.

d) What does it inform?

The data helps us take an informed stance and advocacy on improving emergency shelter services. These include seeking programmatic changes and funding opportunities that ameliorate lives of our clients.

e) What is the intent and purpose?

Please see above.

f) What is redundant for what is already required?

City Staff (Oxford Street Shelter and Family Shelter and Family Shelter) Response:

The data points listed below are already submitted in quarterly reports required by MaineHousing, the Maine State Housing Authority:

- (i) Number of unique individuals served at the shelter
- (ii) Total number of bednights accessed at the shelter
- (iii) Number of intakes during that reporting period
- (iv) Total number of individuals who had previously been unsheltered and staying outside in Portland
- (v) Total number of chronically homeless individuals accessing the shelter
- (vi) Total number of individuals who are defined as having long time stayer status
- (vii) The average length of stay
- (viii) Number of housing placements

These data points can be pulled through Service Point reports, the Consolidated Annual Performance and Evaluation Report (CAPER) and Participation Reports for MaineHousing funded shelters. Domestic Violence Shelters use a separate but comparable database in order to protect confidentiality and complete the CAPER in that database. Criminal Trespass Orders are currently collected monthly for report out at Emergency Shelter and Assessment Committee (ESAC) meetings. Minimum operational requirements align with MaineHousing's eligibility requirements that emergency shelters must currently meet to receive Emergency Shelter and Housing Assistance Program (ESHAP) Funds.

Through These Doors Response:

The application itself is onerous. Management plan, community liaison, environment design.... these are concepts that may be familiar to an organization the size of Preble Street (which I understood at the worksheet was the model for some of this) but are not to us. It is not clear what constitutes shelter staff qualifications that will meet the City's expectations.

Milestone Response:

Most of the data points except for 6 8,9, 11, under data reporting are already collected and reported to ESAC and Mainehousing. We have no formal process for items 8,9 or K. Admin would be tasked to develop these processes and K would require even more meetings for the shelter director. Item 12, while it appears to be a form of standardized language, is far too vague. The people we serve are protected under a higher level of confidentiality and thus we may have to refuse to share certain information if requested. The data points could be forwarded from ESAC or attended by City staff. Item 11 is a challenge to report accurately. It would need to be a list of calls from PD, but we would also have to cross reference the calls as we operate two different programs out of 65 India Street and there is concern that any police call within proximity to a shelter could get blamed on them. The information could be useful to notice patterns and there is concern that the inclusion of this as a primary reporting assumes criminal behavior. If the intent is to collect and show the inadequacies in our collective mental health and substance use continuum of care, there could be some usefulness to this data point. Looking at mental health and substance use calls in general within the city are a key component when assessing the challenges within the community, City and State. Mainehousing already does inspections, audits and set standards, they also offer training and resources. The City's request to have shelters go through a license without any incentive to do so, while increasing administrative duties adds a burden to a system that is already underfunded and feeling the challenges of the opioid epidemic and COVID-19. We serve people that are underserved and over-looked, they do not need further invasion to the places they feel safe.

One possible solution could be to just require the Maine Housing metrics be the report. Since a record of the MaineHousing data is also included, that might be sufficient to meet the needs related to oversight, although as stated it does not include all the data points requested under reporting.

The police call record is of concern. The organization would now have to track that, but they are not responsible for the outcome of a police call. Similarly, emergency calls in the neighborhood can easily start being attributed to "one of your guys", when not everyone with a substance use disorder or experiencing a mental health symptom is someone we treat. This was the case a few months ago when police had to respond and restrain someone who was not "one of ours" but happened to be in front of our building and staff had to call for police response.

15. Provider on-site and day-space requirements. How is this monitored, what is the requirement for day space based on number of occupants? How does the city check on frequency of on-site provider coordination? How is this consistently enforced across shelters?

We do not have City staff capacity or expertise to ensure performance standards are maintained, as is required by the ordinance. In order to implement this part of the ordinance effectively, a new position would need to be created.

16. Adequate access to transportation needs further definition. Is the shelter expected to provide rides to bus stops? Bus passes? coaching on using public transportation?

A councilor is welcome to propose an amendment to the draft ordinance. Otherwise, we recommend discussing the intent of this and other parts of the ordinance with the Committee Chair.

Sec. 15-12. Fees and expiration dates.

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

Location in Code	Description	Fee	Expiration Date
------------------	-------------	-----	-----------------

. . .

XXX	Small Emergency Shelter (1-40 beds)	\$250.00	July 1
	Large Emergency Shelter (41+ beds)	\$500.00	July 1

[NEW ARTICLE]

[NEW SECTION]. Definitions.

Emergency Shelter: A facility providing temporary overnight shelter to individuals experiencing homelessness in a dormitory-style or per-bed arrangement.

[NEW SECTION]. Licensing Requirements.

- (a) Chapter 15 to apply. Except as otherwise provided in this Article, the provisions of Chapter 15 shall apply to all licenses applied for and issued under this Article.
- (b) Operating without a license is prohibited. No individual or entity may operate an emergency shelter within the City without first obtaining a license from the City, except that any emergency shelter in operation as of the effective date of this Article must apply for and receive a license within 90 days of the effective date.
- (c) Burden of proof. The applicant for any license under this Article bears the burden of proving that all qualifications for licensure have been satisfied.
- (d) Current information. Any applicant or licensee must keep all information disclosed in their application current and must notify the City of any change in information within ten business days of any such change.

- (e) No vested rights. No person shall have any entitlement or vested right to a license under this Article, and operating an emergency shelter is a privilege and not a right in the City.

[NEW SECTION]. Licensing Authority

- (a) All new license applications shall be reviewed by the City Council. After a public hearing, the Council shall grant, grant with conditions, or deny the license.
- (b) Except as provided by Subsection (c) below, all renewal applications shall be reviewed by the Permitting and Inspections Department. The Permitting and Inspections Director shall grant, grant with conditions, or deny the license. Except that, at the request of the City Manager or designee, or at the request of any member of the City Council or the Mayor, a renewal application shall be reviewed by the City Council in accordance with Subsection (a) above..
- (c) All renewals of shelter licenses held by the City of Portland shall be reviewed by the City Council in accordance with Subsection (a) above.

[NEW SECTION]. Review Procedures.

The following review procedures shall apply to both initial and renewal applications:

- (a) Applications shall be made in writing using a form prepared by the City for the purpose and must include all information required by this Ordinance and by the form. Applications shall be submitted to the Permitting and Inspections Department.
- (b) If the Permitting and Inspections Department determines that a submitted application is not complete, he or she shall notify the applicant of the additional information required to process the application. If such additional information is not submitted within thirty (30) days of the Permitting and Inspections Department's request, the application may be denied administratively with no further action.
- (c) Before the City Council issues its decision on an initial or renewal application, the Police Department, Fire Department, Permitting and Inspections Department, and the Health and Human Services Department shall review the application and recommend to the City Council whether to issue, issue with conditions, or deny the license. The Departments shall review the application for the following standards:
 - (i) Whether the shelter has complied with its approved operations and security plans.

- (ii) Whether the operations and security plans are more likely than not to protect the public health, safety, and welfare.
 - (iii) Whether the operations and security plans are more likely than not to meet all performance standards and requirements in this ordinance.
 - (iv) Whether there are any outstanding Code violations at the shelter.
- (d) In reviewing license applications, the City Departments and the City Council may consider the approval standards under this Ordinance as well as other applicable local, state or federal laws and, for license renewals, the Licensee's record of compliance with the same.
- (e) Applications for renewal licenses shall be submitted at least thirty (30) days prior to expiration of the existing term. Any Licensee who fails to submit a renewal application by the applicable deadline shall not have authority to operate until a license is granted.
- (f) The City Council shall have the authority to impose any conditions on a license that may be reasonably necessary to insure compliance with the requirements of this Ordinance, to address concerns about operations, or to protect the health, safety, and welfare of the public. Failure of any Licensee to comply with such conditions shall be considered a violation of the license and this Ordinance.

[NEW SECTION]. Application Submission Requirements

Each applicant for a Emergency Shelter license shall complete and file an application on the form provided by the City, together with the applicable license fee as well as the following supporting materials:

- (a) Attested copies of any articles of incorporation, bylaws, operating agreement, management plan, partnership agreement or articles of association that govern the entity that will own and/or operate the emergency shelter.
- (b) A corporate supplement form that identifies all owners, officers, members, managers, partners, and/or board members of the Applicant, and their ownership interests, if applicable.
- (c) A description of the population to be served by the shelter.
- (d) A description of the premises for which the license is sought, including a floor plan of the premises.

- (e) The name and contact information for a community relations liaison, who shall be responsible for receiving and responding to inquiries from, and reasonably addressing concerns raised by, members of the public and other individuals.
- (f) The name and contact information for an emergency contact, who shall respond to all non-emergency contacts by the City within 72 hours of contact, and to any emergency contact by the City within two hours of contact.
- (g) Whether the applicant has experience running a shelter in Portland or elsewhere and a description of that shelter, including size, location, and population served.
- (h) An operations plan describing the following:
 - (i) The experience and qualifications of shelter management and staff, sufficient to demonstrate that the shelter can meet its obligations under this ordinance, including providing appropriate services to shelter guests;
 - (ii) How the shelter will meet the performance standards and other requirements of this ordinance;
 - (iii) Management responsibilities;
 - (iv) A process for effectively resolving neighborhood concerns;
 - (v) Staffing;
 - (vi) Controls for resident behavior and noise levels;
 - (vii) Security, safety and protective measures:
 - (1) On-site surveillance;
 - (2) Provisions to provide access to recordings of exterior public ways by city staff upon request;
 - (3) Safety measures;
 - (4) Access restrictions;
 - (5) Environmental design, engineering or procedural measures to reduce crime, loitering and disorder in and around the facility;
 - (6) Emergency and response protocols, including but not limited to:

- a) Medical emergencies, including overdoses;
 - b) Intruder response;
 - c) Criminal trespass guidance;
 - d) Recovery of weapons;
 - e) Recovery of illicit drugs;
 - f) Incidents involving violence, serious injuries or death;
- (i) The most recent MaineHousing annual monitoring report shall be provided to the City with any renewal application; and
 - (j) A description of the strategies to be implemented to help residents utilize public transit, as required by [Section] (d).

[NEW SECTION]. Performance Standards

In order to obtain a license pursuant to this Ordinance, the Licensee shall demonstrate to the City Council that the following requirements will be met, and must maintain compliance throughout their licensure

The Licensee shall comply with all of the following standards.

- (a) Display of License. The current License shall be displayed at all times in a conspicuous location within the Premises.
- (b) On-Site Supervision. On-site supervision shall be required for any non-apartment style emergency shelter, whenever clients are present.
- (c) Maine State Housing Authority Monitoring. Any Emergency Shelter shall participate in the MaineHousing monitoring program.
- (d) Adequate access to and from METRO service shall be provided. The facility must implement strategies to help residents utilize public transit;
- (e) The facility must provide indoor space to permit shelter guests day shelter.
- (f) The facility must have centralized shelter operations on each level of the emergency shelter providing for sight lines to sleeping areas. However, a pre-existing shelter, as defined in [SECTION] below, shall not be required to meet this requirement, so long as alternative measures are provided to ensure resident safety while sleeping. This requirements shall also not apply to apartment-style shelters.

- (g) The facility must provide on-site services to support residents, such as case management, life skills training, counseling, employment and educational services, or other programs.
- (h) Maximum Density of Beds. The total bed capacity for individual residents within emergency shelters in the City shall not exceed 300 beds within an 1 mile radius. Distance shall be measured between property lines of the emergency shelters.
- (i) Proximity to Other Facilities. There shall be a 1,000 ft buffer between emergency shelters. Distance shall be measured from the nearest property line of each shelter in a straight line.
- (j) Monitoring Reports. Each shelter shall quarterly file a management report with the Department of Health and Human Services, which shall share the report with the other responsible City agencies, including the Police Department. The report shall contain, at a minimum, the following information:
 - (i) Number of unique individuals served at the shelter
 - (ii) Total number of bednights accessed at the shelter
 - (iii) Number of intakes during that reporting period
 - (iv) Total number of individuals who had previously been unsheltered and staying outside in Portland
 - (v) Total number of individuals who are defined as having long time stayer status
 - (vi) The average length of stay
 - (vii) Number of housing placements
 - (viii) Record of neighborhood concerns and resolutions
 - (ix) Summary of meetings with individual neighbors, neighborhood associations and businesses
 - (x) Number of Criminal Trespass Orders (“CTO”) issued, the reasons for those CTOs, the length of those CTOs, and whether the person issued the CTO has been issued a CTO previously
 - (xi) Record of police calls for service related to mental health, substance use, crime or other reasons and outcomes
 - (xii) Any additional information requested by the Department of Health and Human Services.
- (k) Shelter management will meet with and communicate monthly with neighbors and other stakeholders, that will include the Police Chief or designee, to prevent and/or respond proactively to public safety and quality of life concerns.

[NEW SECTION] Review Process for Domestic Violence Shelters

- (a) Due to the need for confidentiality for safety reasons, a shelter serving solely survivors of domestic violence may request a waiver of any of the provisions of this ordinance that may jeopardize the confidentiality of the shelter, including, but not limited to the following:
 - (i) The requirement to provide a description of the premises for which the license is sought, including a floor plan of the premises.
 - (ii) The limitations on the number of beds.
 - (iii) The limitation on the distance between shelters.
- (b) A shelter applying for this exemption must provide its request for a waiver in writing, including the reasons why a waiver is required, and how the shelter will ensure that the public health, safety, and welfare will not be negatively impacted by that waiver.
- (c) At its sole discretion, the City Council may grant a requested waiver if it finds that the waiver is required to protect the confidentiality and safety of the shelter and its guests; and that the public health, safety, and welfare will not be negatively impacted by the waiver.

[NEW SECTION] Enforcement and Penalties

- (a) This Chapter shall be enforced by the City Manager's designee(s).
- (b) Any municipal official with authority to enforce this or other municipal ordinances regulating Emergency Shelters shall have authority to enter the premises of an Applicant or Licensee without notice to make inspection reasonably necessary to ensure compliance with this Article, the applicant or licensee's application or license, or other applicable provisions of the City Code.
- (c) Upon finding a violation of this Article, of an application, license or permit, or of any other provision of the City Code, the inspecting municipal official shall issue a notice of violation and provide a reasonable opportunity to correct that violation before issuing civil penalties, taking action to suspend or revoke a licensee's license, or taking court action against the licensee. However, there shall be an exception to this requirement where a violation poses an imminent threat to health or safety, or if the violation is a repeat violation.

- (d) Each day that a violation of this Chapter exists shall be a civil violation subject to civil penalties. Each violation of this Chapter shall be subject to civil penalties in the minimum amount of \$100 and the maximum amount of \$2,500 per day that the violation has existed. However, the maximum amount of civil penalties may be increased where: (i) There has been a previous violation or judgment against the same party within the past two years for a violation of this Article, except that the maximum civil penalties may not exceed \$25,000 per day; or (ii) The economic benefit resulting from the violation exceeds the applicable penalties, except that the maximum civil penalty may not exceed an amount equal to twice the economic benefit resulting from the violation.
- (e) The City Manager or his/her designee is authorized to cause to be instituted by the corporation counsel, in the name of the City, any and all actions, legal or equitable, that may be appropriate or necessary for the enforcement of the provisions of this Chapter.
- (f) If the City is the prevailing party in any legal action to enforce this chapter, the municipality must be awarded reasonable attorney fees, expert witness fees and costs, unless the court finds that special circumstances make the award of these fees and costs unjust.

[NEW SECTION]. Appeals

- (a) Appeals of the suspension or revocation of a license, or of a notice of violation issued pursuant to this Article, shall be to the City Manager pursuant to Sec. 15-9.
- (b) Appeals from the grant or denial of a license by the City Council shall be taken to Superior Court.
- (c) Appeals from the grant or denial of a renewal license by the Permitting and Inspections Department shall be taken to the City Council within 30 days of the decision.

[NEW SECTION]. Pre-existing Shelters

- (a) For purposes of this Section, “pre-existing emergency shelter” shall mean (i) an emergency shelter that, as of January 31, 2021, is lawfully operating with all required permits and approvals; (ii) an emergency shelter that, as of January 31, 2021, has received conditional use approval that has not expired, or (iii) the consolidation of the operations of the Joe Kreisler Teen Shelter at 38 Preble Street and the Preble Street Teen Center at 343 Cumberland into one 24/7 emergency shelter facility for teens at 343 Cumberland Avenue provided that there is no

expansion of the number of individuals served or beds currently provided between the two existing locations.

(b) Pre-existing emergency shelters shall comply with all of the requirements of this ordinance, except as provided in this section.

(c) Applicability of bed density requirements in [SECTION] (g):

- (i) A pre-existing emergency shelter's inability to meet the maximum density of beds requirement in [SECTION] (g), shall not operate to disqualify that pre-existing emergency shelter from obtaining a license.
- (ii) However, any expansion of a pre-existing emergency shelter shall be required to meet the maximum density of beds requirement in [SECTION] (g).
- (iii) The number of beds at any pre-existing emergency shelter shall still be counted for purposes of determining whether any proposed new shelter is eligible for licensure.

(d) Applicability of proximity requirements in [SECTION] (h):

- (i) A pre-existing emergency shelter's inability to meet the proximity to **other facilities requirement in [SECTION] (h)**, shall not operate to disqualify that pre-existing emergency shelter from obtaining a license.
- (ii) However, a pre-existing emergency shelter may not expand unless it meets the proximity to other facilities requirement in [SECTION] (h).
- (iii) Any new emergency shelter must still meet the proximity to other facilities requirement in [SECTION] (h) with respect to any pre-existing emergency shelter.

(e) Applicability of indoor space performance standards in [SECTION] (e):

- (i) A pre-existing emergency shelter is not required to provide indoor space as required in [SECTION] (e) if it did not have such indoor space at the time of original approval.
- (ii) However, if there is any expansion of a pre-existing emergency shelter, that emergency shelter shall be required to add indoor space sufficient to meet the requirements of [SECTION] (e).

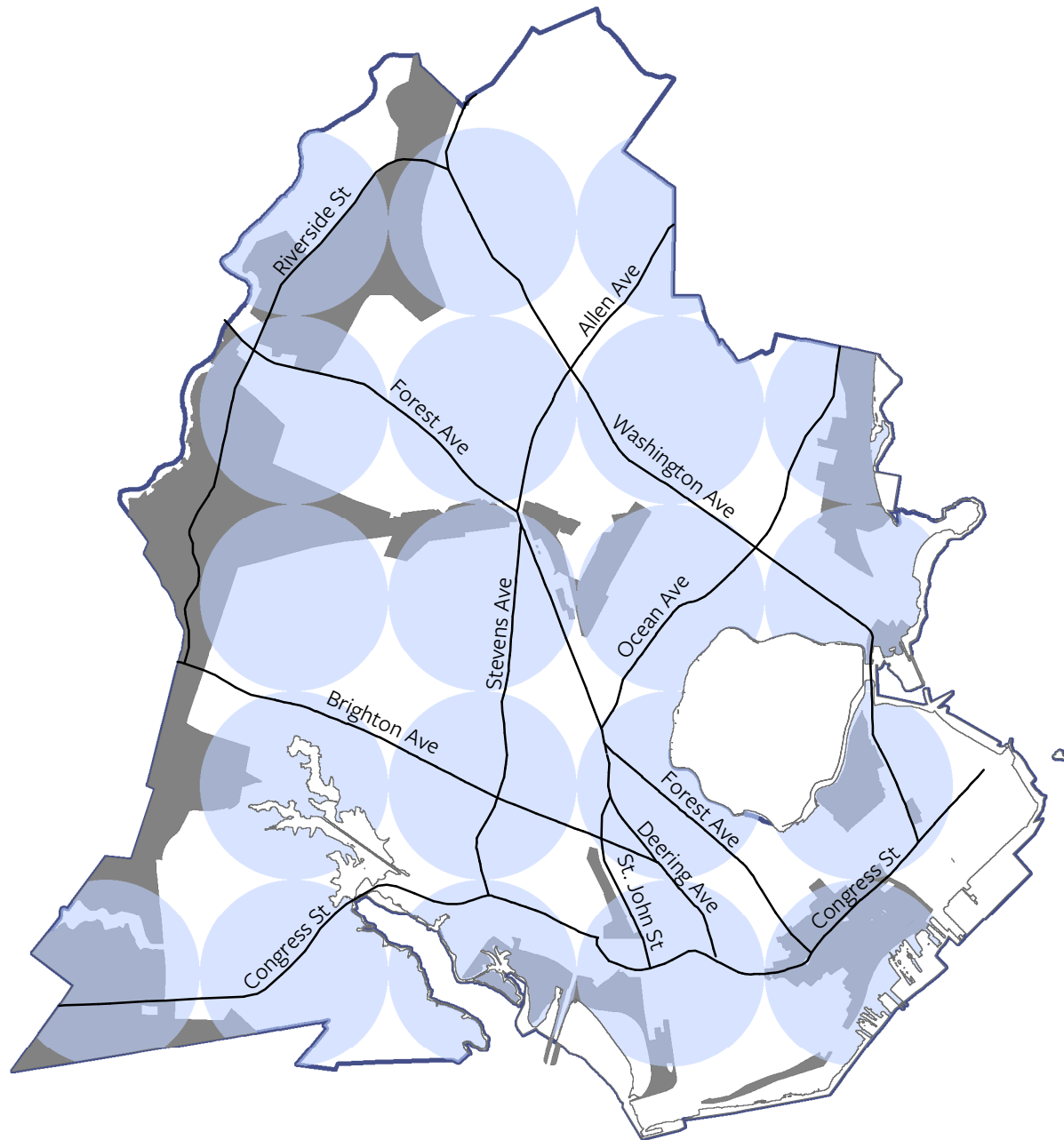
[NEW SECTION]. Severability

The provisions of this Ordinance are severable, and if any provision shall be declared to be invalid or void, the remaining provisions shall not be affected and shall remain in full force and effect.

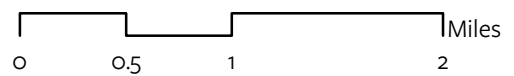
[NEW SECTION]. Reasonable Modifications

The City of Portland may make reasonable modifications to the requirements of this Article to accommodate the needs of persons with disabilities as defined in Title VII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988.

Shelter Spacing (1 Mile)



-  1/2 Mile Buffer
-  Zones with Emergency Shelter Conditional Use
-  City Boundary





Health & Human Services Department
Kristen Dow, Director

-

MEMORANDUM

To: Members of the Health & Human Services & Public Safety Committee

From: Kristen Dow, Director of Health & Human Services

Date: May 7, 2021

Re: Staff Recommendations for Maximum Bed Density & Shelter Buffer Zones

At the March 9, 2021 meeting of the Health & Human Services and Public Safety Committee, when reviewing the draft shelter licensing ordinance, it was requested that staff provide recommendations on *maximum density of beds* and *proximity to other shelters* (Performance Standards G & H in the document) for the May 11th, 2021 committee meeting. Since that time, staff from the Health & Human Services Department have met with area social service providers and developed a questionnaire that was sent to residents of Bayside via the Bayside Neighborhood Association. This was done to gather additional information on local concerns to better inform recommendations to the committee.

Information was gathered from social service providers in two separate meetings. The first was a meeting of shelter operators in the city, the other was through ESAC. A total of fourteen organizations were represented in these meetings. The response from area providers was unanimous in that they did not feel that they could provide a recommendation on maximum bed density *or* proximity to other shelters (buffer zone), because they are not supportive of shelter licensing at this point. It was stated that current shelters are already struggling and that placing further restrictions would cause significant issues to the current shelter system. At the ESAC meeting it was mentioned that the biggest threat is that if this is not done correctly, the risk of encampments will grow.

The questionnaire that was distributed to residents through the Bayside Neighborhood Association received a total of fourteen responses. These responses spoke heavily to the need for equitable distribution of services across the city and the existing high number of shelter beds in a one mile radius in the city. A recommendation of 250 beds in a one mile radius was given and a 2500 foot buffer zone was recommended in five different responses. In addition to equitable distribution of services, other reasons given as a need for these parameters were the ability to track and address problems with the correct agency when services are spread out, as well as the safety of shelter guests, particularly women and children.

In November of 2020 at the request of the HHS & PS Committee, staff conducted research on licensing and zoning mechanisms used to regulate privately operated emergency shelters in other municipalities. This was provided to members of the HHS & PS Committee in a November, 2020

memo. The information on buffer zones collected at that time shows a 500 foot buffer zone in several municipalities, including Brunswick, ME. Additionally, after checking with our own Permitting and Inspections Department, currently our most stringent buffer is 500 ft, between marijuana businesses and schools, which is mandated by the state. All others range from 100 to 300 feet.

With all of the above information in mind, staff would recommend a 500ft buffer between shelters with a bed density of 250 beds in a 1 mile radius. This radius allows for equitable shelter distribution throughout the City while allowing for as many as 20 plots. The potential plots would accommodate more than twice the capacity we've seen throughout the pandemic. It is also the recommendation of staff that a legacy clause be put into place to protect existing shelters.

Striking the balance between neighborhood concerns with equity and safety as well as provider concerns for access to emergency shelter services is challenging. Staff worked to strike a balance that will provide shelter options for those in need while also allowing for more equitable placement of shelters throughout the city.



CITY OF PORTLAND
Social Services Division
Aaron Geyer, Director

MEMORANDUM

TO: The Health & Human Services and Public Safety Committee

FROM: Aaron Geyer, Social Services Division Director

DATE: April 13, 2021

RE: Shelter Reporting and Operational Requirements

At the March 9, 2021 meeting, the committee requested that staff determine which data points within the Monitoring Reports emergency shelters already collect and solicited staff recommendations on basic operational requirements. For the Monitoring Reports, staff Identified which items in the list of information required in quarterly reports are already required by MaineHousing, the Maine State Housing Authority:

- (i) Number of unique individuals served at the shelter
- (ii) Total number of bednights accessed at the shelter
- (iii) Number of intakes during that reporting period
- (iv) Total number of individuals who had previously been unsheltered and staying outside in Portland
- (v) Total number of chronically homeless individuals accessing the shelter
- (vi) Total number of individuals who are defined as having long time stayer status
- (vii) The average length of stay
- (viii) Number of housing placements

These data points can be pulled through Service Point reports, the Consolidated Annual Performance and Evaluation Report (CAPER) and Participation Reports for MaineHousing funded shelters. Domestic Violence Shelters use a separate but comparable database in order to protect confidentiality and complete the CAPER in that database. Criminal Trespass Orders are currently collected monthly for report out at Emergency Shelter and Assessment Committee (ESAC) meetings. Collection of neighborhood concerns, meetings and calls for service would be additional data points not currently collected.

Staff recommend modeling minimum operational requirements to align with MaineHousing's eligibility requirements emergency shelters must currently meet to receive Emergency Shelter and Housing Assistance Program (ESHAP) Funds.

196 Lancaster Street • Portland, ME 04101 • 207-482-5131

aeg@portlandmaine.gov • www.portlandmaine.gov



Health & Human Services Department
Kristen Dow, Director

MEMORANDUM

To: Members of the Health & Human Services & Public Safety Committee

From: Kristen Dow, Director of Health & Human Services

Date: March 9, 2021

Re: Committee Request for Staff Recommendations

At the February 9th, 2021 meeting of the Health & Human Services and Public Safety Committee, when reviewing the draft shelter licensing ordinance, it was requested that staff provide recommendations on *maximum density of beds* and *proximity to other shelters* (Performance Standards G & H in the document). Staff from several city departments met to discuss the request and would like to request additional time to meet with community partners and neighborhood associations to gather additional information on these topic areas in order to bring a recommendation back to the committee.

Staff believes they can have this information collected with a recommendation ready for the May 11th, 2021 Health & Human Services Public Safety Committee meeting. Thank you for your consideration of this request.

concerning fire and safety have been complied with; and if the license is not issuable to any class of persons, the police chief shall cause an investigation to be made of the principal officers or persons to be licensed. All such persons shall report to the Permitting and Inspections Department in writing, and copies of any such report shall be deemed a public record.

(b) Whenever a criminal background check is done prior to issuance of a license, any cost of such background check which is charged to the City by another agency shall be added to the fees to be paid by the applicant.

(Code 1968, § 901.7; Ord. No. 231-80, 12-22-80; Ord. No. 115-84, § 1, 8-6-84; Ord. No. 247-02/03, 5-19-03; Ord. No. 165-15/16, 3-7-2016; Ord. 18-17/18, 8-21-2017)

Sec. 15-8. Standards for denial, suspension or revocation.

(a) *Grounds.* In addition to any other specific provision of this Code authorizing such action, a license or permit may be denied, suspended or revoked upon a determination of the existence of one (1) or more of the following grounds:

- (1) Failure to fully complete the application forms; knowingly making an incorrect statement of a material nature on such form; or failure to supply any additional documentation required or reasonably necessary to determine whether such license is issuable, or failure to pay any fee required hereunder;
- (2) The licensed activity, or persons on the premises for the purpose of participating in the licensed activity, or persons patronizing the licensed device have caused one (1) or more breaches of the peace; or
- (3) There is a clear danger that a breach of the peace will occur if the licensed activity is permitted; or
- (4) The licensed activity or persons patronizing the licensed premises will substantially and adversely affect the peace and quiet of the neighborhood, whether or not residential, or any substantial portion thereof;
- (5) The licensee has violated any provision of this Code in the course of the conduct of the activity or device for which the license or licenses have been applied for, or have been issued; or

- (6) The occurrence of any event subsequent to issuance of the license which event would have been a basis for denial of the license shall be grounds for revocation thereof; or
 - (7) The applicant's or licensee's real or personal property taxes, or final judgments due and payable to the city, are determined to be in arrears as of the date of the license or application; or that real or personal property taxes or final judgments due and payable to the city on account of the premises for which application has been made or a license issued have not been paid in full as of the date of the license or application. Real or personal property taxes or final judgments that are less than thirty (30) days past due at the time of the license or permit application, that are less than \$500.00, or that are determined by the City Manager or his or her designee to not be owed as per §2-203(f) shall not be considered in arrears for purposes of this section.
- (b) *Hearings.*
- (1) Except as expressly provided in this Code, no license to which this chapter applies may be revoked or suspended without prior notice to the licensee, and after a hearing.
 - (2) In the case of the suspension or revocation of a license, a hearing shall be given to the licensee and a generalized statement of the nature of the complaint constituting the basis for the proposed action shall be included in the notice of hearing. Unexcused failure of licensee to appear at the hearing shall be deemed a waiver of the rights to said hearing.
 - (3) Upon a determination that immediate and irreparable harm will be suffered by the public prior to the time that a hearing on suspension or revocation of a license can be scheduled and a finding of probable cause for such suspension or revocation, the Permitting and Inspections Department may suspend a license, pending hearing, effective upon the giving of actual notice to the licensee; provided that the Permitting and Inspections Department shall give an opportunity to be heard as soon as practicable thereafter. At any hearing, the licensee shall be given the opportunity to answer the complaint

and to present evidence. The complainant shall also be notified of the hearing and given the opportunity to be heard.

- (4) All suspensions or revocations shall be upon substantial evidence and all hearings shall be conducted with substantial fairness and strict adherence to the rules of evidence shall not be required.
- (5) All hearings on suspension or revocation of licenses shall be held within thirty (30) days of delivery to licensee of the generalized statement of complaint.

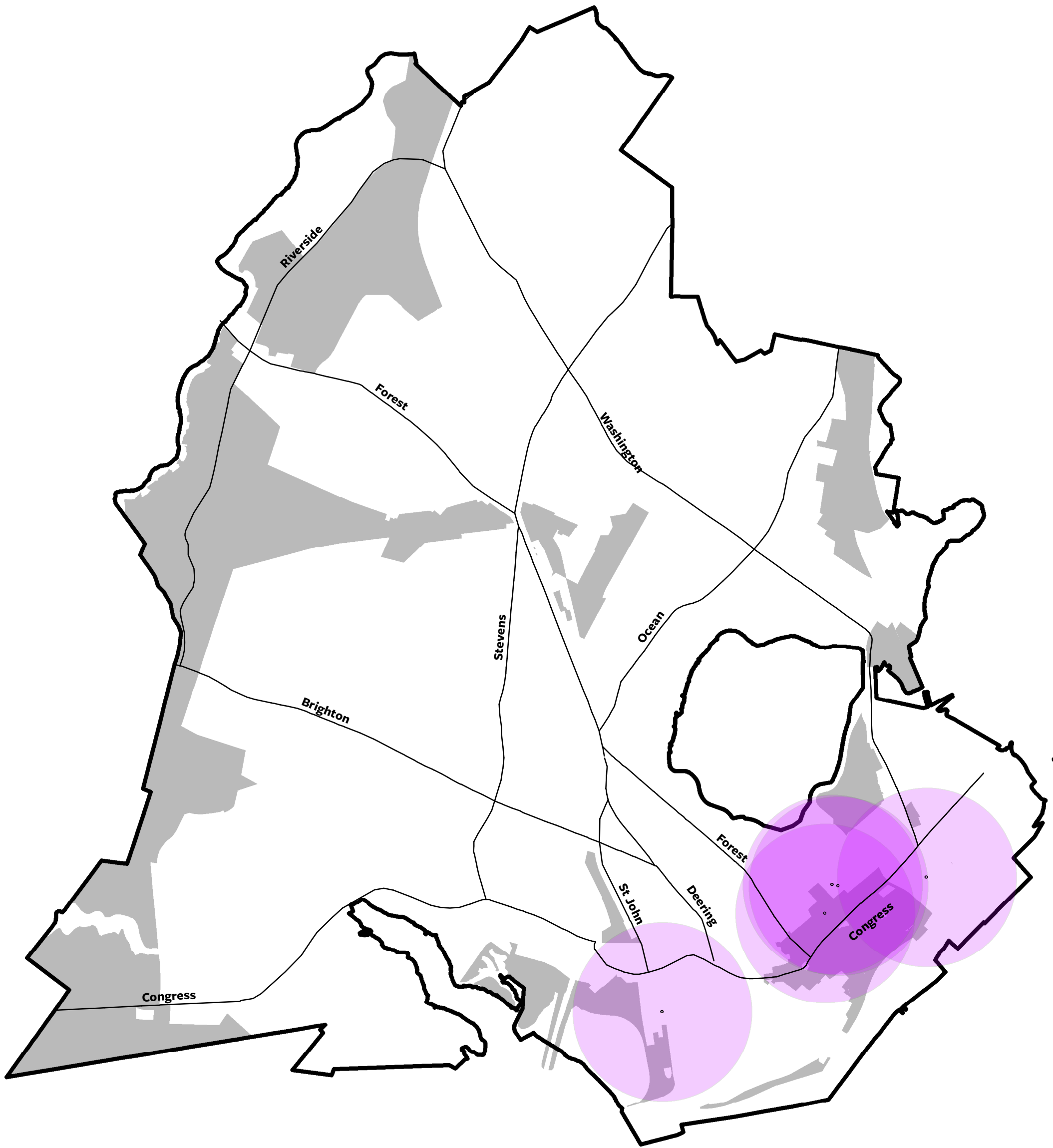
(c) *Abandoned licenses.* The applicant shall pay the issuance fee and obtain any license from the Permitting and Inspections Department within thirty (30) days after it has been approved by the Permitting and Inspections Department. Upon failure to pay the issuance fee and obtain the license within said thirty-day period, the approval shall be void and the application deemed abandoned. For good cause shown, the Permitting and Inspections Department may extend the thirty-day period provided such extension does not result in the issuance of the license being delayed more than one hundred eighty (180) days from its approval by the Permitting and Inspections Department.

(Code 1968, § 901.8; Ord. No. 231-80, 12-22-80; Ord. No. 291-83, 12-5-83; Ord. No. 562-84, §§ 4, 5, 4-23-84; Ord. No. 196-88, 11-7-88; Ord. No. 165-15/16, 3-7-2016; Ord. 18-17/18, 8-21-2017; Ord. No. 220-17/18, 6-4-2018)

Sec. 15-9. Appeals.

(a) *Procedure.* An appeal to the city manager may be taken by any person aggrieved by the denial, suspension or revocation of a license by the Permitting and Inspections Department by filing a notice of appeal and the prescribed fee with the city manager within thirty (30) days of the decision appealed from, and not thereafter. Every appeal should be in writing and shall state the basis for the appeal. Within two (2) business days of the filing of an appeal, the city manager shall designate himself or any agent or employee to act as hearing designee in the appeal. The hearing designee shall hear the appeal within ten (10) business days after the filing of the appeal and may affirm, reverse or modify the decision appealed from. The taking of an appeal shall not stay a decision appealed from, except that at the request of the licensee, the Permitting and Inspections Department may stay the effective date of a suspension, revocation or denial of a renewal license upon a finding that the public is not likely to suffer any harm

Existing Shelters, Shelter Zones, and Spacing

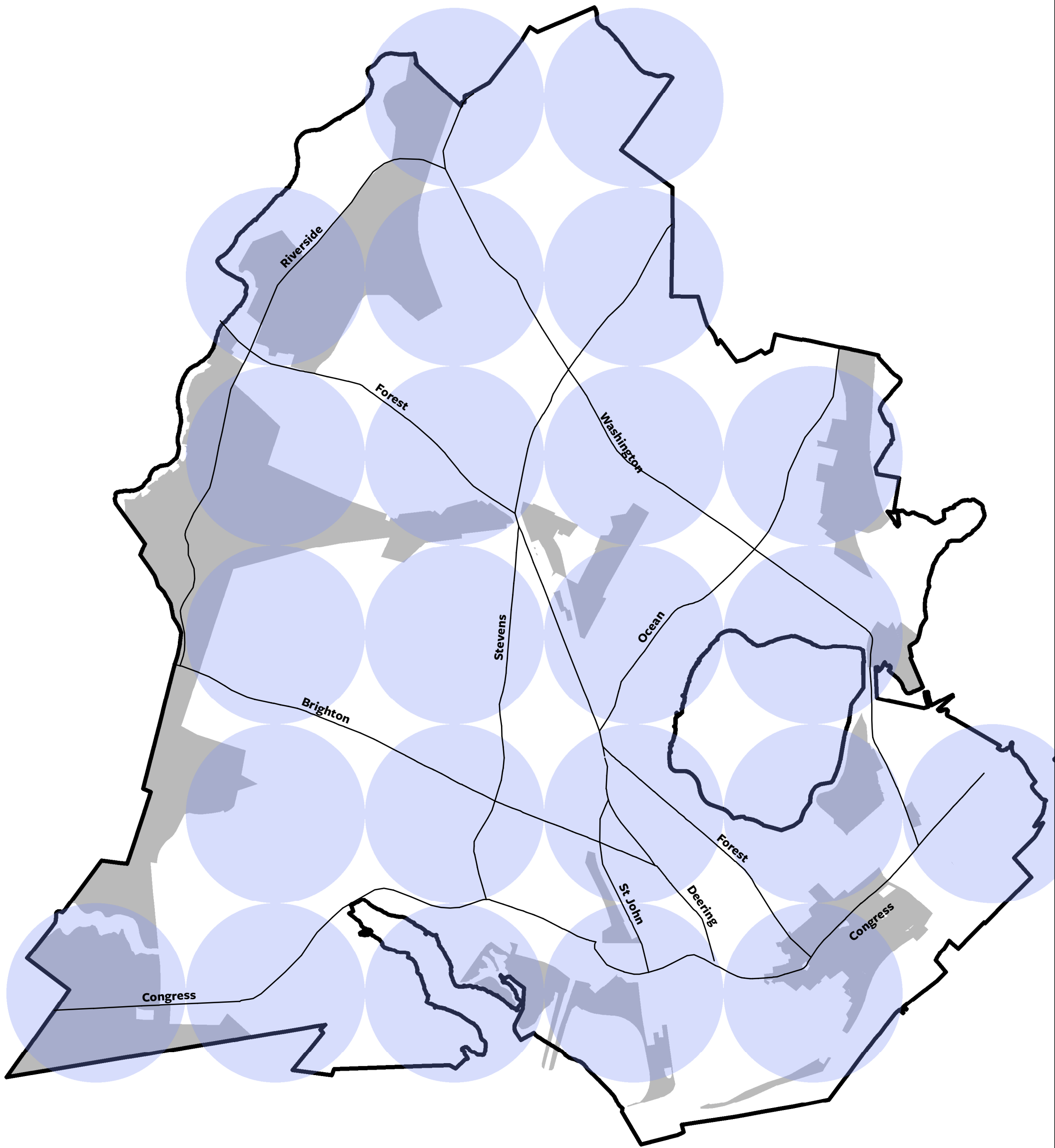


- Shelter*
- City Boundary
- Zones with Emergency Shelter Conditional Use
- 2500 Foot Buffer (Hypothetical)



* Domestic violence shelter is not indicated on this map

Hypothetical Shelter Spacing



-  Zones with Emergency Shelter Conditional Use
-  City Boundary
-  2500 Foot Radius Circle





CITY OF PORTLAND

Health & Human Services Department

Kristen Dow, Director

To: Health and Human Services and Public Safety Committee Members
From: Kristen Dow, Director of Health & Human Services
Date: November 10, 2020
RE: Licensing Examples for Emergency Shelters

At the request of Councilor Ray, staff have conducted research into other jurisdictions, as well as a review of existing City Code to consider mechanisms by which private emergency shelter operations can be regulated in order to better protect the individuals served and manage unintended consequences in the surrounding community.

Summary

While emergency shelters provide a critical service, their impact on the community can be significant, particularly when not properly planned for or in the absence of a strong partnership between a shelter operator and municipality.

To better ensure that privately run emergency shelters are operating in a manner that protects the health, safety, and welfare of individuals experiencing homelessness as well as of the public at large, City staff have compiled relevant research for the review of the Health and Human Services and Public Safety Committee.

This document contains the following:

1. Staff research on licensing and zoning mechanisms used to regulate privately operated emergency shelters in other municipalities;
2. Staff analysis of existing Portland ordinances relevant to the oversight of emergency shelters.

Lastly - it is worth noting that emergency shelters are not the only - or even the primary - source of quality-of-life consequences in Portland neighborhoods. Other sources, such as day service centers, are not addressed in this memo but are believed to have a significant impact on nearby residences and businesses.

Licensing Mechanisms

Staff identified a few municipalities that have designed a program to license homeless or emergency shelters. Of those we identified, none have set clear performance criteria to ensure safe operation or to independently enable City officials to hold shelters accountable for their or their residents' impact on nearby communities (e.g. noise, disturbance of the peace, litter, disorderly conduct, calls for service, etc.). In addition, we were unable to identify any municipalities that require emergency shelters or social service providers to deliver outreach services offsite, in the vicinity of their brick-and-mortar location. Rather, it would appear that programmatic requirements tend to be governed by private grant agreements or state licensure requirements while public safety concerns relating to guest conduct in and outside of shelter property are addressed through generally applicable ordinances or criminal laws.

Some of the requirements established in other municipalities' licensing programs are currently required by Chapter 14 of the City Code as part of the Planning Board's review and approval of emergency shelters as a conditional use. However, there are some noteworthy differences between some of these other municipal programs and the City's conditional use standards, including that Portland does not currently require:

- A mandated buffer between shelters and hospitals, schools, daycares, public buildings, or places of public gathering;
- A mandated buffer between any two shelters;
- A cap on the number of shelter beds allowed in the municipality or in any one facility;
- Restrictions on guests' length of stay.

An overview of other municipalities' licensing programs can be found below. The relevant ordinances are enclosed for further review.

- **Brunswick, ME**

Beginning in early 2019, homeless shelters in Brunswick were required to be licensed by the Town Manager or his/her designee. Existing shelters were grandfathered, and did not require licenses.

Applications for a license must include: governing documents of the owner and/or operating entity; an affidavit identifying all owners, operators, managers, or partners; evidence of all approvals, permits, and/or certificates required to operate the shelter; a description of and plans for the premises. In addition, the applicant must demonstrate that certain operational standards will be met, including hours of operation; staffing; display of license.

The ordinance limits the collective capacity for all homeless shelters in the Town of Brunswick at 85 beds, and that a buffer of at least 500' be maintained between any two shelters. Licenses are valid for a five-year term. Enforcement of licensing requirements are managed by the Town Council or its designee.

- **Phillipsburg, NJ**

Chapter 347 of Phillipsburg's Town Code requires that all operational homeless shelters obtain a license from the Town Clerk. Licenses must be renewed annually.

Shelters are restricted to the B-2 Zone, and deemed a conditional use upon the condition that it must be located immediately adjacent to a highway.

Standards for the issuance of a license include the nature and development of the surrounding property; proximity of churches, schools, public buildings, or other places of public gathering; the effect such business may have upon traffic conditions and the creation of traffic hazards; the sufficiency in number of similar entities; health, safety, and welfare of the public; and the applicant's suitability. Licensing requirements are enforced by the Building Director.

In Phillipsburg, homeless shelters may serve no more than 15 people at the same time, and stays are capped at one month per person. In addition, they are only allowed as accessories to a place of organized worship, and are not permitted principal uses.

- **Oak Lawn, IL**

The Village of Oak Lawn requires that "temporary overnight shelters" are licensed by the Village Manager, and that licenses are renewed annually. In addition, it requires that all shelters proposed in the R-3 Multi-Family Residence District receive a special use permit. License application requirements include a statement that the shelter will maintain a policy of making reasonable efforts to accommodate persons previously residing in the Village of Oak Lawn; operation guidelines; shelter capacity; and the name of the person or entity responsible for the shelter's management.

All operating entities must be not-for-profit, or operate without charge to the shelter occupants. It is also unlawful for any medical care or treatment to be provided as part of the shelter's regular accommodations or services.

Zoning Restrictions

A number of municipalities have introduced amendments to zoning law in order to reduce shelters' impact on other communities.

- **Puyallup, WA**

In 2019, the City of Puyallup passed a law restricting homeless centers to 150 parcels (~400 acres) of land, primarily in industrial zones. It also establishes a 500-foot buffer between

homeless service centers and hospitals or businesses, as well as a 1,000-foot buffer between homeless service centers and daycares or schools.

- **Monterey County, CA**

Monterey County's zoning ordinance establishes size limits, staffing requirements, and requirements related to operational plans (similar to the City of Portland's more comprehensive Master Plan), all of which are reviewed by the Director of Planning.

The zoning ordinance also caps residents' length of stay, establishes a buffer of at least 300 feet between any two shelters, and requires off-street parking.

- **Newport Beach**

California State Law requires that cities articulate their homeless populations' needs and specify where emergency shelters can be built. Newport Beach allows emergency shelters "by right" in areas designated for "private institutions" and "office-airport" zoning, and would require a conditional use permit or rezoning for any other area.

Relevant Portland City Code

Currently, the City of Portland's Land Use Code (Sec. 14-474, enclosed) establishes the use-specific standards applicants must meet as part of the Planning Board review and approval of emergency shelters as a conditional use. Among other things, this section requires a Management Plan outlining management responsibilities; processes for resolving neighborhood concerns; staffing; access restrictions; on-site surveillance; safety measures; controls for resident behavior and noise levels; and monitoring reports.

In addition, the City has in place a number of ordinances outside of Chapter 14 and state land use statutes that protect public safety, health, and welfare by regulating businesses and private individuals' actions. Examples include:

- The requirement for a community relations liaison for marijuana businesses (Chapter 35);
- The requirement for various mitigation plans for odor, waste, loitering, etc. for marijuana businesses (Chapter 35);
- The Sound Oversight Committee process for addressing noise complaints (Chapter 4);
- The disorderly house process for rental properties (Chapter 6);
- Nuisance provisions for a variety of issues (Chapter 17);
- Complaint- or violation-based review of licensees, which may result in fines or license revocation for taxis (Chapter 30);
- The City's ability to deny, revoke, or suspend any business license for cause, including a patron's single breach of the peace (Chapter 15)

Fwd: 5/11/21 HHS&PS: emergency licensing & limited moratorium

2 messages

Kristen Dow <kjd@portlandmaine.gov>
To: Adam Harr <ash@portlandmaine.gov>

Sat, May 8, 2021 at 6:52 PM

For backup.

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

From: **Jim Hall** <mtjimhall@gmail.com>

Date: Sat, May 8, 2021 at 3:45 PM

Subject: 5/11/21 HHS&PS: emergency licensing & limited moratorium

To: To: Kate Snyder <ksnyder@portlandmaine.gov>, Nicholas Mavodones <nmm@portlandmaine.gov>, Pious Ail <pali@portlandmaine.gov>, April Fournier <afournier@portlandmaine.gov>, Belinda Ray <bsr@portlandmaine.gov>, Spencer Thibodeau <sthibodeau@portlandmaine.gov>, Tae Chong <tchong@portlandmaine.gov>, Andrew Zarro <azarro@portlandmaine.gov>, Mark Dion <mdion@portlandmaine.gov>

CC: Jon Jennings <jpj@portlandmaine.gov>, City Clerk <cityclerk@portlandmaine.gov>, Kristen Dow <kjd@portlandmaine.gov>

Re: Emergency shelter licensing & limited moratorium

Dear Chair Chong, Councilors Ray and Dion,
(CC Mayor & full council, City Manager, DHHS Director)

As a resident with 25 years experience living one block downhill of the Oxford Shetler:

- I support strong licensing that ensures all parties are protected: Clients, staff, and the host community.
- I support a targeted moratorium to provide adequate time to work out all the right details.

But please tighten up code around Day Shelter — especially as the city will be creating an RFP soon.

The current licensing definition explicitly limits its domain to “overnight” emergency shelter, and provides NO GOVERNANCE on a separately created “day shelter space” category — except that this must be within 1/4 mile — which in fact creates a new loophole that could literally *double* whatever spacing / density guardrails the council deems appropriate, and actively forces exactly the kind of neighborhood foot traffic to connect basic services that necessitated such licensing rules in the first place.

Moratorium language fails to define “emergency shelter” at all, carving an even wider loophole given the presence of other weak definitions.

We must learn from (and in fact go back and repair) the unintended consequences of 2017’s conditional use language, which allowed Preble Street to spin up yet another clustering shelter on the failed assumption that inadequate infrastructure is “good enough” for Portland’s regional emergency response. When you let the applicant define their own terms, sometimes you get Orwellian fallacies such as *Day Space = Bed Space // Sight Lines = Curved Spacetime // Onsite Services = Referrals to Offsite Partners*, etc — all in service of retrofitting a building they happen to own that’s really no better suited to this use than cramming 154 poor souls head-to-toe on mats in a former garage... which I thought the city was trying to mend. And I don’t know if I need to remind you, but Preble Street’s published 5 year vision imagines additional shetlers in the area, and they are not shy about marching to their own drum against the stated values of the city.

I have already commented extensively on additional aspects of code that need to be “aligned.”. Please use the moratorium appropriately to allow yourselves the necessary time and careful attention to ensure licensing in conjunction with all other ordinance actually accomplishes what you intend.

Thanks
Jim Hall
Cedar St

--

Kristen Dow
Director of Health & Human Services
City of Portland
389 Congress Street
Portland, ME 04101

Kristen Dow <kjd@portlandmaine.gov>
 To: Adam Harr <ash@portlandmaine.gov>
 Cc: Aaron Geyer <aeg@portlandmaine.gov>

Sat, May 8, 2021 at 8:54 PM

For backup.

Kristen

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

From: **Jim Hall** <mtjimhall@gmail.com>

Date: Sat, May 8, 2021 at 7:09 PM

Subject: Re: 5/11/21 HHS&PS: emergency licensing & limited moratorium

To: To: Kate Snyder <ksnyder@portlandmaine.gov>, Nicholas Mavodones <nmm@portlandmaine.gov>, Pious Ail <pali@portlandmaine.gov>, April Fournier <afournier@portlandmaine.gov>, Belinda Ray <bsr@portlandmaine.gov>, Spencer Thibodeau <sthibodeau@portlandmaine.gov>, Tae Chong <tchong@portlandmaine.gov>, Andrew Zarro <azarro@portlandmaine.gov>, Mark Dion <mdion@portlandmaine.gov>

CC: Jon Jennings <jpj@portlandmaine.gov>, City Clerk <cityclerk@portlandmaine.gov>, Kristen Dow <kjd@portlandmaine.gov>

Re: Staff Recommendations for Maximum Bed Density & Shelter Buffer Zones
i.e. yet another critical item on this evening's agenda

So... at a high level we appear to have 14 votes for licensing, and 14 against

However, while long-suffering residents have again and again proven willing to enter into dialog to seek consensus on reasonable parameters — 100% of providers have instead now chosen to form a cabal *against the city*. To equate even a conversation around governance with "*causing significant issues*" and leave it at that is simply irresponsible — and in fact only serves to *prove* that governance is needed in this domain. It's kind of a stupid move if you ask me, since now they'll have no input to a final draft. Assuming our councilors have spine enough to do their jobs in the face of hardball tactics.

Let's say all the industrial operators in the city circled their wagons and cried wolf that limiting noise or dust or other overspill to nearby residences in the covid economy would cause their operations undue harm. Or perhaps all the pubs in the old port would like to refuse to apply for licenses, or claim that policing fights in the streets near their services causes "significant issues" to their clients. It's patently ridiculous. Setting reasonable thresholds is the entire point of government. The social contracts of civil society certainly include appropriate governance of any high-impact use—full stop. Does anyone dare challenge the fact that ungoverned and poorly managed services on Preble Street caused a public health & safety crisis that became "*business as usual*" for years? Flat out refusing to even show up en masse provides zero solutions, and tacitly claims there's no such issue or need to talk about it.

What's worse is that social service operations are ostensibly full of the most caring people in the world — but the "*conditional empathy*" these organizations are all displaying toward their neighbors tells a conditional story about them. I so wish they had risen up to reign in their peers voluntarily when things go so clearly out of hand at 5 Portland Street— but this group has clearly proven unwilling to self-govern up to and including the present.

To be honest I am deeply afraid that the council may lose nerve to do its job properly, which is to insert some semblance of reasonable limits that actively ensure that no "*neighborhood under siege*" can EVER be possible again anywhere in this town. This is dirty politics, hiding behind "Good Works" to pretend there's no such thing as community impacts when you choose to force vulnerable people from all around the region to self-segregate into the streets of one poor neighborhood. Nothing can excuse Portland's past failure to manage these impacts — but with forgiveness we can all move forward into a future with sensible guardrails in place.

I'm not going to comment on the reduction of staff recommended buffers from 2500 to 500. You can probably guess my personal opinion about the usefulness of a 1-2 block buffer. But more importantly: I am advocating for *you* to do your jobs in our representative form of government, and make these very hard and complex decisions by keeping in mind the best available data, and all the humans under your care. If certain stakeholders refuse to participate, even after direct outreach — unfortunately the expected result is that they give up any legitimacy to complain about outcomes. As much as I feel ashamed for them adopting such indefensible posturing — I do hope you continue to move forward with licensing in a fair and balanced way that takes both me and them into account.

Thanks you

Jim Hall
Cedar St

On Sat, May 8, 2021 at 3:44 PM Jim Hall <mtjimhall@gmail.com> wrote:

Re: Emergency shelter licensing & limited moratorium

Dear Chair Chong, Councilors Ray and Dion,
(CC Mayor & full council, City Manager, DHHS Director)

As a resident with 25 years experience living one block downhill of the Oxford Shetler:

- I support strong licensing that ensures all parties are protected: Clients, staff, and the host community.
- I support a targeted moratorium to provide adequate time to work out all the right details.

But please tighten up code around Day Shelter — especially as the city will be creating an RFP soon.

The current licensing definition explicitly limits its domain to “overnight” emergency shelter, and provides NO GOVERNANCE on a separately created “day shelter space” category — except that this must be within 1/4 mile — which in fact creates a new loophole that could literally *double* whatever spacing / density guardrails the council deems appropriate, and actively forces exactly the kind of neighborhood foot traffic to connect basic services that necessitated such licensing rules in the first place.

Moratorium language fails to define “emergency shelter” at all, carving an even wider loophole given the presence of other weak definitions.

We must learn from (and in fact go back and repair) the unintended consequences of 2017’s conditional use language, which allowed Preble Street to spin up yet another clustering shelter on the failed assumption that inadequate infrastructure is “good enough” for Portland’s regional emergency response. When you let the applicant define their own terms, sometimes you get Orwellian fallacies such as *Day Space = Bed Space // Sight Lines = Curved Spacetime // Onsite Services = Referrals to Offsite Partners*, etc — all in service of retrofitting a building they happen to own that’s really no better suited to this use than cramming 154 poor souls head-to-toe on mats in a former garage... which I thought the city was trying to mend. And I don’t know if I need to remind you, but Preble Street’s published 5 year vision imagines additional shetlers in the area, and they are not shy about marching to their own drum against the stated values of the city.

I have already commented extensively on additional aspects of code that need to be “aligned.”. Please use the moratorium appropriately to allow yourselves the necessary time and careful attention to ensure licensing in conjunction with all other ordinance actually accomplishes what you intend.

Thanks
Jim Hall
Cedar St

[Quoted text hidden]

Fwd: Comments on Proposed Emergency Shelter Regulations

1 message

Kristen Dow <kjd@portlandmaine.gov>
To: Adam Harr <ash@portlandmaine.gov>

Tue, May 11, 2021 at 5:59 AM

For backup

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

From: **Laura S. Underkuffler** <lu27@cornell.edu>

Date: Mon, May 10, 2021 at 10:02 PM

Subject: Comments on Proposed Emergency Shelter Regulations

To: tchong@portlandmaine.gov <tchong@portlandmaine.gov>, mdion@portlandmaine.gov <mdion@portlandmaine.gov>, Belinda Ray <bsr@portlandmaine.gov>

CC: kjd@portlandmaine.gov <kjd@portlandmaine.gov>, cdg@portlandmaine.gov <cdg@portlandmaine.gov>, jpj@portlandmaine.gov <jpj@portlandmaine.gov>, fclark@portlandmaine.gov <fclark@portlandmaine.gov>

Dear Chair Chong, Councilor Dion, and Councilor Ray:

I have read the updated Emergency Shelter Licensing Recommendations and Buffering/Spacing Suggestions. It is entirely heartening to see that the placing of additional shelters in the community, the licensing of shelters, and the extremely critical issue of day shelter space for shelter residents are all taken very seriously in this draft.

I am very glad to see the recommendation that no more than 250 beds within a 1 mile radius will be permitted. As a resident of West Bayside, which has suffered for years as the locus of just about all social services and their externalities in the City, experience has taught that this is a critically needed new rule. I understand the need to allow existing shelters to continue, and that this will not change the existing situation in Bayside for the foreseeable future. However, this new rule will hopefully reflect a basic principle of environmental justice -- that no more of what everyone agrees is a community-wide need and community-wide burden will be shifted to the lower-income, higher-minority area of Bayside.

I do not understand, however, why the space between shelters has been reduced to 500 feet in the proposed regulations. Because the average city block is 323 feet long, this reduces the required buffer between shelters to less than 2 city blocks. This is *precisely* the kind of unacceptable concentration of facilities and externalities in dense urban areas (where homes and businesses are a few feet from public streets, and from each other) that the new rules, and their extremely well-stated rationale, seek to prevent.

Finally, although I *celebrate* the new requirement that shelters provide inside day space for residents, I strongly oppose the idea that this rule can be waived if the shelter operator provides day space within 1/4 of a mile away. To be brutally honest, what good will day space 1/4 of a mile away be for the residents of a homeless shelter? How can the residents even get there? How can they get back? Are they expected to take a bus (if indeed that even exists) in the snow, driving rain, or freezing cold, or when they are ill, elderly, or otherwise bodily infirm? Many times we looked out the window of our house on Oxford Street and saw people in wheelchairs, on crutches, elderly, struggling to get to Preble Street for meals in wind and deep snow. How can day space 1/4 of a mile away possibly address the problem?

When we moved to Oxford Street, twelve years ago, and got to know some of the people who lived at the Oxford Street Shelter, we were shocked to learn that they were forced to leave at 9 am every morning, and to scavenge for a place to be all day (hanging in the Public Library, standing on public sidewalks or private driveways, sitting on guardrails around the private parking lot across the street ...). This was the expectation in rain, wind, cold, snow, and sleet. At the time, no one questioned the humanity of this arrangement, or wanted to recognize the problems that hundreds of people with no place to go in the City inevitably created. Finally, and thankfully, this deep and festering problem has been both recognized and addressed. Please do not completely eviscerate this desperately needed new requirement with a completely inadequate waiver option.

I greatly appreciate your attention to all of these matters.

Sincerely,

Laura Underkuffler
Oxford Street

--

Kristen Dow
Director of Health & Human Services
[City of Portland](#)
[389 Congress Street](#)
[Portland, ME 04101](#)
207-874-8633

Fwd: Emergency shelter licensing

1 message

Belinda Ray <bsr@portlandmaine.gov>
To: Adam Harr <ash@portlandmaine.gov>

Mon, Mar 15, 2021 at 12:03 PM

Belinda S. Ray (*she / her / hers*)
City Council, District 1
389 Congress Street
Portland, ME 04101
BSR@portlandmaine.gov

Sign up for [my newsletter](#) or visit [my blog](#)!

Please Note: Under Maine law, emails sent or received by public officials or city employees may be classified as public records. There are very few exceptions. As a result, please be advised that what is written in an e-mail could be released to the public and/or the media if requested.

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

From: **Sarah Michniewicz** <sarahmichniewicz@icloud.com>
Date: Mon, Mar 8, 2021 at 4:38 PM
Subject: Emergency shelter licensing
To: Tae Chong <tchong@portlandmaine.gov>, <mdion@portlandmaine.gov>, Belinda Ray <bsr@portlandmaine.gov>
Cc: Kate Snyder <ksnyder@portlandmaine.gov>, Spencer Thibodeau <sthibodeau@portlandmaine.gov>, Ali Pious <pali@portlandmaine.gov>, Nicholas Mavodones <nmm@portlandmaine.gov>, <afournier@portlandmaine.gov>, <azarro@portlandmaine.gov>, Jon Jennings <jpj@portlandmaine.gov>, Frank Clark <fclark@portlandmaine.gov>, Kristen Dow <kjd@portlandmaine.gov>

Hello Chair Chong and Councilors Dion and Ray,

Thank you for continuing to diligently pursue emergency shelter licensing. I'm pleased that City staff is recommending outreach be conducted with neighborhood associations and the community to get feedback regarding buffers and spacing, and asking for a community survey on emergency shelter licensing.

It's refreshing but bittersweet to see support for giving neighbors a voice in the process. It's an opportunity that Bayside has never had. If you choose to vote the current recommendations out of committee at Tuesday's meeting, please require that suggested outreach for when the full council considers them.

Although staff hopes the data gathering will be complete and ready to present in May, between now and then there's still a lot at risk for this neighborhood, with nothing to stop another shelter proposal before licensing is enacted. Please do not discount that possibility. One new Bayside shelter has already been sped through in under three months, increasing the already excessive bed total by 12%, up to 451 within the suggested 1 mile radius. That's 201 (80%) more than the suggested maximum of 250. Please see the attached graphic for reference, and [this](#) BNA blog post for a comprehensive overview of shelter density in Bayside compared to the rest of the City, county, and state.

It would be indefensible to allow yet another shelter to enter the planning pipeline when the City's clear will is to first get its arms around how and where shelters are best able to serve the needs of providers, consumers, and constituents; even more so when there are vast areas in the rest of the City a shelter could be sited, even without additional zoning changes.

So I ask that as part of this licensing conversation this Committee recommend to the City Council an *immediate and complete moratorium on allowing any additional shelters or shelter beds in the Bayside neighborhood*. Although plans for eventually relocating the Oxford Street shelter are in motion, and licensing is presumably proceeding apace, nothing is certain.

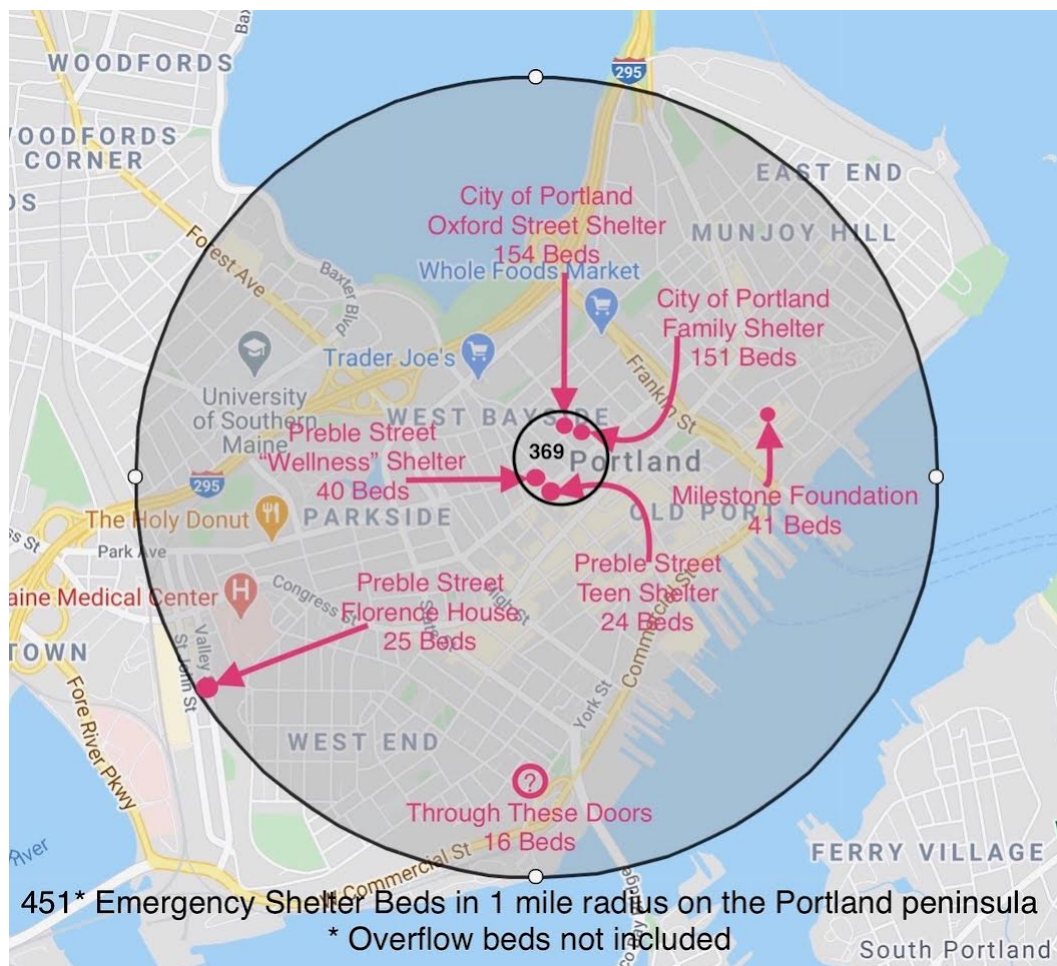
Just as a moratorium on demolitions created a pause to think about the future of Munjoy Hill, a moratorium on new shelters in Bayside will give the neighborhood and the City a safe, depressurized space in which to make fair and durable policy on the location of shelters within the community. But to allow the status quo to continue in Bayside, whilst thoughtfully engaging the rest of City about their preferences, would only serve to affirm that some neighborhoods are more equal than others.

Portland is on the cusp of finally creating a thoughtful and intentional shelter system. Please ask the City Council to enact a moratorium on any new shelters in Bayside so that we can honestly assess the City's role in addressing homelessness, and holistically decide how Portland's shelter system can best fill that role.

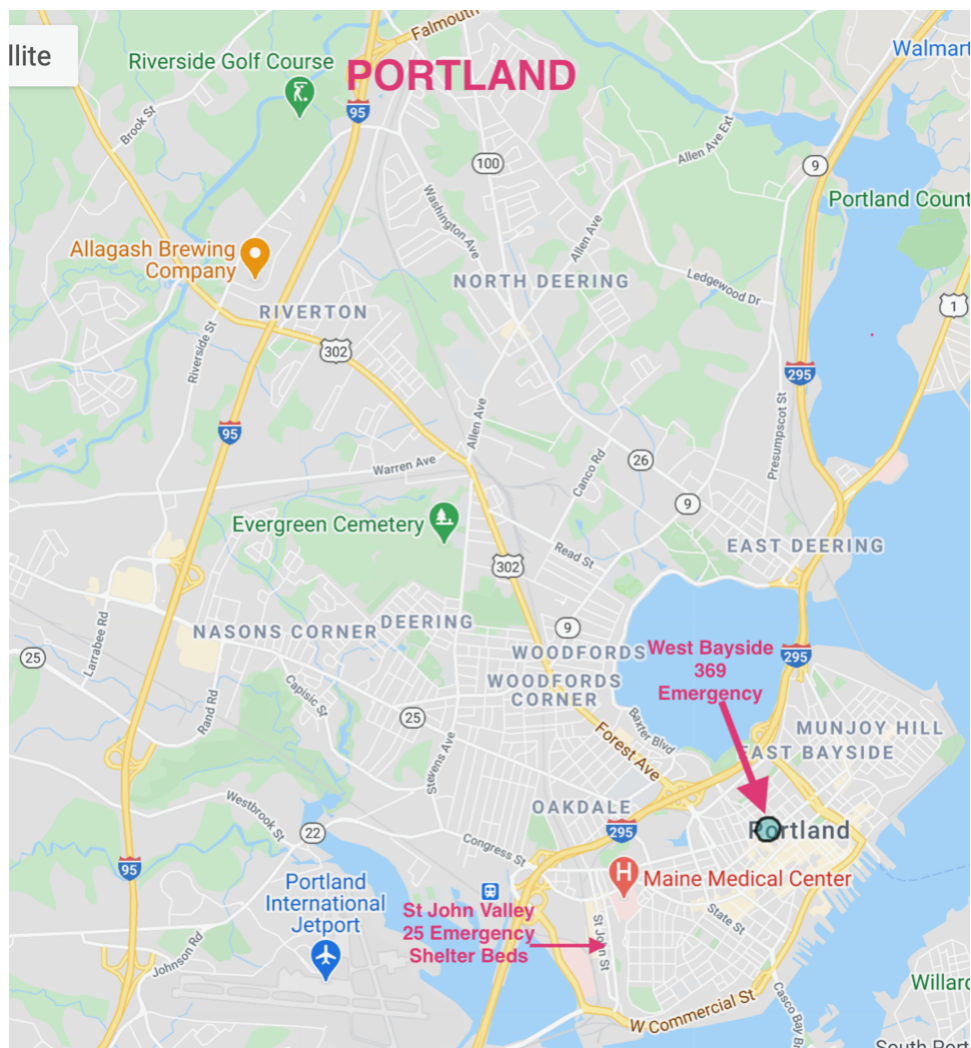
Thank you,

Sarah Michniewicz

Cedar Street, Portland







Fwd: Following up from last week - 39 Forest & Bayside moratorium

1 message

Kristen Dow <kjd@portlandmaine.gov>
To: Adam Harr <ash@portlandmaine.gov>

Wed, Apr 21, 2021 at 9:02 AM

Kristen Dow
Director of Health & Human Services
City of Portland
389 Congress Street
Portland, ME 04101
207-874-8633

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

From: **Heidi Souerwine** <heidi.souerwine@gmail.com>
Date: Tue, Apr 20, 2021 at 10:39 PM
Subject: Following up from last week - 39 Forest & Bayside moratorium
To: Belinda Ray <bsr@portlandmaine.gov>, Tae Chong <tchong@portlandmaine.gov>, <mdion@portlandmaine.gov>
Cc: Kristen Dow <kjd@portlandmaine.gov>, Kate Snyder <ksnyder@portlandmaine.gov>, <afournier@portlandmaine.gov>, <azarro@portlandmaine.gov>, Nick Mavodones <nmm@portlandmaine.gov>, Pious Ali <pali@portlandmaine.gov>, Spencer Thibodeau <sthibodeau@portlandmaine.gov>

Committee members,

Just a note to say I appreciate you addressing questions after public comment at the HHS meeting last week, and your thoughtful dialogue throughout.

The discussion & presentation provided some context, which was helpful.

After thinking about it for a few days though, the fact remains: there are MANY other areas on the peninsula besides this already overloaded area. No one was questioning the need for consolidating these interconnected services under one roof. Rather, we're rightly challenging the City's planning strategy to again site more social services in the smallest area on the peninsula, when the most already exist there. This [graphic](#) provides a good snapshot of West Bayside alone. And, as Council Chong pointed out, there are numerous additional social services in the adjacent vicinity as well, immediately surrounding 39 Forest, that are not "technically" Bayside.

Committee members:

As I understand, on-peninsula was on directive, but was the specific area?

During the meeting it sounded like no other areas nor facilities were explored.
Is that correct?

Regarding Councilor Dion's request for boundary clarity re: a shelter moratorium (OR, for any social services facilities), I would challenge everyone to think strategically & holistically, and look at the **summation of similar entities nearby, whether they're technically over a line or not.**

Council Dion: Thank you for calling for safe harbor for west Bayside - it is desperately needed & it was so wonderful to hear it recognized. I hope it's easy to see that shelters are only one piece. My neighbors & I have continually stated that the neighborhood needs BALANCE from the overwhelm & 39 Forrest would continue to tip things in the wrong direction.

Councilor Chong: the moratorium would be a stop-gap, to prevent more projects from being approved in an area that is already so overwhelmed until the new licensing rules. I would plead for you to support it. One shelter has already squeaked in recently before licensing has been established.

When I think about all of this, in combination with the City Manager's CDBG proposals, it's alarming. Portland St, Cumberland Ave, Park Ave & now Forest Ave.

I know turning the corner on Bayside as the default is hard but it HAS to happen, and quickly.

Thank you for your consideration,
Heidi Souerwine
Mechanic St.

On Tue, Apr 13, 2021 at 6:17 PM Heidi Souerwine <heidi.souerwine@gmail.com> wrote:

Dear Committee members, Councilors and Mayor Snyder:

Hoping you all are able to see this. I'm a bit shocked with the lack of advanced notice for public comment tonight on an issue that will have **so much impact**. I'm hoping to try to join tonight, AND I'm also **hoping** the City isn't trying to push this through without careful thought. Regardless, I wanted to send some thoughts in writing.

I'm pleased to see the city is finally preparing to discuss a shelter moratorium in Bayside. However I'm still left questioning whether it's understood that what west Bayside needs is **balance**.

I'm concerned about a number of ideas I've seen come out recently that collectively amount to the City doubling down on the environment that created the instability in Bayside this whole time. In considering the proposal to consolidate DHHS operations at 39 Forest, and in reviewing the various elements proposed in the City Manager's CDBG funds allocation, the City would be creating the same situation along Forest Avenue that it created years ago on Portland Street.

With Portland Housing Authority & Maine Needs on Forest, the Deering Oaks gatherings, the proposed "ultra low to no barrier housing services" at Spurwink on Park, a proposed consolidated DHHS at 39 Forest, reintroducing another day space as well - it seems the City is creating another social services corridor in a different area of Bayside. And, on a much busier thoroughfare in the city with existing significant safety issues. With none of the other consolidated services moving.

For those of you that don't live anywhere nearby, the situation in that immediate area has been extremely tenuous at best for the better part of the last two years. Longtime community members, residents, & neighbors on Forest on the block between Park & Cumberland are already leaving their homes, and abandoning their businesses because they can no longer handle the environment. I would urge you all to consider how these plans benefit the fabric of the neighborhood, and whether this would be reasonable anywhere else.

It often feels defeating trying to create a life here. We want to stay, but the panic, urgency, and stress when it feels like no balance is even desired for this neighborhood, is beyond challenging.

Being a public servant is such a hard job, and I do appreciate all of you. I am hopeful for some clarity, and want to encourage thoughtful urban planning.

Thank you,
Heidi Souerwine (& Jason Tropp)
Mechanic St.

Fwd: Fw: New Homeless Shelter Licensing Standards - Legal Application and Critical Role

1 message

Belinda Ray <bsr@portlandmaine.gov>
To: Adam Harr <ash@portlandmaine.gov>

Mon, Mar 15, 2021 at 12:03 PM

Belinda S. Ray (*she / her / hers*)
City Council, District 1
[389 Congress Street](#)
Portland, ME 04101
BSR@portlandmaine.gov

Sign up for [my newsletter](#) or visit [my blog](#)!

Please Note: Under Maine law, emails sent or received by public officials or city employees may be classified as public records. There are very few exceptions. As a result, please be advised that what is written in an e-mail could be released to the public and/or the media if requested.

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

From: **Laura S. Underkuffler** <lu27@cornell.edu>
Date: Mon, Mar 8, 2021 at 12:08 PM
Subject: Fw: New Homeless Shelter Licensing Standards - Legal Application and Critical Role
To: Belinda Ray <bsr@portlandmaine.gov>

Hi Belinda, I used the wrong email for you! I am sorry - here is the email I previously sent. Thank you, Laura

From: Laura S. Underkuffler
Sent: Monday, March 8, 2021 5:06 AM
To: tchong@portlandmaine.gov <tchong@portlandmaine.gov>; mdion@portlandmaine.gov <mdion@portlandmaine.gov>; bray@portlandmaine.gov <bray@portlandmaine.gov>
Cc: dwchuhta@portlandmaine.gov <dwchuhta@portlandmaine.gov>; kjd@portlandmaine.gov <kjd@portlandmaine.gov>; cityclerk@portlandmaine.gov <cityclerk@portlandmaine.gov>
Subject: New Homeless Shelter Licensing Standards - Legal Application and Critical Role

Dear Counselors Chong, Dion, and Ray:

At the last public hearing on the proposed licensing standards for homeless shelters, an attorney for Maine Equal Justice objected to the Committee's decision that new shelters permitted after January 31, 2021 will be subject to the new licensing requirements.

The grounds for this objection were obscure. To the extent that some rationale was articulated, it seemed to be that because shelters in existence as of January 31, 2021 would be exempt from concentration limits, all shelters which can manage to rush to permitting between January 31, 2021 and the date of adoption of the licensing standards should be, as well. The reason given was that somehow this would be "best practice" (of some sort).

This attorney gave no legal reason for this position, because there is none. In Kittery Retail Ventures, LLC v. Town of Kittery (2004), the Maine Supreme Court unequivocally and finally held that a town can apply new regulations to existing uses and projects. Neither the submission of a development application nor the issuance of a development permit establishes vested rights, and neither the submission nor the issuance of a permit prevents a city from applying later-adopted police power regulations to that project.

Indeed, common sense dictates that this must be the case, in order to prevent a notorious problem in land use law. If entities know that proposed requirements are being considered by a city (which they always will because of public hearing requirements for any change), and (under the law) they are exempt from those new requirements if an application is made or a permit obtained, they can repeatedly defeat the city's attempt at regulation. There are two ways to deal with this problem: for the city to put everyone on notice that all applications after a certain date will be subject to the new regulations (as done here), or for the city to declare a moratorium pending adoption of the new regulations. Either avenue is expressly permitted by Maine law, as stated in the Kittery case.

The reason is this. Prohibitions against retroactivity exist to prevent unfairness to project applicants who have invested large sums of money in reliance on the absence of existing regulations, who have no notice of the pending change in the law. Where this substantial investment occurred before any notice of the pending change was given to the public, the developer could legitimately claim surprise and unfairness. (Thus the common law rule, in all states, that "vested rights" (and exemption from regulatory change) require *both* permitting *and* substantial construction.) However, where -- as here -- any applicant for a new homeless shelter is now aware of the pending adoption of licensing standards, any claim of "surprise" or "unfairness" is specious.

Indeed, if applicants could subvert new regulations every time by rushing to file permit applications before the public processes -- necessary for any adoption of new regulations -- are completed, a city would -- by definition -- be powerless to maintain any status quo while the public adoption processes finish.

Murmurings about "best practices" does not change these fundamental rules.

There is an odd twist to this attorney's remarks that I also want to address. It was stated that any licensing should focus on the health and wellbeing of people in the homeless shelters in question, and (impliedly) that consideration of impacts on others are illegitimate. What this kind of thinking ignores is that *all of us are in this together*. City government and its police power do not exist only to protect one segment of the public; they exist to represent the interests of all. Homeless shelters can exist in harmony with neighbors, as some exemplary homeless shelters now operating in Portland prove. Licensing requirements -- as now exist in other Maine cities -- are critical to the creation and maintenance of homeless shelter operations that protect *both* the homeless populations (as opposed to the criminal elements that are attracted to them) and the residential neighbors (generally low-income) that live there.

We have lived at 215 Oxford Street for 13 years. We have employed -- sometimes for years -- people who stayed at the OSS, and become lasting friends with them. I can tell you that they don't want to live in crowded and dangerous conditions, with a gauntlet of drug dealers on the street outside, any more than we do. They don't want to be relegated to sitting on curbs and parking lot barriers, or in a tiny courtyard mere feet from the street -- and being gawked at by people in passing cars. In short, they don't want to be relegated to the kind of place that the "West Bayside ghetto" has become, any more than those who are trying to scratch out an existence living in West Bayside want to live in those conditions.

The City must get control of this homeless situation, for everyone, and on multiple levels. These licensing standards are a tremendous step forward. For the first time, the City will have the legal authority to control

shelter operations and locations for the good of the homeless population and other city residents. Thank you for taking this very critical and important step.

Sincerely,

Laura Underkuffler
215 Oxford Street

Work:
J. DuPratt White Professor of Law - Property and Land Use
Cornell University

Fwd: HHS & PS Committee meeting

1 message

Belinda Ray <bsr@portlandmaine.gov>
To: Adam Harr <ash@portlandmaine.gov>

Mon, Mar 15, 2021 at 12:03 PM

Belinda S. Ray (*she / her / hers*)
City Council, District 1
389 Congress Street
Portland, ME 04101
BSR@portlandmaine.gov

Sign up for [my newsletter](#) or visit [my blog](#)!

Please Note: Under Maine law, emails sent or received by public officials or city employees may be classified as public records. There are very few exceptions. As a result, please be advised that what is written in an e-mail could be released to the public and/or the media if requested.

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

From: **K. Scott Morrison** <kscottmorrison2@gmail.com>
Date: Mon, Mar 8, 2021 at 11:00 AM
Subject: HHS & PS Committee meeting
To: <tchong@portlandmaine.gov>, <mdion@portlandmaine.gov>, <bsr@portlandmaine.gov>
Cc: <knyder@portlandmaine.gov>, <sthibodeau@portlandmaine.gov>, <nmm@portlandmaine.gov>, <pali@portlandmaine.gov>, <azarro@portlandmaine.gov>, <afournier@portlandmaine.gov>, <cityclerk@portlandmaine.gov>

Good day HHS/PS city council committee members,

We've been following with significant interest your work on shelter licensing and small shelter zoning. From our perspective as 11 year Parris Street residents, shelter licensing and zoning is seriously needed and long overdue.

Your draft recommendations affirm our thoughts that the Bayside neighborhood has unfairly become the default Portland neighborhood for shelters and social services. Recommendations for a reasonable 2,500 foot spacing between facilities, and a buffer of no more than 250 beds within a 1 mile radius, are fair to neighborhoods as well as to recipients of shelter services. The recommendation that all shelters have adequate space for people to stay off the street during the day is essential for neighborhood safety.

While you continue your work we request the city council immediately enact a **moratorium** on allowing additional shelters in Bayside. Recent news that the city of Scarborough opened a new shelter managed by our Preble Street Inc. neighbors clearly demonstrates that new shelters can be established outside of Bayside. A moratorium in Bayside will help direct providers to consider other neighborhoods as locations for any needed shelter expansion or relocation. Given the statistics from our Oxford Street shelter, that upwards of 2/3 of that shelter's residents come from outside Portland, it is encouraging to hear that another municipality shares in providing shelter services.

Thank you again for your work and service to our city.

Best regards,

K. Scott and Mary Beth Morrison
[9 Parris St.](#)

Fwd: In support of Moratorium on emergency shelters in Bayside

1 message

Jon Jennings <jpj@portlandmaine.gov>

Mon, Apr 12, 2021 at 12:59 PM

To: Kristen Dow <kjd@portlandmaine.gov>, Adam Harr <ash@portlandmaine.gov>

For backup.

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

From: **Heidi Souerwine** <heidi.souerwine@gmail.com>

Date: Mon, Apr 12, 2021 at 12:55 PM

Subject: In support of Moratorium on emergency shelters in Bayside

To: Kate Snyder <ksnyder@portlandmaine.gov>, Nick Mavodones <nmm@portlandmaine.gov>, Pious Ali <pali@portlandmaine.gov>, <afournier@portlandmaine.gov>, Belinda Ray <bsr@portlandmaine.gov>, <azarro@portlandmaine.gov>, Spencer Thibodeau <sthibodeau@portlandmaine.gov>, Tae Chong <tchong@portlandmaine.gov>, <mdion@portlandmaine.gov>

Cc: Jon Jennings <jpj@portlandmaine.gov>

Mayor Snyder, Councilors:

I know this is a busy week, so I'll be brief: writing in advance of tomorrow's meeting saying I'm in support of a moratorium on emergency shelters in Bayside.

After reading the memo online this weekend it's clear to me that the City should be able to easily and confidently advocate for this. Existing ordinances have already proven to be inadequate to prevent overburdening & public harm, which is why licensing is already in progress. Please allow long-overdue processes and boundaries to be enacted before any future site locations are considered in this already overtapped area.

Thank you for your consideration!

Heidi Souerwine

Mechanic St.

--

Jon P. Jennings

City Manager

City of Portland

389 Congress Street

Portland, ME 04101

(207) 874-8689 Office

(207) 874-8669 Fax

jpj@portlandmaine.gov

www.portlandmaine.gov

Fwd: Moratorium on emergency shelters in Bayside

1 message

Jon Jennings <jpj@portlandmaine.gov>

Mon, Apr 12, 2021 at 5:58 PM

To: Adam Harr <ash@portlandmaine.gov>, Christine Grimando <cdg@portlandmaine.gov>, Dena Libner <dlibner@portlandmaine.gov>, Kristen Dow <kjd@portlandmaine.gov>

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

From: **Carolyn Megan** <carolynmegan@gmail.com>

Date: Mon, Apr 12, 2021 at 5:37 PM

Subject: Moratorium on emergency shelters in Bayside

To: Kate Snyder <ksnyder@portlandmaine.gov>, Spencer Thibodeau <sthibodeau@portlandmaine.gov>, Ali Pious <pali@portlandmaine.gov>, Belinda Ray <bsr@portlandmaine.gov>, <afournier@portlandmaine.gov>, <azarro@portlandmaine.gov>, <mdion@portlandmaine.gov>, Nicholas Mavodones <NMM@portlandmaine.gov>, Tae Chong <tchong@portlandmaine.gov>

CC: Jon Jennings <jpj@portlandmaine.gov>

Dear Mayor Snyder and Councilors:

We are writing in support of a moratorium on shelters in Bayside and in support of implementation of the licensing process. As you know, Bayside carries the weight of shelters in the city and simply, neighbors have no way to advocate for themselves without licensing guidelines in place.

Additionally, it is the entire city's challenge and obligation for every neighborhood to support those dealing with housing, substance abuse and/or mental health challenges. A moratorium is fair and just governance to protect and to support all you constituents.

Thank you for your attention and good work,
Carolyn Megan
Michael Gelsanliter

Mechanic St
Bayside

--

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

Fwd: open comment item tonight + CDBG plans

1 message

Kristen Dow <kjd@portlandmaine.gov>
To: Adam Harr <ash@portlandmaine.gov>

Wed, Apr 14, 2021 at 11:31 AM

Kristen Dow
Director of Health & Human Services
City of Portland
389 Congress Street
Portland, ME 04101
207-874-8633

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

From: **Heidi Souerwine** <heidi.souerwine@gmail.com>
Date: Tue, Apr 13, 2021 at 6:17 PM
Subject: open comment item tonight + CDBG plans
To: Belinda Ray <bsr@portlandmaine.gov>, Tae Chong <tchong@portlandmaine.gov>, <mdion@portlandmaine.gov>
Cc: Kate Snyder <ksnyder@portlandmaine.gov>, <afournier@portlandmaine.gov>, <azarro@portlandmaine.gov>, Nick Mavodones <nmm@portlandmaine.gov>, Pious Ali <pali@portlandmaine.gov>, Spencer Thibodeau <sthibodeau@portlandmaine.gov>, Kristen Dow <kjd@portlandmaine.gov>

Dear Committee members, Councilors and Mayor Snyder:

Hoping you all are able to see this. I'm a bit shocked with the lack of advanced notice for public comment tonight on an issue that will have **so much impact**. I'm hoping to try to join tonight, AND I'm also **hoping** the City isn't trying to push this through without careful thought. Regardless, I wanted to send some thoughts in writing.

I'm pleased to see the city is finally preparing to discuss a shelter moratorium in Bayside. However I'm still left questioning whether it's understood that what west Bayside needs is **balance**.

I'm concerned about a number of ideas I've seen come out recently that collectively amount to the City doubling down on the environment that created the instability in Bayside this whole time. In considering the proposal to consolidate DHHS operations at 39 Forest, and in reviewing the various elements proposed in the City Manager's CDBG funds allocation, the City would be creating the same situation along Forest Avenue that it created years ago on Portland Street.

With Portland Housing Authority & Maine Needs on Forest, the Deering Oaks gatherings, the proposed "ultra low to no barrier housing services" at Spurwink on Park, a proposed consolidated DHHS at 39 Forest, reintroducing another day space as well - it seems the City is creating another social services corridor in a different area of Bayside. And, on a much busier thoroughfare in the city with existing significant safety issues. With none of the other consolidated services moving.

For those of you that don't live anywhere nearby, the situation in that immediate area has been extremely tenuous at best for the better part of the last two years. Longtime community members, residents, & neighbors on Forest on the block between Park & Cumberland are already leaving their homes, and abandoning their businesses because they can no longer handle the environment. I would urge you all to consider how these plans benefit the fabric of the neighborhood, and whether this would be reasonable anywhere else.

It often feels defeating trying to create a life here. We want to stay, but the panic, urgency, and stress when it feels like no balance is even desired for this neighborhood, is beyond challenging.

Being a public servant is such a hard job, and I do appreciate all of you. I am hopeful for some clarity, and want to encourage thoughtful urban planning.

Thank you,
Heidi Souerwine (& Jason Tropp)

Mechanic St.

Fwd: Portland Homeless Services (HSSPS 4/13/21)

2 messages

Kristen Dow <kjd@portlandmaine.gov>
To: Adam Harr <ash@portlandmaine.gov>

Mon, Apr 12, 2021 at 1:02 PM

For backup.

Kristen Dow
Director of Health & Human Services
[City of Portland](#)
[389 Congress Street](#)
[Portland, ME 04101](#)
207-874-8633

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

From: **Jim Hall** <mtjimhall@gmail.com>
Date: Sun, Apr 11, 2021 at 8:27 PM
Subject: Portland Homeless Services (HSSPS 4/13/21)
To: Tae Chong <tchong@portlandmaine.gov>, Belinda Ray <bsr@portlandmaine.gov>, Mark Dion <mdion@portlandmaine.gov>
Cc: Kate Snyder <ksnyder@portlandmaine.gov>, Nicholas Mavodones <nmm@portlandmaine.gov>, Pious Ail <pali@portlandmaine.gov>, April Fournier <afournier@portlandmaine.gov>, Spencer Thibodeau <sthibodeau@portlandmaine.gov>, Andrew Zarro <azarro@portlandmaine.gov>, Jon Jennings <jjp@portlandmaine.gov>, Kristen Dow <kjd@portlandmaine.gov>, City Clerk <cityclerk@portlandmaine.gov>

Dear Chair Chong, Councilors Ray and Dion,
(CC full council, city manager, DHHS director)

Re: Items on HSSPS Committee's 4/13/21 meeting relating to homeless services

— **DHHS co-location** —

I'm all for consolidation and facility improvements, from the perspective of administrative efficiency, service coordination, and potential program expansion (also the reason I've advocated for the homeless service center currently requesting proposals). The location on Forest between Congress & Cumberland makes a lot of sense – especially regarding the nascent on-peninsula prevention & diversion program.

My only concern is the potential for unfortunate behavior patterns that are well-documented to follow and cluster around such services. I was glad to learn that DHHS proposes to implement community security protocols in use at other locations. To be specific: **I am advocating for the types of street patrols by security professionals, and immediate response to abutter hotline calls, which have been successful at reducing negative impacts on the properties surrounding the OSS.**

— **Emergency Shelter Moratorium** —

"... a moratorium on certain emergency shelters is appropriate."

The month of February placed fully 33% of all Portland's calls for service within the quarter-mile of the Bayside Neighborhood (only a slight increase from our "normal" load). Passively allowing additional high-impact uses in this geographical location would overburden public facilities even more. In January of this year, the reviewing body for

conditional use standards enacted in 2017 found that current code is inadequate to prevent an operator with a miserable history of failing to manage community impacts from introducing new public harm in the affected area (...as Chief Clark testified: “There *will* be new impacts,” and as one board member stated: “This management plan is about as good as the paper it’s printed on”). Although Portland’s accretion of high-impact services over the decades has somehow progressed with no mechanism for municipal governance – I’m grateful that the committee is taking appropriate time to ensure success, therefore **I am advocating for a targeted moratorium to protect the Bayside Neighborhood while deliberations on licensing proceed.** This would be consistent with the Comp Plan requirement to act toward neighborhood equity in sharing both the benefits & costs of the city.

Portland (Bayside) already contributes so much more than its share in this domain, and I’m not convinced this particular municipality needs to encourage more and more “small” shelters to be sited within our boundaries in order to best serve either clients or the larger community. I would also point out that the Maine Statewide Homeless Council’s current strategy posits only 23 net new emergency beds *across the entire state* – instead following Portland’s lead in focusing on diversion, low-income housing development, rapid rehousing, retention, harm reduction, long-term-stayers, etc. In addition, at the federal level HUD Secretary Fudge has I stated that “Shelters are not the answer”. It’s worth noting that she calls out hotel use similar to temporary GA placement as a way to provide a more private and safe option than congregate settings.

I do hope that the modernization of Portland’s Regional Homeless Service Center will proceed with haste (and that LD-175 bond may eventually help defray funding), as we cannot close shelters before other programs effectively reduce need, and the region’s current facilities are woefully inadequate. I also support the model of a central intake triage collaborating with satellite specialists. But given the history and unfolding events, it could actually be appropriate to pause new shelter applications city-wide.

— Licensing Reporting Requirements —

A way to track neighborhood concerns and resolution is CRITICAL to the success of any new shelter application. If this is not required in the reporting section, it *must* be included via some other mechanism. Information about community meetings attended is less useful, at least in the case of one operator that has proven hostile to its host neighborhood. I feel that it’s important to track CTO reason and recidivism – though I agree with Councilor Dion that this portion of the report could be provided to the operator by the Police Department (thereby removing any hardship around new requirements).

Thank you for your continued important work,
Jim Hall
Cedar St

—
Maine Statewide Homeless Council Analysis
<http://www.mainehomelessplanning.org/wp-content/uploads/2021/03/CSH-Maine-Data-Analysis-for-SHC-2021-03-09.pdf>

HUD Secretary quote
<https://www.washingtonpost.com/us-policy/2021/04/08/homeless-hud-marcia-fudge/>

American Rescue Plan Act HOME Supplemental Allocations
("The first of two funding streams to address homelessness in the American Rescue Plan.")
<https://www.hud.gov/sites/dfiles/CPD/documents/HOME-ARP.pdf>

ME Non Entitlement	\$15,685,918
CNSRT-Auburn	\$ 1,700,829
CNSRT-Portland	\$ 3,594,143

LD 175 An Act To Authorize a General Fund Bond Issue To Create and Enhance Regional Homeless Shelters
<https://trackbill.com/bill/maine-legislative-document-175-an-act-to-authorize-a-general-fund-bond-issue-to-create-and-enhance-regional-homeless-shelters/1993678/>

Jon Jennings <jpj@portlandmaine.gov>

To: Kristen Dow <kjd@portlandmaine.gov>, Adam Harr <ash@portlandmaine.gov>

Mon, Apr 12, 2021 at 2:01 PM

Backup.

[Quoted text hidden]

--

Jon P. Jennings

City Manager

[City of Portland](#)

[389 Congress Street](#)

[Portland, ME 04101](#)

(207) 874-8689 Office

(207) 874-8669 Fax

jpj@portlandmaine.gov

www.portlandmaine.gov

Fwd: Shelter Licensing & Zoning

1 message

Belinda Ray <bsr@portlandmaine.gov>
To: Adam Harr <ash@portlandmaine.gov>

Mon, Mar 15, 2021 at 11:58 AM

Belinda S. Ray (*she / her / hers*)
City Council, District 1
389 Congress Street
Portland, ME 04101
BSR@portlandmaine.gov

Sign up for [my newsletter](#) or visit [my blog](#)!

Please Note: Under Maine law, emails sent or received by public officials or city employees may be classified as public records. There are very few exceptions. As a result, please be advised that what is written in an e-mail could be released to the public and/or the media if requested.

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

From: **Jim Hall** <mtjimhall@gmail.com>

Date: Sun, Mar 7, 2021 at 10:12 PM

Subject: Re: Shelter Licensing & Zoning

To: Tae Chong <tchong@portlandmaine.gov>, Belinda Ray <bsr@portlandmaine.gov>, Mark Dion <mdion@portlandmaine.gov>

Cc: Kate Snyder <ksnyder@portlandmaine.gov>, Nicholas Mavodones <nmm@portlandmaine.gov>, Pious Ail <pali@portlandmaine.gov>, April Fournier <afournier@portlandmaine.gov>, Spencer Thibodeau <sthibodeau@portlandmaine.gov>, Andrew Zarro <azarro@portlandmaine.gov>, Jon Jennings <jjp@portlandmaine.gov>, Kristen Dow <kjd@portlandmaine.gov>, Christine Grimando <cdg@portlandmaine.gov>, Jessica Hanscombe <jhanscombe@portlandmaine.gov>, Frank Clark <fclark@portlandmaine.gov>, Rich Bianculli <richb@portlandmaine.gov>, Jonathan Sahrbeck <sahrbeck@cumberlandcounty.org>, <cityclerk@portlandmaine.gov>

Dear HSSPS Chair Chong, Councilors Ray and Dion,

Re: Shelter Licensing & Zoning

Thanks for continuing to prioritize management of the emergency system Portland provides for the region. I'm glad to see baby steps toward county participation in their allocation of federal funds for a resettlement coordinator. And I'd like to applaud the ways staff are clearly taking to heart the public desire for better engagement and transparency, without creating inordinate delay.

Previously I've made blanket statements on the need for proactive community protections, but considering good actors like Milestone and Through These Doors, I now feel that licensing instead needs to include strong mechanisms to detect and control any specific cases where the operator needs to be compelled to respect their neighbors. It's clearly possible to manage a shelter without pissing off your community. The city shelter has also demonstrated that an honest partner can improve relations after letting impacts get out of hand. But not all actors in this space behave appropriately of their own accord.

I urge the HSSPS committee to recommend a narrow moratorium on new Bayside shelters in particular. The Bayside neighborhood needs more targeted protection than licensing can provide, and requires active healing medicine, not just passive "organic" growth. The so-called neighborhood vision of 20 years ago died on the vine, and this neighborhood is frankly still being abused. Was it right to cram the latest new, permanent emergency shelter into Bayside? Well, it technically met code, and apparently wider neighborhood context is out of scope for reviewing authorities. That leaves the city council as the only body that can produce any kind of holistic oversight.

As to more specific licensing solutions:

- Please consider a sunset provision for grandfathered operations. You've arrived at best practices with thorough research and collaboration, and it would be negligent to allow non-compliance in perpetuity just because a shelter already set up shop.
- The narrative that the proposed licensing language is too focused on neighbors is ridiculous. In the "Requirements" section (h)(vii)(6) is more explicit about internal emergency response than anything to do with community protections. The city shelter's own management model secures residential streets in an appropriate radius, and I'd like to see an explicit requirement to require this at other shelters when necessary. The phrase "around the facility" in (h)(vii)(5) appears similar to conditional use language denoting impact on "surrounding properties", which both planning and zoning have said limits their scope of consideration to abutting buildings, not overall neighborhood impacts. That wider context matters and must be considered at some stage.
- "Review Procedures" (c), (d) and (f) describe protocols only when the City Council reviews; shouldn't these include Permitting and Inspections as well?
- The current language regarding waivers for separate day space could effectively double the number of allowable shelters in a given buffer, and re-create the kind of neighborhood foot traffic that has proved so disastrous in Bayside.
- Removing metro proximity is an improvement that allows for creative strategies to help guests utilize transit in additional areas.
- Please define the domestic violence waiver better. Surely someone must review site plans, safe bed counts and such. The current language appears to give permission to site new shelters without allowing any determination of appropriate facilities. A clause calling for something like executive session seems more appropriate than an outright exemption.
- There are areas where code still needs rationalizing between shelter-specific conditional use standards and licensing. Some examples:
 - Sight-line requirements in conditional use would disallow a dorm/apartment style layout, but it's mentioned twice in licensing.
 - Buffers and densities should be described in shelter conditional use standards (e.g. see ch.14–6.5.6.K.1)
 - Conditional standards still include the loophole allowing zero day space within 1/4 mile of metro.
 - A specific amendment to January's conditional use approval required an advisory panel, and the approved plan included a 24-hour abutter hotline – while licensing requires a named community liaison – all good ideas, but not consistently applied.
 - Some conditional use requirements need clearer definition – for instance what constitutes adequate central office, sight-lines, onsite services & amenities, and day space. Preble Street's 5 Portland Street shelter was allowed to invent definitions that fit their plans, not the other way around, so it seems the current code doesn't produce the intended governance outcome. (... etc...)

I'll close by saying I'm proud of the way this city takes on more than our share when we see a regional problem that needs fixing. I'm grateful for specific attempts to correct previous failures of governance. And I can see that the HHSPS committee is committed to getting this right, and doing so in as timely a manner as possible.

Thanks,
Jim Hall
Cedar St

On Feb 8, 2021, at 9:45 PM, Jim Hall <mtjimhall@gmail.com> wrote:

To HSSPS Chair Chong, Councilors Ray and Dion,

Re: Shelter Licensing

Thank you for continuing to prioritize emergency shelter management. I'm glad to see some urgency now to complete the city's toolkit for overseeing this type of important but high-impact use.

After looking at the proposed ordinance, I have some concerns, comments, questions. I've attached a "redline" version I put together comparing last month's draft since one was not provided.

- **RENEWAL:** Under "Expiration Date"—Is "July 1" an example date, or intended as the actual ordinance (i.e. indicating that all shelters must renew by July 1st each year)? The first draft spelled out "Twelve Months" expiration. Please ensure that code does explicitly require yearly renewal.
- **PUBLIC HEARING:** Please consider requiring public hearing on renewal, not just initial application.
- **TIMING:** There are currently two dates affecting grandfathered locations – in "Licensing Requirements" (b) and "Performance Standards" (f) & (g). My reading is that a shelter use with all permits in hand as of Jan 31 but not technically "*in operation*" as of the effective date would simply need to obtain its initial license at a future date before they could begin operating. Please just make sure there's no loophole created.
- **GRANDFATHERING:** Some but not all of the language regarding shelter-specific conditional use standards is duplicated in this licensing ordinance ("management plan" etc) – but some existing shelters will have other requirements waived (e.g. to provide central office, sight lines, onsite services & amenities). I ask you to ensure that all relevant *operational* requirements *are* applied, even to grandfathered locations.
- **SUNSET:** Please consider a "sunset" for grandfathering, giving prior operations something like 5-10 years to meet ALL conditional use and licensing standards, else relocate to make all code requirements possible. There should not be an option for an inadequate facility to continue operating in perpetuity.
- **ZONING:** It would be appropriate at this time to openly acknowledge that the city is allowing (and operating) illegally zoned shelters, and lay out exactly how / when those need to come up to code.

- **AMENDMENTS:** Last month's planning approval for 5 Portland Street added several amendments creating additional conditions to the permit. and it's worth considering which of these should actually be permanent conditions. Some portion of code should definitely require a maximum allowable capacity both in terms of persons served and space used to be *set in writing*. Most of the monitoring metrics suggested by DHHS have been included in this licensing proposal, which makes conditional use language outdated.
- **ADVISORY PANEL:** This licensing proposal includes a requirement to meet monthly with neighbors – but an advisory panel with a broader array of stakeholders is a more beneficial forum. We have evidence that mere attendance at neighborhood meetings is not adequate to resolving concerns.
- **PUBLIC REPORTS:** There should be a requirement that monitoring reports be made publicly available on the operator's website.
- **CODE LANGUAGE:** I am of the opinion that the approved management plan for 5 Portland did not adequately meet code requirements in several ways - no centralized office; staff workstations will not provide sight lines to all sleeping areas; the only services actually offered "on site" will be case management and housing assistance; there is not a kitchen or pantry "for guests" (only separate production operations that will deliver meals); etc etc... Please consider whether that language needs to be clarified to better instruct the reviewing body as to intention of the law, or to spell out minimum allowable thresholds.
- **DAY SPACE:** Requirements for indoor day space should be tightened up. The current conditional use language has been copied to this licensing proposal, allowing shelters within 1/4 mile of a METRO line to ignore the need for day shelter space. Shelters with no day space force clients out into the neighborhood, and are not considered a best practice. Please consider striking the "*within 1/4 mile OR*" clause entirely – i.e. simply require all new emergency shelters to be located within 1/2 mile of metro AND provide day space AND draw up transit strategies. This is better for clients and for neighborhoods.
- **COMMUNITY PROTECTIONS:** The community must be ACTIVELY protected. Waiting for renewal to count complaints against an unspecified threshold next year is not enough. The proposed licensing language does at least mention things like "security plan", and reducing crime "around" the facility. Please explicitly require *preemptive prevention* of the right kind of neighborhood impacts, not just vague review of an undefined security plan. The proposed licensing language clearly lists many explicit requirements for *internal* safety – it needs to also include equally explicit *community* safety requirements. Please require active mitigation of known community impacts. This is especially important given the overall plan to expand small shelter zoning, which may site future emergency shelters in close proximity to residential homes.
- **THRESHOLDS:** The language around department review removed any mention of appropriate number of calls for service, public safety hazard, or life safety – despite requests from councilors to provide more definition in these areas. In my opinion this can and should operate similarly to the existing "disorderly house" ordinance. Please determine what a reasonable threshold is, enforce penalties, require oversight when necessary, and ultimately revoke the license if a shelter is unable to operate safely at the given location and capacity.

- **SUB-POPULATION:** I'm glad to see applicants will be required to describe the intended population. This language should be stronger to align with city policy and plans. Please require that intake *only* be allowed via the city's central system. I would also suggest any proposed shelter prove it will fill a gap in the existing system. Emergency shelter should not be a "competitive" business; all parties must submit to the fact that this municipality is overseeing a complex system, and has the right and responsibility to manage it appropriately.
- **STANDARDS:** This licensing proposal includes items such as requirements for crime prevention by environmental design; community relations liaison; emergency contact; emergency response protocols, etc. – which need to be included in the conditional use standards.
- **INSPECTIONS:** Last month's minutes show councilors requested that inspections should happen more than twice a year, and that there should be a method of overseeing city operations, but the new language doesn't describe this. Please consider filling this in.
- **ENFORCEMENT:** Generally, this city needs to correct course from a history of failure to actively enforce existing laws surrounding homeless services. Chapter 15.8 is largely reactive unless there is immediate danger of irrevocable harm (I would submit that in many ways irrevocable harm has already been created in the Bayside Neighborhood). The more explicit licensing can be about ways that applicants must *reduce and prevent* known adverse effects, the better.

I'm very hopeful that the full council will soon pass really strong and durable licensing that protects everyone involved – clients, staff, and the host community. I'm also hopeful that the current council & city staff may find ways to encourage other municipalities, regional bodies, the state, and even federal actors, to participate more actively. Many thanks to you and everyone in this city who goes above and beyond to provide regional services, and to ensure they are managed well.

Sincerely,
Jim Hall
Cedar St Portland

<Shelter Licensing - ANNOTATED.pdf>

Fwd: Shelter licensing general comments

2 messages

Belinda Ray <bsr@portlandmaine.gov>
To: Adam Harr <ash@portlandmaine.gov>
Cc: Tae Chong <tchong@portlandmaine.gov>

Tue, Mar 9, 2021 at 5:23 PM

And since I forwarded the ones Mark sent along, I should ask that these be added, too. Again, if not tonight, to the packet for this meeting and then again next month when we are more likely to vote. A couple more coming your way, Adam.

Thanks!

Best,

Belinda
Belinda S. Ray (*she / her / hers*)
City Council, District 1
[389 Congress Street](#)
[Portland, ME 04101](#)
BSR@portlandmaine.gov

Sign up for [my newsletter](#) or visit [my blog](#)!

Please Note: Under Maine law, emails sent or received by public officials or city employees may be classified as public records. There are very few exceptions. As a result, please be advised that what is written in an e-mail could be released to the public and/or the media if requested.

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

From: **Sarah Michniewicz** <sarahmichniewicz@icloud.com>
Date: Tue, Mar 9, 2021 at 3:58 PM
Subject: Shelter licensing general comments
To: Tae Chong <tchong@portlandmaine.gov>, <mdion@portlandmaine.gov>, Belinda Ray <bsr@portlandmaine.gov>
Cc: <cityclerk@portlandmaine.gov>, Spencer Thibodeau <sthibodeau@portlandmaine.gov>, Ali Pious <pali@portlandmaine.gov>, Nicholas Mavodones <nmm@portlandmaine.gov>, Kate Snyder <ksnyder@portlandmaine.gov>, <afournier@portlandmaine.gov>, <azarro@portlandmaine.gov>, Jon Jennings <jjp@portlandmaine.gov>, Kristen Dow <kjd@portlandmaine.gov>, Frank Clark <fclark@portlandmaine.gov>

Hello Chair Chong, Councilor Dion, and Councilor Ray,

Thank you once again for pursuing shelter licensing. I hope you will consider moving this on to the full council with a strong recommendation for passage, after incorporating community feedback on buffers and spacing as recommended by staff. I have a couple of thoughts and questions:

- Allowing separate day space is tantamount to replicating the untenable situation in Bayside; it would contradict the purpose of moving to a best practice model of having all resources in one site and potentially double the amount of shelter space in any given area. This reversion to a campus-style shelter would potentially increase staffing costs for providers and create unnecessary resistance in prospective neighborhoods, thus fulfilling shelter provider prophecies.

Perhaps a better approach would be to allow waivers only for existing shelters. The Oxford Street Shelter has been voluntarily providing day space since 2017 without it being required.

- Regarding waivers for domestic violence shelters, please ask staff for clarification on best practices regarding proximity of DV shelters to general population shelters and how location may effect the goals of operators and the need for confidentiality.

- At the February HHS meeting advocates recommended ditching controls such as retroactive licensing, buffers and spacing, deeming them arbitrary. It was stated that the recommendations are too focused on neighborhoods, an argument echoed by the letter you recently received from the Emergency Shelter Assessment Committee, who went further, asking you to abandon the licensing effort entirely.

If necessary, please clarify at this meeting that the purpose of municipal licensing is to benefit consumers, to be sure, but also ensure the safety of the public, mitigate impacts on abutters, and serve the interests of the City. It's frankly ridiculous to suggest otherwise, or to imply that to do so would unfairly or illegally single out emergency shelters or people experiencing homelessness.

The City has had a wonderful history of caring for people seeking shelter, and a terrible track record for supporting constituents residing near those shelters. That has improved a lot in recent years because of proactive measures taken by the City to provide day space, bathrooms and storage at the OSS. But the biggest limitation to siting shelters in neighborhoods other than Bayside remains a lack of reliable standards that benefit the entire community. Licensing is the next logical step.

Shelter operators fear difficulty siting shelters, based on the pushback from neighborhoods, whose own fears are based on the well-documented crime, disorder, and severe quality of life impacts that have come from having too many services in one area and next to no controls or recourse for mitigation. It's a feedback loop that can only be disrupted by doing something better, something that supports the entire community. Creating a licensing scheme will interrupt that cycle by giving neighborhoods confidence that shelters can be good neighbors, that excessive impacts will be addressed, and will ultimately make it easier to site shelters.

The idea that the City can, should, or will be able to effectively deal with potential impacts from emergency shelters by putting out fires is simply not an acceptable substitute for licensing. It hasn't been for the past 20 years.

No one I know expects utopia, just a fair and reasonable levels of impact. Not fair and reasonable as defined by operators, or by onlookers who insulate themselves in nearby towns that actively prohibit shelters, but fair and reasonable to an average person on an average street in an average Portland neighborhood, deserving to live their life with an average amount of urban disruption. In other words, we expect everyone to act like neighbors.

As I wrote in [this](#) letter to the editor, we must all respect each other. If shelter providers are not willing to voluntarily and proactively consider the needs of the entire community, the City must do it. You have the opportunity to turn things around, to create a framework within which shelters become welcome neighbors. Please take it.

Sincerely,

Sarah Michniewicz
Cedar Street, Portland

PS - Regarding small shelter zoning, it's worth noting that at the Maine Homelessness Planning meeting this morning, the data and recommendations that were shared lean away from increasing permanent shelter bed capacity. In fact, the State sees a current need for only 23 additional shelter beds statewide, based on current data and future predictions, even accounting for evictions and the current economic trajectory. The pandemic-related reduction in shelter beds is seen as an opportunity to not refill them, and move people into permanent housing instead.

- The data and shelter system redesign planning envisions the closing of emergency shelters as the focus on permanent, transitional, supportive, subsidized and affordable housing increases supplies, and prioritizes enhancing diversion programs to keep people out of homelessness in the first place. A specific diversion program has been developed and service hubs are being offered training to implement it.
- Data also shows that compared to other exits to permanent housing from homelessness, exit from emergency shelter has the poorest outcome, 18% compared to roughly 75% for exits via rapid rehousing, transitional housing, and supportive housing.

The slideshow from the meeting is [here](#).

Belinda Ray <bsr@portlandmaine.gov>
To: Adam Harr <ash@portlandmaine.gov>

Mon, Mar 15, 2021 at 11:58 AM

Here you go, Adam. I'll send the others, too. Sorry it didn't work the other way!!
[Quoted text hidden]

Fwd: Shelter licensing

1 message

Belinda Ray <bsr@portlandmaine.gov>
To: Adam Harr <ash@portlandmaine.gov>

Mon, Mar 15, 2021 at 11:59 AM

Belinda S. Ray (*she / her / hers*)
City Council, District 1
[389 Congress Street](#)
[Portland, ME 04101](#)
BSR@portlandmaine.gov

Sign up for [my newsletter](#) or visit [my blog](#)!

Please Note: Under Maine law, emails sent or received by public officials or city employees may be classified as public records. There are very few exceptions. As a result, please be advised that what is written in an e-mail could be released to the public and/or the media if requested.

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

From: **Carolyn Megan** <carolynmegan@gmail.com>

Date: Tue, Mar 9, 2021 at 11:21 AM

Subject: Shelter licensing

To: Tae Chong <tchong@portlandmaine.gov>, <mdion@portlandmaine.gov>, Belinda Ray <bsr@portlandmaine.gov>, Spencer Thibodeau <sthibodeau@portlandmaine.gov>, Ali Pious <pali@portlandmaine.gov>, Nicholas Mavodones <nmm@portlandmaine.gov>, <afournier@portlandmaine.gov>, <azarro@portlandmaine.gov>, Jon Jennings <jpj@portlandmaine.gov>, Frank Clark <fclark@portlandmaine.gov>, Kristen Dow <kjd@portlandmaine.gov>, Kate Snyder <ksnyder@portlandmaine.gov>

Dear Councilors Chong, Dion and Ray:

Thank you for the time and care you have brought to the discussion of licensing shelters in Portland. This work and conversation is long overdue and is crucial for the well-being of both shelters and the neighborhoods in which they are situated. As there is no recourse for residents to be heard in expressing concerns about shelters' impact on neighborhoods, your work is timely and much needed. Additionally, the work underscores the larger visioning for how the city as whole - each neighborhood - can address issues of homelessness.

As an extension of this work, I ask that you urge the City Council to place a moratorium on any new shelters in Bayside until the city can best address Portland's shelter system as a whole.

No doubt there are difficult conversations ahead but this work is a good first start.

Thank you,
Carolyn Megan

Fwd: Shelter Licensing

1 message

Belinda Ray <bsr@portlandmaine.gov>
To: Adam Harr <ash@portlandmaine.gov>

Mon, Mar 15, 2021 at 12:04 PM

Belinda S. Ray (*she / her / hers*)
City Council, District 1
[389 Congress Street](#)
Portland, ME 04101
BSR@portlandmaine.gov

Sign up for [my newsletter](#) or visit [my blog](#)!

Please Note: Under Maine law, emails sent or received by public officials or city employees may be classified as public records. There are very few exceptions. As a result, please be advised that what is written in an e-mail could be released to the public and/or the media if requested.

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

From: **Michael Gelsanliter** <mrgelsanliter@gmail.com>

Date: Tue, Mar 9, 2021 at 8:36 AM

Subject: Shelter Licensing

To: <mdion@portlandmaine.gov>, Belinda Ray <bsr@portlandmaine.gov>, Spencer Thibodeau <sthibodeau@portlandmaine.gov>, Ali Pious <pali@portlandmaine.gov>, Nicholas Mavodones <nmm@portlandmaine.gov>, <afournier@portlandmaine.gov>, <azarro@portlandmaine.gov>, Jon Jennings <jjp@portlandmaine.gov>, Frank Clark <fclark@portlandmaine.gov>, Kristen Dow <kjd@portlandmaine.gov>, <ksnyder@portlandmaine.gov>, <tchong@portlandmaine.gov>

Dear Councilors and Mayor Synder,

Please justly consider a moratorium on additional new shelters in Bayside until adequate time can be given to study how shelters can best serve the greater Portland community.

The effort, time and energy should not be spent on another new Bayside Shelter when we just had one approved. In good conscience shouldn't the location of additional new shelters be more equitable around the city.

Thank you for your consideration and all your hard work,

Sincerely,

Michael Gelsanliter
32 Mechanic Street

Fwd: Shelter spacing recommendations

1 message

Kristen Dow <kjd@portlandmaine.gov>
To: Adam Harr <ash@portlandmaine.gov>

Sun, May 9, 2021 at 3:56 PM

For backup

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

From: **Sarah Michniewicz** <sarahmichniewicz@me.com>

Date: Sun, May 9, 2021 at 2:55 PM

Subject: Shelter spacing recommendations

To: Tae Chong <tchong@portlandmaine.gov>, <mdion@portlandmaine.gov>, Belinda Ray <bsr@portlandmaine.gov>

CC: Kristen Dow <kjd@portlandmaine.gov>, Christine Grimando <cdg@portlandmaine.gov>, Jon Jennings

<jpj@portlandmaine.gov>, Frank Clark <fclark@portlandmaine.gov>

Hello Chair Chong, Councilor Dion and Councilor Ray,

I'm writing in regards to the updated emergency shelter licensing recommendations and buffer/spacing suggestions. The recommendation for no more than 250 beds in a 1 mile radius makes good sense and I'm pleased that's been supported even though Bayside will still be far over that limit for the foreseeable future.

However I don't understand how staff came to recommend a mere 500' between any two shelters. This is actually a little /ess than the current spacing between the Oxford Street Shelter/Family shelter area and Preble Street's teen shelter/5 Portland Street shelter area (formerly consistency utilized as 75 bed overflow site). All evidence points to that being far too dense for one area, as the memo for the shelter moratorium illustrates in detail. Please ask staff to explain this recommendation.

The rationale given in the memo is that 500' is sort of a default setting - it's the maximum buffer used in the City for a potentially high-impact use. But requiring *any* spacing or buffer for a given use means implicitly that there's something unique about that use that's known to cause, or suspected to cause, excessive impact. So for the 500' spacing recommendation to have any meaning staff must be able to articulate a relationship between impacts of an emergency shelter and, in the example staff gives, a marijuana business.

Additionally, this spacing recommendation has to be considered in the context of LD 1478, the proposed legislation that would legalize the behaviors that are at the heart of the disorder and police calls for service in Bayside. Though the requirement that shelters have adequate day space will certainly be helpful in regards to loitering and other concerns, it's a fact that people will continue to use the public space to engage in behaviors prohibited at shelters. 500' spacing will do next to nothing to prevent any one area from carrying an undue burden, even less so should this bill pass.

Based on what's known about the impacts of current shelter spacing and shelter demographic overlap (families, teens and adults all sheltered in one area), the spacing required in this licensing should be at least 1000', preferably 1200'-1500' in order to reflect current understanding of impacts and support the City's overall goals as an equitable provider of emergency shelter.

As to the rest of the licensing recommendations I'm pleased to see they have continued to be strong and clear. There is one worrying clause though:

Performance Standards, section e) *The facility must provide indoor space to permit shelter guests day shelter. If it would cause the shelter an undue burden to provide the indoor, the shelter may apply for a waiver of this requirement if they are able to provide alternative indoor day shelter space within ¼ mile of the shelter.*

- Please *only* make this waiver available to existing shelters. Allowing new, planned shelters this option of a "campus" approach conflicts with conditional use standards and best practices for emergency shelters, and

undermines the intent of this licensing. On multiple occasions councilors and staff have underscored the folly of pushing people out in the morning and lining them up again at night to get back in, citing it as one of the main factors contributing to the disorder and friction in Bayside. A standard that prevents that scenario shouldn't be considered an undue burden.

- Also, consider amending this section to clarify that any such alternative indoor day shelter space allowed by this waiver is subject to the licensing standards governing operations of the main overnight shelter.

Please also consider making the Pre-existing Shelters section clearer. The goal, as I understand it, is to allow shelters operating or permitted to operate as of Jan 31 2021 to maintain their standing; and to prohibit additional shelters, or relocations, or expansion of existing shelters in excess of the licensing's buffer and spacing requirements. However as written the language in this section is difficult to parse.

Thank you, I appreciate your careful attention to this important matter.

Sarah Michniewicz
Cedar Street

--

Kristen Dow
Director of Health & Human Services
[City of Portland](#)
[389 Congress Street](#)
[Portland, ME 04101](#)
207-874-8633

Fwd: tonight's discussion - emergency shelter licensing

1 message

Belinda Ray <bsr@portlandmaine.gov>
To: Adam Harr <ash@portlandmaine.gov>

Mon, Mar 15, 2021 at 11:59 AM

Belinda S. Ray (*she / her / hers*)
City Council, District 1
389 Congress Street
Portland, ME 04101
BSR@portlandmaine.gov

Sign up for [my newsletter](#) or visit [my blog](#)!

Please Note: Under Maine law, emails sent or received by public officials or city employees may be classified as public records. There are very few exceptions. As a result, please be advised that what is written in an e-mail could be released to the public and/or the media if requested.

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

From: **Heidi Souerwine** <heidi.souerwine@gmail.com>

Date: Tue, Mar 9, 2021 at 3:54 PM

Subject: tonight's discussion - emergency shelter licensing

To: Tae Chong <tchong@portlandmaine.gov>, <mdion@portlandmaine.gov>, Belinda Ray <bsr@portlandmaine.gov>

Cc: Kate Snyder <ksnyder@portlandmaine.gov>, Spencer Thibodeau <sthibodeau@portlandmaine.gov>, Ali Pious <pali@portlandmaine.gov>, Nicholas Mavodones <nmm@portlandmaine.gov>, <afournier@portlandmaine.gov>, <azarro@portlandmaine.gov>, Jon Jennings <jpj@portlandmaine.gov>, Frank Clark <fclark@portlandmaine.gov>, Kristen Dow <kjd@portlandmaine.gov>

Dear HHS Committee members and Councilors,

Thank you for the continued discussion, consideration of, and movement forward on our city's shelter regulations. I've been encouraged by thoughtful questions during the committee's dialogue on this topic over the past several months. It's complicated, and I know these topics are especially challenging in our current climate, so I thank you for your continued engagement, and desire for alignment.

I write in support of the more thoughtful shelter licensing and zoning policies under discussion. I think these policies help move away from the dense concentration of social services that has neither benefited individuals experiencing homelessness, nor the neighbors who wish to be in community with them.

I encourage you to take action on shelter licensing at the meeting tomorrow, and send it to the full Council. In the documents posted online I see many things I support that will be crucial to building public understanding and support for shelters around our city, and, are normal parts of licensing and zoning regulations:

1. a buffer of no more than 250 beds within a 1 mile radius.
2. spacing of 2500 feet between facilities.
3. requirement that all shelters must have adequate space for people ONSITE to be able to stay off the street during the day.
 1. I see waivers have been suggested, and I would STRONGLY recommend finding a way to limit those. Otherwise, we're setting up a scenario of ping-ponging vulnerable people between spaces, again, which goes against best practices to serve these individuals and help them overcome permanent homelessness.

However, there's one thing I don't see yet that is CRITICAL: strict rules preventing institutions from undermining this process and skirting the policies in progress:

a moratorium on any new shelters in Bayside.

Why is this so important? As you all know, one shelter has already been added to Bayside, bringing our tiny half of this neighborhood up to 451 beds within the suggested 1 mile radius. That's almost as many beds OVER (201) the suggested maximum of 250.

The City was able to do something similar for development in Munjoy Hill. Doing so right can only help you, our Council, serve our City better in making sound, thoughtful policy decisions by looking at a complete picture, absent of counterproductive pieces running in parallel.

If the City staff are recommending that before further action is taken, [outreach](#) should be conducted with neighborhood associations and shelter providers to get feedback and information (GREAT idea, wish our neighborhood had this), AND they are also recommending [community surveys](#) be conducted to hear what people think about small shelter zoning, allowing other things to proceed in tandem will undermine these efforts. and the transparency I know you all strive for.

Thank you for your diligent work, and I look forward to the discussion this evening.

Heidi Souerwine
Mechanic St.

Fwd: Updated Letter on Shelter Licensing from ESAC

3 messages

Kristen Dow <kjd@portlandmaine.gov>
To: Adam Harr <ash@portlandmaine.gov>

Fri, Jun 4, 2021 at 10:26 AM

For backup.

Thank you,
Kristen

Kristen Dow
Director of Health & Human Services
[City of Portland](#)
[389 Congress Street](#)
[Portland, ME 04101](#)
207-874-8633

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

From: **Jon Jennings** <jpj@portlandmaine.gov>
Date: Fri, Jun 4, 2021 at 10:22 AM
Subject: Fwd: Updated Letter on Shelter Licensing from ESAC
To: Kristen Dow <kjd@portlandmaine.gov>

Please add to the backup for the committee meeting.

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

From: **Pious Ali** <pali@portlandmaine.gov>
Date: Fri, Jun 4, 2021 at 10:20 AM
Subject: Re: Updated Letter on Shelter Licensing from ESAC
To: Homeless Voices for Justice <hvj@preblestreet.org>
CC: Kate Snyder <ksnyder@portlandmaine.gov>, Jon Jennings <jpj@portlandmaine.gov>, Dena Libner <dlibner@portlandmaine.gov>, Katherine Jones <klj@portlandmaine.gov>

Mayor

Can we add this to the backup materials as well Thanks. I have copied the city clerk and the manager just as FYI.
Thanks

Respectfully

Pious Ali

City Councilor At-Large

City Hall

[389 Congress Street](#)

[Portland, ME 04101](#)

PALI@PortlandMaine.gov

[2078074283](tel:2078074283)

On Thu, Jun 3, 2021 at 3:21 PM Homeless Voices for Justice <hvj@preblestreet.org> wrote:

To: Portland City Council Health and Human Services and Public Safety Committee, and City Council

From: Portland's Emergency Shelter Assessment Committee

The Emergency Shelter Assessment Committee (ESAC) was formed in 1987 to monitor and respond to the emergency shelter needs of individuals who are homeless in the City of Portland. One of the ways ESAC works to accomplish this objective is by collecting, aggregating, and disseminating crucial data that illustrates the scope and magnitude of need.

ESAC recognizes that the integrity of our work relies on the accuracy of the data we share. In our March 9th letter to the City Council we wrote, "just last week four people experiencing homelessness died due to shelter occupancy limitations caused by the COVID-19 outbreak." After submission ESAC learned this information was not accurately portrayed. We take full responsibility and want to correct the record. While all of the people referenced in our letter had long histories of homelessness contributing to their deaths, their deaths were not caused by shelter occupancy limitations. We apologize for any confusion this may have caused.

Additionally, we stated that "ESAC has voted unanimously to oppose the proposed shelter licensing regulations." We wish to amend this statement to include ESAC voted unanimously to oppose the proposed shelter licensing regulations with two members abstaining.

Emergency shelter providers have worked tirelessly to help some of our most vulnerable community members during this pandemic and we in no way want to detract from their efforts. The number of individuals experiencing homelessness in Portland has grown exponentially over the last year, recently setting a new record of 321 individuals accessing emergency shelter. 64 people who were homeless died in Portland in 2020, up from 43 the year before. We appreciate the City Council's vote to continue working with community members and providers on this issue and look forward to partnering with the Council to end and prevent homelessness in Portland.

Signed,

ESAC Tri-Chairs: City of Portland, United Way, Homeless Voices for Justice

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

Anna Brewer <abrewer@preblestreet.org>

Mon, Jun 7, 2021 at 4:24 PM

To: "Aaron Geyer (aeg@portlandmaine.gov)" <aeg@portlandmaine.gov>, Adam Harr <ash@portlandmaine.gov>

From: Pious Ali <pali@portlandmaine.gov>
Sent: Friday, June 4, 2021 1:53 PM
To: Jon Jennings <jjp@portlandmaine.gov>
Cc: Dena Libner <dlibner@portlandmaine.gov>; Homeless Voices for Justice <hvj@preblestreet.org>; Kate Snyder <ksnyder@portlandmaine.gov>; Katherine Jones <klj@portlandmaine.gov>
Subject: Re: Updated Letter on Shelter Licensing from ESAC

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe. No member of the Preble Street team will ask you for personal information, credit card information, or banking information using an external email address. Questions or concerns should be brought to the attention of the IT Department before responding.

Thank you

Respectfully

Pious Ali

City Councilor At-Large

City Hall

389 Congress Street

Portland, ME 04101

PALI@PortlandMaine.gov

2078074283

<http://www.portlandmaine.gov>

[Sign up to receive updates on my work](#)

On Fri, Jun 4, 2021 at 10:23 AM Jon Jennings <jjp@portlandmaine.gov> wrote:

I forwarded this to HHS staff to include in the backup for the committee.

On Fri, Jun 4, 2021 at 10:20 AM Pious Ali <pali@portlandmaine.gov> wrote:

Mayor

Can we add this to the backup materials as well Thanks. I have copied the city clerk and the manager just as FYI. Thanks

Respectfully

Pious Ali

City Councilor At-Large

City Hall

389 Congress Street

Portland, ME 04101

PALI@PortlandMaine.gov

2078074283

<http://www.portlandmaine.gov>

[Sign up to receive updates on my work](#)

On Thu, Jun 3, 2021 at 3:21 PM Homeless Voices for Justice <hvj@preblestreet.org> wrote:

To: Portland City Council Health and Human Services and Public Safety Committee, and City Council

From: Portland's Emergency Shelter Assessment Committee

The Emergency Shelter Assessment Committee (ESAC) was formed in 1987 to monitor and respond to the emergency shelter needs of individuals who are homeless in the City of Portland. One of the ways ESAC works to accomplish this objective is by collecting, aggregating, and disseminating crucial data that illustrates the scope and magnitude of need.

ESAC recognizes that the integrity of our work relies on the accuracy of the data we share. In our March 9th letter to the City Council we wrote, "just last week four people experiencing homelessness died due to shelter occupancy limitations caused by the COVID-19 outbreak." After submission ESAC learned this information was not accurately portrayed. We take full responsibility and want to correct the record. While all of the people referenced in our letter had long histories of homelessness contributing to their deaths, their deaths were not caused by shelter occupancy limitations. We apologize for any confusion this may have caused.

Additionally, we stated that "ESAC has voted unanimously to oppose the proposed shelter licensing regulations." We wish to amend this statement to include ESAC voted unanimously to oppose the proposed shelter licensing regulations with two members abstaining.

Emergency shelter providers have worked tirelessly to help some of our most vulnerable community members during this pandemic and we in no way want to detract from their efforts. The number of individuals experiencing homelessness in Portland has grown exponentially over the last year, recently setting a new record of 321 individuals accessing emergency shelter. 64 people who were homeless died in Portland in 2020, up from 43 the year before. We appreciate the City Council's vote to continue working with community members and providers on this issue and look forward to partnering with the Council to end and prevent homelessness in Portland.

Signed,

ESAC Tri-Chairs: City of Portland, United Way, Homeless Voices for Justice

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

Notice: Under Maine law, documents - including e-mails - in the possession of public officials or city employees about government business may be classified as public records. There are very few exceptions. As a result, please be advised that what is written in an e-mail could be released to the public and/or the media if requested.

Kristen Dow <kjd@portlandmaine.gov>
To: Adam Harr <ash@portlandmaine.gov>
Cc: Aaron Geyer <aeg@portlandmaine.gov>

Mon, Jun 7, 2021 at 5:13 PM

Hi Adam,

This is a correction to an item that is currently in the HHS & PS Committee packet for tomorrow night's meeting and should also be added as backup materials.

Thank you,
Kristen

Kristen Dow
Director of Health & Human Services
City of Portland
389 Congress Street
Portland, ME 04101
207-874-8633

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

From: **Aaron Geyer** <aeg@portlandmaine.gov>
Date: Mon, Jun 7, 2021 at 4:53 PM
Subject: Fwd: FW: Updated Letter on Shelter Licensing from ESAC
To: Dow, Kristen <kjd@portlandmaine.gov>

Good Afternoon Kristen,
I wanted to send this along as an FYI from earlier today.

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

From: **Anna Brewer** <abrewer@preblestreet.org>
Date: Mon, Jun 7, 2021 at 4:47 PM
Subject: FW: Updated Letter on Shelter Licensing from ESAC
To: Aaron Geyer (aeg@portlandmaine.gov) <aeg@portlandmaine.gov>

From: Homeless Voices for Justice
Sent: Monday, June 7, 2021 2:05 PM
To: Homeless Voices for Justice <hvj@preblestreet.org>; tchong@portlandmaine.gov; Mark Dion <mdion@portlandmaine.gov>; Belinda Ray <bsr@portlandmaine.gov>
Cc: Azarro@portlandmaine.gov; afournier@portlandmaine.gov; Nicholas Mavodones <nmm@portlandmaine.gov>; Spencer Thibodeau <sthibodeau@portlandmaine.gov>; Kate Snyder <ksnyder@portlandmaine.gov>; Pious Ali

<pali@portlandmaine.gov>

Subject: RE: Updated Letter on Shelter Licensing from ESAC

Dear City Council Members,

We are emailing to make a correction to the updated ESAC letter on shelter licensing that we sent last Thursday, 6/3. The email was signed the “ESAC Tri-Chairs: City of Portland, United Way, Homeless Voices for Justice.” However, the City of Portland and United Way of Greater Portland abstained from the vote as referenced in the body of the letter. We are emailing to correct the record, noting that the City and UWGP abstained and should be removed as signers.

Thank you,

ESAC

From: Homeless Voices for Justice

Sent: Thursday, June 3, 2021 3:21 PM

To: tchong@portlandmaine.gov; Mark Dion <mdion@portlandmaine.gov>; Belinda Ray <bsr@portlandmaine.gov>

Cc: Azarro@portlandmaine.gov; afournier@portlandmaine.gov; Nicholas Mavodones <nmm@portlandmaine.gov>; Spencer Thibodeau <sthibodeau@portlandmaine.gov>; Kate Snyder <ksnyder@portlandmaine.gov>; 'Pious Ali' <pali@portlandmaine.gov>

Subject: Updated Letter on Shelter Licensing from ESAC

To: Portland City Council Health and Human Services and Public Safety Committee, and City Council

From: Portland's Emergency Shelter Assessment Committee

The Emergency Shelter Assessment Committee (ESAC) was formed in 1987 to monitor and respond to the emergency shelter needs of individuals who are homeless in the City of Portland. One of the ways ESAC works to accomplish this objective is by collecting, aggregating, and disseminating crucial data that illustrates the scope and magnitude of need.

ESAC recognizes that the integrity of our work relies on the accuracy of the data we share. In our March 9th letter to the City Council we wrote, “just last week four people experiencing homelessness died due to shelter occupancy limitations caused by the COVID-19 outbreak.” After submission ESAC learned this information was not accurately portrayed. We take full responsibility and want to correct the record. While all of the people referenced in our letter had long histories of homelessness contributing to their deaths, their deaths were not caused by shelter occupancy limitations. We apologize for any confusion this may have caused.

Additionally, we stated that “ESAC has voted unanimously to oppose the proposed shelter licensing regulations.” We wish to amend this statement to include ESAC voted unanimously to oppose the proposed shelter licensing regulations with two members abstaining.

Emergency shelter providers have worked tirelessly to help some of our most vulnerable community members during this pandemic and we in no way want to detract from their efforts. The number of individuals experiencing homelessness in Portland has grown exponentially over the last year, recently setting a new record of 321 individuals accessing emergency shelter. 64 people who were homeless died in Portland in 2020, up from 43 the year before. We appreciate the City Council's vote to continue working with community members and providers on this issue and look forward to partnering with the Council to end and prevent homelessness in Portland.

Signed,

ESAC Tri-Chairs: City of Portland, United Way, Homeless Voices for Justice

--

Aaron Geyer
Director of Social Services
[City of Portland](#)
[196 Lancaster Street](#)
Portland, ME 04101
(207) 482-5131

aeg@portlandmaine.gov

Confidentiality Notice: This email message, including any attachments, is for the sole use of the intended recipient (s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure, or distribution is prohibited. If you are not the intended recipient(s), please contact me by reply email and destroy/delete all copies of the original message. Thank you for your assistance.

Re: Dion Fwd: Shelter Licensing Ordinance Comments

3 messages

Belinda Ray <bsr@portlandmaine.gov>

Tue, Mar 9, 2021 at 5:21 PM

To: Mark Dion <mdion@portlandmaine.gov>, Adam Harr <ash@portlandmaine.gov>

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

I'm forwarding this to Adam to be added to our meeting packet. Adam - I know it's late for this evening, but could you add these to the evening's packet when you get a chance so that they are a part of the public record on this?

We can't discuss this online/via email as it would be a violation of the sunshine/sunlight rules with regard to public meetings.

Thanks for forwarding these along, Mark.

Best,

Belinda
Belinda S. Ray (*she / her / hers*)
City Council, District 1
[389 Congress Street](#)
[Portland, ME 04101](#)
BSR@portlandmaine.gov

Sign up for [my newsletter](#) or visit [my blog](#)!

Please Note: Under Maine law, emails sent or received by public officials or city employees may be classified as public records. There are very few exceptions. As a result, please be advised that what is written in an e-mail could be released to the public and/or the media if requested.

On Tue, Mar 9, 2021 at 4:09 PM Mark Dion <mdion@portlandmaine.gov> wrote:

Tae, Belinda,

I had a meeting with small shelter operators yesterday that included an attorney from Maine Equal Justice.

I listened to their feedback and can summarize as follows:

1. Grandfathering existing shelters: a concern that the language is not sufficiently clear
2. Rationale: no expression by the Committee as to what we want to accomplish with passage of the ordinance. They believe licensing should be about assuring the "quality" of program and services rather than a tool for policing public conduct.
3. No sense of the adverse fiscal consequences that will fall upon operators as a consequence of the ordinance going into effect.

There was a lot of sentiment and given that condition I asked that they send me a more concrete collective assessment of the ordinance.

I just received that and it is attached below.

Mark

Begin forwarded message:

From: Oliver Bradeen <obradeen@milestone-recovery.org>

Subject: Shelter Licensing Ordinance Comments

Date: March 9, 2021 at 3:19:20 PM EST

To: "mdion@portlandmaine.gov" <mdion@portlandmaine.gov>

Hi Counselor Dion,
I have attached comments regarding the Shelter Licensing Ordinance
Thank you for your time,

Memo:

Date: March 9, 2021

To: The City of Portland Health and Human Services & Public Safety Committee

From: Oliver Bradeen, Milestone Recovery on Behalf of Portland's Private Non-Profit Shelter Providers (Milestone Recovery, Preble Street and Through These Doors)

RE: City of Portland Shelter Licensing Ordinance Comments:

At the February 2021 Health and Human Services & Public Safety Committee meeting councilors suggested that they wanted to hear feedback from the providers of shelter in the city of Portland. As a preliminary response to that request we, Portland's three non-profit shelter providers, have compiled the following feedback on the shelter licensing ordinance.

We want to be clear, that this feedback is based on the February 2021 draft licensing ordinance and a brief review of the March draft posted on Friday March 5th. As the document is revised following this evening's meeting, we request that the HHS & PS committee provide a copy to shelters and other homeless service providers for review at least 2 weeks before a committee meeting where it will be discussed. This will ensure that providers who work closest with individuals experiencing homelessness have the opportunity to provide comprehensive feedback on the potential impacts of the proposed ordinance on services and clients.

Impact on Shelters:

The reporting requirements, mandated meetings and added security requirements will impact staffing. Without clear frameworks it is hard to understand the actual impact on personnel hours. At a minimum this would add duties to already overloaded staff at all levels of shelter operations.

To meet the requirements of the licensure, we may have to hire an additional staff to manage the additional data collection, meetings and engagement with the city. As I am sure you are aware, shelters are notoriously underfunded and most operate at a loss with current funding streams and have to supplement their budgets with donations. In addition, we are currently in the COVID-19 pandemic compounded by a substance use disorder epidemic. Both have already strained our shelter systems.

The cost of licensure probably seems low to the city council. Milestone is a 41 Bed Shelter, we would have an additional cost of \$500/year due to this ordinance. In order to pay for the new expense of licensure, we will have to cut corners somewhere. \$500 a year equals 5 new mats for our shelter. Once again, there is no funding stream for new mats for shelter providers and that does not include the cost of a pillow. We would much rather spend that money on improving services for our clients, than on a fee for licensure.

The ordinance, as it is currently written, takes very limited resources and forces us to prioritize the city's needs and the neighborhood concerns over the client's needs. We need to remember that people experiencing homelessness are disenfranchised, discriminated against, and have trauma histories. Experiencing homelessness itself is a trauma, one that individuals utilizing our shelters are experiencing every day. Collaborating with neighbors and the city are integral to the operation of shelters, but this is already happening out of necessity. The reality is that the problems that exist in our system of care for people experiencing homelessness are very complex, often have no solution and will not be able to be remedied without further changes to the larger system, not just the shelter providers. This means that often neighbors will get answers they do not like.

Community Impact:

This licensure ordinance seeks to control neighborhood behavior. The presence of shelters does not dictate behavior in the community. This is a much larger societal problem and to scapegoat it to the shelter systems is misguided and shortsighted. We are in the midst of a substance use epidemic and during the COVID-19 pandemic, people's mental health symptoms have been exacerbated with less access to support services. The increase in mental health and substance use needs are not specific to

the population of people experiencing homelessness but impact all demographics. Often SUD and at times MH disorders lead people to homelessness. These complex issues are not going to be solved by this licensure and much of the unwanted behaviors in community are a result of a broken behavioral health treatment system and not shelter services.

We have sat in collaborative meetings with the City, Fire Department, Police Department, shelter providers, advocates, social service providers and people experiencing homelessness for years in Portland. Other communities in Maine and around the nation look to Portland as an example of community collaboration. These meetings have been filled with bright people, interdisciplinary approaches, local and state officials. Even with pooling all these resources, often challenging situations do not get navigated. The outcome is most often that we have no solution. We can give you case example after case example of how our system will fail the people who need it most. The resource that is there for people when all else fails them are our shelter systems. You don't have to like it, but our system of care has relied on shelters and law enforcement to prop the failing system up for decades. By enacting this licensure and limiting the ability to operate shelters the impact will be increased police and fire calls for service in the city, increased utilization of the emergency departments, camping will increase, and the jail will be the biggest homeless shelter in our city. The "if you build it they will come" narrative is a false one. If you look at any system in which shelter systems close, the people experiencing homelessness do not leave the area. They engage in other methods of seeking shelter, such as camping, tent cities, sleeping in doorways downtown, building temporary shelter and staying in temporary lodging. Regulating the shelters to the point that they cannot operate will negatively impact the community in a larger way than operating the shelters. Licensing shelters is not the appropriate approach to the challenges of the community. If the city wants to figure out a way to tackle the challenges it is seeing, work with ESAC, a group that has existed since 1987 and collaboratively works to end homelessness in the City of Portland.

Final thoughts:

We have many criticisms of this approach to engaging with these problems. If the goal of this ordinance is to make it impossible to operate shelters in the City of Portland, and to block new ones, then this ordinance is extremely successful. If the goal of this ordinance is to reduce the impact of shelter operations on neighbors and communities it misses the mark. It doubles down on an approach that has not been successful; trying to get social services to control community behavior that no other part of the system of care can manage and increased security/policing of individuals experiencing homelessness. We know that the approach and best practice to navigating these challenges is continuing to engage with our clients and global systems of care to foster change.

Oliver Bradeen, LCPC
Executive Director
Milestone Recovery
65 India Street
Portland, ME 04101
www.milestone-recovery.org
(207) 775-4790 ext. 114

Mark Dion
City Council / District 5
[389 Congress Street](#)
[Portland, Me 04101](#)

Please Note: Under Maine law, emails sent or received by public officials or city employees may be classified as public records. There are very few exceptions. As a result, please be advised that what is written in an e-mail could be released to the public and/or the media if requested.

Adam Harr <ash@portlandmaine.gov>

Tue, Mar 9, 2021 at 5:29 PM

To: Belinda Ray <bsr@portlandmaine.gov>

Cc: Mark Dion <mdion@portlandmaine.gov>, Tae Chong <tchong@portlandmaine.gov>, Jon Jennings <jpj@portlandmaine.gov>, Kate Snyder <ksnyder@portlandmaine.gov>

It's up now!

Adam Harr (*he / him / his*)
Executive Assistant
Social Services Division
Health & Human Services Department
City of Portland
196 Lancaster Street
Portland, ME 04101
o: (207) 482-5144
f: (207) 775-7918
ash@portlandmaine.gov

[Quoted text hidden]

Mark Dion <mdion@portlandmaine.gov>

Tue, Mar 9, 2021 at 5:31 PM

To: Adam Harr <ash@portlandmaine.gov>

Adam I need a link for yje meeting
Councilor Dion

[Quoted text hidden]

Subject: ESAC votes unanimously on Shelter Licensing ordinance



hvj <hvj@preblestreet.org>
to tchong@portlandmaine.gov, Belinda Ray, Mark Dion

Tue, Mar 9, 2021

You are viewing an attached message. City of Portland Mail can't verify the authenticity of attached messages.

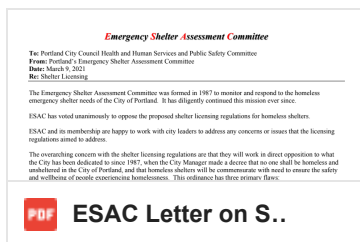
Good afternoon Chairperson Chong, Counselor Ray and Councilor Dion,

Please consider this urgent request from Portland's Emergency Shelter Assessment Committee (ESAC) recommending you vote against the proposed shelter licensing regulations. ESAC has gathered twice during the last week, discussing this issue for hours in depth. The vote was unanimous, with two abstaining votes.

As a collaboration of more than 15 organizations of homeless service providers, funders and people with lived experience that have expertise and many collective years of experience in addressing shelter needs in Portland, this position is telling. Please read the attached letter. Thank you for your consideration.

On behalf of ESAC,

Jim Devine, Homeless Voices for Justice



Emergency Shelter Assessment Committee

To: Portland City Council Health and Human Services and Public Safety Committee

From: Portland's Emergency Shelter Assessment Committee

Date: March 9, 2021

Re: Shelter Licensing

The Emergency Shelter Assessment Committee was formed in 1987 to monitor and respond to the homeless emergency shelter needs of the City of Portland. It has diligently continued this mission ever since.

ESAC has voted unanimously to oppose the proposed shelter licensing regulations for homeless shelters.

ESAC and its membership are happy to work with city leaders to address any concerns or issues that the licensing regulations aimed to address.

The overarching concern with the shelter licensing regulations are that they will work in direct opposition to what the City has been dedicated to since 1987, when the City Manager made a decree that no one shall be homeless and unsheltered in the City of Portland, and that homeless shelters will be commensurate with need to ensure the safety and wellbeing of people experiencing homelessness. This ordinance has three primary flaws:

1. It demonizes people who experience homelessness rather than supports their needs. It does this by representing them as criminals rather than people facing circumstances beyond their control, including inability to afford housing, mental illness, substance use disorder, being victims of domestic violence, or being temporarily or permanently unable to live with parents/family (unaccompanied youth).
2. It arbitrarily limits the amount of homeless resources based on geography rather than need. It does this by declaring limits on the number of people experiencing homelessness served within a square mile or other measures and it does this in a way that is discriminatory.
3. It offers grandfathering that diminishes the current homeless response, while handicapping future response, ignoring the patterns the City of Portland has seen with unmet homelessness demand, and putting homeless emergency shelter providers in an ultimately failing position to deliver emergency services as needed by the City.

All three of these will expose the City to a failed response to homelessness leading directly to homeless encampments – something counterproductive to the City and counterproductive to efforts to end homelessness.

We are dismayed that the proposed shelter licensing regulations are silent on efficiently, effectively, and ethically meeting the needs of people experiencing homelessness. They instead focused solely on how to manage a misperceived threat of people maligned and ostracized for experiencing the circumstances of homelessness.

We urge the City's Health and Human Services and Public Safety Committee to immediately terminate this proposed ordinance. We urge the City's Health and Human Services and Public Safety Committee to instead undertake efforts to meet with professional homeless service providers to develop strategies to directly and precisely address any concerns experienced by the City and its residents. The proposed ordinance would undo current efforts to end and prevent homelessness, and it would do so cruelly amid a pandemic, at a time where just last week four people experiencing homelessness died due to shelter occupancy limitations caused by a COVID-19 outbreak.

Please terminate this ordinance immediately and allow us to ensure people have safe access to emergency shelter in the City of Portland. Please help us end homelessness rather than exacerbate it.

A Collaborative of Services Providers, Consumer Groups, and Health & Human Services Agencies whose Primary Objective is to Ensure the Safety and Well-Being of Portland's Homeless.

Subject: Fwd: Shelter licensing general comments



Belinda Ray <bsr@portlandmaine.gov>
to Adam Harr, Tae Chong

Tue, Mar 9, 5:21

You are viewing an attached message. City of Portland Mail can't verify the authenticity of attached messages.

And since I forwarded the ones Mark sent along, I should ask that these be added, too. Again, if not tonight, to the packet for this meeting and then again next month when we are more likely to vote. A couple more coming your way, Adam.

Thanks!

Best,

Belinda
Belinda S. Ray (*she / her / hers*)
City Council, District 1
389 Congress Street
Portland, ME 04101
BSR@portlandmaine.gov

Sign up for [my newsletter](#) or visit [my blog](#)!

Please Note: Under Maine law, emails sent or received by public officials or city employees may be classified as public records. There are very few exceptions. As a result, please be advised that what is written in an e-mail could be released to the public and/or the media if requested.

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

From: **Sarah Michniewicz** <sarahmichniewicz@icloud.com>

Date: Tue, Mar 9, 2021 at 3:58 PM

Subject: Shelter licensing general comments

To: Tae Chong <tchong@portlandmaine.gov>, <mdion@portlandmaine.gov>, Belinda Ray <bsr@portlandmaine.gov>

Cc: <cityclerk@portlandmaine.gov>, Spencer Thibodeau <sthibodeau@portlandmaine.gov>, Ali Pious

<pali@portlandmaine.gov>, Nicholas Mavodones <nmm@portlandmaine.gov>, Kate Snyder

<ksnyder@portlandmaine.gov>, <afournier@portlandmaine.gov>, <azarro@portlandmaine.gov>, Jon Jennings

<jpj@portlandmaine.gov>, Kristen Dow <kjd@portlandmaine.gov>, Frank Clark <fclark@portlandmaine.gov>

Hello Chair Chong, Councilor Dion, and Councilor Ray,

Thank you once again for pursuing shelter licensing. I hope you will consider moving this on to the full council with a strong recommendation for passage, after incorporating community feedback on buffers and spacing as recommended by staff. I have a couple of thoughts and questions:

- Allowing separate day space is tantamount to replicating the untenable situation in Bayside; it would contradict the purpose of moving to a best practice model of having all resources in one site and potential double the amount of shelter space in any given area. This reversion to a campus-style shelter would



Testimony of Frank D'Alessandro, Maine Equal Justice on Proposed Shelter Licensing Ordinance.

Good afternoon Chairperson Tae Chong and counselors Belinda Ray and Mark Dion sitting as The **Health & Human Services and Public Safety Committee.**

My name is Frank D'Alessandro and I am the Litigation and Policy Director of Maine Equal Justice. We are a civil legal service organization, and we work with and for people with low income seeking solutions to poverty through policy, education and legal representation. Thank for the opportunity to offer you testimony proposed shelter licensing ordinance.

Introduction

Fundamentally, we believe that any licensing ordinance should be focused on the health, safety and care for clients accessing services and not the neighborhood concerns that occur off premises from a given shelter facility or are not tied to the provision of high-quality services to clients. We ask that this Committee and the council as a whole ground its discussion by asking how the licensing ordinance protects those needing access to shelter itself.

In addition, we have the following specific comments concerning the proposed ordinance:

I. The Proposed 1-mile buffer zone and bed cap would impact every shelter located on Peninsula in Portland.

Maine Equal Justice is particularly concerned with the proposed bed limits and distance between shelter requirements.

As the city's own experience with finding the site of the shelter at Riverton and sites for temporary shelter for Covid overflow illustrate, even without ordinances restricting shelter's location, it is very challenging to find land or buildings that work for emergency shelter. The proposed buffer zone restriction adds an artificial barrier to shelter location and relocation. The proposed licensing ordinance will make it even harder for new facilities to open where land and property is available.

Furthermore, it and will also make it difficult for shelters to be renovated, expanded, or moved. This will make it more difficult for shelters to adapt to meet the changing needs of people experiencing homelessness while making it less likely that people experiencing homelessness will have access to adequate, safe, and modern facilities which should be the goal of the licensing scheme. As the Committee is aware, the Preble Street Wellness Shelter, the Joe Kreisler Teen

Shelter, Oxford Street, the family shelter, Florence House, Milestone and the DV Shelter are all located within a mile radius. The buffer zone provision would effectively preclude creation of any new emergency shelter on the peninsula.

While we appreciate that shelters that have been approved prior to January 31, 2021 will be grandfathered in, we recommend that this date be changed to the effective date of any ordinance that is finally passed by the City Council.

II. There is a lack of clarity about when an existing shelter would have to apply for a license to improve or change their facility

The buffer zone requirement may also impact an existing shelter as there is a lack of clarity in the proposed licensing requirement about when a shelter who changes its services or facility in order to make necessary improvements or to meet a new need experienced by the homeless community would be required to submit a new application.

III. The revised proposed ordinance was correct to remove the “unacceptable number of police (and Fire) calls” provision as it could have led to unintended consequences.

We agree that it was appropriate to remove this provision as it would have served to penalize a proactive and productive relationship between city public safety staff and shelter facilities. Law Enforcement calls often stem from an inadequate mental health system or struggles with substance use, precisely the type of circumstances that often lead to homelessness. Those who might interact with law enforcement are often those who most need the services provided by a homeless shelter. The ordinance should avoid such criminalization of homelessness.

Furthermore, police call provisions can have unintended consequences. This is the case with the disorderly house designation currently in city ordinance. Under this ordinance the city is able to designate a property “disorderly” and require the landlord to evict every tenant in the building. We have seen the disorderly house ordinance applied in a manner that allows for the blanket closing down of a building and eviction of lawful tenants who are not themselves engaged in dangerous behavior. Such a provision applied to shelters could result in the unintended closing of needed shelter facilities.

For these reasons among others, we are glad that this provision has been removed.

IV. The Licensing Ordinance raises concerns of disparate impact discrimination against those who access shelter in Portland including people of color, those with disabilities, and those navigating substance use diagnoses.

Finally, according to the Maine State Housing Authority 2019 Point in Time Survey 26% of Maine’s homeless population is Black or African American, and 13% were experiencing substance

abuse issues.¹ According to the same report, there is also a high rate of persons experiencing homelessness who report a disability.

As compared to the overall population, there is a disproportionate number of people of color and those with disabilities who experience homelessness.²

As set forth above, the licensing scheme being considered will negatively impact the availability of homeless shelter and related services. It will do this by requiring a buffer zone and by overemphasizing neighborhood concerns to the detriment of people experiencing homelessness. This will deprive people who are homeless of shelter for reasons unrelated to the behaviors of the vast majority of homeless individuals.

Not only do these requirements impose inappropriate requirements upon shelters, but they will also result in a disparate impact upon both people of color and individuals who suffer from mental illness, potentially violating the Maine Human Rights Act.³

¹ https://www.mainehousing.org/docs/default-source/housing-reports/2019-point-in-time-survey.pdf?sfvrsn=6d6fb415_4

² Only about 1% of the population is Black or African-American, 4.4% of the population suffered from a mental illness.

³ https://www.maine.gov/mhrc/sites/maine.gov/mhrc/files/inline-files/What_it_is.pdf

Subject: Re: Shelter Licensing & Zoning



Jim Hall <mtjimhall@gmail.com>

Tue, Mar 9, 2:16

to Jim Hall, Tae Chong, Belinda Ray, Mark Dion, Kate Snyder, Nicholas Mavodones, Pious Ail, April Fournier, Si

You are viewing an attached message. City of Portland Mail can't verify the authenticity of attached messages.

Hi Councilors Chong, Ray and Dion,

I just learned that ESAC voted in a non-public meeting to oppose shelter licensing altogether (presumably with city staff abstaining). I disagree that creating oversight on a known high-impact use is “demonizing”, “arbitrary”, or “diminishes” response. In fact, as my comments of 3/7 point out, the current licensing proposal is much more explicit about protections inside & “around” the facilities while having almost nothing to say about overall neighborhood impacts. Voluntary behind-the-scenes meetings with city staff may be another welcome solution, but it is NOT an appropriate total response to decades of zero governance. If certain actors in this space had not put the worst externalities of homelessness “on display” while continually disrespecting the community, it would not be so hard to site new shelters in the first place. Homeless services do not need to look like “a neighborhood under siege”, but they did. Please enact oversight that ensures that can never happen again, anywhere.

Jim Hall
Cedar St

On Mar 9, 2021, at 1:47 PM, Jim Hall <mtjimhall@gmail.com> wrote:

Hi Councilors Chong, Ray and Dion,

Apologies for the late add-on. I'm sure some of you are following the Maine Statewide Homeless Council's strategic planning for a better statewide system. I just wanted to point out a few data findings presented today, which may be relevant to Portland's overall strategy regarding management of homeless services.

<http://www.mainehomelessplanning.org/wp-content/uploads/2021/03/CSH-Maine-Data-Analysis-for-SHC-2021-03-09.pdf>

- (p21 of 40) – emergency shelter has the worst record regarding exit to permanent housing, compared to rapid rehousing, transitional housing, and supportive housing (and diversion was not even considered since there is not yet a state system)
- (p29 of 40) – The data suggests adding only 23 emergency beds across the entire state, with spoken analysis pointing to geographical areas that are underserved. Discussion outlined a goal of closing emergency shelters over time as more successful programs reduce the need.

Subject: Shelter licensing



Carolyn Megan <carolynmegan@gmail.com>

Tue, Mar 9, 1'

to Tae Chong, mdion, Belinda Ray, Spencer Thibodeau, Ali Pious, Nicholas Mavodones, afournier, azarro, Jon Jen

You are viewing an attached message. City of Portland Mail can't verify the authenticity of attached messages.

Dear Councilors Chong, Dion and Ray:

Thank you for the time and care you have brought to the discussion of licensing shelters in Portland. This work and conversation is long overdue and is crucial for the well-being of both shelters and the neighborhoods in which they are situated. As there is no recourse for residents to be heard in expressing concerns about shelters' impact on neighborhoods, your work is timely and much needed. Additionally, the work underscores the larger visioning for the city as a whole - each neighborhood - can address issues of homelessness.

As an extension of this work, I ask that you urge the City Council to place a moratorium on any new shelters in Beaverton until the city can best address Portland's shelter system as a whole.

No doubt there are difficult conversations ahead but this work is a good first start.

Thank you,
Carolyn Megan

Subject: tonight's discussion - emergency shelter licensing



Heidi Souerwine <heidi.souerwine@gmail.com>

Tue, Mar 9, 3:54

to Tae Chong, mdion, Belinda Ray, Kate Snyder, Spencer Thibodeau, Ali Pious, Nicholas Mavodones, afournier,

You are viewing an attached message. City of Portland Mail can't verify the authenticity of attached messages.

Dear HHS Committee members and Councilors,

Thank you for the continued discussion, consideration of, and movement forward on our city's shelter regulations. I have been encouraged by thoughtful questions during the committee's dialogue on this topic over the past several months. It's complicated, and I know these topics are especially challenging in our current climate, so I thank you for your continued engagement, and desire for alignment.

I write in support of the more thoughtful shelter licensing and zoning policies under discussion. I think these policies help move away from the dense concentration of social services that has neither benefited individuals experiencing homelessness, nor the neighbors who wish to be in community with them.

I encourage you to take action on shelter licensing at the meeting tomorrow, and send it to the full Council. In the documents posted online I see many things I support that will be crucial to building public understanding and support for shelters around our city, and, are normal parts of licensing and zoning regulations:

1. a buffer of no more than 250 beds within a 1 mile radius.
2. spacing of 2500 feet between facilities.
3. requirement that all shelters must have adequate space for people **ONSITE** to be able to stay off the streets during the day.
 1. I see waivers have been suggested, and I would **STRONGLY** recommend finding a way to limit them. Otherwise, we're setting up a scenario of ping-ponging vulnerable people between spaces, again which goes against best practices to serve these individuals and help them overcome permanent homelessness.

However, there's one thing I don't see yet that is **CRITICAL**: strict rules preventing institutions from undermining the process and skirting the policies in progress:

a moratorium on any new shelters in Bayside.

Why is this so important? As you all know, one shelter has already been added to Bayside, bringing our tiny half of this neighborhood up to 451 beds within the suggested 1 mile radius. That's almost as many beds **OVER** (201) the suggested maximum of 250.

The City was able to do something similar for development in Munjoy Hill. Doing so right can only help you, our Council, serve our City better in making sound, thoughtful policy decisions by looking at a complete picture, absent counterproductive pieces running in parallel.

If the City staff are recommending that before further action is taken, [outreach](#) should be conducted with neighborhood associations and shelter providers to get feedback and information (GREAT idea, wish our neighborhood had this), **AND** they are also recommending [community surveys](#) be conducted to hear what people think about small shelter zoning, allowing other things to proceed in tandem will undermine these efforts. and the transparency I know you all strive for.

MEMORANDUM

TO: Health and Human Services and Public Safety Committee

FROM: Anne Torregrossa, Associate Corporation Counsel

DATE: July 8, 2021

RE: Measuring distances and enforcement

The HHS Committee raised two questions at its last meeting that I would like to address. The first related to the appropriate way to measure the distance between shelters, and the second related to how enforcement would be conducted. This memo addresses both.

MEASURING

In discussing the way that distances should be measured under the proposed shelter licensing ordinance, the Committee asked for examples of how distances are measured in other areas of the City Code. The key is to consider 1) how the distance is measured; and 2) from where the distance is measured. Here are several examples from the City Code and state law:

1. **Bottle Club Distance from Schools, etc. (§ 3-28(d))**

The three hundred (300) foot distance shall be measured from the principal entrance of the school, dormitory, church, chapel or parish house to the principal entrance of the licensed premises by the ordinary course of travel.

2. **Public Nude Activity Distance from Others and from Schools, etc. (§ 4-91(b))**

The distance must be measured from the main entrance of the premises, as measured in a straight line, without regard to intervening structures or objects.

3. **Certain Marijuana Business Distance from Schools, etc. (§ 14-6.4.10(B)(1))**

Distance shall be measured from nearest property line of the respective marijuana-related use and the property line of the lot containing the public school, private school, or public preschool program.

4. **Certain Marijuana Business Distance from Residential Properties (§ 14-6.4.10(B)(2))**

Distance shall be measured from the nearest outer wall of the building housing the marijuana cultivation, manufacturing, or testing facility to the nearest applicable residential zone boundary. If the marijuana-related facility leases a room or suite of rooms within a building, including, without limitation, individual units within a shopping plaza or shopping mall, the nearest outer wall of the room or suite of rooms within which the facility is located shall constitute the nearest outer wall of the building housing that facility.

5. **Entertainment License Holders from Each Other in Downtown Entertainment Overlay District (§ 14-8.2.3)**

A business with an entertainment license as required or authorized by Chapter 4, Section 4-51(a) of the City of Portland Code of Ordinances within the Downtown Entertainment Overlay Zone may not be located within 100 feet of another business with an entertainment

license, as measured along or across public ways from the main entrance or entrances of each.

6. Liquor Licensee Distance from Schools, etc. (28-A M.R.S. § 701)

The distance must be measured from the main entrance of the premises to the main entrance of the school, school dormitory, church, chapel or parish house by the ordinary course of travel.

ENFORCEMENT

There was a great deal of concern about how enforcement would be conducted in connection with shelter licensing. Hopefully, this brief overview of how the City currently conducts enforcement – and how it would conduct enforcement moving forward – will assuage some of the concerns raised.

With respect to certain City ordinances, as well as state laws enforced by the City, City inspectors already have the authority and jurisdiction to inspect existing shelters. By way of example, this would include the Building, Life Safety, and Fire Codes. Currently, the Fire Department and Permitting and Inspections Department conduct inspections of a variety of commercial and residential buildings, and their jurisdiction extends to all buildings in the City, including existing shelters. When the City conducts an inspection and finds a violation of a code or statute, the inspector issues a Notice of Violation and Order to Correct (NOV). The NOV gives the owner or responsible party time to correct the violations that are commensurate with the difficulty that correcting the violation poses and the threat that allowing the violation to continue poses. For example, missing smoke alarms might have a much shorter timeframe for correction than installing a full sprinkler system in a building. It is only after the owner or responsible party does not take any action will the City proceed to civil penalties or legal action.

One exception to this process is where a building or violation poses an imminent threat to safety, in which case a building might be posted against occupancy, or similar steps taken. Also, if a violation is a frequently repeated violation then the City might proceed directly to civil penalties or court action.

Licensing inspections proceed in the same manner. For example, the City's Health Inspectors regularly inspect City licensed restaurants for compliance with City Code and state statute. Again, a notice of Imminent Health Hazard (IHH) would be issued for any violations found during an inspection and the licensee would be given time to remedy the deficiency. Generally, a restaurant would not be shut down or otherwise impacted while they are correcting the deficiency, unless the deficiency posed an immediate threat to health and safety. Civil penalties, license suspension or revocation, or other legal action would not move forward unless the licensee did not comply with the City's orders.

The City's goal in enforcement has always been compliance, and City inspectors spend significant time and energy working with property and business owners to help them come into compliance. A very, very small percentage of violations end in civil penalties, license suspension or revocation, or other negative impact on the property or business owner. All of those are business

or owners who have been given numerous opportunities to voluntarily comply and have either refused or dragged their feet so long that it becomes clear that compliance is not forthcoming.

The same principles would be applied to shelter licensee inspections. Inspections would be based on City Code, state statute, or conditions of approval in the licensee's license. This would include their operating plan. The inspector's criteria would not be subjective, but would be based only on the code, statute, or license. Unless a violation posed an imminent threat, a license would be given notice and an opportunity to correct any violations. Civil penalties, license suspension or revocation, or other legal action would only be taken for those licensees who refused to correct violations or repeatedly showed the same violations to the point that the licensee is clearly not meeting their obligations.



CITY OF PORTLAND
Social Services Division
Aaron Geyer, Director

MEMORANDUM

TO: The Health & Human Services and Public Safety Committee

FROM: Aaron Geyer, Social Services Division Director

DATE: June 8, 2021

RE: Shelter Licensing Reporting Requirements and Definitions

At the last meeting, Councilor Dion asked if referrals to a different shelter were included in the list of reporting requirements and expressed interest in pairing down the list in order to increase efficiency. Referrals to other shelters are not currently included. Shelter to shelter referrals currently occur informally as a mechanisms to maximize beds across our shelter continuum and provide the best possible options for guests. Adding a shelter referral reporting requirement would be complicated to get accurate reporting given the nightly cross over that occurs.

In an effort to streamline the reporting requirements, I recommend eliminating (v) "total number of chronically homeless individuals accessing the shelter" with (vi) "total number of individuals who are defined as having long time stayer status" due to the overlap with individuals who meet both criteria. I also recommend Eliminating (xi) Crisis Calls for services, as those calls in large part could be captured in (xiii) police calls for service.

Below are two definitions the committee requested, but please note: eliminating (xi) completely removes the term "crisis calls for service" from the proposed ordinance:

- Long Term Stayer - An individual staying over 180 days in shelters (or outdoors) within a 365 day period (not necessarily consecutive).
- Crisis Calls for services- Calls placed to crisis line (774-HELP) and those to the Behavioral Health team within the Police Dept.

196 Lancaster Street • Portland, ME 04101 • 207-482-5131
aeg@portlandmaine.gov • portlandmaine.gov • www.portlandmaine.gov



Emergency Shelter and Housing Assistance Program (ESHAP)

2022 Program Guide & Application

Agency Name:

Date:

Table of Contents

Program Guide.....	3
Overview & Purpose.....	3
Funding Allocation & Eligible Activities	3
Housing Voucher Rental Subsidies.....	5
ESHAP Eligible Applicants	6
Monitoring Compliance and Technical Assistance	8
Application.....	9
Application Process.....	9
Application Timeline.....	10
Application Questions	10
MAINEHOUSING NONDISCRIMINATION NOTICE:	16
ATTACHMENT A. CERTIFICATION REGARDING LOBBYING	17
ATTACHMENT B: HOMELESS EXPERIENCE CONSUMER PARTICIPATION.....	18
ATTACHMENT C: MINIMUM DATA REQUIREMENTS.....	19
ATTACHMENT D - APPLICANT CONFLICT OF INTEREST DISCLOSURE FORM	20
ATTACHMENT E CERTIFICATION OF LOCAL APPROVAL FOR NONPROFIT ORGANIZATIONS.....	22
ATTACHMENT F HOMELESS INITIATIVES CONTACT FORM.....	23

Program Guide

Overview & Purpose

The mission of MaineHousing is to assist Maine people in obtaining and maintaining quality affordable housing and services suitable to their housing needs. In carrying out this mission, MaineHousing provides leadership, maximizes resources, and promotes partnerships to develop and implement sound housing policy.

MaineHousing uses funds from certain federal and state resources to give grants to agencies for a variety of activities to assist people who are experiencing homelessness or who are at risk of experiencing homelessness. MaineHousing has allocated resources to the Emergency Shelter and Housing Assistance Program (ESHAP) to be distributed according to the Funding Formula Allocation outlined in Section 4 of MaineHousing's Homeless Solutions Rule (the "Rule"). The Rule is available electronically at:
<http://www.mainehousing.org/docs/default-source/msha-rules/19--homeless-solutions-rule.pdf>.

This program guide and application outlines the process through which these funds will be distributed, the parameters of the activities that they can support, and the process to apply for funding. Capitalized terms have the same meaning as in the Rule unless context indicates otherwise.

ESHAP grantees can receive funding through the three funding components that make up the award: the Shelter Operations Share, the Housing Stabilization Share and the Performance Share. MaineHousing also allocates Rapid Re-housing and permanent rental subsidies to ESHAP Shelters through vouchers. These vouchers are: Stability Through Engagement Program/Tenant Based Rental Assistance (STEP/TBRA) Vouchers and Home to Stay/Housing Choice Vouchers (HTS/HCV). Each of these vouchers have Administrative Plans which detail their usage and are available electronically at
<https://www.mainehousing.org/docs/default-source/rental/2021-hcv-administrative-plan.pdf> and
<https://www.mainehousing.org/docs/default-source/homeless/homeless-initiatives/step/step-resources/step-administrative-plan.pdf>

All ESHAP funds must be targeted to individuals and families that meet the definition of homeless outlined in 24 CFR § 576.2. MaineHousing has designed ESHAP and tailored its monitoring of ESHAP to ensure its grantees are in compliance with all listed funding sources. Housing vouchers and subsidies are always subject to the availability of funds.

MaineHousing has also made Supportive Housing Repair Program Funds available to current ESHAP grantees in good standing. The purpose of this funding is to assist Emergency Shelters in addressing physical plant deficiencies and/or issues in need of correction. Application to this funding must be made separately and details are available at

<https://www.mainehousing.org/docs/default-source/development/2021-final-supportive-housing-emergency-shelter-repair-program-guide---updated-3-2021687c2d36-1658-41af-8fab-9049b6b834d2.pdf>

Funding Allocation & Eligible Activities

ESHAP funds will be distributed as follows:

Shelter Operations Share:

An amount equal to 45% of the Funding Formula Allocation will be disbursed among Emergency Shelters, 3 such that each Emergency Shelter will receive a percentage equal to its Bed Capacity divided by a number

equal to the total Bed Capacity available statewide for the calendar year. Bed Capacity for the 2022 ESHAP operations share is based on the last pre-pandemic HIC, 2020. Agencies will receive scheduled payments on a quarterly basis.

Eligible Activities: The costs of maintenance (including minor or routine repairs), rent, security, fuel, equipment, insurance, utilities, food, furnishings, supplies and staff necessary for the operation of the Emergency Shelter.

Disbursement: Quarterly

Housing Stabilization Share:

An amount equal to 45% of the Funding Formula Allocation will be disbursed among eligible agencies, such that each agency providing staffing for Rapid Re-housing, Housing First and Housing Stabilization services operated by the agency will be eligible to receive a percentage equal to the agency's number of Clients Assessed and Stabilized, divided by the total number of Clients Assessed and Stabilized statewide in the previous quarter. Agencies are reimbursed for costs on a quarterly basis.

Eligible Activities: Navigator staffing, including at least one staff designated and trained as the Primary Navigator for your agency. The Primary Navigator should attend, or complete e-learning training, specific to navigator services. This person will be the primary point of contact regarding Navigator services for the ESHAP grantee. The Primary Navigator will coordinate messaging from MaineHousing staff to the rest of their agency in regards to navigator services and program delivery requirements.

Additional Criteria: Although each agency will have a Primary Navigator, other staff within the agency may provide navigator services to eligible households that can be reimbursable through the Housing Stabilization Share. Navigator services must be provided for by the agency receiving the funds. Eligible households must meet the criteria under paragraph (1) of the "homeless" definition in 24 CFR § 576.2 or under paragraph (4) of the "homeless" definition and live in an emergency shelter or other place described in paragraph (1) of the "homeless" definition. Navigator services must include assessment with housing prioritization tools, 30 day check-ins and Housing Stability Plans, as well as housing navigation and stabilization services.

Assessments

Clients may be assessed if they have experienced homelessness for 15 of the previous 90 days, using the common assessment tools which are designated by MaineHousing and the Maine Continuum of Care. Clients whose assessment results deem them ineligible for ESHAP services should not be enrolled, while clients with eligible assessment results will be entered into the agency's ESHAP program. Documentation of enrollment or non-enrollment should be retained in the client file. Detailed information about the common assessment tool and appropriate housing interventions are provided in the Navigator Services Guide found under the ESHAP heading at

<https://mainehousing.org/partners/partner-type/homeless-service-providers/homeless-initiatives>.

Monthly Check-Ins and Housing Stability Plans

Every client enrolled in ESHAP services must have a Housing Stability Plan based on the needs found in the common assessments. The Housing Stability Plan should be updated during at 30 day check-in to assess the progress and address any additional needs. A new Housing Stability Plan should be created every 90 days.

Housing Navigation and Stabilization

Clients should be given Housing Stabilization services after their enrollment in ESHAP. The Navigators should apply for appropriate subsidies and housing based on the assessment result recommendations for the client. All documentation of housing work including housing applications, mainstream and housing referrals, documentation applications, leases, etc. should be kept in the client's file to show on-going navigation efforts. Documentation that clients were offered an opportunity to participate in housing counseling through the RentSmart curriculum should be present in the client file. After the client is housed, on-going Housing Stabilization services are expected to continue for no less than one year. Clients who are not receiving subsidy through a STEP or Home to Stay voucher have the option to opt out of Housing Stabilization services; any decision to opt out must be noted in the client file.

Ending Services

If a client is terminated from the program, the client should be provided with a letter clearly stating the reason for the termination and the process to appeal the decision. A copy of the termination letter and any other appeal documentation must be included in the client file.

Protections under VAWA: Sub-recipients are exempt from service and stability plan requirements if the Violence Against Women Act of 1994 (42 U.S.C. 13701 et seq.) or the Family Violence Prevention and Services Act (42 U.S.C. 10401 et seq.) prohibits that recipient or sub-recipient from making its shelter or housing conditional on the participant's acceptance of services.

Disbursement: Quarterly

Performance Share:

An amount equal to 10% of the Funding Formula Allocation will be allocated among Emergency Shelters that in the previous 6 months had 15% or fewer clients who exited to permanent housing return to homelessness based on performance indicator data in HMIS (or elsewhere for providers of services to victims of domestic violence). The percentage of funding an Emergency Shelter receives will be equal to the number of clients served by that provider divided by the total number of clients served by all of the Emergency Shelters that meet this performance measure in the applicable 6 month period.

Eligible Activities: Any purpose consistent with the provider's mission, and not otherwise prohibited by state or federal regulations.

Disbursement: The Performance Share is awarded semi-annually with the Operations and Stabilization disbursements. The share is based on performance in January 1- June 30, and July 1 to December 31. The data utilized is from the six-month period that just concluded.

Housing Voucher Rental Subsidies

Staff providing navigator services will additionally have access to a set aside of Stability Through Engagement Program/Tenant Based Rental Assistance Vouchers (STEP/TBRA) and Home To Stay Housing Choice Vouchers (HTS HCV) rental subsidies as resources remain available. Please refer to the Navigator Services Process Guide available electronically at <http://mainehousing.org/partners/partner-type/homeless-service-providers/homeless-initiatives> for detailed information regarding expectations and processes for the navigator role, which is integral to utilizing the voucher resources.

Stability Through Engagement Program/Tenant Based Rental Assistance (STEP/TBRA)

STEP/TBRA guidelines, funding sources, and governing regulations are detailed in the STEP/TBRA Administrative Plan located at https://mainehousing.org/docs/default-source/homeless/homeless-initiatives/step/step-resources/step-administrative-plan.pdf?sfvrsn=42f78f15_2. Providers may access STEP/TBRA only to the extent that the resources remain available. Units funded through STEP/TBRA must be accessed through the Maine CoC Coordinated Entry Process once it is developed. Grantees will use the funds for rental assistance, utility deposits and security deposits to rapidly re-house homeless families and individuals.

Housing Choice Vouchers (HCV)

Home to Stay Housing Choice Vouchers (HTS HCV) will be administered according to federal regulations and MaineHousing policies detailed in the current Administrative Plan for Section 8 Housing Choice Voucher and Project Based Voucher Programs.

MaineHousing makes the final decision on program eligibility, which requires a determination that the current or past behavior of household members does not include activities which are prohibited by HUD or MaineHousing. Upon admission, each family will be required to pay between 30% to 40% of their adjusted total household income for rent in accordance with the individual vouchers administrative plans. All subsidies are only available as funding permits.

ESHAP Eligible Applicants

To be eligible to receive ESHAP funds, an Applicant must:

- be a non-profit corporation in good standing in the State of Maine qualified for tax exemption under 501(c)(3) of the Internal Revenue Code or a municipal corporation;
- be eligible in accordance with the HEARTH Act;
- be a provider of homeless services with at least one (1) year of experience providing emergency housing, street outreach, Homeless Prevention, or Rapid Re-housing activities;
- be a regular and active participant in the Maine Continuum of Care, in accordance with its governance charter and performance criteria;
- have board and or advisory board representation from Persons Experiencing Homelessness or formerly experiencing homelessness who are involved in policy or planning of the organization;
- participate in Coordinated Entry Process by entering into an Agency Participation Agreement (or equivalent for Domestic Violence and Youth Coordinated Entry Systems) for sharing data and administering housing prioritization and assessment tools in accordance with any CoC Coordinated Entry Written Standards and other policies and procedures documents;
- have the administrative and financial management capacity necessary to administer and to account for the use of the applicable grant in accordance with the funding requirements;
- operate in accordance with the homelessness strategy outlined in the Maine Consolidated Plan;
- meet the objectives of ESHAP;
- participate in and meet the performance and reporting requirements of the Homeless Management Information System (HMIS) or a comparable database if the Applicant serves victims of domestic violence;
- not engage in any explicitly religious activities, such as worship, religious instruction, or proselytization, as part of the activities and services funded with any grant for activities or services

covered by this rule; and if religious activities are offered, they must be offered at a separate time or location from the activities and services covered by this rule; and participation in those religious activities must be voluntary for persons receiving assistance with ESHAP funds;

- operate its programs free from discrimination on the basis of age, race, color, religion, national origin, physical or mental disability, sexual orientation, or gender in accordance with applicable federal and state fair housing laws; comply with Section 504 of the Rehabilitation Act of 1973, which prohibits disability discrimination in programs that receive HUD funds; and
- comply with MaineHousing requirements.

To be eligible to receive Shelter Operations or Performance Share Funds, an Applicant must also:

- provide access 365 days per year to assist Persons Experiencing Homelessness meet basic emergency shelter needs;
- provide adequate sleeping space or beds, and clean and functioning shower and toilet facilities;
- provide safe and nutritious food, including breakfast or access to breakfast and, if open 24 hours, also provide lunch and dinner or access to lunch and dinner;
- treat all guests with dignity and respect, regardless of religious or political beliefs, cultural background, disability, gender identity or sexual orientation;
- provide shelter and housing services based upon a Rapid Re-housing or Housing First approach;
- have admittance and stay policies that are appropriate for the population served and do not create unnecessary barriers to guests staying;
- provide linkages and access to community resources such as health care, job readiness and employment services, Mainstream Resources, and educational services to assist guests in achieving housing stability;
- assess guests for housing prioritization and services to enable mobility to permanent housing with adequate supports;
- inform guests of their rights and responsibilities, including specific shelter policies and house rules;
- accept eligible persons regardless of their ability to pay or their eligibility for reimbursement or actual reimbursements from any third party source, including local, municipal, state, or federal funding sources;
- have no lease requirements for guests;
- if serving families with children, provide space other than open dormitory style and do not require involuntary family separation for admission;
- provide separate accommodations for male and female consumers consistent with their gender identity;
- protect the privacy and confidentiality of guests and their personal information;
- provide training, policies, procedures and regular maintenance to encourage, improve, and maintain the health and safety of guests, volunteers and staff;
- post fire, disaster, and other emergency procedures in a conspicuous place and review the procedures with each guest;
- maintain a daily and confidential census of shelter clients including precise sleeping locations;
- operate in compliance with all applicable federal, state and local codes, laws and regulations; and
- have written standards in the form of agency specific policies and procedures that address the following areas: access to shelter services, residential rights and responsibilities; program, personnel

and facility operations; health and safety; food preparation and distribution; case management services; staff training; and HMIS or comparable database; coordination of services; non-discrimination; grievance and termination; whistleblower protections; and computer protocols; and

- make RentSmart tenant based educational training available to eligible ESHAP participants.

Monitoring Compliance and Technical Assistance

MaineHousing will review for program compliance at least every two years at reasonable times and may copy and examine all of a grantee's records other than medical or other confidential client information protected by privacy laws except as required by the federal award pursuant to 2 CFR section 200.336. Grantees will maintain records sufficient to meet monitoring and auditing requirements of MaineHousing and HUD including, without limitation, daily rosters and client files. Grantees will adhere to uniform administrative requirements as outlined in the code of federal regulations 2 CFR section 200, and retain program records for no less than 5 years after participation ends. Grantees will maintain timesheets for staff salaries being charged to ESHAP that specify the amount of time spent on ESHAP activities. MaineHousing will inspect the shelter physical plant for compliance with 24 CFR 576.403 (b) and other MaineHousing requirements.

MaineHousing staff will provide grantees with training, technical assistance, monitoring and oversight to ensure program integrity.

Funding is subject to a grantee's compliance with this guide, a grant agreement with MaineHousing, and with all applicable federal, state and local laws and ordinances as may be amended from time to time including, without limitation, the Rule, the Maine Housing Authorities Act, 30-A M.R.S.A., §4701, et. seq., as amended: and the McKinney-Vento Act, as amended by the HEARTH Act.

MaineHousing will review the performance of each grantee in carrying out its responsibilities at least every two years and as otherwise determined by MaineHousing. In conducting performance reviews, MaineHousing will rely primarily on information obtained from the records and reports from grantees, as well as information from monitoring reviews, audit reports, and HMIS or comparable data bases. If MaineHousing determines that a grantee has not complied with a program requirement, MaineHousing will give the grantee notice of this determination. MaineHousing will offer technical assistance and give the grantee an opportunity to demonstrate, within the time prescribed by MaineHousing, that grantee has complied with program requirements. If the grantee fails to demonstrate to MaineHousing's satisfaction that the activities were carried out in compliance with program requirements, MaineHousing may take one or more of the following actions:

- provide additional technical assistance and training opportunities;
- instruct the grantee to submit and comply with proposals for action to correct, mitigate, and prevent noncompliance with program requirements;
- suspend disbursement of funds for some or all activities;
- reduce or terminate the remaining grant and reallocate those funds to other grantees;
- disqualify grantee from participation in the Performance Share or future ESHAP; and
- require grantee to repay grant funds.

Application

Application Process

The Applications are due no later than Monday, **November 24th, 2021 by 5pm**. If you have questions as you prepare your Application, please e-mail SHLTAPP@mainehousing.org.

Uploading and submitting the Application and any supporting documents must be completed online; just click on the following secure link: <https://mainehousing.sharefile.com>. Upload to the following path: Shared Folders/Homeless Initiatives/Your Shelter/2022/Program Guide and Application. Applications may be submitted as two documents; the application as one document (filled electronically), and the attachments as a second. Applications not submitted as prescribed will not be reviewed. The application is electronically fillable; please utilize electronic signatures for all required signatures when submitting the filled application. Please note that the documents submitted with your ESHAP Application are used for the purpose of monitoring your shelter's compliance with ESHAP.

Applications that, in MaineHousing's sole judgment, are incomplete and/or missing required documents will not be eligible for consideration. For an application to be considered complete, it must contain the following and be uploaded to your ShareFile Folder;

1. Complete answers for Application questions 1 – 12;
2. a completed Emergency Shelter Minimum Threshold Requirements review (see below);
3. the following attachments uploaded and with electronic signatures;
 - Attachment A: Certificate Regarding Lobbying;
 - Attachment B: Homeless Experience Consumer Participation Certification;
 - Attachment C: Minimum Data Requirements Certification;
 - Attachment D: Applicant Conflict of Interest Disclosure and Acknowledgement Form;
 - Attachment E: Certificate of Local Approval for Nonprofit Organizations;
 - Attachment F: Homeless Initiatives Contact Form;
 - Attachment G: Documentation of 501c3 Status;
 - Attachment H: Most recent audit within the last 12 months completed by an outside firm and accompanying management letter. (A133 or comparable);
 - Attachment I: Corporate Resolution from Board of Directors to approve application submission;
 - Attachment J: An organizational chart showing titles and lines of authority for all individuals with any role in approving or recording of financial transactions;
 - Attachment K: List of agency board of directors outlining who each member represents and;
4. any listed policy that has been revised or edited since the previous grant application or all listed policies and procedures if your agency did not apply for ESHAP funding in 2021.

MaineHousing will use the following process to determine which applicants are eligible for funding:

MaineHousing staff will review each application to ensure that it is complete, including the submission of the required attachments. Only complete applications, which have included all required attachments, will be considered. Staff will determine if the application meets minimum threshold requirements.

Applicants who are eligible for funding will be issued a Grant Agreement specifying terms and conditions of the funding award. Once successful applicants receive this notification they will be expected to submit:

1. a signed HMIS Agency Participation Agreement if you are a new ESHAP recipient for the 2022 program year;
2. a certification of Local Approval verifying that the municipality in which the program will run will not be seeking any funds from the Emergency Solutions Grant program to perform similar activities.

A Grant Agreement will not be fully executed until all certification and any other documents that may be required by MaineHousing have been received. Applicants who do not meet threshold requirements will be notified in writing.

Grantee	2022 Audit	PO- Primary Contact
Preble Street	March 9, 2022	Tia
KCHC	March 16, 2022	Linda
RCAM	March 23, 2022	Tia
BAHS	March 30, 2022	Linda
Next Step	April 6, 2022	Tia
PCHC	April 13, 2022	Linda
Shaw House	April 20, 2022	Tia
COP-OSS	April 27, 2022	Linda
Home Inc.	May 4, 2022	Tia
Family Violence Project	May 11, 2022	Linda
Mid-Maine Homeless Shelter	May 18, 2022	Tia
Safe Voices	May 25, 2022	Linda
Homeless Services of Aroostook	June 1, 2022	Tia
Rumford Group Homes	June 8, 2022	Linda
COP-FS	June 15, 2022	Tia
New Beginnings	June 22, 2022	Linda
Partners for Peace	June 29, 2022	Tia
YCSPi	July 6, 2022	Linda
Tedford	July 13, 2022	Tia
Through These Doors	July 20, 2022	Linda
BOLM	August 3, 2022	Tia
Milestone	August 10, 2022	Linda
Hope and Justice Project	August 17, 2022	Tia
Western Maine Community Action	August 24, 2022	Linda
Caring Unlimited	August 31, 2022	Tia
New Hope	September 7, 2022	Linda

Northern Lighthouse	September 14, 2022	Tia
---------------------	-----------------------	-----

Inspection Checklist

Housing Choice Voucher Program

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0169
(Exp. 07/31/2022)

Public reporting burden for this collection of information is estimated to average 0.50 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collection displays a valid OMB control number.

Assurances of confidentiality are not provided under this collection.

This collection of information is authorized under Section 8 of the U.S. Housing Act of 1937 (42 U.S.C. 1437f). The information is used to determine if a unit meets the housing quality standards of the section 8 rental assistance program.

Privacy Act Statement. The Department of Housing and Urban Development (HUD) is authorized to collect the information required on this form by Section 8 of the U.S. Housing Act of 1937 (42 U.S.C. 1437f). Collection of the name and address of both family and the owner is mandatory. The information is used to determine if a unit meets the housing quality standards of the Section 8 rental assistance program. HUD may disclose this information to Federal, State and local agencies when relevant to civil, criminal, or regulatory investigations and prosecutions. It will not be otherwise disclosed or released outside of HUD, except as permitted or required by law. Failure to provide any of the information may result in delay or rejection of family participation.

Name of Family		Tenant ID Number	Date of Request (mm/dd/yyyy)
Inspector		Neighborhood/Census Tract	Date of Inspection (mm/dd/yyyy)
Type of Inspection Initial ☐ Special ☐ Reinspection ☐	Date of Last Inspection (mm/dd/yyyy)		PHA

A. General Information		
Inspected Unit		Year Constructed (yyyy)
Full Address (including Street, City, County, State, Zip)		Housing Type (check as appropriate) ☐ Single Family Detached ☐ Duplex or Two Family ☐ Row House or Town House ☐ Low Rise: 3, 4 Stories, Including Garden Apartment ☐ High Rise; 5 or More Stories ☐ Manufactured Home ☐ Congregate ☐ Cooperative ☐ Independent Group Residence ☐ Single Room Occupancy ☐ Shared Housing ☐ Other
Number of Children in Family Under 6		
Owner		
Name of Owner or Agent Authorized to Lease Unit Inspected	Phone Number	
Address of Owner or Agent		

B. Summary Decision On Unit (To be completed after form has been filled out)			
☐ Pass	Number of Bedrooms for Purposes of the FMR or Payment Standard	Number of Sleeping Rooms	
☐ Fail			
☐ Inconclusive			

Inspection Checklist					
Item No.	1. Living Room	Yes Pass	No Fail	In-Conc.	Final Approval Date (mm/dd/yyyy)
1.1	Living Room Present				
1.2	Electricity				
1.3	Electrical Hazards				
1.4	Security				
1.5	Window Condition				
1.6	Ceiling Condition				
1.7	Wall Condition				
1.8	Floor Condition				

* Room Codes: 1 = Bedroom or Any Other Room Used for Sleeping (regardless of type of room); 2 = Dining Room or Dining Area;
3 = Second Living Room, Family Room, Den, Playroom, TV Room; 4 = Entrance Halls, Corridors, Halls, Staircases; 5 = Additional Bathroom; 6 = Other

Item No.	1. Living Room (Continued)	Yes Pas	No Fail	In-Conc.	Comment	Final Approval Date (mm/dd/yyyy)
1.9	Lead-Based Paint Are all painted surfaces free of deteriorated paint? If not, do deteriorated surfaces exceed two square feet per room and/or is more than 10% of a component?				Not Applicable	
2. Kitchen						
2.1	Kitchen Area Present					
2.2	Electricity					
2.3	Electrical Hazards					
2.4	Security					
2.5	Window Condition					
2.6	Ceiling Condition					
2.7	Wall Condition					
2.8	Floor Condition					
2.9	Lead-Based Paint Are all painted surfaces free of deteriorated paint? If not, do deteriorated surfaces exceed two square feet per room and/or is more than 10% of a component?				Not Applicable	
2.10	Stove or Range with Oven					
2.11	Refrigerator					
2.12	Sink					
2.13	Space for Storage, Preparation, and Serving of Food					
3. Bathroom						
3.1	Bathroom Present					
3.2	Electricity					
3.3	Electrical Hazards					
3.4	Security					
3.5	Window Condition					
3.6	Ceiling Condition					
3.7	Wall Condition					
3.8	Floor Condition					
3.9	Lead-Based Paint Are all painted surfaces free of deteriorated paint? If not, do deteriorated surfaces exceed two square feet per room and/or is more than 10% of a component?				Not Applicable	
3.10	Flush Toilet in Enclosed Room in Unit					
3.11	Fixed Wash Basin or Lavatory in Unit					
3.12	Tub or Shower in Unit					
3.13	Ventilation					

Item No.	4. Other Rooms Used For Living and Halls	Yes Pass	No Fail	In- Conc.	Comment	Final Approval Date (mm/dd/yyyy)
4.1	Room Code* and Room Location ☐	(Circle One) Right/Center/Left		(Circle One) Front/Center/Rear	____ Floor Level	
4.2	Electricity/Illumination					
4.3	Electrical Hazards					
4.4	Security					
4.5	Window Condition					
4.6	Ceiling Condition					
4.7	Wall Condition					
4.8	Floor Condition					
4.9	Lead-Based Paint				☐ Not Applicable	
	Are all painted surfaces free of deteriorated paint?					
	If not, do deteriorated surfaces exceed two square feet per room and/or is more than 10% of a component?					
4.10	Smoke Detectors					
4.1	Room Code* and Room Location ☐	(Circle One) Right/Center/Left		(Circle One) Front/Center/Rear	____ Floor Level	
4.2	Electricity/Illumination					
4.3	Electrical Hazards					
4.4	Security					
4.5	Window Condition					
4.6	Ceiling Condition					
4.7	Wall Condition					
4.8	Floor Condition					
4.9	Lead-Based Paint				☐ Not Applicable	
	Are all painted surfaces free of deteriorated paint?					
	If not, do deteriorated surfaces exceed two square feet per room and/or is more than 10% of a component?					
4.10	Smoke Detectors					
4.1	Room Code* and Room Location ☐	(Circle One) Right/Center/Left		(Circle One) Front/Center/Rear	____ Floor Level	
4.2	Electricity/Illumination					
4.3	Electrical Hazards					
4.4	Security					
4.5	Window Condition					
4.6	Ceiling Condition					
4.7	Wall Condition					
4.8	Floor Condition					
4.9	Lead-Based Paint				☐ Not Applicable	
	Are all painted surfaces free of deteriorated paint?					
	If not, do deteriorated surfaces exceed two square feet per room and/or is more than 10% of a component?					

Item No.	4. Other Rooms Used For Living and Halls	Yes Pass	No Fail	In-Conc.	Comment	Final Approval Date (mm/dd/yyyy)
4.1	Room Code * and Room Location	(Circle One) Right/Center/Left			(Circle One) Front/Center/Rear _____ Floor Level	
4.2	Electricity/Illumination	☐	☐	☐		
4.3	Electrical Hazards	☐	☐	☐		
4.4	Security	☐	☐	☐		
4.5	Window Condition	☐	☐	☐		
4.6	Ceiling Condition	☐	☐	☐		
4.7	Wall Condition	☐	☐	☐		
4.8	Floor Condition	☐	☐	☐		
4.9	Lead-Based Paint				Not Applicable	
	Are all painted surfaces free of deteriorated paint?	☐	☐	☐		
	If not, do deteriorated surfaces exceed two square feet per room and/or is more than 10% of a component?	☐	☐	☐		
4.10	Smoke Detectors	☐	☐	☐		
4.1	Room Code* and Room Location	(Circle One) Right/Center/Left			(Circle One) Front/Center/Rear _____ Floor Level	
4.2	Electricity/Illumination	☐	☐	☐		
4.3	Electrical Hazards	☐	☐	☐		
4.4	Security	☐	☐	☐		
4.5	Window Condition	☐	☐	☐		
4.6	Ceiling Condition	☐	☐	☐		
4.7	Wall Condition	☐	☐	☐		
4.8	Floor Condition	☐	☐	☐		
4.9	Lead-Based Paint				Not Applicable	
	Are all painted surfaces free of deteriorated paint?	☐	☐	☐		
	If not, do deteriorated surfaces exceed two square feet per room and/or is more than 10% of a component?	☐	☐	☐		
4.10	Smoke Detectors	☐	☐	☐		
5. All Secondary Rooms (Rooms not used for living)						
5.1	None Go to Part 6	☐	☐	☐		
5.2	Security	☐	☐	☐		
5.3	Electrical Hazards	☐	☐	☐		
5.4	Other Potentially Hazardous Features in these Rooms	☐	☐	☐		

Item No.	6. Building Exterior	Yes Pass	No Fail	In - Conc.	Comment	Final Approval Date (mm/dd/yyyy)
6.1	Condition of Foundation					
6.2	Condition of Stairs, Rails, and Porches					
6.3	Condition of Roof/Gutters					
6.4	Condition of Exterior Surfaces					
6.5	Condition of Chimney					
6.6	Lead Paint: Exterior Surfaces Are all painted surfaces free of deteriorated paint? If not, do deteriorated surfaces exceed 20 square feet of total exterior surface area?				Not Applicable	
6.7	Manufactured Home: Tie Downs					
7. Heating and Plumbing						
7.1	Adequacy of Heating Equipment					
7.2	Safety of Heating Equipment					
7.3	Ventilation/Cooling					
7.4	Water Heater					
7.5	Approvable Water Supply					
7.6	Plumbing					
7.7	Sewer Connection					
8. General Health and Safety						
8.1	Access to Unit					
8.2	Fire Exits					
8.3	Evidence of Infestation					
8.4	Garbage and Debris					
8.5	Refuse Disposal					
8.6	Interior Stairs and Common Halls					
8.7	Other Interior Hazards					
8.8	Elevators					
8.9	Interior Air Quality					
8.10	Site and Neighborhood Conditions					
8.11	Lead-Based Paint: Owner's Certification				Not Applicable	

If the owner is required to correct any lead-based paint hazards at the property including deteriorated paint or other hazards identified by a visual assessor, a certified lead-based paint risk assessor, or certified lead-based paint inspector, the PHA must obtain certification that the work has been done in accordance with all applicable requirements of 24 CFR Part 35. The Lead -Based Paint Owner Certification must be received by the PHA before the execution of the HAP contract or within the time period stated by the PHA in the owner HQS violation notice. Receipt of the completed and signed Lead-Based Paint Owner Certification signifies that all HQS lead-based paint requirements have been met and no re-inspection by the HQS inspector is required.

C. Special Amenities (Optional)

This Section is for optional use of the HA. It is designed to collect additional information about other positive features of the unit that may be present. Although the features listed below are not included in the Housing Quality Standards, the tenant and HA may wish to take them into consideration in decisions about renting the unit and the reasonableness of the rent. Check/list any positive features found in relation to the unit.

D. Questions to ask the Tenant (Optional)**1. Living Room**

- ☐ High quality floors or wall coverings
- ☐ Working fireplace or stove Balcony, patio, deck, porch Special windows or doors
- ☐ Exceptional size relative to needs of family
- ☐ Other: (Specify)

2. Kitchen

- ☐ Dishwasher
- ☐ Separate freezer
- ☐ Garbage disposal
- ☐ Eating counter/breakfast nook
- ☐ Pantry or abundant shelving or cabinets
- ☐ Double oven/self cleaning oven, microwave
- ☐ Double sink
- ☐ High quality cabinets
- ☐ Abundant counter-top space
- ☐ Modern appliance(s)
- ☐ Exceptional size relative to needs of family
- ☐ Other: (Specify)

3. Other Rooms Used for Living

- ☐ High quality floors or wall coverings
- ☐ Working fireplace or stove Balcony, patio, deck, porch Special windows or doors
- ☐ Exceptional size relative to needs of family
- ☐ Other: (Specify)

4. Bath

- ☐ Special feature shower head
- ☐ Built-in heat lamp
- ☐ Large mirrors
- ☐ Glass door on shower/tub
- ☐ Separate dressing room
- ☐ Double sink or special lavatory
- ☐ Exceptional size relative to needs of family
- ☐ Other: (Specify)

5. Overall Characteristics

- ☐ Storm windows and doors
- ☐ Other forms of weatherization (e.g., insulation, weather stripping) Screen doors or windows
- ☐ Good upkeep of grounds (i.e., site cleanliness, landscaping, condition of lawn)
- ☐ Garage or parking facilities
- ☐ Driveway
- ☐ Large yard
- ☐ Good maintenance of building exterior
- ☐ Other: (Specify)

6. Disabled Accessibility

Unit is accessible to a particular disability. ☐ Yes ☐ No
Disability

1. Does the owner make repairs when asked? Yes ☐ No ☐
2. How many people live there?
3. How much money do you pay to the owner/agent for rent? \$ _____
4. Do you pay for anything else? (specify) _____
5. Who owns the range and refrigerator? (insert O = Owner or T = Tenant) Range _____ Refrigerator _____ Microwave ☐
6. Is there anything else you want to tell us? (specify) Yes ☐ No ☐

E. Inspection Summary/Comments (Optional)

Provide a summary description of each item which resulted in a rating of "Fail" or "Pass with Comments."

Tenant ID Number	Inspector	Date of Inspection (mm/dd/yyyy) Address of Inspected Unit
------------------	-----------	---

Type of Inspection	Initial	Special	Reinspection
--------------------	---------	---------	--------------

Item Number	Reason for "Fail" or "Pass with Comments"	Rating
-------------	---	--------

Continued on additional page Yes ☐ No ☐

Vote to support shelter licensing 1 view



Heidi Souerwine <heidi.souerwine@gmail.com>

Nov 15, 2021, 12:41:56 PM

to publiccomment@portlandmaine.gov, Kate Snyder, Belinda Ray, Pious Ali, Nick Mavodones, Tae Chong, afournier@portlandmaine.gov, mdion@portlandmaine.gov, azarro@portlandmaine.gov

Dear Councilors and Mayor Snyder,

I am writing in support of the shelter licensing recommendations and asking you to do likewise.

In reviewing the proposed licensing, it's clear to me that the City should be able to easily and confidently support this. Existing ordinances have already proven to be inadequate to create a productive, safe, and positive environment for shelter clients and those trying to access services while experiencing homelessness.

I appreciate the hard work that the City staff has done to adjust the licensing to accommodate feedback from the community and social service providers. I participated in the HHS committee meetings before it was unanimously voted out of committee, and watched how well all the needed and desired components were balanced.

This licensing is an important part of repairing public trust and helping our citizenry whole-heartedly support care and programming for our unhoused neighbors. If we want more people and neighborhoods to support shelters, we need this licensing.

Thank you for your time,
Heidi Souerwine
Mechanic St.

Groups

New conversation

My groups

Recent groups

All groups

Favorite groups

Starred conversations

Public Comment

Conversations

68

Members

About

My membership settings

Conversations

Search conversations withi...

Portland
Maine

Public Comment Order 88-21/22 1 view

Oliver Bradeen

<obradeen@milestone-recovery.org>
to publiccomment@portlandmaine.gov, ksnyder@portlandmaine.gov, bsr@portlandmaine.gov, Tchong@portlandmaine.gov, Azarro@i

Attached you will find my written public comment for Order 88-21/22 related to the shelter licensing. I had more to say ir
I thank you for your time and your efforts on this matter.

Respectfully,
Oliver Bradeen, LCPC
Executive Director
Milestone Recovery
65 India Street
Portland, ME 04101
www.milestone-recovery.org
(207) 775-4790 ext. 114





EXECUTIVE DIRECTOR
Oliver Bradeen, LCPC

BOARD OF DIRECTORS

Mike Miles
President

Ryan Ciriello
Vice President

Tony DiSotto
Treasurer

John Branson
Secretary

Rosie DiBella

Marc Foster

John Kilbride

Sadie Knott

Bob MacKenzie

Barbara Merrill

Tom Ptacek

Tom Ranello

Bridget Rauscher

Melissa Skahan

**EMERGENCY SHELTER
DETOXIFICATION PROGRAM
HOME TEAM**
65 India Street
Portland, ME 04101
Tel: 207.775.4790 Fax: 207.775.5231

EXTENDED CARE PROGRAM
28 Portland Avenue
Old Orchard Beach, ME 04064
Tel: 207.934.5231 Fax: 207.934.5139

11/15/2021

To: Mayor Snyder and the Portland City Council

Re: Order 88-21/22: Emergency Shelter Licensing

My name is Oliver Bradeen, I am the executive director of Milestone Recovery located at 65 India Street, Portland. Milestone operates a 41 bed emergency shelter for men with substance use disorder. I am writing today to share Milestone Recovery's opposition to the proposed small shelter licensing. During Milestone Recovery's August Board meeting the Board voted, with one abstention, to take a formal stance of opposition of the City's proposed shelter licensing. This vote was in response to the understanding that the proposed shelter licensing would be in direct conflict with the mission and the work of Milestone Recovery.

I have attended every HHS committee meeting where shelter licensing was on the agenda since starting my position at Milestone Recovery in October 2020. During that time, there have been exhaustive discussions about shelter licensing. However, in all the discussion I was never able to get an answer to one key question: what is this ordinance trying to accomplish? Shelter licensing does not help to improve the functionality of shelter for the clients that receive services, nor does it solve any larger public safety or community issues. It simply limits the amount of shelter beds allowed within a radius, effectively moving any new shelters off the peninsula. While I understand that East Bayside has been an unmanageable situation for years, it is not solely result of the shelter operators' decisions but demonstrates the strain on our social service system within Portland and the State of Maine. We need a sweeping comprehensive overhaul of our housing and treatment systems. Shelter licensing does not move us in the correct direction.

Shelters are expensive to operate and are underfunded. Milestone's shelter has been consistently understaffed over the past several years and COVID-19 has created unprecedented staffing shortages. We are continuing to operate to the best of our capacity but adding responsibilities to shelter operations beyond the current requirements from Maine Housing is an extra burden that comes with no increased funding. We are not a business that can simply increase revenues by producing more products to offset the costs of staffing and operations. Many of the reporting measures are already covered in Maine Housing reports, but some are not, and it will require reporting to both Maine Housing, City and for Milestone to the Office of Behavioral Health as we also have contract funds and oversight by State regulators. The shelter providers have been painted as non-profits seeking to avoid oversight and accountability. The reality for Milestone is that we are already accountable to Maine

Housing and to the Office of Behavioral Health to operate our shelter. Both entities provide oversight because they are both sources of funding and thus want to ensure their money is being spent on quality program that is meeting the requirements and to protect clients we serve through oversight.

Throughout this process the HHS committee has attempted to engage the shelter providers and I appreciate their efforts. I believe in collaborating with our partners in the city, even when we disagree on the path forward. Through the process of trying to find middle ground with the HHS committee and City staff, Milestone Recovery continually stated that we disagree with the principles of the shelter licensing ordinance. We did however contribute our opinions on how to engage with the restrictions put in place. I am appreciative that the HHS committee did listen to the request to raise the bed limit to 300 beds, which by my math leads to creating the capacity for 8 beds to be created within the existing shelter providers should they need it. I was disappointed that the buffer remained 1,000ft. It was lowered from its higher number, but the HHS staff report recommended a buffer of 500 feet stating that 500 feet was the current most restrictive buffer zone in the city ordinances and that was for marijuana retailers. Creating the largest buffer zones within the city ordinance for shelter operators continue to perpetuate negative stereotypes and discrimination against shelter providers and the clients they serve.

What I've heard throughout the shelter focused processes over the last year is a goal for the rest of Maine support their unhoused neighbors instead of sending them to Portland. The small shelter licensing sends the opposite message. It says that shelters are unmanageable and not good neighbors unless you restrict them via licensing. The takeaway from the limitations on bed density and proximity perpetuates the discriminatory thinking that if you put people who are unhoused together you will see increased crime, danger and "ruin the neighborhood." Milestone Recovery has been operating the shelter at 65 India Street in Portland since 1998. We have made it part of our work to be good neighbors and engage with the community.

Milestone Recovery is about practical solutions that reduce homelessness and support people with substance use disorders. For this reason, Milestone Recovery spoke in favor of the homeless service center at the November 1st City Council meeting. It is part of why Milestone Recovery endorsed option C for the Nov 2nd ballot question regarding smaller shelters. While smaller shelters sound like a good idea, it is a logistical and operational nightmare and would have resulted in years more of planning while people continue to suffer. The shelter licensing proposed will impact existing shelters. It may not impact us initially, but it restricts our ability to expand our capacity if the bed density limit is reached as well as limits us to expanding to day space prior to expanding any capacity for overnight beds. It will also impact our staffing hours as we will have to direct staff hours to meet all the requirements within the licensing. The only other Maine municipality that licenses their emergency shelter is Brunswick. The Tedford shelter in Brunswick has faced challenges due to the licensing imposed by Brunswick. It has made their ability to move to a new shelter that will serve the community better more difficult and created unnecessary barriers. I am concerned that shelter licensing could be used to impede or delay resources that would meet the need of the community.

A report I received from 11/7/21 estimated 500 people are staying in hotels and motels in the greater Portland area as part of GA, OSS, and other emergency rental programs. Our need seems higher than ever, and our energy being put on creating more barriers to shelter is not one that moves us towards a solution or

EMERGENCY SHELTER
DETOXIFICATION PROGRAM
HOME TEAM
65 India Street
Portland, ME 04101
Tel: 207.775.4790 Fax: 207.775.5231

EXTENDED CARE PROGRAM
28 Portland Avenue
Old Orchard Beach, ME 04064
Tel: 207.934.5231 Fax: 207.934.5139

www.milestone-recovery.org

reducing the amount of people that are unhoused. Our focus should be on created more affordable and supportive housing and supporting our existing shelters. I hope we can move forward and turn our energy to engaging with the comprehensive plans within the Homeless Service Center and Maine Housings statewide plan for emergency shelter. I urge you to vote against the small shelter licensing and instead focus Portland's efforts on impactful changes to our city's response system and to continue showing support for our unhoused neighbors.

Respectfully submitted,

Oliver Bradeen

EMERGENCY SHELTER
DETOXIFICATION PROGRAM
HOME TEAM
65 India Street
Portland, ME 04101
Tel: 207.775.4790 Fax: 207.775.5231

EXTENDED CARE PROGRAM
28 Portland Avenue
Old Orchard Beach, ME 04064
Tel: 207.934.5231 Fax: 207.934.5139

www.milestone-recovery.org

Correction re discussion of Order 88-21/22 1 view



Sarah Michniewicz <sarahmichniewicz@me.com>

Nov 16, 2021, 7:28:05 PM

to publiccomment@portlandmaine.gov, cityclerk@portlandmaine.gov

Hello Councilors and Mayor Snyder,

I'm writing to correct a misstatement Interim Chief Gorham made during last night's discussion of Order 88-21/22, Emergency Shelter Licensing. Chief Gorham indicated that he believed I attend meetings between shelter providers and the police department – I do not, nor do any other BNA members (nor, I imagine, do any members of the general public).

I communicated with the Chief last night to let him know of this error and it seems his confusion stemmed from the fact that Community Policing representatives and a Preble Street liaison attend BNA's monthly meetings.

Incidentally it's typical for social service providers or other non-profits to attend relevant neighborhood association meetings. It was therefore a head-scratcher last night to hear the requirement to regularly attend neighborhood meetings discussed as if it were an overreach. Licensing simply formalizes those commitments and ensures such relationships are maintained (unless appropriately waived).

I appreciate you all for your work on shelter licensing, and last night's approval. As I'm sure most of you are aware, much if not most of the violent crime in Portland happens near Bayside's dense cluster of shelters and social service facilities, and overwhelmingly impacts unhoused and marginally housed people. Thank you for moving away from practices that have normalized stabbings, shootings, trafficking of drugs and people, theft, trauma and community impact as the inevitable consequence of sheltering vulnerable people.

Sincerely,
Sarah

Shelter Licensing 1 view



Anne Pringle <oldmayor@maine.rr.com>

Nov 15, 2021, 2:36:42 PM

to Mavodones, Nick, Ray, Belinda, Snyder, Kate, Chong, Tae, Ali, Pious, Thibodeau, Spencer, Fournier, April, Dion, Mark, Zarro, Andrew, West, Danielle, Dow, Kristen, Geyer, Aaron, publiccomment@portlandmaine.gov

Mayor Snyder and members of the Council,

I have been following the deliberations of the HHS/PS Committee on the subject of shelter licensing since the process began last fall, a year ago. The Committee has been very thorough in its consideration of this topic, asking staff to research the practice and standards of other communities that regulate shelters, both in Maine and elsewhere. As you can see in your packet, the Committee has received detailed and thoughtful public comment at numerous meetings along the way and made modifications based on that comment.

I believe that the recommended licensing requirements before you tonight are well-developed and responsive, both to the safety needs of the homeless as well as to the neighborhoods that surround shelters.

Certainly, shelters that serve a vulnerable population, the homeless, are as much in need of responsible licensing standards as other licensed businesses.

I strongly urge you to respect the hard and focused work of the HHS/PS Committee and pass the licensing requirements as proposed. Thank you.

Anne Pringle

Neal Street

12/6/21 Council Meeting (Order 88-21/22) 1 view



Jim Hall <mtjimhall@gmail.com>

Nov 22, 2021, 8:50:37 AM (11 days ago)

to trevor4tomorrow@gmail.com, victorialyn12@gmail.com, roberto4portland@gmail.com, Kate Snyder, Nick Mavodones, Pious Ali, April Fournier, Belinda Ray, Tae Chong, Mark Dion, Andrew Zarro, publiccomment@portlandmaine.gov

Dear Councilors Elect,
(CC current council)

First of all congratulations!

It seems that moments after being sworn in, you will be asked to vote on emergency shelter licensing.

I'm asking you to **PLEASE** prepare yourselves appropriately ahead of time, unlike those who requested postponement without scheduling a workshop, then voted in bad faith in order to force reconsideration. I haven't seen any of you participating in public processes around the city's response to homelessness in prior years (decades), and I sincerely hope you will do your best to make informed decisions even with this strange time-crunch being foisted upon you during what should be a ceremonial event.

A good place to start your due diligence might be the 2017 Planning Board hearing where they tabled consideration of Smaller Shelter Zoning, after determining that licensing was a missing requirement. This is likely the reason the 2021 Health and Human Services & Public Safety Committee listed small shelters AND licensing together as a single goal (its top priority). You will set your own council and committee goals for 2022 very soon... but unfortunately not before having to vote on this item.

Portland's HSS&PS committee has really been working steadily through many iterations toward fulfilling the recommendations that came from Portland's various task forces on homelessness (latest in 2012 I believe), as well as continuing to have DHHS staff research and implement modern best practices (like the diversion program at the new DHHS offices!). This body has made demonstrable progress over the years in areas like a zoning expansion, the council's first ever official policy guidance on providing homeless services, the replacement of inadequate infrastructure by a new service center, and a targeted moratorium currently in effect explicitly in order to allow time to complete licensing.

I've provided links below to the proceedings THIS year that lead to the ordinance coming before you, in hopes you will choose to inform yourselves, despite not being quite *"on the job"* yet. I won't burden you with additional links on any of the adjacent topics listed above... though I would certainly be glad to do so if that helps!

As a long-time neighbor of the Oxford Shelter who is extremely proud to have worked for years on common solutions that serve everyone — I sincerely hope you pick up the baton, and find the path forward for municipal governance of Portland's emergency system.

Thank You,
Jim Hall
Cedar St

REFERENCES:

10/24/17 Planning Board

https://www.portlandmaine.gov/AgendaCenter/ViewFile/Agenda/_10242017-2211?html=true
https://townhallstreams.com/stream.php?location_id=42&id=3254

2021 Council Common Goals

<https://www.portlandmaine.gov/Archive.aspx?ADID=1135>

7/14/2020 HHS Meeting

<https://portlandme.civicclerk.com/Web/Player.aspx?id=1418&key=-1&mod=-1&mk=-1&nov=0>
https://townhallstreams.com/stream.php?location_id=42&id=27497

9/8/2020 HHS Meeting

<https://portlandme.civicclerk.com/Web/Player.aspx?id=1408&key=-1&mod=-1&mk=-1&nov=0>
https://townhallstreams.com/stream.php?location_id=42&id=27499

11/10/2020 HHS Meeting

<https://portlandme.civicclerk.com/Web/Player.aspx?id=1410&key=-1&mod=-1&mk=-1&nov=0>
https://townhallstreams.com/stream.php?location_id=42&id=27501

1/12/2021 HHS Meeting

<https://portlandme.civicclerk.com/Web/Player.aspx?id=2190&key=-1&mod=-1&mk=-1&nov=0>
https://townhallstreams.com/stream.php?location_id=42&id=35071

2/9/2021 HHS Meeting

<https://portlandme.civicclerk.com/Web/Player.aspx?id=2191&key=-1&mod=-1&mk=-1&nov=0>
https://townhallstreams.com/stream.php?location_id=42&id=35145

3/9/2021 HHS Meeting

<https://portlandme.civicclerk.com/Web/Player.aspx?id=2192&key=-1&mod=-1&mk=-1&nov=0>
https://townhallstreams.com/stream.php?location_id=42&id=35146

4/13/2021 HHS Meeting

<https://portlandme.civicclerk.com/Web/Player.aspx?id=2193&key=-1&mod=-1&mk=-1&nov=0>
https://townhallstreams.com/stream.php?location_id=42&id=35147

5/11/2021 HHS Meeting

<https://portlandme.civicclerk.com/Web/Player.aspx?id=2194&key=-1&mod=-1&mk=-1&nov=0>
https://townhallstreams.com/stream.php?location_id=42&id=35148

6/8/2021 HHS Meeting

<https://portlandme.civicclerk.com/Web/Player.aspx?id=2195&key=-1&mod=-1&mk=-1&nov=0>
https://townhallstreams.com/stream.php?location_id=42&id=35149

7/13/2021 HHS Meeting

<https://portlandme.civicclerk.com/Web/Player.aspx?id=2196&key=-1&mod=-1&mk=-1&nov=0>
https://townhallstreams.com/stream.php?location_id=42&id=35150

9/28/2021 HHS Meeting

<https://portlandme.civicclerk.com/Web/Player.aspx?id=3133&key=-1&mod=-1&mk=-1&nov=0>
https://townhallstreams.com/stream.php?location_id=42&id=40197

11/1/21 Council

<https://portlandme.civicclerk.com/Web/Player.aspx?id=1912&key=-1&mod=-1&mk=-1&nov=0>
https://townhallstreams.com/stream.php?location_id=42&id=32758

11/15/2021 Council

<https://portlandme.civicclerk.com/Web/Player.aspx?id=1896&key=-1&mod=-1&mk=-1&nov=0>
https://townhallstreams.com/stream.php?location_id=42&id=32760

11/17/21 PPH article (reconsideration request)

<https://www.pressherald.com/2021/11/17/portland-council-to-reconsider-approval-of-shelter-licensing-program/>

12/6/21 Public Comment: Reconsideration of Order 88-21/22

0 views



Jim Hall <mtjimhall@gmail.com>

11:00 AM (1 hour ago)

to Kate Snyder, Jen Thompson, trevorrow4tomorrow@gmail.com, victorialyn12@gmail.com, roberto4portland@gmail.com, Pious Ali, April Fournier, Tae Chong, Mark Dion, Andrew Zarro, publiccomment@portlandmaine.gov, Danielle West-Chuhta, City Clerk

RE: 12/6/21 Reconsideration of Order 88-21/22

Thanks Mayor,
CC returning & incoming councilors

You've been extremely helpful in explaining the council's reconsideration procedures. However, I may have lost track of the underlying issue. My attempts to understand what constitutes a "*next*" meeting and such all were predicated on an assumption that this is actually a "reconsideration" coming from a majority supporter of Order 88. Which I don't in fact believe it is.

Three councilors *lost* a motion to postpone Order 88. Now two of them have stated in various public forums that the only reason they subsequently joined the majority was to force postponement from their minority position. That may not break any letter of the law, but it's a loophole at best.

A conscientious vote (as suggested by the vote on whether to hold a workshop) would have clearly gone 5-3 in favor, not 7-1 with two immediate "reconsiderations." The choice to wait 15 minutes after adjournment to avoid the provision for reconsideration at the same meeting also reads as inauthentic.

I'd appreciate hearing Corporation Counsel's opinion on this. Often when such things make it to press, they've included a statement of their professional interpretation. Councilors may not always agree with those findings, but it will certainly be helpful for the public to at least hear the neutral guidance of the domain experts.

So Mayor – I'm asking if you would please **request that a representative from Corporation Counsel's Office** attend the substantive meeting of the newly inaugurated council on 12/6, and **provide legal guidance on what the council's reconsideration rule is there for**. And as Corp Counsel often advises on perception as well as strict legality, I'm also requesting to hear an interpretation as to **whether the current situation risks any appearance of impropriety**. I would argue that tactical vote changes very much do.

I'm also concerned that although this maneuver forcing re-litigation of settled law came from a strong desire to schedule a *workshop* before voting on the ordinance — that a workshop is not even a direct result of invoking this procedure. So I'm asking – if the incoming council does in fact pass the motion to reconsider (and the mayor has the option), would you please use your role as facilitator to immediately make that motion yourself, to postpone to the next council meeting, and schedule a workshop this month? That way, at least we know the intended path is available.

TO COUNCILORS

I'm holding out hope that the incoming council agrees its perceived good faith would likely be undermined should its very first act be to immediately kill outright the years of collaborative work represented here. But I'm not convinced that accepting reconsideration then rubber-stamping looks so good either. As I'm sure you are aware, some social-service providers have consistently argued the city should not make policy at *all* in regards to their operations.

I hope you will do all you can to demonstrate respect for the work of your colleagues AND your predecessors, for the sake of the greater good, and strive to repair civil discourse even if you may have specific line items you want to amend later.

Please focus on building up your *own* work rather than re-litigating the work of others. Set your own goals this month – you already have the authority to assess appropriate amendments on ANY ordinance adopted in prior sessions, like this shelter licensing.

Please withdraw or reject the motion to reconsider order 88, or barring that, at least do all you can to guarantee that a workshop makes it on the calendar this month. And if this should come back from workshop amended, I hope the council will allow public comment on any changes.

Thanks,
Jim Hall
Cedar St

P.S.

(1) Because there's a chance the council may vote *directly* on whether to re-adopt Order 88 at this meeting, I'm including a very high-level summary of my advocacy FOR shelter licensing.

- Municipal oversight of local emergency response is a universally recognized best practice
- Three decades of reactive practice with no policy have revealed flaws and gaps that only a proper governance scheme can heal

Emergency shelters that close at 7am and force people back onto the streets to find food or rehousing assistance *need* to become a thing of the past!

(2) I am also strongly advocating that if Order 88 were to be postponed or rejected – that you adopt Order 111-21/22 extending the targeted moratorium, which was explicitly put in place to allow time for licensing to complete.

Vote to support shelter licensing 1 view



Heidi Souerwine <heidi.souerwine@gmail.com>

Nov 15, 2021, 12:41:56 PM

to publiccomment@portlandmaine.gov, Kate Snyder, Belinda Ray, Pious Ali, Nick Mavodones, Tae Chong, afournier@portlandmaine.gov, mdion@portlandmaine.gov, azarro@portlandmaine.gov

Dear Councilors and Mayor Snyder,

I am writing in support of the shelter licensing recommendations and asking you to do likewise.

In reviewing the proposed licensing, it's clear to me that the City should be able to easily and confidently support this. Existing ordinances have already proven to be inadequate to create a productive, safe, and positive environment for shelter clients and those trying to access services while experiencing homelessness.

I appreciate the hard work that the City staff has done to adjust the licensing to accommodate feedback from the community and social service providers. I participated in the HHS committee meetings before it was unanimously voted out of committee, and watched how well all the needed and desired components were balanced.

This licensing is an important part of repairing public trust and helping our citizenry whole-heartedly support care and programming for our unhoused neighbors. If we want more people and neighborhoods to support shelters, we need this licensing.

Thank you for your time,
Heidi Souerwine
Mechanic St.

Groups

New conversation

My groups

Recent groups

All groups

Favorite groups

Starred conversations

Public Comment

Conversations

68

Members

About

My membership settings

Conversations

Search conversations withi...

Portland
Maine

Public Comment Order 88-21/22 1 view

Oliver Bradeen

<obradeen@milestone-recovery.org>
to publiccomment@portlandmaine.gov, ksnyder@portlandmaine.gov, bsr@portlandmaine.gov, Tchong@portlandmaine.gov, Azarro@i

Attached you will find my written public comment for Order 88-21/22 related to the shelter licensing. I had more to say ir
I thank you for your time and your efforts on this matter.

Respectfully,
Oliver Bradeen, LCPC
Executive Director
Milestone Recovery
65 India Street
Portland, ME 04101
www.milestone-recovery.org
(207) 775-4790 ext. 114





EXECUTIVE DIRECTOR
Oliver Bradeen, LCPC

BOARD OF DIRECTORS

Mike Miles
President

Ryan Ciriello
Vice President

Tony DiSotto
Treasurer

John Branson
Secretary

Rosie DiBella

Marc Foster

John Kilbride

Sadie Knott

Bob MacKenzie

Barbara Merrill

Tom Ptacek

Tom Ranello

Bridget Rauscher

Melissa Skahan

**EMERGENCY SHELTER
DETOXIFICATION PROGRAM
HOME TEAM**
65 India Street
Portland, ME 04101
Tel: 207.775.4790 Fax: 207.775.5231

EXTENDED CARE PROGRAM
28 Portland Avenue
Old Orchard Beach, ME 04064
Tel: 207.934.5231 Fax: 207.934.5139

11/15/2021

To: Mayor Snyder and the Portland City Council

Re: Order 88-21/22: Emergency Shelter Licensing

My name is Oliver Bradeen, I am the executive director of Milestone Recovery located at 65 India Street, Portland. Milestone operates a 41 bed emergency shelter for men with substance use disorder. I am writing today to share Milestone Recovery's opposition to the proposed small shelter licensing. During Milestone Recovery's August Board meeting the Board voted, with one abstention, to take a formal stance of opposition of the City's proposed shelter licensing. This vote was in response to the understanding that the proposed shelter licensing would be in direct conflict with the mission and the work of Milestone Recovery.

I have attended every HHS committee meeting where shelter licensing was on the agenda since starting my position at Milestone Recovery in October 2020. During that time, there have been exhaustive discussions about shelter licensing. However, in all the discussion I was never able to get an answer to one key question: what is this ordinance trying to accomplish? Shelter licensing does not help to improve the functionality of shelter for the clients that receive services, nor does it solve any larger public safety or community issues. It simply limits the amount of shelter beds allowed within a radius, effectively moving any new shelters off the peninsula. While I understand that East Bayside has been an unmanageable situation for years, it is not solely result of the shelter operators' decisions but demonstrates the strain on our social service system within Portland and the State of Maine. We need a sweeping comprehensive overhaul of our housing and treatment systems. Shelter licensing does not move us in the correct direction.

Shelters are expensive to operate and are underfunded. Milestone's shelter has been consistently understaffed over the past several years and COVID-19 has created unprecedented staffing shortages. We are continuing to operate to the best of our capacity but adding responsibilities to shelter operations beyond the current requirements from Maine Housing is an extra burden that comes with no increased funding. We are not a business that can simply increase revenues by producing more products to offset the costs of staffing and operations. Many of the reporting measures are already covered in Maine Housing reports, but some are not, and it will require reporting to both Maine Housing, City and for Milestone to the Office of Behavioral Health as we also have contract funds and oversight by State regulators. The shelter providers have been painted as non-profits seeking to avoid oversight and accountability. The reality for Milestone is that we are already accountable to Maine

Housing and to the Office of Behavioral Health to operate our shelter. Both entities provide oversight because they are both sources of funding and thus want to ensure their money is being spent on quality program that is meeting the requirements and to protect clients we serve through oversight.

Throughout this process the HHS committee has attempted to engage the shelter providers and I appreciate their efforts. I believe in collaborating with our partners in the city, even when we disagree on the path forward. Through the process of trying to find middle ground with the HHS committee and City staff, Milestone Recovery continually stated that we disagree with the principles of the shelter licensing ordinance. We did however contribute our opinions on how to engage with the restrictions put in place. I am appreciative that the HHS committee did listen to the request to raise the bed limit to 300 beds, which by my math leads to creating the capacity for 8 beds to be created within the existing shelter providers should they need it. I was disappointed that the buffer remained 1,000ft. It was lowered from its higher number, but the HHS staff report recommended a buffer of 500 feet stating that 500 feet was the current most restrictive buffer zone in the city ordinances and that was for marijuana retailers. Creating the largest buffer zones within the city ordinance for shelter operators continue to perpetuate negative stereotypes and discrimination against shelter providers and the clients they serve.

What I've heard throughout the shelter focused processes over the last year is a goal for the rest of Maine support their unhoused neighbors instead of sending them to Portland. The small shelter licensing sends the opposite message. It says that shelters are unmanageable and not good neighbors unless you restrict them via licensing. The takeaway from the limitations on bed density and proximity perpetuates the discriminatory thinking that if you put people who are unhoused together you will see increased crime, danger and "ruin the neighborhood." Milestone Recovery has been operating the shelter at 65 India Street in Portland since 1998. We have made it part of our work to be good neighbors and engage with the community.

Milestone Recovery is about practical solutions that reduce homelessness and support people with substance use disorders. For this reason, Milestone Recovery spoke in favor of the homeless service center at the November 1st City Council meeting. It is part of why Milestone Recovery endorsed option C for the Nov 2nd ballot question regarding smaller shelters. While smaller shelters sound like a good idea, it is a logistical and operational nightmare and would have resulted in years more of planning while people continue to suffer. The shelter licensing proposed will impact existing shelters. It may not impact us initially, but it restricts our ability to expand our capacity if the bed density limit is reached as well as limits us to expanding to day space prior to expanding any capacity for overnight beds. It will also impact our staffing hours as we will have to direct staff hours to meet all the requirements within the licensing. The only other Maine municipality that licenses their emergency shelter is Brunswick. The Tedford shelter in Brunswick has faced challenges due to the licensing imposed by Brunswick. It has made their ability to move to a new shelter that will serve the community better more difficult and created unnecessary barriers. I am concerned that shelter licensing could be used to impede or delay resources that would meet the need of the community.

A report I received from 11/7/21 estimated 500 people are staying in hotels and motels in the greater Portland area as part of GA, OSS, and other emergency rental programs. Our need seems higher than ever, and our energy being put on creating more barriers to shelter is not one that moves us towards a solution or

EMERGENCY SHELTER
DETOXIFICATION PROGRAM
HOME TEAM
65 India Street
Portland, ME 04101
Tel: 207.775.4790 Fax: 207.775.5231

EXTENDED CARE PROGRAM
28 Portland Avenue
Old Orchard Beach, ME 04064
Tel: 207.934.5231 Fax: 207.934.5139

www.milestone-recovery.org

reducing the amount of people that are unhoused. Our focus should be on created more affordable and supportive housing and supporting our existing shelters. I hope we can move forward and turn our energy to engaging with the comprehensive plans within the Homeless Service Center and Maine Housings statewide plan for emergency shelter. I urge you to vote against the small shelter licensing and instead focus Portland's efforts on impactful changes to our city's response system and to continue showing support for our unhoused neighbors.

Respectfully submitted,

Oliver Bradeen

**EMERGENCY SHELTER
DETOXIFICATION PROGRAM
HOME TEAM**
65 India Street
Portland, ME 04101
Tel: 207.775.4790 Fax: 207.775.5231

EXTENDED CARE PROGRAM
28 Portland Avenue
Old Orchard Beach, ME 04064
Tel: 207.934.5231 Fax: 207.934.5139

www.milestone-recovery.org

Correction re discussion of Order 88-21/22 1 view



Sarah Michniewicz <sarahmichniewicz@me.com>

Nov 16, 2021, 7:28:05 PM

to publiccomment@portlandmaine.gov, cityclerk@portlandmaine.gov

Hello Councilors and Mayor Snyder,

I'm writing to correct a misstatement Interim Chief Gorham made during last night's discussion of Order 88-21/22, Emergency Shelter Licensing. Chief Gorham indicated that he believed I attend meetings between shelter providers and the police department – I do not, nor do any other BNA members (nor, I imagine, do any members of the general public).

I communicated with the Chief last night to let him know of this error and it seems his confusion stemmed from the fact that Community Policing representatives and a Preble Street liaison attend BNA's monthly meetings.

Incidentally it's typical for social service providers or other non-profits to attend relevant neighborhood association meetings. It was therefore a head-scratcher last night to hear the requirement to regularly attend neighborhood meetings discussed as if it were an overreach. Licensing simply formalizes those commitments and ensures such relationships are maintained (unless appropriately waived).

I appreciate you all for your work on shelter licensing, and last night's approval. As I'm sure most of you are aware, much if not most of the violent crime in Portland happens near Bayside's dense cluster of shelters and social service facilities, and overwhelmingly impacts unhoused and marginally housed people. Thank you for moving away from practices that have normalized stabbings, shootings, trafficking of drugs and people, theft, trauma and community impact as the inevitable consequence of sheltering vulnerable people.

Sincerely,
Sarah

Shelter Licensing 1 view



Anne Pringle <oldmayor@maine.rr.com>

Nov 15, 2021, 2:36:42 PM

to Mavodones, Nick, Ray, Belinda, Snyder, Kate, Chong, Tae, Ali, Pious, Thibodeau, Spencer, Fournier, April, Dion, Mark, Zarro, Andrew, West, Danielle, Dow, Kristen, Geyer, Aaron, publiccomment@portlandmaine.gov

Mayor Snyder and members of the Council,

I have been following the deliberations of the HHS/PS Committee on the subject of shelter licensing since the process began last fall, a year ago. The Committee has been very thorough in its consideration of this topic, asking staff to research the practice and standards of other communities that regulate shelters, both in Maine and elsewhere. As you can see in your packet, the Committee has received detailed and thoughtful public comment at numerous meetings along the way and made modifications based on that comment.

I believe that the recommended licensing requirements before you tonight are well-developed and responsive, both to the safety needs of the homeless as well as to the neighborhoods that surround shelters.

Certainly, shelters that serve a vulnerable population, the homeless, are as much in need of responsible licensing standards as other licensed businesses.

I strongly urge you to respect the hard and focused work of the HHS/PS Committee and pass the licensing requirements as proposed. Thank you.

Anne Pringle

Neal Street

12/6/21 Council Meeting (Order 88-21/22) 1 view



Jim Hall <mtjimhall@gmail.com>

Nov 22, 2021, 8:50:37 AM (11 days ago)

to trevor4tomorrow@gmail.com, victorialyn12@gmail.com, roberto4portland@gmail.com, Kate Snyder, Nick Mavodones, Pious Ali, April Fournier, Belinda Ray, Tae Chong, Mark Dion, Andrew Zarro, publiccomment@portlandmaine.gov

Dear Councilors Elect,
(CC current council)

First of all congratulations!

It seems that moments after being sworn in, you will be asked to vote on emergency shelter licensing.

I'm asking you to **PLEASE** prepare yourselves appropriately ahead of time, unlike those who requested postponement without scheduling a workshop, then voted in bad faith in order to force reconsideration. I haven't seen any of you participating in public processes around the city's response to homelessness in prior years (decades), and I sincerely hope you will do your best to make informed decisions even with this strange time-crunch being foisted upon you during what should be a ceremonial event.

A good place to start your due diligence might be the 2017 Planning Board hearing where they tabled consideration of Smaller Shelter Zoning, after determining that licensing was a missing requirement. This is likely the reason the 2021 Health and Human Services & Public Safety Committee listed small shelters AND licensing together as a single goal (its top priority). You will set your own council and committee goals for 2022 very soon... but unfortunately not before having to vote on this item.

Portland's HSS&PS committee has really been working steadily through many iterations toward fulfilling the recommendations that came from Portland's various task forces on homelessness (latest in 2012 I believe), as well as continuing to have DHHS staff research and implement modern best practices (like the diversion program at the new DHHS offices!). This body has made demonstrable progress over the years in areas like a zoning expansion, the council's first ever official policy guidance on providing homeless services, the replacement of inadequate infrastructure by a new service center, and a targeted moratorium currently in effect explicitly in order to allow time to complete licensing.

I've provided links below to the proceedings THIS year that lead to the ordinance coming before you, in hopes you will choose to inform yourselves, despite not being quite *"on the job"* yet. I won't burden you with additional links on any of the adjacent topics listed above... though I would certainly be glad to do so if that helps!

As a long-time neighbor of the Oxford Shelter who is extremely proud to have worked for years on common solutions that serve everyone — I sincerely hope you pick up the baton, and find the path forward for municipal governance of Portland's emergency system.

Thank You,
Jim Hall
Cedar St

REFERENCES:

10/24/17 Planning Board

https://www.portlandmaine.gov/AgendaCenter/ViewFile/Agenda/_10242017-2211?html=true
https://townhallstreams.com/stream.php?location_id=42&id=3254

2021 Council Common Goals

<https://www.portlandmaine.gov/Archive.aspx?ADID=1135>

7/14/2020 HHS Meeting

<https://portlandme.civicclerk.com/Web/Player.aspx?id=1418&key=-1&mod=-1&mk=-1&nov=0>
https://townhallstreams.com/stream.php?location_id=42&id=27497

9/8/2020 HHS Meeting

<https://portlandme.civicclerk.com/Web/Player.aspx?id=1408&key=-1&mod=-1&mk=-1&nov=0>
https://townhallstreams.com/stream.php?location_id=42&id=27499

11/10/2020 HHS Meeting

<https://portlandme.civicclerk.com/Web/Player.aspx?id=1410&key=-1&mod=-1&mk=-1&nov=0>
https://townhallstreams.com/stream.php?location_id=42&id=27501

1/12/2021 HHS Meeting

<https://portlandme.civicclerk.com/Web/Player.aspx?id=2190&key=-1&mod=-1&mk=-1&nov=0>
https://townhallstreams.com/stream.php?location_id=42&id=35071

2/9/2021 HHS Meeting

<https://portlandme.civicclerk.com/Web/Player.aspx?id=2191&key=-1&mod=-1&mk=-1&nov=0>
https://townhallstreams.com/stream.php?location_id=42&id=35145

3/9/2021 HHS Meeting

<https://portlandme.civicclerk.com/Web/Player.aspx?id=2192&key=-1&mod=-1&mk=-1&nov=0>
https://townhallstreams.com/stream.php?location_id=42&id=35146

4/13/2021 HHS Meeting

<https://portlandme.civicclerk.com/Web/Player.aspx?id=2193&key=-1&mod=-1&mk=-1&nov=0>
https://townhallstreams.com/stream.php?location_id=42&id=35147

5/11/2021 HHS Meeting

<https://portlandme.civicclerk.com/Web/Player.aspx?id=2194&key=-1&mod=-1&mk=-1&nov=0>
https://townhallstreams.com/stream.php?location_id=42&id=35148

6/8/2021 HHS Meeting

<https://portlandme.civicclerk.com/Web/Player.aspx?id=2195&key=-1&mod=-1&mk=-1&nov=0>
https://townhallstreams.com/stream.php?location_id=42&id=35149

7/13/2021 HHS Meeting

<https://portlandme.civicclerk.com/Web/Player.aspx?id=2196&key=-1&mod=-1&mk=-1&nov=0>
https://townhallstreams.com/stream.php?location_id=42&id=35150

9/28/2021 HHS Meeting

<https://portlandme.civicclerk.com/Web/Player.aspx?id=3133&key=-1&mod=-1&mk=-1&nov=0>
https://townhallstreams.com/stream.php?location_id=42&id=40197

11/1/21 Council

<https://portlandme.civicclerk.com/Web/Player.aspx?id=1912&key=-1&mod=-1&mk=-1&nov=0>
https://townhallstreams.com/stream.php?location_id=42&id=32758

11/15/2021 Council

<https://portlandme.civicclerk.com/Web/Player.aspx?id=1896&key=-1&mod=-1&mk=-1&nov=0>
https://townhallstreams.com/stream.php?location_id=42&id=32760

11/17/21 PPH article (reconsideration request)

<https://www.pressherald.com/2021/11/17/portland-council-to-reconsider-approval-of-shelter-licensing-program/>

12/6/21 Public Comment: Reconsideration of Order 88-21/22

0 views



Jim Hall <mtjimhall@gmail.com>

11:00 AM (1 hour ago)

to Kate Snyder, Jen Thompson, trevorrow4tomorrow@gmail.com, victorialyn12@gmail.com, roberto4portland@gmail.com, Pious Ali, April Fournier, Tae Chong, Mark Dion, Andrew Zarro, publiccomment@portlandmaine.gov, Danielle West-Chuhta, City Clerk

RE: 12/6/21 Reconsideration of Order 88-21/22

Thanks Mayor,
CC returning & incoming councilors

You've been extremely helpful in explaining the council's reconsideration procedures. However, I may have lost track of the underlying issue. My attempts to understand what constitutes a "*next*" meeting and such all were predicated on an assumption that this is actually a "reconsideration" coming from a majority supporter of Order 88. Which I don't in fact believe it is.

Three councilors *lost* a motion to postpone Order 88. Now two of them have stated in various public forums that the only reason they subsequently joined the majority was to force postponement from their minority position. That may not break any letter of the law, but it's a loophole at best.

A conscientious vote (as suggested by the vote on whether to hold a workshop) would have clearly gone 5-3 in favor, not 7-1 with two immediate "reconsiderations." The choice to wait 15 minutes after adjournment to avoid the provision for reconsideration at the same meeting also reads as inauthentic.

I'd appreciate hearing Corporation Counsel's opinion on this. Often when such things make it to press, they've included a statement of their professional interpretation. Councilors may not always agree with those findings, but it will certainly be helpful for the public to at least hear the neutral guidance of the domain experts.

So Mayor – I'm asking if you would please **request that a representative from Corporation Counsel's Office** attend the substantive meeting of the newly inaugurated council on 12/6, and **provide legal guidance on what the council's reconsideration rule is there for**. And as Corp Counsel often advises on perception as well as strict legality, I'm also requesting to hear an interpretation as to **whether the current situation risks any appearance of impropriety**. I would argue that tactical vote changes very much do.

I'm also concerned that although this maneuver forcing re-litigation of settled law came from a strong desire to schedule a *workshop* before voting on the ordinance — that a workshop is not even a direct result of invoking this procedure. So I'm asking – if the incoming council does in fact pass the motion to reconsider (and the mayor has the option), would you please use your role as facilitator to immediately make that motion yourself, to postpone to the next council meeting, and schedule a workshop this month? That way, at least we know the intended path is available.

TO COUNCILORS

I'm holding out hope that the incoming council agrees its perceived good faith would likely be undermined should its very first act be to immediately kill outright the years of collaborative work represented here. But I'm not convinced that accepting reconsideration then rubber-stamping looks so good either. As I'm sure you are aware, some social-service providers have consistently argued the city should not make policy at *all* in regards to their operations.

I hope you will do all you can to demonstrate respect for the work of your colleagues AND your predecessors, for the sake of the greater good, and strive to repair civil discourse even if you may have specific line items you want to amend later.

Please focus on building up your *own* work rather than re-litigating the work of others. Set your own goals this month – you already have the authority to assess appropriate amendments on ANY ordinance adopted in prior sessions, like this shelter licensing.

Please withdraw or reject the motion to reconsider order 88, or barring that, at least do all you can to guarantee that a workshop makes it on the calendar this month. And if this should come back from workshop amended, I hope the council will allow public comment on any changes.

Thanks,
Jim Hall
Cedar St

P.S.

(1) Because there's a chance the council may vote *directly* on whether to re-adopt Order 88 at this meeting, I'm including a very high-level summary of my advocacy FOR shelter licensing.

- Municipal oversight of local emergency response is a universally recognized best practice
- Three decades of reactive practice with no policy have revealed flaws and gaps that only a proper governance scheme can heal

Emergency shelters that close at 7am and force people back onto the streets to find food or rehousing assistance *need* to become a thing of the past!

(2) I am also strongly advocating that if Order 88 were to be postponed or rejected – that you adopt Order 111-21/22 extending the targeted moratorium, which was explicitly put in place to allow time for licensing to complete.

Portland shelters & human trafficking 0 views



Avery Yale Kamila <avery.kamila@gmail.com>

5:55 AM (6 hours ago)

to publiccomment@portlandmaine.gov

Dear Honorable City Council Members,

Thank you for all the work you are doing to address the complicated issue of unhoused people seeking shelter in Portland. I understand the council will reconsider the licensing of shelters at the meeting tonight. I hope in your deliberations you will consider the drive thru human trafficking situation the current unlicensed shelters have created.

Because Preble Street Resource Center closed their day shelter when the pandemic began, which was just when our unhoused neighbors needed a day shelter the most, the human trafficking situation on Portland's streets has grown much, much worse. As you know, unhoused people are encamped outside of the former day shelter on Oxford Street between Preble and Portland streets (this is where one unhoused man recently tried to commit "sucide by cop"). Outside of the Oxford Street Shelter a similar situation develops on the Oxford Street sidewalk (and surrounding sidewalks) each day. All of these vulnerable people are then exposed to the human traffickers and other predators who come through every day. The predators don't even need to get out of their vehicles.

I know a number of people experiencing homelessness. One woman recently told me that in most cities a unit of sex costs \$100 and a unit of illegal drugs costs \$25. However, she told me, on Oxford Street it is reversed: Sex costs \$25 and drugs \$100. This means the unhoused experiencing addiction need to traffick themselves four times to obtain the substances they are addicted to. Pricing is a function of supply and demand. Because the city lacks licensing rules for shelters and has no day shelter, there are so many trafficking victims in one spot that the price for each has dropped. Without licensing, the city has allowed Oxford Street to function as an open-air human trafficking corridor.

This is unacceptable.

Not only are our unhoused neighbors being exploited on a daily basis due to the current unregulated situation, but students attending Portland High School and Baxter High School must navigate through this area daily as must the hundreds of young children staying at the family shelter.

I've discovered that very few Portland residents are aware of the human trafficking that is happening every day and night on Oxford Street. I urge you to adopt licensing rules that will protect the most vulnerable people in our city and eliminate the drive thru human trafficking corridor that the city currently facilitates with its lack of licensing. Thank you for considering my comments.

Sincerely,
Avery

Avery Yale Kamila, AOLCP
Co-founder
Portland Protectors
PO Box 4242
Portland, ME 04101
207-780-0915
www.facebook.com/portlandprotectors

Please add to packet Fwd: Question regarding reconsideration of shelter licensing

0 views



Sarah Michniewicz <sarahmichniewicz@me.c...> Dec 3, 2021, 4:49:12 PM (2 days ago)
to publiccomment@portlandmaine.gov, cityclerk@portlandmaine.gov

Please add this letter to the to packet for Monday's council meeting.

Thanks!
Sarah

Begin forwarded message:

From: Sarah Michniewicz <sarahmichniewicz@me.com>
Subject: Question regarding reconsideration of shelter licensing
Date: December 3, 2021 at 1:41:38 PM EST
To: jlt@portlandmaine.gov
Cc: dwest@portlandmaine.gov, Mayor Kate <ksnyder@portlandmaine.gov>, Belinda Ray <bsr@portlandmaine.gov>, Kristen Dow <kjd@portlandmaine.gov>, Heath Gorham <frankg@portlandmaine.gov>

Hello Interim Corporation Counsel Thompson,

Last week I had a meeting with Councilor Ali that brought up some concerns and I'd like your thoughts. We discussed his rationale for requesting reconsideration of Order 88. As you know he and Councilor Fournier have stated that they chose to vote in the affirmative specifically in order to join the majority thereby securing the opportunity to ask for reconsideration of a vote which would have otherwise passed with a clear 5 - 3 majority.

I suggested to Councilor Ali that requesting reconsideration of an inauthentic vote is an improper use of reconsideration, in contrast to Councilor Zarro's apparently genuine desire to reconsider his majority vote on the historic district. Councilor Ali's response was that "if it was not appropriate Corporation Counsel would not have allowed it." This struck me as presumptive and I'd like to hear directly from you whether this is indeed your interpretation of council rules regarding reconsideration.

Counsel's opinion on this matter is important since the appearance of impropriety is corrosive to public confidence in the council's decision-making process and may open the door for challenges to past decisions. The City has repeatedly expressed its interest in maintaining the integrity of its governance; for example former Corporation Counsel West recently opined on the potential appearance of conflict of interest should plaintiffs on the clean elections lawsuit participate in Council deliberations on the matter.

If it is your opinion that council members will be misusing reconsideration I hope you will advise as such at Monday's meeting and outline potential consequences of the new council proceeding to set such a precedent.

I also ask that on Monday you and other staff will articulate to the council the legal rationale for the Bayside shelter moratorium and strongly recommend its extension for another 180 days, *regardless of whether the passed licensing ordinance is overturned, postponed to a workshop, or otherwise delayed*. The conditions of overburden for which the moratorium was enacted have unambiguously not been mitigated (i.e. the Oxford Street Shelter will not relocate for at least another 12-18 months; a [new shelter](#) by a Bayside social service

provider is being planned and promoted; police and emergency calls for service remain disproportionately high; etc.).

No measures or policies to mitigate the acknowledged overburden have yet been enacted or implemented since the need was memorialized in the moratorium's whereas clauses, and the overburden has not resolved organically. As such, won't the City will impliedly remain responsible for addressing those conditions satisfactorily via other means should licensing fail to be enacted?

Thank you for your attention to this issue. I look forward to hearing from you.

Best,
Sarah

Timothy McNamara <tionamara1@hotmail.com>
to publiccomment@portlandmaine.gov

11:23 AM (1 hour ago)

Dear City Council Members,

I write to request that the Council vote NO on reconsidering the shelter licensing vote.

The time for shelters to operate under a City wide set of guidelines is NOW!

Guidelines for shelter operations are critical to the safety and well-being of those receiving services, those providing services and those living, working or traveling through neighborhoods where a shelter might be located.

Thank you.

Tim McNamara

Valley Street Portland

Anne Pringle <oldmayor@maine.rr.com>

Dec 5, 2021, 9:16:24 PM (15 hours ago)

to publiccomment@portlandmaine.gov

Mayor Snyder and Members of the Council,

On November 15, I submitted a public comment supporting shelter licensing, having followed the issue closely and attended numerous meetings over the year that this issue was under consideration by the then-Council.

As a former elected official, I am disturbed that the reconsideration process appears to be being used to thwart a legitimate public policy vote already taken. Any member of the prior Council could have formally requested the Mayor to schedule a workshop on the issue. But, apparently, no request for a workshop was ever made. And of course, Councilors were free to attend or view the tapes of the many HHS/PS Committee meetings over which the licensing recommendations were developed. Several Councilors, not a member of the Committee, availed themselves of this opportunity.

So why is the Council now considering punting the already well-considered and well-debated issue to a brand new Council? Frankly, the reconsideration effort disrespects a lengthy public process and sends a message that the new Council, despite expressed support for "transparency" and "accessibility", appears to be dismissing an open and extensive public process during which significant public comment was made by a broad segment of the engaged and affected communities and considered by the Committee.

This is not a good start for the new Council.

Please vote against this reconsideration motion and respect the past process...

Anne Pringle
Neal Street

Sent from my iPad

MEMORANDUM
City Council Agenda Item

FROM: Danielle West Chuhta, Interim City Manager

DATE: January 4, 2022

SUBJECT: Order 132-21/22 Amendment of Portland City Code Chapter 14 Re: Eastern Waterfront Port Zone Marina Food Service - Sponsored by the Planning Board, Brandon Mazer, Chair

SPONSOR: Brandon Mazer, Chair, Portland Planning Board. On November 23, 2021, the Planning Board voted 4-1 that the proposed zoning text amendment was consistent with the Comprehensive Plan for the City of Portland.

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

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st Reading 1/3/2022

Final Action 1/19/2022

Can action be taken at a later date: Yes If action cannot be taken at a later date, please explain why

PRESENTATION: Brandon Mazer, Planning Board Chair, 5 minutes.

I. SUMMARY

The Planning Board recommends zoning text amendments to the Land Use Code's Eastern Waterfront Port Zone's (EWPZ) Use Standards to allow limited restaurant and food service use as part of a marina, with restrictions on floor area and location within the zone.

II. AGENDA DESCRIPTION

On November 23, 2021, the Planning Board voted 4-1 that the proposed zoning text amendment was consistent with the Comprehensive Plan for the City of Portland.

Portland Foreside Development Company is requesting to amend the Waterfront Chapter (Article 10) of the Land Use Code to permit limited restaurant and food service uses where associated with a marina within the EWPZ. The proposed amendments would limit the overall floor area of such use to 1,000 square feet, and limit any outdoor components of the use to within 100 feet of the marina office building. This amendment would also remove the existing prohibition on restaurants and food service uses within 25 feet of the pier edge.

This item must be read on two separate days. It received its first reading on January 3, 2022. Five affirmative votes are required for passage after public comment.

III. BACKGROUND

The Eastern Waterfront Port Zone (EWPZ) features just two property owners; the City of Portland (properties include Maine State Pier, Ocean Gateway, Amethyst Lot, and SailMaine) and Portland Foreside Development Company, which owns and operates the Fore Points Marina, the only marina in operation within the zone. As this text amendment applies only to restaurant and food service uses associated with a marina, this amendment, in practice, will likely only ever apply to this particular property. As such, the draft text is notably specific to this site and context.

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

The intent of the proposed zoning actions is to introduce a compatible non-marine use on waterfront property that will be considered a component to marinas, a prominent water-dependent use within the City, and which will enable residents and visitors alike to access an area of Portland's waterfront that would otherwise have

been restricted, private property. These benefits are pronounced within Portland's Plan 2030, which calls for increased waterfront access, and the leveraging of non-marine development to support water-dependent uses.

V. FINANCIAL IMPACT

The proposed code amendment will result in no financial impact to the City.

VI. STAFF ANALYSIS AND BACKGROUND

The advertised text amendments are the result of two Planning Board workshops, meetings with the applicant, neighborhood input, and Planning staff analysis. In the course of this review, staff and the Planning Board have sought to understand and limit any potential impacts a restaurant use may have on the heavily trafficked Eastern Promenade Trail, which immediately abuts the marina property, as well as areas envisioned for future public access. This has resulted in revisions to the food service/restaurant use as it appears in this amendment, in order to ensure that such use may operate without interior seating, as operated currently, and that all preparatory and storage areas associated with the use be subject to proposed dimensional restrictions. Further, this discussion led to the introduction of language requiring that the use not interfere or encroach upon areas envisioned for future public access.

When initially submitted, the restaurant and food service use was proposed as being an accessory use to the marina. Accessory uses are formally defined in the land use code, and are permitted to constitute no more than 25% of a building's floor area, or, if not located within a building, 25% of a lot's unbuilt lot area. Given that marina office buildings are generally smaller in size but are located on lots of a substantial size the general accessory use limitations were considered either too limited with respect to floor area, or too generous with respect to lot area. Noting this, the text amendment was revised to directly incorporate the food service use into the marina, with more tailored dimensional restrictions.

Prior to the Planning Board Public Hearing, Planning staff developed an alternative version of the text to limit exterior components of the restaurant use to within 75 feet of the marina office building, as opposed to 100 feet, as had previously been recommended. The rationale for developing this alternative was that the Planning Board and some members of the public had requested that the restaurant use be clearly incidental to the marina and restricted so as not to interfere with the eastern promenade trail or areas envisioned to be publicly accessible. This alternative text amendment was proposed to reflect those considerations. At the public hearing, the applicant noted that this alternative version, while reflective of the proposed future buildout of their marina building, would limit the use prior to the development of the marina office building without any real perceived benefit to the public. The Planning Board, in discussing the two options presented, agreed that sufficient controls had been introduced to ensure that the restaurant use would not impact the trail or other future publicly accessible areas, and chose to recommend the version permitting components of the restaurant use within 100 feet of the marina office building.

Portland's Plan 2030 identifies vision statements, policy goals for the City, and principles of future land use, several of which support the proposed text amendment. The text amendments align with the Comprehensive Plan vision statements and goals by expanding access to the waterfront in this location with the introduction of a restaurant, which while not public space, is accessible to members of the general public. The text amendment also serves to support a traditional marine industry, as the restaurant use will in part subsidize and support one of the most prominent deep water marinas in the state of Maine.

VII. RECOMMENDATION

At a public hearing on November 23, 2021, the Planning Board voted 4-1 (Silk against, Smith Recused, Chann absent) that the proposed zoning text amendment (to permit food service as a component of a marina in the EWPZ with specified dimensional requirements) is consistent with the Comprehensive Plan for the City of Portland.

The Planning Board recommended these actions to the City Council.

VIII. LIST ATTACHMENTS

1. Ch. 14 Rezoning Waterfront Zone, food service at marinas 1.3.2022
2. Article 10 Redlined Version
3. CC Report - 1 Marina Way

Prepared by:

Danielle West Chuhta, Interim City Manager

Date: 01/04/2022

KATE SNYDER (MAYOR)
ANNA TREVORROW (1)
VICTORIA L. PELLETIER (2)
TAE Y. CHONG (3)
ANDREW ZARRO (4)

**CITY OF PORTLAND
IN THE CITY COUNCIL**

MARK DION (5)
APRIL D. FOURNIER(A/L)
PIOUS ALI (A/L)
ROBERTO RODRÍGUEZ (A/L)

**AMENDMENT TO PORTLAND CITY CODE CHAPTER 14 RE:
EASTERN WATERFRONT PORT ZONE MARINA FOOD SERVICE**

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

*That Chapter 14, Section 10.2.3(B)(10) is hereby amended to
read as follows, on the following page:*

10. Facilities for marine pollution control, oil spill cleanup, and servicing of marine sanitation devices.

Marinas located east of the eastern boundary of the parcel of land owned by the City of Portland pursuant to a deed from the State of Maine dated February 1982 and recorded in the Cumberland County Registry of Deeds at Book 4916, Page 26. Marinas may include food service where food or drink is prepared, served, kept, or stored for retail sale onsite if such food service does not exceed 1,000 square feet of total floor area and is within 100 feet of the principal marina building. Outdoor seating for marina food service shall be permitted within 100 feet of the principal marina building. Areas dedicated to food service shall be open to the general public, and shall not impede areas dedicated to pedestrian circulation.

Restaurants and food service establishments, including any storage or preparatory space, shall be permitted as accessory uses if such uses do not exceed 1,000 square feet of total interior floor area of the principal marina building and are within 100 feet of the principal marina building, provided pedestrian circulation is not unreasonably impaired and further provided that such accessory uses are open to the general public.

Marine office, including but not limited to offices of owners of marinas, wharves or their agents, and naval architects, and seafood brokers.

C. Commercial

1. Professional, business, government, and general office located in upper floors of structures existing as of September 18, 2006.

**Editor's Note - On-site parking for non-marine commercial uses are permitted as conditional uses subject to the provisions of Subsection 10.2.4.*

2. Temporary events, except festivals as otherwise governed under paragraph (3) listed below. Buildings, piers and lands within the EWPZ may be used for temporary public and private events including but not limited to exhibitions, conferences, meetings, and trade shows under the following conditions:
 - a. Temporary events occupying more than 10,000 square feet of building or outdoor space shall not exceed a combined total of 60 days between May 1st to October 31st.
 - b. No temporary event may continue for more than 14 days of continuous operation.
 - c. Any temporary event that anticipates more than 5,000 people in attendance on any single day must provide and be subject to a parking management plan. The parking management plan must be submitted for the review and approval of the public works authority at least 60 days prior to the first day of the event.

OPTION A - DRAFT AMENDMENTS FOR PLANNING BOARD CONSIDERATION – 11/23/21

10 WATERFRONT ZONES

10.1 IN GENERAL

Portland's waterfront zones were developed to support a wide range of industries unique to the city's maritime environment that rely upon access to the working waterfront. Competing demands for limited access require a more exhaustive use list, specialized performance standards, and a unique set of dimensional restrictions that are unlike those of other zones. Given this high degree of specialization, Article 10 should generally be viewed in isolation from other articles within the Land Use Code, with the exception of waterfront-specific definitions, listed within Article 3. Uses specific to Article 10 may feature some degree of overlap with other defined uses allowed elsewhere within the city. However, in such instances, the use as referenced within this article shall control.

10.2 EASTERN WATERFRONT PORT ZONE (EWPZ)

10.2.1 Purpose

- A. The Eastern Waterfront Port Zone is created to nurture deepwater-dependent activity within the context of the established waterfront. The transport of goods and passengers by water is an important component of both the local and regional economies and this transport and other forms of marine industry are dependent upon land and piers with direct access to

Portland Harbor. Given the existing pier infrastructure, proximity to deep water, and urban context, Portland's Eastern Waterfront is uniquely situated to support a wide range of water-dependent industry and commerce through a variety of marine activities.

- B. The support and expansion of Portland's marine industry requires piers, uplands, and circulation consistent with the transportation purpose and use of marine facilities. The growth of Portland's marine passenger industry also requires supporting services and activities to provide a safe, convenient, and enjoyable travel experience for users of marine passenger facilities. Non-marine uses that complement the marine passenger industry, are compatible with existing and future water-dependent uses, and provide opportunities for residents and visitors alike to enjoy the Eastern Waterfront throughout the year, are encouraged.
- C. The primary use of the deep-water resources must be for the berthing and support of large vessels. Non-marine uses that complement and support the deepwater infrastructure and do not conflict or compete for limited space with existing or anticipated deepwater-dependent uses are encouraged. Existing and future pier infrastructure and upland support areas should be designed and maintained to support a variety of marine uses and be responsive to future technologies and trends in the marine industry.
- D. Given the need to nurture and support deepwater-dependent uses and the need for non-deepwater-dependent uses to complement the marine passenger industry and to support the maintenance and repair of pier infrastructure, the Eastern Waterfront

Port Zone recognizes the following hierarchy of uses:

1. The first priority of this zone is to protect and nurture existing and potential deepwater-dependent uses (those uses requiring a minimum of 15 feet of water depth).
2. The second priority is to allow shallow water-dependent and other permitted marine uses, so long as they do not interfere with deepwater-dependent uses, either directly by displacement or indirectly by placing incompatible demands on the zone's infrastructure.
3. Other uses specified herein are allowed only if they do not interfere with and are not incompatible with higher priority uses.

10.2.2 No adverse impact on marine uses

No use shall be permitted, approved or established in this zone if it will have an impermissible adverse impact on future marine development opportunities. A proposed non-water-dependent component of a development will have an impermissible adverse impact if it will result in any one or more of the following:

- A.** The proposed use will displace an existing water-dependent use.
- B.** The proposed use will reduce existing commercial vessel berthing space.
- C.** The proposed use, structure or activities, including but not limited to access, circulation, parking, dumpsters, exterior storage or loading facilities, and other structures, will unreasonably interfere with the activities and operation of existing water-dependent uses or significantly impede access to vessel berthing

or other access to the water by water-dependent uses.

- D.** The siting of a proposed use will substantially reduce or inhibit existing public access to marine or tidal waters.

10.2.3 Permitted uses

Subject to a determination that the proposed use meets the standards of Subsection 10.2.2, the following uses are permitted in the Eastern Waterfront Port Zone:

A. Marine passenger

1. Intermodal marine passenger facilities.
2. Cruise ship home port and port-of-call berthing and support.
3. International and domestic ferries.

B. Marine commercial

1. Transient and long-term commercial berthing.
2. Marine-related warehousing.
3. Marine-related construction, manufacturing, fabrication, salvage, and repair.
4. Storage and repair of fishing equipment.
5. Ship and other marine vessel construction, building, servicing, and repair.
6. Boat and marine equipment storage.
7. Harbor and marine supplies and services, chandleries, and ship supply such as fueling and bunkering of vessels.
8. Public, non-profit, or commercial marine transportation and excursion services, including captained charter services, sport fishing and water taxis.
9. Ship and off-shore support services, including but not limited to tug boats, pilot boats, and chandleries.

10. Facilities for marine pollution control, oil spill cleanup, and servicing of marine sanitation devices.

Marinas located east of the eastern boundary of the parcel of land owned by the City of Portland pursuant to a deed from the State of Maine dated February 1982 and recorded in the Cumberland County Registry of Deeds at Book 4916, Page 26. Marinas may include food service where food or drink is prepared, served, kept, or stored for retail sale onsite if such food service does not exceed 1,000 square feet of total floor area and is within 100 feet of the principal marina building. Outdoor seating for marina food service shall be permitted within 100 feet of the principal marina building. Areas dedicated to food service shall be open to the general public, and shall not impede areas dedicated to pedestrian circulation.

Restaurants and food service establishments, including any storage or preparatory space, shall be permitted as accessory uses if such uses do not exceed 1,000 square feet of total interior floor area of the principal marina building and are within 100 feet of the principal marina building, provided pedestrian circulation is not unreasonably impaired and further provided that such accessory uses are open to the general public.

Marine office, including but not limited to offices of owners of marinas, wharves or their agents, and naval architects, and seafood brokers.

C. Commercial

1. Professional, business, government, and general office located in upper floors of structures existing as of September 18, 2006.

**Editor's Note - On-site parking for non-marine commercial uses are permitted as conditional uses subject to the provisions of Subsection 10.2.4.*

2. Temporary events, except festivals as otherwise governed under paragraph (3) listed below. Buildings, piers and lands within the EWPZ may be used for temporary public and private events including but not limited to exhibitions, conferences, meetings, and trade shows under the following conditions:
 - a. Temporary events occupying more than 10,000 square feet of building or outdoor space shall not exceed a combined total of 60 days between May 1st to October 31st.
 - b. No temporary event may continue for more than 14 days of continuous operation.
 - c. Any temporary event that anticipates more than 5,000 people in attendance on any single day must provide and be subject to a parking management plan. The parking management plan must be submitted for the review and approval of the public works authority at least 60 days prior to the first day of the event.

3. Festivals subject to City license.
4. Street vendors licensed pursuant to Chapter 19 of the City of Portland Code of Ordinances.

D. Public

1. Fire, police, and emergency services.
2. Governmental agency emergency operations/crisis centers.
3. Research, military and visiting attraction vessel berthing.
4. Landscaped pedestrian parks, plazas and other similar outdoor pedestrian spaces, including without limitation pedestrian and/or bicycle trails.

E. Other

1. A facility for non-profit organizations whose facility may include offices, classrooms, equipment, equipment rentals, storage, and bathrooms for the public.

10.2.4 Conditional uses

A. The following uses shall be permitted as conditional uses in the Eastern Waterfront Port Zone, provided that, notwithstanding Subsection 6.5.1, or any other provision of this code, the Planning Board shall be substituted for the Board of Appeals as the review authority, and provided further that in addition to the provisions of Subsection 6.5.2, such uses will not impede or preclude existing or potential water-dependent development within the zone, will allow for adequate right-of-way access to the water, are compatible with marine uses, and meet all additional standards set forth below.

B. Conditional use standards

1. *Marine compatibility.* The proposed use shall be compatible with existing and

potential marine uses in the vicinity, as required by Subsection 10.2.8(M) and (N).

2. *Parking and traffic circulation.* All applications for conditional use in the EWPZ shall submit a parking and circulation plan for review and approval by the Planning Board. The parking and circulation plan shall show the location of all existing and proposed structures, travel ways, and parking under the common ownership and/or control of the subject pier or property. The plan shall demonstrate that the parking and circulation of the conditional use does not interfere with the functional marine utility of the property and otherwise meets the standards and conditions of the EWPZ.

C. Conditional uses

1. *Marine*
 - a. Marine products, wholesaling, and retailing.
 - b. Ice-making services.
 - c. Marine freight facilities providing service for, and/or intermodal transfer of, container and breakbulk freight.
 - d. Marine educational facilities.
 - e. Seafood retailing, wholesaling, packaging, and shipping.
 - f. Seafood processing for human consumption, subject to the performance standards applicable to the I-L zone as listed in Section 6.8.
 - g. Commercial marinas serving commercial and recreation boats located west of the eastern boundary of the parcel of land owned by the City of Portland pursuant to a deed from the State of Maine dated

February 1982 and recorded in the Cumberland County Registry of Deeds at Book 4916, Page 26, provided that such facilities are located in areas that do not conflict with the navigation and handling of deepwater-dependent vessels accessing existing or potential deepwater berthing.

- h. Fish byproducts processing, provided that:
 - i. Any fish byproducts processing facility has a valid rendering facility license under Chapter 12 of the Portland City Code of Ordinances.
 - ii. Any fish byproducts facility shall employ current and appropriate odor control technology to eliminate or minimize detectable odors from such a process, and in no case shall odors exceed the odor limitation performance standards of the IM zone in Subsection 6.8.10.
 - iii. The processing other material wastes or byproducts shall not be deemed a lawful accessory use permitted herein.
- 2. *Commercial*
 - a. Structured parking available to the general public.
 - b. Professional, business, government and general offices uses in upper floors of structures constructed after September 18, 2006.
 - c. Passenger support services supporting a marine passenger use listed under Subsection 10.2.3(A). The total

ground floor area occupied by any combination of the following uses (regardless of ownership) shall not exceed 35% of the gross floor area of the principal associated marine passenger use and no more than 35,000 square feet cumulative within the EWPZ:

- i. Retail.
 - ii. Restaurants/food service other than street vendors.
 - iii. Retail service.
 - iv. Passenger information services.
- 3. *Industrial*. The following industrial uses are permitted provided that such uses shall conform to the IM zone performance standards set forth in Section 6.8 in addition to the performance standards of Subsection 10.2.8. Where redundant or contradictory performance standards exist, the more restrictive standard applies.
 - a. Non-marine-related warehousing in structures existing as of September 18, 2006.
 - b. Facilities for combined marine and general construction.
 - c. Low impact industrial uses as permitted in the IL zone in structures existing as of September 18, 2006, excluding all auto repair service facilities.
- 4. *Public*
 - a. Utility substations. Public utility substations, including but not limited to electrical transformers, sewage and stormwater pumps and telecommunication switching stations,

are permitted under the following conditions:

- i. The facility is located more than 100 feet from the water's edge.
 - ii. The facility occupies no more than 50 square feet of structure above ground.
 - iii. The facility provides no dedicated on-site parking and all subsurface elements of the facility are installed and operated such that land occupied by the facility is otherwise useable and made available for marine-related uses, including but not limited to parking, travel ways, and/or storage.
 - iv. The facility shall be sized, sited and screened to minimize visual impact and prominence from public ways.
- b. Maritime museums, limited to 5,000 square feet of ground floor footprint.

**Editor's Note - On-site parking for non-marine commercial and industrial uses are permitted as conditional uses subject to the following provisions.*

5. *Parking for non-marine uses.*
Notwithstanding Subsection 19.1.6 and Article 14 of this Land Use Code, no parking shall be allowed in this zone for non-marine uses unless the applicant can demonstrate that the number of parking spaces on-site exceeds the number of parking spaces needed to accommodate the demand for marine and water-dependent uses that are permitted by Subsections 10.2.3 and 10.2.4 which are or

may be located on the subject property.
(See editor's note below.) The remainder of parking required, if any, for such non-marine uses shall be provided off-site.

**Editor's Note - Vacant ground floor space should be considered to have a parking demand similar to other space housing an existing water-dependent use elsewhere on the subject property or on a comparable property.*

- D. The following use shall be permitted only upon the issuance of a conditional use permit subject to the provisions of Section 6.5, and any special provisions, standards, or requirements specified below:
 1. Wind energy systems.
 2. Solar energy systems.

10.2.5 Prohibited uses

Uses, whether floating or fixed to land, which are not enumerated in Subsections 10.2.3 or 10.2.4 as permitted or conditional uses are prohibited. Those uses that are specifically prohibited shall include, without limitation:

- A. Residential uses.
- B. Amusement/theme parks.
- C. Bulk freight facilities.
- D. On-site gambling casinos not accessory to and located aboard either a ferry or inter-port cruise ship.

10.2.6 Contract or conditional rezoning

In addition to those marine and non-marine uses authorized in Subsections 10.2.3 and 10.2.4, an applicant may apply to locate a non-marine use not otherwise permitted, if the reviewing body finds the applicant has met the standards of Subsection 10.2.2, the performance standards of Subsection 10.2.8, the applicable standards of

contract/conditional rezoning contained in Section 5.3, and conforms to the following requirements:

A. Standards for contract or conditional rezoning:

1. All non-marine uses are either permitted or conditionally permitted in the B-5 zone, and are not specifically prohibited in Subsection 10.2.5 above. Any hotel, inn, or other similar transient lodging establishment proposed must be located landward of the spring tide line and westerly of the extension of the India Street right-of-way.
2. The aggregate ground floor area of any development permitted hereunder located within 100 feet of the pier edge or working edge of the hardened shoreline shall be occupied by at least 50% of one or more marine uses set forth in Subsections 10.2.3 and 10.2.4. Note: the circulation areas and areas occupied for accessory parking serving marine uses shall not be used as the basis for calculating the 50% provision above.
3. The development is consistent with the Comprehensive Plan and without the non-marine use component authorized herein, the site could not otherwise support an economically viable water-dependent use.
4. The project's public benefits outweigh its potential negative impacts, provided that such public benefits include one or more of the following: protection of existing water-dependent uses, preservation of future water-dependent use development opportunities, contribution to the development of and/or on-going maintenance of the marine infrastructure for commercial vessels, and visual and

physical access to the waterfront for the general public.

5. The non-marine portion of the development will not significantly restrict air or light for marine uses located in the immediate vicinity; will not create significant adverse local climatic effects on marine uses such as an undue increase of winds or shadowing; and will not adversely affect the efficient operation of marine uses, such as by producing less efficient traffic, parking or circulation patterns.
6. The rezoning contains adequate provisions and/or conditions to ensure that on-site water-dependent infrastructure remains occupied by commercial marine use(s) listed in Subsections 10.2.3 and 10.2.4 and that said use is not abandoned after the project is developed.

- B.** Notwithstanding Subsection 10.2.8(H) and off-street parking standards of Article 14, all on-site parking constructed or used for non-marine uses allowed only by contract or conditional rezoning shall be subject to the conditional use provisions Subsection 10.2.4(C)(5). Additionally, the total amount of parking shall be established by the City Council in the conditional or contract rezoning agreement after consideration of the Planning Board's recommendation on the same.

10.2.7 Dimensional requirements.

In addition to the generally applicable provisions of Section 7.5 of this Land Use Code, lots in the EWPZ shall be subject to the following requirements:

- A. Minimum lot size:** None
- B. Minimum frontage:** None

C. Minimum yard dimensions:

1. *Front setback:* None
2. *Side setback:* None
3. *Rear setback:* None
4. *Setback from pier line:* Notwithstanding the above requirements, a minimum setback of 25 feet from the edge of any pier, wharf or working edge of the hardened shoreline shall be required for any structure, provided that marine offices, as defined in Section 10.2.3(B)(12), may be located up to five feet from the edge of any pier, wharf, or working edge of the hardened shoreline. The setback area may be utilized for water-dependent uses, and public uses and activities, subject to the provisions of Subsections 10.2.2 and 10.2.4, and shall not be utilized for ~~restaurant, drinking, or~~ other non water-dependent uses or for off-street parking. The edge of any pier, wharf or bulkhead shall include any attached apron(s).

Portland Foreside Development Company, Applicant

Date: December 17, 2021

principal marina building. Further, this request is seeking to permit such accessory use within the required 25-foot pier edge setback applicable to most uses in the EWPZ.

The proposed text amendments are listed below.

Addition to Article 10, Waterfront Zones, Eastern Waterfront Port Zone, Permitted Uses:

“Section 10.2.3.B.11(a): Marinas located east of the eastern boundary of the parcel of land owned by the City of Portland pursuant to a deed from the State of Maine dated February 1982 and recorded in the Cumberland County Registry of Deeds at Book 4916, Page 26. Marinas may include food service where food or drink is prepared, served, kept, or stored for retail sale onsite if such food service does not exceed 1,000 square feet of total floor area and is within 100 feet of the marina office. Outdoor seating for marina food service shall be permitted within 100 feet of the principal marina building. Areas dedicated to food service shall be open to the general public, and shall not impede areas dedicated to pedestrian circulation.

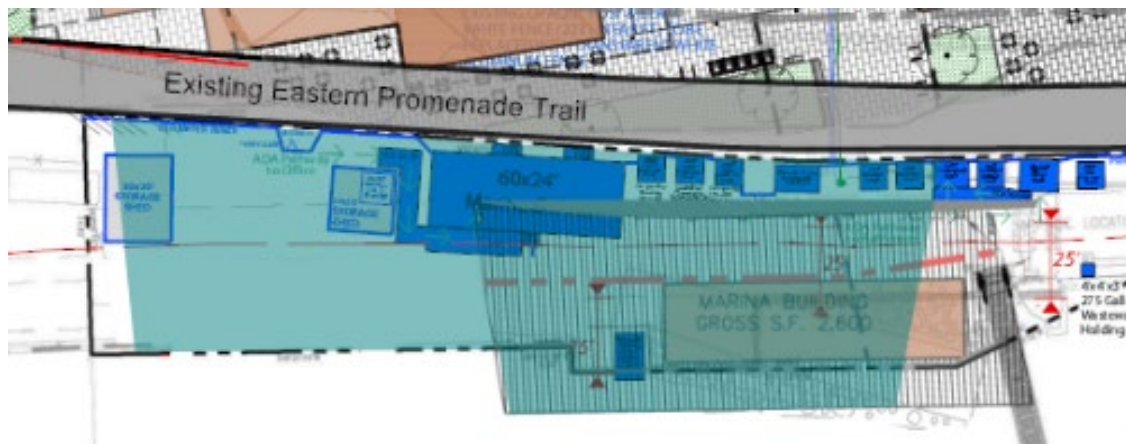


Figure 2: Blue shaded area depicts areas of the marina property within approximately 100 feet of marina office building

Addition to Article 10, Waterfront Zones, Eastern Waterfront Port Zone, Dimensional Requirements:

Section 10.2.7.C.4 –Setback from pier line: Notwithstanding the above requirements, a minimum setback of 25 feet from the edge of any pier, wharf or working edge of the hardened shoreline shall be required for any structure, provided that marine offices, as defined in Section 10.2.3 (B)(12), may be located up to five feet from the edge of any pier, wharf, or working edge of the hardened shoreline. The setback area may be utilized for water-dependent uses and public uses and activities, subject to the provisions of Subsections 10.2.2 and 10.2.4, and shall not be utilized for ~~restaurant, drinking, or~~ other non-water-dependent uses or for off-street parking. The edge of any pier, wharf, or bulkhead shall include any attached apron(s)."

B. Staff Policy Analysis

As shown above, this text directly incorporates the food service and restaurant use as a potential component of a marina and does not identify the restaurant or food service use as accessory to the marina, on account of the established dimensional limits for accessory uses. Per Article 6.6.1 of the City's Land Use Code, accessory uses as defined in City ordinances, may occupy no more than 25% of a building's floor area, or, where the accessory use is not located within a building, 25% of a lot's total undeveloped lot area. Given that the floor area of t marina buildings is generally limited, but are typically located on larger lots, the accessory use dimensional restrictions were found to be either too restrictive in the case of floor area, and too generous in the case of lot area. For this reason, the food service use is not specifically cited as being accessory, in part so as to allow for more tailored dimensional restrictions as presented in this amendment.

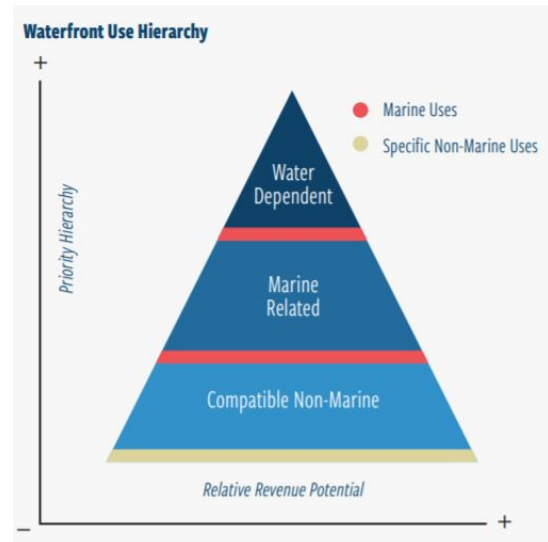


Figure 3: Hierarchy of waterfront uses concept adopted as City policy in Portland's Plan 2030.

The proposed text further draws on language from Ch. 11, Section 11.4.a of the City Code, pertaining to food service establishments, to define a form of restaurant/food service use to be permissible as a component of a marina that does not explicitly require indoor dining. This language, in effect, would supersede the Article 3 definitions for both restaurant and food service, that require indoor dining. Given that the restaurant/food service use is now an integrated component of a marina, the specific allowance for such use within the 25-foot pier edge setback has now been removed, as marinas are a water-dependent use, though the prohibition language that exists currently remains struck in this proposal.

Other aspects of the amendment include language pertaining to the use of interior and exterior space, which clarifies that all operations associated with the restaurant are included as part of any dimensional limits. In addition, language has been introduced stating that pedestrian circulation should not unreasonably be impaired so as to ensure adequate pedestrian circulation. By allowing the restaurant use to extend up to 100 feet from the marina office, there is flexibility in how outdoor seating is arranged without being overly prescriptive, while retaining other assurances that the use does not impact the water dependent use or any waterfront public access.



Figure 4: The location of outdoor dining is restricted by the Eastern Promenade Trail and site circulation as depicted on the 58 Fore Street approved MDP plan. Proposed language further requires that pedestrian circulation not be unreasonably impaired by the use.

In reviewing the proposed amendment, the Planning Board focused primarily on ensuring that the restaurant was consistent with policy priorities for the City's waterfront and the eastern waterfront in particular. The zones are built around a policy framework that both prioritizes water dependent uses and ensures that other marine-related or compatible non-marine uses are compatible with water-dependent activities. In this case, that policy direction would limit restaurant uses in scope, and discourage such uses as a principal stand-alone use. Based upon the current boundaries of the EWPZ, this marina development is likely to be the only marina in the EWPZ, and so the zoning should be considered for how it will function in this relatively constrained physical context. Planning staff provided input to the applicant early in this process on this policy framework, and the resulting proposal addressed that feedback by only allowing restaurants where associated with a marina, capped at just 1,000 square feet of interior floor space, with language to ensure it be public in nature rather than limited to only marina customers, and limited in terms of its footprint as to not have an adverse impact on marine uses and waterfront access. The Planning Board found that the draft amendment succeeds in proposing a change to the water-dependent marina use that is generally consistent with the zone, with waterfront priorities, with precedents in other waterfront zones in Portland's Land Use Code, and with the common functioning and amenities often associated with marinas.

In regards to allowing restaurants within the 25-foot pier edge setback, the Planning Board found that if the use allows for adequate right-of-way access to the water, and does not impede or preclude existing or potential water-dependent development within the site, and complies with Performance Standards, Shoreland Zoning and Flood Plain standards, that it would also be generally consistent with the purpose of these dimensional requirements. Furthermore, EWPZ Section 10.2.2 adds additional regulatory measures by stating that:

"No use shall be permitted, approved or established in this zone if it will have an impermissible adverse impact on future marine development opportunities. A proposed non-water dependent

component of a development will have an impermissible adverse impact if it will result in any one or more of the following:

- A. *The proposed use will displace an existing water-dependent use.*
- B. *The proposed use will reduce existing commercial vessel berthing space.*
- C. *The proposed use, structure or activities, including but not limited to access, circulation, parking, dumpsters, exterior storage or loading facilities, and other structures, will unreasonably interfere with the activities and operation of existing water-dependent uses or significantly impede access to vessel berthing or other access to the water by water dependent uses.*
- D. *The siting of a proposed use will substantially reduce or inhibit existing public access to marine or tidal waters.”*

In addition, Section 10.2.8 Performance Standards provides that further standards be met to ensure compatibility with marine uses and that there is functional utility of piers and access to the water’s edge.

If the text amendments as presented are adopted, any potential impacts of a restaurant use on this site would still require rigorous review under both site plan and zoning performance standards, which include specific requirements around maintaining adequate waterfront access for other users and ensuring the compatibility of non-marine uses with water-dependent activities

Currently, restaurants and food service establishments are permitted in all three waterfronts zones (WPDZ, WCZ, EWPZ) in a variety of forms as described below:

Waterfront Port Development Zone (WPDZ), the purpose of the WPDZ is to ensure the continued viability of the Port of Portland. Permitted uses are primarily limited to those uses which are dependent upon deep-water and which contribute to port activity. Non-marine activity may be allowed to the extent that it will not have any adverse impact on marine uses. Much like the EWPZ, restaurants and drinking establishments are expressly prohibited, however, as specified in Table 10-A, footnote 2, food service establishments, including food trucks and other similar retail and service support uses are permitted as accessory uses if all such uses do not exceed 2,000 SF in total floor area of the building and each individual use does not exceed 1,000 SF in total floor area of the building; and further provided that such accessory uses provide goods or services that are supportive of the principal use and its clientele.

Waterfront Central Zone (WCZ), the purpose of the WCZ is to protect and nurture water-dependent and marine-related support uses so that they may grow and prosper in the present and into the future in an environment and area dedicated to this purpose. Non-marine uses are encouraged provided they do not interfere with and are not incompatible with the first and second priority uses, specifically interior accessory uses including *food service establishments shall be permitted as accessory uses if they are part of and located within the lot lines of a use set forth in Subsections 10.3.3(A)(1), (7), (11), or (12); such uses do not exceed 2,000 SF in total floor area of the building, or 25 percent of the total floor area of the building, whichever is less, and each individual accessory use does not exceed 1,000 square feet in total floor area of the building; and further provided that such accessory uses provide goods or services that are*

supportive of the principal use and its clientele. In addition, marine-compatible uses, including restaurants, are encouraged to locate and grow along Commercial Street within the Commercial Street Overlay Zone, while higher priority marine uses are protected on the waterfront.

Eastern Waterfront Port Zone (EWPZ), is intended to nurture a wide range of deepwater-dependent industry and commerce as well as the encouragement of non-marine uses that support deepwater activities. Currently, the EWPZ allows restaurants/food services as a conditional use in association with marine passenger use facilities, including, Intermodal marine passenger facilities; cruise ship home port and port-of-call berthing and support, and international and domestic ferries. The use is further restricted to equal or less than 35 percent of the gross floor area of the principal associated marine passenger use and no more than 35,000 gross square feet (cumulatively) in the EWPZ. Currently, restaurants and drinking uses are not permitted within the minimum 25-foot setback from the edge of any pier, wharf, or working edge of the hardened shoreline.

While all three waterfront zones allow restaurants and food service establishments in a variety of manners, the common theme is that all three zones restrict these uses to a minimal size, and are intended to be subsidiary to water dependent uses and public access.

III. COMPREHENSIVE PLAN CONSISTENCY

Portland's Plan 2030

Portland's Plan maintains a long-standing City policy to prioritize and promote our city's unique mixture of water-dependent, marine-related and compatible non-marine uses along our waterfronts. Portland's waterfront policies prioritize preserving marine uses, but also provide for a balance of non-marine uses which allow the waterfront to adapt to changing economic trends. Looking at regional and national examples, restaurants are often co-located within or alongside marinas, as a restaurant does not inhibit a marina's operation and serves to attract other users to the site that may not have access to the boating functions that occur at a marina. The key to finding the introduction of restaurants in the EWPZ consistent with the comprehensive plan is balancing that use with the waterfront priorities of the zone. A restaurant use with no limits on size or location may be generally consistent with some economic development goals for the city as a whole, but more importantly for the purposes of this review, specifically inconsistent with the priorities for the waterfront. As proposed, the amendment addresses that priority, by requiring that the use be a component of a marina, and be limited in its scale and permissible location. The addition of a restaurant, if tailored in its application, reinforces the waterfront as a key component of Portland's economic health, this interwoven approach provides a unique connection between the city's traditional maritime activity and the commercial, tourist, and recreational city. This is further supported by the fact that the restaurant would only be permitted as a limited component to a marina, and would be subject to restrictive dimensional standards. Some relevant goals from *Portland's Plan 2030* include:

State Goals:



- *To expand opportunities for outdoor recreation and to encourage appropriate coastal tourist activities and development.*

Local Goals:

- *Prioritize and promote Portland's unique mix of water-dependent, marine related uses and compatible non-marine uses.*
- *Recognize and reinforce the respective roles of the Eastern, Central, and Western Waterfronts.*
- *Promote passive and active recreational access to the waterfront.*

IV. PUBLIC COMMENT

A total of 125 written public comment were received on this application, generally in support of permitting restaurants as an accessory component to a marina. Much of the public comment focused on the fact that there are few other restaurants with immediate waterfront access located elsewhere in Portland, and that the use draws visitors to the site who would otherwise not utilize the marina property. There were several comments opposed to the restaurant, which mostly cite the lack of general public waterfront access elsewhere on the site currently, and the quality of the temporary structures and spaces erected without authorization from the City.

V. PLANNING BOARD RECOMMENDATION

The Planning Board considered the proposed zoning text amendments at a hearing on November 23, 2021. After deliberation, and on the basis of staff reports, public testimony, and review of applicable policies, the Planning Board voted 5-0 (Smith recused, and Chann absent) to find that the following zoning text amendments are consistent with the Comprehensive Plan and recommended adoption to the City Council:

1. Text amendment to Chapter 14, Article 10, Section 10.2.3.B.11 and Section 10.2.7.C.4, to permit restaurants and food service uses as a limited component of a marina within the Eastern Waterfront Port Zone (EWPZ), as presented in Attachment 1.

VI. ATTACHMENTS

Report Attachments

1. Article 10 Zoning Amendments
2. Public Comments

Applicant's Submittal

- A. Zoning Amendment Narrative and Policy Analysis
- B. 100 Foot Distance Depiction

Order 132-21/22 Amendment of Portland City Code Chapter 14 Re: Eastern Waterfront Port Zone Marina Food Service - Sponsored by the Planning Board, Brandon Mazer, Chair

1 view



Sarah Davidson <sarahdavidson635@gmail.c...> Jan 5, 2022, 2:21:33 PM (7 days ago)
to publiccomment@portlandmaine.gov

To whom it may concern,

We are thrilled to hear of the recent support expressed for the Zoning Text Amendment that will allow food and beverage at the Fore Points Marina. I am writing to express my continued support for this Zoning Text Amendment. Our family loves Evo X and the community they are building in the heart of Portland, and look forward to spending many more summers there with friends and family.

Best regards and happy New Year,
Sarah

--

Sarah Davidson

@sarahdavidson63
(C): 847.431.6255



Will Siltan <willsiltan@gmail.com> Jan 5, 2022, 2:39:25 PM (7 days ago)
to publiccomment@portlandmaine.gov

Hello,
Once again, I am writing to voice my support for Fore Points Marina's zoning text amendment to allow food and beverage at the marina.
Fore Points is culturally intertwined with the East End (my neighborhood) and I value the dynamic it has brought to the space for area residents.
Sincerely,
Will Siltan



Corey Merrill <merrill.corey@gmail.com> Jan 5, 2022, 6:07:02 PM (6 days ago)
to publiccomment@portlandmaine.gov

Hi - thank you for taking the time to read my email.

I am very happy to hear that a hearing is going forward on January 19th to amend the code. As an individual who grew up in Portland and who visits his parents there 4+ times per year, I think this change is necessary in the name of progress.

Portland is a great, progressive, ever evolving city and amendments such as this will add up with several other factors to keep it as a growing tourist destination.

Thank you!



Stephanie Woods <nearhos00@yahoo.com> Jan 5, 2022, 7:52:19 PM (6 days ago)

to publiccomment@portlandmaine.gov

Good evening

Writing to support **Order 132-21/22 Amendment of Portland City Code Chapter 14 Re: Eastern Waterfront Port Zone Marina Food Service.**

EvoX and the Marina Bar have been a great addition to the East End. Having an open, welcoming space right on the harbor where you can enjoy good food, drinks, and company while you watch the boats sail around on Casco Bay can't be beat. There are only few other places like this but none offer this type of relaxed laid back atmosphere.

Thank you

Matt and Steph Woods

Sent from nowhere in particular

Marina Bar 1 view



Jane Ellis <jmdellis@gmail.com>
to publiccomment@portlandmaine.gov

Jan 6, 2022, 9:13:14 AM (6 days ago)

Encouraging Community to join together, to interact in unity without division is a goal worthy of more than consideration. Please allow folks of our community to linger and enjoy the company of others while breaking bread together in a friendly atmosphere. It is a great step in civilization not to separate, but to interact sharing food and friendship.

Please support shared community; expand zoning to allow licensing of food and beverage on this waterfront property.

Jane Ellis

Jan 5, 2022, 7:52:19 PM (6 days ago)

Stephanie Woods <nearhos00@yahoo.com>
to publiccomment@portlandmaine.gov

Good evening

Writing to support **Order 132-21/22 Amendment of Portland City Code Chapter 14 Re: Eastern Waterfront Port Zone Marina Food Service.**

EvoX and the Marina Bar have been a great addition to the East End. Having an open, welcoming space right on the harbor where you can enjoy good food, drinks, and company while you watch the boats sail around on Casco Bay can't be beat. There are only few other places like this but none offer this type of relaxed laid back atmosphere.

Thank you
Matt and Steph Woods

Sent from nowhere in particula

Order 132-21/22 Amendment of Portland City Code Chapter 14 Re: Eastern Waterfront Port Zone Marina Food Service

1 view



Yannick Peary <yannick.peary@gmail.com> Jan 5, 2022, 2:54:56 PM (7 days ago)
to publiccomment@portlandmaine.gov

To whom it may concern,

I am excited to hear of the recent support expressed for the Zoning Text Amendment that will allow food and beverage at the Fore Points Marina.

I am writing to express my vehement support for this Zoning Text Amendment.

Our family loves Evo X and the community they are building in the heart of Portland, and look forward to spending many more summers there with friends and family.

Best regards,
Yannick Peary

Order 132-21/22 Amendment of Portland City Code

Chapter 14

0 views



Winston Lumpkins <winston.lumpkins@gmail.com> Jan 18, 2022, 11:22:18 AM (23 hours ago)
to publiccomment@portlandmaine.gov

Dear councilors,

I want to urge you to think long and hard about this decision, and the precedent it sets.

Portland Foreside Development Company has been acting in a shameful and scofflaw manner for well over a year.

It is fundamentally unfair to hold developers to a lower standard than homeowners or private citizens. They could have afforded an 11,100 dollar fine. They probably spent that much on legal advice and billable hours arguing that they didn't have to pay it... Though I think that's tax deductible?

I don't particularly care about the sheds or what they do (though, sewage containment should probably be done only in accordance with existing rules). It's the double standard that bothers me. When I'm fined, I pay the fine. When they were fined, they were allowed to argue to retroactively change their permissions before the planning board, who have now asked you to allow them to continue doing what they have already been doing.

They should have paid, and I would not be writing to you right now if they had.

Perhaps they could be asked to make a donation to the city of 11,100 dollars, and this could be passed after that? Though, that might be extortion of some kind...

It might be better off to just not approve this- they are going to have a restaurant across the path anyway.

It's depressing to see the double standard is all.

~Winston

~Winston W. Lumpkins IV
Portland, Maine,
04101
[207-408-1508](tel:207-408-1508)

Order 132-21/22 Amendment of Portland City Code Chapter 14 Re: Eastern Waterfront Port Zone Marina Food Service - Sponsored by the Planning Board, Brandon Mazer, Chair

1 view



Sarah Davidson <sarahdavidson635@gmail.c...> Jan 5, 2022, 2:21:33 PM (7 days ago)
to publiccomment@portlandmaine.gov

To whom it may concern,

We are thrilled to hear of the recent support expressed for the Zoning Text Amendment that will allow food and beverage at the Fore Points Marina. I am writing to express my continued support for this Zoning Text Amendment. Our family loves Evo X and the community they are building in the heart of Portland, and look forward to spending many more summers there with friends and family.

Best regards and happy New Year,
Sarah

--

Sarah Davidson

@sarahdavidson63
(C): 847.431.6255



Will Silton <willsilton@gmail.com> Jan 5, 2022, 2:39:25 PM (7 days ago)
to publiccomment@portlandmaine.gov

Hello,
Once again, I am writing to voice my support for Fore Points Marina's zoning text amendment to allow food and beverage at the marina.
Fore Points is culturally intertwined with the East End (my neighborhood) and I value the dynamic it has brought to the space for area residents.
Sincerely,
Will Silton



Corey Merrill <merrill.corey@gmail.com> Jan 5, 2022, 6:07:02 PM (6 days ago)
to publiccomment@portlandmaine.gov

Hi - thank you for taking the time to read my email.

I am very happy to hear that a hearing is going forward on January 19th to amend the code. As an individual who grew up in Portland and who visits his parents there 4+ times per year, I think this change is necessary in the name of progress.

Portland is a great, progressive, ever evolving city and amendments such as this will add up with several other factors to keep it as a growing tourist destination.

Thank you!



Stephanie Woods <nearhos00@yahoo.com> Jan 5, 2022, 7:52:19 PM (6 days ago)

to publiccomment@portlandmaine.gov

Good evening

Writing to support **Order 132-21/22 Amendment of Portland City Code Chapter 14 Re: Eastern Waterfront Port Zone Marina Food Service.**

EvoX and the Marina Bar have been a great addition to the East End. Having an open, welcoming space right on the harbor where you can enjoy good food, drinks, and company while you watch the boats sail around on Casco Bay can't be beat. There are only few other places like this but none offer this type of relaxed laid back atmosphere.

Thank you

Matt and Steph Woods

Sent from nowhere in particular

Marina Bar 1 view



Jane Ellis <jmdellis@gmail.com>
to publiccomment@portlandmaine.gov

Jan 6, 2022, 9:13:14 AM (6 days ago)

Encouraging Community to join together, to interact in unity without division is a goal worthy of more than consideration. Please allow folks of our community to linger and enjoy the company of others while breaking bread together in a friendly atmosphere. It is a great step in civilization not to separate, but to interact sharing food and friendship.

Please support shared community; expand zoning to allow licensing of food and beverage on this waterfront property.

Jane Ellis

Jan 5, 2022, 7:52:19 PM (6 days ago)

Stephanie Woods <nearhos00@yahoo.com>
to publiccomment@portlandmaine.gov

Good evening

Writing to support **Order 132-21/22 Amendment of Portland City Code Chapter 14 Re: Eastern Waterfront Port Zone Marina Food Service.**

EvoX and the Marina Bar have been a great addition to the East End. Having an open, welcoming space right on the harbor where you can enjoy good food, drinks, and company while you watch the boats sail around on Casco Bay can't be beat. There are only few other places like this but none offer this type of relaxed laid back atmosphere.

Thank you
Matt and Steph Woods

Sent from nowhere in particula

Order 132-21/22 Amendment of Portland City Code Chapter 14 Re: Eastern Waterfront Port Zone Marina Food Service

1 view



Yannick Peary <yannick.peary@gmail.com> Jan 5, 2022, 2:54:56 PM (7 days ago)
to publiccomment@portlandmaine.gov

To whom it may concern,

I am excited to hear of the recent support expressed for the Zoning Text Amendment that will allow food and beverage at the Fore Points Marina.

I am writing to express my vehement support for this Zoning Text Amendment.

Our family loves Evo X and the community they are building in the heart of Portland, and look forward to spending many more summers there with friends and family.

Best regards,
Yannick Peary

MEMORANDUM
City Council Agenda Item

FROM:

DATE: January 5, 2022

SUBJECT: Order 135-21/22 Adopting the 2022 Cumberland County Hazard Mitigation Plan - Sponsored by Danielle P. West, Interim City Manager

SPONSOR: The Mayor, City Manager, City Clerk, Corporation Counsel, the Planning Board, or up to three (3) members of the Council shall sponsor any orders or other items. If sponsored by a Council Committee, please include the date the committee met and the results of the vote.

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

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st Reading

Final Action

Can action be taken at a later date: No If action cannot be taken at a later date, please explain why

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

I. SUMMARY

II. AGENDA DESCRIPTION

Cumberland County's Hazard Mitigation plan must be approved by all municipalities by February 25th in order for the plan to gain final approval from the Federal Emergency Management Agency. There is no cost to the communities by adopting this Plan. If a municipality does not adopt this Plan, however, it will lose access to valuable pre-disaster mitigation funding that could save money on mitigation projects. A town would not be eligible for that funding until the next Five Year Plan is approved in 2027.

Cumberland County wrote the 2022 Cumberland County Hazard Mitigation Plan with input from several City of Portland departments throughout the process. The Plan identifies natural disaster risks and vulnerabilities that are common in Cumberland County and outlines long-term strategies for protecting people and property from natural disasters. Mitigation plans are crucial to breaking the cycle of disaster damage and reconstruction.

The County releases a new Plan every five years; the Portland City Council adopted and signed the 2017 Hazard Mitigation Plan in December 2016.

Five affirmative votes are required for passage after public comment.

III. BACKGROUND

Background information that will not appear in the Agenda Description

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

V. FINANCIAL IMPACT

Please indicate whether or not there is a financial impact. Please note that per Council Rule 12, this form must have "a separate fiscal impact statement memo attached if the impact of the item is \$50,000 or more in a given fiscal year. This memo shall include details and information describing the fiscal impact including, but not limited to, projected costs, revenues or savings over a three (3) year period and/or any potential impacts on the City tax levy."

VI. STAFF ANALYSIS AND BACKGROUND

Staff Analysis that will not appear in the Agenda Description.

VII. RECOMMENDATION

VIII. LIST ATTACHMENTS

1. Cumberland County Hazard Mitigation Plan 1.19.2022

Prepared by:

Date: 01/05/2022

KATE SNYDER (MAYOR)
ANNA TREVORROW (1)
VICTORIA L. PELLETIER (2)
TAE Y. CHONG (3)
ANDREW ZARRO (4)

**CITY OF PORTLAND
IN THE CITY COUNCIL**

MARK DION (5)
APRIL D. FOURNIER(A/L)
PIOUS ALI (A/L)
ROBERTO RODRÍGUEZ (A/L)

**ORDER ADOPTING THE
2022 CUMBERLAND COUNTY HAZARD MITIGATION PLAN**

ORDERED, that the City hereby adopts the 2022 Cumberland County Hazard Mitigation Plan in substantially the same form attached hereto; and

BE IT FURTHER ORDERED, that the City Manager or his or her designee is authorized to sign the Cumberland County Hazard Mitigation Plan and all other necessary documents on behalf of the City.

MEMORANDUM
City Council Agenda Item

FROM: Samara Ray
DATE: January 6, 2022
SUBJECT: Order 136-21/22 Accepting the 2021 Annual Land Bank Report - Sponsored by Danielle P. West, Interim City Manager
SPONSOR: Interim City Manager, Danielle West
(If sponsored by a Council committee, include the date the committee met and the results of the vote.)

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st Reading **Final Action**

Can action be taken at a later date: Yes If action cannot be taken at a later date, please explain why

PRESENTATION: Land Bank Chair Pat Bailey will be present at the meeting.

I. SUMMARY

2021 Annual Report of the Portland Land Bank Commission

II. AGENDA DESCRIPTION

The Portland Land Bank Commission is required by City Ordinance to submit an annual report that details the commission's activity over the past year, its yearly budget, and a registry of conservation properties.

Five affirmative votes are required for passage after public comment.

III. BACKGROUND

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

To update the City Council on the Commission's activities over the past 12 months.

V. FINANCIAL IMPACT

VI. STAFF ANALYSIS AND BACKGROUND

Staff finds the report is factual and the report is in order.

VII. RECOMMENDATION

Staff recommends acceptance by the City Council.

VIII. LIST ATTACHMENTS

1. Accepting the 2021 Land Bank Commission Annual Report 1.19.2022
2. Portland Land Bank Report 2021 FINAL

Prepared by:

Samara Ray

Date: 01/06/2022

KATE SNYDER (MAYOR)
ANNA TREVORROW (1)
VICTORIA L. PELLETIER (2)
TAE Y. CHONG (3)
ANDREW ZARRO (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

MARK DION (5)
APRIL D. FOURNIER(A/L)
PIOUS ALI (A/L)
ROBERTO RODRÍGUEZ (A/L)

ORDER ACCEPTING THE 2021 LAND BANK COMMISSION ANNUAL REPORT

ORDERED, that the 2021 Land Bank Commission Annual Report is hereby approved and accepted.

Portland Land Bank Commission 2021 Annual Report



December 2021

Acknowledgment

The Land Bank Commission is pleased to present its annual report to the City Manager and City Council whose collective wisdom and vision recognized a “need to balance development within the municipality with conservation of open space important for wildlife, ecological, environmental, scenic or outdoor recreation values” by creating an entity to ensure conservation and preservation of limited open space. The Commission offers special thanks and appreciation to Michael Goldman, Ethan Hipple, Alex Marshall, Greg Mitchell, Mike Murray, Samara Ray, Doug Roncarati, and all staff whose hard work supports the Commission’s efforts.

Overview

Under The City of Portland, Maine Code of Ordinances, Article III-A, the Land Bank Commission is charged with the responsibility of submitting an annual report to the City Manager and making recommendations for preserving open space to the City Council. This annual report provides a summary of the work the Commission completed in the last year.

The Land Bank Commission receives funding to assist with achieving the goals of the Commission and to acquire property for open space conservation purposes. One half of 1% of the City's annual Capital Improvement Budget is set aside for the acquisition of property recommended to the City Council for Land Bank status and for remedial work on existing Land Bank holdings. The Commission has other methods to acquire or protect open space property which include personal property donations, direct purchases, easements, land trades, grants, and developer agreements.

Commission Members (2021):

Pat Bailey, Chair, At Large
Simon Rucker, Secretary, District 1
Baxter Miatke, Treasurer, District 3
Jon Kachmar, At Large
Jennifer Fox, At Large
Jayne Foley, District 4
Dan Herzlinger, District 4
Robert Foster, District 4
Andrew Zarro (City Council Representative)

Non Voting Members

Kara Wooldrik, Portland Trails Representative
Maine Audubon Society Representative (vacant)

Staff Support:

Tom Jewell, Outside Counsel, Jewell & Bulger, P.A.
Michael Goldman, Associate Corporation Counsel
Ethan Hipple, Director, Parks, Recreation and Facilities Department
Alex Marshall, Parks Director, Parks, Recreation and Facilities Department
Greg Mitchell, Consultant, Housing & Economic Development
Mike Murray, Director of Cemeteries and Project Management
Doug Roncarati, Stormwater Program Coordinator
Samara Ray, Senior Executive Assistant

Introduction

This document, including the attached Exhibits, is the Annual Report and Updated Registry of Open Spaces as set forth in Section 2-42 (g), Article III-A of the City of Portland, Code of Ordinances created by the City Council in 1999 which established the Portland Land Bank Commission with the following stated purposes:

1. Act as an advocate for the acquisition and conservation of open space within the city;
2. Cooperate with other agencies and parties on wetlands mitigation projects;
3. Recommend on a priority basis the acquisition of various interests in real estate in order to effectuate the goal of this article;
4. Accept gifts and funds from both private and public sources and disburse such funds for the purposes hereunder;
5. Act as a liaison to other public and private nonprofit agencies involved in planning, acquiring, disposing, and managing land within the municipality; and
6. Recommend an annual budget to the city manager and city council to carry out its purpose.

City Code requires the Commission to annually file a report consisting of two parts: the Registry of Open Space and an operating budget.

The Registry of Open Space must list all open space of types in Code Section 2-43 (a), publicly or privately owned, located within the city or abutting the city as potential buffer areas, for the purpose of providing information pertinent to property utilization, protection, development, or use of such open space. The Registry must show all property interests then currently held by the city, including a description of the use of those interests and all acquisitions, improvements, or dispositions of all property interests held by the city at any time during each filing.

The types of land and interests specified in Section 2-43 (a) are the following:

- Ocean, harbor, river, stream, or pond frontage and adjoining back lands;
- Fresh or saltwater marshes, estuaries, flood plains and adjoining uplands;
- Islands;
- Land for future passive public outdoor recreational use, including hiking, trails, bicycle paths, green belts, and high elevations with a view;
- Aquifers, aquifer recharge areas, and other ecologically fragile or significant property;
- Properties with unique historical or geological characteristics or otherwise important to the community's cultural welfare;
- Woods or forest land;
- Farmland or wildlife habitat;
- Open spaces which help shape the settlement pattern of the community by promoting the neighborhood concept and discouraging sprawl;

- Vacant parcels of land, vacant buildings and properties or buildings and properties in significant disrepair which may be reclaimed for the purpose of establishing natural areas for conservation and open space land; or
- Conservation or trail easements and other similar interests in land.

A map of Land Bank Holdings is attached as Exhibit D. To view a full-sized map of Land Bank holdings click [here](#).

The Operating Budget for all expenses and projects of the Commission is required to be submitted to the City Manager and City Council by Code Section 2-41 (h) (9). That Section of the Code specifies that the budget “shall include a separate budget for expenditures from the Land Bank fund, which expenditures will be limited to the purposes for which the fund is dedicated.”

Compliant with the stated requirements in Code, the Land Bank Commission Annual Report for 2021 contains the Registry and operating budget for the calendar year 2022.

2021 Accomplishments

- **Rand Road.** In February, the Land Bank Commission acquired an approximately 27.38 acre parcel of open space land on Rand Road. A press release and map for this project area attached as Exhibit E.
- **Riverton Trolley Park Addition.** This parcel (CBL 325 C00 to 007) was approved by the Land Bank Commission in November. If acquired, this would constitute a 0.9-acre addition to the park. This undeveloped tract of land is heavily forested and acts as a wildlife habitat and drainage buffer between the Presumpscot River and the existing residential and commercial development along Riverside Street. Acquisition of this property, which has significant local support, would buffer Riverton Trolley Park from development on Riverside Street. A map and summary are attached as Exhibit F.
- **North Deering Park (1831 Washington Avenue).** North Deering Park consists of approximately 8 acres of forested wetlands between Washington and Auburn Avenues in North Deering. This is a cooperative project between the Land Bank Commission and the Trust for Public Land, who are also working to conserve the adjacent ballfield and 410 Auburn Street which is on the Land Bank Priority Parcel List (HP-11). In September, the Commission voted to allocate \$80,000 of Land Bank funds for the acquisition of the 8 acre parcel. The City of Portland, working with TPL, has submitted a \$400,000 grant request to the Outdoor Recreation Legacy Program (ORLP), a federal program, for additional acquisition funding. A map and summary are attached as Exhibit G.

- **Redlon Woods.** Work on Phase II of the Redlon Woods project continues, with the pace of development and building during 2021 impacting the acquisition. A map of this project is attached as Exhibit H.
- **Trail improvements and maintenance.** The Land Bank Commission allocated a total of \$14,200 for a six-person field team for two weeks of trail maintenance at Riverton Trolley Park.
- **New Land Bank Commissioner.** In 2021, the Land Bank Commission welcomed Jayne Foley, Robert Foster, Dan Herzlinger and Baxter Miatke. Information about commissioner, including term dates and bios, can be found [here](#).

Program Budget and Project Initiatives for 2022

Per Chapter 2 of the City Code, an annual appropriation of 0.5% of the total annual capital improvement program is to be deposited into the Land Bank Fund. The annual appropriation of 0.5% of the total CIP for 2018, 2019, 2020 and 2021 is shown on a separate line item in our budget as the bonding has not been authorized. For planning purposes the appropriated amount of \$287,627 from these fiscal years is shown on a separate line item.

Available funding as of December 8, 2021 for the planned work activity by the Land Bank Commission is approximately \$593,789.87, as indicated in the 2021 Land Bank Commission Budget which is attached as Exhibit I.

Land Bank Commission Project Initiatives 2022

- *Complete the acquisition of the Riverton Trolley Park Addition* (see above).
- *Continue work towards the acquisition of North Deering Park* (see above).
- *Complete the acquisition of parcels in Redlon Park.* The Land Bank Commission is currently working on acquiring additional parcels within Redlon Woods. Redlon Woods consists of several acres of open space surrounded by Brighton Avenue, Stevens Avenue, Capisic Street and Bancroft Street. The Land Bank Commission has been working on conservation of Redlon Woods since 2000 and it was one of the project examples that led to the formation of the Land Bank Commission. A map of the Redlon Woods project is attached as Exhibit E.
- *Continue acquisitions of parcels in Oatnuts Park.* There is the potential for the acquisition of additional lots for Oatnuts Park going into 2022.

- *Review and assess Tax Acquired Parcels Committee List.* The Land Bank Commission will annually review and assess the TAPC list for TAPC properties suitable for Land Bank protection and provide our recommendations to city staff.
- *Trail improvements, wayfinding and maintenance on Land Bank parcels.* Land Bank signage will be installed and trail maintenance will continue to be funded on Land Bank properties.
- *Green Space Gathering.* The Land Bank hopes to again work with the Parks Commission to assist with developing the agenda and logistics with the annual Green Space Gathering that focuses on open space advocates. The status of the gathering for 2022 is TBD.
- *Continue to field proposals to the Land Bank Commission from community members.* We receive requests from the public to consider parcels of land to be put into the Land Bank and these requests constitute several of the ongoing projects.

Exhibit A – Description of Current Land Bank Registry Existing Holdings (Open Space)

E-1 Natick Street. This parcel is contiguous with the northern end of the Interurban Line parcel (HP- 19) which, like its counterpart, runs along the western side of the railroad line. The land provides a wooded buffer between the railroad line and adjacent residential development and includes a trail that is heavily used by local residents. A network of wetlands and a stream are also located on the property.

E-2 Pineloch Drive. Situated next to Oatnuts Park, this parcel follows a sewer right-of-way and brook, which are flanked on both sides by mixed woodlands. The Portland Water District conveyed this property to the City in 2001. The trail through Oatnuts Park emerges into the cleared right-of-way and follows it for several hundred feet before reentering the woods and continuing on towards the Presumpscot River Preserve.

E-3 City RPZ Land on Starbird Lane. This large parcel is located next to the Fore River Sanctuary, at the confluence of Capisic Brook and the Fore River, and consists of a mix of marshland, wet meadow, and woodland. It serves as valuable habitat for migratory waterfowl and other species of wildlife. Forming its southern border, the railroad line affords excellent views of the marsh.

E-4 City RPZ Land on Rand Road. This parcel, along with the Union Water-Power land (HCP-14) is located off Rand Road just to the west of the Fore River Sanctuary. The property is predominantly wooded, with the exception of the CMP right-of-way that runs the length of the parcel. It forms a significant drainage area with many hills and gullies collecting and guiding stormwater toward the Fore River. Consequently, numerous streams and wetlands are located throughout the parcel. The blend of softwoods and hardwoods, shrubs, and ground cover provide abundant habitat for wildlife, including deer. Together these parcels serve as an important wildlife corridor for the Fore River, even though it is bounded to the west by the Maine Turnpike. Several footpaths wind through the woods and along the right-of-way, connecting to Portland Trails' Fore River Sanctuary trail system. This includes a trail along the remains of the historic Cumberland and Oxford Canal.

E-5 Hobart Street Area. Situated off Hobart Street these parcels provide public access to and afford spectacular views of the Fore River. It also links with Portland Trails' Fore River Trail on the other side of Hobart Street. Portland Water District maintains a pump station and outfall at the site.

E-6 Pine Grove Park. Pine Grove Park, as the name implies, is an 8-acre parcel on Ray Street that is mostly covered with mature white pine. Several paths wind through the park bringing attention to interesting ledge outcrops.

E-7 Blueberry Road Parcel. Located along the Stroudwater River at the end of Blueberry Road, this one-acre parcel includes a section of the proposed Stroudwater River Corridor (HCP-15)

nearest the Maine Turnpike. This City-owned property provides direct access to the river and Stroudwater Trail. The Portland Water District has a pump station on part of the property. The land is currently afforded some protection by virtue of being in the Resource Open Space Zone (ROS) and the Shoreland Overlay Zone.

E-8 Conservation Area at Evergreen Cemetery. This area at the rear of Evergreen Cemetery just beyond the ponds is a pleasant and inviting refuge of undeveloped woodland, undulating ground and rock outcroppings in the city. It consists primarily of two landscapes. One is a high central area of exposed bedrock vegetated with small trees. The other is lower, more level and somewhat poorly drained woodland with larger trees and an open plain of ground. The tree cover is mixed deciduous and evergreen consisting largely of White and Red Oak species, White Pine and Hemlock, with some Birch and Red Maple. The area is approximately 30 acres in size. It contains a number of existing trails. This area, in conjunction with the rest of the cemetery, provides an excellent habitat for a variety of bird species. For this reason Evergreen Cemetery is a favorite spot for birding enthusiasts. In addition, joggers, walkers, cross-country skiers, and dog owners use the area.

E-9 City-Owned Parcels in Oatnuts Park. Oatnuts Park is an approximately 23-acre undeveloped wooded area located off of Summit Street in the North Deering neighborhood. Oatnuts Park is contiguous with the Presumpscot River Preserve. It includes a gated entrance on Summit Street and existing trails providing access to the Presumpscot River Preserve and to nearby residential streets.

E-10 Presumpscot River Preserve. The 48-acre Presumpscot River Preserve, located in the North Deering neighborhood, is one of the river's largest areas of undeveloped riparian land. It abuts land owned by Portland Trails, the Town of Falmouth and other private landowners who keep their land wild. The parcel is heavily wooded and many of the steep slopes that traverse the landscape are overgrown and difficult to access. The property includes over 3100 feet of river-frontage, providing direct access to the beauty and peacefulness of the river. The preserve is crossed by a cascading stream and several stream pools. It provides Portland residents with unequalled opportunities within the city for nature study, fishing, and picnicking. Further, with the removal of the Smelt Hill Dam in 2003, alewives have returned to the lower Presumpscot River for their annual migratory run. They draw a variety of other wildlife to the river including cormorants and osprey, which congregate at Presumpscot Falls looking for an easy meal. The City is cooperatively managing the preserve in conjunction with Portland Trails. There are several wonderful trails that provide direct access to the river within the preserve and beyond its borders.

E-11 Sheridan Street Property. This property forms one of the few areas of open space on the bay side of the Eastern Promenade. The land drops precipitously from the western side of North Street to the eastern side of Sheridan Street, making most of it unsuitable for development. It offers accessible open space between Sheridan Street and North Street, and good views of Back Cove and points west. It links via footpaths to the grounds of the East End School.

E-12 PATHS Wooded Area. Located behind the Portland Arts and Technology High School (PATHS), this land is comprised of a few lightly wooded areas, but is mostly open and includes both scrub-shrub wetlands and granite outcroppings. Over the past ten years the School has used the land as a training ground for students. The PATHS property and North Deering/Riverton Parcels (E-19) serve as the headwaters of Dole Brook, a stream that runs west through Riverside Golf Course to connect with the Presumpscot River. Preservation of these wetlands, fields and woodland buffers is critical to protecting water quality within Dole Brook Watershed.

E-13 Virginia Street Parcels. These City-owned, tax-acquired parcels adjacent to Maine Ave and Ray Street are contiguous with the Ocean Ave Open Space (E-14) and part of the Ocean Avenue Recreation Area. This undeveloped land features a mix of shrubs, trees, wetlands and streams. Several trails running through this property connect it to the larger Portland Trails network. The property's proximity to extensive residential neighborhoods creates an exceptional opportunity for recreation, education, and conservation activities.

E-14 Ocean Avenue Open Space. This property is the area formerly used as a landfill on outer Ocean Avenue near the intersection with Presumpscot Avenue. The 60+ acre site includes the capped landfill, Quarry Run Dog Park, and adjacent woodlands and wetland areas, which provide a mix of habitat for a variety of wildlife species including turkeys, deer and fox and song birds, especially migrating sparrows. In fact, the site is so popular with "birders" that is known as the "Dragon Fields" due to its proximity to the former Dragon Cement quarry. The landfill rises approximately 50-70 feet above the gravel drive at the highest point, affording good views in all directions, including Casco Bay to the south and east. These properties, in combination with the Virginia Street Parcels (E-13) and other nearby City-owned tax-acquired parcels make up the Ocean Avenue Recreation Area. The Commission has been working to protect additional trails and wildlife habitat, mainly wetland areas, contiguous with these existing holdings.

E-15 Maggie Lane Lot. This triangular lot off Maggie Lane, in combination with a trail easement on private property, was acquired in 2008 to provide trail access and linkage along the Riverton Rail Trail. Portland Trails constructed a trail head and boardwalk to connect with the trail network.

E-16 Beverly Street Lots – North. The Beverly Street Lots - North link with southern counterpart and the Natick Street Property along the west side of the Riverton Rail Trail. These lots were acquired to protect the Dole Brook stream corridor, provide access to the trail and to preserve a wooded buffer between the trail and adjacent properties.

E-17 Beverly Street Lots – South. The Beverly Street Lots - South, link with their northern counterpart and the Natick Street Property along the west side of the Riverton Rail Trail. These lots were acquired to protect wetlands associated with Dole Brook, provide access to the trail and to preserve a wooded buffer between the trail and adjacent properties.

E-18 Goodridge Avenue Lots. These wooded lots behind the intersection of Goodridge Avenue and Eleanor Street were acquired in conjunction with the Maggie Lane Lot and a trail easement to provide trail access and linkage along the Riverton Rail Trail. Portland Trails completed the new section of trail in 2010.

E-19 North Deering / Riverton Parcels. This large group of parcels is located north and west of the PATHS Wooded Area (E-12), just across the tracks from the Riverton Rail Trail. These wooded parcels provide connectivity to the Portland Trails network, provide significant wildlife habitat and preserve wetlands and stream buffers essential to maintaining the health of Dole Brook.

E-20 Castine Pines. This attractive grove of pine trees at the intersection of Forest Avenue and Castine Avenue was acquired as conservation land in 2008 through a land swap with a local developer planning to build additional housing on the street.

E-21 Ocean Ave Rec Area-Pine Grove Ave Lots. These lots near Copley Woods Circle were purchased to fill in gaps at the southern edge of the Ocean Avenue Recreation Area. This acquisition preserves trail connectivity and wooded wetlands in this area. Additional lots near Stepping Stone Lane were also included in this transaction.

E-22 Ocean Ave Rec Area-Belfast St Lots. These lots near Maine Avenue and Ray Street were donated to the Land Bank as conservation land to fill in gaps at the north-western edge of the Ocean Avenue Recreation Area. This acquisition preserves trail connectivity and wooded wetlands in this area.

E-23 Ocean Ave Rec Area-Marlborough Rd/Trapelo St Lots. These lots near Copley Woods Circle were purchased to fill in gaps at the southern edge of the Ocean Avenue Recreation Area. This acquisition preserves trail connectivity and wooded wetlands in this area.

E-24 Dole Brook Driving Range Property. This property across the street from Riverside Golf Course was once used as a driving range. The land is mostly wooded with the exception of a clearing for the former driving range and slopes towards a ravine that carries Dole Brook on its way to the Presumpscot River. Dole Brook has been identified as an impaired stream by the Maine Department of Environmental Protection, because it does not meet its designated water quality classification due to the impacts of urban stormwater runoff. State and Federal regulations under the Clean Water Act require the City to restore water quality in the brook. This property was placed in the Land Bank to protect the stream corridor, prevent further water quality degradation and potentially provide for passive recreational activities, such as trails or a low-impact driving range.

E-25 Canco Woods. The Canco Woods property was protected in 2012 through a collaborative partnership between neighborhood residents, the Trust for Public Land, Portland Trails, the Land Bank Commission and the former land owner, Union Water- Power Company. This very popular 13-acre wooded area features wetlands, streams and trails. The City also has a sewer

right-of-way through a portion of the property. Canco Woods is owned by the City and is subject to a conservation easement held by Portland Trails.

E-26 University Park. A popular spot for off-leash dog walking, University Park can be accessed from either Yale Street off Allen Avenue or from the east at Harvard Street. The property is bisected by the Harvard Street Path.

E-27 Wooded Area North of Riverside Golf Course. This wooded area is part of Riverside Golf Course and is bordered by the Presumpscot River and Interstate 95.

E-28 Land Along Canco Road. This parcel connects to the larger Canco Woods to the south (E-25) and contains the road frontage of The Woods at Canco retirement home.

E-29 to E-62 – See Exhibit B

E-63 Redlon Woods. This wooded area, located in the Rosemont neighborhood, features an interesting mix of woodlands, wetlands and ledge outcroppings, as well as some popular informal walking and mountain biking trails. The desire to protect this open space was the impetus behind the creation of the Land Bank Commission in 1999. Long-term protection of Redlon Woods has involved and will continue to require collaboration between the Land Bank Commission, City, neighboring property owners, local NGOs and other open space preservation advocates

E-66 Avangrid 204 Rand Rd. (See attached Exhibit D).

Exhibit B – Specific Properties (Portland Parks) Dedicated as Land Bank Property Interests

E-29 Back Cove Park and Trail
E-30 Barrow's Park/Baxter Sundial
E-31 Stone Street - Bayside Park & Playground
E-32 Baxter Pines
E-33 Baxter Woods
E-34 Bell Buoy Park
E-35 Belmeade Park
E-36 Capisic Pond Park
E-37 Clark Street Park
E-38 Congress Square Park
E-39 Deering Oaks Park
E-40 Dougherty Field
E-41 Eastern Prom, East End Beach, Fort Allen Park
E-42 Fessenden Park
E-43 Fort Gorges
E-44 Fort Sumner Park
E-45 Fox Field/Kennedy Park
E-46 Harbor View Park/Tate-Tyng Park
E-47 Heseltine Park
E-48 Lincoln Park
E-49 Lobsterman Park
E-50 Longfellow Square
E-51 Monument Square
E-52 Munjoy Playground
E-53 Payson Park
E-54 Peppermint Park

E-55 Pleasant Street Playground

E-56 Post Office Park

E-57 Riverside Golf Course

E-58 Riverton Park

E-59 Stroudwater Park

E-60 Taylor Street Playground

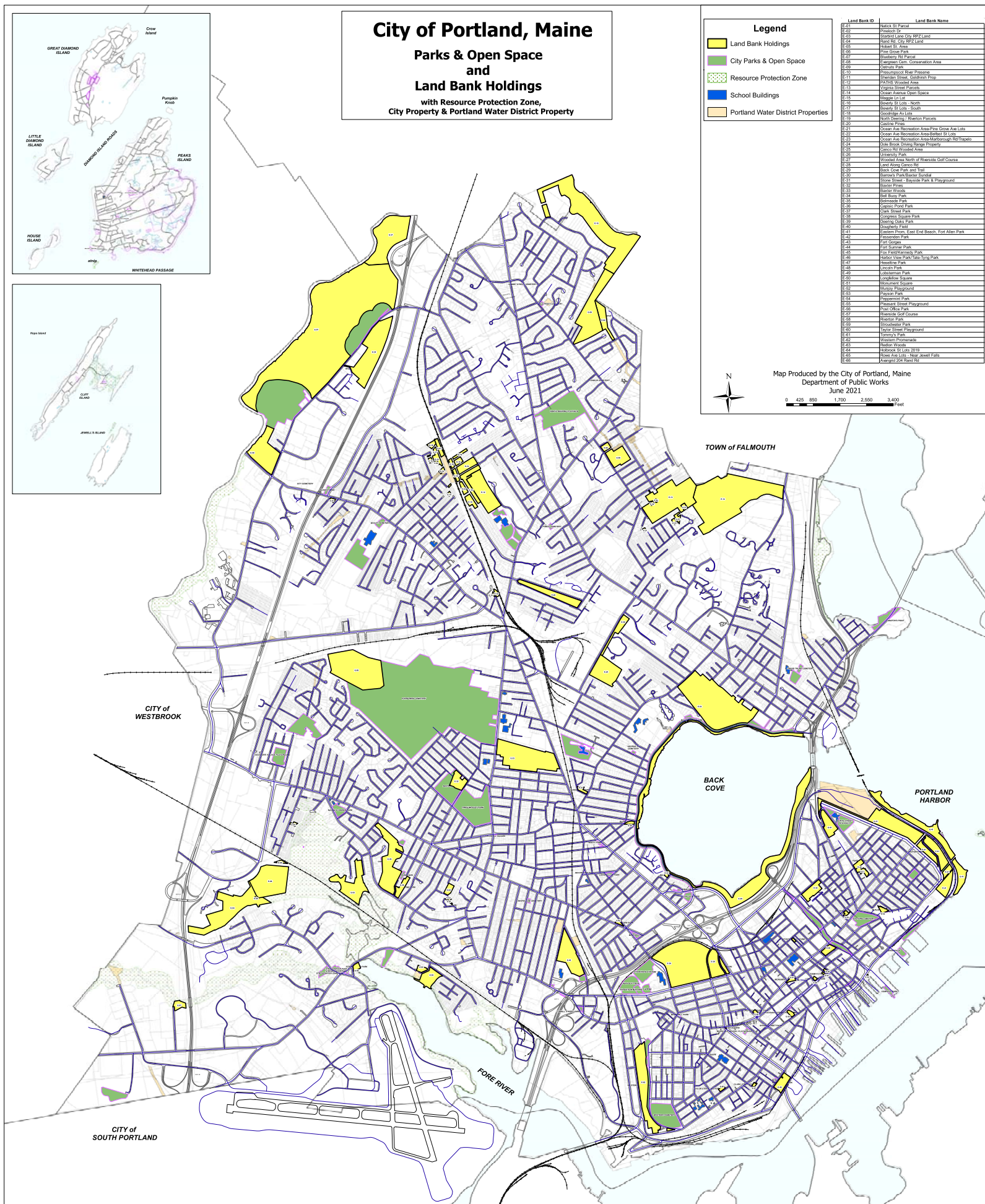
E-61 Tommy's Park

E-62 Western Promenade

E-63 Redlon Woods

Exhibit C - Current Land Bank Commission High Priority Parcels

HCP-1 Glickman, GDI
HCP-9 Brackett St Lots at Indian Trail, Peaks
HCP-11 Riverton Trolley Park Parcels
HCP-12 Verizon/Fairpoint Pines
HCP-13 Redlon Road Parcels
HCP-15 Stroudwater River Corridor
HP-3 ACE Griffin's Cove, Cliff Island
HP-4 Kensington St Parcel
HP-6 RPZ 1601-1660 Congress Street
HP-7 Waynflete School Property
HP-9 MTA Land Holm Ave
HP-10 PTC Land Holm Ave
HP-11 410 Auburn St
HP-12 1831 Washington Ave
HP-13 Rocky Hill
HP-15 Land West of Murray St
HP-19 Inter-urban Line
HP-21 Fore River Corridor on Yellowbird Ln
HP-24 Salem St Parcels



NEWS RELEASE

FOR IMMEDIATE RELEASE

April 19, 2021

MEDIA CONTACT

Pat Bailey, Land Bank Chair

202-213-7454

Portland Land Bank Commission Conserves Open Space on Rand Road

***Ahead of Earth Day, addition of 27-acre parcel will add to existing
preserves at the Fore River Sanctuary and Jewell Falls***

PORTLAND, Maine -- The Portland Land Bank Commission announced the acquisition by the City of Portland of a 27-acre forested parcel along Rand Road near outer Congress Street, from the Avangrid Foundation. This land has been a high priority open space parcel for several years due to its adjacency to existing conservation land, its network of trails and its natural and recreational values. With this addition, the City has added protection to its largest remaining undeveloped area around the headwaters of the Fore River.

"When you're hiking in these woods you are among soaring pine trees, streams and open wetlands," said Pat Bailey, Chair of the Portland Land Bank Commission. "You feel like you are in a special place but you are right in the heart of Portland."

The Avangrid Foundation, charitable arm of AVANGRID, parent company of Central Maine Power, worked with the City and Land Bank Commission to assess the best and highest use of the property and then to ensure that the parcel would be kept as open space and available to the public. The Foundation donated 85% of the appraised value to the Land Bank to support the acquisition.

"At the Avangrid Foundation we look for unique opportunities to partner with our local communities and pursue our mission of environmental stewardship, and this was the perfect opportunity to do both," said Nicole Licata Grant, Executive Director of the Avangrid Foundation. "We are so pleased to work with the City's Land Bank Commission to provide this land for public use. We want to thank the Boulos Company and the Law Firm of Curtis Thaxter for the additional donation of time and services to bring it to fruition."

Public access to the Rand Road property will continue via the trail network maintained by Portland Trails, which can be reached from Rowe Avenue, Starbird Land and Rand Road. Due to the varied land cover, topography and soil type, this is an area of regional flow for species moving to adapt to climate change. Development of the Rand Road property would not only represent the loss of an opportunity to protect a unique and important natural area, it would degrade the value of adjacent conservation lands by fragmenting the large undeveloped acreage.

"This is a big deal for Portland to be able to preserve this 27-acre parcel that helps the City accomplish so many goals at once -- from preserving our existing tree canopy and habitat areas, to getting us closer to 100% of our residents living within a 10-minute walk of a park or

trail, to creating outdoor recreation and exercise opportunities for walkers, bikers, students, commuters, and dog-walkers,” said Ethan Hipple, the City’s Director of Parks, Recreation & Facilities. “One hundred years from now, when Portland may have grown or changed so much, residents will be thankful that this gem of a property was set aside for the public to share and enjoy forever. The City of Portland and the Land Bank Commission want to thank the law firm of Jewell & Bulger for donating time and services to complete this transaction.”

The Avangrid Foundation recognized the conservation value of the area and quickly reached an agreement with the Portland Land Bank Commission, despite the COVID-19 pandemic. The Portland Land Bank Commission is responsible for identifying and protecting open space resources within the City of Portland. The commission seeks to preserve a balance between development and conservation of open space important for wildlife, ecological, environmental, scenic, or outdoor recreational values.

About The Avangrid Foundation

The Avangrid Foundation is an independent, nonprofit organization that funds philanthropic investments that primarily impact communities where AVANGRID, Inc. and its subsidiaries operate. Since 2002, the Avangrid Foundation and its predecessors have invested more than \$28 million in partnerships that focus on building sustainable, vital and healthy communities; preserving cultural and artistic heritage; advancing education; and improving people’s lives. The Avangrid Foundation is committed to advancing the United Nations Sustainable Development Goals in the United States. For more information, please visit www.avangridfoundation.org.

###



CITY OF PORTLAND, MAINE
DEPT. OF PUBLIC WORKS
212 CANCO RD, SUITE B
PORTLAND, MAINE 04103
PHONE (207) 874-8801

LEGEND

- UWP2-10-2020
- Designated Land Bank
- Drainage**
 - Brook
 - Ditch or Brook
 - Contour Lines

E-03 Starbird
Lane City
RPZ Land

E-04 Rand
Rd. City
RPZ Land

Rand Road:
Former Union Water
& Power Property

Note: Drainage & Water Bodies were derived from aerial imagery, not survey or wetland delineation. They are an indicator of potential water features only.

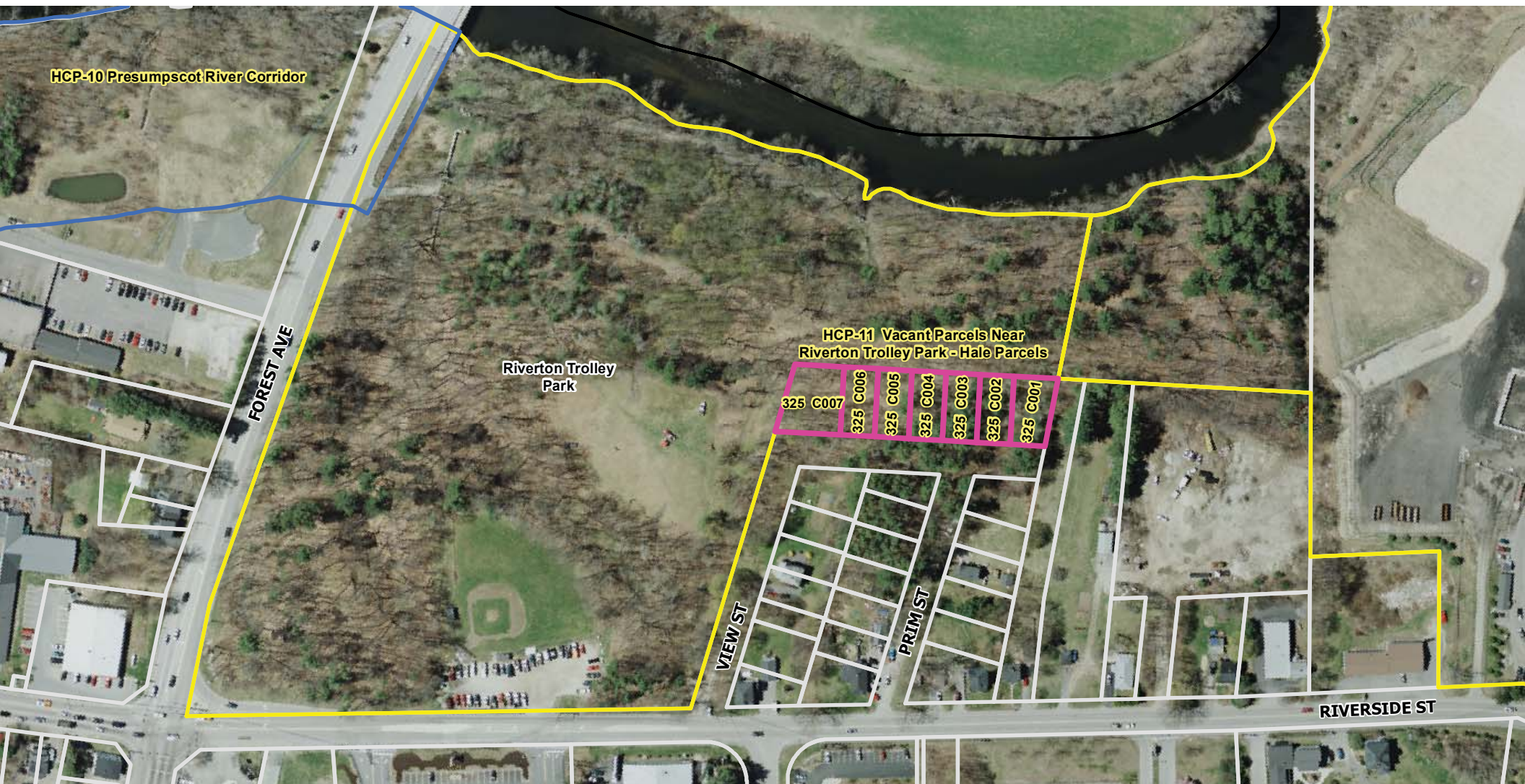


February 10, 2020

DESIGN BY: DAR | DRAWN BY: DAR | CHECK BY: XXX



Exhibit F - Riverton Trolley Park Addition





30 Danforth Street
Suite 106
Portland, ME
04101
t: 207.772.7424
tpl.org

Exhibit G - North Deering Park Summary and Map

September 1, 2021

City of Portland
Land Bank Commission
Maine

The Land Bank Commission,

I'm writing to request \$80,000 to support the acquisition of an +/- 8-acre forested parcel in North Deering, Portland. With help from The Trust for Public Land, the City of Portland submitted a \$400,000 grant request to the Outdoor Recreation Legacy Program (ORLP), a federal program. However, ORLP funding requires a 1:1 match and the \$80,000 request from The Land Bank Commission would help meet that need. The Trust for Public Land, the project manager, plans to also submit an application to the Land for Maine's Future Program to request an additional \$320,000, which would satisfy the 1:1 ORLP match requirement when combined with The Land Bank's support/contribution.

According to the Trust for Public Land's *Park Serve*, a geospatial analysis tool, North Deering is one of the few neighborhoods with a "high" need for public space within a 10-minute walk. Due to this deficiency, local children use this space as a wooded play space and refer to it as "The Forbidden Forest." The unofficial open space contains well-loved informal trails and wetlands, critical natural infrastructure that can help manage stormwater runoff and floods.

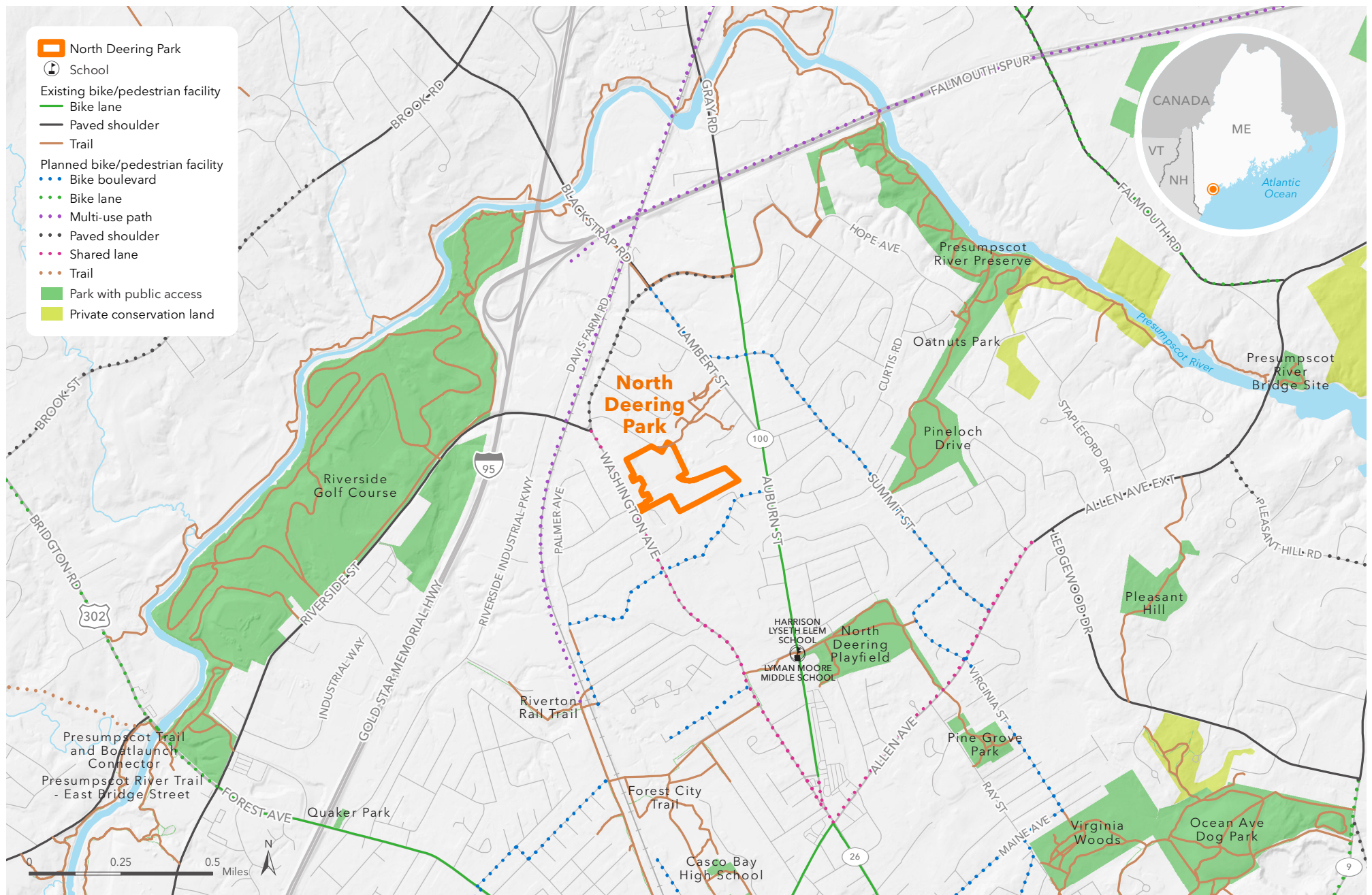
This project will add much needed public outdoor space in the neighborhood. During the COVID-19 pandemic, public outdoor spaces have offered respite and opportunities for physical activities to many communities. This park will make it possible for this community to have easy access to outdoor space and aligns with TPL's *Land for People* mission.

The Trust for Public Land (TPL) is dedicated to protecting *Land for People* and working with our partners we have conserved more than 170,000 acres and created over 70 new parks and public land units – including the Bayside Trail, Eastern Prom Trail, and Canco Woods – in Maine since 1998.

We are excited about this project and look forward to working with our partners to bring it to life.

Sincerely,

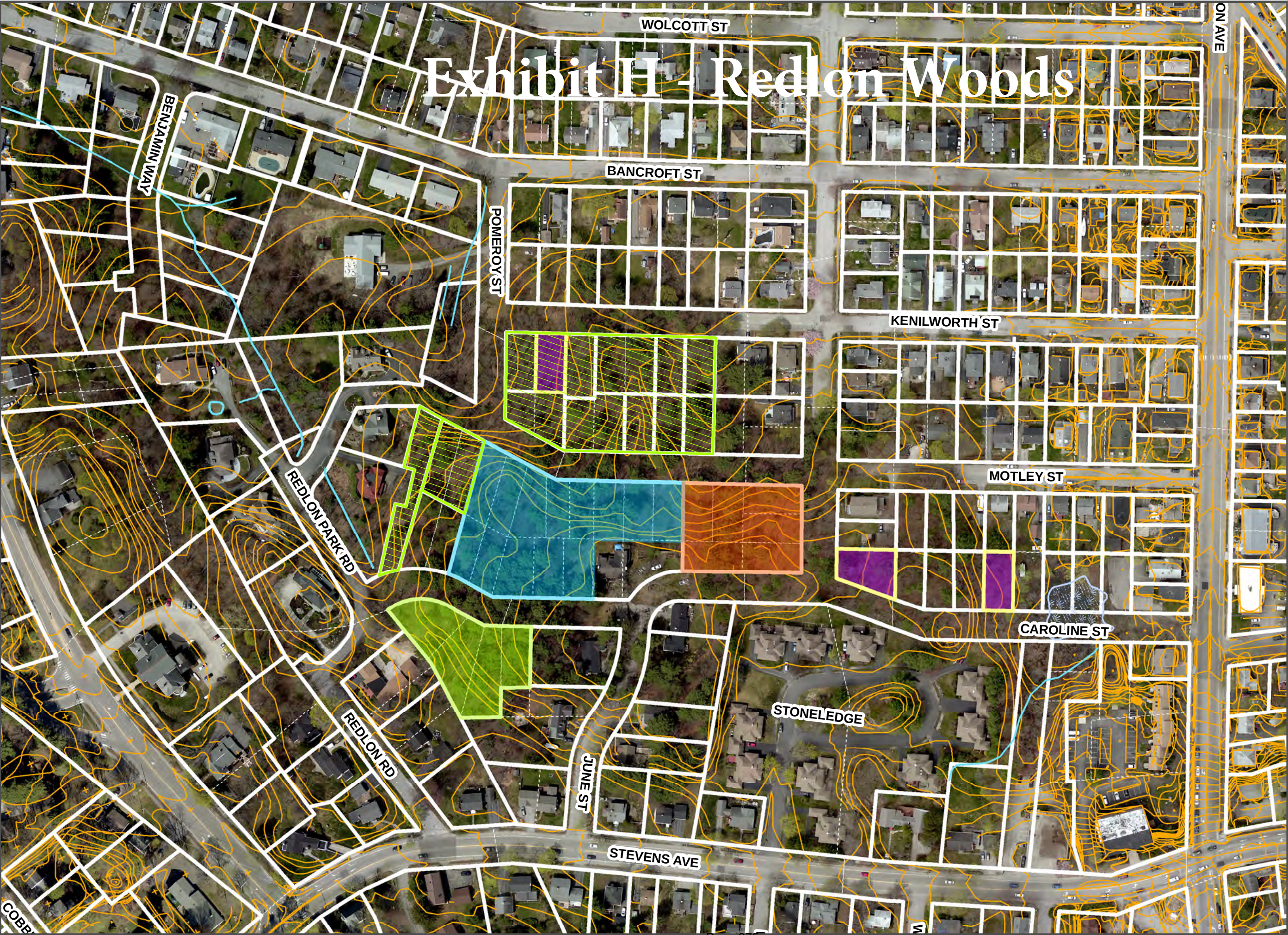
Phillip Dube, Senior Project Associate
The Trust for Public Land



North Deering Park

NEIGHBORHOOD MAP, NATIONAL PARK SERVICE OUTDOOR RECREATION LEGACY PROGRAM

August 26, 2021. Copyright © The Trust for Public Land. The Trust for Public Land and The Trust for Public Land logo are federally registered marks of The Trust for Public Land. Information on this map is provided for purposes of discussion and visualization only. www.tpl.org



CITY OF PORTLAND, MAINE
DEPT. OF PUBLIC WORKS
212 CANCO RD, SUITE B
PORTLAND, MAINE 04103
PHONE (207) 874-8801

LEGEND

- Redlon Woods Phase1
- Taylor
- Berry2
- Berry1
- City-owned

Drainage

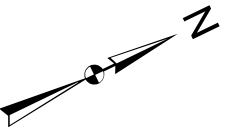
- Brook
- Ditch or Brook

Water Bodies

- swamp
- Countour Lines

Redlon Woods Area

Note: Drainage & Water Bodies were derived from aerial imagery, not survey or wetland delineation. They are an indicator of potential water features only.



January 7, 2020

DESIGN BY: DAR	DRAWN BY: DAR	CHECK BY: XXX
0 25 50 100 150 200 Feet		

Exhibit I - Land Bank Commission Budget 2022

2022 FINAL Land Bank Commission Budget			
	Prepared by: Baxter Miatke (Treasurer)	11/5/2021	
	Reviewed by: Pat Bailey (Chair)	11/5/2021	
	Updated and Finalized At Meeting	11/10/2021	
	<u>General Statement of Financial Position</u>		<u>Notes</u>
	Balance from City: (As of 11/1/2021)	\$ 303,762.87	Cash on Hand Balance reported from City Staff (includes donations)
	2018, 2019, 2020, 2021 Land Bank Allocations	\$ 287,627	This is an estimated additional amount that is not bonded at this point. The process for using these funds would be to contact the City Finance Director with a summary about the prospective purchase and then the funds would be bonded and allocated.
	Restricted Gifts (parks account)	\$ 2,400	
	Total Estimated Available as of 11/1/2021	\$ 593,789.87	Includes estimated allocations and restricted gifts
	<u>2022 Anticipated Expenditures</u>		
	Property Acquisition	\$ 282,000	\$80,000 of this approved by comission for North Deering Park through TPL (expected 2022), Assume \$27,000 for Riverton Trolly Park Parcel from appraisal, Assume up to \$100,000 for Redlon Parcel, Assume \$75,000 for to be determined acquisitions in 2022
	<u>Aqisition Related Dilligence</u>		
	Survey	\$ 10,200	Assume 3 surveys at approximately \$3,400 each
	Appraisals	\$ 10,200	Assume 3 appraisals at approximately \$3,400 each
	Environmental Assessments	\$ 5,000	Assume 2 Environmental Assesments at \$2,500 each
	Legal	\$ 10,000	Assume 2 legal reviews up to \$5,000 each
			<i>Sub Total Acquisition related Costs \$35,000</i>
	Land Maintenance	\$ 20,000	Assumes Portland Trails Work and Parks and Rec on existing Land Bank Properties
	Administrative	\$ 3,000	Assume administrative fees for comission
	Total 2022 Estimated Expenditures	\$ 340,400	
	Percentage of Available Funds for 2022 Expenditures	57%	

MEMORANDUM
City Council Agenda Item

FROM: Paul Bradbury, Jetport Director

DATE: January 3, 2022

SUBJECT: Order 137-21/22 Approving and Appropriating a Federal Aviation Administration Airport Improvement Program Federal Fiscal Year 2022 Entitlement and Discretionary Grant - Sponsored by Danielle P. West, Interim City Manager

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

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st Reading 1/19/2022

Final Action 2/7/2022

Can action be taken at a later date: Yes

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

I. SUMMARY

The Portland International Jetport requests approval and appropriation of a Federal Aviation Administration Airport Improvement Program (AIP) federal fiscal year 2022 grant totaling \$12.39 million and matching funds of \$1.38 million split equally between the Jetport and the State of Maine for a total of \$13.77 million to rehabilitate the Jetport's primary runway 11/29.

II. AGENDA DESCRIPTION

The Federal Aviation Administration issues grants to fund eligible safety and capacity projects at airports nationwide through the Airport Improvement Program (AIP). This program is funded through federal taxes on commercial air fares and on aviation fuel. The amount of entitlement funding allocated to each airport is based on the annual number of enplaned commercial passengers the airport handled in the prior calendar year. Due to the pandemic, the FAA is allowing entitlement funds to be based on 2019 passenger enplanements since for most airports, including the Jetport, 2019 passenger enplanements were significantly higher than 2020. For federal fiscal year 2022, the Portland International Jetport will be allocated AIP entitlement funding totaling \$4.15 million based upon 1,088,728 enplaned passengers in calendar year 2019. In addition to entitlement funding, the Jetport is also seeking AIP discretionary funding of \$8.24 million in federal fiscal year 2022. The full AIP grant of \$12.39 million combined with \$1.38 million in matching funds split equally between the Jetport and the state of Maine will fund the total \$13.77 million cost to rehabilitate the Jetport's primary runway 11/29.

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

III. BACKGROUND

The FAA requires approval of AIP Grants and AIP Grant Assurances by the airport sponsor's governing body, which for the Portland International Jetport is the Portland City Council. Additionally, it requires the governing body to name the official representative for those grants, which for the Portland International Jetport is the Airport Director. The runway reconstruction project being proposed for federal FY 2022 was included and scheduled within the 20 year capital program developed as part of the Jetport's Sustainable Airport Master Plan that was accepted by the City Council in November 2016.

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

The approval of this federal FY 2022 AIP grant will allow the Portland International Jetport to proceed with this important runway rehabilitation project.

The Portland International Jetport provides a robust connection for the region to the national air transportation system and, in doing so, plays an important role in supporting the Council's goals for regional economic stability.

V. FINANCIAL IMPACT

If approved, the Portland International Jetport will apply for and expects to receive a \$12.39 million federal AIP grant that will fund 90% of the project's \$13.77 million cost. The \$1.38 million not covered by the federal AIP grant will be covered equally by the Jetport and the State of Maine in the amount of \$688,000 each. Approval of this AIP grant has no impact on the City of Portland's general fund or the tax rate.

VI. STAFF ANALYSIS AND BACKGROUND

The Portland International Jetport's primary runway, 11/29, is its most critical operational asset. It has been 18 years since the last rehabilitation was completed in 2004. As assets like this age, the cost to maintain and operate increases dramatically. Sections of the runway have already required patching to mitigate pavement surface cracking, weathering, and aggregate loss. This is certainly a greater concern for runway surfaces which need to be kept clear of debris that could be ingested by aircraft engines. This grant will provide a complete mill and overlay of the bituminous asphalt surface and replacement of critical runway lighting system infrastructure.

The project will require a 56 day runway closure that will result in a change to flight patterns in and out of the Jetport. A media campaign is underway to notify communities surrounding the airport of this change to flight patterns from April 18 through June 13, 2022.

VII. RECOMMENDATION

Portland International Jetport staff highly recommends City Council approval and appropriation of this federal fiscal year 2022 AIP grant funding request of \$12.39 million, and local Jetport and state funding of \$1.38 million to rehabilitate its primary runway 11/29.

VIII. LIST ATTACHMENTS

1. Order FAA AIP Grants and Authorizing Dir. of Jetport 1.19.2022
2. Orientation Plan 11-29 Rehabilitation and Development Staging Diagram
3. airport-sponsor-assurances-aip-2020

Prepared by:

Paul Bradbury, Jetport Director

Date: 01/03/2022

KATE SNYDER (MAYOR)
ANNA TREVORROW (1)
VICTORIA L. PELLETIER (2)
TAE Y. CHONG (3)
ANDREW ZARRO (4)

**CITY OF PORTLAND
IN THE CITY COUNCIL**

MARK DION (5)
APRIL D. FOURNIER(A/L)
PIOUS ALI (A/L)
ROBERTO RODRÍGUEZ (A/L)

**ORDER APPROVING AND APPROPRIATING
A FEDERAL AVIATION ADMINISTRATION
AIRPORT IMPROVEMENT PROGRAM
FEDERAL FISCAL YEAR 2022 ENTITLEMENT AND DISCRETIONARY
GRANT**

ORDERED, that grant funding of approximately \$4.15 million dollars from the Federal Aviation Administration (FAA) Airport Improvement Program (AIP) from federal fiscal year 2022 entitlement and \$8.24 million in discretionary funding is hereby approved for the Portland International Jetport (Jetport) for the following project, as well as funding of \$1.38 million split equally between the Jetport and the State of Maine:

- Rehabilitate the Portland International Jetport's primary runway 11/29;
and

BE IT FURTHER ORDERED, that the funds for said project are hereby appropriated from federal and state grant funding, and the local share of the projects shall be appropriated from the Jetport's unrestricted fund balance and from state funding; and

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

V:\1952\active\195210916\aviation\9_drawing\sheet_files\figures\195210916_figures-Context_Plan.dwg lranthony 9/21/2021 4:56 PM



Stantec
2211 Congress Street, Suite 380
Portland, Maine 04102-1955
Tel. 207.883.3355
www.stantec.com

Client/Project
PORTLAND INTERNATIONAL JETPORT
PORTLAND AND SOUTH PORTLAND, MAINE

File Name:	195210916_figures-context_plan	LA	DDA	DDA	21.09.21
		DWN.	CHKD.	DSGN.	YY.MM.DD

Title
STRENGTHEN\REHABILITATION RUNWAY 11-29
PROJECT LOCATION

Figure No.
1

SHORT TERM DEVELOPMENT

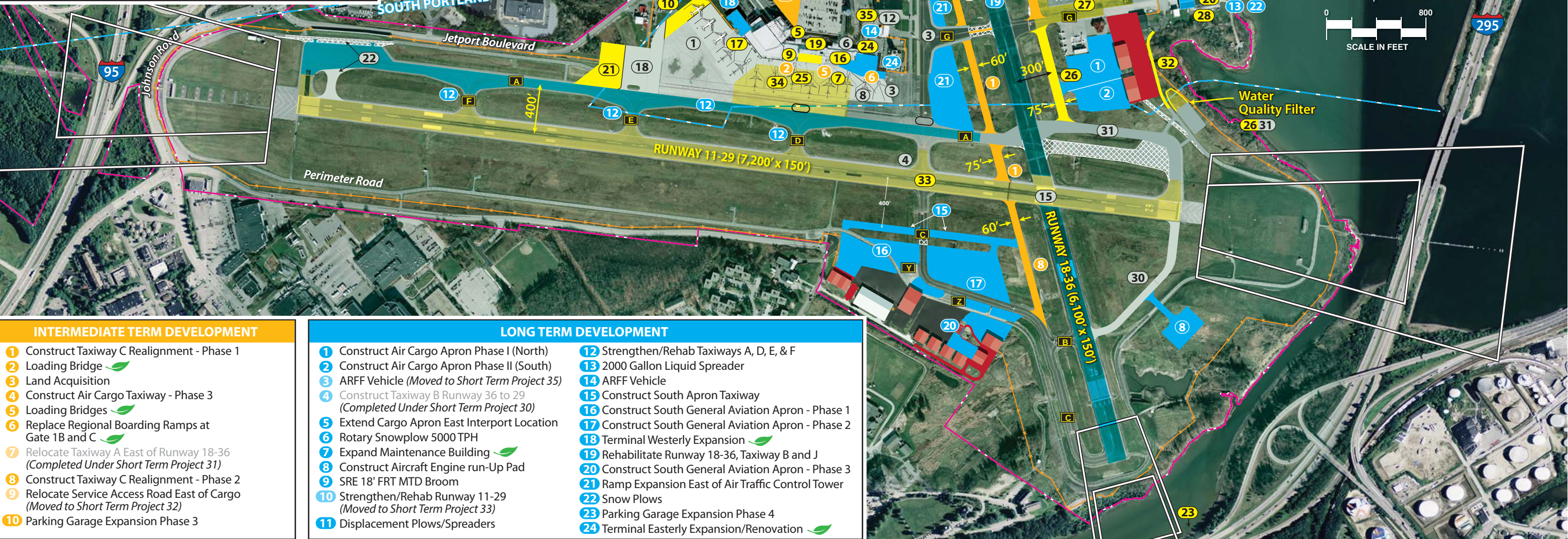
- 1 Terminal Apron Expansion Northwest End - Phase 1
- 2 Environmental Assessment and Permitting for Airport Improvements - NS
- 3 Gate 1 Apron Reconstruction and Construct TW C Snow Shoulders North
- 4 Runway Incursion Warning System
- 5 3rd Floor Bypass Auto Exit Portals
- 6 Gate 1 - 6 Rehabilitation Vertical Circulation Improvement
- 7 Preconditioned Air/Lifts for Loading Bridges
- 8 Gates 1 Additional Loading Bridges
- 9 Central Air Handling Units
- 10 Terminal Apron Expansion Northwest End - Phase 2
- 11 Environmental Assessment Mitigation Measures - NS
- 12 ARFF Vehicle
- 13 Snow Removal Tractor for Airfield Lights/Signs
- 14 Maintenance Building Generator and Enclosure
- 15 Click to Activate Runway Lights
- 16 Admin Offices above Bag Claim - East End
- 17 Additional Loading Bridges for Gate 11
- 18 Long Term Hold/Deicing/RON Apron - Phase 1
- 19 FIS Facility
- 20 Snow Melt Equipment for Contaminated Snow - SRE/Maintenance
- 21 Long Term Hold/Deicing/RON Apron - Phase 2
- 22 Runway 11 Taxiway Bypass and Perimeter Service Road Realignment

- 23 Tree Removal for GQS on Runway 36 End
- 24 Expand Baggage Claim - Phase 2
- 25 Loading Bridge
- 26 Construct Air Cargo Taxiway & Taxiway A East - Phase 2
- 27 Rehabilitate Cargo Apron
- 28 Displacement Plows
- 29 Airport Security Fence and Gate Upgrades (North East Area)
- 30 Construct Taxiway B Runway 36 to 29 (Moved to Short Term Due to RSAT Priority)
- 31 Construct Air Cargo Taxiway & TW A East - Phase 1
- 32 Relocate Service Access Road East of Cargo
- 33 Strengthen/Rehab Runway 11-29
- 34 Terminal Apron Rehabilitation
- 35 ARFF Vehicle

NS - Not Shown

LEGEND

- Airport Property Line
- City Limit Line
- Airport Fence Line
- Runway Protection Zone (RPZ)
- Short Term Development
- Intermediate Term Development
- Long Term Development
- Third Party Tenant Development
- Completed Projects
- Sustainable Projects



INTERMEDIATE TERM DEVELOPMENT

- 1 Construct Taxiway C Realignment - Phase 1
- 2 Loading Bridge
- 3 Land Acquisition
- 4 Construct Air Cargo Taxiway - Phase 3
- 5 Loading Bridges
- 6 Replace Regional Boarding Ramps at Gate 1B and C
- 7 Relocate Taxiway A East of Runway 18-36 (Completed Under Short Term Project 31)
- 8 Construct Taxiway C Realignment - Phase 2
- 9 Relocate Service Access Road East of Cargo (Moved to Short Term Project 32)
- 10 Parking Garage Expansion Phase 3

LONG TERM DEVELOPMENT

- 1 Construct Air Cargo Apron Phase I (North)
- 2 Construct Air Cargo Apron Phase II (South)
- 3 ARFF Vehicle (Moved to Short Term Project 35)
- 4 Construct Taxiway B Runway 36 to 29 (Completed Under Short Term Project 30)
- 5 Extend Cargo Apron East Interport Location
- 6 Rotary Snowplow 5000 TPH
- 7 Expand Maintenance Building
- 8 Construct Aircraft Engine run-Up Pad
- 9 SRE 18' FRT MTD Broom
- 10 Strengthen/Rehab Runway 11-29 (Moved to Short Term Project 33)
- 11 Displacement Plows/Spreaders
- 12 Strengthen/Rehab Taxiways A, D, E, & F
- 13 2000 Gallon Liquid Spreader
- 14 ARFF Vehicle
- 15 Construct South Apron Taxiway
- 16 Construct South General Aviation Apron - Phase 1
- 17 Construct South General Aviation Apron - Phase 2
- 18 Terminal Westerly Expansion
- 19 Rehabilitate Runway 18-36, Taxiway B and J
- 20 Construct South General Aviation Apron - Phase 3
- 21 Ramp Expansion East of Air Traffic Control Tower
- 22 Snow Plows
- 23 Parking Garage Expansion Phase 4
- 24 Terminal Easterly Expansion/Renovation

Exhibit 10

DEVELOPMENT STAGING



ASSURANCES

AIRPORT SPONSORS

A. General.

1. These assurances shall be complied with in the performance of grant agreements for airport development, airport planning, and noise compatibility program grants for airport sponsors.
2. These assurances are required to be submitted as part of the project application by sponsors requesting funds under the provisions of Title 49, U.S.C., subtitle VII, as amended. As used herein, the term "public agency sponsor" means a public agency with control of a public-use airport; the term "private sponsor" means a private owner of a public-use airport; and the term "sponsor" includes both public agency sponsors and private sponsors.
3. Upon acceptance of this grant offer by the sponsor, these assurances are incorporated in and become part of this grant agreement.

B. Duration and Applicability.

1. **Airport development or Noise Compatibility Program Projects Undertaken by a Public Agency Sponsor.**

The terms, conditions and assurances of this grant agreement shall remain in full force and effect throughout the useful life of the facilities developed or equipment acquired for an airport development or noise compatibility program project, or throughout the useful life of the project items installed within a facility under a noise compatibility program project, but in any event not to exceed twenty (20) years from the date of acceptance of a grant offer of Federal funds for the project. However, there shall be no limit on the duration of the assurances regarding Exclusive Rights and Airport Revenue so long as the airport is used as an airport. There shall be no limit on the duration of the terms, conditions, and assurances with respect to real property acquired with federal funds. Furthermore, the duration of the Civil Rights assurance shall be specified in the assurances.

2. **Airport Development or Noise Compatibility Projects Undertaken by a Private Sponsor.**

The preceding paragraph 1 also applies to a private sponsor except that the useful life of project items installed within a facility or the useful life of the facilities developed or equipment acquired under an airport development or noise compatibility program project shall be no less than ten (10) years from the date of acceptance of Federal aid for the project.

3. **Airport Planning Undertaken by a Sponsor.**

Unless otherwise specified in this grant agreement, only Assurances 1, 2, 3, 5, 6, 13, 18, 25, 30, 32, 33, and 34 in Section C apply to planning projects. The terms, conditions, and assurances of this grant agreement shall remain in full force and effect during the life of the project; there shall be no limit on the duration of the assurances regarding Exclusive Rights and Airport Revenue so long as the airport is used as an airport.

C. Sponsor Certification.

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

1. General Federal Requirements.

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

- a. Title 49, U.S.C., subtitle VII, as amended.
- b. Davis-Bacon Act - 40 U.S.C. 276(a), et seq.¹
- c. Federal Fair Labor Standards Act - 29 U.S.C. 201, et seq.
- d. Hatch Act – 5 U.S.C. 1501, et seq.²
- e. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 Title 42 U.S.C. 4601, et seq.^{1 2}
- f. National Historic Preservation Act of 1966 - Section 106 - 16 U.S.C. 470(f).¹
- g. Archeological and Historic Preservation Act of 1974 - 16 U.S.C. 469 through 469c.¹
- h. Native Americans Grave Repatriation Act - 25 U.S.C. Section 3001, et seq.
- i. Clean Air Act, P.L. 90-148, as amended.
- j. Coastal Zone Management Act, P.L. 93-205, as amended.
- k. Flood Disaster Protection Act of 1973 - Section 102(a) - 42 U.S.C. 4012a.¹
- l. Title 49, U.S.C., Section 303, (formerly known as Section 4(f))
- m. Rehabilitation Act of 1973 - 29 U.S.C. 794.
- n. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- o. Americans with Disabilities Act of 1990, as amended, (42 U.S.C. § 12101 et seq.), prohibits discrimination on the basis of disability).
- p. Age Discrimination Act of 1975 - 42 U.S.C. 6101, et seq.
- q. American Indian Religious Freedom Act, P.L. 95-341, as amended.
- r. Architectural Barriers Act of 1968 -42 U.S.C. 4151, et seq.¹
- s. Power plant and Industrial Fuel Use Act of 1978 - Section 403- 2 U.S.C. 8373.¹
- t. Contract Work Hours and Safety Standards Act - 40 U.S.C. 327, et seq.¹
- u. Copeland Anti-kickback Act - 18 U.S.C. 874.1
- v. National Environmental Policy Act of 1969 - 42 U.S.C. 4321, et seq.¹
- w. Wild and Scenic Rivers Act, P.L. 90-542, as amended.
- x. Single Audit Act of 1984 - 31 U.S.C. 7501, et seq.²
- y. Drug-Free Workplace Act of 1988 - 41 U.S.C. 702 through 706.
- z. The Federal Funding Accountability and Transparency Act of 2006, as amended (Pub. L. 109-282, as amended by section 6202 of Pub. L. 110-252).

EXECUTIVE ORDERS

- a. Executive Order 11246 - Equal Employment Opportunity¹
- b. Executive Order 11990 - Protection of Wetlands
- c. Executive Order 11998 –Flood Plain Management
- d. Executive Order 12372 - Intergovernmental Review of Federal Programs
- e. Executive Order 12699 - Seismic Safety of Federal and Federally Assisted New Building Construction¹
- f. Executive Order 12898 - Environmental Justice
- g. Executive Order 13788 - Buy American and Hire American
- h. Executive Order 13858 – Strengthening Buy-American Preferences for Infrastructure Projects

FEDERAL REGULATIONS

- a. 2 CFR Part180 – OMB Guidelines to Agencies on Government-wide Debarment and Suspension (Non-procurement).
- b. 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. [OMB Circular A-87 Cost Principles Applicable to Grants and Contracts with State and Local Governments, and OMB Circular A-133 - Audits of States, Local Governments, and Non-Profit Organizations].^{4, 5, 6}
- c. 2 CFR Part 1200 – Non-procurement Suspension and Debarment
- d. 14 CFR Part 13 - Investigative and Enforcement Procedures14 CFR Part 16 - Rules of Practice For Federally Assisted Airport Enforcement Proceedings.
- e. 14 CFR Part 150 - Airport noise compatibility planning.
- f. 28 CFR Part 35- Discrimination on the Basis of Disability in State and Local Government Services.
- g. 28 CFR § 50.3 - U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964.
- h. 29 CFR Part 1 - Procedures for predetermination of wage rates.¹
- i. 29 CFR Part 3 - Contractors and subcontractors on public building or public work financed in whole or part by loans or grants from the United States.¹
- j. 29 CFR Part 5 - Labor standards provisions applicable to contracts covering federally financed and assisted construction (also labor standards provisions applicable to non-construction contracts subject to the Contract Work Hours and Safety Standards Act).¹
- k. 41 CFR Part 60 - Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Federal and federally assisted contracting requirements).¹
- l. 49 CFR Part 18 - Uniform administrative requirements for grants and cooperative agreements to state and local governments.³
- m. 49 CFR Part 20 - New restrictions on lobbying.

- n. 49 CFR Part 21 – Nondiscrimination in federally-assisted programs of the Department of Transportation - effectuation of Title VI of the Civil Rights Act of 1964.
- o. 49 CFR Part 23 - Participation by Disadvantage Business Enterprise in Airport Concessions.
- p. 49 CFR Part 24 – Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs.^{1,2}
- q. 49 CFR Part 26 – Participation by Disadvantaged Business Enterprises in Department of Transportation Programs.
- r. 49 CFR Part 27 – Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance.¹
- s. 49 CFR Part 28 –Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities conducted by the Department of Transportation.
- t. 49 CFR Part 30 - Denial of public works contracts to suppliers of goods and services of countries that deny procurement market access to U.S. contractors.
- u. 49 CFR Part 32 –Government-wide Requirements for Drug-Free Workplace (Financial Assistance)
- v. 49 CFR Part 37 –Transportation Services for Individuals with Disabilities (ADA).
- w. 49 CFR Part 41 - Seismic safety of Federal and federally assisted or regulated new building construction.

SPECIFIC ASSURANCES

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

FOOTNOTES TO ASSURANCE C.1.

- ¹ These laws do not apply to airport planning sponsors.
- ² These laws do not apply to private sponsors.
- ³ 49 CFR Part 18 and 2 CFR Part 200 contain requirements for State and Local Governments receiving Federal assistance. Any requirement levied upon State and Local Governments by this regulation and circular shall also be applicable to private sponsors receiving Federal assistance under Title 49, United States Code.
- ⁴ On December 26, 2013 at 78 FR 78590, the Office of Management and Budget (OMB) issued the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR Part 200. 2 CFR Part 200 replaces and combines the former Uniform Administrative Requirements for Grants (OMB Circular A-102 and Circular A-110 or 2 CFR Part 215 or Circular) as well as the Cost Principles (Circulars A-21 or 2 CFR part 220; Circular A-87 or 2 CFR part 225; and A-122, 2 CFR part 230). Additionally it replaces Circular A-133 guidance on the Single Annual Audit. In accordance with 2 CFR section 200.110, the standards set forth in Part 200 which affect administration of Federal awards issued by Federal agencies become effective once implemented by Federal agencies or when any future amendment to this Part becomes final. Federal agencies, including the Department of Transportation, must implement the policies and procedures applicable to Federal awards by promulgating a regulation to be effective by December 26, 2014 unless different provisions are required by statute or approved by OMB.

- ⁵ Cost principles established in 2 CFR part 200 subpart E must be used as guidelines for determining the eligibility of specific types of expenses.
- ⁶ Audit requirements established in 2 CFR part 200 subpart F are the guidelines for audits.

2. Responsibility and Authority of the Sponsor.

a. Public Agency Sponsor:

It has legal authority to apply for this grant, and to finance and carry out the proposed project; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.

b. Private Sponsor:

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

3. Sponsor Fund Availability.

It has sufficient funds available for that portion of the project costs which are not to be paid by the United States. It has sufficient funds available to assure operation and maintenance of items funded under this grant agreement which it will own or control.

4. Good Title.

- a. It, a public agency or the Federal government, holds good title, satisfactory to the Secretary, to the landing area of the airport or site thereof, or will give assurance satisfactory to the Secretary that good title will be acquired.
- b. For noise compatibility program projects to be carried out on the property of the sponsor, it holds good title satisfactory to the Secretary to that portion of the property upon which Federal funds will be expended or will give assurance to the Secretary that good title will be obtained.

5. Preserving Rights and Powers.

- a. It will not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in this grant agreement without the written approval of the Secretary, and will act promptly to acquire, extinguish or modify any outstanding rights or claims of right of others which would interfere with such performance by the sponsor. This shall be done in a manner acceptable to the Secretary.
- b. Subject to the FAA Act of 2018, Public Law 115-254, Section 163, it will not sell, lease, encumber, or otherwise transfer or dispose of any part of its title or other interests in the property shown on Exhibit A to this application or, for a noise compatibility program project, that portion of the property upon which Federal funds have been expended, for the duration of the terms, conditions, and assurances in this grant agreement without approval by the

Secretary. If the transferee is found by the Secretary to be eligible under Title 49, United States Code, to assume the obligations of this grant agreement and to have the power, authority, and financial resources to carry out all such obligations, the sponsor shall insert in the contract or document transferring or disposing of the sponsor's interest, and make binding upon the transferee all of the terms, conditions, and assurances contained in this grant agreement.

- c. For all noise compatibility program projects which are to be carried out by another unit of local government or are on property owned by a unit of local government other than the sponsor, it will enter into an agreement with that government. Except as otherwise specified by the Secretary, that agreement shall obligate that government to the same terms, conditions, and assurances that would be applicable to it if it applied directly to the FAA for a grant to undertake the noise compatibility program project. That agreement and changes thereto must be satisfactory to the Secretary. It will take steps to enforce this agreement against the local government if there is substantial non-compliance with the terms of the agreement.
- d. For noise compatibility program projects to be carried out on privately owned property, it will enter into an agreement with the owner of that property which includes provisions specified by the Secretary. It will take steps to enforce this agreement against the property owner whenever there is substantial non-compliance with the terms of the agreement.
- e. If the sponsor is a private sponsor, it will take steps satisfactory to the Secretary to ensure that the airport will continue to function as a public-use airport in accordance with these assurances for the duration of these assurances.
- f. If an arrangement is made for management and operation of the airport by any agency or person other than the sponsor or an employee of the sponsor, the sponsor will reserve sufficient rights and authority to insure that the airport will be operated and maintained in accordance Title 49, United States Code, the regulations and the terms, conditions and assurances in this grant agreement and shall insure that such arrangement also requires compliance therewith.
- g. Sponsors of commercial service airports will not permit or enter into any arrangement that results in permission for the owner or tenant of a property used as a residence, or zoned for residential use, to taxi an aircraft between that property and any location on airport. Sponsors of general aviation airports entering into any arrangement that results in permission for the owner of residential real property adjacent to or near the airport must comply with the requirements of Sec. 136 of Public Law 112-95 and the sponsor assurances.

6. Consistency with Local Plans.

The project is reasonably consistent with plans (existing at the time of submission of this application) of public agencies that are authorized by the State in which the project is located to plan for the development of the area surrounding the airport.

7. Consideration of Local Interest.

It has given fair consideration to the interest of communities in or near where the project may be located.

8. Consultation with Users.

In making a decision to undertake any airport development project under Title 49, United States Code, it has undertaken reasonable consultations with affected parties using the airport at which project is proposed.

9. Public Hearings.

In projects involving the location of an airport, an airport runway, or a major runway extension, it has afforded the opportunity for public hearings for the purpose of considering the economic, social, and environmental effects of the airport or runway location and its consistency with goals and objectives of such planning as has been carried out by the community and it shall, when requested by the Secretary, submit a copy of the transcript of such hearings to the Secretary. Further, for such projects, it has on its management board either voting representation from the communities where the project is located or has advised the communities that they have the right to petition the Secretary concerning a proposed project.

10. Metropolitan Planning Organization.

In projects involving the location of an airport, an airport runway, or a major runway extension at a medium or large hub airport, the sponsor has made available to and has provided upon request to the metropolitan planning organization in the area in which the airport is located, if any, a copy of the proposed amendment to the airport layout plan to depict the project and a copy of any airport master plan in which the project is described or depicted.

11. Pavement Preventive Maintenance.

With respect to a project approved after January 1, 1995, for the replacement or reconstruction of pavement at the airport, it assures or certifies that it has implemented an effective airport pavement maintenance-management program and it assures that it will use such program for the useful life of any pavement constructed, reconstructed or repaired with Federal financial assistance at the airport. It will provide such reports on pavement condition and pavement management programs as the Secretary determines may be useful.

12. Terminal Development Prerequisites.

For projects which include terminal development at a public use airport, as defined in Title 49, it has, on the date of submittal of the project grant application, all the safety equipment required for certification of such airport under section 44706 of Title 49, United States Code, and all the security equipment required by rule or regulation, and has provided for access to the passenger enplaning and deplaning area of such airport to passengers enplaning and deplaning from aircraft other than air carrier aircraft.

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

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

14. Minimum Wage Rates.

It shall include, in all contracts in excess of \$2,000 for work on any projects funded under this grant agreement which involve labor, provisions establishing minimum rates of wages, to be predetermined by the Secretary of Labor, in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a-276a-5), which contractors shall pay to skilled and unskilled labor, and such minimum rates shall be stated in the invitation for bids and shall be included in proposals or bids for the work.

15. Veteran's Preference.

It shall include in all contracts for work on any project funded under this grant agreement which involve labor, such provisions as are necessary to insure that, in the employment of labor (except in executive, administrative, and supervisory positions), preference shall be given to Vietnam era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns owned and controlled by disabled veterans as defined in Section 47112 of Title 49, United States Code. However, this preference shall apply only where the individuals are available and qualified to perform the work to which the employment relates.

16. Conformity to Plans and Specifications.

It will execute the project subject to plans, specifications, and schedules approved by the Secretary. Such plans, specifications, and schedules shall be submitted to the Secretary prior to commencement of site preparation, construction, or other performance under this grant agreement, and, upon approval of the Secretary, shall be incorporated into this grant agreement. Any modification to the approved plans, specifications, and schedules shall also be subject to approval of the Secretary, and incorporated into this grant agreement.

17. Construction Inspection and Approval.

It will provide and maintain competent technical supervision at the construction site throughout the project to assure that the work conforms to the plans, specifications, and schedules approved by the Secretary for the project. It shall subject the construction work on any project contained in an approved project application to inspection and approval by the Secretary and such work shall be in accordance with regulations and procedures prescribed by the Secretary. Such regulations and procedures shall require such cost and progress reporting by the sponsor or sponsors of such project as the Secretary shall deem necessary.

18. Planning Projects.

In carrying out planning projects:

- a. It will execute the project in accordance with the approved program narrative contained in the project application or with the modifications similarly approved.
- b. It will furnish the Secretary with such periodic reports as required pertaining to the planning project and planning work activities.
- c. It will include in all published material prepared in connection with the planning project a notice that the material was prepared under a grant provided by the United States.
- d. It will make such material available for examination by the public, and agrees that no material prepared with funds under this project shall be subject to copyright in the United States or any other country.
- e. It will give the Secretary unrestricted authority to publish, disclose, distribute, and otherwise use any of the material prepared in connection with this grant.

- f. It will grant the Secretary the right to disapprove the sponsor's employment of specific consultants and their subcontractors to do all or any part of this project as well as the right to disapprove the proposed scope and cost of professional services.
- g. It will grant the Secretary the right to disapprove the use of the sponsor's employees to do all or any part of the project.
- h. It understands and agrees that the Secretary's approval of this project grant or the Secretary's approval of any planning material developed as part of this grant does not constitute or imply any assurance or commitment on the part of the Secretary to approve any pending or future application for a Federal airport grant.

19. Operation and Maintenance.

- a. The airport and all facilities which are necessary to serve the aeronautical users of the airport, other than facilities owned or controlled by the United States, shall be operated at all times in a safe and serviceable condition and in accordance with the minimum standards as may be required or prescribed by applicable Federal, state and local agencies for maintenance and operation. It will not cause or permit any activity or action thereon which would interfere with its use for airport purposes. It will suitably operate and maintain the airport and all facilities thereon or connected therewith, with due regard to climatic and flood conditions. Any proposal to temporarily close the airport for non-aeronautical purposes must first be approved by the Secretary. In furtherance of this assurance, the sponsor will have in effect arrangements for-
 - 1) Operating the airport's aeronautical facilities whenever required;
 - 2) Promptly marking and lighting hazards resulting from airport conditions, including temporary conditions; and
 - 3) Promptly notifying airmen of any condition affecting aeronautical use of the airport. Nothing contained herein shall be construed to require that the airport be operated for aeronautical use during temporary periods when snow, flood or other climatic conditions interfere with such operation and maintenance. Further, nothing herein shall be construed as requiring the maintenance, repair, restoration, or replacement of any structure or facility which is substantially damaged or destroyed due to an act of God or other condition or circumstance beyond the control of the sponsor.
- b. It will suitably operate and maintain noise compatibility program items that it owns or controls upon which Federal funds have been expended.

20. Hazard Removal and Mitigation.

It will take appropriate action to assure that such terminal airspace as is required to protect instrument and visual operations to the airport (including established minimum flight altitudes) will be adequately cleared and protected by removing, lowering, relocating, marking, or lighting or otherwise mitigating existing airport hazards and by preventing the establishment or creation of future airport hazards.

21. Compatible Land Use.

It will take appropriate action, to the extent reasonable, including the adoption of zoning laws, to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations, including landing and takeoff of aircraft. In addition, if the project is for noise compatibility program implementation, it will not cause or permit any change in land use, within its jurisdiction, that will reduce its compatibility, with

respect to the airport, of the noise compatibility program measures upon which Federal funds have been expended.

22. Economic Nondiscrimination.

- a. It will make the airport available as an airport for public use on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport.
- b. In any agreement, contract, lease, or other arrangement under which a right or privilege at the airport is granted to any person, firm, or corporation to conduct or to engage in any aeronautical activity for furnishing services to the public at the airport, the sponsor will insert and enforce provisions requiring the contractor to-
 - 1) furnish said services on a reasonable, and not unjustly discriminatory, basis to all users thereof, and
 - 2) charge reasonable, and not unjustly discriminatory, prices for each unit or service, provided that the contractor may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.
- c. Each fixed-based operator at the airport shall be subject to the same rates, fees, rentals, and other charges as are uniformly applicable to all other fixed-based operators making the same or similar uses of such airport and utilizing the same or similar facilities.
- d. Each air carrier using such airport shall have the right to service itself or to use any fixed-based operator that is authorized or permitted by the airport to serve any air carrier at such airport.
- e. Each air carrier using such airport (whether as a tenant, non-tenant, or subtenant of another air carrier tenant) shall be subject to such nondiscriminatory and substantially comparable rules, regulations, conditions, rates, fees, rentals, and other charges with respect to facilities directly and substantially related to providing air transportation as are applicable to all such air carriers which make similar use of such airport and utilize similar facilities, subject to reasonable classifications such as tenants or non-tenants and signatory carriers and non-signatory carriers. Classification or status as tenant or signatory shall not be unreasonably withheld by any airport provided an air carrier assumes obligations substantially similar to those already imposed on air carriers in such classification or status.
- f. It will not exercise or grant any right or privilege which operates to prevent any person, firm, or corporation operating aircraft on the airport from performing any services on its own aircraft with its own employees [including, but not limited to maintenance, repair, and fueling] that it may choose to perform.
- g. In the event the sponsor itself exercises any of the rights and privileges referred to in this assurance, the services involved will be provided on the same conditions as would apply to the furnishing of such services by commercial aeronautical service providers authorized by the sponsor under these provisions.
- h. The sponsor may establish such reasonable, and not unjustly discriminatory, conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport.

- i. The sponsor may prohibit or limit any given type, kind or class of aeronautical use of the airport if such action is necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public.

23. Exclusive Rights.

It will permit no exclusive right for the use of the airport by any person providing, or intending to provide, aeronautical services to the public. For purposes of this paragraph, the providing of the services at an airport by a single fixed-based operator shall not be construed as an exclusive right if both of the following apply:

- a. It would be unreasonably costly, burdensome, or impractical for more than one fixed-based operator to provide such services, and
- b. If allowing more than one fixed-based operator to provide such services would require the reduction of space leased pursuant to an existing agreement between such single fixed-based operator and such airport. It further agrees that it will not, either directly or indirectly, grant or permit any person, firm, or corporation, the exclusive right at the airport to conduct any aeronautical activities, including, but not limited to charter flights, pilot training, aircraft rental and sightseeing, aerial photography, crop dusting, aerial advertising and surveying, air carrier operations, aircraft sales and services, sale of aviation petroleum products whether or not conducted in conjunction with other aeronautical activity, repair and maintenance of aircraft, sale of aircraft parts, and any other activities which because of their direct relationship to the operation of aircraft can be regarded as an aeronautical activity, and that it will terminate any exclusive right to conduct an aeronautical activity now existing at such an airport before the grant of any assistance under Title 49, United States Code.

24. Fee and Rental Structure.

It will maintain a fee and rental structure for the facilities and services at the airport which will make the airport as self-sustaining as possible under the circumstances existing at the particular airport, taking into account such factors as the volume of traffic and economy of collection. No part of the Federal share of an airport development, airport planning or noise compatibility project for which a grant is made under Title 49, United States Code, the Airport and Airway Improvement Act of 1982, the Federal Airport Act or the Airport and Airway Development Act of 1970 shall be included in the rate basis in establishing fees, rates, and charges for users of that airport.

25. Airport Revenues.

- a. All revenues generated by the airport and any local taxes on aviation fuel established after December 30, 1987, will be expended by it for the capital or operating costs of the airport; the local airport system; or other local facilities which are owned or operated by the owner or operator of the airport and which are directly and substantially related to the actual air transportation of passengers or property; or for noise mitigation purposes on or off the airport. The following exceptions apply to this paragraph:
 - 1) If covenants or assurances in debt obligations issued before September 3, 1982, by the owner or operator of the airport, or provisions enacted before September 3, 1982, in governing statutes controlling the owner or operator's financing, provide for the use of the revenues from any of the airport owner or operator's facilities, including the airport, to support not only the airport but also the airport owner or operator's general debt obligations or other facilities, then this limitation on the use of all revenues generated

by the airport (and, in the case of a public airport, local taxes on aviation fuel) shall not apply.

- 2) If the Secretary approves the sale of a privately owned airport to a public sponsor and provides funding for any portion of the public sponsor's acquisition of land, this limitation on the use of all revenues generated by the sale shall not apply to certain proceeds from the sale. This is conditioned on repayment to the Secretary by the private owner of an amount equal to the remaining unamortized portion (amortized over a 20-year period) of any airport improvement grant made to the private owner for any purpose other than land acquisition on or after October 1, 1996, plus an amount equal to the federal share of the current fair market value of any land acquired with an airport improvement grant made to that airport on or after October 1, 1996.
 - 3) Certain revenue derived from or generated by mineral extraction, production, lease, or other means at a general aviation airport (as defined at Section 47102 of title 49 United States Code), if the FAA determines the airport sponsor meets the requirements set forth in Sec. 813 of Public Law 112-95.
- b. As part of the annual audit required under the Single Audit Act of 1984, the sponsor will direct that the audit will review, and the resulting audit report will provide an opinion concerning, the use of airport revenue and taxes in paragraph (a), and indicating whether funds paid or transferred to the owner or operator are paid or transferred in a manner consistent with Title 49, United States Code and any other applicable provision of law, including any regulation promulgated by the Secretary or Administrator.
 - c. Any civil penalties or other sanctions will be imposed for violation of this assurance in accordance with the provisions of Section 47107 of Title 49, United States Code.

26. Reports and Inspections.

It will:

- a. submit to the Secretary such annual or special financial and operations reports as the Secretary may reasonably request and make such reports available to the public; make available to the public at reasonable times and places a report of the airport budget in a format prescribed by the Secretary;
- b. for airport development projects, make the airport and all airport records and documents affecting the airport, including deeds, leases, operation and use agreements, regulations and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request;
- c. for noise compatibility program projects, make records and documents relating to the project and continued compliance with the terms, conditions, and assurances of this grant agreement including deeds, leases, agreements, regulations, and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request; and
- d. in a format and time prescribed by the Secretary, provide to the Secretary and make available to the public following each of its fiscal years, an annual report listing in detail:
 - 1) all amounts paid by the airport to any other unit of government and the purposes for which each such payment was made; and
 - 2) all services and property provided by the airport to other units of government and the amount of compensation received for provision of each such service and property.

27. Use by Government Aircraft.

It will make available all of the facilities of the airport developed with Federal financial assistance and all those usable for landing and takeoff of aircraft to the United States for use by Government aircraft in common with other aircraft at all times without charge, except, if the use by Government aircraft is substantial, charge may be made for a reasonable share, proportional to such use, for the cost of operating and maintaining the facilities used. Unless otherwise determined by the Secretary, or otherwise agreed to by the sponsor and the using agency, substantial use of an airport by Government aircraft will be considered to exist when operations of such aircraft are in excess of those which, in the opinion of the Secretary, would unduly interfere with use of the landing areas by other authorized aircraft, or during any calendar month that –

- a. Five (5) or more Government aircraft are regularly based at the airport or on land adjacent thereto; or
- b. The total number of movements (counting each landing as a movement) of Government aircraft is 300 or more, or the gross accumulative weight of Government aircraft using the airport (the total movement of Government aircraft multiplied by gross weights of such aircraft) is in excess of five million pounds.

28. Land for Federal Facilities.

It will furnish without cost to the Federal Government for use in connection with any air traffic control or air navigation activities, or weather-reporting and communication activities related to air traffic control, any areas of land or water, or estate therein, or rights in buildings of the sponsor as the Secretary considers necessary or desirable for construction, operation, and maintenance at Federal expense of space or facilities for such purposes. Such areas or any portion thereof will be made available as provided herein within four months after receipt of a written request from the Secretary.

29. Airport Layout Plan.

- a. Subject to the FAA Reauthorization Act of 2018, Public Law 115-254, Section 163, it will keep up to date at all times an airport layout plan of the airport showing:
 - 1) boundaries of the airport and all proposed additions thereto, together with the boundaries of all offsite areas owned or controlled by the sponsor for airport purposes and proposed additions thereto;
 - 2) the location and nature of all existing and proposed airport facilities and structures (such as runways, taxiways, aprons, terminal buildings, hangars and roads), including all proposed extensions and reductions of existing airport facilities;
 - 3) the location of all existing and proposed non-aviation areas and of all existing improvements thereon; and
 - 4) all proposed and existing access points used to taxi aircraft across the airport's property boundary. Such airport layout plans and each amendment, revision, or modification thereof, shall be subject to the approval of the Secretary which approval shall be evidenced by the signature of a duly authorized representative of the Secretary on the face of the airport layout plan. The sponsor will not make or permit any changes or alterations in the airport or any of its facilities which are not in conformity

with the airport layout plan as approved by the Secretary and which might, in the opinion of the Secretary, adversely affect the safety, utility or efficiency of the airport.

- b. Subject to the FAA Reauthorization Act of 2018, Public Law 115-254, Section 163, if a change or alteration in the airport or the facilities is made which the Secretary determines adversely affects the safety, utility, or efficiency of any federally owned, leased, or funded property on or off the airport and which is not in conformity with the airport layout plan as approved by the Secretary, the owner or operator will, if requested, by the Secretary (1) eliminate such adverse effect in a manner approved by the Secretary; or (2) bear all costs of relocating such property (or replacement thereof) to a site acceptable to the Secretary and all costs of restoring such property (or replacement thereof) to the level of safety, utility, efficiency, and cost of operation existing before the unapproved change in the airport or its facilities except in the case of a relocation or replacement of an existing airport facility due to a change in the Secretary's design standards beyond the control of the airport sponsor.

30. Civil Rights.

It will promptly take any measures necessary to ensure that no person in the United States shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in any activity conducted with, or benefiting from, funds received from this grant.

- a. Using the definitions of activity, facility and program as found and defined in §§ 21.23 (b) and 21.23 (e) of 49 CFR § 21, the sponsor will facilitate all programs, operate all facilities, or conduct all programs in compliance with all non-discrimination requirements imposed by, or pursuant to these assurances.
- b. Applicability
 - 1) Programs and Activities. If the sponsor has received a grant (or other federal assistance) for any of the sponsor's program or activities, these requirements extend to all of the sponsor's programs and activities.
 - 2) Facilities. Where it receives a grant or other federal financial assistance to construct, expand, renovate, remodel, alter or acquire a facility, or part of a facility, the assurance extends to the entire facility and facilities operated in connection therewith.
 - 3) Real Property. Where the sponsor receives a grant or other Federal financial assistance in the form of, or for the acquisition of real property or an interest in real property, the assurance will extend to rights to space on, over, or under such property.

c. Duration.

The sponsor agrees that it is obligated to this assurance for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or structures or improvements thereon, in which case the assurance obligates the sponsor, or any transferee for the longer of the following periods:

- 1) So long as the airport is used as an airport, or for another purpose involving the provision of similar services or benefits; or
- 2) So long as the sponsor retains ownership or possession of the property.

- d. Required Solicitation Language. It will include the following notification in all solicitations for bids, Requests For Proposals for work, or material under this grant agreement and in all proposals for agreements, including airport concessions, regardless of funding source:

“The **(Name of Sponsor)**, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises and airport concession disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.”

- e. Required Contract Provisions.

- 1) It will insert the non-discrimination contract clauses requiring compliance with the acts and regulations relative to non-discrimination in Federally-assisted programs of the DOT, and incorporating the acts and regulations into the contracts by reference in every contract or agreement subject to the non-discrimination in Federally-assisted programs of the DOT acts and regulations.
- 2) It will include a list of the pertinent non-discrimination authorities in every contract that is subject to the non-discrimination acts and regulations.
- 3) It will insert non-discrimination contract clauses as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a sponsor.
- 4) It will insert non-discrimination contract clauses prohibiting discrimination on the basis of race, color, national origin, creed, sex, age, or handicap as a covenant running with the land, in any future deeds, leases, license, permits, or similar instruments entered into by the sponsor with other parties:
 - a. For the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and
 - b. For the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.
- f. It will provide for such methods of administration for the program as are found by the Secretary to give reasonable guarantee that it, other recipients, sub-recipients, sub-grantees, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the acts, the regulations, and this assurance.
- g. It agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the acts, the regulations, and this assurance.

31. Disposal of Land.

- a. For land purchased under a grant for airport noise compatibility purposes, including land serving as a noise buffer, it will dispose of the land, when the land is no longer needed for such purposes, at fair market value, at the earliest practicable time. That portion of the proceeds of such disposition which is proportionate to the United States' share of acquisition of such land will be, at the discretion of the Secretary, (1) reinvested in another project at the airport, or (2) transferred to another eligible airport as prescribed by the Secretary. The Secretary shall give preference to the following, in descending order, (1)

- reinvestment in an approved noise compatibility project, (2) reinvestment in an approved project that is eligible for grant funding under Section 47117(e) of title 49 United States Code, (3) reinvestment in an approved airport development project that is eligible for grant funding under Sections 47114, 47115, or 47117 of title 49 United States Code, (4) transferred to an eligible sponsor of another public airport to be reinvested in an approved noise compatibility project at that airport, and (5) paid to the Secretary for deposit in the Airport and Airway Trust Fund. If land acquired under a grant for noise compatibility purposes is leased at fair market value and consistent with noise buffering purposes, the lease will not be considered a disposal of the land. Revenues derived from such a lease may be used for an approved airport development project that would otherwise be eligible for grant funding or any permitted use of airport revenue.
- b. For land purchased under a grant for airport development purposes (other than noise compatibility), it will, when the land is no longer needed for airport purposes, dispose of such land at fair market value or make available to the Secretary an amount equal to the United States' proportionate share of the fair market value of the land. That portion of the proceeds of such disposition which is proportionate to the United States' share of the cost of acquisition of such land will, (1) upon application to the Secretary, be reinvested or transferred to another eligible airport as prescribed by the Secretary. The Secretary shall give preference to the following, in descending order: (1) reinvestment in an approved noise compatibility project, (2) reinvestment in an approved project that is eligible for grant funding under Section 47117(e) of title 49 United States Code, (3) reinvestment in an approved airport development project that is eligible for grant funding under Sections 47114, 47115, or 47117 of title 49 United States Code, (4) transferred to an eligible sponsor of another public airport to be reinvested in an approved noise compatibility project at that airport, and (5) paid to the Secretary for deposit in the Airport and Airway Trust Fund.
 - c. Land shall be considered to be needed for airport purposes under this assurance if (1) it may be needed for aeronautical purposes (including runway protection zones) or serve as noise buffer land, and (2) the revenue from interim uses of such land contributes to the financial self-sufficiency of the airport. Further, land purchased with a grant received by an airport operator or owner before December 31, 1987, will be considered to be needed for airport purposes if the Secretary or Federal agency making such grant before December 31, 1987, was notified by the operator or owner of the uses of such land, did not object to such use, and the land continues to be used for that purpose, such use having commenced no later than December 15, 1989.
 - d. Disposition of such land under (a) (b) or (c) will be subject to the retention or reservation of any interest or right therein necessary to ensure that such land will only be used for purposes which are compatible with noise levels associated with operation of the airport.

32. Engineering and Design Services.

Engineering and Design Services. If any phase of such project has received Federal funds under Chapter 471 subchapter 1 of Title 49 U.S.C., it will award each contract, or sub-contract for program management, construction management, planning studies, feasibility studies, architectural services, preliminary engineering, design, engineering, surveying, mapping or related services in the same manner as a contract for architectural and engineering services is negotiated under Chapter 11 of Title 40 U. S. C., or an equivalent qualifications-based requirement prescribed for or by the sponsor of the airport.

33. Foreign Market Restrictions.

It will not allow funds provided under this grant to be used to fund any project which uses any product or service of a foreign country during the period in which such foreign country is listed by the United States Trade Representative as denying fair and equitable market opportunities for products and suppliers of the United States in procurement and construction.

34. Policies, Standards, and Specifications.

It will carry out the project in accordance with policies, standards, and specifications approved by the Secretary including, but not limited to, the advisory circulars listed in the Current FAA Advisory Circulars for AIP projects, dated _____, and included in this grant, and in accordance with applicable state policies, standards, and specifications approved by the Secretary.

35. Relocation and Real Property Acquisition.

- a. It will be guided in acquiring real property, to the greatest extent practicable under State law, by the land acquisition policies in Subpart B of 49 CFR Part 24 and will pay or reimburse property owners for necessary expenses as specified in Subpart B.
- b. It will provide a relocation assistance program offering the services described in Subpart C and fair and reasonable relocation payments and assistance to displaced persons as required in Subpart D and E of 49 CFR Part 24.
- c. It will make available within a reasonable period of time prior to displacement, comparable replacement dwellings to displaced persons in accordance with Subpart E of 49 CFR Part 24.

36. Access By Intercity Buses.

The airport owner or operator will permit, to the maximum extent practicable, intercity buses or other modes of transportation to have access to the airport; however, it has no obligation to fund special facilities for intercity buses or for other modes of transportation.

37. Disadvantaged Business Enterprises.

The sponsor shall not discriminate on the basis of race, color, national origin or sex in the award and performance of any DOT-assisted contract covered by 49 CFR Part 26, or in the award and performance of any concession activity contract covered by 49 CFR Part 23. In addition, the sponsor shall not discriminate on the basis of race, color, national origin or sex in the administration of its Disadvantaged Business Enterprise (DBE) and Airport Concessions Disadvantaged Business Enterprise (ACDBE) programs or the requirements of 49 CFR Parts 23 and 26. The sponsor shall take all necessary and reasonable steps under 49 CFR Parts 23 and 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts, and/or concession contracts. The sponsor's DBE and ACDBE programs, as required by 49 CFR Parts 26 and 23, and as approved by DOT, are incorporated by reference in this agreement. Implementation of these programs is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the sponsor of its failure to carry out its approved program, the Department may impose sanctions as provided for under Parts 26 and 23 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1936 (31 U.S.C. 3801).

38. Hangar Construction.

If the airport owner or operator and a person who owns an aircraft agree that a hangar is to be constructed at the airport for the aircraft at the aircraft owner's expense, the airport owner or

operator will grant to the aircraft owner for the hangar a long term lease that is subject to such terms and conditions on the hangar as the airport owner or operator may impose.

39. Competitive Access.

- a. If the airport owner or operator of a medium or large hub airport (as defined in section 47102 of title 49, U.S.C.) has been unable to accommodate one or more requests by an air carrier for access to gates or other facilities at that airport in order to allow the air carrier to provide service to the airport or to expand service at the airport, the airport owner or operator shall transmit a report to the Secretary that-
 - 1) Describes the requests;
 - 2) Provides an explanation as to why the requests could not be accommodated; and
 - 3) Provides a time frame within which, if any, the airport will be able to accommodate the requests.
- b. Such report shall be due on either February 1 or August 1 of each year if the airport has been unable to accommodate the request(s) in the six month period prior to the applicable due date.

MEMORANDUM
City Council Agenda Item

FROM:

DATE: December 13, 2021

SUBJECT: Order 138-21/22 Amendment to Portland City Code Chapter 17 Re: Sale of Flavored Tobacco Products Prohibited - Sponsored by the Health & Human Services and Public Safety Committee, Councilor Tae Chong, Chair

SPONSOR: Health & Human Services and Public Safety Committee, Councilor Tae Chong, Chair

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

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st Reading 12/6/2021

Final Action 12/20/2021

Can action be taken at a later date: Yes Yes.

PRESENTATION: Councilor Tae Chong will present at the second reading.

I. SUMMARY

The amendment would define and ban flavored tobacco and nicotine products; these include natural, synthetic, and menthol products with the ban enforced by the City's Public Health Director.

II. AGENDA DESCRIPTION

The Health & Human Services and Public Safety Committee met on November 9, 2021 and voted 3 - 0 to recommend passage to the full Council.

The amendment would define and ban the sale of flavored tobacco and nicotine products, including natural, synthetic, and menthol tobacco products, with the ban enforced by the City's Public Health Director.

The Health & Human Services Committee also voted that the amendment should be effective June 1, 2022 to be consistent with one approved by the Bangor City Council. Bangor, Maine is the first municipality in the state of Maine to adopt a full flavor ban ordinance. Additionally, this will give ample time for the Portland Public Health's Tobacco Prevention Team to develop and disseminate a retailer campaign and other educational resources.

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

III. BACKGROUND

To address the increase in youth tobacco and nicotine use and prevent a new generation of addicted youth, Public Health staff presented a full tobacco flavor ban to the Health & Human Services and Public Safety Committee on October 12, 2021 meeting. Public comment was taken at that meeting and at the November 9, 2021 meeting where the Committee voted 3 - 0 to recommend passage to the full Council.

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

The intended result is to prevent Portland youth from becoming addicted to tobacco and nicotine and the negative health outcomes that result from addiction. The amendment addresses the Council goal to prioritize human dignity and adopt anti-racism and anti-discrimination practices; the tobacco industry targets their products to marginalized people and communities of color, leading to disproportionate rates of use and health disparities for BIPOC and LGBT people.

V. FINANCIAL IMPACT

Enforcement will be part of the Public Health Director's duties and will not incur additional staffing costs.

VI. STAFF ANALYSIS AND BACKGROUND

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

VII. RECOMMENDATION

Passage.

VIII. LIST ATTACHMENTS

1. Ch. 17 Ban on Flavored Tobacco Products 12.6.2021
2. City of Portland Flavor Ban Response Memo
3. Draft Flavored Tobacco Ordinance (revision 11.9.2021)
4. Tobacco Free Kids Factsheet 2- Flavors attract kids
5. Tobacco Free Kids Factsheet- Impact of Menthol Cigarettes on Youth Smoking Initiation and Health Disparities 2021
6. State and Localities Fact Sheet -Tobacco Free Kids
7. FDA Commits to Evidence-Based Actions Aimed at Saving Lives and Preventing Future Generations of Smokers _ FDA
8. City of Portland Tobacco Flavor Ban Memo October 2021
9. Flavored Tobacco Ban Public Comment

Prepared by:

Date: 12/13/2021

KATE SNYDER (MAYOR)
ANNA TREVORROW (1)
VICTORIA L. PELLETIER (2)
TAE Y. CHONG (3)
ANDREW ZARRO (4)

**CITY OF PORTLAND
IN THE CITY COUNCIL**

MARK DION (5)
APRIL D. FOURNIER(A/L)
PIOUS ALI (A/L)
ROBERTO RODRÍGUEZ (A/L)

**AMENDMENT TO PORTLAND CITY CODE
CHAPTER 17**

Re: SALE OF FLAVORED TOBACCO PRODUCTS PROHIBITED

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

1. *That Sections 17-71 and 17-98 of the Portland City Code are hereby amended to read as follows:*

Chapter 17 OFFENSES, MISCELLANEOUS PROVISIONS*

Art. I. In General, §§ 17-1--17-14

...

Art. V. Regulation of Tobacco, §§ 17-70--17-98

Div. 1. Generally, §§ 17-70--17-80

...

Div. 6. Smoking Prohibited in City Parks and Public Grounds
§§17-96-17-98

Div. 7. Sale of Flavored Tobacco Products Prohibited, Sec.
17-98.

...

Sec. 17-71. Definitions.

Words used in this chapter shall have their common meanings, except that definitions set forth in 22 M.R.S.A. Chapter 262-A, or this section shall apply unless the context clearly indicates that a different meaning is intended:

Designated city trail means the traveled portion of all city-owned or controlled trails open to use by the public that have been designated as a nonsmoking trail by order of the city council.

Flavored tobacco products means any tobacco product that

imparts a taste or smell, other than the taste or smell of tobacco, either prior to, or during the consumption of, a tobacco product, including, but not limited to, any taste or smell relating to fruit, menthol, mint, wintergreen, chocolate, cocoa, vanilla, honey, or any candy, dessert, alcoholic beverage, herb, or spice. Specifically excluded from this definition are any product(s) containing cannabis, as defined by Chapter [], of this Code, unless these products contain, are made of, or are derived from tobacco or nicotine.

Outdoor eating areas shall mean patios, decks, public property permitted for outdoor dining and other outdoor areas under the control of a restaurant or bar for the use of its patrons.

Owner means and includes the proprietor, manager, lessee, lessor licensee or any other person exercising control over any facility or location.

Private function is a room or a hall in which the sponsor of the private function and not the owner or proprietor has control over the seating arrangements.

Smoking means the lighting, inhaling, exhaling, burning or carrying of any cigar, cigarette, pipe, electronic cigarette, electronic cigar, electronic pipe, other similar product that relies on vaporization or aerosolization, or other tobacco product, or carrying or having in one's possession any lighted object giving off smoke from tobacco or any other substance that emits smoke that is customarily used and intended for inhalation into the lungs.

~~*Tobacco or tobacco product* means any form of tobacco, including but not limited to cigarettes, cigars, pipe tobacco, chewing tobacco or snuff, and any material or device used in the smoking, chewing or other form of tobacco consumption, including but not limited to cigarette papers, pipes, electronic cigarettes, electronic cigars, electronic pipes, and other similar products that rely on vaporization or aerosolization.~~

Tobacco product means: (1) any product containing, made of, or derived from tobacco or nicotine, natural or synthetic, that is intended for human consumption or is likely to be consumed, whether inhaled, absorbed, or ingested by any other means, including but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, or snus; (2) any electronic

smoking device and any substances that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine; or (3) any component, part, or accessory of (1) or (2), whether or not any of these contains tobacco or nicotine, including but not limited to filters, rolling papers, blunt or hemp wraps, hookahs, and pipes. "Tobacco product" does not mean drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.

Traveled portion means that area of a trail covered by material such as concrete, pavement, stone dust, or cedar mulch, designed to bear traffic from individuals or vehicles powered by individuals.

...

DIVISION 7

Sec. 17-98. Sale of Flavored Tobacco Products Prohibited.

(a) No individual, corporation, partnership, unincorporated association or other entity may sell or permit the sale of any flavored tobacco product, or display, market, or advertise for sale in the City of Portland, or display, market, or advertise for sale in the City of Portland, any flavored tobacco product.

(b) There shall be a rebuttable presumption that a tobacco product is a flavored tobacco product if a manufacturer of tobacco products, or any employee or agent of a manufacturer of tobacco products, or any individual, corporation, partnership, or other entity that sells tobacco in the City of Portland, has: (1) made a public statement or claim that the tobacco product imparts a taste or smell other than the taste or smell of tobacco; (2) used text or images, or both, on the tobacco product's labeling or packaging to explicitly or implicitly indicate that the tobacco product imparts a taste or smell other than tobacco; or (3) taken action directed to consumers that would be reasonably expected to cause consumers to believe the tobacco product imparts a taste or smell other than tobacco.

(c) The City of Portland's Public Health Division Director or his/her/their designee(s) shall have the primary responsibility for enforcement of this section and may conduct random, unannounced inspections at locations where tobacco

products are sold to test and ensure compliance with this ordinance.

(d) A violation of this section shall be a civil violation subject to the general penalty provisions of section 1-15 of this Code.

(e) This section shall become effective on June 1, 2022.

~~Sec. 17-98. Reserved.~~



CITY OF PORTLAND
Health and Human Services

MEMORANDUM

TO: Kristen Dow, Director of Health and Human Services
Tina Pettingill, Deputy Director of Health and Human Services
Bridget Rauscher, Chronic Disease Prevention Manager
FROM: Kirsten Goodrich, Public Health Division, Tobacco Prevention Program
DATE: 11/3/2021
SUBJECT: Outline of Education and Outreach Strategy for Retailers

This memo addresses the questions posed by the Health and Human Services and Public Safety Committee (HHS&PS Committee) on October 12, 2021.

Outreach & Education Strategies:

As of September 2021, there are 90 licensed tobacco retailers in the City of Portland. The tobacco prevention team has a previously established partnership with local retailers for retailer education and technical assistance. In the past, the tobacco prevention team has had success surveying retailers to identify needs of appropriate educational materials. The tobacco prevention program will continue with this approach and will survey licensed retailers in the City of Portland to get a better sense of the materials that retail establishments would prefer to display. The survey will be conducted and evaluated prior to developing materials.

As a current grant recipient and partner, the tobacco prevention team anticipates continuing partnerships with MaineHealth's Center for Tobacco Independence (CTI) to improve and support consistent messaging. The tobacco prevention team will expand the current retailer initiatives such as promoting the NO BUTS! training program, a free training to reduce underage tobacco sales, and the Maine QuitLink program, a tobacco quitting program free to Maine residents. Additionally, the tobacco prevention team will update the current retailer toolkits to reflect the flavor ban, if adopted. The purpose of the toolkit will be to provide education and support to retailers around the specifics of the full flavor ban. It will also provide materials to educate customers by providing resources to display with language that informs customers of the change. These resources will be designed to alleviate the burden placed on retailers to educate customers. The toolkit will be mailed to retailers at least 30 days before the law goes into effect.

A retailer toolkit will include:

- Signage stating new ordinance changes and the effective date (various sizes and styles)
- Educational rack cards,
- Maine Quitlink resources,
- No Buts! one pager,
- FAQ one pager.

In addition, the tobacco prevention program will draft communication that will go out to all licensed retailers in the Portland area that will comprehensively detail the changes to the current retail tobacco ordinance. The tobacco prevention program will record educational trainings for retailers. The tobacco prevention team will create social media posts to share on virtual platforms to expand reach. All resources will be uploaded to the City's website in order to be accessible to retailers and residents. All materials will be translated into the top five most spoken languages here in Portland. The top five languages spoken in Portland are Somali, Arabic, Spanish, French, Portuguese. Translated materials will be printed and distributed and electronic versions will be available on the City's website. We anticipate that the retailer outreach process will take approximately four to six months.

Updates to LD1190 & LD1550:

LD 1190, passed as amended in the 129th Legislature

When LD 1190 was introduced at the start of the 129th Legislature (January 2019), the FDA was considering action on flavored tobacco products. The Legislature's Health & Human Services Committee decided they wanted to wait and see what actions the FDA would take. As a result, LD 1190 was amended significantly by the Committee, stripping out all references to flavored tobacco products and simply aligning statutory enforcement provisions for furnishing tobacco products with those for furnishing alcohol in Maine, thereby leaving the continued proliferation of flavored tobacco products unaddressed. Unfortunately, the FDA has taken extremely limited action, likely taking years to fully implement, which is why LD 1550 (see below) was introduced in the 130th.

LD 1550, carried over to the 2nd Regular Session of the 130th Legislature

Two years later, with inadequate action taken by the FDA and an explosion of flavored tobacco products on the market, LD 1550 was introduced at the start of the 130th Legislature (January 2021) with strong bipartisan sponsorship, including members of Democratic leadership, Democratic House chairs of both the HHS and Appropriations Committees and Republican Senate and House Appropriations Committee leads. The bill was supported by Governor Mills, who included the proposal in her Supplemental Budget proposal, and was voted with a majority "ought to pass" out of the HHS committee. The Governor and Appropriations Committee agreed to advance a budget that could garner the support of 2/3 of legislators. Ultimately, Republican leadership requested the flavors proposal come out of the budget in order to reach 2/3 support, and this was agreed to by the Appropriations Committee. With only a few days remaining in the legislative session, LD 1550 was carried over to the 2nd Regular Session of the 130th (starting January 2022), where it will be considered for passage and funding.

Fiscal Note:

The cost of implementing a full ban on flavored tobacco products will not exceed \$50,000. Any costs incurred would be minimal and will be paid from existing grant funds by the Tobacco Prevention Program, in collaboration with the Center for Tobacco Independence and the Maine CDC.

Ordinance Language:
See Attached

Chapter 17 OFFENSES, MISCELLANEOUS PROVISIONS*

*Cross reference(s)--Alarm systems, Ch. 2.5; rules of conduct in
cemeteries, § 7-123 et seq.; police, Ch. 20; traffic and motor vehicles, Ch. 28.

Art. I. In General, §§ 17-1--17-14

Art. II. Offenses Against Public Peace, §§ 17-15--17-30

Art. III. Offenses Against Public Safety, §§ 17-31--17-60

Div. 1. Generally, §§ 17-31--17-40

Div. 2. Weapons, §§ 17-41--17-43

Art. III-A. Trigger Locking Devices, §§ 17-44--17-60

Art. IV. Obscenity, §§ 17-61--17-69

Art. V. Regulation of Tobacco, §§ 17-70--17-98

Div. 1. Generally, §§ 17-70--17-80

Div. 2. Miscellaneous Provisions, §§ 17-81--17-85

Div. 3. Nonsmoking on Designated City Trails, §§ 17-86--17-89

Div. 4. Secondhand Smoke on Playgrounds, Beaches, and Athletic
Facilities, §§17-90--17-93

Div. 5. Secondhand Smoke in Indoor and Outdoor Eating Areas,
§§17-94--17-95

Div. 6. Smoking Prohibited in City Parks and Public Grounds
§§17-96--17-98

[Div. 7. Sale of Flavored Tobacco Products Prohibited, Sec.
17-98.](#)

Art. VI. Mercury Thermometers, §§ 17-99--17-107

Div. 1. Generally, §§ 17-99--17-100

Div. 2. Restrictions, §§ 17-101--17-107

Art. VII. Reserved, §§ 17-108--17-112

**Art. VIII. Recreational Use of Marijuana by Adults 21 Years of
Age or Older, §§ 17-113--17-119**

**Art. IX. Moratorium on Retail Marijuana Establishments and
Retail Marijuana Social Clubs, §§ 17-120--17-123**

**Art. X. Moratorium on Marijuana Caregiver Retail Stores, Testing
Facilities, Manufacturing Facilities, and Grow Facilities, §§
17-124--17-128**

Art. XI. Facial Recognition Technology, , §§ 17-130--17-133

....

Sec. 17-68. Reserved.

Sec. 17-69. Reserved.

ARTICLE V. REGULATION OF TOBACCO*

***Editor's note**--Ord. No. 241-98, § 1, adopted Apr. 7, 1998, amended this chapter by adding provisions as herein set out; such ordinance was approved at referendum on Nov. 3, 1998, with an effective date of Dec. 5, 1998.

***Editor's note**—Pursuant to Council Order 39-12/13, passed by City Council on 2/4/13 repealed Article V in its entirety and replaced it with a new Article V.

DIVISION 1. GENERALLY

Sec. 17-70. Findings; purposes.

(a) The city council hereby finds as follows:

- (1) There is no risk-free level of contact with secondhand smoke; even brief exposure can be harmful to health;
- (2) Secondhand smoke contains over 4,000 chemicals, more than 60 of which are known to cause cancer;
- (3) The smoking of other substances may also cause serious health problems and risks to those who smoke; and
- (4) The purpose of this regulation is to decrease the exposure of individuals, and children in particular, to secondhand smoke in their outdoor environment.

(b) The city council hereby finds that it is in the public health, safety and welfare to supplement state regulation of the use of tobacco, tobacco products and other substances that emit smoke that is used and intended customarily for inhalation into the lungs in outdoor locations and the free distribution and self-service displays of tobacco and tobacco products.
(Ord. No. 39-12/13, 2-4-13, Ord. 207-14/15, 4-27-2015)

Sec. 17-71. Definitions.

Words used in this chapter shall have their common meanings, except that definitions set forth in 22 M.R.S.A. Chapter 262-A, or this section shall apply unless the context clearly indicates that a different meaning is intended:

Designated city trail means the traveled portion of all city-owned or controlled trails open to use by the public that have been designated as a nonsmoking trail by order of the city council.

Flavored tobacco products means any tobacco product that imparts a taste or smell, other than the taste or smell of tobacco, either prior to, or during the consumption of, a tobacco product, including, but not limited to, any taste or smell relating to fruit, menthol, mint, wintergreen, chocolate, cocoa, vanilla, honey, or any candy, dessert, alcoholic beverage, herb, or spice. Specifically excluded from this definition are any product(s) containing cannabis, as defined by Chapter [_____], of this Code, unless these products contain, are made of, or are derived from tobacco or nicotine.

Outdoor eating areas shall mean patios, decks, public property permitted for outdoor dining and other outdoor areas under the control of a restaurant or bar for the use of its patrons.

Owner means and includes the proprietor, manager, lessee, lessor licensee or any other person exercising control over any facility or location.

Private function is a room or a hall in which the sponsor of the private function and not the owner or proprietor has control over the seating arrangements.

Smoking means the lighting, inhaling, exhaling, burning or carrying of any cigar, cigarette, pipe, electronic cigarette, electronic cigar, electronic pipe, other similar product that relies on vaporization or aerosolization, or other tobacco product, or carrying or having in one's possession any lighted object giving off smoke from tobacco or any other substance that emits smoke that is customarily used and intended for inhalation into the lungs.

~~*Tobacco or tobacco product* means any form of tobacco, including but not limited to cigarettes, cigars, pipe tobacco, chewing tobacco or snuff, and any material or device used in the smoking, chewing or other form of tobacco consumption, including~~

~~but not limited to cigarette papers, pipes, electronic cigarettes, electronic cigars, electronic pipes, and other similar products that rely on vaporization or aerosolization.~~

"Tobacco product" means: (1) any product containing, made of, or derived from tobacco or nicotine, natural or synthetic, that is intended for human consumption or is likely to be consumed, whether inhaled, absorbed, or ingested by any other means, including but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, or snus; (2) any electronic smoking device and any substances that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine; or (3) any component, part, or accessory of (1) or (2), whether or not any of these contains tobacco or nicotine, including but not limited to filters, rolling papers, blunt or hemp wraps, hookahs, and pipes. "Tobacco product" does not mean drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.

Traveled portion means that area of a trail covered by material such as concrete, pavement, stone dust, or cedar mulch, designed to bear traffic from individuals or vehicles powered by individuals.

(Ord. No.39-12/13, 2-4-13, Ord. 207-14/15, 4-27-2015)

Sec. 17-72. Reserved.

Sec. 17-73. Reserved.

Sec. 17-74. Reserved.

Sec. 17-75. Reserved.

Sec. 17-76. Reserved.

Sec. 17-77. Reserved.

Sec. 17-78. Reserved.

Sec. 17-79. Reserved.

Sec. 17-80. Reserved.

DIVISION 2. MISCELLANEOUS PROVISIONS

Sec. 17-81. Free distribution; sampling.

The free distribution or sampling of tobacco is prohibited in the City of Portland. A violation of this section shall be a civil violation subject to the general penalty provisions of section 1-15 of this Code.

(Ord. No. 241-98, § 1, 4-7-98; Ord. No. 39-12/13, 2-4-13)

Sec. 17-82. Self-service displays.

(a) Self-service displays of tobacco products, from which individual packages, cartons, or items may be selected by the customer, are prohibited in the City of Portland.

(b) The foregoing shall not apply in a retail tobacco store which specializes in the sale of tobacco and tobacco products only.

(c) A violation of this section shall be a civil violation subject to the general penalty provisions of section 1-15 of this Code.

(Ord. No. 39-12/13, 2-4-13)

Sec. 17-83. Nonretaliation.

No person or employer shall discharge, refuse to hire or in any manner retaliate against any employee or applicant for employment because such employee or applicant exercises any right to smoke-free environment afforded by this article. A violation of this section shall be a civil violation subject to the general penalty provisions of section 1-15 of this code.

(Ord. No. 39-12/13, 2-4-13)

Sec. 17-84. Sale of tobacco products to people under 21 prohibited.

(a) Notwithstanding the provisions of 22 M.R.S. §1555-B(2) and in accordance with 22 M.R.S. 1556, in the City of Portland, no individual, corporation, partnership, unincorporated association or other entity may sell, furnish, give away or offer to sell, furnish or give away a tobacco product to any individual under 21 years of age.

(b) No individual, corporation, partnership, unincorporated association or other entity may sell or permit the sale of tobacco products in the City of Portland unless a clearly visible notice is posted at the location where tobacco products are available for purchase. The City of Portland shall provide this notice, which shall state "No person under the age of 21 may purchase tobacco products," legibly printed in letters at least one-half inch high.

(c) The City of Portland's Public Health Division Director or his or her designee(s) shall have the primary responsibility

for enforcement of this section and may conduct random, unannounced inspections at locations where tobacco products are sold to test and ensure compliance with this ordinance.

(d) A violation of this section shall be a civil violation subject to the general penalty provisions of section 1-15 of this Code.

(Ord. No. 303-15/16, 7-20-2016)

Sec. 17-85. Reserved.

DIVISION 3. NONSMOKING ON DESIGNATED CITY TRAILS

Sec. 17-86. Purpose.

This ordinance is enacted to protect, preserve, and promote the health, safety, welfare, and quality of life of the children and other people that use designated city trails.

(Ord. No. 39-12/13, 2-4-13)

Sec. 17-87. Smoking prohibited.

It shall be unlawful for any person to smoke on a designated city trail at any time.

(Ord. No. 39-12/13, 2-4-13)

Sec. 17-88. Enforcement.

The parks and recreation department shall place signs at the beginning and end point of any city trail as well as in such other locations that, in its sole discretion, the parks and recreation department deems necessary to notify the public of this ordinance. Prior to issuing a citation for a violation of this section, a police officer or any law enforcement or code enforcement officer or park ranger shall issue one verbal warning to an individual. If the individual fails to immediately comply after one warning, individual shall be given a citation.

(Ord. No. 39-12/13, 2-4-13)

Sec. 17-89. Reserved.

DIVISION 4. SECONDHAND SMOKE ON
PLAYGROUNDS, BEACHES, AND ATHLETIC FACILITIES

Sec. 17-90. Purposes.

The purpose of this regulation is to decrease the exposure of individuals, and children in particular, to secondhand smoke in their outdoor environment.

(Ord. No. 39-12/13, 2-4-13, Ord. 207-14/15, 4-27-2015)

Sec. 17-91. Smoking prohibited at playgrounds, beaches and outdoor athletic facilities.

(a) Smoking is prohibited both at, or within, twenty (20) feet of the following outdoor areas: playgrounds, beaches and outdoor athletic facilities owned and maintained by the city where members of the general public of any age assemble to engage in physical exercise, participate in athletic competition, play or recreational activity, or to witness sports, or other outdoor recreational events.

(b) The foregoing prohibition shall not apply in an area which has been designated prior to passage of this ordinance as a designated smoking area at Hadlock Field, but such area shall not be expanded.

(Ord. No. 39-12/13, 2-4-13)

Sec. 17-92. Enforcement.

(a) The health and human services department shall work with the public works department to place signs notifying the public of this prohibition at or near playgrounds and athletic facilities, as well as in such other locations that, in its sole discretion, the health and human services department deems necessary to notify the public of this ordinance.

(b) Prior to issuing a citation for a violation of this section, a police officer or any law enforcement or code enforcement officer or park ranger shall issue one verbal warning to an individual. If the individual fails to comply after one warning, said individual shall be given a citation. Failure to comply after one warning is cause for citation whether or not the failure or subsequent failures are contemporaneous in time with the initial warning.

(Ord. No. 39-12/13, 2-4-13; Ord. 108-15/16, 11-16-2015)

Sec. 17-93.Reserved.

DIVISION 5. SECONDHAND SMOKE IN
INDOOR AND OUTDOOR EATING AREAS

Sec. 17-94. Smoking Prohibited in Indoor and Outdoor Eating Areas.

(a) Smoking is prohibited within the indoor and outdoor eating areas provided by restaurants and bars while such indoor or outdoor eating areas, or any portion thereof, are open and available for dining and beverage service.

(b) *Indoor eating areas* shall mean indoor areas permitted for dining that are under the control of a restaurant or bar for the use of its patrons.

(c) *Outdoor eating areas* shall mean patios, decks, public property permitted for outdoor dining and other outdoor areas under the control of a restaurant or bar for the use of its patrons.
(Ord. 207-14/15, 4-27-2015)

Sec. 17-95. Enforcement.

(a) It shall be the responsibility of restaurants and bars to notify its customers of this prohibition and to request that customers comply with it.

(b) Prior to issuing a citation for a violation of this section, a police officer or any law enforcement or code enforcement officer shall issue one verbal warning to an individual and the restaurant. If the individual or restaurant or bar fails to comply after one warning, said individual or restaurant or bar shall be given a citation. Failure to comply after one warning is cause for citation whether or not the failure or subsequent failures are contemporaneous in time with the initial warning.
(Ord. 207-14/15, 4-27-2015)

DIVISION 6. SMOKING PROHIBITED IN CITY PARKS AND PUBLIC GROUNDS

Sec. 17-96. Smoking prohibited in all city-owned or maintained parks.

(a) Smoking is prohibited in the City's public parks, squares and grounds and temporary parks requiring a permit.

(b) The Council shall define by order the City-owned or maintained public parks and grounds to which this requirement shall apply and such order shall be kept on file in the Department of Public Works.

(c) Smoking is prohibited in any temporary or "pop-up" park operated or maintained by a private person or entity, into which the public is invited and that requires an event permit under Chapter 18 for the duration of the event so approved. (Ord. No. 39-12/13, 2-4-13; Ord. 80-15/16, 10-19-2015, Ord. 108-15/16, 11-16-2015)

***Editor's Note:** Pursuant to Council Order 38-12/13, passed on 2/4/13, and Order 76-15/16, passed on 10/19/2015, the following is the list of public parks to which 17-96(b) applies:

ORDERED, that smoking shall be prohibited in the following parks and public grounds as described in Section 17-96 of the Portland City Code:

Back Cove Park	Lobsterman Park
Baxter Woods	Longfellow Square
Bayside Park	Marginal Way Field
Bedford Park	Monument Square
Bell Buoy Park	Oatnuts Park
Belmeade Park	Payson Park
Boothby Square	Pleasant Street Park
Capisic Pond Park	Post Office Park
Compass Park/Maine State Pier	Presumpscot Park
Congress Square	Presumpscot River Preserve
Deering Oaks Park	Quarry Run Dog Park
Dougherty Field	Riverton Park
Eastern Promenade	Stroudwater Park
Fessenden Park	Tommy's Park
Fort Allen Park	University Park
Fort Sumner Park	Valley Street Dog Park
Ganley Plaza	Western Promenade
Harbor View Park	
Heseltine Park	
Lincoln Park	

Sec. 17-97. Enforcement.

(a) The health and human services department shall work with the public works department to place signs notifying the public of this prohibition at or near playgrounds and athletic facilities, as well as in such other locations that, in its sole discretion, the health and human services department deems necessary to notify the public of this ordinance.

(b) Prior to issuing a citation for a violation of this section, a police officer or any law enforcement or code enforcement officer or park ranger shall issue one verbal warning to an individual. If the individual fails to comply after one warning, said individual shall be given a citation. Failure to comply after one warning is cause for citation whether or not the failure or subsequent failures are contemporaneous in time with the initial warning.
(Ord No. 39-12/13, 2-4-13; Ord. 108-15/16, 11-16-2015)

DIVISION 7

Sec. 17-98. Sale of Flavored Tobacco Products Prohibited.

(a) No individual, corporation, partnership, unincorporated association or other entity may sell or permit the sale of any flavored tobacco product, or display, market, or advertise for sale in the City of Portland, or display, market, or advertise for sale in the City of Portland, any flavored tobacco product.

(b) There shall be a rebuttable presumption that a tobacco product is a flavored tobacco product if a manufacturer of tobacco products, or any employee or agent of a manufacturer of tobacco products, or any individual, corporation, partnership, or other entity that sells tobacco in the City of Portland, has: (1) made a public statement or claim that the tobacco product imparts a taste or smell other than the taste or smell of tobacco; (2) used text or images, or both, on the tobacco product's labeling or packaging to explicitly or implicitly indicate that the tobacco product imparts a taste or smell other than tobacco; or (3) taken action directed to consumers that would be reasonably expected to cause consumers to believe the tobacco product imparts a taste or smell other than tobacco.

(c) The City of Portland's Public Health Division Director or his/her/their designee(s) shall have the primary responsibility for enforcement of this section and may conduct random, unannounced inspections at locations where tobacco products are sold to test and ensure compliance with this ordinance.

(d) A violation of this section shall be a civil violation subject to the general penalty provisions of section 1-15 of this Code.

(e) This section shall become effective on [_____].

~~Sec. 17-98. Reserved.~~



FLAVORED TOBACCO PRODUCTS ATTRACT KIDS

Cigarettes with specific characterizing flavors were prohibited in the U.S. on September 22, 2009, as part of the Family Smoking Prevention and Tobacco Control Act (TCA) that gave the U.S. Food and Drug Administration (FDA) authority over tobacco products.¹ However, before that, tobacco companies marketed cigarettes with flavors, images, and names that appealed to a young audience. Despite the FDA's ban on flavored cigarettes, the overall market for flavored tobacco products is growing. Continuing a long tradition of designing products that appeal explicitly to new users, tobacco companies in recent years have significantly stepped up the introduction and marketing of flavored other tobacco products (OTPs), particularly e-cigarettes and cigars, as well as smokeless tobacco and hookah. With their colorful packaging and sweet flavors, today's flavored tobacco products are often hard to distinguish from the candy displays near which they are frequently placed in retail outlets. Although tobacco companies claim to be responding to adult tobacco users' demand for variety, flavored tobacco products play a key role in enticing new users, particularly kids, to a lifetime of addiction. This growing market for flavored tobacco products is undermining the nation's overall progress in reducing youth tobacco use.

Flavored Tobacco Products are on the Rise

Tobacco companies market products in many kid-friendly flavors such as gummy bear, berry blend, chocolate, peach, cotton candy, strawberry, and grape, and more seem inevitable. "Candy-flavored" is, in fact, an appropriate way to describe these products since a recent chemical analysis has shown that the same flavor chemicals used in sweet-flavored cigars of various sizes and smokeless tobacco products are also used in popular candy and drink products such as LifeSavers, Jolly Ranchers, and Kool-Aid.² A 2013 survey of internet tobacco retailers found that more than 40% of cigarette-sized cigars, machine-made cigars, moist snuff, and dry snuff tobacco products were flavored, including fruit, sweet, and mint/menthol.³ An article in *Convenience Store News* stated, "flavored tobacco is offering a bright spot in the category," referring to the increased tobacco sales – and number of consumers – in stores that sell such products.⁴

Cigars. Historically, cigar manufacturers designed flavored cigars to serve as "starter" smokes for youth and young adults because the flavors helped mask the harshness, making the products easier to smoke.⁵ Recently, there has been an explosion of cheap, flavored cigars. Sales of cigars (i.e., large cigars, cigarillos, and small cigars) have more than doubled between 2000 and 2019, from 6.1 billion cigars to 13.4 billion cigars, and sales have been generally increasing at a time when cigarette smoking has been declining.⁶

Much of the growth in cigar sales is attributable to smaller types of cigars, many of them flavored. An industry publication stated, "While different cigars target a variety of markets, all flavored tobacco products tend to appeal primarily to younger consumers."⁷ These products are often colorfully packaged and much cheaper than cigarettes; for instance, cigarillos can be priced as low as 3 or 4 for 99 cents, making them even more appealing to price-sensitive youth.

- There has been an explosive growth in flavor options for cigars, such as candy, fruit, chocolate, and various other kid-attracting tastes. The vice president of one distributor commented, "For a while it felt as if we were operating a Baskin-Robbins ice cream store" in reference to the huge variety of cigar flavors available – and, no doubt, an allusion to flavors that would appeal to kids.⁸
- Flavored cigars have made a substantial contribution to the overall growth of the cigar market. 2015 Nielsen convenience store market scanner data show that sales of flavored cigars increased by nearly 50% since 2008. As a proportion of all cigar sales in these stores, the share of flavored cigars rose from 43.6% in 2008 to 52.1% in 2015. Among flavored cigars sold in these stores in 2015, the most popular flavors were fruit (38.8%), sweet or candy (21.2%), and wine (17.0%). Further, the number of unique cigar flavor names more than doubled from 2008 to 2015, from 108 to 250.⁹

Including additional store types, Nielsen data showed that flavored cigars made up 43% of cigar sales in 2015, an increase from 2011.¹⁰

- The top five most popular cigar brands among 12- to 17-year olds who have used cigars – Swisher Sweets, Black & Mild, Backwoods, White Owl, and Dutch Masters – all come in flavor varieties.¹¹ For example, Black & Mild cigars come in flavors such as apple and cherry; Swisher Sweets comes in a huge variety of flavors such as tropical fusion, Maui pineapple, twisted berry, cherry dynamite and banana smash; and White Owl has flavors such as mango, tropical twist, strawberry kiwi and peach. Altria, the nation's largest tobacco manufacturer and parent company of Philip Morris USA, expanded its business to the cigar category in 2007 by acquiring John Middleton, Inc., which sells Black & Mild.
- Nielsen convenience store market scanner data also show an increasing number of products with names that do not explicitly identify a flavor, such as Swisher's "Wild Rush" and Altria's "Jazz," even though they are flavored. From 2012 to 2016, the proportion of all cigar sales comprised by these products (which researchers call "concept flavors") increased from 9% to 15%. The increase was greatest among cigarillos, among which the number of unique concept flavors more than doubled, from 17 to 46.¹² This strategy could be an attempt by cigar manufacturers to circumvent or complicate enforcement of local sales restrictions on characterizing flavors, some of which rely on definitions that describe flavors.

Since the Tobacco Control Act prohibited flavored cigarettes in 2009, cigarette makers have manipulated their products to qualify as "little" or "filtered" cigars.¹³ For instance, the 2012 Surgeon General's report, *Preventing Tobacco Use Among Youth and Young Adults*, noted that flavored cigarettes such as Sweet Dreams re-emerged as Sweet Dreams flavored cigars after the federal restriction on flavored cigarettes went into effect.¹⁴ In October 2009, U.S. Representatives Henry Waxman and Bart Stupak sent letters to two flavored cigarette companies, Cheyenne International and Kretek International, that began making little cigars shortly after the federal flavored cigarette ban went into effect.¹⁵ Rep. Waxman discovered that Kretek International intentionally changed their cigarettes to cigars to exploit a loophole in the TCA.¹⁶ In December 2016, the FDA issued warning letters to four tobacco manufacturers – Swisher International, Inc., Cheyenne International LLC, Prime Time International Co. and Southern Cross Tobacco Company Inc. – for marketing and selling fruit-flavored cigarettes labeled as cigars, in violation of the 2009 Tobacco Control Act.¹⁷

Electronic Cigarettes. Although these products are relatively new to the market, the variety of flavors available for use in e-cigarettes has grown exponentially. E-cigarette marketing employs many of the same strategies used for years by cigarette manufacturers that proved so effective in reaching kids, such as celebrity endorsements, slick TV and magazine advertisements, and sports and music sponsorships. Another strategy has been the widespread marketing of e-cigarettes and nicotine "e-juice" with a wild assortment of candy, fruit and other flavors. Flavors are not just a critical part of the product design, but are a key marketing ploy for the industry. The 2016 Surgeon General Report on e-cigarettes concluded that, **"E-cigarettes are marketed by promoting flavors and using a wide variety of media channels and approaches that have been used in the past for marketing conventional tobacco products to youth and young adults."**¹⁸

- As of 2017, researchers had identified more than 15,500 unique e-cigarette flavors available online.¹⁹ An earlier study of e-cigarette flavors found that among the more than 400 brands available online in 2014, 84% offered fruit flavors and 80% offered candy and dessert flavors.²⁰
- In addition to the more traditional candy and fruit flavors like cherry and chocolate, the liquid nicotine solutions are sold in such kid-friendly options as cotton candy, root beer float, and banana split. One study even uncovered over twenty different types of unicorn-flavored e-liquid, often paired with cartoon imagery, undoubtedly appealing to kids.²¹
- "Vape shops," which are specialty e-cigarette retail stores, offer an even wider assortment of flavors. In addition to the pre-made options, these stores allow patrons to mix their own preferred flavor combinations.²²

In January 2020, the FDA issued guidance restricting some flavors in cartridge-based e-cigarettes, but exempted menthol-flavored e-cigarettes and left flavored e-liquids and disposable e-cigarettes widely available in every imaginable flavor. As a result, sales of these products have grown substantially:

- From February 2020 to June 2021, sales of disposable e-cigarettes increased by over 200% (from 2.8 million units to 8.5 million units). During this time period, the proportion of total e-cigarette sales that were disposable devices nearly doubled, from 18.8% to 38%. Disposables are widely sold in kid-friendly flavors like fruit and candy. 80% of disposable sales are of flavors other than tobacco, mint and menthol.²³
- From February 2020 to June 2021, menthol flavored e-cigarette sales increased by 42.5% (from 6.4 million units to 9.1 million units), and they are now the top selling e-cigarette flavor, comprising 40.4% of the market. Sales of menthol-flavored cartridge-based products (like JUUL) increased by 47% over this same time.²⁴

The use of flavors in e-cigarette products is of even greater concern because e-cigarettes are the subject of extensive advertising campaigns, and there is evidence that young people are exposed to significant amounts of e-cigarette advertising. The 2019 National Youth Tobacco Survey found that 69.3% of middle and high school students—over 18.2 million youth—had been exposed to e-cigarette advertisements from at least one source.²⁵

Smokeless Tobacco. The variety of flavored smokeless tobacco products has grown over time and continues to grow.

- U.S. Smokeless Tobacco Company (UST, owned by Philip Morris USA's parent company, Altria) increased the number of its sub-brands—including flavored products—by 140% from 2000 to 2006 in order to “cast a wide net” and appeal to as many potential users as possible.²⁶ In 2011, more than 80% of Skoal smokeless tobacco sold in convenience stores was flavored; and more than one out of five (21.1%) were fruit-flavored.²⁷ Current Skoal flavors include kid-friendly peach, citrus, cherry, berry, and apple.
- Between 2011 and 2019, the portion of flavored moist snuff products grew such that these products accounted for two-thirds of moist snuff products sold in 2019. Mint-type flavors (e.g., wintergreen, mint, spearmint) are by far the most popular.²⁸
- In 2019, nearly 90% of snus products sold were flavored as wintergreen, spearmint, and mint. All newer non-tobacco nicotine pouches are flavored, with wintergreen/spearmint/mint making up nearly 80% of the market, followed by cinnamon, coffee, and fruit flavors.²⁹
- A trade publication for convenience stores quoted one retailer stating, “In the case of smokeless tobacco, you get a new flavor once every quarter.”³⁰

Hookah. Hookahs (water pipes) originate from Middle Eastern countries, but their use has rapidly increased in the U.S. The tobacco used in hookah often has flavorings or sweeteners added to enhance the taste and aroma. In the U.S., even more kid-friendly flavors are available, such as watermelon, tropical fruit, orange cream, caramel, chocolate, tutti frutti, vanilla and strawberry.³¹

Cigarettes. Menthol cigarettes, the only remaining flavored cigarette, maintain a significant market share. While overall cigarette sales have been declining, the proportion of smokers using *menthol* cigarettes has been increasing.³²

- Data from the Federal Trade Commission (FTC) show that in 2019 (the most recent year for which data are available), menthol cigarettes comprised 37% of the market, the highest proportion on record since FTC began collecting this data in 1963.³³ Between 2009 and 2018, sales of non-menthol cigarettes have declined by 33.1% nationally while sales of menthol cigarettes have declined by only 8.2% during the same period. 91% of the decline in cigarette sales between 2009 and 2018 is attributable to nonmenthol cigarettes.³⁴
- Before cigarettes with specific characterizing flavors were prohibited by the Tobacco Control Act, R.J. Reynolds’ “Camel Exotic Blends” came in flavors such as Twista Lime, Kauai Kolada, Warm Winter Toffee and Winter Mocha Mint, among others. Bright, colorful and alluring ads for these cigarettes have appeared in magazines popular with kids, including *Rolling Stone*, *Cosmopolitan* and *Sports Illustrated*.
- Using data from the 1999-2013 Youth Tobacco Surveys, a 2017 study analyzed the impact of the 2009 ban on characterizing flavors in cigarettes on youth tobacco use. The researchers found that cigarette use declined significantly after the ban, whereas cigar and pipe tobacco use significantly

increased. Further, use of menthol cigarettes, the only remaining flavored cigarette, increased significantly after the ban.³⁵

Flavored Products Appeal to Youth and Young Adults

Research shows that flavored products – no matter what the tobacco product – appeal to youth and young adults. Data from the 2013-2014 Population Assessment of Tobacco and Health (PATH) study found that 80.8% of 12-17 year olds who had ever used a tobacco product initiated tobacco use with a flavored product and that for each tobacco product, at least two-thirds of youth reported using these products “because they come in flavors I like.”³⁶ Data from the 2014-2015 wave of the PATH study found that 72.3% of current tobacco users had used a flavored tobacco product in the past month.³⁷

Another national study found that 18.5% of young adult tobacco users (18-34 years old) currently use a flavored tobacco product, with younger age being a predictor of flavored tobacco product use. In fact, the study found that those aged 18-24 years old had an 89% increased odds of using a flavored tobacco product compared to those aged 25-34 years old.³⁸

According to the 2012 Surgeon General Report, “Much of the growing popularity of small cigars and smokeless tobacco is among younger adult consumers (aged <30 years) and appears to be linked to the marketing of flavored tobacco products that, like cigarettes, might be expected to be attractive to youth.”³⁹ The 2016 Surgeon General Report on e-cigarettes concluded that flavors are among the most commonly cited reasons for using e-cigarettes among youth and young adults.⁴⁰

Cigars. More than 1,400 kids under age 18 try cigar smoking for the first time every day.⁴¹ Research shows that flavored cigars are driving much of this usage. Cheap, sweet cigars can serve as an entry product for kids to a lifetime of smoking.

- 43.2% of current youth high school cigar smokers report using a flavored product in the last month.⁴²
- The 2016-2017 wave of the PATH study found that 56.8% of 12-17 year olds who had ever smoked cigarillos started with a flavored product.⁴³ In 2013-2014, 73.8% of youth cigar smokers reported that they smoked cigars “because they come in flavors I like.”⁴⁴
- National data suggest that flavored cigar products are driving cigar use among adults, particularly young adults. With few exceptions, use of flavored cigars among adult cigar smokers is highest among those groups with the highest overall cigar use rates, including young adults aged 18-24 (57.1%), income below \$20,000 (51.7%), and non-Hispanic others (62.4%).⁴⁵
- Data from the National Adult Tobacco Survey indicate that use of flavored cigars decreases with age. Flavored cigar use among cigar smokers was 57.1% among 18-24 year olds, 43.2% among 25-44 year olds, 28.9% among 45-64 year olds and 13.4% among those ages 65 and older.⁴⁶
- Youth and young adults prefer brands that come in a variety of flavors, and that preference declines significantly with age – in one study, 95% of 12-17 year old cigar smokers reported a usual brand that makes flavored cigars compared with 63% of cigar smokers aged 35 and older.⁴⁷

E-Cigarettes. Given the dramatic growth in the availability and marketing of flavored e-cigarettes, it's no surprise that e-cigarettes have been the most popular tobacco product among youth since 2014. Among high school students, e-cigarette use declined to 19.6% in 2020, after increasing an alarming 135% from 2017 to 2019 (from 11.7% to 27.5%).⁴⁸ While the significant decline in youth users since 2019 is a sign of progress, youth e-cigarette use remains a public health crisis. 3.6 million kids use e-cigarettes, about the same as in 2018 when the U.S. Surgeon General first called youth e-cigarette use an “epidemic.”⁴⁹

One tobacco company has even acknowledged that youth are attracted to sweet flavored products. Lorillard Inc.'s Youth Smoking Prevention Program posted a page on e-cigarettes on its “Real Parents Real Questions” website that stated: “Kids may be particularly vulnerable to trying e-cigarettes due to an abundance of fun flavors such as cherry, vanilla, piña-colada and berry.”⁵⁰

- The 2020 NYTS found that an increasing proportion of youth e-cigarette users reported using flavored products in 2020 (82.9%, up from 68.8% in 2019).⁵¹ Nearly 3 million youth use flavored e-cigarettes.⁵²

Among high school students who currently used any type of flavored e-cigarette, the most commonly used flavor types were fruit (73.1%), mint (55.8%), menthol (37%), and candy, desserts, or other sweets (36.4%).⁵³

- Earlier data from the 2016-2017 wave of the PATH study found that 96.1% of 12-17 year olds who had initiated e-cigarette use since the last survey wave started with a flavored product. Additionally, it found that 97% of current youth e-cigarette users had used a flavored e-cigarette in the past month and 70.3% say they use e-cigarettes “because they come in flavors I like.”⁵⁴
- While fruit and mint flavors are now prohibited in cartridge-based e-cigarettes, disposable e-cigarettes come in a wide array of kid-friendly flavors, like cotton candy, strawberry, and mint, which have become increasingly popular among kids. Among high school current e-cigarette users, use of disposable e-cigarettes increased by 1,000% from 2019 to 2020 (from 2.4% to 26.5%).⁵⁵ Among current youth users of disposable e-cigarettes, the most commonly used flavor type is fruit (82.7%), followed by mint (51.9%).⁵⁶
- The 2013-2014 National Adult Tobacco Survey found that use of flavored e-cigarettes was highest among young adults (ages 18-24), compared to those over age 25, and that flavored e-cigarettes were most popular among adults who were never cigarette smokers.⁵⁷
- A national phone survey found that youth (ages 13-17) were more likely to report interest in trying an e-cigarette offered by a friend if it were flavored like fruit, candy or menthol, compared to tobacco. This study also found that youth believed that fruit-flavored e-cigarettes were less harmful than tobacco-flavored e-cigarettes.⁵⁸
- Another study found that compared to college students, high school students were more likely to report experimenting with e-cigarettes because of appealing flavors (47% vs. 33%).⁵⁹

Smokeless Tobacco. As with cigarettes, characterizing flavors in other tobacco products (OTPs) mask the tobacco flavor, and can make the products appealing to youth. Smokeless (or spit) tobacco companies, particularly the U.S. Smokeless Tobacco Company (UST), have a long history of creating new products that appeal to kids and marketing them aggressively to children in order to “graduate” them to more potent smokeless tobacco varieties.⁶⁰

- Although cigarette smoking among youth in the U.S. has declined rapidly since the Tobacco Control Act went into effect, use of smokeless tobacco among youth has not followed that same trend, and among high school boys, the prevalence of smokeless tobacco use is about the same as that of cigarettes (4.8 vs. 5.4%).⁶¹
- The 2019 NYTS found that about half (49.8%) of current high school smokeless tobacco users report using flavored products.⁶²
- The 2013-2014 PATH study found that 68.9% of 12-17 year olds who had ever used smokeless tobacco reported using flavored smokeless tobacco the first time they tried the product.⁶³
- Among youth smokeless tobacco users, mint and menthol are the most popular flavors.⁶⁴

Hookah. Research shows that many youth and young adults perceive hookah to be safer than other combustible tobacco products.⁶⁵ However, according to the CDC, using a hookah to smoke tobacco poses serious health risks to smokers and others exposed to the smoke from the hookah.⁶⁶ Because the flavors and the smoking technique create a more soothing (“smooth”) experience, hookah smokers can inhale more deeply and spend more time in a “hookah session,” which typically lasts for 40 to 45 minutes (three to four times longer than it takes to smoke a cigarette). While a typical cigarette requires about 20 puffs, an hour-long hookah session may involve 100 to 200 puffs⁶⁷, potentially exposing the user to more smoke over a greater period of time than what occurs when smoking a regular cigarette.⁶⁸ The appeal of flavored hookah undoubtedly contributes to its popularity among youth and young adults.

- The 2019 NYTS found that one-third of current high school hookah users reported using a flavored product in the last month.⁶⁹

- The 2013-2014 PATH study found that 88.7% of 12-17 year olds who had ever smoked hookah used flavored hookah the first time they tried the product and more than three-quarters (78.9%) of youth hookah users reported that they use hookah “because they come in flavors I like.”⁷⁰

Cigarettes. As the only flavored cigarette left on the market, it is no surprise that menthol cigarettes are popular among youth. Menthol cools and numbs the throat, reducing the harshness of cigarette smoke, thereby making menthol cigarettes more appealing to youth who are initiating tobacco use.⁷¹

- About half of all high school smokers use menthol cigarettes. Over half a million (530,000) middle and high schoolers use menthol cigarettes.⁷²
- The popularity of menthol flavored cigarettes is also evidenced by brand preference among youth. According to data from the 2016 National Survey on Drug Use and Health, about one in five (18.9%) smokers ages 12-17 prefers Newport cigarettes, a heavily marketed menthol cigarette brand. Preference for Newport is even higher among African-American youth smokers (70.9%) because of targeted marketing by the tobacco industry.⁷³

According to FDA’s Tobacco Product Scientific Advisory Committee (TPSAC):⁷⁴

- Menthol cigarettes increase the number of children who experiment with cigarettes and the number of children who become regular smokers, increasing overall youth smoking.
- Young people who initiate using menthol cigarettes are more likely to become addicted and become long-term daily smokers.
- The availability of menthol cigarettes reduces smoking cessation, especially among African-Americans, and increases the overall prevalence of smoking among African Americans.

FDA’s own scientific analysis concluded that menthol cigarettes lead to increased smoking initiation among youth and young adults, greater addiction and decreased success in quitting smoking.⁷⁵

Although they are no longer on the market, older studies on flavored cigarettes other than menthol are still relevant to reinforce the general appeal of flavors to youth and young adults. When they were available, flavored cigarettes were being tried and used primarily by the young.⁷⁶ Candy-flavored cigarettes clearly had their greatest appeal to new smokers, 90% of whom were teens or younger. Research indicated that youth and young adults were more likely to notice flavored tobacco products and their ads, and this awareness translated into higher use rates among young smokers.

- Older adolescents and young adults aged 17 to 19 years old were more than twice as likely to report using flavored cigarettes (specifically Camel Exotic blends, Kool Smooth Fusion or Salem Silver Label brands) in the past 30 days compared to those aged 22 years or older.⁷⁷
- A significant gradient in flavored cigarette use was seen across age, with the highest rates of utilization among 17 year old smokers (22.8%) and 18-19 year old smokers (21.7%). Nine% of 24-26 year olds reported flavored cigarette use.⁷⁸

Tobacco Companies Have Long Recognized that Flavored Products Appeal to Youth

The tobacco companies know that almost all new tobacco users begin their addiction as kids, but they also know that to novice smokers, tobacco can be harsh and unappealing. Internal tobacco industry documents show that tobacco companies have a long history of using flavors to reduce the harshness of their products to make them more appealing to new users, almost all of whom are under age 18.⁷⁹ By masking the harshness and soothing the irritation caused by tobacco smoke, flavors make it easier for beginners – primarily kids – to try the product and ultimately become addicted. As early as the 1970s, the tobacco companies were discussing the “benefits” of sweet flavors. Their internal documents and public statements show that the tobacco industry’s use of sweet flavors goes beyond just encouraging current smokers to switch brands, but rather to attract new users, mostly kids.

- As early as 1972, advisors to Brown & Williamson reviewed new concepts for a “youth cigarette,” including cola and apple flavors, and a “sweet flavor cigarette,” stating, “It’s a well-known fact that teenagers like sweet products. Honey might be considered.”⁸⁰

- A 1974 summary of an RJR meeting discussed cigarettes designed for beginning smokers, noting that such a cigarette should be *“low in irritation and possibly contain added flavors to make it easier for those who never smoked before to acquire the taste of it more quickly.”*⁸¹
- An RJR interoffice memo revealed ideas for new products: *“Make a cigarette which is obviously youth oriented. This could involve cigarette name, blend, flavor and marketing technique....for example, a flavor which would be candy-like but give the satisfaction of a cigarette.”*⁸²
- A Lorillard report summarizing the test results from new cigarette flavors, included smokers' description of “Tutti Frutti” flavored cigarettes as *“for younger people, beginner cigarette smokers, teenagers . . . when you feel like a light smoke, want to be reminded of bubblegum.”*⁸³
- A UST document called “The graduation theory” stated: *“New users of smokeless tobacco – attracted to the product for a variety of reasons – are most likely to begin with products that are milder tasting, more flavored, and/or easier to control in the mouth. After a period of time, there is a natural progression of product switching to brands that are more full-bodied, less flavored, have more concentrated ‘tobacco taste’ than the entry brand.”*⁸⁴
- A former UST sales representative revealed that, *“Cherry Skoal is for somebody who likes the taste of candy, if you know what I’m saying.”*⁸⁵

What States and Localities Can Do

In addition to the federal ban on flavored cigarettes, states and localities can implement additional sales restrictions to address the remaining flavored tobacco products on the market, including menthol cigarettes.

Five states—California, Massachusetts, New Jersey, New York and Rhode Island—have enacted laws or rules to prohibit the sale of flavored e-cigarettes, and both California and Massachusetts prohibit the sale of menthol cigarettes (CA implementation pending referendum vote). Maryland and Utah also restrict the sale of some flavored e-cigarettes. In addition, at least 300 localities across the country restrict the sale of flavored tobacco products, although laws differ in their application to specific products and store types.

For a list of state and localities that have passed restrictions on the sale of flavored tobacco products, visit: <https://www.tobaccofreekids.org/assets/factsheets/0398.pdf>.

Campaign for Tobacco-Free Kids, September 1, 2021 / Laura Bach

¹ See U.S. Food and Drug Administration's (FDA) Flavored Tobacco webpage at

<http://www.fda.gov/TobaccoProducts/GuidanceComplianceRegulatoryInformation/FlavoredTobacco/default.htm>.

² Brown, JE, et al., “Candy Flavorings in Tobacco,” *New England Journal of Medicine*, DOI: 10.1056/NEJMc1403015, May 7, 2014,

<http://www.nejm.org/doi/full/10.1056/NEJMc1403015>.

³ Morris, DS, Fiala, SC, “Flavoured, non-cigarette tobacco for sale in the USA: an inventory analysis of Internet retailers,” *Tobacco Control* [Epub ahead of print] doi: 10.1136/tobaccocontrol-2013-051059, August 8, 2013.

⁴ “Flavors Add New Dimension to Tobacco,” *Convenience Store News*, October 1, 2007.

⁵ Kostygina, G, Glantz, S, & Ling, PM, “Tobacco industry use of flavours to recruit new users of little cigars and cigarillos,” *Tobacco Control* 25(1):66-74, January 2016.

⁶ U.S. Alcohol and Tobacco Tax and Trade Bureau (TTB), Tobacco Statistics. December 2000 & December 2019,

<https://www.ttb.gov/tobacco/tobacco-stats.shtml>.

⁷ Niksic, M, “Flavored Smokes: Mmmmm...More Profits?” *Tobacco Retailer*, April 2007, http://tobacco-retailer.com/uploads/Features/2007/0407_flavored_smokes.asp.

⁸ Niksic, M, “Flavored Smokes: Mmmmm...More Profits?” *Tobacco Retailer*, April 2007, http://tobacco-retailer.com/uploads/Features/2007/0407_flavored_smokes.asp.

⁹ Delnevo, CD, et al., “Changes in the mass-merchandise cigar market since the Tobacco Control Act,” *Tobacco Regulatory Science*, 3(2 Suppl 1): S8-S16, 2017.

¹⁰ Kuiper, NM, et al., “Trends in sales of flavored and menthol tobacco products in the United States during 2011-2015,” *Nicotine & Tobacco Research*, published online June 1, 2017.

¹¹ SAMHSA's public online data analysis system (PDAS). National Survey on Drug Use and Health, 2016,

https://pdas.samhsa.gov/#/survey/NSDUH-2016-DS0001?column=CATAG2&results_received=true&row=CGR30BR2&weight=ANALWT_C.

- ¹² Gammon, DG, et al., "National and state patterns of concept-flavoured cigar sales, USA, 2012-2016," *Tobacco Control*, published online August 1, 2018. See also Viola, AS, et al., "A cigar by any other name would taste as sweet," *Tobacco Control*, published online October 1, 2015. Delnevo, CD, et al., "Changes in the mass-merchandise cigar market since the Tobacco Control Act," *Tobacco Regulatory Science*, 3(2 Suppl 1): S8-S16, 2017.
- ¹³ Delnevo, CD, et al., "Close, but no cigar: certain cigars are pseudo-cigarettes designed to evade regulation," *Tobacco Control*, Online first, doi:10.1136/tobaccocontrol-2016-052935, May 24, 2016.
- ¹⁴ HHS, *Preventing Tobacco Use Among Youth and Young Adults, A Report of the Surgeon General*, 2012, <http://www.cdc.gov/Features/YouthTobaccoUse/>.
- ¹⁵ House Committee on Energy & Commerce, "Energy and Commerce Committee Requests Information on Sales and Marketing of Flavored Tobacco Products," October 2, 2009, accessed April 18, 2012 at <http://democrats.energycommerce.house.gov/index.php?q=news/energy-and-commerce-committee-requests-information-on-sales-and-marketing-of-flavored-tobacco-p>.
- ¹⁶ Representative Henry A. Waxman, "Rep. Waxman Urges FDA to Ban Clove-Flavored Cigars," Letter to FDA Commissioner Margaret Hamburg, March 28, 2011, accessed April 18, 2012 at <http://democrats.energycommerce.house.gov/index.php?q=news/rep-waxman-urges-fda-to-ban-clove-flavored-cigars>.
- ¹⁷ FDA, Center for Tobacco Products, "FDA takes action against four tobacco manufacturers for illegal sales of flavored cigarettes labeled as little cigars or cigars," December 9, 2016, <http://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm532563.htm>.
- ¹⁸ HHS, *E-Cigarette Use Among Youth and Young Adults. A Report of the Surgeon General*. Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2016.
- ¹⁹ Zhu, S-H, et al., "Evolution of Electronic Cigarette Brands from 2013-2014 to 2016-2017: Analysis of Brand Websites," *Journal of Medical Internet Research*, 20(3), published online March 12, 2018.
- ²⁰ Zhu, S-H, et al., "Four Hundred and Sixty Brands of E-cigarettes and Counting: Implications for Product Regulation," *Tobacco Control*, 23(Suppl 3):iii3-iii9, 2014.
- ²¹ Jackler, RK, and Ramamurthi, D. "Unicorn cartoons: marketing sweet and creamy e-juice to youth," *Tobacco Control*, published online August 19, 2016.
- ²² Johnson, A, "Up in smoke? Alamance e-cigarette store operators concerned about proposed regulations," *Times-News*, April 30, 2014, <http://www.thetimesnews.com/news/top-news/up-in-smoke-alamance-e-cigarette-store-operators-concerned-about-proposed-regulations-1.313005>. The website for VapeRite ATL also boasts that customers can "mix well over 100,000 possible flavor and mix type combinations" [<https://atlanta.vaperite.com/#vape-bar>, accessed May 30, 2014].
- ²³ CDC Foundation & Information Resources, Inc., "Monitoring U.S. E-Cigarette Sales: National Trends," <https://www.cdcfoundation.org/programs/monitoring-e-cigarette-use-among-youth>. Data from Information Resources, Inc. (IRI), which includes e-cigarette sales data from convenience stores, gas stations and other retail store chains. Sales from the internet and tobacco-specialty stores, including vape shops, are not included.
- ²⁴ CDC Foundation & Information Resources, Inc., "Monitoring U.S. E-Cigarette Sales: National Trends," <https://www.cdcfoundation.org/programs/monitoring-e-cigarette-use-among-youth>. Data from Information Resources, Inc. (IRI), which includes e-cigarette sales data from convenience stores, gas stations and other retail store chains. Sales from the internet and tobacco-specialty stores, including vape shops, are not included.
- ²⁵ Wang, TW, et al., "Tobacco Product Use and Associated Factors Among Middle and High School Students—United States, 2019," *MMWR*, 68(12): December 6, 2019, <https://www.cdc.gov/mmwr/volumes/68/ss/pdfs/ss6812a1-H.pdf>.
- ²⁶ Alpert, HR, et al., "Free nicotine content and strategic marketing of moist snuff tobacco products in the United States: 2000-2006," *Tobacco Control* 17:332-338, 2008.
- ²⁷ Delnevo, C, et al., "Examining market trends in the United States smokeless tobacco use: 2005 – 2011," *Tobacco Control*, October 31, 2012, doi:10.1136/tobaccocontrol-2012-050739.
- ²⁸ Delnevo, CD, et al., "Examining market trends in smokeless tobacco sales in the United States: 2011-2019," *Nicotine & Tobacco Research*, published online November 26, 2020.
- ²⁹ Delnevo, CD, et al., "Examining market trends in smokeless tobacco sales in the United States: 2011-2019," *Nicotine & Tobacco Research*, published online November 26, 2020.
- ³⁰ "Flavors Add New Dimension to Tobacco," *Convenience Store News*, October 1, 2007.
- ³¹ American Lung Association, *An Emerging Deadly Trend: Waterpipe Tobacco Use*, February 2007, http://www.lungusa2.org/embargo/slati/TrendAlert_Waterpipes.pdf.
- ³² Villanti, A., et al., "Changes in the prevalence and correlates of menthol cigarette use in the USA, 2004–2014," *Tobacco Control*, published online October 20, 2016.
- ³³ U.S. Federal Trade Commission (FTC), *Cigarette Report for 2019, 2021*, https://www.ftc.gov/system/files/documents/reports/federal-trade-commission-cigarette-report-2019-smokeless-tobacco-report-2019/cigarette_report_for_2019.pdf [data for top 5 manufacturers only].
- ³⁴ Delnevo, CD, et al., "Assessment of Menthol and Nonmenthol Cigarette Consumption in the US, 2000 to 2018," *JAMA Network Open*, published online August 7, 2020.
- ³⁵ Courtemanche, CJ, et al., "Influence of the Flavored Cigarette Ban on Adolescent Tobacco Use," *American Journal of Preventive Medicine*, published online January 9, 2017.
- ³⁶ Ambrose, BK, et al., "Flavored Tobacco Product Use Among US Youth Aged 12-17 Years, 2013-2014," *Journal of the American Medical Association*, published online October 26, 2015.
- ³⁷ Rose, S, et al., "Flavour types used by youth and adult tobacco users in wave 2 of the Population Assessment of Tobacco and Health (PATH) Study 2015-2015," *Tobacco Control*, published online September 21, 2019. Additional national data from the 2019 National Youth Tobacco Survey (NYTS) found that 69.6% of current middle and high school tobacco users had used a flavored tobacco product in the past month.

- Wang, TW, et al., "Tobacco Product Use and Associated Factors Among Middle and High School Students—United States, 2019," *MMWR*, 68(12): December 6, 2019, <https://www.cdc.gov/mmwr/volumes/68/ss/pdfs/ss6812a1-H.pdf>.
- ³⁸ Villanti, AC, et al., "Flavored Tobacco Product Use Among U.S. Young Adults," *American Journal of Preventive Medicine* 44(4):388-391, 2013.
- ³⁹ HHS, *Preventing Tobacco Use Among Youth and Young Adults, A Report of the Surgeon General*, 2012, <http://www.cdc.gov/Features/YouthTobaccoUse/>.
- ⁴⁰ HHS, *E-Cigarette Use Among Youth and Young Adults. A Report of the Surgeon General*. Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2016.
- ⁴¹ U.S. Dept of Health & Human Services (HHS), Substance Abuse and Mental Health Services Administration (SAMHSA), HHS, Results from the 2019 National Survey on Drug Use and Health, NSDUH: Detailed Tables, 2019, <https://www.samhsa.gov/data/report/2019-nsduh-detailed-tables>. Cigars are defined as cigars, cigarillos or little cigars.
- ⁴² Wang, TW, et al., "Tobacco Product Use and Associated Factors Among Middle and High School Students—United States, 2019," *MMWR*, 68(12): December 6, 2019, <https://www.cdc.gov/mmwr/volumes/68/ss/pdfs/ss6812a1-H.pdf>.
- ⁴³ FDA, "Modifications to Compliance Policy for Certain Deemed Products: Guidance for Industry, Draft Guidance," March 13, 2019, <https://www.fda.gov/media/121384/download>.
- ⁴⁴ Ambrose, BK, et al., "Flavored Tobacco Product Use Among US Youth Aged 12-17 Years, 2013-2014," *Journal of the American Medical Association*, published online October 26, 2015.
- ⁴⁵ King, BA, Dube, SR, & Tynan, MA, "Flavored Cigar Smoking Among U.S. Adults: Findings From the 2009–2010 National Adult Tobacco Survey," *Nicotine & Tobacco Research*, August 27, 2012.
- ⁴⁶ King, BA, Dube, SR, & Tynan, MA, "Flavored Cigar Smoking Among U.S. Adults: Findings From the 2009–2010 National Adult Tobacco Survey," *Nicotine & Tobacco Research*, August 27, 2012.
- ⁴⁷ Delnevo, C, et al., "Preference for flavoured cigar brands among youth, young adults and adults in the USA," *Tobacco Control* 24(4):389-94, 2015.
- ⁴⁸ Cullen, KA, et al., "e-Cigarette Use Among Youth in the United States, 2019" *JAMA*, published online November 5, 2019.
- ⁴⁹ Office of the Surgeon General, "Surgeon General's Advisory on E-Cigarette Use Among Youth," December 18, 2018, <https://e-cigarettes.surgeongeneral.gov/documents/surgeon-generals-advisory-on-e-cigarette-use-among-youth-2018.pdf>.
- ⁵⁰ Real Parents Real Answers, "What you need to know about e-cigarettes – Infographic," April 23, 2014, accessed November 7, 2014, <http://www.realparentsrealanswers.com/what-you-need-to-know-about-e-cigarettes-infographic/>.
- ⁵¹ Wang, TW, et al., "E-cigarette Use Among Middle and High School Students – United States, 2020," *MMWR*, Volume 69, September 9, 2020, <https://www.cdc.gov/mmwr/volumes/69/wr/pdfs/mm6937e1-H.pdf>.
- ⁵² Wang, TW, et al., "E-Cigarette Use Among Middle and High School Students – United States, 2020," *MMWR* ePub, September 9, 2020, <https://www.cdc.gov/mmwr/volumes/69/wr/pdfs/mm6937e1-H.pdf>.
- ⁵³ Wang, TW, et al., "E-cigarette Use Among Middle and High School Students – United States, 2020," *MMWR*, Volume 69, September 9, 2020, <https://www.cdc.gov/mmwr/volumes/69/wr/pdfs/mm6937e1-H.pdf>.
- ⁵⁴ FDA, "Modifications to Compliance Policy for Certain Deemed Products: Guidance for Industry, Draft Guidance," March 13, 2019, <https://www.fda.gov/media/121384/download>. While the methodology is not comparable to the PATH study, the 2019 NYTS found that 68.8% of middle and high school e-cigarette users had used a flavored tobacco product in the past month. Wang, TW, et al., "Tobacco Product Use and Associated Factors Among Middle and High School Students—United States, 2019," *MMWR*, 68(12): December 6, 2019, <https://www.cdc.gov/mmwr/volumes/68/ss/pdfs/ss6812a1-H.pdf>.
- ⁵⁵ Wang, TW, et al., "E-cigarette Use Among Middle and High School Students – United States, 2020," *MMWR*, Volume 69, September 9, 2020, <https://www.cdc.gov/mmwr/volumes/69/wr/pdfs/mm6937e1-H.pdf>.
- ⁵⁶ Wang, TW, et al., "E-cigarette Use Among Middle and High School Students – United States, 2020," *MMWR*, Volume 69, September 9, 2020, <https://www.cdc.gov/mmwr/volumes/69/wr/pdfs/mm6937e1-H.pdf>.
- ⁵⁷ Bonhomme, MG, et al., "Flavoured non-cigarette tobacco product use among US adults: 2013-2014," *Tobacco Control*, 25: ii4-ii13, 2016.
- ⁵⁸ Pepper, JK, et al., "Adolescents' interest in trying flavoured e-cigarettes," *Tobacco Control*, 25:ii62-ii66, published online September 15, 2016.
- ⁵⁹ Kong, G, et al., "Reasons for Electronic Cigarette Experimentation and Discontinuation Among Adolescents and Young Adults," *Nicotine & Tobacco Research* 17(7):847-54, July 2015.
- ⁶⁰ Connolly, GN, "The Marketing of Nicotine Addiction by One Oral Snuff Manufacturer," *Tobacco Control* 4(1):73-79, Spring 1995.
- ⁶¹ Gentzke, A, et al., "Tobacco Product Use Among Middle and High School Students—United States, 2020," *MMWR* 69(50): 1881-1888, December 18, 2020, <https://www.cdc.gov/mmwr/volumes/69/wr/pdfs/mm6950a1-H.pdf>.
- ⁶² Wang, TW, et al., "Tobacco Product Use and Associated Factors Among Middle and High School Students—United States, 2019," *MMWR*, 68(12): December 6, 2019, <https://www.cdc.gov/mmwr/volumes/68/ss/pdfs/ss6812a1-H.pdf>.
- ⁶³ Ambrose, BK, et al., "Flavored Tobacco Product Use Among US Youth Aged 12-17 Years, 2013-2014," *Journal of the American Medical Association*, published online October 26, 2015.
- ⁶⁴ Rose, S, et al., "Flavour types used by youth and adult tobacco users in wave 2 of the Population Assessment of Tobacco and Health (PATH) Study 2014-2015," *Tobacco Control*, published online September 21, 2019.
- ⁶⁵ See e.g., Ambrose, BK, et al., "Flavored Tobacco Product Use Among US Youth Aged 12-17 Years, 2013-2014," *Journal of the American Medical Association*, published online October 26, 2015. Wackowski, OA and Delnevo, CD, "Young Adults' Risk Perceptions of Various Tobacco Products Relative to Cigarettes: Results from the National Young Adult Health Survey," *Health Education & Behavior*, published online August 24, 2015. Villanti, AC, et al., "Correlates of Hookah Use and Predictors of Hookah Trial in U.S. Young Adults," *American Journal of Preventive Medicine*, 48(6):742-746, 2015.
- ⁶⁶ CDC, "Hookahs." Available at http://www.cdc.gov/tobacco/data_statistics/fact_sheets/tobacco_industry/hookahs/. Accessed March 4, 2016.
- ⁶⁷ CDC, "Dangers of Hookah Smoking." Available at <http://www.cdc.gov/features/hookahsmoking/>. Accessed March 4, 2016.
- ⁶⁸ World Health Organization. WHO Advisory Note: "WaterpipeTobacco Smoking: Health Effects, Research Needs and

Recommended Actions by Regulators," WHO 2005; HHS, *Prevention Tobacco Use Among Youth and Young Adults, A Report of the Surgeon General*, 2012, <http://www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/index.html>; American Lung Association, *An Emerging Deadly Trend: Waterpipe Tobacco Use*, February 2007, http://www.lungusa2.org/embargo/slati/Trendalert_Waterpipes.pdf. American Lung Association, *Hookah Smoking: A Growing Threat to Public Health*, 2011, <http://www.lung.org/assets/documents/tobacco/hookah-policy-brief-updated.pdf>.

⁶⁹ Wang, TW, et al., "Tobacco Product Use and Associated Factors Among Middle and High School Students—United States, 2019," *MMWR*, 68(12): December 6, 2019, <https://www.cdc.gov/mmwr/volumes/68/ss/pdfs/ss6812a1-H.pdf>.

⁷⁰ Ambrose, BK, et al., "Flavored Tobacco Product Use Among US Youth Aged 12-17 Years, 2013-2014," *Journal of the American Medical Association*, published online October 26, 2015.

⁷¹ FDA, *Preliminary Scientific Evaluation of the Possible Public Health Effects of Menthol versus Nonmenthol Cigarettes*, 2013.

⁷² Wang, TW, et al., "Tobacco Product Use and Associated Factors Among Middle and High School Students—United States, 2019," *MMWR*, 68(12), December 6, 2019, <https://www.cdc.gov/mmwr/volumes/68/ss/pdfs/ss6812a1-H.pdf>.

⁷³ SAMHSA's public online data analysis system (PDAS), National Survey on Drug Use and Health, 2016.

https://pdas.samhsa.gov/#/survey/NSDUH-2016-DS0001?column=CATAG3&results_received=true&row=CIG30BR2&weight=ANALWT_C and https://pdas.samhsa.gov/#/survey/NSDUH-2016-DS0001?column=CATAG3&control=NEWRACE2&results_received=true&row=CIG30BR2&weight=ANALWT_C.

⁷⁴ Tobacco Products Scientific Advisory Committee, *Menthol Cigarettes and Public Health: Review of the Scientific Evidence and Recommendations*, July 21, 2011,

<http://www.fda.gov/downloads/AdvisoryCommittees/CommitteesMeetingMaterials/TobaccoProductsScientificAdvisoryCommittee/UCM269697.pdf>

⁷⁵ FDA, *Preliminary Scientific Evaluation of the Possible Public Health Effects of Menthol versus Nonmenthol Cigarettes*, 2013.

⁷⁶ Carpenter, CM, et al, "New Cigarette Brands with Flavors that Appeal to Youth: Tobacco Marketing Strategies," *Health Affairs* 24(6):1601-1610, Nov/Dec 2005. Lewis, M, et al., "Dealing with an Innovative Industry: A Look at Flavored Cigarettes Promoted by Mainstream Brands," *American Journal of Public Health* 96(2), February 2006.

⁷⁷ Klein, S, et al., Use of flavored cigarettes among older adolescent and adult smokers: United States, 2004 – 2005," *Nicotine and Tobacco Research*, Volume 10, Number 7, July 2008.

⁷⁸ Klein, S et al., Use of flavored cigarettes among older adolescent and adult smokers: United States, 2004 – 2005," *Nicotine and Tobacco Research*, Volume 10, Number 7, July 2008.

⁷⁹ HHS, *Preventing Tobacco Use Among Youth and Young Adults, A Report of the Surgeon General*, 2012, <http://www.cdc.gov/Features/YouthTobaccoUse/>.

⁸⁰ Marketing Innovations, "Youth Cigarette - New Concepts," Memo to Brown & Williamson, September 1972, Bates No. 170042014.

⁸¹ R.J. Reynolds Tobacco Company, "Conference report #23," June 5, 1974, Bates No. 500254578-4580.

⁸² R.J. Reynolds Inter-office Memorandum, May 9, 1974, Bates No. 511244297-4298.

⁸³ R.M. Manko Associates report for Lorillard, Summary Report: New Flavors Focus Group Sessions, August, 1978, Bates No. 85093450-3480.

⁸⁴ Connolly, GN, "The Marketing of Nicotine Addiction by One Oral Snuff Manufacturer," *Tobacco Control* 4(1):73-79, Spring 1995.

⁸⁵ "Juiced Up: How a Tobacco Giant Doctors Snuff Brands to Boost Their 'Kick,'" *The Wall Street Journal*, October 26, 1994.



IMPACT OF MENTHOL CIGARETTES ON YOUTH SMOKING INITIATION AND HEALTH DISPARITIES

Cigarettes with specific characterizing flavors were prohibited in the U.S. on September 22, 2009, as part of the Family Smoking Prevention and Tobacco Control Act (TCA) that gave the U.S. Food and Drug Administration (FDA) authority over tobacco products.¹ This provision excluded menthol cigarettes, which have subsequently increased their share of the cigarette market. Data from the Federal Trade Commission (FTC) show that in 2019, menthol cigarettes comprised 37% of the market, the highest proportion on record since FTC began collecting this data in 1963.² Between 2009 and 2018, sales of non-menthol cigarettes declined by 33.1% nationally while sales of menthol cigarettes declined by only 8.2% during the same period. 91% of the decline in cigarette sales between 2009 and 2018 is attributable to nonmenthol cigarettes.³

Menthol cigarettes pose a tremendous public health threat. A 2013 FDA report on the health impact of menthol cigarettes determined that menthol cigarettes lead to increased smoking initiation among youth and young adults, greater addiction and decreased success in quitting smoking.⁴ Further, FDA's Tobacco Products Scientific Advisory Committee's (TPSAC)* concluded, **"Removal of menthol cigarettes from the marketplace would benefit public health in the United States."**⁵

Menthol Makes it Easier for Youth to Initiate Tobacco Use

The tobacco companies know that almost all new tobacco users begin their addiction as kids, but they also know that to novice smokers, tobacco can be harsh and unappealing. Internal tobacco industry documents show that tobacco companies have a long history of using flavors to reduce the harshness of their products to make them more appealing to new users, almost all of whom are under age 18.⁶ By masking the harshness and soothing the irritation caused by tobacco smoke, flavors make it easier for beginners – primarily kids – to experiment with the product and ultimately become addicted. Menthol has particularly appealing qualities for novice smokers. Menthol is a chemical compound that cools and numbs the throat, reducing the harshness of cigarette smoke, thereby making menthol cigarettes more appealing to youth who are initiating tobacco use.⁷ As TPSAC noted, "Menthol cannot be considered merely a flavoring additive to tobacco. Its pharmacological actions reduce the harshness of smoke and the irritation from nicotine."⁸ According to TPSAC's conclusions:⁹

- Menthol cigarettes increase the number of children who experiment with cigarettes and the number of children who become regular smokers, increasing overall youth smoking.
- Young people who initiate using menthol cigarettes are more likely to become addicted and become long-term daily smokers.

As the only flavored cigarette left on the market, it is no surprise that menthol cigarettes remain popular among youth. In fact, a study analyzing the impact of the 2009 ban on characterizing flavors in cigarettes on youth tobacco use found that use of menthol cigarettes among high schoolers significantly increased after the ban.¹⁰ Since the reports from FDA and TPSAC, research has continued to demonstrate the popularity of menthol cigarettes among youth and menthol's role in smoking initiation:

* TPSAC is a group of scientific experts charged with advising the Commissioner of Food and Drugs on safety, dependence, and health issues relating to tobacco. See <https://www.fda.gov/advisoryCommittees/CommitteesMeetingMaterials/tobaccoproductsScientificAdvisoryCommittee/default.htm> for more details.

- About half of all high school smokers use menthol cigarettes. Over half a million (530,000) middle and high schoolers use menthol cigarettes.¹¹
- The popularity of menthol-flavored cigarettes is also evidenced by brand preference among youth. According to data from the 2015 National Survey on Drug Use and Health, one in five smokers ages 12-17 prefers Newport cigarettes, a heavily marketed menthol cigarette brand. Preference for Newport is even higher among African-American youth smokers (69.1%) because of targeted marketing by the tobacco industry.¹²
- Data from the government's Population Assessment of Tobacco and Health (PATH) study shows that youth menthol smokers are more likely to perceive menthol cigarettes as easier to smoke than regular cigarettes,¹³ that youth menthol smokers have significantly higher levels of certain measures of dependence,¹⁴ and that initiation with a menthol-flavored cigarette is associated with a higher relative risk of daily smoking.¹⁵
- Data from Truth Initiative's Young Adult Cohort Study, a national study of 18-34 year olds, showed that 52% of new young adult smokers initiated with menthol cigarettes. Initiation with menthol cigarettes was higher among black smokers (93.1%) compared to white smokers (43.9%).¹⁶
- Data from the 2017 and 2018 National Youth Tobacco Surveys shows that among middle and high school students, menthol smoking was associated with greater smoking frequency (smoking on at least 10 of the last 30 days) and intention to continue smoking, compared to non-menthol smoking.¹⁷

Menthol Increases Addiction and Makes it Harder for Smokers to Quit

While the tobacco industry initially marketed menthol cigarettes as safer and healthier cigarettes, because of their cooling properties and reduced throat irritability, this could not be further from the truth.¹⁸ In fact, because menthol cigarettes are less harsh, they are associated with increased initiation and greater addiction, and FDA found that it is **“likely that menthol cigarettes pose a public health risk above that seen with nonmenthol cigarettes.”**¹⁹

Both TPSAC's and FDA's own scientific analyses conclude that menthol cigarettes are associated with increased nicotine dependence and reduced success in smoking cessation.²⁰ TPSAC projected that by 2020, about 17,000 premature deaths will be attributable to menthol cigarettes and about 2.3 million people will have started smoking because of menthol cigarettes.²¹ Using the same model, researchers recently quantified the population harms caused by menthol cigarettes between 1980 and 2018. They estimate that during this time, menthol cigarettes were responsible for 10.1 million additional new smokers, 378,000 premature deaths and nearly 3 million life years lost. This amounts to nearly 10,000 premature deaths and over 265,000 new smokers each year over the 38-year period.²²

Research published since FDA's and TPSAC's reports continue to demonstrate the detrimental public health impact of menthol cigarettes:

- A 2014 randomized clinical trial of FDA-approved cessation treatments among 1,500 US adult smokers found that menthol smoking was associated with reduced likelihood of quitting, compared to non-menthol smoking. African American female menthol smokers had the lowest quit rates of all groups in the study.²³
- A meta-analysis of findings from nearly 150,000 smokers found that among African Americans, menthol smokers have a 12% lower odds of smoking cessation compared to non-menthol smokers.²⁴
- Relying on these studies as well as the FDA's and TPSAC's findings, the 2020 Surgeon General Report on Smoking Cessation determined that the evidence was suggestive, but not conclusive as to the role of menthol on smoking cessation, finding the strongest evidence for reduced likelihood of smoking cessation among African American menthol smokers.²⁵

- Most recently, a study analyzing four waves of data from the government's Population Assessment of Tobacco and Health (PATH) study found that among daily smokers, menthol cigarette smokers have a 24% lower odds of quitting as compared to non-menthol smokers (the study did not find a significant difference among quit rates for non-daily menthol and non-menthol smokers). Among daily smokers, African American menthol smokers had a 53% lower odds of quitting compared to African American non-menthol smokers and white menthol smokers had a 22% lower odds of quitting compared to white non-menthol smokers.²⁶
- Despite the overwhelming evidence regarding the public health harms of menthol cigarettes, misperceptions still exist. A survey of African American adult smokers in Minnesota found that over half (59%) were either unsure of the relative harm of menthol cigarettes or perceived that menthol cigarettes are less harmful than non-menthol cigarettes.²⁷

The difficulty that menthol smokers have in quitting continues to be reflected in national smoking prevalence trends. While smoking rates have declined overall in recent years, use of menthol cigarettes has increased significantly. Menthol smoking rates have increased among young adults and remained constant among youth and adults, while non-menthol smoking has decreased in all three age groups.²⁸ Overall, about 4 out of 10 (39.9%) of smokers use menthol cigarettes.²⁹

In recent years, use of menthol cigarettes has increased among White, Asian, and Hispanic smokers. Use of menthol cigarettes has remained constant among African-American smokers, who continue to use menthol cigarettes more than any other racial/ethnic group.³⁰ Research also shows that use of menthol cigarettes has perpetuated disparities among other groups. According to the 2018 National Survey of Drug Use and Health (NSDUH):³¹

- 85% of African American smokers, 50% of Hispanic smokers and 47% of Asian American smokers use menthol cigarettes, compared to 29% of White smokers.
- 51% of lesbian/gay and 46% of bisexual smokers use menthol cigarettes, compared to 39% of heterosexual smokers.
- 45% of smokers with severe psychological distress use menthol cigarettes compared to 39% of smokers with no past month serious psychological distress.
- 47% of smokers living in poverty use menthol cigarettes, compared to 36% of smokers with an income exceeding twice the Federal Poverty Threshold.
- 60% of pregnant smokers use menthol cigarettes.

Use of Menthol Cigarettes Leads to Health Disparities for African Americans

Prevalence of menthol use is highest among African Americans – 85% of all African-American smokers smoke menthol cigarettes, compared to 29% of Whites.³² The tobacco industry's "investment" in the African-American community has had a destructive impact. TPSAC's report and FDA's analysis conclude that African Americans are disproportionately burdened by the health harms of menthol cigarettes. Specifically, TPSAC concluded that the marketing and availability of menthol cigarettes increases the overall prevalence of smoking and reduces cessation among African Americans.³³

- African Americans generally have higher levels of nicotine dependence as a consequence of their preference for mentholated cigarettes.³⁴ While research shows that African American smokers are highly motivated to quit smoking and are more likely than White smokers to have made a quit attempt and used counseling services in the previous year, they are less likely than White smokers to successfully quit smoking.³⁵
- Due to the lower likelihood of smoking cessation among African American menthol smokers, the 2020 Surgeon General Report on Smoking Cessation concluded that, "Use of menthol cigarettes has been shown to contribute to tobacco cessation-related disparities in the United States."³⁶

- TPSAC estimated that by 2020, 4,700 excess deaths in the African-American community will be attributable to menthol cigarettes, and over 460,000 African Americans will have started smoking because of menthol cigarettes.³⁷
- A 2019 metaanalysis found that among African American smokers, menthol smokers had a 12% lower odds of successfully quitting smoking compared to non-menthol smokers.³⁸
- African Americans suffer the greatest burden of tobacco-related mortality of any racial or ethnic group in the United States. Each year, approximately 45,000 African Americans die from a smoking-caused illness. Unless action is taken, an estimated 1.6 million African Americans alive today, who are now under the age of 18, will become regular smokers; and about 500,000 of these will die prematurely from a tobacco-related disease.³⁹
- Lung cancer is the second most common cancer in both African-American men and women, but it kills more African Americans than any other type of cancer.⁴⁰ Decreased cessation success due to the popularity of menthol cigarettes among African Americans likely contributes to this mortality disparity.⁴¹

The Tobacco Industry Targets Minorities and Youth with Menthol Cigarette Marketing

The greater popularity of menthol cigarettes among African Americans, youth, and other minorities is a direct result of a decades-long marketing campaign by the tobacco industry. In fact, TPSAC concluded that menthol cigarettes are marketed disproportionately to younger smokers and African Americans.⁴² Dating back to the 1950s, the tobacco industry has targeted these communities with marketing for menthol cigarettes through sponsorship of community and music events, targeted magazine advertising, youthful imagery, and marketing in the retail environment.

Music and Community Event Sponsorship. Beginning in the 1970s, the major tobacco companies competed for the African American market share by sponsoring music and community events like Brown & Williamson's "Kool Jazz Festival," R.J. Reynolds' "Salem Summer Street Scenes," and Phillip Morris's "Club Benson & Hedges" promotional bar nights.⁴³ Kool also sponsored Latin music festivals, including the branded "Kool Latino Festival," in the 1970s and 1980s.⁴⁴

Magazine Advertising. Expenditures for magazine advertising of mentholated cigarettes increased from 13% of total ad expenditures in 1998 to 76% in 2006.⁴⁵ During the two years after the Master Settlement Agreement (MSA) in November 1998, the average annual expenditures for Newport in magazines with high youth readership increased 13.2% (from \$5.3 to \$6.0 million).⁴⁶ Between 1998–2002, *Ebony*, a magazine tailored to African-American culture, was 9.8 times more likely than *People* to contain ads for menthols.⁴⁷ One study comparing the English and Spanish language versions of *Cosmopolitan* and *Glamour* from 1998–2002 found that 51% of the cigarette ads in the Spanish language versions were for menthol brands, compared to only 28% in the English language versions.⁴⁸

Youthful Imagery. The tobacco companies commonly use youthful imagery in its advertising to appeal to young consumers. As a R.J. Reynolds document from 1981 noted, "The benefit of smoking which has most frequently and most successfully been exploited by brand families appears to be Social Interaction. For example, some brands, such as Newport, have focused on the younger adult 'peer group' aspect of social interaction."⁴⁹ Newport's "Alive with Pleasure" campaign, which continues today, portrays smokers in fun, social environments in its advertisements.⁵⁰ In 2004, Brown & Williamson started an ad campaign for their Kool brand cigarettes clearly aimed at youth—and African-American youth, in particular. The Kool Mixx campaign featured images of young rappers, disc jockeys and dancers on cigarette packs and in advertising. The campaign also included radio giveaways with cigarette purchases and a Hip-Hop disc jockey competition in major cities around the country. The themes, images, radio giveaways and music involved in the campaign all clearly have tremendous appeal to youth, especially African-American youth.

Attorneys General from several states promptly filed motions against Brown & Williamson for violating the Master Settlement Agreement.⁵¹

Retail Promotions. For decades, tobacco companies have specifically targeted minority communities, particularly African Americans, with intense advertising and promotional efforts. Beginning in the 1970s, the major tobacco companies used mobile van programs, like the Newport Pleasure Van, to expand their reach in urban areas through product sampling and coupon distribution.⁵² The tobacco companies also developed specific strategies and specially designed product displays to adapt their point-of-sale marketing to smaller retailers that were more common in urban areas. Phillip Morris implemented promotion programs and paid retailers to exhibit product displays and grow their inventory. Brown & Williamson launched its Kool Inner City Point of Purchase Program, later the Kool Inner City Family Program, with the explicit goal, “to reach the core of Kool’s franchise (young, black, relatively low income and education),”⁵³ with both retailer and consumer promotions.⁵⁴ Today, menthol cigarettes continue to be heavily advertised, widely available, and priced cheaper in certain African-American communities, making them more appealing, particularly to price-sensitive youth. A wealth of research indicates that African-American neighborhoods have a disproportionate number of tobacco retailers, pervasive tobacco marketing, and in particular, more marketing of menthol products.⁵⁵

- Like many minority and low-income neighborhoods, African-American neighborhoods tend to have more tobacco retailers. Nationwide, census tracts with a greater proportion of African American residents have higher tobacco retailer density.⁵⁶
- A 2011 study of cigarette prices in retail stores across the U.S. found that Newport cigarettes are significantly less expensive in neighborhoods with higher proportions of African Americans.⁵⁷
- The 2011 California Tobacco Advertising Survey reports that there were significantly more menthol advertisements at stores in neighborhoods with a higher proportion of African-American residents and in low-income neighborhoods.⁵⁸
- Another 2011 California study found that as the proportion of African-American high school students in a neighborhood rose, the proportion of menthol advertising increased, the odds of a Newport promotion were higher, and the cost of Newport cigarettes was lower.⁵⁹
- A 2013 study of tobacco retail outlets in St. Louis found more tobacco advertising, including more menthol advertising, in areas with a greater proportion of African-American residents.⁶⁰ Another 2013 study found similar patterns in Ramsey County, Minnesota.⁶¹

FDA Action Needed to Prohibit Menthol Cigarettes

Despite strong evidence from the FDA and TSPAC reports and continued research on the public health harms, the FDA has yet to take action to prohibit menthol cigarettes. In 2013, the FDA issued an Advanced Notice of Proposed Rulemaking (ANPRM), soliciting additional research and comments from the public on prohibiting menthol cigarettes. In 2018, the FDA issued another ANPRM, seeking additional evidence on the public health harms of menthol cigarettes, along with other flavored tobacco products. Neither of these ANPRMs have led to the issuance of a rule to prohibit menthol cigarettes; however, in November 2018, FDA Commissioner Scott Gottlieb announced the agency’s intention to ban menthol in combustible tobacco products, including cigarettes and cigars.⁶² This announcement received strong support from the public health and African American communities, including the National Association for the Advancement of Colored People (NAACP), the National Urban League, the National African American Tobacco Prevention Network and the African American Tobacco Control Leadership Council.⁶³

State and Local Action to Restrict the Sale of Menthol Tobacco Products

States and localities can implement additional sales restrictions on menthol cigarettes and flavored non-cigarette tobacco products.

- In November 2019, Massachusetts enacted the first statewide ban on the sale of all flavored tobacco products, including menthol cigarettes (effective 6/1/20). In August 2020, California became the second state to ban menthol cigarettes, along with flavored e-cigarettes and most other flavored tobacco products (implementation pending referendum vote).
- In 2017, the San Francisco Board of Supervisors unanimously passed an ordinance to prohibit the sale of all flavored tobacco products, including menthol cigarettes and e-cigarettes, becoming the first major U.S. city to enact a comprehensive ban.⁶⁴ This law was originally slated to go into effect on April 1, 2018. However, R.J. Reynolds, manufacturer of the top-selling menthol brand, quickly responded by gathering signatures for a referendum petition, allowing voters to decide on the June 2018 ballot whether the restriction should be implemented.⁶⁵ San Francisco residents overwhelmingly voted (68.4% to 31.6%)⁶⁶ to implement the flavored tobacco sales restriction, despite the industry spending nearly \$12 million to try to defeat the initiative.⁶⁷
- Now, over 100 localities from California to Illinois to Minnesota restrict or ban the sale of menthol cigarettes.⁶⁸

The Canadian government banned menthol cigarettes in October 2017, although most provinces had banned menthol cigarettes prior to the nationwide law. Surveillance from Ontario, which banned menthol cigarettes on January 1, 2017 shows promising evidence that banning menthol cigarettes increases quit attempts and cessation:

- A 1-year follow-up survey found that both daily and occasional menthol smokers were more likely to report having quit smoking (24% and 20%, vs 14%) or having made a quit attempt (63% and 62%, vs 43%), compared to non-menthol smokers.⁶⁹
- A 2-year follow-up survey found that menthol smokers were more likely to report having quit smoking for at least the last 6 months (12% for daily menthol smokers and 10% for occasional menthol smokers), compared to non-menthol smokers (3%), with no significant differences in relapse rates. Menthol smokers also reported more quit attempts than non-menthol smokers. Daily menthol smokers reported an average of 3 quit attempts, compared to 2.6 for occasional menthol smokers and 1.2 for non-menthol smokers.⁷⁰

Research on the impact of Canada's national ban is also starting to emerge. Data from the International Tobacco Control Policy Evaluation Project (ITC) are consistent with the findings on the impact of the Ontario ban. Specifically, ITC researchers, using longitudinal surveys of Canadian smokers in seven provinces from 2016-2018 found that following provincial bans and the national ban, menthol smokers were more likely to try to quit than non-menthol smokers (59% vs. 49%), and were twice as likely to have quit smoking for at least six months (12% vs. 6%).⁷¹ It is important to note that menthol cigarettes comprised a much smaller proportion of the Canadian cigarette marketplace (~5%) than the US marketplace (37%), and the demographics of menthol smokers are very different between the two countries.

In May 2020, the European Union and the United Kingdom banned the sale of menthol cigarettes, but research is not yet available on the impact of these bans.

Campaign for Tobacco-Free Kids, April 14, 2021 / Laura Bach

More information on Tobacco and African Americans is available at
<https://www.tobaccofreekids.org/fact-sheets/tobaccos-toll-health-harms-and-cost/toll-of-tobacco-on-specific-populations-african-americans>

More information on Flavored Tobacco Products is available at
[tfk.org/flavortrap](http://www.tobaccofreekids.org/research/factsheets/pdf/0383.pdf) and <http://www.tobaccofreekids.org/research/factsheets/pdf/0383.pdf>.

- ¹ See U.S. Food and Drug Administration's (FDA) Flavored Tobacco webpage at <http://www.fda.gov/TobaccoProducts/GuidanceComplianceRegulatoryInformation/FlavoredTobacco/default.htm>.
- ² U.S. Federal Trade Commission (FTC), *Cigarette Report for 2019*, 2021, https://www.ftc.gov/system/files/documents/reports/federal-trade-commission-cigarette-report-2019-smokeless-tobacco-report-2019/cigarette_report_for_2019.pdf [data for top 5 manufacturers only].
- ³ Delnevo, CD, et al., "Assessment of Menthol and Nonmenthol Cigarette Consumption in the US, 2000 to 2018," *JAMA Network Open*, published online August 7, 2020.
- ⁴ FDA, *Preliminary Scientific Evaluation of the Possible Public Health Effects of Menthol versus Nonmenthol Cigarettes* (2013).
- ⁵ Tobacco Products Scientific Advisory Committee (TPSAC), FDA, "Menthol Cigarettes and Public Health: Review of the Scientific Evidence and Recommendations, 2011," <https://wayback.archive-it.org/7993/20170405201731/https://www.fda.gov/downloads/AdvisoryCommittees/CommitteesMeetingMaterials/TobaccoProductsScientificAdvisoryCommittee/UCM269697.pdf>.
- ⁶ HHS, *Preventing Tobacco Use Among Youth and Young Adults, A Report of the Surgeon General*, 2012, <http://www.cdc.gov/Features/YouthTobaccoUse/>.
- ⁷ FDA, *Preliminary Scientific Evaluation of the Possible Public Health Effects of Menthol versus Nonmenthol Cigarettes* (2013).
- ⁸ TPSAC, FDA, "Menthol Cigarettes and Public Health: Review of the Scientific Evidence and Recommendations, 2011," <https://wayback.archive-it.org/7993/20170405201731/https://www.fda.gov/downloads/AdvisoryCommittees/CommitteesMeetingMaterials/TobaccoProductsScientificAdvisoryCommittee/UCM269697.pdf>.
- ⁹ TPSAC, FDA, "Menthol Cigarettes and Public Health: Review of the Scientific Evidence and Recommendations, 2011," <https://wayback.archive-it.org/7993/20170405201731/https://www.fda.gov/downloads/AdvisoryCommittees/CommitteesMeetingMaterials/TobaccoProductsScientificAdvisoryCommittee/UCM269697.pdf>.
- ¹⁰ Courtemanche, CJ, et al., "Influence of the Flavored Cigarette Ban on Adolescent Tobacco Use," *American Journal of Preventive Medicine*, published online January 9, 2017.
- ¹¹ Wang, TW, et al., "Tobacco Product Use and Associated Factors Among Middle and High School Students—United States, 2019," *MMWR* 68(12), December 6, 2019, <https://www.cdc.gov/mmwr/volumes/68/ss/pdfs/ss6812a1-H.pdf>.
- ¹² SAMHSA's public online data analysis system (PDAS), National Survey on Drug Use and Health, 2015. http://pdas.samhsa.gov/#/survey/NSDUH-2015-DS0001/crosstab?row=CIG30BR2&column=CATAG3&control=NEWRACE2&weight=ANALWT_C&results_received=true and https://pdas.samhsa.gov/#/survey/NSDUH-2015-DS0001/crosstab?column=CATAG3&results_received=true&row=CIG30BR2&weight=ANALWT_C.
- ¹² FDA, *Preliminary Scientific Evaluation of the Possible Public Health Effects of Menthol versus Nonmenthol Cigarettes* (2013).
- ¹³ Cohn, AM, et al., "Menthol Smoking Patterns and Smoking Perceptions Among Youth: Findings from the Population Assessment of Tobacco and Health Study," *American Journal of Preventive Medicine*, 56(4): e107-e116, 2019.
- ¹⁴ Cwalina, SN, et al., "Adolescent menthol cigarette use and risk of nicotine dependence: Findings from the national Population Assessment on Tobacco and Health (PATH) study," *Drug and Alcohol Dependence*, published online November 15, 2019.
- ¹⁵ Villanti, AC, et al., "Association of flavored tobacco use with tobacco initiation and subsequent use among US youth and adults, 2013-2015," *JAMA Network Open*, published online October 23, 2019.
- ¹⁶ D'Silva, J, et al., "Differences in Subjective Experiences to First Use of Menthol and Nonmenthol Cigarettes in a National Sample of Young Adult Cigarette Smokers," *Nicotine & Tobacco Research*, 20(9): 1062-1068, 2018.
- ¹⁷ Azagba, S, et al., "Cigarette smoking behavior among menthol and nonmenthol adolescent smokers," *Journal of Adolescent Health*, 66: 545-550, 2020.
- ¹⁸ Anderson, SJ, et al., "Marketing of menthol cigarette sand consumer perceptions: a review of tobacco industry documents," *Tobacco Control*, 20(Suppl 2): ii20-ii28, 2011.
- ¹⁹ FDA, "Preliminary Scientific Evaluation of the Possible Public Health Effects of Menthol Versus Nonmenthol Cigarettes," <http://www.fda.gov/downloads/ScienceResearch/SpecialTopics/PeerReviewofScientificInformationandAssessments/UCM361598.pdf>, 2013.
- ²⁰ TPSAC, Menthol Cigarettes and Public Health: Review of the Scientific Evidence and Recommendations, July 21, 2011 <http://www.fda.gov/downloads/AdvisoryCommittees/CommitteesMeetingMaterials/TobaccoProductsScientificAdvisoryCommittee/UCM269697.pdf>.
- ²¹ TPSAC, Menthol Cigarettes and Public Health: Review of the Scientific Evidence and Recommendations, July 21, 2011 <http://www.fda.gov/downloads/AdvisoryCommittees/CommitteesMeetingMaterials/TobaccoProductsScientificAdvisoryCommittee/UCM269697.pdf>.
- ²² Le, TT, "An estimation of the harm of menthol cigarettes in the United States from 1980 to 2018," *Tobacco Control*, published online February 25, 2021.
- ²³ Smith, SS, et al., "Smoking cessation in smokers who smoke menthol and non-menthol cigarettes," *Addiction*, 109: 2107-2117, 2014.
- ²⁴ Smith, PH, et al., "Use of Mentholated Cigarettes and Likelihood of Smoking Cessation in the United States: A Meta-Analysis," *Nicotine & Tobacco Research*, 2019, published online June 17, 2019.
- ²⁵ U.S. Department of Health and Human Services. *Smoking Cessation. A Report of the Surgeon General*. Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2020.
- ²⁶ Mills, S, et al., *The Relationship between Menthol Cigarette Use, Smoking Cessation and Relapse: Findings from Waves 1 to 4 of the Population Assessment of Tobacco and Health Study*, *Nicotine & Tobacco Research*, published online October 16, 2020, <https://doi.org/10.1093/ntr/ntaa212>.

- 27 Kingsbury, JH, et al., "Perceptions of Menthol Cigarettes and Reasons for Unsuccessful Quit Attempts in an African American Community Sample," *Journal of Immigrant and Minority Health*, published online May 25, 2020.
- 28 Giovino, GA, et al., "Differential trends in cigarette smoking in the USA: is menthol slowing progress?" *Tobacco Control*, 2013.
- 29 Delnevo, CD, et al., "Banning Menthol Cigarettes: A Social Justice Issue Long Overdue," *Nicotine & Tobacco Research*, 22(10): 1673-1675, 2020.
- 30 Villanti, A., et al., "Changes in the prevalence and correlates of menthol cigarette use in the USA, 2004–2014," *Tobacco Control*, published online October 20, 2016.
- 31 Delnevo, CD, et al., "Banning Menthol Cigarettes: A Social Justice Issue Long Overdue," *Nicotine & Tobacco Research*, 22(10): 1673-1675, 2020.
- 32 Villanti, A., et al., "Changes in the prevalence and correlates of menthol cigarette use in the USA, 2004–2014," *Tobacco Control*, published online October 20, 2016
- 33 TPSAC, Menthol Cigarettes and Public Health: Review of the Scientific Evidence and Recommendations, July 21, 2011
<http://www.fda.gov/downloads/AdvisoryCommittees/CommitteesMeetingMaterials/TobaccoProductsScientificAdvisoryCommittee/UCM269697.pdf>
- 34 FDA, "Preliminary Scientific Evaluation of the Possible Public Health Effects of Menthol Versus Nonmenthol Cigarettes,"
<http://www.fda.gov/downloads/ScienceResearch/SpecialTopics/PeerReviewofScientificInformationandAssessments/UCM361598.pdf>, 2013;
Tobacco Products Scientific Advisory Committee, FDA, "Menthol Cigarettes and Public Health: Review of the Scientific Evidence and Recommendations, 2011,
<http://www.fda.gov/downloads/AdvisoryCommittees/CommitteesMeetingMaterials/TobaccoProductsScientificAdvisoryCommittee/UCM269697.pdf>;
Alexander, LA, et al., "Why we must continue to investigate menthol's role in the African American smoking paradox," *Nicotine & Tobacco Research*, 18(S1): S91-S101, 2016;
- 35 See e.g., CDC, "Quitting Smoking Among Adults—United States, 2000-2015," *MMWR*, 65(52): 1457-1464, January 6, 2017,
<https://www.cdc.gov/mmwr/volumes/65/wr/pdfs/mm6552a1.pdf>. Royce, J, et al., "Smoking cessation factors among African Americans and Whites: COMMIT Research Group," *American Journal of Public Health* 83(2):220-6, February 1993.
<https://www.fda.gov/advisoryCommittees/CommitteesMeetingMaterials/tobaccoproductsScientificAdvisoryCommittee/default.htm>
- 36 U.S. Department of Health and Human Services. *Smoking Cessation. A Report of the Surgeon General*. Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2020.
- 37 TPSAC, FDA, "Menthol Cigarettes and Public Health: Review of the Scientific Evidence and Recommendations, 2011,
<http://www.fda.gov/downloads/AdvisoryCommittees/CommitteesMeetingMaterials/TobaccoProductsScientificAdvisoryCommittee/UCM269697.pdf>.
- 38 Smith, PH, et al., "Use of mentholated cigarettes and Likelihood of Smoking Cessation in the United States: A Meta-Analysis," *Nicotine & Tobacco Research*, 22(3): 307-316, 2020.
- 39 HHS, "Tobacco Use Among US Racial/Ethnic Minority Groups—African Americans, American Indians and Alaskan Natives, Asian Americans and Pacific Islanders, and Hispanics: A Report of the Surgeon General," 1998,
http://www.cdc.gov/tobacco/data_statistics/sgr/1998/complete_report/pdfs/complete_report.pdf.
- 40 American Cancer Society, "Cancer Facts & Figures for African Americans, 2016-2018," 2016,
<http://www.cancer.org/acs/groups/content/@editorial/documents/document/acspc-047403.pdf>.
- 41 Alexander, LA, et al., "Why we must continue to investigate menthol's role in the African American smoking paradox," *Nicotine & Tobacco Research*, 18 (Suppl 1): S91-S101, 2016.
- 42 TPSAC, Menthol Cigarettes and Public Health: Review of the Scientific Evidence and Recommendations, July 21, 2011
<https://wayback.archive-it.org/7993/20170405201731/http://www.fda.gov/downloads/AdvisoryCommittees/CommitteesMeetingMaterials/TobaccoProductsScientificAdvisoryCommittee/UCM269697.pdf>.
- 43 Hafez, N. & Ling, P.M. "Finding the Kool Mixx: how Brown & Williamson used music marketing to sell cigarettes," *Tobacco Control* 15: 359-366, 2006. See also Yerger, VB, et al., "Racialized geography, corporate activity, and health disparities: Tobacco industry targeting of inner cities," *Journal of Health Care for the Poor and Underserved*, 18: 10-38, 2007. R.J. Reynolds. *Black Street Scenes: review and recommendations*. Winston-Salem, NC: R.J. Reynolds Tobacco Company, 1983. Available at <http://legacy.library.ucsf.edu/tid/onb19d00>.
- 44 Hafez, N, & Ling, P, "Finding the Kool Mixx: how Brown & Williamson used music marketing to sell cigarettes," *Tobacco Control*, 15: 359-366, 2006.
- 45 Alpert, H, Koh, HK, & Connolly, GN, "After the Master Settlement Agreement: Targeting and exposure of youth to magazine tobacco advertising," *Health Affairs* 27(6):w503-w512, 2008.
- 46 King, C, et al., "The Master Settlement Agreement with the tobacco industry and cigarette advertising in magazines," *New England Journal of Medicine* 345(7):504-11, August 2001.
- 47 Landrine, H, et al., "Cigarette advertising in Black, Latino and White magazines, 1998-2002: An exploratory investigation," *Ethnic Disparities* 15(1):63-7, 2005.
- 48 Fernandez, S, et al., "Cigarette Advertising in Magazines for Latinas, White Women, and Men, 1998-2002: A Preliminary Investigation," *Journal of Community Health*, 30(2): 141-151, 2005.
- 49 R.J. Reynolds. Strategic Research Report: The 1981 Brand Family Segmentation Study. Mangini, 1982.
<https://www.industrydocumentslibrary.ucsf.edu/tobacco/docs/#id=zfbf0092>.
- 50 Anderson, SJ, et al., "Marketing of menthol cigarette sand consumer perceptions: a review of tobacco industry documents," *Tobacco Control*, 20(Suppl 2): ii20-ii28, 2011.
- 51 Hafez, N, & Ling, P, "Finding the Kool Mixx: how Brown & Williamson used music marketing to sell cigarettes," *Tobacco Control*, 15: 359-366, 2006.

- ⁵² Yerger, VB, et al., "Racialized geography, corporate activity, and health disparities: Tobacco industry targeting of inner cities," *Journal of Health Care for the Poor and Underserved*, 18: 10-38, 2007. Hafez, N. & Ling, P.M. "Finding the Kool Mixx: how Brown & Williamson used music marketing to sell cigarettes," *Tobacco Control* 15: 359-366, 2006.
- ⁵³ Hudson RC. Brown & Williamson. Inner city POP Program. Macon, GA: Brown & Williamson Tobacco Corporation, 1979 Oct 15. <http://legacy.library.ucsf.edu/tid/icb91d00>.
- ⁵⁴ Yerger, VB, et al., "Racialized geography, corporate activity, and health disparities: Tobacco industry targeting of inner cities," *Journal of Health Care for the Poor and Underserved*, 18: 10-38, 2007.
- ⁵⁵ Lee, JGL, et al., "A Systematic Review of Neighborhood Disparities in Point-of-Sale Tobacco Marketing," *American Journal of Public Health*, published online ahead of print July 16, 2015.
- ⁵⁶ Rodriguez, D, et al., "Predictors of tobacco outlet density nationwide: a geographic analysis," *Tobacco Control*, published online first on April 4, 2012. See also Lee, JGL, et al., "Inequalities in tobacco outlet density by race, ethnicity and socioeconomic status, 2012, USA: results from the ASPIRE Study," *Journal of Epidemiology and Community Health*, published online March 1, 2017.
- ⁵⁷ Resnick, EA, et al., *Cigarette Pricing Differs by U.S. Neighborhoods—A BTG Research Brief*. Chicago, IL: Bridging the Gap Program, Health Policy Center, Institute for Health Research and Policy, University of Illinois at Chicago, 2012, www.bridgingthegapresearch.org.
- ⁵⁸ Schleicher, N, et al., "Tobacco Marketing in California's Retail Environment (2008-2011), Final report for the California Tobacco Advertising Survey. Stanford, CA: Stanford Prevention Research Center, July 2013.
- ⁵⁹ Henriksen, L., et al., "Targeted Advertising, Promotion, and Price for Menthol Cigarettes in California High School Neighborhoods," *Nicotine & Tobacco Research*, June 24, 2011.
- ⁶⁰ Moreland-Russell, S. "Disparities and Menthol Marketing: Additional Evidence in Support of Point of Sale Policies," *International Journal of Environmental Research and Public Health*, 10: 4571-4583, 2013.
- ⁶¹ Widome, R, et al., "The relationship of neighborhood demographic characteristics to point-of-sale tobacco advertising and marketing," *Ethnicity & Disease* 18(2): 136-151, 2013.
- ⁶² FDA, "Statement from FDA Commissioner Scott Gottlieb, M.D., on proposed new steps to protect youth by preventing access to flavored tobacco products and banning menthol in cigarettes," November 15, 2018, <https://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm625884.htm>.
- ⁶³ NAACP, "NAACP Statement on FDA Plan to Ban Sale of Menthol and E-Cigarettes," November 14, 2018, <https://www.naacp.org/latest/naacp-statement-fda-plan-ban-sale-menthol-e-cigarettes/>. National Urban League, "National Urban League: Proposed Menthol Cigarette Ban Would Benefit African Americans' Health," November 13, 2018, <http://nul.iamempowered.com/content/national-urban-league-proposed-menthol-cigarette-ban-would-benefit-african-americans-health>.
- ⁶⁴ San Francisco Health Code 140-17, Banning the Sale of Flavored Tobacco Products, <http://sfbos.org/sites/default/files/o0140-17.pdf>
- ⁶⁵ Swan, R., "SF's battle over flavored tobacco heats up," *San Francisco Chronicle*, September 4, 2017, <http://www.sfchronicle.com/bayarea/article/SF-s-battle-over-flavored-tobacco-heats-up-12172353.php>. Matier & Ross, "SF ban on flavored tobacco looks headed for the ballot," *San Francisco Chronicle*, July 26, 2017, <http://www.sfchronicle.com/bayarea/article/SF-ban-on-flavored-tobacco-looks-headed-for-the-11408689.php>.
- ⁶⁶ City and County of San Francisco Department of Elections. June 5, 2018 Election Results – Summary. See Local Measure E - Prohibiting Tobacco Retailers from Selling Flavored Tobacco Products. <https://sfelections.sfgov.org/june-5-2018-election-results-summary>.
- ⁶⁷ Hoffman, J. "San Francisco Voters Uphold Ban on Flavored Tobacco Products," *New York Times*, June 6, 2018, <https://www.nytimes.com/2018/06/06/health/vaping-ban-san-francisco.html>.
- ⁶⁸ Campaign for Tobacco-Free Kids, "States & Localities That Have Restricted the Sale of Flavored Tobacco Products," <https://www.tobaccofreekids.org/assets/factsheets/0398.pdf>.
- ⁶⁹ Chaiton, MO, et al., "Ban on menthol-flavoured tobacco products predicts cigarette cessation at 1 year: a population cohort study," *Tobacco Control*, published online May 30, 2019.
- ⁷⁰ Chaiton, M, et al., "Prior daily menthol smokers more likely to quit two years after a menthol ban than non-menthol smokers: a population cohort study," *Nicotine & Tobacco Research*, published online March, 10, 2021.
- ⁷¹ Chung-Hall, et al., "Evaluating the impact of menthol cigarette bans on cessation and smoking behaviours in Canada: longitudinal findings from the Canadian arm of the 2016-2018 ITC Four Country Smoking and Vaping Surveys," *Tobacco Control*, published online April 5, 2021.



STATES & LOCALITIES THAT HAVE RESTRICTED THE SALE OF FLAVORED TOBACCO PRODUCTS

Cigarettes with specific characterizing flavors, other than menthol, were prohibited in the U.S. on September 22, 2009, as part of the Family Smoking Prevention and Tobacco Control Act (TCA) that gave the U.S. Food and Drug Administration (FDA) authority over tobacco products. In addition to the federal ban on flavored cigarettes, states and localities can implement additional sales restrictions to address menthol cigarettes and flavored non-cigarette tobacco products and their appeal to youth and young adults.

States

In November 2019, Massachusetts became the first state to restrict the sale of all flavored tobacco products, including menthol cigarettes. In 2020, New Jersey, New York and Rhode Island enacted bans on the sale of flavored e-cigarettes and California became the second state to prohibit the sale of both flavored e-cigarettes and menthol cigarettes.

1. **Massachusetts**² (effective 11/27/19 for e-cigarettes; 6/1/20 for all other products)
2. New Jersey⁴ (effective 4/20/20)
3. New York^{4,7} (effective 5/18/20)
4. Rhode Island⁴ (effective 3/26/20)
5. **California**^{6,8,9} (implementation pending referendum vote)

In 2019, eight states—Massachusetts, Michigan, Montana, New York, Oregon, Rhode Island, Utah and Washington—issued emergency rules to temporarily ban the sale of flavored e-cigarettes. As a result of legal challenges, these orders were blocked in Michigan, New York, Oregon and Utah. The Montana and Washington state orders have expired. Massachusetts, New York and Rhode Island later enacted permanent bans. Utah later enacted regulations restricting the sale of flavored e-cigarettes (except mint/menthol) to adult-only retail tobacco specialty businesses

Prior to the enactment of the Tobacco Control Act, New Jersey had already restricted the sale of flavored cigarettes, excluding menthol and clove flavors. Maine prohibits the sale of flavored non-premium cigars.

Localities

At least 310 localities have passed restrictions* on the sale of flavored tobacco products, although laws differ in their application to specific products and store types (see endnotes). At least 120 of these communities—those listed in **bold**—restrict the sale of menthol cigarettes, in addition to other flavored tobacco products.

California (109)

1. **Adelanto**
2. **Alameda**
3. **Alameda County**³
4. **Albany**
5. **Alturas**
6. Anderson^{2,4}
7. Arroyo Grande^{4,7}
8. Auburn
9. **Benicia**
10. **Berkeley**
11. **Beverly Hills**
12. **Burbank**²
13. **Burlingame**

California (cont'd)

14. Calabasas²
15. **Capitola**
16. **Carpinteria**
17. **Carson**
18. Cerritos⁴
19. Cloverdale
20. **Compton**²
21. **Contra Costa County**³
22. **Corte Madera**
23. **Cudahy**
24. **Culver City**²
25. **Cupertino**
26. Danville^{4,7}

California (cont'd)

27. **Davis**
28. **Delano**
29. **Dublin**
30. **East Palo Alto**
31. El Cerrito
32. **El Monte**
33. **Encinitas**⁶
34. **Fairfax**
35. **Fremont**
36. **Glendale**^{6,8,9}
37. **Guadalupe**
38. **Half Moon Bay**
39. **Hayward**

California (cont'd)

40. **Hermosa Beach**
41. **Imperial Beach**
42. **Lafayette**
43. **Laguna Niguel**
44. **Larkspur**
45. **Livermore**
46. **Long Beach**^{6,8,9}
47. **Loomis**⁴
48. **Los Altos**²
49. **Los Angeles County**³
50. **Los Gatos**
51. **Mammoth Lakes**
52. **Manhattan Beach**
53. **Marin County**³
54. **Maywood**
55. **Mendocino County**³
56. **Menlo Park**
57. **Mill Valley**
58. **Mono County**³
59. **Morgan Hill**
60. **Morro Bay**⁵
61. **Novato**
62. **Oakland**
63. **Oroville**
64. **Oxnard**
65. **Napa**^{6,8,9}
66. **Pacific Grove**
67. **Palmdale**⁴
68. **Palo Alto**
69. **Paradise**
70. **Pinole**
71. **Pleasanton**
72. **Portola Valley**
73. **Redondo Beach**²
74. **Richmond**
75. **Ross**
76. **Sacramento**
77. **San Anselmo**
78. **San Carlos**
79. **San Diego County**^{3,6,8,9}
80. **San Francisco**
81. **San Leandro**
82. **San Luis Obispo**^{4,7}
83. **San Luis Obispo County**^{3,4,7}
84. **San Mateo**
85. **San Mateo County**³
86. **San Pablo**
87. **San Rafael**
88. **Santa Barbara County**³
89. **Santa Clara County**³
90. **Santa Clarita**
91. **Santa Cruz**
92. **Santa Cruz County**³
93. **Santa Maria**
94. **Saratoga**

California (cont'd)

95. **Sausalito**
96. **Sebastopol**
97. **Solana Beach**
98. **Sonoma**⁴
99. **South San Francisco**
100. **Sunnyvale**
101. **Tiburon**
102. **Ventura**
103. **Ventura County**^{3,4}
104. **Watsonville**
105. **West Hollywood**⁶
106. **West Sacramento**
107. **Windsor**
108. **Woodland**
109. **Yolo County**³

Colorado (5)

1. **Aspen**
2. **Boulder**⁴
3. **Carbondale**
4. **Glenwood Springs**
5. **Snowmass Village**

Illinois (1)

1. **Chicago**¹

Massachusetts (168)

1. **Acton**²
2. **Adams**²
3. **Agawam**²
4. **Andover**²
5. **Amherst**²
6. **Arlington**²
7. **Ashburnham**²
8. **Ashby**²
9. **Ashland**²
10. **Athol**²
11. **Attleboro**²
12. **Avon**²
13. **Ayer**²
14. **Barnstable**²
15. **Bedford**²
16. **Belmont**²
17. **Beverly**²
18. **Billerica**²
19. **Bolton**²
20. **Boston**²
21. **Braintree**²
22. **Brewster**²
23. **Brockton**²
24. **Brookline**
25. **Buckland**²
26. **Cambridge**²
27. **Canton**²
28. **Carver**²
29. **Charlemont**²
30. **Charlton**²
31. **Chatham**²

Massachusetts (cont'd)

32. **Chelsea**²
33. **Chelmsford**²
34. **Clinton**²
35. **Cohasset**²
36. **Concord**²
37. **Conway**²
38. **Danvers**²
39. **Dedham**²
40. **Deerfield**²
41. **Dracut**²
42. **Duxbury**²
43. **Easthampton**²
44. **E. Longmeadow**²
45. **Easton**²
46. **Edgartown**²
47. **Essex**²
48. **Everett**²
49. **Fairhaven**²
50. **Fitchburg**²
51. **Framingham**²
52. **Franklin**²
53. **Gardner**²
54. **Gill**²
55. **Gloucester**²
56. **Grafton**²
57. **Granby**²
58. **Greenfield**²
59. **Groton**²
60. **Hadley**²
61. **Halifax**²
62. **Hamilton**²
63. **Harvard**²
64. **Harwich**²
65. **Hatfield**²
66. **Haverhill**²
67. **Holbrook**²
68. **Holden**²
69. **Holyoke**²
70. **Hopkinton**²
71. **Ipswich**²
72. **Lancaster**²
73. **Lanesboro**²
74. **Lawrence**²
75. **Leominster**²
76. **Lee**²
77. **Lenox**²
78. **Leverett**²
79. **Littleton**²
80. **Lowell**²
81. **Ludlow**²
82. **Lynn**²
83. **Lynnfield**²
84. **Malden**²
85. **Marblehead**²
86. **Marion**²
87. **Marlboro**²
88. **Marshfield**²

Massachusetts (cont'd)

89. Mashpee²
90. Maynard²
91. Medfield²
92. Medford²
93. Melrose²
94. Methuen²
95. **Middleboro**²
96. Middleton²
97. Millis²
98. Milton²
99. Montague²
100. Natick²
101. **Needham**²
102. Newburyport²
103. Newton²
104. **Norfolk**²
105. North Adams²
106. **North Andover**²
107. North Attleboro²
108. Northampton²
109. North Reading²
110. Norton²
111. Norwell²
112. **Norwood**²
113. Oak Bluffs²
114. Orange²
115. Orleans²
116. Palmer²
117. Peabody²
118. Pittsfield²
119. Provincetown²
120. Reading²
121. Rockport²
122. Royalston²
123. Salem²
124. Sandwich²
125. Saugus²
126. **Sharon**²
127. Shelburne²
128. Sherborn²
129. Shrewsbury²
130. **Somerville**²
131. Southampton²
132. **South Hadley**²
133. Spencer²

Massachusetts (cont'd)

134. Stockbridge²
135. Stoneham²
136. **Stoughton**²
137. Stow²
138. Sudbury²
139. Sunderland²
140. **Swampscott**²
141. Templeton²
142. Tewksbury²
143. Topsfield²
144. Townsend²
145. Tyngsboro²
146. Upton²
147. Uxbridge²
148. Wakefield²
149. **Walpole**²
150. Wareham²
151. Watertown²
152. Webster²
153. Wellfleet²
154. West Boylston²
155. Westboro²
156. Westford²
157. Westminster²
158. Westwood²
159. Whately
160. Wilbraham²
161. Williamstown²
162. Wilmington²
163. Winchendon²
164. Winchester²
165. Winthrop²
166. Worcester²
167. Wrentham²
168. Yarmouth²

Minnesota (19)

1. **Arden Hills**
2. **Bloomington**
3. **Duluth**²
4. **Edina**
5. **Falcon Heights**²
6. **Fridley**²
7. **Golden Valley**
8. **Hennepin County**^{2,3}

Minnesota (cont'd)

9. **Lauderdale**
10. **Lilydale**
11. **Mendota Heights**
12. **Minneapolis**²
13. New Hope
14. Robbinsdale²
15. **Roseville**²
16. Rushford²
17. St. Louis Park²
18. **St. Paul**²
19. Shoreview²

Montana (1)

1. Missoula⁴

New Jersey (1)

1. Jersey City⁴

New York (3)

1. New York City²
2. **Manheim**
3. Yonkers⁴

Pennsylvania (1)

1. Philadelphia^{2,5,6}

Rhode Island (6)

1. Barrington²
2. Central Falls²
3. Johnston²
4. Middletown²
5. Providence²
6. Woonsocket²

MA localities courtesy of the Municipal Tobacco Control Technical Assistance Program.

*The above list may not be comprehensive. It includes communities that have passed restrictions, but some have future implementation dates and/or are the subject of litigation.

Campaign for Tobacco-Free Kids, June 8, 2021 / Laura Bach

¹ Chicago's e-cigarette flavor ban is comprehensive, but restrictions on other tobacco products apply only to retailers within 500 feet of high schools and exempt adult-only tobacco retailers

² Exempts certain types of retailers, such as tobacco retailers (stores that receive a certain proportion of their revenue from tobacco), tobacco/smoking bars, hookah bars, e-cigarette establishments, adult-only retailers and/or liquor stores.

³ Applies only to retailers in unincorporated areas of the County.

⁴ Flavor restrictions only apply to e-cigarettes.

⁵ Exempts smokeless tobacco.

⁶ Exempts hookah tobacco

⁷ Exempts products that have received a marketing order from the FDA. Currently, no e-cigarettes have received a marketing order.

⁸ Exempts pipe tobacco

⁹ Exempts premium cigars

FDA NEWS RELEASE

FDA Commits to Evidence-Based Actions Aimed at Saving Lives and Preventing Future Generations of Smokers

Efforts to ban menthol cigarettes, ban flavored cigars build on previous flavor ban and mark significant steps to reduce addiction and youth experimentation, improve quitting, and address health disparities

For Immediate Release:

April 29, 2021

Español ([/news-events/press-announcements/la-fda-se-compromete-tomar-medidas-basadas-en-la-evidencia-dirigidas-salvar-vidas-y-prevenir-futuras](https://www.fda.gov/news-events/press-announcements/la-fda-se-compromete-tomar-medidas-basadas-en-la-evidencia-dirigidas-salvar-vidas-y-prevenir-futuras))

Today, the U.S. Food and Drug Administration announced it is committing to advancing two tobacco product standards to significantly reduce disease and death from using combusted tobacco products, the leading cause of preventable death in the U.S. The FDA is working toward issuing proposed product standards within the next year to ban menthol as a characterizing flavor in cigarettes and ban all characterizing flavors (including menthol) in cigars; the authority to adopt product standards is one of the most powerful tobacco regulatory tools Congress gave the agency. This decision is based on clear science and evidence establishing the addictiveness and harm of these products and builds on important, previous actions that banned other flavored cigarettes in 2009.

“Banning menthol—the last allowable flavor—in cigarettes and banning all flavors in cigars will help save lives, particularly among those disproportionately affected by these deadly products. With these actions, the FDA will help significantly reduce youth initiation, increase the chances of smoking cessation among current smokers, and address health disparities experienced by communities of color, low-income populations, and LGBTQ+ individuals, all of whom are far more likely to use these tobacco products,” said Acting FDA Commissioner Janet Woodcock, M.D. **“Together, these actions represent powerful, science-based approaches that will have an extraordinary public health impact. Armed with strong scientific evidence, and with full support from the Administration (<https://www.hhs.gov/about/news/2021/04/29/statement-hhs-secretary-xavier-becerra-fda-tobacco-actions-menthol-cigarettes-flavored-cigars.html>), we believe these actions will launch us on a trajectory toward ending tobacco-related disease and death in the U.S.”**

The agency is taking urgent action to reduce tobacco addiction and curb deaths. There is strong evidence that a menthol ban will help people quit. Studies show that menthol increases the appeal of tobacco and facilitates progression to regular smoking, particularly among youth and young adults. Menthol masks unpleasant flavors and harshness of tobacco products, making them easier to start using. Tobacco products with menthol can also be more addictive and harder to quit by enhancing the effects of nicotine. One [study](https://tobaccocontrol.bmj.com/content/early/2021/03/31/tobaccocontrol-2020-056259) (<https://tobaccocontrol.bmj.com/content/early/2021/03/31/tobaccocontrol-2020-056259>) [↗](http://www.fda.gov/about-fda/website-policies/website-disclaimer) (<http://www.fda.gov/about-fda/website-policies/website-disclaimer>) suggests that banning menthol cigarettes in the U.S. would lead an additional 923,000 smokers to quit, including 230,000 African Americans in the first 13 to 17 months after a ban goes into effect. An earlier [study](https://ajph.aphapublications.org/doi/full/10.2105/AJPH.2011.300179) (<https://ajph.aphapublications.org/doi/full/10.2105/AJPH.2011.300179>) [↗](http://www.fda.gov/about-fda/website-policies/website-disclaimer) (<http://www.fda.gov/about-fda/website-policies/website-disclaimer>) projected that about 633,000 deaths would be averted, including about 237,000 deaths averted for African Americans.

“For far too long, certain populations, including African Americans, have been targeted, and disproportionately impacted by tobacco use. Despite the tremendous progress we’ve made in getting people to stop smoking over the past 55 years, that progress hasn’t been experienced by everyone equally,” said Mitch Zeller, J.D., director of the FDA’s Center for Tobacco Products. **“These flavor standards would reduce cigarette and cigar initiation and use, reduce health disparities, and promote health equity by addressing a significant and disparate source of harm. Taken together, these policies will help save lives and improve the public health of our country as we confront the leading cause of preventable disease and death.”**

If implemented, the FDA’s enforcement of any ban on menthol cigarettes and all flavored cigars will only address manufacturers, distributors, wholesalers, importers and retailers. The FDA cannot and will not enforce against individual consumer possession or use of menthol cigarettes or any tobacco product. The FDA will work to make sure that any unlawful tobacco products do not make their way onto the market.

These actions are an important opportunity to achieve significant, meaningful public health gains and advance health equity. The FDA is working expeditiously on the two issues, and the next step will be for the agency to publish proposed rules in the Federal Register allowing an opportunity for public comment.

The agency also recognizes the importance of ensuring broad and equitable access to all the tools and resources that can help currently addicted smokers seeking to quit, including those who smoke menthol cigarettes and would be impacted by these public health measures. The FDA will work with partners in other federal agencies to make sure the support is there for those who are trying to quit. Smokers interested in quitting today should visit smokefree.gov (<https://smokefree.gov/>) or call 1-800-QUIT-NOW to learn about cessation services available in their state.

The FDA also remains focused on its regulatory oversight of e-cigarettes and other electronic nicotine delivery systems (ENDS). The Center for Tobacco Products recently [provided an update \(/tobacco-products/ctp-newsroom/perspective-fdas-progress-review-tobacco-product-applications-submitted-sept-9-2020-deadline\)](#) on its ongoing work of conducting the premarket review of ENDS and other tobacco product applications, and has issued warning letters to ENDS product manufacturers and retailers who continue to sell products that are illegally on the market. The FDA has also made a significant investment in a multimedia e-cigarette public education campaign. The campaign targets nearly 10.7 million youth aged 12-17 who have ever used e-cigarettes or are open to trying them, and highlights information about the potential risks of e-cigarette use.

Background on Today's Actions

Menthol Product Standard

Today, the FDA granted a citizen petition requesting that the agency pursue rulemaking to prohibit menthol in cigarettes, affirming its commitment to proposing such a product standard.

The 2009 Tobacco Control Act (TCA) did not include menthol in its ban on characterizing flavors in cigarettes, leaving menthol cigarettes as the only flavored combusted cigarettes still marketed in the U.S. The law instructed the FDA to further consider the issue of menthol in cigarettes.

Since then, the FDA sought input from an [independent advisory committee as required by the TCA \(https://wayback.archive-it.org/7993/20170404143901/https://www.fda.gov/AdvisoryCommittees/CommitteesMeetingMaterials/TobaccoProductsScientificAdvisoryCommittee/ucba2c1c-17b0-4900-9000-000000000000\)](#) (<http://www.fda.gov/about-fda/website-policies/website-disclaimer>), and further demonstrated its interest by issuing an [Advance Notice of Proposed Rulemaking \(https://www.federalregister.gov/documents/2013/07/24/2013-17805/menthol-in-cigarettes-tobacco-products-request-for-comments\)](#), undertaking an [independent evaluation \(https://www.fda.gov/media/86497/download\)](#) and supporting broader research efforts—all to better understand the differences between menthol and non-menthol cigarettes and the impact of menthol on population health.

In the U.S., it is estimated that there are nearly 18.6 million current smokers of menthol cigarettes. But use of menthol cigarettes among smokers is not uniform: out of all Black smokers, nearly 85% smoke menthol cigarettes, compared to 30% of White smokers who smoke menthols. In addition, among youth, from 2011 to 2018, declines in menthol cigarette use were observed among non-Hispanic White youth but not among non-Hispanic Black or Hispanic youth.

Cigar Flavor Product Standard

After the 2009 statutory ban on flavors in cigarettes other than menthol, use of flavored cigars increased dramatically, suggesting that the public health goals of the flavored cigarette ban may have been undermined by continued availability of these flavored cigars.

Flavored mass-produced cigars and cigarillos are combusted tobacco products that can closely resemble cigarettes, pose many of the same public health problems, and are disproportionately popular among youth and other populations. In 2020, non-Hispanic Black high school students reported past 30-day cigar smoking at levels twice as high as their White counterparts.

Nearly 74% of youth aged 12-17 who use cigars say they smoke cigars because they come in flavors they enjoy. Among youth who have ever tried a cigar, 68% of cigarillo users and 56% of filtered cigar users report that their first cigar was a flavored product. Moreover, in 2020, more young people tried a cigar every day than tried a cigarette.

Related Information

- [Statement by HHS Secretary Xavier Becerra on FDA Tobacco Actions on Menthol Cigarettes and Flavored Cigars \(https://www.hhs.gov/about/news/2021/04/29/statement-hhs-secretary-xavier-becerra-fda-tobacco-actions-menthol-cigarettes-flavored-cigars.html\)](#).

###

The FDA, an agency within the U.S. Department of Health and Human Services, protects the public health by assuring the safety, effectiveness, and security of human and veterinary drugs, vaccines and other biological products for human use, and medical devices. The agency also is responsible for the safety and security of our nation's food supply, cosmetics, dietary supplements, products that give off electronic radiation, and for regulating tobacco products.

Inquiries

Media:

✉ [Alison Hunt \(mailto:alison.hunt@fda.hhs.gov\)](mailto:alison.hunt@fda.hhs.gov)

☎ 202-308-5496

Consumer:

☎ 888-INFO-FDA

[More Press Announcements \(/news-events/newsroom/press-announcements\)](#)



CITY OF PORTLAND
Health and Human Services

MEMORANDUM

TO: Kristen Dow, Director of Health and Human Services
Tina Pettingill, Deputy Director of Health and Human Services
Bob Fowler, Public Health Director
Bridget Rauscher, Chronic Disease Prevention Manager
FROM: Kirsten Goodrich, Public Health Division, Tobacco Prevention Program
DATE: October 7, 2021
SUBJECT: Full Ban of All Flavored Tobacco Products

Introduction

The information contained in this memo is in response to the request for information pertaining to a full ban of flavored tobacco products, including e-cigarettes, in the City of Portland.

Background:

According to the National Youth Tobacco Survey released in September 2021, nearly 85% of young people using e-cigarettes are using flavored products. In 2009, all cigarette flavors, except for menthol, were banned across the United States, as part of the Family Smoking Prevention and Tobacco Control Act. Effective July, 2010, Maine banned the sale of flavored cigars. The Centers for Disease Control and Prevention (CDC) reported between 2011-2020, after the cigarette flavor ban, youth smoking rates declined at a steady rate, indicating that flavor bans have been a successful public health strategy.

Since 2009, laws banning all flavored tobacco products, with the inclusion of menthol, have been heavily on the rise as such restrictions have been shown to reduce the risk of nicotine addiction among youth. In April 2021, the FDA announced its intention to ban menthol flavoring in cigarettes, addressing health impacts to communities of color and LGBTQ+ individuals of all ages who are more likely to use these products. According to the CDC, African American adults have the highest percentage of menthol cigarette use compared to other racial and ethnic groups. Additionally, a report from the National LGBTQ Young Adult Tobacco Project, 71% of LGBTQ youth who smoke cigarettes use menthol cigarettes.

In Cumberland county, the 2019 Maine Integrated Youth Health Survey (MIYHS) reported that 45% of high school students have tried an e-cigarette at least once and 29% of high school students reported having used an electronic vapor product at least once in the past 30 days.* While youth use of combustible tobacco products (cigarettes) has declined for nearly two

decades, schools around the state have seen and reported a dramatic increase in youth electronic cigarette use. This is demonstrated by MIYHS data that shows youth e-cigarette use nearly doubling from 15.3% in 2017 to 28.7% in 2019. *Portland specific data not available.

As of February 2020, the majority of flavored e-cigarettes (including JUUL) are no longer legally sold in the United States due to FDA guidance that prohibits all sales of cartridge-based e-cigarettes not flavored with menthol or tobacco. Unfortunately, the guidance continues to permit the sale of menthol-flavored cartridges, and fails to restrict reusable cartridges and disposable devices.

Recommendations

We recommend a full flavor ban for all tobacco products, inclusive of mint and menthol, for the City of Portland.

Failure to adopt a full flavor ban by the FDA has resulted in a wave of states and municipalities taking action. States and localities across the country are taking appropriate steps to restrict the sale of flavored tobacco products. [Bangor, Maine](#) is currently considering this ban for all flavored tobacco products with the ordinance unanimously passing through committee. In recent years, while youth smoking rates have decreased, tobacco companies have begun enticing a new generation of young consumers with candy-flavored e-cigarette products. There are currently more than 15,000 flavors of e-cigarettes on the market today. The FDA recently estimated that more than two million U.S. middle and high school students reported currently using e-cigarettes in 2021, with more than 8 in 10 of those youth using flavored e-cigarettes.

Five states and over 310 localities have moved forward with full flavor tobacco bans. A ban on all flavored tobacco products would exceed the current restrictions on all other tobacco and combustible products. Tobacco use remains the leading cause of death and disease in this country with over 480,000 deaths per year. Previous studies have shown flavors play a major role in youth initiation and continued use of tobacco products. Banning the sale of all flavored tobacco products, including mint and menthol, within the City of Portland is a key step in reducing youth use and promoting health equity.

Enforcement

An ordinance would ban the sale, display, marketing, and advertising of flavored tobacco products. Such a ban would apply to all retailers within the City of Portland. In looking at Bangor and around the country, most ordinances impose a progressive fine on retailers. Bangor proposes a fine of up to \$100 for the first violation within a twenty-four month period and a fine of up to \$1,000 for each subsequent offense within that twenty-four month period. The Public Health Division recommends a progressive fine that would align with similar municipal bans.

Enforcement would be the responsibility of Portland's Public Health Director, similar to our Tobacco 21 ordinance (Chapter 17) which states "The City of Portland's Public Health Division Director or his or her designee(s) shall have the primary responsibility for enforcement of this section and may conduct random, unannounced inspections at locations where tobacco products are sold to test and ensure compliance with this ordinance. (d) A violation of this section shall be a civil violation subject to the general penalty provisions of section 1-15 of this

Code." Under that section, each violation is punishable by a minimum fine of \$100 and a maximum fine of \$500.

Efficacy-Related Sources

Bach, L. (December, 2019). *Flavored Tobacco Products Attract Kids*. Tobacco Free Kids.
<https://www.tobaccofreekids.org/assets/factsheets/0383.pdf>

Bach, L. (January, 2020). *States and Localities That Have Restricted The Sale of Flavored Tobacco Products*. Campaign for Tobacco Free Kids.
<https://www.tobaccofreekids.org/assets/factsheets/0398.pdf>

Caccamo, S. (January, 2020). *FDA Finalizes Enforcement Policy on Unauthorized Flavored Cartridge-based E-cigarettes that Appeal to Children, Including Fruit and Mint*. U.S. Food and Drug Administration.
<https://www.fda.gov/news-events/press-announcements/fda-finalizes-enforcement-policy-unauthorized-flavored-cartridge-based-e-cigarettes-appeal-children>

Carr, D., Musburger, P. (October, 2019). *It's Time To Eliminate All Flavored Cigarettes, Not Just the Electronic Kind*. Stat News. <https://www.statnews.com/>

The Centers for Disease Control and Prevention. (2015).
https://www.cdc.gov/tobacco/data_statistics/fact_sheets/health_effects/tobacco_related_mortality/index.htm

The Centers for Disease Control and Prevention. (2018).
<https://www.cdc.gov/tobacco/disparities/african-americans/index.htm>

FDA Commits to Evidence-Based Actions Aimed at Saving Lives and Preventing Future Generations of Smokers. (2021). U.S. Food and Drug Administration.
<https://www.fda.gov/news-events/press-announcements/fda-commits-evidence-based-actions-aimed-saving-lives-and-preventing-future-generations-smokers>

Jamal et al. (2017). *Tobacco Use Among Middle and High School Students - United States, 2011-2016*. MMWR Morb Mortal Wkly Rpt.; 66:597–603. DOI:
<http://dx.doi.org/10.15585/mmwr.mm6623a1>

Levy et al. (2011). *Modeling the Future Effects of a Menthol Ban on Smoking Prevalence and Smoking-Attributable Deaths in the United States* *American Journal of Public Health* 101, 1236–1240, <https://doi.org/10.2105/AJPH.2011.300179>

Prieur, N. (December, 2018). *National Adolescent Drug Trends in 2018. Vaping Surges: Largest Year-to-Year Increase in Substance Use Ever Recorded in the U.S. for 10th and 12th Grade Students*. Institute for Social Research.
<https://isr.umich.edu/news-events/news-releases/national-adolescent-drug-trends-in-2018>

Results from the Annual National Youth Tobacco Survey. (September 2021.)

<https://www.fda.gov/tobacco-products/youth-and-tobacco/results-annual-national-youth-tobacco-survey>

Youth E-cigarette Use Remains Serious Public Health Concern amid Covid-19 Pandemic.

(September, 2021). U.S. Food and Drug Administration.

www.fda.gov/news-events/press-announcements/youth-e-cigarette-use-remains-serious-public-health-concern-amid-covid-19-pandemic.



October 29, 2021

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

Dear Mayor Snyder;

I write to you today in reference to the proposal before the Portland City Council, from Portland's Health and Human Services and Public Safety Committee, which would ban the sale of flavored tobacco products by Portland retail establishments. On behalf of the Maine Energy Marketers Association (MEMA), I strongly encourage the Council to reject this well-meaning, but short-sighted proposal.

MEMA is a trade association based in Brunswick, Maine and composed of approximately 300-member companies, including 70% of Maine's 1,300 convenience stores – small businesses which sell more than 1 billion gallons of gasoline and diesel fuel each year and employ approximately 10,000 Mainers who – for the last 18 months - have been on the front lines of the COVID-19 pandemic providing the citizens of Portland and our state with essential goods and services during these unprecedented times.

While on the surface the “Flavor Ban” – as it is known – may sound like good policy, history tells a very different story. A century ago, “Prohibition” failed miserably as illegal alcohol sales flourished and ultimately led to the repeal of the 18th Amendment to the U.S. Constitution. Today, with the legalization of marijuana, we have seen first-hand that prohibition of these products for people over 21 does not work and that, ultimately, adults should be free to make their own decisions.

Lastly, the proposal before you would cause great harm to these retailers who struggle daily to comply with existing regulations, find employees, and simply deal with the devastating effects of the pandemic. The men and women who own and operate these critically important businesses depend on these sales to create regular traffic in their establishments and go to painstaking efforts to ensure that tobacco products do not get into the hands of underaged customers.

Again, on behalf of MEMA, I respectfully urge the Portland City Council to vote against this proposal.

A handwritten signature in black ink that reads "Charles E. Summers, Jr." with a stylized flourish at the end.

Charles E. Summers, Jr., President/CEO
Maine Energy Marketers Association

Fwd: Portland, ME- Flavored Tobacco Products Ban

1 message

Jon Jennings <jpj@portlandmaine.gov>

Fri, Oct 29, 2021 at 6:35 PM

To: Adam Harr <ash@portlandmaine.gov>, Kristen Dow <kjd@portlandmaine.gov>

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

From: **Nick Mavodones** <nmm@portlandmaine.gov>

Date: Fri, Oct 29, 2021 at 3:16 PM

Subject: Fwd: Portland, ME- Flavored Tobacco Products Ban

To: Danielle West-Chuhta <dwest@portlandmaine.gov>, Jon Jennings <jpj@portlandmaine.gov>

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

From: **Jasmine McKinney** <jasmine.mckinney@swedishmatch.com>

Date: Fri, Oct 29, 2021 at 3:15 PM

Subject: Portland, ME- Flavored Tobacco Products Ban

To: ksnyder@portlandmaine.gov <ksnyder@portlandmaine.gov>, bsr@portlandmaine.gov <bsr@portlandmaine.gov>, sthibodeau@portlandmaine.gov <sthibodeau@portlandmaine.gov>, tchong@portlandmaine.gov <tchong@portlandmaine.gov>, azarro@portlandmaine.gov <azarro@portlandmaine.gov>, mdion@portlandmaine.gov <mdion@portlandmaine.gov>, pali@portlandmaine.gov <pali@portlandmaine.gov>, nmm@portlandmaine.gov <nmm@portlandmaine.gov>, afournier@portlandmaine.gov <afournier@portlandmaine.gov>

Dear members of the Portland City Council:

The ordinance the Council is considering banning all flavored tobacco products is well intended and admirable in its goal. However, I think that the scope of the ordinance goes too far and will actually have unintended consequences. The banning of all flavored tobacco products will in effect take some products off the shelves that actually help smokers quit using cigarettes. Specifically I'm referring to smokeless tobacco products and flavored non-tobacco nicotine products.

A blanket flavor ban is contrary to the scientific evidence that currently exists. The U.S. Food and Drug Administration's Office of Science has recognized that some flavors in tobacco products are not likely to appeal to youth. In a process that approved the marketing of certain flavored smokeless tobacco products, the Office of Science stated:

- The proposed products are reported to have flavors such as mint, wintergreen, or tobacco character with citrus. These proposed flavors are consistent with traditionally available [smokeless tobacco] flavors and are not novel flavors that likely increase appeal to youth. Additionally, in that ruling the FDA stated that the smokeless tobacco product called snus is low risk. FDA assessed the risk posed to the individual as well as the population as a whole, and judged that the products met the standard in the 2009 US Tobacco Control Act. FDA also considered the fact that the products come in mint and wintergreen flavors. It is significant that the Swedish Match snus products are currently determined by FDA to be "appropriate to the protection of the public health", and that these products are flavored, and are smokeless.

A complete ban on all flavors is overbroad in at least two ways. First, a complete ban on flavors is not targeted to flavors that "increase appeal to youth" and will only affect legal, adult users of tobacco products who will simply patronize stores in neighboring cities or turn to the Internet as a source for their preferred

tobacco products. Second, it applies the ban equally to all types of tobacco products. Some products (such as smokeless tobacco) are less likely to be used by youth.

Smokeless Tobacco Products are Less Harmful and Should Not be Restricted

In 2002 the Royal College of Physicians of London, one of the oldest and most prestigious medical societies in the world, issued a report called "Protecting Smokers, Saving Lives," which stated, "As a way of using nicotine, the consumption of non-combustible [smokeless] tobacco is on the order of 10–1,000 times less hazardous than smoking, depending on the product." A blanket flavor ban would take large portions of these products off the market, leaving adult tobacco users to choose only more harmful products like cigarettes.

As a matter of public health policy, the FDA has taken an approach to encourage harm reduction in the consumption of tobacco products. A recent (July 28, 2017) announcement from the FDA Commissioner focused on the need to view tobacco and nicotine products from a continuum of risk perspective. The continuum, according to the FDA Commissioner, ranges from cigarettes, the most dangerous form of nicotine delivery, at one end, to medicinal nicotine products at the other end. Recognizing that some risk comes from the use of any product, there remain compelling arguments that some products are less harmful and adult consumers should be able to choose these products. However, if those products are removed from the shelves because they are frequently flavored, those options are not available to adult consumers. Prohibiting the sale of less harmful products is a byproduct of blanket flavor bans. The interest of public health is not advanced when a total flavor ban removes all flavored product options from the marketplace for adult tobacco users to choose from, especially when the FDA has stated that some flavors do not “increase appeal to youth.”

The impact of a comprehensive tobacco products flavor ban in San Francisco among young adults: Could increase cigarette consumption

According to a June 2020 study from Addictive Behavior Reports which was funded by the National Institute of Drug Abuse of the National Institutes of Health. In the study they reported moderate usage rate drops in the 18-24 years and the 25—34 years old respectively. The findings suggest that comprehensive local flavor bans, by themselves, cannot sharply reduce the availability or use of flavored tobacco products among residents and may actually increase the amount of cigarette smoking which all tobacco control advocates would agree is the most deadly form of tobacco consumption.

Youth usage in California

According to the California Department of Public Health, only 1.7% of California teens have tried smokeless tobacco a single time in a period of 30 days.

Source: California Department of Public Health, California Tobacco Control Program. California Student Tobacco Survey, 2015-2016. Sacramento, CA: California Department of Public Health; February 2017.

According to the Los Angeles County Public Health, only 0.4% have reported using smokeless tobacco products.

Source: County of Los Angeles Public Health 2017-18 California Student Survey

I hope you will take these facts into consideration when you are deliberating this ordinance and exclude smokeless tobacco from the flavor ban.

Respectfully,

Jasmine McKinney

Staff Attorney

Swedish Match North America

--

Nick Mavodones City Council At-Large [389 Congress Street Portland ME 04101](#) (207) 874-8685
nmm@portlandmaine.gov Sent from Gmail Mobile

--

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

Fwd: Proposed Flavored Tobacco Product Ban

1 message

Jon Jennings <jpj@portlandmaine.gov>

Fri, Oct 29, 2021 at 6:35 PM

To: Adam Harr <ash@portlandmaine.gov>, Kristen Dow <kjd@portlandmaine.gov>

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

From: **Nick Mavodones** <nmm@portlandmaine.gov>

Date: Fri, Oct 29, 2021 at 3:17 PM

Subject: Fwd: Proposed Flavored Tobacco Product Ban

To: Danielle West-Chuhta <dwest@portlandmaine.gov>, Jon Jennings <jpj@portlandmaine.gov>

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

From: **Charlie Summers** <csummers@maineenergymarketers.com>

Date: Fri, Oct 29, 2021 at 2:08 PM

Subject: Proposed Flavored Tobacco Product Ban

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

CC: bsr@portlandmaine.gov <bsr@portlandmaine.gov>, sthibodeau@portlandmaine.gov

<sthibodeau@portlandmaine.gov>, tchong@portlandmaine.gov <tchong@portlandmaine.gov>,

Azarro@portlandmaine.gov <Azarro@portlandmaine.gov>, mdion@portlandmaine.gov <mdion@portlandmaine.gov>,

pali@portlandmaine.gov <pali@portlandmaine.gov>, nmm@portlandmaine.gov <nmm@portlandmaine.gov>,

afournier@portlandmaine.gov <afournier@portlandmaine.gov>, Megan Diver <mdiver@maineenergymarketers.com>

Dear Mayor Snyder,

Attached, for the Council's consideration, please find a letter on behalf of the Maine Energy Marketers Association (MEMA) outlining our position on the pending proposal before the Council to ban flavored tobacco products within the City of Portland. If you, or any Council member, should have any questions or wish further comment please do not hesitate to contact me.

Sincerely,

Charlie Summers
President & CEO



Maine Energy Marketers Association

csummers@maineenergymarketers.com

T: 207-729-5298

25 Greenwood Rd.

Brunswick, ME 04011-0249

MaineEnergyMarketers.com | mtec4me.com

--

Nick Mavodones City Council At-Large [389 Congress Street Portland ME 04101](#) (207) 874-8685
nmm@portlandmaine.gov Sent from Gmail Mobile

--

Jon P. Jennings, ICMA-CM, MPA

City Manager

[City of Portland](#)

389 Congress Street

[Portland, ME 04101](#)

(207) 874-8689 Office

jpj@portlandmaine.gov

www.portlandmaine.gov



Portland City Council Flavor Ban 10.29.21.pdf

124K

Fwd: testimony request

1 message

Jon Jennings <jpj@portlandmaine.gov>

Thu, Oct 28, 2021 at 12:57 PM

To: Adam Harr <ash@portlandmaine.gov>, Kristen Dow <kjd@portlandmaine.gov>

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

From: **Nick Mavodones** <nmm@portlandmaine.gov>

Date: Thu, Oct 28, 2021 at 12:49 PM

Subject: Fwd: testimony request

To: Danielle West-Chuhta <dwest@portlandmaine.gov>, Jon Jennings <jpj@portlandmaine.gov>

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

From: **Jon Shaer** <jon@necsema.net>

Date: Thu, Oct 28, 2021 at 12:23 PM

Subject: testimony request

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

Councilors-

I'm writing to you this afternoon on behalf the 37 convenience stores in Portland to request the Health and Human Services and Public Safety committee allow testimony at their November 9, 2021 meeting on a proposal to ban the sale of flavored tobacco in Portland. It only recently came to our attention that the committee took testimony at their October 12th meeting. However, nobody in opposition to the proposal was in attendance (in person or virtually) to provide the committee with information as to why they should oppose a ban. It is our understanding that since the committee already allowed public testimony that it does not need to allow it again. This is an important issue for our members, so we hope you will require the committee to take a second round of testimony.

It is distressing that this is now the second Maine city, Bangor being the first, to hold a flavored tobacco hearing that was seemingly made known to proponents in advance of any public posting. All we ask is that the committee have the opportunity to hear testimony that can help inform a well-rounded consideration.

Respectfully and with appreciation,

Jon

Jonathan Shaer, Executive Director

New England Convenience Store & Energy Marketers Association, Inc. (NECSEMA)

[1044 Central Street, Suite 203, Stoughton, MA 02072](https://www.necsema.net)

Mobile: 774-406-1997 | Office: 781-297-9600 ext. 3 | Fax: 781-297-9601

jon@necsema.net | www.necsema.net | [Join NECSEMA](#)



--

Nick Mavodones City Council At-Large [389 Congress Street Portland ME 04101](#) (207) 874-8685
nmm@portlandmaine.gov Sent from Gmail Mobile

--

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

Proposed Portland Flavor Ban 1 view



brandi.cushman@cnbrown.com <brandi.cushman@cnbro...
to council@portlandmaine.gov, publiccomment@portlandmaine.gov

Nov 15, 2021, 9:08:11
AM

Good morning council members.

My name is Brandi Cushman and I am the Director of Purchasing for C. N. Brown Company. We own and operate two Big Apple Convenience Stores in the City of Portland.

I hope that you will take a few minutes to read our concerns with this proposed flavor ban in the attached document.

I appreciate your time.

Thank you,

Brandi Cushman

Director of Purchasing and Merchandising

C. N. Brown Company

P.O. Box 200

1 C. N. Brown Way

South Paris, ME 04281

☎: 207-743-4200 ext. 3102

📠: 207-743-8357

✉: brandi.cushman@cnbrown.com

www.cnbrown.com

When you think something is more important than a Customer.....Think Again





1 CN Brown Way
PO Box 200
South Paris, ME 04281
Phone: (207) 743-9212
Fax: (207) 743-8357
Toll Free 800-432-4211
cnbrown.com

Portland City Council
City Hall
389 Congress Street
Portland, ME 04101

RE: Portland City Ordinance Ending the Sale of Flavored Tobacco Products

Portland City Council-

Thank you for taking the time to read C. N. Brown Company's concerns with the proposed city ordinance ending the sale of flavored tobacco products.

My name is Brandi Cushman and I am the Director of Purchasing and Merchandising and the Category Manager of tobacco for C. N. Brown Company. We own and operate the Big Apple convenience stores at 2 Park Avenue and 16 Washington Ave. in Portland employing a total of 18 associates. Those are 18 local jobs we have created.

I am writing in opposition of this city ordinance, an ordinance that will dramatically decrease the operating revenue and profitability of many stores within the city, will affect jobs, and do nothing to keep these products that you propose to ban out of the hands of your youth as it is intended.

Zero Tolerance

We have absolutely no interest in selling tobacco to the youth in your city or anywhere else. We have training, policies, and procedures in place to ensure, to the best of our ability, that tobacco products do not get into the hands of your youth. In fact, we take this so seriously that in the rare instance an employee is found in violation of the law, and our internal training and policies regarding underage tobacco sales, they are immediately terminated. Retailers like us are on the front-line protecting young people in your city and throughout the State of Maine and we take that responsibility very seriously.

Goes Too Far

It is stated that this ordinance is about protecting youth, however, this policy is looking to ban many adult-preferred products including menthol cigarettes, mint and wintergreen smokeless tobacco and flavored cigars. The CDC's 2020 National Youth Tobacco Survey shows that high school-aged use for ENDS/vapor is 19.6% (down from 27.5% in 2019), cigarettes use at 4.6% (down 15.8% since 2011), smokeless use at 3.1% (down 7.9% since 2011) and cigar use at 5% (down 11.6% since 2011). This shows that the most preferred products by youth (although it has declined significantly) are ENDS/vapor products, yet the city is looking to ban ALL flavored tobacco products.

Federal Action

The FDA is diligently working through the Pre-Market Tobacco Application (PMTA) process with vapor products and has already removed more than 6,000,000 of these products from the market by denying their PMTA application. The only products the FDA will allow to remain on the market are those that they have determined are “appropriate for the protection of public health”. The FDA is using a science based approach to ensure that vapor products that meet their standards are available to adult tobacco consumers.

Doesn't Eliminate Access

Local tobacco bans are not going to protect your youth. If this ordinance is passed, flavored tobacco and ENDS/vapor users, including youth illegally obtaining such products, will simply go to the next city/town to get the products they want. The only people that will be negatively affected by this ordinance are your legal, licensed, tax paying local businesses who will not only lose the sale of these legal products to adult tobacco consumers, but also all of the ancillary sales these customers take with them.

The majority of youth are getting these products via adult tobacco consumers, including parents. Instead of continually attacking retailers on this issue, let's put some responsibility on the youth access issue where it lies.

With alcohol there are numerous laws on the books in regards to Illegal Possession by a Minor, Illegal Transportation by a Minor, and Furnishing to a Minor. If youth access is truly the concern of this council, these are the same laws that need to be in place and enforced for tobacco products. (I have attached a listing of these laws.) Stop making retailers shoulder all of the burden and all of the consequences of the youth access issue.

At the same time, in the rare instance that an associate at a retail establishment fails a sting because **they choose** to ignore the age verification prompt of the POS system as well as all policies and training procedures of that retail establishment, that associate should receive some form of consequence from the city and/or state, not solely the retailer. Retailers do everything in their power to make sure an illegal sale to a minor does not occur but we cannot control an associate who chooses to ignore all of the retailer's precautions.

We believe that these issues should be debated where they belong, at the state level and with the FDA. Allow the FDA, with its resources, to determine which products are safe and which are not so that adult tobacco consumers are not forced to travel across city limits to purchase legal products and therefore hurt businesses within the city of Bangor.

We strongly encourage that you vote no on the city ordinance ending the sale of flavored tobacco products.

Thank you.

A Flavored Tobacco Ban is Bad Policy -- Please Oppose 2 views



MEGAN TURBIDE <Mturbide76@gmail.com>

Dec 8, 2021, 2:21:40 PM

to publiccomment@portlandmaine.gov

Dear Portland City Council,

As your constituent, I'm very disappointed to learn that the Portland City Council is considering a ban on menthol cigarettes, flavored dip, and flavored cigars for adults 21 and older. This would be adult prohibition and goes too far--I ask you to please oppose a ban on these tobacco products.

We all agree that kids shouldn't use tobacco products--that's why the law is 21. But banning legal flavored tobacco products and menthol cigarettes for adults 21 and older is too extreme and bad policy.

A ban wouldn't get rid of these products. Instead, it will just drive consumers to nearby towns or even worse--the illegal market--to get their products. As a result, a ban will increase crime, endanger consumers, and hurt small businesses and our communities.

Our local lawmakers should be focused on the economy, jobs, and addressing the rising cost of living--instead of limiting adult choices by banning legal products.

Please oppose this extreme proposal.

Sincerely,
MEGAN TURBIDE
170 Portland Ave
Old Orchard Beach, ME 04064-1293



Olivia Curtis <ocurtis1832@gmail.com>

Dec 13, 2021, 4:37:39 PM

to publiccomment@portlandmaine.gov

Dear Portland City Council,

As your constituent, I'm very disappointed to learn that the Portland City Council is considering a ban on menthol cigarettes, flavored dip, and flavored cigars for adults 21 and older. This would be adult prohibition and goes too far--I ask you to please oppose a ban on these tobacco products.

We all agree that kids shouldn't use tobacco products--that's why the law is 21. But banning legal flavored tobacco products and menthol cigarettes for adults 21 and older is too extreme and bad policy.

A ban wouldn't get rid of these products. Instead, it will just drive consumers to nearby towns or even worse--the illegal market--to get their products. As a result, a ban will increase crime, endanger consumers, and hurt small businesses and our communities.

Our local lawmakers should be focused on the economy, jobs, and addressing the rising cost of living-- instead of limiting adult choices by banning legal products.

Please oppose this extreme proposal.

Sincerely,

Olivia Curtis
16 Adelaide Rd
Apt A
Old Orchard Beach, ME 04064-2227



Heather Brooks <heatherbrooks024@gmail.com>
to publiccomment@portlandmaine.gov

Dec 15, 2021, 12:33:45 PM

Dear Portland City Council,

As your constituent, I'm very disappointed to learn that the Portland City Council is considering a ban on menthol cigarettes, flavored dip, and flavored cigars for adults 21 and older. This would be adult prohibition and goes too far--I ask you to please oppose a ban on these tobacco products.

We all agree that kids shouldn't use tobacco products--that's why the law is 21. But banning legal flavored tobacco products and menthol cigarettes for adults 21 and older is too extreme and bad policy.

A ban wouldn't get rid of these products. Instead, it will just drive consumers to nearby towns or even worse--the illegal market--to get their products. As a result, a ban will increase crime, endanger consumers, and hurt small businesses and our communities.

Our local lawmakers should be focused on the economy, jobs, and addressing the rising cost of living-- instead of limiting adult choices by banning legal products.

Please oppose this extreme proposal.

Sincerely,

Heather Brooks
36 Maggie Ln
Portland, ME 04103-6502



to publiccomment@portlandmaine.gov

Dear Portland City Council,

As your constituent, I'm very disappointed to learn that the Portland City Council is considering a ban on menthol cigarettes, flavored dip, and flavored cigars for adults 21 and older. This would be adult prohibition and goes too far--I ask you to please oppose a ban on these tobacco products.

We all agree that kids shouldn't use tobacco products--that's why the law is 21. But banning legal flavored tobacco products and menthol cigarettes for adults 21 and older is too extreme and bad policy.

A ban wouldn't get rid of these products. Instead, it will just drive consumers to nearby towns or even worse--the illegal market--to get their products. As a result, a ban will increase crime, endanger consumers, and hurt small businesses and our communities.

Our local lawmakers should be focused on the economy, jobs, and addressing the rising cost of living--instead of limiting adult choices by banning legal products.

Please oppose this extreme proposal.

Sincerely,
Phyllis Nimer
749 Diabolo Rd
Danville, CA 94526



Katie Wilson <katiewils0nn@icloud.com>
to publiccomment@portlandmaine.gov

Dec 17, 2021, 6:55:03 PM

Dear Portland City Council,

As your constituent, I'm very disappointed to learn that the Portland City Council is considering a ban on menthol cigarettes, flavored dip, and flavored cigars for adults 21 and older. This would be adult prohibition and goes too far--I ask you to please oppose a ban on these tobacco products.

We all agree that kids shouldn't use tobacco products--that's why the law is 21. But banning legal flavored tobacco products and menthol cigarettes for adults 21 and older is too extreme and bad policy.

A ban wouldn't get rid of these products. Instead, it will just drive consumers to nearby towns or even worse--the illegal market--to get their products. As a result, a ban will increase crime, endanger consumers, and hurt small businesses and our communities.

Our local lawmakers should be focused on the economy, jobs, and addressing the rising cost of living--instead of limiting adult choices by banning legal products.

Please oppose this extreme proposal.

Sincerely,

Katie Wilson
25 Munjoy S
Portland, ME 04101-4310



Duane Tower <duanetower11@gmail.com>
to publiccomment@portlandmaine.gov

Dec 18, 2021, 2:53:45 PM

Dear Portland City Council,

As your constituent, I'm very disappointed to learn that the Portland City Council is considering a ban on menthol cigarettes, flavored dip, and flavored cigars for adults 21 and older. This would be adult prohibition and goes too far--I ask you to please oppose a ban on these tobacco products.

We all agree that kids shouldn't use tobacco products--that's why the law is 21. But banning legal flavored tobacco products and menthol cigarettes for adults 21 and older is too extreme and bad policy.

A ban wouldn't get rid of these products. Instead, it will just drive consumers to nearby towns or even worse--the illegal market--to get their products. As a result, a ban will increase crime, endanger consumers, and hurt small businesses and our communities.

Our local lawmakers should be focused on the economy, jobs, and addressing the rising cost of living--instead of limiting adult choices by banning legal products.

Please oppose this extreme proposal.

Sincerely,

Duane Tower
4816 Briarcliff Sq
Apt 13
Honeoye, NY 14471-9680



Duane Tower <duanetower11@gmail.com>
to publiccomment@portlandmaine.gov

Dec 18, 2021, 2:56:12 PM

Dear Portland City Council,

As your constituent, I'm very disappointed to learn that the Portland City Council is considering a ban on menthol cigarettes, flavored dip, and flavored cigars for adults 21 and older. This would be adult prohibition and goes too far--I ask you to please oppose a ban on these tobacco products.

We all agree that kids shouldn't use tobacco products--that's why the law is 21. But banning legal flavored tobacco products and menthol cigarettes for adults 21 and older is too extreme and bad policy.

A ban wouldn't get rid of these products. Instead, it will just drive consumers to nearby towns or even worse--the illegal market--to get their products. As a result, a ban will increase crime, endanger consumers, and hurt small businesses and our communities.

Our local lawmakers should be focused on the economy, jobs, and addressing the rising cost of living-- instead of limiting adult choices by banning legal products.

Please oppose this extreme proposal.

Sincerely,
Duane Tower
4816 Briarcliff Sq
Apt 13
Honeoye, NY 14471-9680

Protect Portland Children from Tobacco Addiction 1 view



Deb Smith <executivedirector.mahperd@gmail.com>

Nov 9, 2021, 3:42:13 PM

to council@portlandmaine.gov, publiccomment@portlandmaine.gov

Dear Portland City Council Health & Human Services and Public Safety Committee

Chair Councilor Tae Chong, and Councilor Belinda Ray, and Councilor Mark Dion

I am Deb Smith a resident of Portland and the Executive Director of the Maine Association for Health, Physical Education, Recreation, and Dance (MAHPERD). The MAHPERD Board of Directors signed on to the Flavors Hook Kids Campaign in Maine in 2021. The MAHPERD Board, and I are supportive of the ordinance to end the sale of Flavored Tobacco Products in Portland.

The use of tobacco products remains the nation's number one cause of preventable death and in Maine, nearly 1 in 5 adults smoke cigarettes, the highest rate in the Northeast. In recent years, overall youth tobacco use in Maine has skyrocketed, largely driven by the youth e-cigarette use epidemic and now 1 in 2 Maine high school students and 1 in 6 middle school students have used e-cigarettes.

Tobacco companies are targeting youth with flavored tobacco products. Products that come in array of kid friendly candy and fruit flavors such as mint, cherry, grape jelly, cotton candy, piña colada, and cinnamon roll, all sold in colorful packaging that is designed to attract tweens and teens. Nationwide, nearly 81% of youth ages 12 to 17 who had ever used a tobacco product reported that the first product they used was flavored. Tobacco companies use flavor to hook a new generation of kids on its deadly products. Flavors hide the bad taste of tobacco and make it easier for kids to try. Menthol has the additional quality of soothing the irritation of combustible cigarettes, which is why so many young people start smoking using menthol cigarettes.

We must do everything in our power to keep our communities healthy and safe and we applaud the Portland City Council for making sure that Portland residents are healthy and safe against the harms from tobacco with the ordinance.

Sincerely,

Deb Smith
201 Bradley Street
Portland, ME 04102
Executivedirector.mahperd@gmail.com

--

Deb Smith
Executive Director, Maine AHPERD



Engage • Educate • Inspire

NECSEMA comments on proposed flavored tobacco ban in Portland, ME

0 views



Havens, Jonathan A. <Jonathan.Havens@saul.com>

Nov 22, 2021, 3:21:13 PM

to ksnyder@portlandmaine.gov, council@portlandmaine.gov, publiccomment@portlandmaine.gov

Dear Mayor Snyder and Members of the Portland City Council:

On behalf of our client, the New England Convenience Store and Energy Marketers Association (NECSEMA or the Association), I am submitting the attached comments regarding the proposed ordinance that would ban the sale of flavored tobacco products in Portland, Maine.

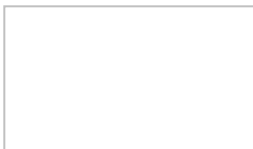
I would ask that you include these comments in the Councilor's agenda packet for when the City Council meets to discuss the proposed flavored tobacco ban.

Thank you for your consideration of these comments.

Sincerely,

Jonathan Havens

Outside Counsel to NECSEMA



Jonathan A. Havens

500 E. Pratt Street | Suite 900 | Baltimore, MD 21202
1919 Pennsylvania Ave., NW | Suite 550 | Washington, D.C. 20006
O: 410.332.8757 | M: 301.404.0674 | F: 410.332.8179
Jonathan.Havens@saul.com | www.saul.com | [LinkedIn](#) | [Twitter](#)

Click  for an interactive look at the latest from our Cannabis Law Team.

"Saul Ewing Arnstein & Lehr LLP (saul.com)" has made the following annotations:

+~~~~~+

This e-mail may contain privileged, confidential, copyrighted, or other legally protected information. If you are not the intended recipient (even if the e-mail address is yours), you may not use, copy, or retransmit it. If you have received this by mistake please notify us by return e-mail, then delete.

+~~~~~+



November 22, 2021

Mayor Kate Snyder
Members of the Portland City Council
City of Portland
389 Congress Street
Portland, ME 04101

Re: Comments on proposed flavored tobacco ban in Portland, ME

Dear Mayor Snyder and Members of the Portland City Council:

On behalf of our client, the New England Convenience Store and Energy Marketers Association (NECSEMA or the Association), I am submitting these comments regarding the proposed ordinance that would ban the sale of flavored tobacco products in Portland, Maine. I would ask that you include these comments in the Councilor's agenda packet for when the City Council meets to discuss the proposed flavored tobacco ban. I am outside counsel to NECSEMA, and advise the Association on various state and federal regulatory matters. Prior to entering private practice, I served as a regulatory counsel with the U.S. Food and Drug Administration's (FDA or the Agency) Center for Tobacco Products (CTP). Prior to starting law school, I served as a legislative aide in the U.S. Senate and U.S. House of Representatives.

As you know, the proposed ban would prohibit in Portland the sale and consumption of flavored tobacco products, including any smell or taste relating to fruit, menthol, or candy. NECSEMA opposes the proposed flavor ban for numerous reasons, including: (1) flavored products that the U.S. Food and Drug Administration (FDA or the Agency) has authorized for marketing would be banned under the ordinance; (2) the Maine Legislature considered such a ban last session and will likely do so again this session; and (3) local tobacco-related bans are ineffective. In short, the federal government and the State are equipped to handle how best to regulate flavored tobacco products, and NECSEMA urges you to let them do so.

The primary focus of these comments is to alert you to the fact that banning flavored tobacco products in Portland would undermine FDA's robust regulation of the same. By law, any flavored tobacco product that FDA allows on the market would have included a determination by the Agency that such product is "appropriate for the protection of public health"¹ and/or "appropriate to promote

¹ 21 U.S.C. § 387j(c)(4).

public health.”² When reviewing medical products, FDA uses a “safe and effective” standard. However, this standard does not apply to tobacco products. Instead, when considering a tobacco product marketing application, the Agency uses an arguably more rigorous standard, the “public health” standard, that requires FDA to consider “the risks and benefits of the tobacco product to the population as a whole, including users and nonusers.”³

More specifically, per the language in the Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act), in finding that the marketing of a tobacco product for which a marketing application has been submitted is appropriate for the protection of public health, FDA *must* consider:

- (A) The increased or decreased likelihood that existing users of tobacco products will stop using such products; and
- (B) The increased or decreased likelihood that those who do not use tobacco products will start using such products.⁴

To get a sense of what a marketing application requires, consider the following elements, which a PMTA must contain:

- (A) Full reports of all information, published or known to, or which should reasonably be known to, the applicant, concerning investigations which have been made to show the health risks of such tobacco product and whether such tobacco product presents less risk than other tobacco products;
- (B) A full statement of the components, ingredients, additives, and properties, and of the principle or principles of operation, of such tobacco product;
- (C) A full description of the methods used in, and the facilities and controls used for, the manufacture, processing, and, when relevant, packing and installation of, such tobacco product;
- (D) An identifying reference to any tobacco product standard under 21 U.S.C. § 387g which would be applicable to any aspect of such tobacco product, and either adequate information to show that such aspect of such tobacco product fully meets such tobacco product standard or adequate information to justify any deviation from such standard;
- (E) Such samples of such tobacco product and of components thereof as FDA may reasonably require;
- (F) Specimens of the labeling proposed to be used for such tobacco product; and
- (G) Such other information relevant as the Agency may require.

When one considers the breadth and depth of these requirements, it is no surprise that PMTA

² *Id.* at § 387k(g)(2)(A)(i).

³ FDA, “A New Standard of Effective Regulation,” <https://www.fda.gov/tobacco-products/rules-regulations-and-guidance/rules-and-regulations> (last updated Oct. 4, 2021).

⁴ Family Smoking Prevention and Tobacco Control Act, June 22, 2009, Pub. L. 111-31, 123 Stat. 1776, 1816.

submissions can easily exceed one million pages.

As the City of Portland considers the measure before it, I suspect one question will be, “If we do not ban the sale of flavored tobacco products, how will the health of Portland residents be protected?” The answer to that question is that FDA’s rigorous review of any product that is the subject of an Agency marketing order will have been evaluated thoroughly with regard to the risks and benefits of the product to the population as a whole, including tobacco users and nonusers. Moreover, with regard to such products, FDA will have already considered: (1) the increased or decreased likelihood that current tobacco users will stop using such product; and (2) the increased or decreased likelihood that nonusers will start using such product. In short, the Agency’s review standard ensures that granting a marketing order for such product is appropriate for the protection of public health.

Proof of the rigor of FDA’s tobacco product review standard is that on October 21, 2021, the Agency for the very first time authorized the marketing of three new electronic nicotine delivery system (ENDS) products.⁵ A week later, FDA authorized the marketing of four smokeless tobacco products, all of them mint flavored.⁶ To provide some context:

- The Agency on August 26, 2021 announced that it denied marketing applications for approximately 55,000 flavored ENDS products for “failing to provide evidence they appropriately protect public health.”⁷
- Earlier that month, FDA on Aug. 9, 2021 issued a Refuse to File (RTF) letter to JD Nova Group LLC, in which the Agency notified the company that their PMTAs that are associated with approximately 4.5 million of their products did not meet the filing requirements for a new tobacco product seeking a marketing order.⁸

Clearly, the robust standard that tobacco products must meet in order to receive a marketing order from FDA is serving to protect the public health. Rather than believing that the proposed flavor ban is the only way to protect Portland residents, you can rest assured that allowing only those flavored tobacco products that receive an Agency marketing order is a more than adequate measure to protect the health of your constituents.

⁵ FDA, “Premarket Tobacco Product Marketing Granted Orders,” <https://www.fda.gov/tobacco-products/premarket-tobacco-product-applications/premarket-tobacco-product-marketing-granted-orders> (last updated Oct. 25, 2021).

⁶ *Id.*

⁷ FDA, Press Release – “FDA Denies Marketing Applications for About 55,000 Flavored E-Cigarette Products for Failing to Provide Evidence They Appropriately Protect Public Health,” Aug. 26, 2021, <https://www.fda.gov/news-events/press-announcements/fda-denies-marketing-applications-about-55000-flavored-e-cigarette-products-failing-provide-evidence>.

⁸ FDA, Press Release – “FDA Issues Refuse to File (RTF) Letter to JD Nova Group LLC,” Aug. 9, 2021, https://www.fda.gov/tobacco-products/ctp-newsroom/fda-issues-refuse-file-rtf-letter-jd-nova-group-llc/?utm_content=landingpage&utm_medium=email&utm_source=govdelivery&utm_term=stratcomms.

Thank you for your consideration of these comments.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jonathan A. Havens', written over a light gray rectangular background.

Jonathan A. Havens
Outside Counsel to NECSEMA

ad in MA newspapers 0 views



Jon Shaer <jon@necsema.net>

Nov 28, 2021, 8:26:20 PM

to Kate Snyder, council@portlandmaine.gov, publiccomment@portlandmaine.gov

Good evening, Mayor Snyder and Councilors,

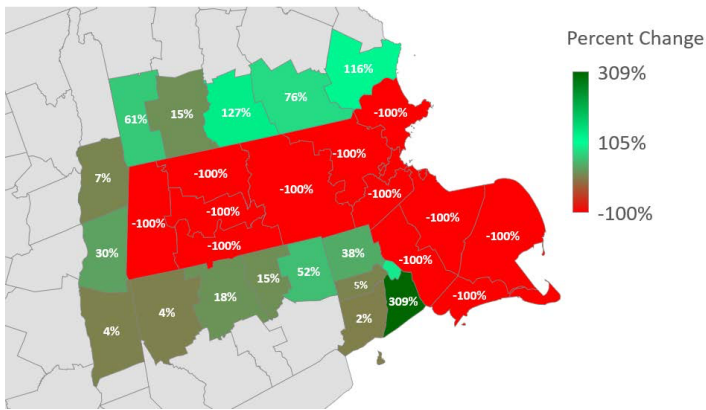
As we approach the first of two readings on the proposal to ban flavored tobacco, I want to share two images that help illustrate the important point that local bans do not work.

The first is an advertisement that appears in the Boston Herald and Boston Globe almost every day since the Massachusetts flavored tobacco ban began on 6/2020 and is likely running in other papers as well. Foods Plus is just over the MA border and runs this same ad which informs MA residents that menthol and other flavored tobacco remain available to them just over the border in Plaistow, NH. This store is spending hundreds of thousands of dollars advertising. It's safe to say that if it wasn't working, they wouldn't continue to spend the money. Imagine how much they're making!?



Unless every town within reasonable proximity to Portland enacts the same ban, then the ban is ineffective in limiting access to the products. That is why this issue should be handled, at minimum, in the state legislature. In truth, even a state ban would be ineffective since there isn't any way New Hampshire will enact a ban. Therefore, it really needs to be addressed at the federal level. A local-only ban impacts one group – the 50 legal retailers Portland has licensed to responsibly sell tobacco products. And they've done it at a 97% FDA-verified compliance rate.

This second image is a heat map of menthol cigarette sales 12 months following the ban. I think the image speaks for itself and further makes the point that products continue to be sold and come back into the voided market. In this case, Portland.



Respectfully,

Jon

Jonathan Shaer, Executive Director

New England Convenience Store & Energy Marketers Association, Inc. (NECSEMA)

1044 Central Street, Suite 203, Stoughton, MA 02072

Mobile: [774-406-1997](tel:774-406-1997) | Office: [781-297-9600](tel:781-297-9600) ext. 3 | Fax: [781-297-9601](tel:781-297-9601)

jon@necsema.net | www.necsema.net | [Join NECSEMA](#)



FW: PLEASE include my comments to the packet for the meeting where the Flavored Tobacco Ban will receive a first reading

1 view



Julie Parker <PortlandCon@cigaretshopper.com>

Nov 12, 2021, 10:25:22 AM

to publiccomment@portlandmaine.gov, council@portlandmaine.gov

From: Julie Parker

Sent: Friday, November 12, 2021 9:30 AM

To: Chris Beaulier <Chris@cigaretshopper.com>

Cc: Julie Parker (julieparker286@gmail.com) <julieparker286@gmail.com>

Subject: PLEASE include my comments to the packet for the meeting where the Flavored Tobacco Ban will receive a first reading

To whom this may concern,

I'm a voter and Portland resident and manage the Cigaret Shopper on Congress Street. I want to oppose the ordinance banning the sale of flavored tobacco and vapor products in Portland. If this ban is passed, I will have to travel outside of the city and give another town my tax dollars. I would prefer to keep my money in the city I live and work in. This city is for small businesses and if this passes the city will lose a lot of the small businesses that are struggling to stay open. Congress Street use to be so full of people and businesses and now there are more for lease signs on vacant retail space do you really want to add more to that?

We as an adult's have the right to make our own choices in life and you are now trying to make it, so we do not have that right. I have lived in this city for 27 years and I have been working on Congress Street the whole time and have been watching the struggles of every person in the downtown district. The homeless, the mentally ill, the elderly the blue-collar workers and corporate employees do not have places to really shop for there needs on Congress Street. By taking flavored tobacco and vape products will not only hurt the store I manage it will hurt downtown just as much.

This city would lose so much tax dollars that it would hurt everyone that is still trying to afford to live in the city. In the meeting on the 9th, I sat in the zoom meeting and listened to you say that the city will not have money to help the homeless if you do not get the federal funding you need. Isn't this a more important situation you should be dealing with. And with me saying that you stop the sales of all the products you are trying to ban is this really going to help? I can answer that, and I know you can as well.

To me I feel you should be also more concerned about the crime's that are happening in this city, the illegal drug activities, rent control, the roads, and getting more businesses to come back to the downtown area.

Also, in the same meeting I listened to a school nurse talk about a middle school child STEALING their parents vape device and taking it to school. Well, no offense but that child should be taught at home about tobacco. Hold the parents accountable not everyone else!!!! Remember Maine does have the best grade for not selling to minors so why punish us for something that is obviously not the store's fault.

Thank you,

Julie Parker

Cigaret Shopper

579 Congress Street

Portland, Maine

A Flavored Tobacco Ban is Bad Policy -- Please Oppose 1 view



Tara Florentine <tflo02@att.net>
to publiccomment@portlandmaine.gov

Jan 8, 2022, 8:54:51 AM (4 days ago)

Dear Portland City Council,

As your constituent, I'm very disappointed to learn that the Portland City Council is considering a ban on menthol cigarettes, flavored dip, and flavored cigars for adults 21 and older. This would be adult prohibition and goes too far--I ask you to please oppose a ban on these tobacco products.

We all agree that kids shouldn't use tobacco products--that's why the law is 21. But banning legal flavored tobacco products and menthol cigarettes for adults 21 and older is too extreme and bad policy.

A ban wouldn't get rid of these products. Instead, it will just drive consumers to nearby towns or even worse--the illegal market--to get their products. As a result, a ban will increase crime, endanger consumers, and hurt small businesses and our communities.

Our local lawmakers should be focused on the economy, jobs, and addressing the rising cost of living--instead of limiting adult choices by banning legal products.

Please oppose this extreme proposal.

Sincerely,
Tara Florentine
2739 Rockford Rd
Shelby, NC 28152-9606

A Flavored Tobacco Ban is Bad Policy -- Please Oppose

Public Comment inbox



Joseph Rowe <rowej280@gmail.com>

6:40 AM (9 hours ago)

to publiccomment

Dear Portland City Council,

As your constituent, I'm very disappointed to learn that the Portland City Council is considering a ban on menthol cigarettes, flavored dip, and flavored cigars for adults 21 and older. This would be adult prohibition and goes too far--I ask you to please oppose a ban on these tobacco products.

We all agree that kids shouldn't use tobacco products--that's why the law is 21. But banning legal flavored tobacco products and menthol cigarettes for adults 21 and older is too extreme and bad policy.

A ban wouldn't get rid of these products. Instead, it will just drive consumers to nearby towns or even worse--the illegal market--to get their products. As a result, a ban will increase crime, endanger consumers, and hurt small businesses and our communities.

Our local lawmakers should be focused on the economy, jobs, and addressing the rising cost of living--instead of limiting adult choices by banning legal products.

Please oppose this extreme proposal.

Sincerely,

Joseph Rowe

37 Casco St

Apt 205

Portland, ME 04101-2932

A Flavored Tobacco Ban is Bad Policy -- Please Oppose

Public Comment inbox



Richard Hoyt <richard.t.hoyt@gmail.com>

Thu, Jan 13, 7:10 PM (21 hours ago)

to publiccomment

Dear Portland City Council,

As your constituent, I'm very disappointed to learn that the Portland City Council is considering a ban on menthol cigarettes, flavored dip, and flavored cigars for adults 21 and older. This would be adult prohibition and goes too far--I ask you to please oppose a ban on these tobacco products.

We all agree that kids shouldn't use tobacco products--that's why the law is 21. But banning legal flavored tobacco products and menthol cigarettes for adults 21 and older is too extreme and bad policy.

A ban wouldn't get rid of these products. Instead, it will just drive consumers to nearby towns or even worse--the illegal market--to get their products. As a result, a ban will increase crime, endanger consumers, and hurt small businesses and our communities.

Our local lawmakers should be focused on the economy, jobs, and addressing the rising cost of living--instead of limiting adult choices by banning legal products.

Please oppose this extreme proposal.

Sincerely,

Richard Hoyt

796 Brighton Ave

Portland, ME 04102-1016

Flavored tobacco ban ordinance 0 views



Anthony Scott <psavanthony@yahoo.com> Jan 17, 2022, 9:35:27 PM (12 hours ago)
to publiccomment@portlandmaine.gov

Councilors,

I wanted to send you a couple studies recently published to reinforce the truth behind some of the statements I've made to councilors and you're likely hearing from opponents of the Flavored tobacco vape ban.

The first article I want to point you towards is found in a press release by the National Institute of Health on December 15th 2021. It was the Monitoring the Future survey done by researchers at the University of Michigan. See below for link to article.

The survey found that there was a substantial decline of substance use of several substances over the last couple years.

I would like to point out below from the survey that the rate of alcohol use and Marijuana use among youth is higher for the 12th graders than vaping rates, but these products remain to be sold. These products have been known to cause many problems for our youth far greater than vaping can but yet vapes continue to be targeted. I would also like to add that the vaping industry has had many new regulations over the last two years and currently in progress of other regulatory guidelines, which should be given more time to evaluate how it will impact the vaping rates among youth before we jump to drastic measures of an outright ban.

Moving the age to purchase tobacco to 21, Restrictions on shipping vape products (PACT act), tax increases, PMTA process, and marketing restrictions are all ways in which the vape industry has been regulated in the last two years to decrease these rates. As you can see below it appears to be working and this demonstrates there are other means to accomplish the overall shared goal of lowering the youth vaping rates. Let's have a conversation on how we can lower access to these products and continue to lower vaping rates while allowing access to adults.

- **Alcohol:** The percentage of students who reported using alcohol within the past year decreased significantly for 10th and 12th grade students and remained stable for eighth graders.
 - **Eighth graders:** 17.2% reported using alcohol in the past year in 2021, remaining steady compared to 20.5% in 2020 (not a statistically significant decrease)
 - **10th graders:** 28.5% reported using alcohol in the past year in 2021, a statistically significant decrease from 40.7% in 2020
 - **12th graders:** 46.5% reported using alcohol in the past year in 2021, a statistically significant decrease from 55.3% in 2020
- **Marijuana:** The percentage of students who reported using marijuana (in all forms, including smoking and vaping) within the past year decreased significantly for eighth, 10th, and 12th grade students.
 - **Eighth graders:** 7.1% reported using marijuana in the past year in 2021, compared to 11.4% in 2020

- **10th graders:** 17.3% reported using marijuana in the past year in 2021, compared to 28.0% in 2020
 - **12th graders:** 30.5% reported using marijuana in the past year in 2021, compared to 35.2% in 2020
- **Vaping nicotine:** Vaping continues to be the predominant method of nicotine consumption among young people, though the percentage of students who reported vaping nicotine within the past year decreased significantly for eighth, 10th, and 12th grade students.
 - **Eighth graders:** 12.1% reported vaping nicotine in the past year in 2021, compared to 16.6% in 2020
 - **10th graders:** 19.5% reported vaping nicotine in the past year in 2021, compared to 30.7% in 2020
 - **12th graders:** 26.6% reported vaping nicotine in the past year in 2021, compared to 34.5% in 2020

<https://www.drugabuse.gov/news-events/news-releases/2021/12/percentage-of-adolescents-reporting-drug-use-decreased-significantly-in-2021-as-the-covid-19-pandemic-endured>

The Second study is done by Abigail S Friedman PHD of Department of Health Policy and Management, Yale School of Public Health. I have attached the study published in Jamapediatrics below for your consideration. The study considers the San Francisco ban on flavored tobacco products and its association with smoking rates among minor high school students compared to students in other districts without a flavor ban. It found that the San Francisco flavor ban was associated with more than doubled odds of recent smoking among underage high school students. This should raise concern that chances of an increase in cigarette use will happen not just for youth but adults as well if a flavor ban is enacted.

I hope you all have a great holiday and I would still like to connect with more of you soon. Please consider my open invitation to meet and discuss this topic.

Thank you
 Anthony Scott
 Portland Smoke and Vape

FW: Flavor ban 0 views



Brett Scott <brett@smokershaveninc.com> Jan 18, 2022, 11:49:46 AM (23 hours ago)
to Publiccomment@portlandmaine.gov

Hello,

I am writing as the owner of Smokers Haven, a retailer and distributor in the state of Maine selling flavored e-cigarettes, and a member of the Maine Vapers Association.

Considering a flavor ban is an immense decision that will affect the people of Portland. It is easy for someone that is not a smoker to say, "Just stop smoking", but nicotine is a highly addictive chemical. Think about a person's daily coffee, tea, or energy drink. Most people cannot function without their morning cup, but caffeine is considered "not addictive scientifically speaking."^[1] In terms of cigarettes, the addictive part is the nicotine. But, for people to get that nicotine, there are other harmful chemicals they inhale in the process of using traditional combustible tobacco products. According to the FDA "There are more than 7,000 chemicals in cigarette smoke. More than 70 of those chemicals are linked to cancer."^[2] Flavored electronic nicotine devices help people transition from traditional cigarettes to a less harmful nicotine deliverance system. "E-cigarettes have the potential to benefit adult smokers if used as a complete substitute for regular cigarettes and other smoked tobacco products"^[3]. As a retailer, we hear the stories first-hand. It is not uncommon to hear, I smoked for 30 years, switched to vaping, and can finally breathe again. We also often hear about the benefits of being able to taste and smell again, as well as coughing less, being able to take full breaths of air, not smelling like cigarettes, and so much more. For the people of Portland, I ask that you listen to real stories of how vaping has helped people live healthier lives. I welcome anybody to our stores to listen to the customers.

The FDA is already doing substantial testing to prove these products are a benefit to public health. One may conclude the primary objective of this legislation appears to be limiting youth access. The State of Maine has recently made many changes to combat underage youth access. The age to purchase tobacco is now 21. In addition, online sales direct to the customer have been banned. Both of these initiatives were followed thereafter in country-wide legislation. After the changes, statistics for the overall youth surveys have demonstrated declining usage. The most recent National Youth Tobacco Survey shows a decrease of more than 27% youth use of e-cigarettes in 2020 compared to 2019. Past 30-day electronic cigarette use for middle school students was down over 55% from the 2019 survey as well as high school student usage down over 28% in the same time period. The overall reduction is 1.73 million fewer youth using tobacco products than last year. ^[4] That is a huge reduction in youth access to see in one year, and at the time of the survey, the online shipping ban was not in effect, an additional measure that we have yet to see the statistical benefit, which may also play a large role in additional youth access reduction.

Please keep in mind who the large companies are that are proposing compromises to this legislation. Compromises through crafting very specific legislation are used to attack the small, local businesses and families while protecting the products sold in convenience stores such as JUUL. JUUL has been at the center of the vaping epidemic and the root of the publicized vaping issue. Their easily disguised products and higher nicotine

concentration have brought a wrath of bad publicity to the industry. JUUL is owned by Altria, a massive publicly traded tobacco company that also owns Marlboro cigarettes and is worth \$80 billion. They have the money and political connections to write legislation that will benefit their [\\$80 billion company](#). It is local specialty mom and pop businesses, that this is all their business does, that will be the compromises, eliminated from the industry, and ultimately close their doors.

We are small, local, Maine specialty shops that have a healthier alternative. We offer a way to quit traditional tobacco. We offer choices in flavor and nicotine level. It allows for people to find a flavor that works for their preferences. Most people choose flavors over tobacco as a way to quit cigarettes. The tobacco flavors make it very easy to go back to cigarettes. Adults use flavors and they work to quit traditional tobacco. We also offer nicotine levels which allows people to progressively step down in nicotine level, all the way to no nicotine. That is not something that is available in cigarettes or electronic nicotine delivery systems owned by cigarette companies, such as JUUL. Without careful consideration, the big tobacco companies will be the only companies continue in the industry using money, connections, and policy compromises to do so, while the local Maine businesses will be unable to.

Preventing underage youth access is and a high priority for Maine and nationally as a country. As retailers, we also welcome any methods to prevent youth access. Youth usage has tarnished a small, locally owned industry that is here with a goal to help people make healthier choices and live longer lives by switching from traditional combustible tobacco to flavored electronic nicotine delivery systems. We would love to see a 100% elimination of youth access as it has discredited the benefit adult smokers have received from using these products. Some ideas include requiring retailers to set sales limits per transaction, day, week, or month. As well as scanning and tracking drivers' licenses on what is being bought, which can be provided to local municipalities upon request. We, as local businesses, are looking to work with you directly on reducing underage access while finding a solution that keeps our doors open. I am asking everyone to consider meeting with me, or other members of the group, to discuss a true compromise that considers public safety, public health, and the small businesses of Maine.

[1] [https://archives.drugabuse.gov/blog/post/caffeine-really-addictive#:~:text=While%20caffeine%20produces%20a%20small,not%20addictive%20\(scientifically%20speaking\)](https://archives.drugabuse.gov/blog/post/caffeine-really-addictive#:~:text=While%20caffeine%20produces%20a%20small,not%20addictive%20(scientifically%20speaking))

² <https://www.fda.gov/tobacco-products/products-ingredients-components/chemicals-cigarettes-plant-product-puff>

³ https://www.cdc.gov/tobacco/basic_information/e-cigarettes/pdfs/Electronic-Cigarettes-Infographic-508.pdf

⁴ https://www.cdc.gov/tobacco/data_statistics/fact_sheets/youth_data/tobacco_use/index.htm

Thank you,

Brett Scott

President

Office – [603-513-1852](tel:603-513-1852) Ext. 406

www.SmokersHavenInc.com

[1] [https://archives.drugabuse.gov/blog/post/caffeine-really-addictive#:~:text=While%20caffeine%20produces%20a%20small,not%20addictive%20\(scientifically%20speaking\)](https://archives.drugabuse.gov/blog/post/caffeine-really-addictive#:~:text=While%20caffeine%20produces%20a%20small,not%20addictive%20(scientifically%20speaking))

[2] <https://www.fda.gov/tobacco-products/products-ingredients-components/chemicals-cigarettes-plant-product-puff>

[3] https://www.cdc.gov/tobacco/basic_information/e-cigarettes/pdfs/Electronic-Cigarettes-Infographic-508.pdf

[4] https://www.cdc.gov/tobacco/data_statistics/fact_sheets/youth_data/tobacco_use/index.htm

Big Tobacco vs S...



ahsanrana88 <ahsanrana88@yahoo.com>

7:39 AM (4 hours ago)

to publiccomment@portlandmaine.gov

Hi,

My name is Muhammad Ahsan Ashraf and I own a convenience store at 885 Brighton ave Portland maine with the name of Three ds variety, I am writing regarding the proposed flavor ban in Portland, as I want to show you my concern my store is situated is right on the border between portland and westbrook, the proposed flavor ban is counter productive as there will be no ban in westbrook, south portland, falmouth and in surrounding cities, customers will move from portland to westbrook and other cities. Which will result in killing out business my store is the only livelihood I have for me and my family. Also like to share my personal experience in Massachusetts my cousins use to own convenience store their store is shut down due to this ban and they moved to different state. My kind request request to you is please reconsider your proposed ban and save us from closing our business.

Thanks

Muhammad Ahsan Ashraf
Three ds variety

Protects

Big Tobacco



Corporate Greed

Destroys

Small Businesses



Little Guy



donald lingar <90776439ers@gmail.com>
to publiccomment@portlandmaine.gov

Jan 16, 2022, 9:39:36 PM (2 days ago)

Dear Portland City Council,

As your constituent, I'm very disappointed to learn that the Portland City Council is considering a ban on menthol cigarettes, flavored dip, and flavored cigars for adults 21 and older. This would be adult prohibition and goes too far--I ask you to please oppose a ban on these tobacco products.

We all agree that kids shouldn't use tobacco products--that's why the law is 21. But banning legal flavored tobacco products and menthol cigarettes for adults 21 and older is too extreme and bad policy.

A ban wouldn't get rid of these products. Instead, it will just drive consumers to nearby towns or even worse--the illegal market--to get their products. As a result, a ban will increase crime, endanger consumers, and hurt small businesses and our communities.

Our local lawmakers should be focused on the economy, jobs, and addressing the rising cost of living--instead of limiting adult choices by banning legal products.

Please oppose this extreme proposal.

Sincerely,
donald lingar
214 Gold Ave
Kellogg, ID 83837-2625



Steve Marzza <steve@darkharbortattoo.com> Jan 18, 2022, 10:07:04 AM (yesterday)
to publiccomment@portlandmaine.gov

Dear Portland City Council,

As your constituent, I'm very disappointed to learn that the Portland City Council is considering a ban on menthol cigarettes, flavored dip, and flavored cigars for adults 21 and older. This would be adult prohibition and goes too far--I ask you to please oppose a ban on these tobacco products.

We all agree that kids shouldn't use tobacco products--that's why the law is 21. But banning legal flavored tobacco products and menthol cigarettes for adults 21 and older is too extreme and bad policy.

A ban wouldn't get rid of these products. Instead, it will just drive consumers to nearby towns or even worse--the illegal market--to get their products. As a result, a ban will increase crime, endanger consumers, and hurt small businesses and our communities.

Our local lawmakers should be focused on the economy, jobs, and addressing the rising cost of living--instead of limiting adult choices by banning legal products.

Please oppose this extreme proposal.

Sincerely,

Steve Marzza
459 Saco St
Westbrook, ME 04092-2028



Craig Durant <cdurant@gmail.com>
to publiccomment@portlandmaine.gov

Jan 18, 2022, 10:12:50 AM (24 hours ago)

Dear Portland City Council,

As your constituent, and local business manager, I'm very disappointed to learn that the Portland City Council is considering a ban on menthol cigarettes, flavored dip, and flavored cigars for adults 21 and older. This would be adult prohibition and goes too far--I ask you to please oppose a ban on these tobacco products.

We all agree that kids shouldn't use tobacco products--that's why the law is 21. But banning legal flavored tobacco products and menthol cigarettes for adults 21 and older is too extreme and bad policy.

A ban wouldn't get rid of these products. Instead, it will just drive consumers to nearby towns or even worse--the illegal market--to get their products. As a result, a ban will increase crime, endanger consumers, and hurt small businesses and our communities.

Our local lawmakers should be focused on the economy, jobs, and addressing the rising cost of living--instead of limiting adult choices by banning legal products.

Please oppose this extreme proposal.

Sincerely,

Craig Durant
1 Exchange St
Portland, ME 04101-5123



Mohamed Mohamed <rocboyidris@gmail.com>
to publiccomment@portlandmaine.gov

Jan 18, 2022, 10:41:23 AM (23 hours ago)

Dear Portland City Council,

As your constituent, I'm very disappointed to learn that the Portland City Council is considering a ban on menthol cigarettes, flavored dip, and flavored cigars for adults 21 and older. This would be adult prohibition and goes too far--I ask you to please oppose a ban on these tobacco products.

We all agree that kids shouldn't use tobacco products--that's why the law is 21. But banning legal flavored tobacco products and menthol cigarettes for adults 21 and older is too extreme and bad policy.

A ban wouldn't get rid of these products. Instead, it will just drive consumers to nearby towns or even worse--the illegal market--to get their products. As a result, a ban will increase crime, endanger consumers, and hurt small businesses and our communities.

Our local lawmakers should be focused on the economy, jobs, and addressing the rising cost of living--instead of limiting adult choices by banning legal products.

Please oppose this extreme proposal.

Sincerely,

Mohamed Mohamed
21 Chestnut St
Portland, ME 04101-4973



Caity Cook <caitymarie007@icloud.com> Jan 18, 2022, 11:28:25 AM (23 hours ago)
to publiccomment@portlandmaine.gov

Dear Portland City Council,

As your constituent, I'm very disappointed to learn that the Portland City Council is considering a ban on menthol cigarettes, flavored dip, and flavored cigars for adults 21 and older. This would be adult prohibition and goes too far--I ask you to please oppose a ban on these tobacco products.

We all agree that kids shouldn't use tobacco products--that's why the law is 21. But banning legal flavored tobacco products and menthol cigarettes for adults 21 and older is too extreme and bad policy.

A ban wouldn't get rid of these products. Instead, it will just drive consumers to nearby towns or even worse--the illegal market--to get their products. As a result, a ban will increase crime, endanger consumers, and hurt small businesses and our communities.

Our local lawmakers should be focused on the economy, jobs, and addressing the rising cost of living--instead of limiting adult choices by banning legal products.

Please oppose this extreme proposal.

Sincerely,

Caity Cook
105 Gould Rd
Dayton, ME 04005-7406



Rianna Tuttle <pinkmusic95@gmail.com> Jan 18, 2022, 11:29:06 AM (23 hours ago)
to publiccomment@portlandmaine.gov

Dear Portland City Council,

As your constituent, I'm very disappointed to learn that the Portland City Council is considering a ban on menthol cigarettes, flavored dip, and flavored cigars for adults 21 and older. This would be adult prohibition and goes too far--I ask you to please oppose a ban on these tobacco products.

We all agree that kids shouldn't use tobacco products--that's why the law is 21. But banning legal flavored tobacco products and menthol cigarettes for adults 21 and older is too extreme and bad policy.

A ban wouldn't get rid of these products. Instead, it will just drive consumers to nearby towns or even worse--the illegal market--to get their products. As a result, a ban will increase crime, endanger consumers, and hurt small businesses and our communities.

Our local lawmakers should be focused on the economy, jobs, and addressing the rising cost of living--instead of limiting adult choices by banning legal products.

Please oppose this extreme proposal.

Sincerely,

Rianna Tuttle
12 Pottersville Rd
Windham, ME 04062



Dave Discatio <mjd32@msn.com>
to publiccomment@portlandmaine.gov

10:11 AM (2 hours ago)

Dear Portland City Council,

As your constituent, and local business owner, I'm very disappointed to learn that the Portland City Council is considering a ban on menthol cigarettes, flavored dip, and flavored cigars for adults 21 and older. This would be adult prohibition and goes too far--I ask you to please oppose a ban on these tobacco products.

We all agree that kids shouldn't use tobacco products--that's why the law is 21. But banning legal flavored tobacco products and menthol cigarettes for adults 21 and older is too extreme and bad policy.

A ban wouldn't get rid of these products. Instead, it will just drive consumers to nearby towns or even worse--the illegal market--to get their products. As a result, a ban will increase crime, endanger consumers, and hurt small businesses and our communities.

Our local lawmakers should be focused on the economy, jobs, and addressing the rising cost of living--instead of limiting adult choices by banning legal products.

Please oppose this extreme proposal.

Sincerely,

Dave Discatio
665 Congress St
Portland, ME 04101-3302



Peter Larsen <moransmarket@gmail.com>
to publiccomment@portlandmaine.gov

10:49 AM (1 hour ago)

Dear Portland City Council,

As your constituent, and local business owner, I'm very disappointed to learn that the Portland City Council is considering a ban on menthol cigarettes, flavored dip, and flavored cigars for adults 21 and older. This would be adult prohibition and goes too far--I ask you to please oppose a ban on these tobacco products.

We all agree that kids shouldn't use tobacco products--that's why the law is 21. But banning legal flavored tobacco products and menthol cigarettes for adults 21 and older is too extreme and bad policy.

A ban wouldn't get rid of these products. Instead, it will just drive consumers to nearby towns or even worse--the illegal market--to get their products. As a result, a ban will increase crime, endanger consumers, and hurt small businesses and our communities.

Our local lawmakers should be focused on the economy, jobs, and addressing the rising cost of living--instead of limiting adult choices by banning legal products.

Please oppose this extreme proposal.

Sincerely,

Peter Larsen
1576 Forest Ave
Portland, ME 04103-1314



Lisa Walters <qshop473@gmail.com>
to publiccomment@portlandmaine.gov

11:32 AM (1 hour ago)

Dear Portland City Council,

As your constituent, and local business owner, I'm very disappointed to learn that the Portland City Council is considering a ban on menthol cigarettes, flavored dip, and flavored cigars for adults 21 and older. This would be adult prohibition and goes too far--I ask you to please oppose a ban on these tobacco products.

We all agree that kids shouldn't use tobacco products--that's why the law is 21. But banning legal flavored tobacco products and menthol cigarettes for adults 21 and older is too extreme and bad policy.

A ban wouldn't get rid of these products. Instead, it will just drive consumers to nearby towns or even worse--the illegal market--to get their products. As a result, a ban will increase crime, endanger consumers, and hurt small businesses and our communities.

Our local lawmakers should be focused on the economy, jobs, and addressing the rising cost of living--instead of limiting adult choices by banning legal products.

Please oppose this extreme proposal.

Sincerely,

Lisa Walters
473 Stevens Ave
Portland, ME 04103-2635



Chris Jackson <psavchris@yahoo.com>
to publiccomment@portlandmaine.gov

Jan 18, 2022, 11:30:45 AM (23 hours ago)

Vaping flavors is effective for adults.

Hello, and thank you for taking the time to read this. My name is Chris and I'm a small business owner here in Portland Maine. I would first like to take the time to explain why my brother and I got into this industry. We are both former smokers who tried everything in our power to stop smoking. We tried taking the pill, gum, patches and everything in between to quit and everytime it was the same result. We always found ourselves smoking again and again. Vaping has been out for more than a decade and about 8 years ago I decided to give it a shot. I first tried vaping on a tobacco flavored e-liquid and quickly realized tobacco flavored products only acted as a trigger and made me want to smoke traditional combustibles. So, I gave a strawberry flavored product a try and was surprised by the results. It seemed to work well and didn't create the urge to smoke cigarettes.

The longer I stayed away from cigarettes and continued vaping the better I felt. My sense of smell and taste came back better than ever. I was able to breathe much better and snore less at night which resulted in a better nights sleep. Vaping flavored products had a profound health impact on my life and soon I couldn't wait to share my success story with others. So, my brother and I opened up a small business in Portland Maine and soon got thousands of other smokers to make the switch. Nothing has brought so much happiness into my life than seeing other people on the right step in recovery weather it be from substance abuse or nicotine. We started this business to save lives and help others and that's exactly what we have done.

Vaping has been one of the only ways to get an oral fixation like smoking but allows you to do so in less and less nicotine until you are finally down to 0mg of nicotine. The ultimate goal of vaping is to decrease your nicotine dependency until you're able to get off of nicotine all together. So after about four years of vaping and no nicotine dependency I finally quit vaping. After I stopped vaping I was curious to see if there would be any health differences like there was when I quit smoking cigarettes. After a year and a half I have yet to see or feel any differences with my health.

Unfortunately for adults minors find the flavors to be attractive too.

But, where do we draw the line? Should we ban flavored alcohol? THC infused edibles such as chocolate bars and nurds rope candy? Perhaps we should get rid smart phones and social media because the youth abuse these products and platforms as well. Flavored alcohol has certainly attracted the youth. We know how bad cigarettes are yet they are still legal to sell. Why haven't you tried to ban these products? Sounds a bit drastic but in a sense that's exactly what we have here. Vaping is the single most effective harm reduction tool a smoker has to quit. Vaping on flavors are extremely important when it comes to quitting smoking. I am fearful for my customers because I know how important flavors are and without them I believe you will see an explosion of traditional cigarette use and many vapers relapsing.

To make my point clear vaping does not come without some sort of risk. Although it has been proven to be 97% safer to smoking it can be habit forming. I do not believe inhaling anything other than clean air into our lungs, eating well and exercising will prolong or life expectancy. But vaping is certainly better than smoking and one step closer to living a more full healthier life free of addiction. For those exact reasons I started vaping and opened up a business.

It saddens me to see a room full of such smart individuals voting with emotions versus factual data on such a controversial topic that will ruin so many businesses and force many vapers to go back to smoking. I urge you to reconsider this ordinance for many reasons. I fully understand that you feel obligated to try and curve the youth using these products. But all this bill will do is push these problems to your surrounding cities and neighbors. Perhaps you would consider determining what products the youth are using and making tougher laws regarding the sale of these products. For starters I believe these products should be sold in 21+ stores keeping them out of sight to the minors. There could be a limit to how many of these products an individual could purchase during a single day. We as store owners could keep track of who is buying what in each store to help determine who is actually furnishing these products to minors. I believe harsher fines for those found furnishing these products may deter some. And for those found underage using these products there should be some sort of repercussions such as community service and or some sort of class room training. We should be exhausting all means of education and enforcement before we start to ban products that have helped so many in our community.

I would like for you to consider stores and owners such as myself as a resource you can turn to and ask complicated questions on such a controversial issue. I believe if we work together on these issues we can find common ground and both sides would benefit. As far as an outright ban on these products no one will win and you will only push consumers to other cities, helping surge an unregulated black market and more at home methods of obtaining and creating these products. When one door closes another will open and I firmly believe its best if we all tackle these issues together instead taking a chance of closing this door and creating another unknown issue all together. Please feel free to reach out to me ask any questions you may have.

Email- psavchris@yahoo.com

Phone-207-641-5114

Public Comment Order 138-21/22 0 views



Christopher B. Hudgins <chris@alfakherus.com>

11:59 AM (9 minutes ago)

to publiccomment@portlandmaine.gov

Please see attached public comment submitted by the National Hookah Community Association.
Address is:

P.O. Box 5256 S. Mission Rd, Suite 703

Bonsall, Ca 92003



Chris Hudgins

Director, U.S. Corporate & Regulatory Affairs

[703-350-5964](tel:703-350-5964)

www.alfakher.com



Preserving Hookah Culture & Protecting Hookah Tradition across the USA

January 19, 2022

Portland, Maine City Council
City Hall
389 Congress Street
Portland, ME 04101

Re: Order 138-21/22 Amendment to Portland City Code Chapter 17 Re: Sale of Flavored Tobacco Products Prohibited

Dear Councilmembers:

The National Hookah Community Association (NHCA) brings together, and serves as the voice of, hookah producers, distributors, sellers, lounge owners, consumers, and community members who support the preservation of hookah's cultural traditions. We are writing to request that you follow the lead of other jurisdictions, including the state of California, and exempt hookah from the flavored tobacco ban (Order 138-21/22) currently being considered.

Hookah is an important cultural practice that has existed for centuries, originating in the Middle East and India. Today, a broad cross-section of immigrants in the U.S. from around the world enjoy hookah as a centerpiece for cultural, business, and social gatherings. Hookah is widely used by Middle Eastern, Armenian, Turkish, East African, Indian, Persian, Indonesian, and other minority immigrant citizens. Hookah lounges across the country have come to serve as safe gathering places for many diverse ethnic and religious communities. Despite the importance of this social practice and tradition, NHCA members continue to find that many policymakers are often unfamiliar with hookah, its practice, and its community.

NHCA fully supports efforts to eliminate youth access and usage of tobacco products, including hookah. Hookah is unlikely to be used or consumed by youth for many reasons. Hookah water pipes are several feet tall, not easily concealed, and the setup for use is a lengthy process. Lounges that offer hookah are restricted to of-age customers, preventing teens from accessing the product. Recent research by the Centers for Disease Control and Prevention (CDC) found that just 2.1% of middle and high school students used hookah in the past 30 days, five times less than the number of teens or youth who vape.

Shisha, the product used in hookah, is a combination of tobacco and a sugar substance such as honey or molasses, and the total product is only comprised of approximately 15% tobacco. As has been the practice for hundreds of years, hookah is, by nature, a flavored product. Unfortunately, noble efforts to address the teen vaping epidemic by **banning flavored tobacco also would result in the ban of ALL hookah.**



Preserving Hookah Culture & Protecting Hookah Tradition across the USA

A ban on hookah would not only eliminate this important cultural practice for many U.S. citizens, but could also shutter many small, independent, and minority owned businesses. Many of these businesses serve as community gathering places for immigrant populations in cities across the country. Many hookah users are part of religious or ethnic populations that already face discrimination. Eliminating this cultural practice would make many feel as though they are misunderstood and targeted as an outsider by lawmakers and regulators.

We ask that you do not vote to shutter minority and immigrant owned business. Please include an exemption for hookah in Order 138-21/22.

Sincerely,

National Hookah Community Association

A Flavored Tobacco Ban is Bad Policy -- Please Oppose

Public Comment inbox



donald lingar <90776439ers@gmail.com>

to publiccomment

Dear Portland City Council,

As your constituent, I'm very disappointed to learn that the Portland City Council is considering a ban on menthol cigarettes, flavored dip, and flavored cigars for adults 21 and older

We all agree that kids shouldn't use tobacco products--that's why the law is 21. But banning legal flavored tobacco products and menthol cigarettes for adults 21 and older is too ex

A ban wouldn't get rid of these products. Instead, it will just drive consumers to nearby towns or even worse--the illegal market--to get their products. As a result, a ban will increase

Our local lawmakers should be focused on the economy, jobs, and addressing the rising cost of living--instead of limiting adult choices by banning legal products.

Please oppose this extreme proposal.

Sincerely,

donald lingar

214 Gold Ave

Kellogg, ID 83837-2625

From: Jonathan Shaer - NECSEMA <jon@necsema.net>
Date: Tuesday, January 11, 2022 at 1:26 PM
To: "council@portlandmaine.gov" <council@portlandmaine.gov>
Subject: debunking study findings

Councilors-

I'd like to bring to your attention concerns I have with a recent American Cancer Society press release titled, *American Cancer Society Releases Findings on Association of Cigarette Sales with Comprehensive Menthol Flavor Ban in Massachusetts* (link: <http://pressroom.cancer.org/menthol>). The study ignores the significant migration of product sales to NH and RI, and is selective in comparison states while making claims of the ban's successful impact. I fear that without the proper context and complete picture, the findings are quite misleading.

The release claims:

- Sales of all cigarettes in Massachusetts declined by up to 33% after the state instituted a ban on menthol-flavored cigarettes.
- The Massachusetts ban led to a roughly 300% drop in sales of packs of menthol-flavored cigarettes in the state by July of last year.
- Over the same period, cigarette sales in 33 states that did not institute a menthol flavor ban fell by 8%, while sales of menthol-flavored cigarettes declined by 3%.
- "We learn from Massachusetts that a menthol flavor ban effectively reduces both menthol and overall cigarette sales," study co-author Samuel Asare told UPI in an email.

On its face, you might say... wow, it works. But with only a little effort, you can see how this study is bunk. Attached is a press release we felt compelled to issue in response but following are some reasons why the findings should be dismissed.

The report declares sales of menthol cigarettes in MA dropped. Of course, sales fall when you ban 1/3 of in-state volume. But it completely ignores the fact that almost all the sales migrated to NH and RI as publicly available excise tax data demonstrates. Furthermore, NielsenIQ sales data is not a reliable source for this information, and it is compared to only 27 other states rather than 49 + DC. Why? Do the other 33 states not support their findings? Does Nielsen not have data there? Some other reason?

ACS and other will likely prop this up as "proof". But I hope you will dismiss it or, at the very least, ask ACS how the study accounts for a nearly 90% increase in NH/RI sales and 33 states not used in the study?

Respectfully,

Jon

Jonathan Shaer, Executive Director

New England Convenience Store & Energy Marketers Association, Inc. (NECSEMA)

1044 Central Street, Suite 203, Stoughton, MA 02072

Mobile: [774-406-1997](tel:774-406-1997) | Office: [781-297-9600](tel:781-297-9600) ext. 3 | Fax: [781-297-9601](tel:781-297-9601)

jon@necsema.net | www.necsema.net | [Join NECSEMA](#)

FOR IMMEDIATE RELEASE

January 6, 2022



Media contact:

Dave Wedge

617-799-0537

davidmwedge@gmail.com

THE AMERICAN CANCER SOCIETY (ACS) PUBLISHES MISLEADING REPORT

Engineered ACS findings ignore tax stamp sales data, which irrefutably demonstrate most menthol cigarette sales migrated to bordering states, to claim that the Massachusetts menthol ban led to a reduction in cigarette sales

STOUGHTON, Mass. (January 6, 2022) – The American Cancer Society (ACS) promoted findings yesterday in The Journal of the American Medical Association that Massachusetts’ ban on menthol cigarettes led to a sharp decline in cigarette sales in the Commonwealth, implying decreased in-state sales are equivalent to a decline in Massachusetts cigarette smoking rates. The findings, as asserted by ACS, completely ignore that an overwhelming majority of menthol cigarette sales immediately migrated to Rhode Island and New Hampshire where Massachusetts consumers made their purchases following implementation of the ban.

The New England Convenience Store and Energy Marketers Association (NECSEMA) previously published data unequivocally demonstrating the migration of sales from Massachusetts to surrounding New England states utilizing publicly available and easily verifiable state Department of Revenue tax stamp data. This data undermines the recent ACS report which attempts to paint a failed public health experiment as a success.

Since the implementation of the Massachusetts menthol ban, NECSEMA regularly released tax stamp data during the first year of the ban that demonstrated an overwhelming increase in the volume of menthol cigarette sales in Rhode Island and New Hampshire: Here are the facts:

- In the twelve months following the ban, menthol cigarettes sales skyrocketed by over 126% on average in the Rhode Island and New Hampshire counties bordering Massachusetts. These six counties saw an increase of over 23 million packs of menthol cigarettes.
- Statewide, Rhode Island saw an increase of over 43% in menthol cigarette sales and New Hampshire’s statewide increase was over 79%.
- Total cigarette tax stamp sales fell in Massachusetts by nearly 24%, during the same time period, and total cigarette tax stamp sales increased by over 22% in New Hampshire and 18% in Rhode Island.

To mislead the public about tobacco policy, especially in The Journal of the American Medical Association, does a grave disservice to public health and the credibility of the ACS.

“The report published by the ACS is absurd. It is not surprising that in-state menthol cigarette sales declined when the state banned the legal sale of those products. However, to promote misleading findings by omitting significant facts is both irresponsible and dangerous as other states and some cities consider a similar policy. Moreover, it undermines the Food and Drug Administration’s substantial investments in evidence-based research to determine the appropriate path forward for certain nicotine and tobacco products,” said Jonathan Shaer, Executive Director of the New England Convenience Store & Energy Marketers Association. “When organizations release findings about public policies that purport to provide improvements to public health while ignoring widely available government data, it undermines public trust and ignores the public health potential for evidence-based tobacco and nicotine policies that will actually improve health outcomes.”

To speak with Jonathan Shaer, please contact Dave Wedge at davidmwedge@gmail.com or 617-799-0537.

###

From: Jonathan Shaer - NECSEMA <jon@necsema.net>
Date: Friday, January 7, 2022 at 10:54 AM
To: "council@portlandmaine.gov" <council@portlandmaine.gov>
Subject: my editorial

Good morning, Councilors. Back in May, I penned an editorial that was picked up the Maine Wire about LD 1550 – a state bill that sought to ban flavored tobacco. As I've explained before, the bill came out of committee with a split report: one in support of a complete flavored tobacco ban, the other a flavored vape-only ban with a pmtpa/mrtp exemption. The sponsors chose to carry the bill into the 2022 session recognizing their preferred version was unlikely to pass.

The editorial is an easy-to-read summary of the process and issue, in general.

<https://www.themainewire.com/2021/05/debunking-the-myths-of-maines-proposed-flavored-tobacco-ban/>

Respectfully,

Jon

Jonathan Shaer, Executive Director

New England Convenience Store & Energy Marketers Association, Inc. (NECSEMA)

1044 Central Street, Suite 203, Stoughton, MA 02072

Mobile: [774-406-1997](tel:774-406-1997) | Office: [781-297-9600](tel:781-297-9600) ext. 3 | Fax: [781-297-9601](tel:781-297-9601)

jon@necsema.net | www.necsema.net | [Join NECSEMA](#)

From: Jonathan Shaer - NECSEMA <jon@necsema.net>
Date: Wednesday, January 5, 2022 at 2:35 PM
To: "council@portlandmaine.gov" <council@portlandmaine.gov>
Subject: Explaining LD1550

Councilors-

Happy new year. I hope you've found the information I have been sending to be helpful for your understanding of the proposal to ban flavored tobacco. Following is more information very relevant to your personal contemplations.

Allow me to explain what happened with LD1550, the flavored tobacco ban bill debated in the Maine state legislature last session, and why it never came up for a vote. I believe this is very important to understand if you hope a Portland ban will lead to a state ban.

Last session, three tobacco related bills were proposed: [LD1550](#) which sought to ban the sale of flavored tobacco, [LD1423](#) which sought to increase the excise tax on a pack of cigarettes from \$2 to \$4 per pack and double the excise tax on all Other Tobacco Products (OTP), and LD1693 which was both a flavor ban and a tax increase – this last bill never saw the light of day. Another tobacco-related proposal that didn't get any traction was the Governor's *Part 2 Budget* which was a flavored tobacco ban with a \$32 million draw on the federal stimulus money the state had received.

LD1550 was voted out of committee as a *divided report* with the Majority Report supporting a full ban while the Minority Report would have only banned flavored vape products that did not receive a PMTA approval. As the weeks passed and legislators learned about the issue, the FDA's PMTA process, and the enormous difference between the fiscal note of LD1550 (\$32 million in first year) vs. Minority Report (\$2.1 million in first year) the Minority Report gained a lot of support. Then, in mid-June, LD1423 came up for a vote and failed 67-73. At this point, it was clear LD1550 was unlikely to pass so the sponsors opted to carry it over to 2022. If any confidence existed that LD1550 would pass then it would have been called for a vote. But that never happened.

I strongly believe LD1550 has even less of a chance in 2022 because so much has happened: Youth vape rates have fallen 60%, the FDA is removing almost every flavored vape product from the market via their PMTA process, the USPS is no longer shipping e-cigarettes and, perhaps most notably, there is a full year of data demonstrating how the ban in Massachusetts has been an abject failure. None of which existed in 2021 which is why we believe LD1550 stands less a chance next year than it did last year. So, supporting a local ban will very likely mean putting Portland on an island.

Respectfully,

Jon

Jonathan Shaer, Executive Director

New England Convenience Store & Energy Marketers Association, Inc. (NECSEMA)

1044 Central Street, Suite 203, Stoughton, MA 02072

Mobile: [774-406-1997](tel:774-406-1997) | Office: [781-297-9600](tel:781-297-9600) ext. 3 | Fax: [781-297-9601](tel:781-297-9601)

jon@necsema.net | www.necsema.net | [Join NECSEMA](#)

From: Jonathan Shaer - NECSEMA <jon@necsema.net>
Date: Monday, December 20, 2021 at 9:33 AM
To: "council@portlandmaine.gov" <council@portlandmaine.gov>
Subject: NIH Study

Councilors-

The *Monitoring the Future* (MTF) survey released its 2021 results the week before last. The MTF is funded by the National Institute of Health and conducted by the University of Michigan, and measures drug and alcohol use and related attitudes among adolescent students nationwide.

The results are significant as it relates to your consideration of a ban on the sale of all flavored nicotine products in Portland.

Vaping continues to be the predominant method of nicotine consumption among young people, though the percentage of students who reported vaping nicotine within the past year decreased significantly for eighth, 10th, and 12th grade students.

- **8th graders:** 12.1% reported vaping nicotine in the past year in 2021, compared to 16.6% in 2020
- **10th graders:** 19.5% reported vaping nicotine in the past year in 2021, compared to 30.7% in 2020
- **12th graders:** 26.6% reported vaping nicotine in the past year in 2021, compared to 34.5% in 2020

*These percentages are for use at any point during the prior 12 months, whereas the National Youth Tobacco Survey (NYTS) is any use over the past 30th days. We prefer the NYTS numbers, but both are showing significant reductions in underage use.

The first sentence corroborates what we've been saying all along that it is vaping, not all the other traditional tobacco products, that attract youth. Yet, the ban you are considering bans everything. Also, worth noting is that 12th graders are drinking (46.5) and using marijuana (30.5%) at greater rates than 12th graders are vaping nicotine. Yet, we continue to demonize one product over others.

<https://www.nih.gov/news-events/news-releases/percentage-adolescents-reporting-drug-use-decreased-significantly-2021-covid-19-pandemic-endured>

I hope you all have a wonderful holiday season, and I look forward to connecting in 2022 on this important issue and any others that cause our paths to cross.

Respectfully,

Jon

Jonathan Shaer, Executive Director

New England Convenience Store & Energy Marketers Association, Inc. (NECSEMA)

1044 Central Street, Suite 203, Stoughton, MA 02072

Mobile: [774-406-1997](tel:774-406-1997) | Office: [781-297-9600](tel:781-297-9600) ext. 3 | Fax: [781-297-9601](tel:781-297-9601)

jon@necsema.net | www.necsema.net | [Join NECSEMA](#)

From: Jonathan Shaer - NECSEMA <jon@necsema.net>
Date: Tuesday, December 14, 2021 at 9:05 AM
To: "council@portlandmaine.gov" <council@portlandmaine.gov>
Subject: Denver veto

Councilors-

Last week, the Mayor of Denver, CO vetoed an ordinance passed by the city council to ban the sale of flavored tobacco. The council vote was not unanimous, and the ordinance was a bit different from the one Portland is considering. I wish to draw your attention to the letter Mayor Hancock sent to the city council explaining his reasoning. I believe you'll recognize some of the themes.

<https://www.denvergov.org/files/assets/public/mayor/documents/2021-12-10-mayor-hancock-letter-to-city-council-cb21-1182.pdf>

As I've said time and again, this is truly an issue that belongs with the Maine state legislature. I recognize you don't wish to harm your local retailers nor treat your legal-aged adults unfairly, but if Portland passes the ban and the state legislature does not then that is exactly what would occur.

Respectfully,

Jon

Jonathan Shaer, Executive Director

New England Convenience Store & Energy Marketers Association, Inc. (NECSEMA)

1044 Central Street, Suite 203, Stoughton, MA 02072

Mobile: [774-406-1997](tel:774-406-1997) | Office: [781-297-9600](tel:781-297-9600) ext. 3 | Fax: [781-297-9601](tel:781-297-9601)

jon@necsema.net | www.necsema.net | [Join NECSEMA](#)

From: Jonathan Shaer - NECSEMA <jon@necsema.net>
Date: Friday, December 10, 2021 at 7:56 AM
To: "council@portlandmaine.gov" <council@portlandmaine.gov>
Subject: 2 important points

Councilors-

There are a couple issues that I fear are misunderstood and/or under-appreciated. The first is the importance of the FDA's PMTA process. It cannot be overstated how important it is for you to completely understand the process and the end result. The second is which products the ban would actually outlaw – spoiler alert: it's a lot more than just vape. Please take 5 minutes and read below and attached.

Pre-Market Tobacco Application Process (PMTA)

Attached is a letter I asked Attorney Jonathan Havens write to the Portland City Council. It is succinct and provides insight into this rigorous FDA process. I include this because it is a terrific summary of the FDA's PMTA process from an attorney who is a former regulatory counsel with the FDA and counsels his clients on regulatory, compliance, and enforcement matters related to products regulated by the FDA, FTC and CPSC.

By law, every nicotine product marketed after February 15, 2007 must receive an order from the FDA permitting the ongoing marketing of the product. The order is called a PMTA authorization. For the FDA to issue a PMTA marketing order, the agency must determine that the manufacturer has demonstrated that marketing of the new tobacco product would be appropriate for the protection of the public health.

The FDA's deadline was September 20, 2021. The FDA still has some products it needs to evaluate, but only a handful will be issued PMTA orders effectively decimating the category. In other words, the days of thousands of flavors and devices are over. Anyone using the term *unicorn tears* from this point forward is either uninformed or trying to pray on past emotions.

Products

Attached is a flavored products inventory report that Chris from Cigaret Shopper has provided. Almost every product in the "Vape and Vape Devices" category will be pulled from shelves in just a matter of time once the FDA releases its list of unauthorized products. Every other product on the list is a *traditional tobacco* product. Per CDC data, these traditional products have low single digit youth user appeal. They are adult products. **Every product on this entire spreadsheet would be banned** if the ordinance passes. Maine's flavored tobacco profile happens to be quite large: Menthol cigarettes account for about 18% of state cigarette volume, about 89% of Maine's snuff volume is flavored, 71% of Maine's e-cigarette volume is flavored product and 60% of Maine's cigar volume is flavored.

Best,

Jon

Jonathan Shaer, Executive Director

New England Convenience Store & Energy Marketers Association, Inc. (NECSEMA)

1044 Central Street, Suite 203, Stoughton, MA 02072

Mobile: [774-406-1997](tel:774-406-1997) | Office: [781-297-9600](tel:781-297-9600) ext. 3 | Fax: [781-297-9601](tel:781-297-9601)

jon@necsema.net | www.necsema.net | [Join NECSEMA](#)

From: Jonathan Shaer - NECSEMA <jon@necsema.net>
Date: Tuesday, November 9, 2021 at 6:21 AM
To: Belinda Ray <bsr@portlandmaine.gov>, Tae Chong - City number <tchong@portlandmaine.gov>, "mdion@portlandmaine.gov" <mdion@portlandmaine.gov>
Cc: "council@portlandmaine.gov" <council@portlandmaine.gov>
Subject: flavored tobacco ban comments

Pease accept these written comments to complement the verbal testimony I plan to give this evening. Once again, thank you for opening this hearing for additional public comment on the proposed flavored tobacco ban.

Jon

Jonathan Shaer, Executive Director

New England Convenience Store & Energy Marketers Association, Inc. (NECSEMA)

1044 Central Street, Suite 203, Stoughton, MA 02072

Mobile: [774-406-1997](tel:774-406-1997) | Office: [781-297-9600](tel:781-297-9600) ext. 3 | Fax: [781-297-9601](tel:781-297-9601)

jon@necsema.net | www.necsema.net | [Join NECSEMA](#)



November 9, 2021

Portland City Council
Health and Human Services & Public Safety Committee
Portland City Hall
389 Congress St.
Portland, ME 04101

Chairman Chong, Councilmember Ray and Councilmember Dion,

Thank you for accepting additional public testimony at your hearing this evening. This is a very important issue to 50 businesses in your city, its 38 convenience stores and a significant number of adults evidenced by the volume of flavored tobacco these stores sell. Allowing additional testimony is particularly important considering the number of inaccuracies and biased information presented to your committee by the local tobacco control coordinator at the last hearing (i.e. the number of states with a ban is one, not five as you were told).

I will not waste your time defending flavored tobacco, and I hope you will not succumb to tactics which attempt to demonize the companies that manufacture and sell them. Those schemes are irrelevant and only serve as smoke and mirrors to the real questions: What is the purpose of a local ban, and will a local ban be effective?

If the purpose is to prevent youth from initiating nicotine use, then a local ban will be ineffective because you have not closed access of the products to minors, Portland retailers have a 97% FDA-verified compliance rate and the only products youth are statistically using, electronic nicotine delivery systems (ENDS), have all effectively been banned by the FDA via their Pre-Market Tobacco Application (PMTA) process.

If the purpose is to send a signal to the state legislature that Portland is in favor of a statewide ban, then a local ban will be equally ineffective since the state will likely take a more measured approach as it was prepared to last session (even before the PMTA process began) and only leave Portland businesses disadvantaged adults inconvenienced by its more sweeping ban.

Everyone claims this policy is intended to protect youth. If that is the case, then there is no empirical or statistical reason why menthol cigarettes, wintergreen smokeless and the varieties of pipe tobacco should be banned. The only product shown to demonstrate any modern-day youth appeal is ENDS (aka vape). The statistics are clear and come right from the CDC's National Youth Tobacco Survey¹ which shows that in 2020 high school-aged use for ENDS was 19.6% (down from 27.5% in 2019), cigarettes use at 4.6% (down 15.8% since 2011), smokeless use at 3.1% (down 7.9% since 2011) and cigar use at 5% (down 11.6% since 2011). In fact, the 2021 early data shows ENDS use has fallen again

¹ CDC Tobacco Data Statistics *Estimates of Current Tobacco Use Among Youth*
https://www.cdc.gov/tobacco/data_statistics/fact_sheets/youth_data/tobacco_use/index.htm

1044 Central Street, Suite 203
Stoughton, MA 02072
(781) 297 – 9600

to 11.3% - a 60% drop in two years. As you can see, there are stark difference in the various products' youth appeal rates.

The Maine state legislature took the time to understand these facts and didn't allow emotion to dictate their decision on LD 1550. Had the bill not been pulled by the sponsors, the legislature \ likely would have passed an alternative that only banned flavored ENDS and included an PMTA authorized products exemption.

Understanding PMTA is absolutely critical as you consider this proposed ban. By September 2020, every ENDS product had to submit an application to the FDA to remain on the market. Since then, the FDA has acted on nearly 7,000,000 flavored ENDS/vapor applications and granted only 22 authorizations. The only products that will remain available are those the FDA has determined are "appropriate for the protection of public health". This is a science-based process, not an emotional one, and I would hope Portland would want these products available to legal adults if they FDA authorizes them. I was shocked your local tobacco control coordinator did not include any mention of this process in her presentation.

A local ban will not stop youth who are already knowingly breaking the law and it will not hurt the tobacco manufacturers since their products will continue to be sold, just not in Portland. Look no further than Massachusetts which saw virtually all the products come back into the state via New Hampshire and Rhode Island, coupled with a migration to traditional tobacco and vape. It will only hurt your local retailers. These local retailers are the only face to face gatekeepers for age-restricted tobacco and have a 97% compliance rate. Out of the 169 inspections since 2018 there have only been 5 violations. They are doing their job!

I implore you to oppose this proposed by-law. It is misguided as a targeted approach to reduce youth nicotine access and initiation, it ignores the science-based work of the FDA, it overreaches to impact Portland's adults, and will do nothing to reduce use or access while only serving to damage legal, licensed, tax-paying businesses in your city and the jobs those businesses provide and the families those jobs provide for.

Respectfully submitted,



Jonathan Shaer
Executive Director
Jon@necsema.net
781-297-9600 x3

1044 Central Street, Suite 203
Stoughton, MA 02072
(781) 297 – 9600

Proposed Portland Flavor Ban 1 view



brandi.cushman@cnbrown.com <brandi.cushman@cnbro... Nov 15, 2021, 9:08:11 AM
to council@portlandmaine.gov, publiccomment@portlandmaine.gov

Good morning council members.

My name is Brandi Cushman and I am the Director of Purchasing for C. N. Brown Company. We own and operate two Big Apple Convenience Stores in the City of Portland.

I hope that you will take a few minutes to read our concerns with this proposed flavor ban in the attached document.

I appreciate your time.

Thank you,

Brandi Cushman

Director of Purchasing and Merchandising

C. N. Brown Company

P.O. Box 200

1 C. N. Brown Way

South Paris, ME 04281

☎: 207-743-4200 ext. 3102

📠: 207-743-8357

✉: brandi.cushman@cnbrown.com

www.cnbrown.com

When you think something is more important than a Customer.....Think Again





1 CN Brown Way
PO Box 200
South Paris, ME 04281
Phone: (207) 743-9212
Fax: (207) 743-8357
Toll Free 800-432-4211
cnbrown.com

Portland City Council
City Hall
389 Congress Street
Portland, ME 04101

RE: Portland City Ordinance Ending the Sale of Flavored Tobacco Products

Portland City Council-

Thank you for taking the time to read C. N. Brown Company's concerns with the proposed city ordinance ending the sale of flavored tobacco products.

My name is Brandi Cushman and I am the Director of Purchasing and Merchandising and the Category Manager of tobacco for C. N. Brown Company. We own and operate the Big Apple convenience stores at 2 Park Avenue and 16 Washington Ave. in Portland employing a total of 18 associates. Those are 18 local jobs we have created.

I am writing in opposition of this city ordinance, an ordinance that will dramatically decrease the operating revenue and profitability of many stores within the city, will affect jobs, and do nothing to keep these products that you propose to ban out of the hands of your youth as it is intended.

Zero Tolerance

We have absolutely no interest in selling tobacco to the youth in your city or anywhere else. We have training, policies, and procedures in place to ensure, to the best of our ability, that tobacco products do not get into the hands of your youth. In fact, we take this so seriously that in the rare instance an employee is found in violation of the law, and our internal training and policies regarding underage tobacco sales, they are immediately terminated. Retailers like us are on the front-line protecting young people in your city and throughout the State of Maine and we take that responsibility very seriously.

Goes Too Far

It is stated that this ordinance is about protecting youth, however, this policy is looking to ban many adult-preferred products including menthol cigarettes, mint and wintergreen smokeless tobacco and flavored cigars. The CDC's 2020 National Youth Tobacco Survey shows that high school-aged use for ENDS/vapor is 19.6% (down from 27.5% in 2019), cigarettes use at 4.6% (down 15.8% since 2011), smokeless use at 3.1% (down 7.9% since 2011) and cigar use at 5% (down 11.6% since 2011). This shows that the most preferred products by youth (although it has declined significantly) are ENDS/vapor products, yet the city is looking to ban ALL flavored tobacco products.

Federal Action

The FDA is diligently working through the Pre-Market Tobacco Application (PMTA) process with vapor products and has already removed more than 6,000,000 of these products from the market by denying their PMTA application. The only products the FDA will allow to remain on the market are those that they have determined are “appropriate for the protection of public health”. The FDA is using a science based approach to ensure that vapor products that meet their standards are available to adult tobacco consumers.

Doesn't Eliminate Access

Local tobacco bans are not going to protect your youth. If this ordinance is passed, flavored tobacco and ENDS/vapor users, including youth illegally obtaining such products, will simply go to the next city/town to get the products they want. The only people that will be negatively affected by this ordinance are your legal, licensed, tax paying local businesses who will not only lose the sale of these legal products to adult tobacco consumers, but also all of the ancillary sales these customers take with them.

The majority of youth are getting these products via adult tobacco consumers, including parents. Instead of continually attacking retailers on this issue, let's put some responsibility on the youth access issue where it lies.

With alcohol there are numerous laws on the books in regards to Illegal Possession by a Minor, Illegal Transportation by a Minor, and Furnishing to a Minor. If youth access is truly the concern of this council, these are the same laws that need to be in place and enforced for tobacco products. (I have attached a listing of these laws.) Stop making retailers shoulder all of the burden and all of the consequences of the youth access issue.

At the same time, in the rare instance that an associate at a retail establishment fails a sting because **they choose** to ignore the age verification prompt of the POS system as well as all policies and training procedures of that retail establishment, that associate should receive some form of consequence from the city and/or state, not solely the retailer. Retailers do everything in their power to make sure an illegal sale to a minor does not occur but we cannot control an associate who chooses to ignore all of the retailer's precautions.

We believe that these issues should be debated where they belong, at the state level and with the FDA. Allow the FDA, with its resources, to determine which products are safe and which are not so that adult tobacco consumers are not forced to travel across city limits to purchase legal products and therefore hurt businesses within the city of Bangor.

We strongly encourage that you vote no on the city ordinance ending the sale of flavored tobacco products.

Thank you.

A Flavored Tobacco Ban is Bad Policy -- Please Oppose 2 views



MEGAN TURBIDE <Mturbide76@gmail.com>

Dec 8, 2021, 2:21:40 PM

to publiccomment@portlandmaine.gov

Dear Portland City Council,

As your constituent, I'm very disappointed to learn that the Portland City Council is considering a ban on menthol cigarettes, flavored dip, and flavored cigars for adults 21 and older. This would be adult prohibition and goes too far--I ask you to please oppose a ban on these tobacco products.

We all agree that kids shouldn't use tobacco products--that's why the law is 21. But banning legal flavored tobacco products and menthol cigarettes for adults 21 and older is too extreme and bad policy.

A ban wouldn't get rid of these products. Instead, it will just drive consumers to nearby towns or even worse--the illegal market--to get their products. As a result, a ban will increase crime, endanger consumers, and hurt small businesses and our communities.

Our local lawmakers should be focused on the economy, jobs, and addressing the rising cost of living--instead of limiting adult choices by banning legal products.

Please oppose this extreme proposal.

Sincerely,
MEGAN TURBIDE
170 Portland Ave
Old Orchard Beach, ME 04064-1293



Olivia Curtis <ocurtis1832@gmail.com>

Dec 13, 2021, 4:37:39 PM

to publiccomment@portlandmaine.gov

Dear Portland City Council,

As your constituent, I'm very disappointed to learn that the Portland City Council is considering a ban on menthol cigarettes, flavored dip, and flavored cigars for adults 21 and older. This would be adult prohibition and goes too far--I ask you to please oppose a ban on these tobacco products.

We all agree that kids shouldn't use tobacco products--that's why the law is 21. But banning legal flavored tobacco products and menthol cigarettes for adults 21 and older is too extreme and bad policy.

A ban wouldn't get rid of these products. Instead, it will just drive consumers to nearby towns or even worse--the illegal market--to get their products. As a result, a ban will increase crime, endanger consumers, and hurt small businesses and our communities.

Our local lawmakers should be focused on the economy, jobs, and addressing the rising cost of living-- instead of limiting adult choices by banning legal products.

Please oppose this extreme proposal.

Sincerely,

Olivia Curtis
16 Adelaide Rd
Apt A
Old Orchard Beach, ME 04064-2227



Heather Brooks <heatherbrooks024@gmail.com>
to publiccomment@portlandmaine.gov

Dec 15, 2021, 12:33:45 PM

Dear Portland City Council,

As your constituent, I'm very disappointed to learn that the Portland City Council is considering a ban on menthol cigarettes, flavored dip, and flavored cigars for adults 21 and older. This would be adult prohibition and goes too far--I ask you to please oppose a ban on these tobacco products.

We all agree that kids shouldn't use tobacco products--that's why the law is 21. But banning legal flavored tobacco products and menthol cigarettes for adults 21 and older is too extreme and bad policy.

A ban wouldn't get rid of these products. Instead, it will just drive consumers to nearby towns or even worse--the illegal market--to get their products. As a result, a ban will increase crime, endanger consumers, and hurt small businesses and our communities.

Our local lawmakers should be focused on the economy, jobs, and addressing the rising cost of living-- instead of limiting adult choices by banning legal products.

Please oppose this extreme proposal.

Sincerely,

Heather Brooks
36 Maggie Ln
Portland, ME 04103-6502



to publiccomment@portlandmaine.gov

Dear Portland City Council,

As your constituent, I'm very disappointed to learn that the Portland City Council is considering a ban on menthol cigarettes, flavored dip, and flavored cigars for adults 21 and older. This would be adult prohibition and goes too far--I ask you to please oppose a ban on these tobacco products.

We all agree that kids shouldn't use tobacco products--that's why the law is 21. But banning legal flavored tobacco products and menthol cigarettes for adults 21 and older is too extreme and bad policy.

A ban wouldn't get rid of these products. Instead, it will just drive consumers to nearby towns or even worse--the illegal market--to get their products. As a result, a ban will increase crime, endanger consumers, and hurt small businesses and our communities.

Our local lawmakers should be focused on the economy, jobs, and addressing the rising cost of living--instead of limiting adult choices by banning legal products.

Please oppose this extreme proposal.

Sincerely,
Phyllis Nimer
749 Diabolo Rd
Danville, CA 94526



Katie Wilson <katiewils0nn@icloud.com>
to publiccomment@portlandmaine.gov

Dec 17, 2021, 6:55:03 PM

Dear Portland City Council,

As your constituent, I'm very disappointed to learn that the Portland City Council is considering a ban on menthol cigarettes, flavored dip, and flavored cigars for adults 21 and older. This would be adult prohibition and goes too far--I ask you to please oppose a ban on these tobacco products.

We all agree that kids shouldn't use tobacco products--that's why the law is 21. But banning legal flavored tobacco products and menthol cigarettes for adults 21 and older is too extreme and bad policy.

A ban wouldn't get rid of these products. Instead, it will just drive consumers to nearby towns or even worse--the illegal market--to get their products. As a result, a ban will increase crime, endanger consumers, and hurt small businesses and our communities.

Our local lawmakers should be focused on the economy, jobs, and addressing the rising cost of living--instead of limiting adult choices by banning legal products.

Please oppose this extreme proposal.

Sincerely,

Katie Wilson
25 Munjoy S
Portland, ME 04101-4310



Duane Tower <duanetower11@gmail.com>
to publiccomment@portlandmaine.gov

Dec 18, 2021, 2:53:45 PM

Dear Portland City Council,

As your constituent, I'm very disappointed to learn that the Portland City Council is considering a ban on menthol cigarettes, flavored dip, and flavored cigars for adults 21 and older. This would be adult prohibition and goes too far--I ask you to please oppose a ban on these tobacco products.

We all agree that kids shouldn't use tobacco products--that's why the law is 21. But banning legal flavored tobacco products and menthol cigarettes for adults 21 and older is too extreme and bad policy.

A ban wouldn't get rid of these products. Instead, it will just drive consumers to nearby towns or even worse--the illegal market--to get their products. As a result, a ban will increase crime, endanger consumers, and hurt small businesses and our communities.

Our local lawmakers should be focused on the economy, jobs, and addressing the rising cost of living--instead of limiting adult choices by banning legal products.

Please oppose this extreme proposal.

Sincerely,

Duane Tower
4816 Briarcliff Sq
Apt 13
Honeoye, NY 14471-9680



Duane Tower <duanetower11@gmail.com>
to publiccomment@portlandmaine.gov

Dec 18, 2021, 2:56:12 PM

Dear Portland City Council,

As your constituent, I'm very disappointed to learn that the Portland City Council is considering a ban on menthol cigarettes, flavored dip, and flavored cigars for adults 21 and older. This would be adult prohibition and goes too far--I ask you to please oppose a ban on these tobacco products.

We all agree that kids shouldn't use tobacco products--that's why the law is 21. But banning legal flavored tobacco products and menthol cigarettes for adults 21 and older is too extreme and bad policy.

A ban wouldn't get rid of these products. Instead, it will just drive consumers to nearby towns or even worse--the illegal market--to get their products. As a result, a ban will increase crime, endanger consumers, and hurt small businesses and our communities.

Our local lawmakers should be focused on the economy, jobs, and addressing the rising cost of living-- instead of limiting adult choices by banning legal products.

Please oppose this extreme proposal.

Sincerely,
Duane Tower
4816 Briarcliff Sq
Apt 13
Honeoye, NY 14471-9680

Protect Portland Children from Tobacco Addiction 1 view



Deb Smith <executivedirector.mahperd@gmail.com>

Nov 9, 2021, 3:42:13 PM

to council@portlandmaine.gov, publiccomment@portlandmaine.gov

Dear Portland City Council Health & Human Services and Public Safety Committee

Chair Councilor Tae Chong, and Councilor Belinda Ray, and Councilor Mark Dion

I am Deb Smith a resident of Portland and the Executive Director of the Maine Association for Health, Physical Education, Recreation, and Dance (MAHPERD). The MAHPERD Board of Directors signed on to the Flavors Hook Kids Campaign in Maine in 2021. The MAHPERD Board, and I are supportive of the ordinance to end the sale of Flavored Tobacco Products in Portland.

The use of tobacco products remains the nation's number one cause of preventable death and in Maine, nearly 1 in 5 adults smoke cigarettes, the highest rate in the Northeast. In recent years, overall youth tobacco use in Maine has skyrocketed, largely driven by the youth e-cigarette use epidemic and now 1 in 2 Maine high school students and 1 in 6 middle school students have used e-cigarettes.

Tobacco companies are targeting youth with flavored tobacco products. Products that come in array of kid friendly candy and fruit flavors such as mint, cherry, grape jelly, cotton candy, piña colada, and cinnamon roll, all sold in colorful packaging that is designed to attract tweens and teens. Nationwide, nearly 81% of youth ages 12 to 17 who had ever used a tobacco product reported that the first product they used was flavored. Tobacco companies use flavor to hook a new generation of kids on its deadly products. Flavors hide the bad taste of tobacco and make it easier for kids to try. Menthol has the additional quality of soothing the irritation of combustible cigarettes, which is why so many young people start smoking using menthol cigarettes.

We must do everything in our power to keep our communities healthy and safe and we applaud the Portland City Council for making sure that Portland residents are healthy and safe against the harms from tobacco with the ordinance.

Sincerely,

Deb Smith
201 Bradley Street
Portland, ME 04102
Executivedirector.mahperd@gmail.com

--

Deb Smith
Executive Director, Maine AHPERD



Engage • Educate • Inspire

NECSEMA comments on proposed flavored tobacco ban in Portland, ME

0 views



Havens, Jonathan A. <Jonathan.Havens@saul.com> Nov 22, 2021, 3:21:13 PM
to ksnyder@portlandmaine.gov, council@portlandmaine.gov, publiccomment@portlandmaine.gov

Dear Mayor Snyder and Members of the Portland City Council:

On behalf of our client, the New England Convenience Store and Energy Marketers Association (NECSEMA or the Association), I am submitting the attached comments regarding the proposed ordinance that would ban the sale of flavored tobacco products in Portland, Maine.

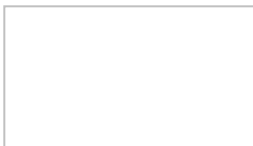
I would ask that you include these comments in the Councilor's agenda packet for when the City Council meets to discuss the proposed flavored tobacco ban.

Thank you for your consideration of these comments.

Sincerely,

Jonathan Havens

Outside Counsel to NECSEMA



Jonathan A. Havens

500 E. Pratt Street | Suite 900 | Baltimore, MD 21202
1919 Pennsylvania Ave., NW | Suite 550 | Washington, D.C. 20006
O: 410.332.8757 | M: 301.404.0674 | F: 410.332.8179
Jonathan.Havens@saul.com | www.saul.com | [LinkedIn](#) | [Twitter](#)

Click  for an interactive look at the latest from our Cannabis Law Team.

"Saul Ewing Arnstein & Lehr LLP (saul.com)" has made the following annotations:

+~~~~~+

This e-mail may contain privileged, confidential, copyrighted, or other legally protected information. If you are not the intended recipient (even if the e-mail address is yours), you may not use, copy, or retransmit it. If you have received this by mistake please notify us by return e-mail, then delete.

+~~~~~+



November 22, 2021

Mayor Kate Snyder
Members of the Portland City Council
City of Portland
389 Congress Street
Portland, ME 04101

Re: Comments on proposed flavored tobacco ban in Portland, ME

Dear Mayor Snyder and Members of the Portland City Council:

On behalf of our client, the New England Convenience Store and Energy Marketers Association (NECSEMA or the Association), I am submitting these comments regarding the proposed ordinance that would ban the sale of flavored tobacco products in Portland, Maine. I would ask that you include these comments in the Councilor's agenda packet for when the City Council meets to discuss the proposed flavored tobacco ban. I am outside counsel to NECSEMA, and advise the Association on various state and federal regulatory matters. Prior to entering private practice, I served as a regulatory counsel with the U.S. Food and Drug Administration's (FDA or the Agency) Center for Tobacco Products (CTP). Prior to starting law school, I served as a legislative aide in the U.S. Senate and U.S. House of Representatives.

As you know, the proposed ban would prohibit in Portland the sale and consumption of flavored tobacco products, including any smell or taste relating to fruit, menthol, or candy. NECSEMA opposes the proposed flavor ban for numerous reasons, including: (1) flavored products that the U.S. Food and Drug Administration (FDA or the Agency) has authorized for marketing would be banned under the ordinance; (2) the Maine Legislature considered such a ban last session and will likely do so again this session; and (3) local tobacco-related bans are ineffective. In short, the federal government and the State are equipped to handle how best to regulate flavored tobacco products, and NECSEMA urges you to let them do so.

The primary focus of these comments is to alert you to the fact that banning flavored tobacco products in Portland would undermine FDA's robust regulation of the same. By law, any flavored tobacco product that FDA allows on the market would have included a determination by the Agency that such product is "appropriate for the protection of public health"¹ and/or "appropriate to promote

¹ 21 U.S.C. § 387j(c)(4).

public health.”² When reviewing medical products, FDA uses a “safe and effective” standard. However, this standard does not apply to tobacco products. Instead, when considering a tobacco product marketing application, the Agency uses an arguably more rigorous standard, the “public health” standard, that requires FDA to consider “the risks and benefits of the tobacco product to the population as a whole, including users and nonusers.”³

More specifically, per the language in the Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act), in finding that the marketing of a tobacco product for which a marketing application has been submitted is appropriate for the protection of public health, FDA *must* consider:

- (A) The increased or decreased likelihood that existing users of tobacco products will stop using such products; and
- (B) The increased or decreased likelihood that those who do not use tobacco products will start using such products.⁴

To get a sense of what a marketing application requires, consider the following elements, which a PMTA must contain:

- (A) Full reports of all information, published or known to, or which should reasonably be known to, the applicant, concerning investigations which have been made to show the health risks of such tobacco product and whether such tobacco product presents less risk than other tobacco products;
- (B) A full statement of the components, ingredients, additives, and properties, and of the principle or principles of operation, of such tobacco product;
- (C) A full description of the methods used in, and the facilities and controls used for, the manufacture, processing, and, when relevant, packing and installation of, such tobacco product;
- (D) An identifying reference to any tobacco product standard under 21 U.S.C. § 387g which would be applicable to any aspect of such tobacco product, and either adequate information to show that such aspect of such tobacco product fully meets such tobacco product standard or adequate information to justify any deviation from such standard;
- (E) Such samples of such tobacco product and of components thereof as FDA may reasonably require;
- (F) Specimens of the labeling proposed to be used for such tobacco product; and
- (G) Such other information relevant as the Agency may require.

When one considers the breadth and depth of these requirements, it is no surprise that PMTA

² *Id.* at § 387k(g)(2)(A)(i).

³ FDA, “A New Standard of Effective Regulation,” <https://www.fda.gov/tobacco-products/rules-regulations-and-guidance/rules-and-regulations> (last updated Oct. 4, 2021).

⁴ Family Smoking Prevention and Tobacco Control Act, June 22, 2009, Pub. L. 111-31, 123 Stat. 1776, 1816.

submissions can easily exceed one million pages.

As the City of Portland considers the measure before it, I suspect one question will be, “If we do not ban the sale of flavored tobacco products, how will the health of Portland residents be protected?” The answer to that question is that FDA’s rigorous review of any product that is the subject of an Agency marketing order will have been evaluated thoroughly with regard to the risks and benefits of the product to the population as a whole, including tobacco users and nonusers. Moreover, with regard to such products, FDA will have already considered: (1) the increased or decreased likelihood that current tobacco users will stop using such product; and (2) the increased or decreased likelihood that nonusers will start using such product. In short, the Agency’s review standard ensures that granting a marketing order for such product is appropriate for the protection of public health.

Proof of the rigor of FDA’s tobacco product review standard is that on October 21, 2021, the Agency for the very first time authorized the marketing of three new electronic nicotine delivery system (ENDS) products.⁵ A week later, FDA authorized the marketing of four smokeless tobacco products, all of them mint flavored.⁶ To provide some context:

- The Agency on August 26, 2021 announced that it denied marketing applications for approximately 55,000 flavored ENDS products for “failing to provide evidence they appropriately protect public health.”⁷
- Earlier that month, FDA on Aug. 9, 2021 issued a Refuse to File (RTF) letter to JD Nova Group LLC, in which the Agency notified the company that their PMTAs that are associated with approximately 4.5 million of their products did not meet the filing requirements for a new tobacco product seeking a marketing order.⁸

Clearly, the robust standard that tobacco products must meet in order to receive a marketing order from FDA is serving to protect the public health. Rather than believing that the proposed flavor ban is the only way to protect Portland residents, you can rest assured that allowing only those flavored tobacco products that receive an Agency marketing order is a more than adequate measure to protect the health of your constituents.

⁵ FDA, “Premarket Tobacco Product Marketing Granted Orders,” <https://www.fda.gov/tobacco-products/premarket-tobacco-product-applications/premarket-tobacco-product-marketing-granted-orders> (last updated Oct. 25, 2021).

⁶ *Id.*

⁷ FDA, Press Release – “FDA Denies Marketing Applications for About 55,000 Flavored E-Cigarette Products for Failing to Provide Evidence They Appropriately Protect Public Health,” Aug. 26, 2021, <https://www.fda.gov/news-events/press-announcements/fda-denies-marketing-applications-about-55000-flavored-e-cigarette-products-failing-provide-evidence>.

⁸ FDA, Press Release – “FDA Issues Refuse to File (RTF) Letter to JD Nova Group LLC,” Aug. 9, 2021, https://www.fda.gov/tobacco-products/ctp-newsroom/fda-issues-refuse-file-rtf-letter-jd-nova-group-llc/?utm_content=landingpage&utm_medium=email&utm_source=govdelivery&utm_term=stratcomms.

Mayor Snyder and Portland City Council Members

November 22, 2021

Page 4

Thank you for your consideration of these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Jonathan A. Havens", written over a light gray rectangular background.

Jonathan A. Havens
Outside Counsel to NECSEMA

ad in MA newspapers 0 views



Jon Shaer <jon@necsema.net>

Nov 28, 2021, 8:26:20 PM

to Kate Snyder, council@portlandmaine.gov, publiccomment@portlandmaine.gov

Good evening, Mayor Snyder and Councilors,

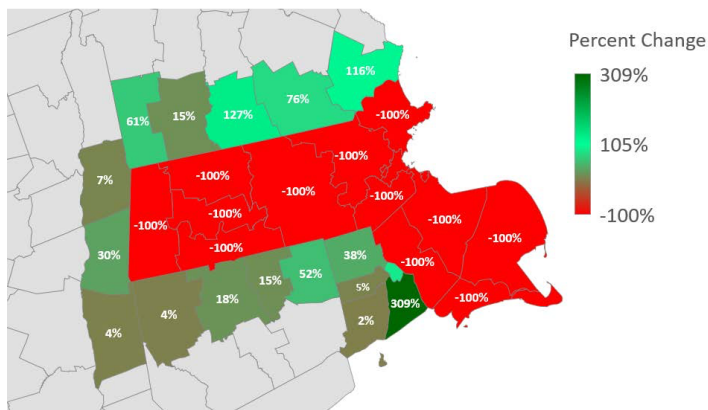
As we approach the first of two readings on the proposal to ban flavored tobacco, I want to share two images that help illustrate the important point that local bans do not work.

The first is an advertisement that appears in the Boston Herald and Boston Globe almost every day since the Massachusetts flavored tobacco ban began on 6/2020 and is likely running in other papers as well. Foods Plus is just over the MA border and runs this same ad which informs MA residents that menthol and other flavored tobacco remain available to them just over the border in Plaistow, NH. This store is spending hundreds of thousands of dollars advertising. It's safe to say that if it wasn't working, they wouldn't continue to spend the money. Imagine how much they're making!?



Unless every town within reasonable proximity to Portland enacts the same ban, then the ban is ineffective in limiting access to the products. That is why this issue should be handled, at minimum, in the state legislature. In truth, even a state ban would be ineffective since there isn't any way New Hampshire will enact a ban. Therefore, it really needs to be addressed at the federal level. A local-only ban impacts one group – the 50 legal retailers Portland has licensed to responsibly sell tobacco products. And they've done it at a 97% FDA-verified compliance rate.

This second image is a heat map of menthol cigarette sales 12 months following the ban. I think the image speaks for itself and further makes the point that products continue to be sold and come back into the voided market. In this case, Portland.



Respectfully,

Jon

Jonathan Shaer, Executive Director

New England Convenience Store & Energy Marketers Association, Inc. (NECSEMA)

1044 Central Street, Suite 203, Stoughton, MA 02072

Mobile: 774-406-1997 | Office: 781-297-9600 ext. 3 | Fax: 781-297-9601

jon@necsema.net | www.necsema.net | [Join NECSEMA](#)



FW: PLEASE include my comments to the packet for the meeting where the Flavored Tobacco Ban will receive a first reading

1 view



Julie Parker <PortlandCon@cigaretshopper.com>

Nov 12, 2021, 10:25:22 AM

to publiccomment@portlandmaine.gov, council@portlandmaine.gov

From: Julie Parker

Sent: Friday, November 12, 2021 9:30 AM

To: Chris Beaulier <Chris@cigaretshopper.com>

Cc: Julie Parker (julieparker286@gmail.com) <julieparker286@gmail.com>

Subject: PLEASE include my comments to the packet for the meeting where the Flavored Tobacco Ban will receive a first reading

To whom this may concern,

I'm a voter and Portland resident and manage the Cigaret Shopper on Congress Street. I want to oppose the ordinance banning the sale of flavored tobacco and vapor products in Portland. If this ban is passed, I will have to travel outside of the city and give another town my tax dollars. I would prefer to keep my money in the city I live and work in. This city is for small businesses and if this passes the city will lose a lot of the small businesses that are struggling to stay open. Congress Street use to be so full of people and businesses and now there are more for lease signs on vacant retail space do you really want to add more to that?

We as an adult's have the right to make our own choices in life and you are now trying to make it, so we do not have that right. I have lived in this city for 27 years and I have been working on Congress Street the whole time and have been watching the struggles of every person in the downtown district. The homeless, the mentally ill, the elderly the blue-collar workers and corporate employees do not have places to really shop for there needs on Congress Street. By taking flavored tobacco and vape products will not only hurt the store I manage it will hurt downtown just as much.

This city would lose so much tax dollars that it would hurt everyone that is still trying to afford to live in the city. In the meeting on the 9th, I sat in the zoom meeting and listened to you say that the city will not have money to help the homeless if you do not get the federal funding you need. Isn't this a more important situation you should be dealing with. And with me saying that you stop the sales of all the products you are trying to ban is this really going to help? I can answer that, and I know you can as well.

To me I feel you should be also more concerned about the crime's that are happening in this city, the illegal drug activities, rent control, the roads, and getting more businesses to come back to the downtown area.

Also, in the same meeting I listened to a school nurse talk about a middle school child STEALING their parents vape device and taking it to school. Well, no offense but that child should be taught at home about tobacco. Hold the parents accountable not everyone else!!!! Remember Maine does have the best grade for not selling to minors so why punish us for something that is obviously not the store's fault.

Thank you,

Julie Parker

Cigaret Shopper

579 Congress Street

Portland, Maine

A Flavored Tobacco Ban is Bad Policy -- Please Oppose 1 view



Tara Florentine <tflo02@att.net>
to publiccomment@portlandmaine.gov

Jan 8, 2022, 8:54:51 AM (4 days ago)

Dear Portland City Council,

As your constituent, I'm very disappointed to learn that the Portland City Council is considering a ban on menthol cigarettes, flavored dip, and flavored cigars for adults 21 and older. This would be adult prohibition and goes too far--I ask you to please oppose a ban on these tobacco products.

We all agree that kids shouldn't use tobacco products--that's why the law is 21. But banning legal flavored tobacco products and menthol cigarettes for adults 21 and older is too extreme and bad policy.

A ban wouldn't get rid of these products. Instead, it will just drive consumers to nearby towns or even worse--the illegal market--to get their products. As a result, a ban will increase crime, endanger consumers, and hurt small businesses and our communities.

Our local lawmakers should be focused on the economy, jobs, and addressing the rising cost of living--instead of limiting adult choices by banning legal products.

Please oppose this extreme proposal.

Sincerely,
Tara Florentine
2739 Rockford Rd
Shelby, NC 28152-9606

A Flavored Tobacco Ban is Bad Policy -- Please Oppose

Public Comment inbox



Joseph Rowe <rowej280@gmail.com>

6:40 AM (9 hours ago)

to publiccomment

Dear Portland City Council,

As your constituent, I'm very disappointed to learn that the Portland City Council is considering a ban on menthol cigarettes, flavored dip, and flavored cigars for adults 21 and older. This would be adult prohibition and goes too far--I ask you to please oppose a ban on these tobacco products.

We all agree that kids shouldn't use tobacco products--that's why the law is 21. But banning legal flavored tobacco products and menthol cigarettes for adults 21 and older is too extreme and bad policy.

A ban wouldn't get rid of these products. Instead, it will just drive consumers to nearby towns or even worse--the illegal market--to get their products. As a result, a ban will increase crime, endanger consumers, and hurt small businesses and our communities.

Our local lawmakers should be focused on the economy, jobs, and addressing the rising cost of living--instead of limiting adult choices by banning legal products.

Please oppose this extreme proposal.

Sincerely,

Joseph Rowe

37 Casco St

Apt 205

Portland, ME 04101-2932

A Flavored Tobacco Ban is Bad Policy -- Please Oppose

Public Comment inbox



Richard Hoyt <richard.t.hoyt@gmail.com>

Thu, Jan 13, 7:10 PM (21 hours ago)

to publiccomment

Dear Portland City Council,

As your constituent, I'm very disappointed to learn that the Portland City Council is considering a ban on menthol cigarettes, flavored dip, and flavored cigars for adults 21 and older. This would be adult prohibition and goes too far--I ask you to please oppose a ban on these tobacco products.

We all agree that kids shouldn't use tobacco products--that's why the law is 21. But banning legal flavored tobacco products and menthol cigarettes for adults 21 and older is too extreme and bad policy.

A ban wouldn't get rid of these products. Instead, it will just drive consumers to nearby towns or even worse--the illegal market--to get their products. As a result, a ban will increase crime, endanger consumers, and hurt small businesses and our communities.

Our local lawmakers should be focused on the economy, jobs, and addressing the rising cost of living--instead of limiting adult choices by banning legal products.

Please oppose this extreme proposal.

Sincerely,

Richard Hoyt

796 Brighton Ave

Portland, ME 04102-1016