

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)

SPECIAL CITY COUNCIL MEETING - FEBRUARY 28, 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.

This meeting will be held remotely pursuant to the Remote Meeting Policy adopted by the Portland City Council and as authorized under 1 M.R.S. 403-B because of the existence of an emergency or urgent issue that requires the committee to meet by remote methods. 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 available in the [Agenda Center](#) following the meeting.

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:

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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://portlandmaine-gov.zoom.us/j/kdL3evbtBR>

PLEDGE OF ALLEGIANCE:

ROLL CALL:

ANNOUNCEMENTS:

APPROVAL OF MINUTES OF PREVIOUS MEETING:

Approval of the Draft February 7, 2022 City Council Meeting Minutes

APPOINTMENTS:

Order 146-21/22 Confirming the Appointment of Kari L. Twaite as Associate Corporation Counsel - Sponsored by Acting Corporation Counsel Jen Thompson

Attorney Kari L. Twaite has extensive regulatory experience, including with enforcement, rule and ordinance interpretation and drafting, and an excellent sense of what it means to work for a governmental entity given that she has spent several years of her career working for the federal government. This order would confirm her appointment and set her salary at \$106,671.

Five affirmative votes are required for passage after public comment.

COMMUNICATIONS:

Com 13-21/22 Appointing Members of the Re-Appportionment Committee - Sponsored by Kate Snyder, Mayor

By this communication, Mayor Snyder creates the Reapportionment Committee, which will work to formulate preliminary proposals and prepare a recommendation to the City Council for the shifting of the precinct lines in response to Census data and changes made at the State level to House and Senate Districts. Any proposed changes would be made in the form of an amendment to Chapter 9 of the City Code and would require consideration and approval by the full Council.

The Mayor has appointed the following to the Reapportionment Committee to address this reapportioning issue:

Councilor April Fournier, City Councilor At-Large
Councilor Pious Ali, City Councilor At-Large
Katherine Jones, City Clerk
Melissa Cowie, Deputy City Clerk,
Paul Riley, Elections Administrator
Jen Thompson, Acting Corporation Counsel
Jon Giles, Survey, GIS & Archives Manager, Dep't of Public Works
Thea Youngs, GIS Mapping Specialist, Dep't of Public Works

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

UNFINISHED BUSINESS:

Order 143-21/22 Approving the Collective Bargaining Agreement with the American Federation of State, County and Municipal Employees (AFSCME) Local 481-07 Supervisors - Sponsored by Danielle West, Interim City Manager

City staff has reached a tentative three (3) year agreement with AFSCME Supervisors representing approximately 38 supervisors and foremen. The tentative agreement is within guidance received from Council on July 27, 2021.

The parties have tentatively agreed to a three (3) year contract with general wage increases as follows:

2% effective retroactive to July 4, 2021

2.5% effective July 3, 2022

3% effective July 2, 2023

In addition, the City has agreed to implement a longevity step at sixteen plus (16+) years upon Council vote of approval of the new contract and a twenty plus (20+) year step effective July 3, 2022. The City will also implement Earned Paid Leave in accordance with 26 M.R.S. Sec 637.

Other economic items include:

- Adding Juneteenth as a recognized holiday and changing Columbus Day to Indigenous People's Day
- Adding \$.10 per hour increase to shift differentials
- Increase to standby pay
- Adding Fleet Services supervisors & foreman to the uniform rental agreement

The contract term is July 2, 2021 through June 30, 2024. The total direct cost of the general wage increase and other economic impacts is approximately \$370,000.00. Other language changes which do not have a financial impact have also been agreed to. The Supervisors members have ratified the three (3) year agreement.

This item must be read on two separate days. It received its first reading on February 7, 2022. Five affirmative votes are required for passage after public comment.

Order 145-21/22 Amendment to the Portland City Code Chapter 33 Re: Hazard Pay in Effect during Mask Mandate - Sponsored by Councilor Victoria Pelletier

This amendment to the Portland City Code would institute a "Hazard Pay" of 1.5 times the City's minimum wage for work performed when the City of Portland's Public Face Covering Mandate (Portland City Code Chapter 17, Article XII) is in effect. This amendment would be retroactive to February 7, 2022.

This item must be read on two separate days. It received its first reading on February 7, 2022. Five affirmative votes are required for passage after public comment.

Written Public Comment on Order 145-21/22

ORDERS:

Order 147-21/22 Extending Charter Review Commission Deadlines - Sponsored by Danielle West, Interim City Manager

Under State law (30-A MRS S2103(5)(E)), the City Council “may extend the time limits for the preparation and submission of preliminary and final reports of the charter commission for up to 24 months after the election of the commission if the extension is necessary to:

(1) Properly complete the reports;” The Charter Commission and its several Committees have been diligently carrying out their work on numerous proposals for Charter revisions with the intent to meet deadlines that would allow the Commission to place the resulting Charter revision questions on the November 2022 ballot. However, the number and scope of the revision proposals requested by the public at the Commission’s initial public hearing require an extension of time to properly draft those proposals in the format and language of the Charter and to complete the preliminary and final reports that would contain and accompany these proposals, while still meeting the deadline for the November 2022 election ballot.

At the request of the Charter Review Commission, this item moves the deadline for the preliminary Charter Review Commission report to the City Council from March 8, 2022 to on or before May 9, 2022, and the final report deadline from June 8, 2022 to on or before July 11, 2022.

Five affirmative votes are required for passage of a resolution after public comment.

Order 148-21/22 Approving the Housing and Urban Development Citizen Participation Plan for the City of Portland - Sponsored by the Housing & Economic Development Committee, Councilor Pious Ali, Chair

The Housing & Economic Development Committee reviewed and approved the changes on January 18, 2022 and voted (4-0) to forward the item to council for approval.

The Citizen Participation Plan is a required document that outlines the methods and procedures by which the City will communicate with the public regarding the federal programs administered by the Housing and Community Development Division (HCD). These programs include, but are not limited to, programs administered by the U.S. Department of Housing and Urban Development, such as the Community Development Block Grant Program (CDBG), HOME Program, and Emergency Solutions Grant Program (ESG). Federal requirements necessitate updates to the Citizen Participation Plan to increase accessibility for low-income individuals and those with limited English proficiency; additional changes are also proposed.

Five affirmative votes are required for passage after public comment.

Order 149-21/22 Setting the Public Hearings on 2022-2026 Housing and Urban Development Five-Year Consolidated Plan, Fiscal Year 2023 Annual Action Plan and Appropriations for Community Development Block Grant Program, HOME Program, and Emergency Solutions Grant Program - Sponsored by Danielle P. West, Interim City Manager

The United States Housing and Urban Development Department (HUD) requires that the City create a Consolidated Plan outlining the needs, goals, and proposed activities for Community Development Block Grant (CDBG), Emergency Solutions Grant (ESG), and HOME funding. It is revised every five years to reflect the changing needs and priorities of the community. During the approval process, HUD requires the City to provide at least two opportunities for the public to comment on the proposed Consolidated Plan.

In addition, as required under our HUD approved citizen participation process, Public Hearings are held each spring to consider the City's Housing and Community Development Program proposal for the ensuing year. The CDBG Annual Allocation Committee, appointed by the Council, reviewed each application and made funding recommendations. They are given an opportunity to make a presentation to the Council at this meeting, and citizens may comment on the City's annual plan for the use of CDBG, HOME and ESG funds.

Public Hearings will be held on March 21, 2022 and on April 11, 2022 at a City Council Meeting to be held at 5:00 pm.

Five affirmative votes are required for passage after public comment.

Order 150-21/22 Approving the Purchase and Sale Agreement with Dorothy Hale for Property at 834 Riverside Street, Accepting a \$23,000 Donation from Allagash Brewing Company for that Purchase, and Placing that Land in the Portland Land Bank - Sponsored by Danielle P. West, Interim City Manager

This order would approve the Hale Parcel at 834 Riverside Street Purchase and Sale Agreement for land to be added to the Portland Land Bank, to protect the ecological, historical, and scenic values of the park. The acquisition was approved by the Land Bank Commission by a vote of 8-0 on February 9th 2022, and will use a donation from Allagash Brewery Company of \$23,000 and \$27,000 from the Land Bank Fund.

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

Written Public Comment on Order 150-21/22

Order 151-21/22 Traffic Schedule Amendment Re: 101 York Street - Sponsored by Danielle P. West, Interim City Manager

The City Council is being asked to approve a reassignment of the five (5) on-street parking spaces in front of 101 York Street. Currently, these five (5) spaces are unrestricted and the owner of 101 York Street stated that there are many cars that park here for extended periods of time. The City's recommendation is to have the two (2) spaces adjacent to the parking garage at 101 York Street be 30-minute commercial loading zones between 9 AM to 12 PM and 2-hour parking from 12 PM to 5 PM. The remaining three (3) spaces will be 2-hour spaces.

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

Order 152-21/22 Approving the Agreements between the Maine Department of Transportation and the City of Portland Re: Forest Avenue Paving -- Sponsored by Danielle P. West, Interim City Manager

This agreement, between the Maine Department of Transportation (MaineDOT) and the City of Portland, obligates MaineDOT to mill and fill Forest Avenue, update and/or install new pedestrian curb ramps to meet ADA requirements, and all appurtenances when MaineDOT's contractor paves Forest Avenue. The agreement obligates the City to pay for 25% of the work as its municipal share, or an estimated \$65,575.00. A separate Utility Agreement for the approximately \$16,800 cost to adjust the manhole frame and covers will be paid from an already funded Water Resources account.

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

AMENDMENTS:

Order 153-21/22 Amendment to Portland City Code Chapter 14 Re: Height Bonus in India Street Form-Based Code Zone - Sponsored by the Planning Board, Maggie Stanley, Chair

On January 11, 2022, the Portland Planning Board unanimously voted 6-0 (Smith recused) to recommend to the City Council adoption of the text amendment to allow a height bonus in the Urban Active Subdistrict along Commercial Street within the India Street Form-Based Code Zone. Maine Public Broadcasting Corporation applied for this zoning text amendment to allow for an additional floor for a future building at 35 Commercial Street.

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

Written Public Comment on Order 153-21/22

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

ADJOURNMENT:

ZOOM INFORMATION:

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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 5:03 PM. (All Councilors present).

ANNOUNCEMENTS:

APPROVAL OF MINUTES OF PREVIOUS MEETING:

Approval of the draft January 19, 2022 City Council Meeting Minutes.

Motion was made by Councilor Chong and seconded by Councilor Zarro to approve the January 19, 2022 City Council meeting minutes. Passage 8-0 (Fournier out).

PROCLAMATIONS:

Proclamation 13-21/22 Recognizing Black History Month - Sponsored by Kate Snyder, Mayor

LICENSES:

Order 139-21/22 Granting Municipal Officers' Approval of Port City Holdings LLC, dba Portland Lobster Company. Application for Class III & IV FSE with Outdoor Entertainment and Outdoor Dining on Private Property at 184 Commercial Street - Sponsored by Danielle West, Interim City Manager

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

Order 140-21/22 Granting Municipal Officers' Approval of Porthole Hospitality LLC, dba The Porthole Restaurant & Pub. Application for Class XI Restaurant/Lounge with Combined Entertainment and Outdoor Dining on Private Property at 20 Custom House Wharf - Sponsored by Danielle West, Interim City Manager

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

RESOLUTIONS:

Resolve 7-21/22 Joining the Community Resilience Partnership - Sponsored by the Sustainability and Transportation Committee, Councilor Andrew Zarro, Chair

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

UNFINISHED BUSINESS:

Order 89-21/22 Amendment to the Portland City Code Chapter 18 Re: Bedford Park renamed Noyes Park - Sponsored by Danielle West, Interim City Manager

Motion was made by Mayor Snyder and seconded by Councilor Chong to postpone Order 89 to the March 7, 2022 City Council meeting. Passage 8-1 (Fournier).

Written Public Comment on Order 89-21/22

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

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

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

Councilor Trevorror indicated that her employer, Norman, Hanson & DeTroy, is advocating in opposition to the amendment. Upon discussions with Corporation Counsel, she disclosed that she works in another department as a Paralegal. She has no gain in this and it will not impede her decision, she will not be recusing herself from this vote.

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

Written Public Comment on Order 138-21/22

ORDERS:

Order 141-21/22 Extending the Face Covering Mandate to March 7, 2022 - Sponsored by Mayor Kate Snyder

Motion was made by Councilor Trevorrow and seconded by Councilor Chong to amend Order 141 from “extending the order to repeal the order” for passage. Passage 7-2 (Zarro, Pelletier).

Motion was made by Councilor Ali and seconded by Councilor Fournier for passage as amended. Passage 7-2 (Zarro, Pelletier).

Written Public Comment on Order 141-21/22

Order 142-21/22 Approving a Three-Year Agreement with Cumulous Global for Google Workspace - Sponsored by Danielle P. West, Interim City Manager

Motion was made by Councilor Ali and seconded by Councilor Chong to suspend the rules to deliberate after 10:00 PM. Passage 9-0.

Motion was made by Councilor Ali and seconded by Councilor Dion to waive the second reading of Order 142. Passage 9-0.

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

Order 144-21/22 Amendment to the Portland City Code Chapter 17 Re; Change to Date of Review of Mask Mandate - Sponsored by Mayor Kate Snyder

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

Motion was made by Councilor Ali and seconded by Councilor Chong to postpone Order 144 indefinitely. Passage 7-2 (Zarro, Pelletier).

Order 143-21/22 Approving the Collective Bargaining Agreement with the American Federation of State, County and Municipal Employees (AFSCME) Local 481-07 Supervisors - Sponsored by Danielle West, Interim City Manager

This is its first reading.

AMENDMENTS:

Order 145-21/22 Amendment to the Portland City Code Chapter 33 Re: Hazard Pay in Effect during Mask Mandate - Sponsored by Councilor Victoria Pelletier

This is its first reading.

Written Public Comment on Order 145-21/22

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

MEMORANDUM
City Council Agenda Item

FROM:

DATE: February 9, 2022

SUBJECT: Order 146-21/22 Confirming the Appointment of Kari L. Twaite as Associate Corporation Counsel - Sponsored by Acting Corporation Counsel Jen Thompson

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

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

Attorney Kari L. Twaite has extensive regulatory experience, including with enforcement, rule and ordinance interpretation and drafting, and an excellent sense of what it means to work for a governmental entity given that she has spent several years of her career working for the federal government. This order would confirm her appointment and set her salary at \$106,671.

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

The salary for this position was approved in the Fiscal Year 2022 City of Portland Budget.

VI. STAFF ANALYSIS AND BACKGROUND

Staff Analysis that will not appear in the Agenda Description.

VII. RECOMMENDATION

VIII. LIST ATTACHMENTS

1. Kari L. Twaite Appointment Assoc Corp Counsel 2.28.2022
2. Kari Twaite letter and resume for council 2.28.2022_Redacted

Prepared by:

Date: 02/09/2022

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

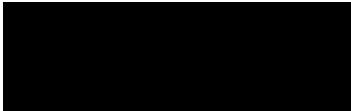
CITY OF PORTLAND
IN THE CITY COUNCIL

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

**ORDER CONFIRMING THE APPOINTMENT OF KARI L. TWAITE AS
ASSOCIATE CORPORATION COUNSEL**

ORDERED, that Kari L. Twaite is hereby appointed as Associate Corporation Counsel at a salary of \$106,671, said appointment to be effective March 14, 2022.

Kari L. Twaite



December 18, 2021

Ms. Jennifer Thompson
Acting Corporation Counsel, City of Portland
389 Congress St
Portland, ME 04101

Dear Ms. Thompson,

I am writing to apply for the Land Use and Regulatory Attorney position with the City of Portland's Office of Corporation Counsel. I am eager to return to Maine and use my experience as a government attorney to support sustainable and equitable growth for the City of Portland.

The skills that I have developed providing regulatory counsel and litigation support to a complex government agency will transfer well to the municipal setting. In my current position with the Department of Energy's (DOE) Office of General Counsel, I work closely with a small, cohesive attorney team to support a range of client offices across DOE. I manage complex rulemakings from initial drafting through final publication, coordinating and responding to input from internal and external stakeholders while building an administrative record that will withstand legal challenges. When rules are challenged through litigation, I work closely with the United States Department of Justice to vigorously defend DOE's actions. I also advise both program staff and political appointees in the General Counsel's office, translating complex legal and technical concepts into clear and accessible language. Further, I work directly with permit applicants to help them navigate DOE's regulatory requirements. This builds on my work as a private sector attorney, where I advised pharmaceutical producers on compliance with novel product take-back ordinances and defended municipal utilities against tort and Clean Water Act claims.

My current role requires excellent communication skills, a commitment to supporting good governance through diligent legal counsel, and attention to developing constructive and collaborative relationships with client offices, my fellow attorneys, and the public. These skills make me a strong fit for an attorney position with the City of Portland.

Thank you very much for your time and consideration.

Best regards,

Kari Twaite

PROFESSIONAL EXPERIENCE

U.S. Department of Energy, Washington, DC; *Attorney Advisor, Office of the Assistant General Counsel for Electricity, Fossil Energy, and Carbon Management*, Spring 2019 to Present

- Represent DOE in rate case litigation before state public utility commissions
- Manage rulemakings under National Environmental Policy Act pertaining to natural gas export authorizations
 - Draft proposed rules; input revisions from client office, four General Counsel offices, CEQ, and DOJ; review and respond to all public input and comments on proposed rules; draft final rules; ensure compliance with all administrative and procedural rulemaking requirements
- Support Office of Regulation, Analysis, and Engagement's natural gas permitting program by drafting export orders, interpreting the Natural Gas Act and related regulations, participating in program communication with private sector applicants, and working with program to develop online applicant portal and related forms
- Coordinate legislative proposals for the Office of Resource Sustainability
 - Draft legislative text and associated documents in cooperation with program technical experts; coordinate within DOE and externally to submit proposals to the Office of Management and Budget and respond to OMB review
- Serve as a primary legal contact for the Office of Resource Sustainability's Office of Research and Development
 - Provide counsel pertaining to administration of grant programs, legal review of technical reports to Congress, and development of public/private research partnerships and demonstration projects
- Review and advise political leadership on the content and tone of public statements and speaking engagements

U.S. Department of Energy, Washington, DC; *Attorney Advisor, Office of the Assistant General Counsel for Environment*, Spring 2015 to Spring 2019

- Negotiated and drafted consent orders with states and provided counsel regarding their implementation at national laboratories, national petroleum reserves, and nuclear storage and processing facilities
- Assisted with negotiating and drafting environmental provisions in contracts and permits pertaining to use or sale of national laboratories and national petroleum reserves
- Oversaw resolution of health, safety, and employment concerns raised via DOE's Employee Concerns Program
- Drafted health and safety regulations in collaboration with DOE scientists, engineers, and technical experts; ensured compliance with procedural and administrative requirements including Administrative Procedure Act
- Provided legal review and assisted with drafting of NEPA documents supporting permitting of transmission projects

Beveridge & Diamond, PC, Washington, DC; *Associate Attorney*, Fall 2011 to Spring 2015

- Worked with over 100 pharmaceutical companies to achieve compliance with novel county and city ordinances requiring collection of end-of-life pharmaceutical products through creation of the Pharmaceutical Product Stewardship Work Group (PPSWG) and its implementation vehicle, MED-Project;
 - Advised PPSWG regarding ordinance terms and intersecting state, local, and federal requirements
 - Negotiated and drafted contracts for waste vendor, communications, and pharmaceutical collection contractors
 - Drafted comments on proposed pharmaceutical ordinances on behalf of PPSWG
- Drafted motions and conducted discovery in support of state and federal litigation, including defense of municipal water utilities against tort and Clean Water Act claims
- Served as environmental in-house counsel for a Fortune 500 technology company during yearlong secondment
- Represented clients seeking permits before federal regulators

ACTIVE BAR MEMBERSHIPS

Maine: Bar Number 004938, *Massachusetts*: Bar Number 681603, *Washington, DC*: Bar Number 1004219

EDUCATION

Vermont Law School, South Royalton, VT
Juris Doctor *magna cum laude*, May 2011

Yale University School of Environment, New Haven, CT
Master of Environmental Management, Energy Systems and Industrial Ecology, May 2011

Bowdoin College, Brunswick, ME
B.A. *cum laude*, Government and Legal Studies and Environmental Studies, French Minor, May 2006

CIVIC ENGAGEMENT

Vermont Law School Energy Clinic Guest Lecturer, *Federal Environmental Review of Energy Projects*, Fall 2020
St. Luke Christian Day School Board Member, Summer 2019 to Present
St. Luke Lutheran Church Congregation Council Member, Summer 2019 to Present
North Woodside Civic Association (Committees: Antiracism and Talbot Bridge Construction), Summer 2015 to Present

MEMORANDUM
City Council Agenda Item

FROM:

DATE: February 2, 2022

SUBJECT: Com 13-21/22 Appointing Members of the Re-Appportionment Committee -
Sponsored by Kate Snyder, Mayor

SPONSOR: Mayor Kate Snyder

(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

By this communication, Mayor Snyder creates the Reapportionment Committee, which will work to formulate preliminary proposals and prepare a recommendation to the City Council for the shifting of the precinct lines in response to Census data and changes made at the State level to House and Senate Districts. Any proposed changes would be made in the form of an amendment to Chapter 9 of the City Code and would require consideration and approval by the full Council.

The Mayor has appointed the following to the Reapportionment Committee to address this reapportioning issue:

Councilor April Fournier, City Councilor At-Large

Councilor Pious Ali, City Councilor At-Large

Katherine Jones, City Clerk

Melissa Cowie, Deputy City Clerk,

Paul Riley, Elections Administrator

Jen Thompson, Acting Corporation Counsel

Jon Giles, Survey, GIS & Archives Manager, Dep't of Public Works

Thea Youngs, GIS Mapping Specialist, Dep't of Public Works

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

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. Memorandum from Mayor Kate Snyder re Redistricting for the 2.28.2022 Council Meeting
2. Memo From City Clerk
3. Chapter 9 ELECTIONS re council districts
4. Census 2020 Block Map
5. title30-Asec2503

Prepared by:

Date: 02/02/2022

MEMORANDUM

TO: Portland City Council

FROM: Mayor Kate Snyder

SUBJECT: Reapportionment

DATE: February 23, 2022

The City Clerk has alerted me to the fact that, in response to updated Census data and resulting changes made by the State of Maine to State House and Senate District lines, there is a need for the City to examine its council district and voting precinct lines and to consider whether changes at the local level are needed. See memo from City Clerk, map, and 30-A M.R.S. § 2503(1) attached to the agenda back-up.

Consistent with the Clerk's recommendation and with past practice, I am appointing a Reapportionment Committee, which will be comprised of the following members:

Councilor April Fournier, City Councilor At-Large
Councilor Pious Ali, City Councilor At-Large
Katherine Jones, City Clerk
Melissa Cowie, Deputy City Clerk,
Paul Riley, Elections Administrator
Jen Thompson, Acting Corporation Counsel
Jon Giles, Survey, GIS & Archives Manager, Dep't of Public Works
Thea Youngs, GIS Mapping Specialist, Dep't of Public Works

The first meeting of this group will be as soon as possible. The City Clerk will contact all members of the Committee with the date/time of the first meeting.

To: The Mayor and the Members of the Portland City Council

From: The Office of City Clerk – Katherine Jones

Subject: Municipal Reapportionment

Date 02/28/2022

This memorandum is intended to serve as an informational communication to this body on the processes and practices of Portland's Municipal Redistricting and to request the formation of a special committee to assist in that process.

As you know, Portland is subdivided into five (5) Districts of which many of you represent, and those five (5) Districts are subdivided into two (2) voting Precincts each with one (1) polling location where voting occurs.

Every ten (10) years in accordance with the compilation and release of the new Census data, the State of Maine redraws their State House, State Senate, County Commissioner, and Congressional Districts to account for the newly reported data. Because of these changes, cities and towns may often see their Districts affected. Under Title 30-A §2503(1)(B) all municipalities have an obligation to reapportion their Districts to the following standards:

Each district must contain as nearly as possible the same number of inhabitants as determined according to the latest Federal Decennial Census, but districts may not differ in number of inhabitants by more than 10% of the inhabitants in the smallest district created.

After the Census data was compiled and the Legislature's Redistricting was completed, it appears that Portland's Districts remain in compliance with this requirement (Exhibit 1) such that shifting the City's Council Districts likely is not required under the State statute. Below is a table illustrating our determination in that regard.

Exhibit 1)

District	Residents	Compliance
1	13,487	(smallest)
2	13,583	Under 14,836
3	13,715	Under 14,836
4	13,816	Under 14,836
5	13,779	Under 14,836

Notwithstanding our preliminary determination that shifts to the City's Council Districts are not required, we do believe that a minor shift in the lines should be made in order to alleviate impacts to the City's voting Precincts that result from changes at the State level. Our reasoning is outlined below:

Though the City is not required to reapportion its Council Districts in response to the Census data, the State was required to revise its House and Senate Districts. The 130th State Legislature ratified those changes on September 29, 2021. As a result of the State's revision of its House and Senate Districts, we anticipate impacts on the City's voting Precincts and the distribution at polling places that we fear may place an inequitable and burdensome strain on voters within certain Districts.

Specifically, as a result of the release of the Census data, we are noting that there is now a significant imbalance in the number of voters assigned to designated polling locations. This may lead to longer wait times and may serve as a deterrent to voters. Additionally, because of the changes in the State House and Senate Districts, some Election Clerks will be required to distribute, and account for up to five (5) ballot styles depending on the voter's location within the Precinct. This adjustment in the volume of voters and in the number of ballots involved in any given election is burdensome on voters and Election Clerks alike. It has the potential to negatively impact voter participation and to overwhelm Election staff. The existing Precinct breakdown (Exhibit 2) helps to illustrate the issue:

Exhibit 2)

D/P	Location	Senate Districts	House Districts	Ballot Styles (During primaries, this expands to 3 ballots per Senate/House District)	Residents (2020 Census Data)	Residential Balance (How many would be moved for equilibrium)
1-1	East End Community School	28	119	28/119	5434	+763
1-2	Merrill Auditorium	28	115, 118, 119	28/115, 28/118, 28/119	6960	-763
1-3	Peaks Island Community Center	28	119	28/119	897	N/A
1-4/5	Islands	28	119	28/119	196	N/A
2-1	Reiche School	28	117, 119	28/117, 28/119	7090	-299
2-2	Portland Exposition Building	28	115, 117, 118	28/115, 28/117, 28/118	6493	+299
3-1	Woodford's Club	27, 28	115, 116, 117, 118	27/116, 28/115, 28/116, 28/117, 28/118	7906	-1048

3-2	Italian Heritage Center	27	113, 116	27/113, 27,116	5809	+1048
4-1	St. Pius Church	27, 28	114, 115,	27/114, 27/115, 28/114	8332	-1424
4-2	First Baptist Church	27, 28	113, 114, 115	27/113, 27/115, 28/114	5484	+1424
5-1	Deering High School	27	113, 115, 116	27/113, 27/115, 27/116	5277	+1612
5-2	Grace Baptist Church	27	112, 113	27/112, 27/113	8502	-1612

As seen in Exhibit 2, 3-1 for example, Woodford's, following changes at the State level and the release of the Census data, if left unchanged in this process, would have at least five (5) different ballot styles, two more ballot styles than any other Precinct. In a primary election, that number would triple in order to account for all of the different parties.

To alleviate this issue of ballot distribution caused by State Redistricting our office is proposing **limited, offsetting** and **targeted** changes to the boundaries of District 3 and District 2 with the goal of eliminating one ballot style from 3-1 and assimilating those voters into 2-2 while still remaining in compliance with State law.

To alleviate the resident inequity between Precincts noted in Exhibit 2 as well as crowding of certain polling locations, the City Clerk's office proposes that we redraw Precinct lines to bring the numerical differences closer together. This process may, as a byproduct, also help us in eliminating ballot styles in the newly drawn Precincts as well.

The Office of the City Clerk is asking that this body create a special committee to meet with our staff, hear in more depth about our proposal, and assist finalizing a proposal for consideration and action by the full Council.

Chapter 9 ELECTIONS*

...

ARTICLE I. IN GENERAL

Sec. 9-1. Council districts.

(a) *Map included.* The districts and precincts of the City for all elections of the City shall be as shown on the map dated January 29, 2014, on file in the Office of the City Clerk.

(b) *Narrative description of districts.* The districts shown on the map as enacted by this section are further described below. Any reference to Census Tracts, Block Groups, and/or Blocks refers to Census 2010 defined areas. The descriptions are as follows:

District 1. Beginning at the center of the mouth of Back Cove at the centerline of Tukey's Bridge and I-295; thence easterly, southeasterly, and then southerly along the northerly and easterly edges of Census Tracts 1, 2, and 3, around the northeasterly end of the Portland Peninsula, until it intersects with the Portland/South Portland boundary near the mouth of the Fore River in Portland Harbor, said point being southerly of Fish Point and northwesterly of Bug Light; thence following the Portland/South Portland boundary southwesterly to the centerline of Casco Bay Bridge; thence northwesterly along the centerline of the Casco Bay Bridge to a point directly above the shoreline of Portland Harbor; thence northeasterly along the shore of Portland Harbor and the southeasterly edge of the piers, bulkheads, and wharfs to Hobson's Wharf; thence northwesterly along the street on Hobson's Wharf to Commercial Street; thence southwesterly along the centerline of Commercial Street until it intersects the centerline of High Street; thence northwesterly along the centerline of High Street to the centerline of Park Avenue; thence northwesterly along the centerline of the extension of High Street, that passes through Deering Oaks, to the centerline of Forest Avenue; thence northwesterly along the centerline of Forest Avenue to the centerline of Dartmouth Street; thence northeasterly along the centerline of Dartmouth Street to the centerline of Baxter Boulevard; thence easterly along the centerline of Baxter Boulevard to a point on said centerline that is northerly of Forest Park and is on the easterly edge of Census Block 003, of Census Tract 15, Block Group 1; thence northerly to Back Cove along the easterly edge of Census Block 003, of Census Tract 15, Block Group 1; thence westerly and northwesterly along Back Cove which is also the northeasterly edge of Census Block 003, of Census Tract 15,

Block Group 1 to a point along Back Cove, that is easterly o the intersection of Belmont Street and Baxter Boulevard; thence northeasterly along the boundary between Census Tract 15 and 18 to a point in Back Cove; thence southeasterly following the boundary between Census Tract 15 and 18 to a point in Back Cover where the boundaries of Census Tracts 15, 18, and 5 intersect; thence northeasterly along the boundary between Census Tract 18 and 5 to a point in Back Cover where the boundaries of Census Tracts 23, 18, and 5 intersect; thence continuing northeasterly along the boundary between Census Tracts 23 and 5 to the centerline of I-295 on Tukey's Bridge; thence southerly along the centerline of I-295 to the point of beginning. In addition to this area, District 1 includes all islands within the City limits.

District 2. Beginning at the intersection of the Casco Bay Bridge and the boundary between Portland and South Portland; thence following the Portland/South Portland boundary southwesterly, westerly, northwesterly along the Fore River until said Portland/South Portland boundary intersects a projection of Danforth Street's centerline to the southwest of the intersection of Danforth Street and West Commercial Street; thence following said projection of Danforth Street and the centerline of Danforth Street itself in a northeasterly direction to where the centerline of Danforth Street cross the railroad tracks of Portland Terminal Company, said intersection also being at the boundary between Census Tracts 3 and 13; thence northerly along the westerly edge of Census Tract 13 and the Portland Terminal Company's railroad tracks to a point, just north of the Congress Street grade crossing with the Portland Terminal Company's tracks, where the Union Branch tracks diverge from the mainline tracks, said point is southerly of Park Avenue and westerly of Saint John Street; thence along the northwesterly edge of Census Tract 13 and along the railroad tracks of the Union Branch to the centerline of Deering Avenue; thence northwesterly along the centerline of Deering Avenue to the intersection of Dartmouth St. Thence northeasterly along the centerline of Dartmouth Street to the centerline of Forest Avenue; thence southwesterly along the centerline of Forest Avenue to its intersection with the centerline of the extension of High Street, that passes through Deering Oaks; thence southeasterly along the centerline of said extension of High Street, to the intersection of High Street and Park Avenue; thence southeasterly along the centerline of High Street to the centerline of Commercial Street; thence northeasterly along the centerline of Commercial Street to its intersection with the street on Hobson's Wharf; thence southeasterly along the street on Hobson's Wharf to the end of said wharf; thence southeasterly along the piers, wharfs, bulkheads, and shore of Portland Harbor, such that the piers,

wharfs, and bulkheads in their entirety will be contained in District 2, to the Casco Bay Bridge; thence along the centerline of the Casco Bay Bridge to the Portland/South Portland boundary and the point of beginning.

District 3. Beginning on the Portland/South Portland boundary where it would intersect a projection of Danforth Street's centerline if projected southwesterly of the intersection of Danforth Street and West Commercial Street; thence northwesterly and westerly along the Portland/South Portland boundary, in the Fore River, to the centerline of I-295 as it crosses the Fore River; thence westerly along the Portland/South Portland boundary to the point where the Portland/South Portland and the Portland/Westbrook boundaries meet; thence northerly along the Portland/Westbrook boundary to where said town line intersects the Boston and Maine Railroad's location, this point of intersection is westerly of Riverside Street, southerly of Warren Avenue, and northerly of Larrabee Road; thence easterly along the Boston and Maine Railroad's location to where it crosses Capisic Brook; thence westerly and southerly along the Capisic Brook to where it intersects the boundary between Census Tracts 21.02 and 20.01, said boundary is a line running parallel with Birchwood Drive in a northwesterly to southeasterly orientation and lies southerly of the homes on the southerly side of Birchwood Drive; thence southeasterly, then northerly, and southeasterly again along the boundary between Census Tracts 21.02 and 20.01, and northerly of Penwood Drive and Woodvale Street, to a point on said Census Tract boundary and the southerly boundary of Evergreen Cemetery; thence southeasterly along the southerly boundary of Evergreen Cemetery as it runs north of the homes on the northerly side of Ludlow Street, said line is also the boundary between Census Tracts 21.02 and 20.01, to the point where this course intersects the boundary of Evergreen Cemetery that lies westerly of and roughly parallel to Hamblet Avenue; thence southeasterly along Wayside Rd. to Brighton Avenue. Thence southeasterly along the centerline of Brighton Avenue to the centerline of Columbia Road; thence northeasterly along the centerline of Columbia Road to the centerline of Ludlow Street; thence southeasterly and then northeasterly along the centerline of Ludlow Street to the centerline of Stevens Avenue; thence southerly along the centerline of Stevens Avenue to the centerline of Woodford Street; thence easterly along the centerline of Woodford Street to the centerline of Clifton Street; thence northeasterly along the centerline of Clifton Street to the centerline of Vannah Avenue; thence easterly along the centerline of Vannah Avenue to the centerline of Baxter Boulevard; thence southerly along the centerline of Baxter Boulevard to the intersection of the

centerlines of Baxter Boulevard and Belmont Street; thence easterly along the boundary of Census Tracts 15 and 18 to a point on the shore of Back Cove; thence southeasterly along the shore of Back Cove, which is also the easterly edge of Census Block 003, of Census Tract 15, Block Group 1, to a point that is northerly of Forest Park and is on the easterly edge of Census Block 003, of Census Tract 15, Block Group 1 at the shore of Back Cove; thence southerly to the centerline of Baxter Boulevard and along the easterly edge of Census Block 003, of Census Tract 15, Block Group 1; thence westerly along the centerline of Baxter Boulevard to the centerline of Dartmouth Street; thence southwesterly along the centerline of Dartmouth Street to the centerline of Deering Avenue; thence southeasterly along the centerline of Deering Avenue to the railroad tracks of the Union Branch at the northerly edge of Census Tract 13; thence southwesterly along the railroad tracks of the Union Branch and the northwesterly edge of Census Tract 13 to a point, just north of the Congress Street grade crossing with the Portland Terminal Company's tracks, where the Union Branch tracks diverge from the mainline tracks, said point is southerly of Park Avenue and westerly of Saint John Street; thence southerly along the westerly edge of Census Tract 13 and the Portland Terminal Company's railroad tracks to a point where the centerline of Danforth Street cross the railroad tracks of Portland Terminal Company, said intersection also being at the boundary between Census Tracts 3 and 13 and said point is southeasterly of the easterly end of Veterans Memorial Bridge; thence southwesterly along the centerline of Danforth Street and a projection of Danforth Street's centerline to the Portland/South Portland boundary and the point of beginning.

District 4. Beginning at the intersection of the centerlines of Lawn Avenue and Woodford Street; thence easterly along the centerline of Woodford Street to the centerline of Clifton Street; thence northeasterly along the centerline of Clifton Street to the centerline of Vannah Avenue; thence easterly along the centerline of Vannah Avenue to the centerline of Baxter Boulevard; thence southerly along the centerline of Baxter Boulevard to the intersection of the centerlines of Baxter Boulevard and Belmont Street; thence easterly along the boundary of Census Tracts 15 and 18 to a point on the shore of Back Cove; thence northeasterly along the boundary between Census Tract 15 and 18 to a point in Back Cove; thence southeasterly following the boundary between Census Tract 15 and 18 to a point in Back Cove where the boundaries of Census Tracts 15, 18, and 5 intersect; thence northeasterly along the boundary between Census Tract 18 and 5 to a point in Back Cover where the boundaries of Census Tracts 23, 18, and 5 intersect; thence

continuing northeasterly along the boundary between Census Tracts 23 and 5 to the centerline of I-295 on Tukey's Bridge; thence northerly to a point at the northerly shoreline at the mouth of Back Cove; then easterly and northeasterly along the shoreline of Casco Bay, between the mouth of Back Cove and the mouth of the Presumpscot River, to the Portland/Falmouth boundary at the Presumpscot River and the Route 1 Bridge at Martins Point; thence northwesterly by the Falmouth/Portland boundary and the Presumpscot River to a point easterly of the intersection of Interstate 295 and the Portland/Falmouth boundary; then westerly along the Portland/Falmouth boundary, crossing Interstate 295, and continuing in a generally westerly direction by the Portland/Falmouth boundary until said town boundary intersects the centerline of Allen Avenue; thence southwesterly along the centerline of Allen Avenue to the centerline of Forest Avenue; thence southerly along the centerline of Forest Avenue to the centerline of Stevens Avenue; thence southerly along the centerline of Stevens Avenue to the centerline of Pleasant Avenue; thence easterly along the centerline of Pleasant Avenue to the centerline of Lawn Avenue; thence southerly along the centerline of Lawn Avenue to the point of beginning.

District 5. Beginning at the intersection of the centerlines of Lawn Avenue and Woodford Street; thence northerly along the centerline of Lawn Avenue to the centerline of Pleasant Avenue; thence westerly along the centerline of Pleasant Avenue to the centerline of Stevens Avenue; thence northerly along the centerline of Stevens Avenue to the centerline of Forest Avenue; thence northerly along the centerline of Forest Avenue to the centerline of Allen Avenue; thence northeasterly along the centerline of Allen Avenue to the Portland/Falmouth boundary; thence northwesterly and then northeasterly along the Portland/Falmouth boundary to the Presumpscot River; thence along the Portland/Falmouth boundary and the Presumpscot River to the Falmouth Spur of the Maine Turnpike; thence southwesterly along the Falmouth Spur of the Maine Turnpike to a point where the Portland/Falmouth boundary changes direction and heads northwesterly across the Falmouth Spur of the Maine Turnpike, this point being northerly of Alice Court; thence southwesterly along the Portland/Falmouth boundary, again crossing the Falmouth Spur of the Maine Turnpike, to a point on the Portland/Falmouth boundary where said town line boundary turns northwesterly; thence northwesterly along the Portland/Falmouth boundary to the Portland/Falmouth Boundary along the Presumpscot River; thence southwesterly along the Portland/Falmouth boundary and the

Presumpscot River to the point where the Portland/Falmouth boundary intersects the Portland/Westbrook boundary along the Presumpscot River; thence continuing southwesterly along the Portland/Westbrook boundary and the Presumpscot River to the point where the Portland/Westbrook boundary along the Presumpscot River turns southeasterly and leaves the river; thence southeasterly along the Portland/Westbrook boundary to where said town line intersects the Boston and Maine Railroad's location, this point of intersection is westerly of Riverside Street, southerly of Warren Avenue, and northerly of Larrabee Road; thence easterly along the Boston and Maine Railroad's location to where it crosses Capisic Brook; thence westerly and southerly along the Capisic Brook to where it intersects the boundary between Census Tracts 21.02 and 20.01, said boundary is a line running parallel with Birchwood Drive; thence southeasterly, then northerly, and southeasterly again along the boundary between Census Tracts 21.02 and 20.01, and northerly of Penwood Drive and Woodvale Street, to a point on said boundary and the southerly boundary of Evergreen Cemetery; thence southeasterly along the southerly boundary of Evergreen Cemetery as it runs north of the homes on the northerly side of Ludlow Street, said line is also the boundary between Census Tracts 21.02 and 20.01, to the point where this course intersects the boundary of Evergreen Cemetery that lies westerly of and roughly parallel to Hamblet Avenue; thence southwesterly to the centerline of Ludlow Street; thence northeasterly along the centerline of Ludlow Street to a point beyond the easterly side of Wayside Rd. to the intersection of Brighton Avenue; thence southeasterly along the centerline of Brighton Avenue to the centerline of Columbia Road; thence northeasterly along the centerline of Columbia Road to the centerline of Ludlow Street; thence southeasterly and then northeasterly along the centerline of Ludlow Street to the centerline of Stevens Avenue; thence southerly along the centerline of Stevens Avenue to the centerline of Woodford Street thence easterly along the centerline of Woodford Street to the centerline of Lawn Avenue and the point of beginning.

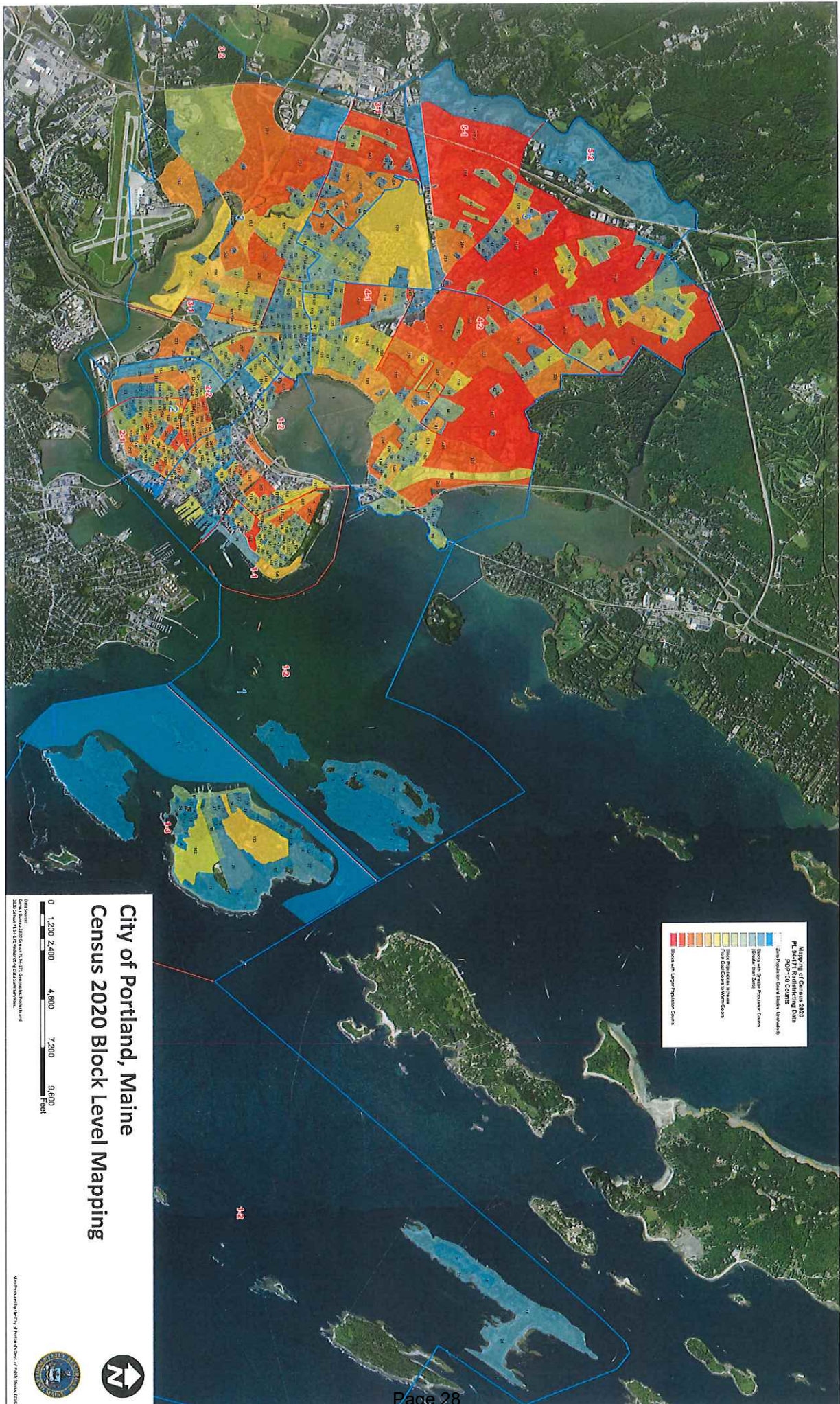
(c) *Conflicts between map and description.* In the event of any conflict between the above map and the preceding description, the map provision shall control.

ARTICLE II. PRECINCTS*

...

Sec. 9-16. Generally.

The districts of the city established by section 9-1 of this Code pursuant to section 1 of article II of the charter are for voting purposes divided into the precincts shown on the map incorporated into said section 9-1 with voting places within or near each such precinct as hereinafter designated by order of the council.



§2503. Reapportionment

1. Adoption by ordinance. Districts established for the purpose of electing, from each district, an equal number of municipal officers may be adjusted, by ordinance, by the municipal legislative body subject to the following conditions.

A. Each district must be formed of compact, contiguous territory. Its boundary lines may follow the center lines of streets. [PL 1987, c. 737, Pt. C, §2 and Pt (NEW); PL 1989, c. 6 (AMD); PL 1989, c. 9, §2 (AMD); PL 1989, c. 104, Pt. C, §§8, 10 (AMD).]

B. Each district must contain as nearly as possible the same number of inhabitants as determined according to the latest Federal Decennial Census, but districts may not differ in number of inhabitants by more than 10% of the inhabitants in the smallest district created. [PL 1987, c. 737, Pt. A, §2 (NEW); PL 1987, c. 737, Pt. C, §106 (NEW); PL 1989, c. 6 (AMD); PL 1989, c. 9, §2 (AMD); PL 1989, c. 104, Pt. C, §§8, 10 (AMD).]

C. The ordinance must include a map and a description of the districts. [PL 1987, c. 737, Pt. A, §2 (NEW); PL 1987, c. 737, Pt. C, §106 (NEW); PL 1989, c. 6 (AMD); PL 1989, c. 9, §2 (AMD); PL 1989, c. 104, Pt. C, §§8, 10 (AMD).]

D. The ordinance takes effect on the 30th day after adoption by the legislative body. The new districts and boundaries, as of the effective date, supersede previous districts and boundaries for the purposes of the next regular municipal election, including nominations. [PL 1987, c. 737, Pt. A, §2 (NEW); PL 1987, c. 737, Pt. C, §106 (NEW); PL 1989, c. 6 (AMD); PL 1989, c. 9, §2 (AMD); PL 1989, c. 104, Pt. C, §§8, 10 (AMD).]

[PL 1987, c. 737, Pt. A, §2 (NEW); PL 1987, c. 737, Pt. C, §106 (NEW); PL 1989, c. 6 (AMD); PL 1989, c. 9, §2 (AMD); PL 1989, c. 104, Pt. C, §§8, 10 (AMD).]

2. Failure to enact ordinance. The municipal legislative body must enact the reapportionment ordinance within 12 months after the Legislature has reapportioned the House and Senate districts pursuant to the Constitution of Maine, Article IV, Part First, Section 3 and Article IV, Part Second, Section 2 or after a court decision finalizing the reapportionment of districts. The ordinance must be enacted at least 90 days before a regular municipal election occurring within that 12-month period or the previous reapportionment ordinance applies to that election. If the legislative body fails to enact an ordinance within the 12-month period or at least 90 days before a regular election occurring after the 12-month period, all municipal officers to be elected must be elected at large and serve until their terms expire. Such at-large elections continue until the legislative body enacts an ordinance in accordance with subsection 1 at least 90 days before a regular municipal election.

[PL 2001, c. 537, §1 (AMD); PL 2001, c. 537, §2 (AFF).]

3. Referendum. Except when the municipal legislative body is the town meeting, the voters of the municipality may require the municipal legislative body to reconsider any ordinance adopted under subsection 1. If the legislative body does not repeal an ordinance so reconsidered, the voters may approve or reject it at a municipal election.

A. Any 5 voters may commence referendum proceedings by filing an affidavit with the municipal clerk stating:

- (1) They will constitute the petitioners' committee;
- (2) They will be responsible for circulating the petition and filing it in proper form;
- (3) Their names and addresses;
- (4) The address to which all notices to the committee are to be sent; and
- (5) The ordinance sought to be reconsidered.

Promptly after the affidavit of the petitioners' committee is filed, the clerk shall issue the appropriate petition blanks to the petitioners' committee. [PL 1987, c. 737, Pt. A, §2 (NEW); PL 1987, c. 737, Pt. C, §106 (NEW); PL 1989, c. 6 (AMD); PL 1989, c. 9, §2 (AMD); PL 1989, c. 104, Pt. C, §§8, 10 (AMD).]

B. Petitions under this subsection must meet the following requirements.

- (1) Petitions must be signed by a number of voters of the municipality equal to at least 15% of the total number of voters in the municipality at the last presidential election.
- (2) All papers of a petition shall be uniform in size and style and shall be assembled as one instrument for filing. Each signature must be executed in ink or indelible pencil and must be followed by the address of the person signing. While being circulated, petitions must have the full text of the ordinance sought to be reconsidered contained in or attached to the petition.
- (3) When filed, each paper of a petition must have an affidavit, executed by the circulator of the petition, attached to it stating:
 - (a) That the circulator personally circulated the paper;
 - (b) The number of signatures on the paper;
 - (c) That all the signatures were signed in the circulator's presence;
 - (d) That the circulator believes them to be the genuine signatures of the persons whose names they purport to be; and
 - (e) That each signer had an opportunity before signing to read the full text of the ordinance sought to be reconsidered.
- (4) Petitions must be filed within 30 days after the municipal legislative body adopts the ordinance sought to be reconsidered. [PL 1987, c. 737, Pt. A, §2 (NEW); PL 1987, c. 737, Pt. C, §106 (NEW); PL 1989, c. 6 (AMD); PL 1989, c. 9, §2 (AMD); PL 1989, c. 104, Pt. C, §§8, 10 (AMD).]

C. The following procedure shall be followed after the petition is filed with the municipal clerk.

- (1) Within 20 days after the petition is filed, the municipal clerk shall complete a certificate as to its sufficiency, specifying, if it is insufficient, the particulars which render it defective. The clerk shall promptly send a copy of the certificate to the petitioners' committee by registered mail. A petition certified insufficient for lack of the required number of valid signatures may be amended once if the petitioners' committee files a notice of intention to amend it with the clerk within 2 days after receiving the copy of the clerk's certificate and files a supplementary petition upon additional papers within 10 days after receiving a copy of the certificate. This supplementary petition must comply with the requirements of paragraph B, subparagraphs (2) and (3). Within 5 days after it is filed, the clerk shall complete a certificate as to the sufficiency of the petition as amended and promptly send a copy of that certificate to the petitioners' committee by registered mail as in the case of an original petition. If a petition or amended petition is certified insufficient and the petitioners' committee does not elect to amend the petition or request review under subparagraph (2), within the time required, the clerk shall promptly present the clerk's certificate to the municipal legislative body and the certificate is then a final determination as to the sufficiency of the petition.
- (2) If a petition has been certified insufficient and the petitioners' committee does not file notice of intention to amend it or if an amended petition has been certified insufficient, the committee, within 2 days after receiving the copy of the certificate, may file a request that it be reviewed by the municipal legislative body. The legislative body shall review the certificate at its next meeting following the filing of the committee's request and approve or disapprove it. This determination is then final as to the sufficiency of the petition.

(3) A final determination as to the sufficiency of a petition is subject to court review. A final determination of insufficiency, even if sustained upon court review, does not prejudice the filing of a new petition for the same purpose. [PL 1987, c. 737, Pt. A, §2 (NEW); PL 1987, c. 737, Pt. C, §106 (NEW); PL 1989, c. 6 (AMD); PL 1989, c. 9, §2 (AMD); PL 1989, c. 104, Pt. C, §§8, 10 (AMD).]

D. When a petition is filed with the clerk under this subsection, the ordinance sought to be reconsidered is suspended from taking effect. This suspension ends when:

- (1) There is a final determination of insufficiency of the petition;
- (2) The petitioners' committee withdraws the petition;
- (3) The council repeals the ordinance; or
- (4) Thirty days have elapsed after a vote of the municipality on the ordinance. [PL 1987, c. 737, Pt. A, §2 (NEW); PL 1987, c. 737, Pt. C, §106 (NEW); PL 1989, c. 6 (AMD); PL 1989, c. 9, §2 (AMD); PL 1989, c. 104, Pt. C, §§8, 10 (AMD).]

E. The following procedure shall be followed if a petition is determined to be sufficient.

(1) When a petition has been finally determined sufficient, the municipal legislative body shall promptly reconsider the referred ordinance by voting its repeal. If the legislative body fails to repeal the referred ordinance within 30 days after the date the petition was finally determined sufficient, it shall submit the referred ordinance to the voters of the municipality.

(2) The vote of the municipality on a referred ordinance shall be held at least 30 days and not more than one year after the municipal legislative body's final vote on the ordinance. If no regular municipal election is to be held within this period, the legislative body shall provide for a special election; otherwise the vote shall be held at the same time as a regular election occurring within this period, except that the legislative body, in its discretion, may provide for a special election at an earlier date within the prescribed period. Copies of the referred ordinance shall be made available at the polls.

(3) The form of the ballot for the repeal of the ordinance shall be substantially as follows:

"Shall the ordinance entitled '.....' be repealed?

YES / / NO / /"

(The voters shall indicate their choice by a cross or check mark placed in the appropriate box opposite the words YES or NO.)

(4) A petition may be withdrawn at any time before the 15th day prior to the day scheduled for a vote of the municipality. The petitioners' committee must file with the municipal clerk a request for withdrawal signed by at least 4 members of the petitioners' committee. Upon filing this request, the petition has no further effect and all proceedings on the petition shall be terminated. [PL 1987, c. 737, Pt. A, §2 (NEW); PL 1987, c. 737, Pt. C, §106 (NEW); PL 1989, c. 6 (AMD); PL 1989, c. 9, §2 (AMD); PL 1989, c. 104, Pt. C, §§8, 10 (AMD).]

F. If a majority of the voters who vote on a referred ordinance vote for its repeal, it is considered repealed upon certification of the election results. [PL 1989, c. 6 (AMD); PL 1989, c. 9, §2 (AMD); PL 1989, c. 104, Pt. A, §16 (AMD); PL 1989, c. 104, Pt. C, §§8, 10 (AMD).]
[PL 1989, c. 6 (AMD); PL 1989, c. 9, §2 (AMD); PL 1989, c. 104, Pt. A, §16 (AMD); PL 1989, c. 104, Pt. C, §§8, 10 (AMD).]

4. Exception. This section does not apply to municipalities whose charters specify different methods of reapportionment.

[PL 1987, c. 737, Pt. A, §2 (NEW); PL 1987, c. 737, Pt. C, §106 (NEW); PL 1989, c. 6 (AMD); PL 1989, c. 9, §2 (AMD); PL 1989, c. 104, Pt. C, §§8, 10 (AMD).]

SECTION HISTORY

PL 1987, c. 737, §§A2,C106 (NEW). PL 1989, c. 6 (AMD). PL 1989, c. 9, §2 (AMD). PL 1989, c. 104, §§A116,C8,10 (AMD). PL 1989, c. 104, §§A116,C10 (AMD). PL 2001, c. 537, §1 (AMD). PL 2001, c. 537, §2 (AFF).

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PLEASE NOTE: The Revisor's Office cannot perform research for or provide legal advice or interpretation of Maine law to the public. If you need legal assistance, please contact a qualified attorney.

MEMORANDUM
City Council Agenda Item

FROM:

DATE: February 11, 2022

SUBJECT: Order 143-21/22 Approving the Collective Bargaining Agreement with the American Federation of State, County and Municipal Employees (AFSCME) Local 481-07 Supervisors - 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

City staff has reached a tentative three (3) year agreement with AFSCME Supervisors representing approximately 38 supervisors and foremen. The tentative agreement is within guidance received from Council on July 27, 2021.

The parties have tentatively agreed to a three (3) year contract with general wage increases as follows:

2% effective retroactive to July 4, 2021

2.5% effective July 3, 2022

3% effective July 2, 2023

In addition, the City has agreed to implement a longevity step at sixteen plus (16+) years upon Council vote of approval of the new contract and a twenty plus (20+) year step effective July 3, 2022. The City will also implement Earned Paid Leave in accordance with 26 M.R.S. Sec 637.

Other economic items include:

- Adding Juneteenth as a recognized holiday and changing Columbus Day to Indigenous People's Day
- Adding \$.10 per hour increase to shift differentials
- Increase to standby pay
- Adding Fleet Services supervisors & foreman to the uniform rental agreement

The contract term is July 2, 2021 through June 30, 2024. The total direct cost of the general wage increase and other economic impacts is approximately \$370,000.00.

Other language changes which do not have a financial impact have also been agreed to.

The Supervisors members have ratified the three (3) year agreement.

This item must be read on two separate days. It received its first reading on February 7, 2022. 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

See attached fiscal impact statement memo.

VI. STAFF ANALYSIS AND BACKGROUND

Staff Analysis that will not appear in the Agenda Description.

VII. RECOMMENDATION

VIII. LIST ATTACHMENTS

1. AFSCME Local 481-07 Supervisors Contract 2.7.2022
2. Supervisors Contract Costing - Fiscal Impact Note

Prepared by:

Date: 02/11/2022

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 THE
COLLECTIVE BARGAINING AGREEMENT WITH
THE AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL
EMPLOYEES (AFSCME) LOCAL 481-07 SUPERVISORS**

ORDERED, that the attached Collective Bargaining Agreement with the American Federation of State, County and Municipal Employees (AFSCME) Local 481-07 Supervisors for July 2, 2021 through June 30, 2024, is hereby approved.

Formula for New Program Costing on Tax R

1) FY22 Valuation:	14,629,000,000	\$14,629,000
2) FY22 Tax Rate (Total City & School): <u>Levy / (Valuation/1000)</u>		\$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		\$125,000		\$145,000		\$170,000
LESS: TOTAL NEW ITEM ANNUAL REVENUES		\$0		\$0		\$0
=NEW ITEM NET TAX RATE IMPACT PROJECTION	\$125,000	\$125,000	\$145,000	\$145,000	\$170,000	\$170,000
New Program Impact to the Tax Rate	\$0.0085	\$0.0085	\$0.0099	\$0.0099	\$0.0116	\$0.0116
New Program % Impact on Tax Rate	0.1374%	0.0658%	0.1594%	0.0763%	0.1868%	0.0895%
Tax Rate Including New Program	\$6.23	\$13.00	\$6.23	\$13.00	\$6.23	\$13.00

Notes: See detailed contract redline for detailed item by item changes to the contract. Amounts are estimates and will vary depending on number of vacancies and approved union positions in future budget years.

MEMORANDUM
City Council Agenda Item

FROM:

DATE: February 11, 2022

SUBJECT: Order 145-21/22 Amendment to the Portland City Code Chapter 33 Re: Hazard Pay in Effect during Mask Mandate - Sponsored by Councilor Victoria Pelletier

SPONSOR: Councilor Victoria Pelletier

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

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st Reading **Final Action**

Can action be taken at a later date: No

PRESENTATION:

I. SUMMARY

II. AGENDA DESCRIPTION

This amendment to the Portland City Code would institute a "Hazard Pay" of 1.5 times the City's minimum wage for work performed when the City of Portland's Public Face Covering Mandate (Portland City Code Chapter 17, Article XII) is in effect. This amendment would be retroactive to February 7, 2022.

This item must be read on two separate days. It received its first reading on February 7, 2022. Five affirmative votes are required for passage after public comment.

III. BACKGROUND

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

V. FINANCIAL IMPACT

The impact of this item is estimated to be under the \$50,000 required for a fiscal note for the period it would be in effect.

VI. STAFF ANALYSIS AND BACKGROUND

VII. RECOMMENDATION

VIII. LIST ATTACHMENTS

1. Ch 33 Hazard Pay with Mask Mandate 2.7.2022
2. Finance Dept. Memo re: Fiscal Impact Considerations
3. Hazard Pay Q&A

Prepared by:

Date: 02/11/2022

KATE SNYDER (MAYOR)
ANNA J. 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 RODRIGUEZ (A/L)

**AMENDMENT TO PORTLAND CITY CODE CHAPTER 33
Re: HAZARD PAY TIED TO MASK MANDATE**

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

1. That Section 33-7 is hereby amended to read as follows:

Section 33.7. Minimum Wage.

- (a) *Minimum wage payment required:* Except as provided herein, Employers shall pay all Employees no less than the Minimum Wage established by this ordinance for each hour worked within the City Limits.
- (b) *Minimum Wage rate:*
 - (i) Beginning on January 1, 2022, the regular Minimum Wage for all Employees, including, but not limited to, Service Employees, shall be raised to \$13.00 per hour;
 - (ii) Beginning on January 1, 2023, the regular Minimum Wage for all Employees, including, but not limited to, Service Employees, shall be raised to \$14.00 per hour; and
 - (iii) Beginning on January 1, 2024, the regular Minimum Wage for all Employees, including, but not limited to, Service Employees, shall be raised to \$15.00 per hour; and
 - (iv) On January 1, 2025 and each January 1st thereafter, the minimum hourly wage then in effect must be increased by the increase, if any, in the cost of living. The increase in

the cost of living must be measured by the percentage increase, if any, as of August of the previous year over the level as of August of the year preceding that year in the Consumer Price Index for All Urban Consumers, CPI-U, for the Northeast Region, or its successor index, as published by the United States Department of Labor, Bureau of Labor Statistics or its successor agency, with the amount of the minimum wage increase rounded to the nearest multiple of 5¢. If the state minimum wage established by 26 M.R.S. § 664 is increased in excess of the minimum wage in effect under this ordinance, the minimum wage under this ordinance is increased to the same amount, effective on the same date as the increase in the state minimum wage, and must be increased in accordance with this ordinance thereafter.

...

(g) *Effect of Emergency Proclamation.* For work performed during a declared emergency, the effective Minimum Wage rate established by this ordinance shall be calculated as 1.5 times the regular minimum wage rate under subsection (b) above. A declared emergency under this ordinance shall include the period of time during which:

- (i) A proclamation issued pursuant to Chapter 2, Sec. 2-406, of this code declares an emergency to exist, if such emergency proclamation is geographically applicable to the Employee's workplace; or
- (ii) A proclamation issued pursuant to 37-B M.R.S. § 742 declares an emergency to exist, if such emergency proclamation is geographically applicable to the Employee's workplace.

A declared emergency under this ordinance shall not apply to work performed under a teleworking arrangement, as defined under 5. U.S.C. § 6501, allowing the Employee to work from home.

(h) Hazard Pay. For work performed when the City of Portland's Public Face Covering Mandate (Portland City Code Chapter 17, Article XII) is in effect, the effective Minimum Wage rate established by this ordinance shall be calculated as 1.5 times the regular minimum wage rate under subsection (b) above. Hazard Pay under this section shall not apply to work performed under a teleworking arrangement, as defined under 5. U.S.C. § 6501, allowing the Employee to work from home.

BE IT FURTHER ORDAINED that, notwithstanding the provisions of 1 M.R.S. § 302, this amendment shall apply retroactively to February 7, 2022.

City of Portland | Finance Department

Brendan T. O'Connell, *Finance Director*



To: Mayor Snyder and Members of the Portland City Council

From: Brendan T. O'Connell, Finance Director

Date: February 23, 2022

Re: Fiscal Impact Note Considerations – Amendment to Portland City Code Chapter 33 Re: Hazard Pay Tied to Mask Mandate

The fiscal impact of the proposed amendment is under \$50,000 and therefore does not require a fiscal impact note. The proposed amendment would not trigger the \$50,000 threshold since it is tied to the mask mandate and would therefore only currently require hazard pay payments over a 10-day period in mid-February 2022. It is important to note, however, that this amendment introduces potential significant variability in future City wages and could trigger the \$50,000 threshold and impact future City budgets over a longer period of time (or during an election week). Potential future impacts could range from \$0 to \$3.75M.

Consequently, some important factors to consider when reviewing this amendment include:

- **An estimate of potential days and likelihood the City could be in hazard pay status;**
- **The number of City employees earning under \$19.50** – In 2021 the City had 780 employees across all categories who at some point earned an hourly wage below \$19.50 per hour. The majority of these workers were election staff (approximately 475) and the second largest group were on-call workers (non full time – approximately 180 – mostly seasonal & event staff);
- **The number of City employees earning close to \$19.50** – In 2021 the City had 492 employees with a current pay rate of between \$19.50 and \$25. If hazard pay went into effect the City would need to review potential compression issues between employees and supervisors;
- **Existing hazard pay bonuses, etc.** – The City in many instances already negotiated additional hazard pay and bonuses for various front line workers. If mandated hazard pay went into effect these programs would likely need to be adjusted;
- **Impact of collective bargaining on wage rates** – The City is in active negotiations with several of our largest labor unions and the figures noted regarding pay rates below \$19.50 and below \$25 per hour will decrease as a result of those negotiations – however the complete impact will not be known until each contract receives final approval; and

- **Potential other cost increases from external vendors impacted by hazard pay** - The City would need to review all contracts with external vendors to determine if wage rates and therefore contract prices would be impacted by potential hazard pay. Many services being provided by outside vendors would become more expensive if hazard pay were in place.

Overall, given the above factors and the fact that the City's ability to pay wages is dependent on a fixed number of property tax dollars collected each fiscal year, the City Council may want to consider adding caveat language making the applicability of the amendment to municipal staff subject to availability of funds within the annual City budget or excluding City employees from its applicability entirely.

Date: February 18, 2022
Re: Order 145-21/22



The following information was requested by Councilor Fournier in advance of the Council meeting on February 28, 2022. It will be enclosed in the agenda packet to facilitate Council consideration of Order 145-21/22.

- Do we have a sense of the average rate for MaineCare reimbursement for agencies like Barron Center, Gateway, or other Mental Health/Behavioral Health Services and what it might look like to compare the current cost of staff before hazard wage vs when hazard wage is implemented and how that might affect staffing, services, and sustainability? I know we can't speak for private businesses likely, but not sure if we have any figures.

While we cannot speak for other agencies, we do know that long term care facilities across the state receive an increased MaineCare reimbursement rate when they are declared in outbreak status by the ME CDC. For the Barron Center, we receive an extra \$23.58 to our reimbursement rate when in outbreak status.

- When we have a policy with a fiscal impact to the city presented, can we comment on the typical process that policy takes to ensure that we understand the budget implications as well as all affected parties? I'm thinking something like this typically is brought forward in a council committee and if voted out of committee would go to full council for consideration.

Yes, we think it is appropriate to explain why this item followed a different path than policy proposals typically do. As you know, new policies with broad impacts on the City or the community are typically first developed at the council committee level. Through that process, the Council is able to divide up the shared priorities identified through Council goal setting by having its various committees complete foundational work for particular initiatives. Then, comprehensive proposals can be prepared and presented to the full council. In the usual course, a policy like this would go through committee and be vetted by City staff expert in a particular area, members of the public, impacted businesses, etc.

This particular policy, however, did not go through that usual process because it was proposed as a component of the City's Covid-19 response. Like the mask mandate discussed in October and then enacted in January, and other Covid-related initiatives, this item did not go through committee. Though the exceptions to the usual process accorded to Covid related items has allowed the Council to respond with needed urgency

during the pandemic, it has limited the ability of the Council, staff, and the public to study the full impacts of particular policies as thoroughly as is typically possible when the committee process is utilized.

- if this were to be approved it would only cover the days from 2/7-2/28 right? And then if we wanted to bring back a mask mandate we would have to suspend council rules to do that and then would hazard pay be back in effect?

If enacted as written, this order would be effective retroactively, from February 7 through February 17, when the mask mandate was no longer in effect. Retroactivity of ordinances can raise legal concerns so you are encouraged to discuss these questions with Corporation Counsel. Because of Rule 19, if the Council wishes to establish a new mask mandate, the Council rules would need to be suspended to allow the Council to take that question up again. At such time as a mask mandate is enacted, the hazard pay would then be triggered unless and until the hazard pay provision is, itself, repealed.

- Have we had any sort of analysis of the financial impact to the city if this were to be approved and who shoulders that burden?

A memo with this information will be uploaded to the agenda packet Friday, Feb. 25, and is attached here as well.

- Previously when hazard pay was considered at the beginning of the pandemic we had federal funds coming in to help businesses, can we comment on any federal or state business support programs or funds that remain this far into the pandemic?

Hazard pay is an eligible use of ARPA funds. The City has a Microenterprise Program (funded by CDBG), which provides grants of up to \$5,000 to assist with the stabilization and growth of very small for-profit businesses (0-3 employees) whose owners are low/moderate income, and will be launching a similar program with ARPA funding for small for-profit businesses with no more than five employees. Payroll is an eligible expense for both programs.

We are not aware of any other public programs available to support businesses in response to the pandemic.

- Is this written for only "essential workers" or for all workers who face the public on a regular basis? and how is essential defined if that's the case?

This order would temporarily change the minimum wage for all City of Portland employees.



gabe demaine <gabedemaine@gmail.com>

to publiccomment

11:23 AM (8 minutes ago)

February 28, 2022

Order number 145-21/22

Amendment to Portland City Code Chapter 33

Re: Hazard Pay in effect during mask mandate

Madam Mayor, esteemed Council Members,

Thank you for your time and attention in regards to this submitted written testimony addressing Councilor Pelletier's amendment linking hazard pay to a city wide mask mandate.

First, I would like to remark on the apparent hypocrisy of the Council's decision to terminate the citywide state of emergency and mask mandate (voted on earlier this month) while a "limited state of emergency" (adopted by Council in August 2021) remains in place for the personnel and functions of City Hall. Surely this represents a disconnect between the essential workers of City Hall and the public of Portland.

I ask that you consider and comment on this glaring discrepancy of public health policy.

Second, the provision of hazard pay would do much to alleviate the financial pressures of all workers in the city. There exists a wide range of the number of workers that businesses employ in the city. Many small businesses employ less than 50 workers, some even fewer. A system of tiered hazard pay based on the number of workers each business employs could be an equitable solution to the distribution of hazard pay.

Additionally I implore the Council to amend and adopt a "pandemic pay" provision apart from paid sick time, for employees who test positive for Covid and must quarantine. Using paid sick time; often a total of accrued sick time of some workers, to the necessity of quarantining represents an unintended cost and often financial hardship in the practice of public health.

I also urge the Council to consider that employers be responsible for the provision of N-95 or KN-95 masks for all their workers while on the job as well as payment for regular Covid testing for all their employees.

The provision of "quarantine pay" (at a worker's regular wage), regular Covid testing (either rapid testing at home or at an approved test site), and CDC recommended face coverings would

much advance public health, as well as prove a commitment to the health and safety of Portland's workers.

Thank you.

Respectfully submitted

Gabriel Demaine

112 Sherman St. District 2, Portland

IBEW Local #1837 Comment on Emergency Minimum Wage

Public Comment inbox



Matthew Beck <matt@ibew1837.org>
to publiccomment@portlandmaine.gov

8:53 AM (2 hours ago)

Please see below and attached comment.

February 28, 2022

Dear Councilors,

I am writing to you once again to urge you to immediately reinstate Portland's emergency minimum wage of \$19.50 for workers who interact with the public. Although the overwhelming majority of our union's members already make \$19.50 or above, we believe in the principle of "an injury to one is an injury to all," and many Portland workers continue to put their health at risk every day. COVID-19 case numbers are declining but an unacceptable level of risk continues as evidenced by your ongoing policy of remote meetings.

Portland's workers need hazard pay now, as well as permanent minimum wage increases that account for the rising costs of food, housing and other basic human needs. City Council should bring the hazard pay workshop back. Other solutions to this crisis for workers have yet to be fully explored and we believe it is the Council's responsibility to consider them.

Maine's largest city is more than a destination for tourists that is "open for business." It is home to many working class people who are suffering. We urge you to set aside the Chamber of Commerce's fear tactics and find a way to support low wage workers and small businesses. You can do both. You must do both.

Please reinstate Portland's emergency minimum wage of \$19.50 for frontline workers.

Sincerely yours,

Matthew Beck

Organizer/Business Representative
IBEW Local #1837, Maine and New Hampshire
Cell: 207-441-4123
Office: 207-623-1030





International Brotherhood Electrical Workers

Local #1837 Utility / Broadcasting

NEW HAMPSHIRE OFFICE
680 Central Avenue, Suite 201
Dover, NH 03820
(603) 743-1652
Fax (603) 743-1654
nhlocal@ibew1837.org

Tony Sapienza, Business Manager
Michelle Crocker, President
Renee Gilman, Assistant Business Manager
Matthew Beck, Business Representative

MAINE OFFICE
16 Old Winthrop Road, Suite 1
Manchester, ME 04351
(207) 623-1030
Fax (207) 621-8384
union@ibew1837.org

Portland City Council
City Hall
389 Congress Street
Portland, ME 04101

February 28, 2022

Dear Councilors,

I am writing to you once again to urge you to immediately reinstate Portland's emergency minimum wage of \$19.50 for workers who interact with the public. Although the overwhelming majority of our union's members already make \$19.50 or above, we believe in the principle of "an injury to one is an injury to all," and many Portland workers continue to put their health at risk every day. COVID-19 case numbers are declining but an unacceptable level of risk continues as evidenced by your ongoing policy of remote meetings.

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Please reinstate Portland's emergency minimum wage of \$19.50 for frontline workers.

Sincerely yours,

Matthew Beck
IBEW Local #1837 Business Representative

sent via email

For 2/7/22 packet – Question on proposed amendment to Order 131-21/22 Amendment to Portland City Code Chapter 17 Re: Face Covering Mandate

0 views



Jim Hall <mtjimhall@gmail.com>

8:47 AM (8 hours ago)

to publiccomment@portlandmaine.gov, Kate Snyder, Pious Ali, April Fournier, rrodriguez@portlandmaine.gov, atrevorrow@portlandmaine.gov, vpelletier@portlandmaine.gov, Tae Chong, Andrew Zarro, Mark Dion, Jen Thompson, Danielle West-Chuhta

Dear Councilors,
CC: Corp Counsel

I am writing to ask you to determine the legality of amending hazard pay rules that were enacted by citizens initiative in 2020. I believe the council may not adjust code passed in this way until 2025. This is not an argument for or against hazard pay as such, but a request to demonstrate that you are following predictable rules of order as set forth in current law.

I would also question whether your rules allow a minority dissenting vote to bring up an issue that has already been settled (... though this council has already proven willing to manipulate the so-called "reconsideration" rule). I'm guessing the fact that order 131 explicitly comes back for review every 30 days may open up the floor for anyone to amend etc — but I would like to hear Corp Counsel provide legal clarity about this as well before you vote on the amendment.

Thank you,
Jim Hall
District One

<https://www.pressherald.com/2022/02/01/portland-council-will-consider-whether-to-implement-hazard-pay-for-workers/>

Comment for 2 28 22 Hazard Pay Agenda item

Public Comment inbox



Peggy Marchand <pm17march@gmail.com>

10:13 AM (53 minutes ago)

to publiccomment

To: The Portland City Council

From: Peggy Marchand, Gorham, Maine

Re: Agenda Item on Hazard Pay, February 28, 2022

Thank you for the opportunity to speak on the issue surrounding Hazard Pay. Please know that your decisions are having a direct impact beyond the people living and working in Portland, including my family. We miss Portland. Before the Pandemic, we drove into the city frequently. We shopped here, filling parking meters with cash and credit, and packing up bags of groceries to bring home. We spent significant sums on all kinds of goods and services. We volunteered here, dined here, and came here to our doctors' offices for medical care. We happily paid for the freshest fish, took courses, attended plays and lectures, visited museums, picked up take-out here, and witnessed the moon rise over Casco Bay. Now, not so much. The lack of consistency about mask wearing gave us pause, a literal pause, one that turned into a two-year decision to stay out of indoor spaces anywhere in the city. We are lucky. We are old. As retired senior citizens, we can stay safe by just staying home.

We wait. And we watch. We watch Portland as the Pandemic continues. We were so proud when over 62% of Portland voters cast their ballots for implementing Hazard Pay in 2020. Their intention to support essential workers who must muster true courage as they go into work each day, protected only by masks and plexiglass, is something that should not only be re-implemented right now, but celebrated as the least a city could do to support their front-facing workers. Portland is a city that depends on thousands of low-wage workers showing up each day. Essential workers can't just pause and wait for Pandemic conditions to improve. They deserve Hazard Pay now; the Omicron variant continues to create significant risks. Current data from the CDC, reported in Saturday's Portland Press Herald, stated that only 3 counties in Maine have low enough transmission rates to support rescinding mask-wearing in indoor spaces. Cumberland County is not a low transmission area. This means Portland continues to need indoor masking to protect the health and well-being of its workers and the public. The City Council should muster its courage to enforce indoor masking and Hazard Pay policies tonight.

"Everybody, come to the table!" is a phrase from my childhood. We gathered around, to eat, of course, but also to talk and listen. Sitting at a table together implies a relationship; it's a recognition of belonging and fosters a sense of equity. Surely, it's a sign of respect as well. In Portland, businesses, workers, the City Council, and the voters share a very necessary relationship. Workers depend on good jobs, healthy conditions, and fair pay, while business owners depend on their workers to supply the hard work that keeps the companies' customers satisfied, produces quality goods and services, and polishes the reputation Portland companies are so justifiably proud of. This symbiotic relationship should be paramount in a pandemic! The voters held their part of the relationship, recognizing early on the support workers need in a dangerous time. Voters moved to guarantee workers some extra financial support. Voters demonstrated their respect and appreciation. It seems as if the City Council may have missed the importance of Hazard Pay or perhaps bowed to phony "financial scarcity" pressures to reject the will of its voters. Many months have gone by since the voters passed Hazard Pay and all legal challenges against Hazard Pay were dismissed. The Council has had plenty of time to find appropriate sources to fund Hazard Pay as Covid, in all its changing forms, continues to emerge, and create risks for workers. It is not too late. Please, return to the table. Please think more deeply about the respect workers deserve and the encouragement they need everyday as they go about their jobs. The risks they face each day are for all of us. We owe them Hazard Pay. It is nothing more than simple respect. Please support making Portland a safer, better place for its workers and the public they serve. Thank you.

Peggy Marchand

For 2/7/22 packet – Question on proposed amendment to Order 131-21/22 Amendment to Portland City Code Chapter 17 Re: Face Covering Mandate

0 views



Jim Hall <mtjimhall@gmail.com>

8:47 AM (8 hours ago)

to publiccomment@portlandmaine.gov, Kate Snyder, Pious Ali, April Fournier, rrodriguez@portlandmaine.gov, atrevorrow@portlandmaine.gov, vpelletier@portlandmaine.gov, Tae Chong, Andrew Zarro, Mark Dion, Jen Thompson, Danielle West-Chuhta

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CC: Corp Counsel

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I would also question whether your rules allow a minority dissenting vote to bring up an issue that has already been settled (... though this council has already proven willing to manipulate the so-called "reconsideration" rule). I'm guessing the fact that order 131 explicitly comes back for review every 30 days may open up the floor for anyone to amend etc — but I would like to hear Corp Counsel provide legal clarity about this as well before you vote on the amendment.

Thank you,
Jim Hall
District One

<https://www.pressherald.com/2022/02/01/portland-council-will-consider-whether-to-implement-hazard-pay-for-workers/>

MEMORANDUM
City Council Agenda Item

FROM:

DATE: February 2, 2022

SUBJECT: Order 147-21/22 Extending Charter Review Commission Deadlines - Sponsored by Danielle 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

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

Under State law (30-A MRS S2103(5)(E)), the City Council “may extend the time limits for the preparation and submission of preliminary and final reports of the charter commission for up to 24 months after the election of the commission if the extension is necessary to:

(1) Properly complete the reports;” The Charter Commission and its several Committees have been diligently carrying out their work on numerous proposals for Charter revisions with the intent to meet deadlines that would allow the Commission to place the resulting Charter revision questions on the November 2022 ballot. However, the number and scope of the revision proposals requested by the public at the Commission’s initial public hearing require an extension of time to properly draft those proposals in the format and language of the Charter and to complete the preliminary and final reports that would contain and accompany these proposals, while still meeting the deadline for the November 2022 election ballot.

At the request of the Charter Review Commission, this item moves the deadline for the preliminary Charter Review Commission report to the City Council from March 8, 2022 to on or before May 9, 2022, and the final report deadline from June 8, 2022 to on or before July 11, 2022.

Five affirmative votes are required for passage of a resolution 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. Order Extending the Deadline for the Charter Commission Report 2.28.2022

Prepared by:

Date: 02/02/2022

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 EXTENDING THE DEADLINE FOR THE REPORTS FROM THE
CHARTER COMMISSION**

ORDERED, that the deadline for the preliminary Charter Commission report to the City Council is hereby extended from March 8, 2022 to on or before May 9, 2022; and

BE IT FURTHER ORDERED, that the deadline for the final Charter Commission report to the City Council is hereby extended from June 8, 2022 to on or before July 11, 2022.

MEMORANDUM
City Council Agenda Item

FROM: Mary Davis, Division Director

DATE: February 7, 2022

SUBJECT: Order 148-21/22 Approving the Housing and Urban Development Citizen Participation Plan for the City of Portland - Sponsored by the Housing & Economic Development Committee, Councilor Pious Ali, Chair

SPONSOR: Councilor Pious Ali, Chair, Housing and Economic Development Committee
(If sponsored by a Council committee, include the date the committee met and the results of the vote.)

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st Reading 2/28/2022

Final Action 2/28/2022

Can action be taken at a later date: Yes Action must be taken by March 7, 2022 in order to enact the changes prior to the public hearing process for the Five-Year Consolidated Plan which will begin on March 21, 2022.

PRESENTATION: Mary Davis and Heidi McCarthy will provide a brief background about this item and take questions on the proposed changes. There will not be a slide deck.

I. SUMMARY

The Housing and Community Development Division (HCD) has revised the Citizen Participation Plan to better align with federal requirements and best practices for public notice and participation.

II. AGENDA DESCRIPTION

The Housing & Economic Development Committee reviewed and approved the changes on January 18, 2022 and voted (4-0) to forward the item to council for approval.

The Citizen Participation Plan is a required document that outlines the methods and procedures by which the City will communicate with the public regarding the federal programs administered by the Housing and Community Development Division (HCD). These programs include, but are not limited to, programs administered by the U.S. Department of Housing and Urban Development, such as the Community Development Block Grant Program (CDBG), HOME Program, and Emergency Solutions Grant Program (ESG). Federal requirements necessitate updates to the Citizen Participation Plan to increase accessibility for low-income individuals and those with limited English proficiency; additional changes are also proposed.

Five affirmative votes are required for passage after public comment.

III. BACKGROUND

The Citizen Participation Plan is a required document that outlines the methods and procedures by which the City will communicate with the public regarding the federal programs administered by HCD. These programs include, but are not limited to, the Community Development Block Grant (CDBG), HOME, and Emergency Solutions Grant (ESG).

Annually, the City creates an Annual Action Plan (AAP) and reports to HUD on the results and impact of the AAP through the Consolidated Annual Performance and Evaluation Report (CAPER). Every five years, the City develops a Consolidated Plan which outlines the needs of the community and proposed activities to address them through available funding. Each of these documents requires the City to facilitate significant public participation during the development process as defined in the Citizen Participation Plan.

The most recent updates to the Citizen Participation Plan are as follows:

1. More comprehensive procedures and methods for providing outreach to individuals who need accommodation or translation for meetings and documents, including a translation page. The City's Office of Economic Opportunity contributed significantly to this revision.
2. Specific due dates outlined for important and vital documents to ensure compliance.
3. Streamlined definition of substantial amendment. Previously, the definition included different percentage thresholds for each program. The new definition uses the same percentage for each program to trigger a substantial amendment process.
4. Generic language for future national emergencies or disasters in Section 10. This update may allow the City to immediately implement updated HUD requirements in times of national emergency without first requiring updates to the Citizen Participation Plan, allowing for more timely response to the emergency and faster dissemination of emergency funding.
5. Updated methods for disseminating plans and documents. This change clarifies how and where individuals may access plans and reports. Once the City has completed the website review and overhaul of the current website, the link in Section 8 will be updated.
6. The addition of the City's Remote Meeting Policy

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

The Citizen Participation Plan directly affects the City's eligibility for continued federal HUD funding. This funding is used to provide public services for unhoused individuals, development of community assets, and affordable housing.

V. FINANCIAL IMPACT

There is no additional financial impact as a result of this item; however, this item directly affects eligibility for federal HUD funding.

VI. STAFF ANALYSIS AND BACKGROUND

Staff recommends City Council approval of these changes. The revisions will allow HCD to provide accommodations to reach a wider and more diverse audience, respond more quickly in times of emergency, and ensure the Remote Meeting Policy guidelines are followed during public processes related to HUD funding.

VII. RECOMMENDATION

The changes are recommended by the Housing and Economic Development Committee.

VIII. LIST ATTACHMENTS

1. Order Approving the Citizen Participation Plan 2.28.2022
2. CPP revisions 2-14-2022
3. eCFR __ 24 CFR 91.105 -- Citizen participation plan; local governments__

Prepared by:

Mary Davis, Division Director

Date: 02/07/2022

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
THE HOUSING AND URBAN DEVELOPMENT CITIZEN PARTICIPATION PLAN
FOR THE CITY OF PORTLAND**

ORDERED, that the Housing and Urban Development Citizen Participation Plan for the City of Portland is hereby approved in substantially the form attached hereto; and

BE IT FURTHER ORDERED, that the City Council hereby authorizes the Interim City Manager or her designee to execute the Citizen Participation Plan any other related documents necessary or convenient to carry out the intent and purpose of this order.

City of Portland, Maine

Citizen Participation Plan



Adopted as Part of the 2022-2026 Consolidated Annual Action Plan

_____, 2022

Prepared by
Housing & Community Development Division
City of Portland, Maine
389 Congress Street Room 312
Portland, ME 04101



Please contact the following person to request an interpreter or accommodation for the document: Heidi McCarthy, hmccarthy@portlandmaine.gov, 207-756-8089.

Fadlan la xiriir qofkan hoose si aad u condsato turjumaan ama tixgelin xiliga dukumeenti: Heidi McCarthy, hmccarthy@portlandmaine.gov, 207-756-8089.

Por favor entre em contato com a seguinte pessoa para solicitar um intérprete ou acomodação para o documento: Heidi McCarthy, hmccarthy@portlandmaine.gov, 207-756-8089.

Heidi McCarthy, hmccarthy@portlandmaine.gov, 207-756-8089:

يرجى الاتصال بالشخص التالي لطلب مترجم أو تسهيلات لحضور الاجتماع: الاسم والبريد الإلكتروني ورقم الهاتف

Pour obtenir un interprète ou faciliter le document, veuillez contacter la personne suivante: Heidi McCarthy, hmccarthy@portlandmaine.gov, 207-756-8089.

Para solicitar un intérprete o una adaptación especial para el documento comuníquese con esta persona: Heidi McCarthy, hmccarthy@portlandmaine.gov, 207-756-8089.

CITY OF PORTLAND, MAINE

Citizen Participation Plan

The Citizen Participation Plan ("Plan") describes the processes and procedures the City follows in order to ensure that there is an effective public process for the allocation of Community Development Block Grant and other U.S. Department of Housing and Urban Development (HUD) Program funds. These programs are meant to benefit the community, particularly low-to moderate-income Portland residents. Thus, the Plan encourages input and participation from all citizens, non-profit organizations, and other interested parties, especially low-income persons, especially those who live in areas where CDBG funds will primarily be used, public housing residents, and organizations representing these groups. This plan is in accordance with federal regulations at 24 CFR Part 91.105.

The Plan also details how residents can access meetings, information, and public hearings on the Consolidated Housing and Community Development Plan, the Annual Action Plan, the Consolidated Annual Performance and Evaluation Reports (CAPER), and the Analysis of Impediments to Fair Housing. Housing and Community Development (HCD) Division staff, who administer the programs, are available to provide technical assistance and facilitate other accommodation requests, such as translation for limited English speakers or access and accommodation for disabled persons.

This Plan is posted on the City website to allow for access by the public. Interested parties may also request a copy of the Plan by contacting the City of Portland Housing and Community Development Division.

The City of Portland Housing and Community Development Division can be reached at:

Portland City Hall
389 Congress Street
Room 312
Portland, ME 04101
(207) 874-8711
TTY: (207) 874-8936

Department and program information can also be found at:
<https://www.portlandmaine.gov/775/Housing-and-Community-Development>

Draft Citizen Participation Plan last updated 2-14-2022

**where this symbol indicates, see Section 10 for guidance.*

1. Public Reports and Comment Period

The City of Portland prepares the following plans and reports about its HUD programs.

Document	Description	Report Due Dates	Length of Public Comment Period
Five Year Consolidated Plan	Five year plan that identifies City goals, priorities, and needs, and strategies to address them.	May 17: 45 days prior to beginning of fiscal year	30 days*
Annual Action Plan	Describes activities the City will fund and undertake in the coming year in order to benefit low- to moderate-income residents, in accordance with the Consolidated Plan.	May 17: 45 days prior to beginning of fiscal year	30 days*
Consolidated Annual Performance and Evaluation Report (CAPER)	Describes activities undertaken in the previous year.	September 29 : 90 days after close of program year	15 days*
Analysis of Impediments to Fair Housing	Outlines actions to overcome barriers, impediments, or discrimination that Portland residents face in accessing and maintaining housing.	Updated as necessary, aligned with Consolidated Plan	30 days

Prior to adoption of the Five Year Consolidated Plan, Annual Action Plans, and Consolidated Annual Performance Evaluation Reports (CAPER), the City will make available on the City website and in a local newspaper a summary of the plan or report for review by citizens, including low-and moderate-income persons residing in the areas in which CDBG funds will predominantly be used; organizations, including businesses, developers, community groups, and faith-based entities; public agencies including the Cumberland County Community Development office, the Continuum of Care, and Portland Housing Authority; and any other interested parties. The report or summary will contain information regarding the purpose and process for developing the Plan, the anticipated funding to be received and the range of activities that are eligible and either planned to be or have been undertaken as well as the locations where copies of the plan or report are available. These publications will commence a 30 day comment period for the Five Year Plan and the Annual Action Plan, and a 15 day comment period for the Consolidated Annual Performance Evaluation Report (CAPER).*

An electronic version of the Plan is available for review on the City of Portland's website. Hard copies can be made available for review at City Hall in the Housing and Community Development Office, Room 312 or at the Cumberland County Community Development office at 142 Federal Street.* The City will provide a reasonable number of free copies of the Consolidated Plan and Analysis of Impediments when requested by citizens or community groups.

Draft Citizen Participation Plan last updated 2-14-2022

**where this symbol indicates, see Section 10 for guidance.*

2. Public Hearings and Meetings*

The City holds a number of public hearings each year to obtain citizen input and comments on the Consolidated Plan, the Annual Action Plan, and the Consolidated Annual Performance Evaluation Report (CAPER). All such meetings and hearings are held in accessible, public locations, primarily City Hall and other community centers unless subject to the City's Remote Participation Policy, adopted on July 19, 2021 under the State of Maine legislation that governs remote meetings, 1 M.R.S. § 403-B.

A) City Council Meetings - Two public hearings are held in March or April, prior to the City Council's adoption of the Consolidated Plan and the Annual Action Plan. The City notifies the general public of the time and dates of the hearing by placing a legal advertisement in the local daily paper at least 15 days prior to the date of the hearing. The notice contains at a minimum the amount of assistance the City expects to receive (including grant funds and program income); the range of activities that may be undertaken; the estimated amount of funding that will benefit persons of low- and moderate-income; the City's plans to minimize displacement of persons and to assist any persons displaced; and when and how the City will make this information available. The City also notifies public agencies, organizations and other stakeholders through email or mail at least 15 days prior to the hearing. Information is also always posted on the City of Portland's website.

B) District Meetings - The City of Portland holds 5 District meetings in the fall. These meetings are open to every resident and neighborhood in Portland. The meetings are held virtually or in accessible locations such as community centers, City Hall, or public school buildings and feature presentations describing the CDBG, HOME, and ESG programs, Citizen Participation Plan, eligible activities, and funded projects that have been completed in these neighborhoods. Staff are available for feedback or questions from the public regarding CDBG, HOME, ESG and the lead grant. In addition, staff makes informational packets available and offers a signup opportunity for interested parties to be added to the Community Development listserv. Advertisement and outreach for these meetings are provided by City of Portland social media, press releases, and email listservs of neighborhood organizations and interested parties.

C) Housing and Economic Development Committee Meetings - This committee meets twice a month and regularly addresses HUD program topics. Meetings are noticed and open to the public.

3. CDBG Priority Task Force

The CDBG Priority Task Force is a Council appointed Task Force which convenes prior to the submission of a new consolidated plan to develop priorities and provide advice to the

City Manager and City Council on the Housing and Community Development needs of the City, including social, economic, housing, and neighborhood revitalization needs. This group consists of 9-16 Portland residents representing diverse and relevant populations and expertise, including but not limited to: a) residents of eligible neighborhoods; b) low and moderate income Portland residents; c) renters and d) landlords; individuals who are knowledgeable about e) planning and f) economic development; g) public service representatives from various areas of expertise; h) Portland housing authority (resident or worker); i) senior citizens; j) young persons (under 30); k) immigrant and refugees; and an individual with a l) disability. All meetings of the Task Force are noticed and open to the public. A new Task Force is appointed every three to five years. Task Force membership lasts the duration of the priority setting process for that year, approximately six months to one year.

4. CDBG Annual Allocation Committee

The CDBG Annual Allocation Committee is a Council appointed volunteer Committee responsible for reviewing and scoring Community Development applications and making funding recommendations to the City Manager and the City Council each year. All Committee meetings are open to the public. Dates, agendas, backup materials, and minutes are posted to the City of Portland's website and updated regularly during the months the Committee meets, typically December through February. The CDBG Allocation Committee is a standing Committee where members serve three year terms. This group consists of 7-10 Portland residents, who serve staggered three year terms. Conflicts of interest are minimized; no staff, board members, contractors or anyone receiving financial gain from an applicant's proposal can participate on this committee. The City advertises one to two times per year (in the local newspaper and the web site, etc.) for persons interested in being on this Committee.

5. Technical Assistance and Outreach

The City's Housing and Community Development Division provides technical assistance to any organization, agency, or individual serving or interested in serving low income neighborhoods and persons for the purpose of developing proposals to request funding under Housing and Community Development programs and activities. Technical assistance is available upon request from the HCD Division at City Hall, Room 312, 389 Congress Street, or by calling (207) 874-8731.

6. Access to Records and Information*

Residents, public agencies and other interested parties will also have access to records relating to the City's Consolidated Plan, proposed activities, HUD-provided data, and the use of funding over the previous five years. Records are available at the Housing and Community Development office, Room 312 City Hall, 389 Congress Street and on the

City's website.

A) Procedures for Assessing Language Needs

The City of Portland assesses its Language Access needs through its Office of Economic Opportunity (OEO). OEO is charged with ensuring Portland's racial, ethnic and linguistic minorities reach their full potential in Portland. As a result, OEO has strong partnerships to help the City assess Portland's most spoken languages among limited English proficient populations (LEPs). Portland Public Schools Home Language Survey is the most up to date language data available. OEO checks in regularly with their Language Access coordinator to review trends and co-inform one another on information of new arrivals. Additionally, Portland Adult Education, Portland's largest English language acquisition hub, also collects native language information.

The City of Portland Family Shelter runs a daily report on new arrivals, which captures country of origin and language, and OEO captures native or preferred language in all its initiatives and programs. Lastly, Census data and other report generators, such as the New American Economy, serve as a useful resource.

B) Need for Translation of Notices and Other Vital Documents

Translation and interpretation services for non-English speaking persons will be made available for materials or meetings upon request. It is the City's policy to provide any and all reasonable accommodations for its disabled or non-English speaking citizens to access any materials, presentations, or locations relative to City programs, including providing oral, Braille, electronic, or large print copies of materials for the visually impaired; and delivering copies of materials to the homebound. Such requests can be made by contacting the Housing and Community Development division at City Hall, Room 312, 389 Congress Street, or by calling (207) 874-8731, TTY: (207) 874-8936.

In addition it is the City's policy that "Vital documents" will be translated when a significant number or percentage of the population eligible to be served, or likely to be directly affected by the program/activity, needs services or information in a language other than English to communicate effectively.

The Office of Economic Opportunity (OEO) supports City departments in their translation of vital documents. OEO also engages with Department decision-makers to encourage the collection of primary native language data in their daily operations to ensure documents are translated to the unique languages spoken by their specific constituents.

OEO recommends Departments identify their vital documents and translate them into the five most spoken languages in Portland: Arabic, French, Portuguese, Spanish and Somali. This process often involves a discussion on Plain Language and a modification or alteration of form, notices, or other documents to ensure they follow Plain Language

principles.

The City of Portland has standard contracts with several in-person language interpretation agencies as well as telephonic ones. Virtual meetings have also provided the option to offer simultaneous interpretation at any public hearings. Through the City's Minority Health program, any City Department, Division, or employee can contract with one of the City's Community Health Outreach Workers, who offer interpretation, translation, and cross-cultural services. The team at OEO has experience facilitating public meetings, in person and virtually, where simultaneous interpretation has been offered to any participant in the five most spoken languages in Portland.

7. Comments and Complaints*

The City considers all comments, whether received orally or in writing, during the development of the Consolidated Plan and related Annual Action Plans and Consolidated Annual Performance and Evaluation Reports (CAPER). Comments or Complaints can be submitted orally at public meetings or in written form at any time. A summary of the comments received in the preparation of the Plan will be attached to the final Consolidated Plan, Annual Action Plan, amendment to the Plan, or Consolidated Annual Performance and Evaluation Report.

The City responds to all substantive complaints regarding the Consolidated Plan, or activities implemented under the Plan, in writing within 15 working days of receiving said complaints where feasible. If a complainant remains unsatisfied, staff brings the complaint to the City Manager for review and resolution. If warranted, the City Manager may refer the complaint to the City Council for review and resolution. All comments and complaints should be directed either in writing or orally to the City's Housing and Community Development Program Manager (207) 874-8731, City Hall, Room 312, 389 Congress Street, Portland, ME 04101 or the Director of Housing and Community Development (207) 874-8711, City Hall, Room 312, 389 Congress Street, Portland, ME 04101.

8. City of Portland Website and Social Networking Sites

The City of Portland's website provides up-to-date information on the Community Development Block Grant, HOME Program, and Emergency Solutions Grant. The CDBG application, process, dates, and additional information is listed and updated regularly on the website. The current Citizen Participation Plan, Consolidated Plan, Consolidated Annual Performance and Evaluation Reports (CAPER), and Annual Action Plans are available on the web site all year. The website can be accessed at <https://portlandmaine.gov/762/Plans-Reports>. The City will also ensure that electronic materials are accessible via screen reader technology for the visually impaired and that

translation of website content is available. The City of Portland has multiple social network accounts via Facebook, Instagram, and Twitter. Housing and Community Development news is posted here regularly.

9. Amendments to the Consolidated Housing and Community Development Plan

Due to changes in local needs during the program year, amendments and revisions to the Consolidated Plan may be necessary. Some of them may be substantial amendments that significantly alter the priorities of the 5-year strategy and the activities within the Annual Plan. Most will be minor in nature, requiring only insignificant shifting of funds from one account to another in order to complete an approved activity. This may include the reprogramming of contingency or surplus funds. The following criteria will govern how the City implements substantial amendments and funding revisions.

A) Minor amendments. Unless a change qualifies as a substantial amendment (see below) the City Manager or his/her designee will amend the City's approved plan whenever one of the following decisions is made:

- (1) To make a change in its allocation priorities, including between eligible activities within a program, or a change in the method of distribution of funds; or
- (2) To carry out an activity, using funds from any program covered by the consolidated plan (including program income), not previously described in the action plan; or
- (3) To change the purpose, scope, location, or beneficiaries of an activity.

Each minor amendment must be authorized by the City Manager or his designee, made available to the public, and submitted to HUD; the amendment may be implemented immediately after completing these steps. All amendments will be made public by posting on the City of Portland's website, and made available during business hours in the Housing and Community Development Division, City Hall, Room 312. Additionally, members of the public may request a copy of any proposed minor amendment via email request to the City's CDBG Program Manager.

B) Substantial amendment*. A substantial amendment to the Consolidated Plan or Annual Action Plan is defined by the City as a transfer of funds between two or more approved Plan activities that is greater than 7% of the grant allocation by which the program activity is funded, including changes in the use of CDBG funds between eligible activities.

Substantial amendments to the Plan will be presented to the Portland City Council for its review and approval. This meeting will be advertised as a City Council action item; be open to the public; and provide opportunity for public comment in writing or orally on the proposed substantial amendment. The public will be notified of all substantial amendments by an advertisement in a local newspaper and a posting on the City's

web site. The advertising of the substantial amendment will begin a thirty (30) day citizen review and comment period. The City will consider any comments or views of citizens received in writing or orally during the comment period, and will attach to the amendment a summary of any comments or views, with explanations of those not accepted. The City Manager will submit to HUD a letter authorizing the amendment after the thirty-day comment period and City Council approval, and will implement the amendment at that time.

C) Funding revisions. Funding revisions are defined as minor programmatic or budgeting changes necessary to fund new activities or secure adequate funding to complete approved activities. For this purpose, a “new activity” is defined as a project or projects not originally submitted for funding during that year’s CDBG program application process. Funding revisions will be addressed in the following ways.

(1) Any new activities proposed to be funded in an amount less than the substantial amendment thresholds stated above, with either reprogrammed contingency, unallocated funds, additional funds allocated by HUD, or with monies from another account will require approval from the City Manager.

(2) Any fund transfer from one approved activity to another in an amount less than the substantial amendment thresholds stated above, but in an amount that increases the underfunded activity *in excess of* 25% of the original allocation shall be approved by the Director of Housing and Economic Development.

(3) Any fund transfer from one approved activity to another in an amount less than the substantial amendment thresholds stated above, but in an amount that increases the underfunded activity *less than* 25% of the original allocation shall be approved by the Department’s Housing and Community Development Director.

10. Times of National Emergency/Disaster

In times of national emergency with authorization from HUD, the public hearings and meetings to provide comment on the Consolidated Plan, Annual Action Plans, and Substantial Amendments to the Annual Action Plan, may be done virtually with reasonable notice to the public.

A) Public Hearings and Meetings

Due to the Coronavirus outbreak and the passage of the CARES Act of 2020 HUD has authorized new guidelines surrounding public hearings and meetings. The City will post a notice of public hearing in a paper of regular circulation no less than 5 days prior to the meeting. Meetings and public hearings may be held virtually.

In future times of national emergency or disaster, the City of Portland will follow any revised requirements and waivers authorized by HUD regarding public hearings and meetings.

B) Public Reports

Due to the Coronavirus outbreak and the passage of the CARES Act of 2020, or in future times of national emergency or disaster, hard copies of reports may not be available. All reports will be available electronically via the City's website.

C) Access to Records and Information

Due to the Coronavirus outbreak and the passage of the CARES Act of 2020, or in future times of national emergency or disaster, hard copies of reports may not be available. All records will be available electronically via the City's website.

Every effort will be made to accommodate those seeking interpretation services and accommodations for persons with disabilities.

D) Comments and Complaints

Due to the Coronavirus outbreak and the passage of the CARES Act of 2020 the public comment period shall be no less than 5 days. In future times of national emergency or disaster, the City of Portland will follow any revised requirements and waivers authorized by HUD regarding public comments.

E) Substantial Amendments to the Consolidated Plan or Action Plan

Due to the Coronavirus outbreak and the passage of the CARES Act of 2020, in lieu of a 30 day comment period, which is otherwise required, a public comment period for expedited substantial amendments shall be no less than 5 days. In future times of national emergency or disaster, the City of Portland will follow any revised requirements and waivers authorized by HUD regarding substantial amendments.

For FY 2019-2020 funding, the City of Portland may provide a 5-day notice for public comment as allowed under a waiver of certain regulatory requirements provided by the U.S. Department of Housing and Urban Development.



Displaying title 24, up to date as of 1/11/2022. Title 24 was last amended 11/08/2021.

Title 24 - Housing and Urban Development

Subtitle A - Office of the Secretary, Department of Housing and Urban Development

Part 91 - Consolidated Submissions for Community Planning and Development Programs

Subpart B - Citizen Participation and Consultation

§ 91.105 Citizen participation plan; local governments.

(a) *Applicability and adoption of the citizen participation plan.*

- (1) The jurisdiction is required to adopt a citizen participation plan that sets forth the jurisdiction's policies and procedures for citizen participation. (Where a jurisdiction, before August 17, 2015, adopted a citizen participation plan it, will need to amend the citizen participation plan to comply with provisions of this section.)
- (2) *Encouragement of citizen participation.*
 - (i) The citizen participation plan must provide for and encourage citizens to participate in the development of the consolidated plan, any substantial amendment to the consolidated plan, and the performance report. These requirements are designed especially to encourage participation by low- and moderate-income persons, particularly those persons living in areas designated by the jurisdiction as a revitalization area or in a slum and blighted area and in areas where CDBG funds are proposed to be used, and by residents of predominantly low- and moderate-income neighborhoods, as defined by the jurisdiction. A jurisdiction must take appropriate actions to encourage the participation of all its citizens, including minorities and non-English speaking persons, as provided in paragraph (a)(4) of this section, as well as persons with disabilities.
 - (ii) The jurisdiction shall encourage the participation of local and regional institutions, Continuums of Care, and other organizations (including businesses, developers, nonprofit organizations, philanthropic organizations, and community-based and faith-based organizations) in the process of developing and implementing the consolidated plan.
 - (iii) The jurisdiction shall encourage, in conjunction with consultation with public housing agencies, the participation of residents of public and assisted housing developments (including any resident advisory boards, resident councils, and resident management corporations) in the process of developing and implementing the consolidated plan, along with other low-income residents of targeted revitalization areas in which the developments are located. The jurisdictions shall make an effort to provide information to the PHA about affirmatively furthering fair housing strategy, and consolidated plan activities related to its developments and surrounding communities so that the PHA can make this information available at the annual public hearing(s) required for the PHA Plan.
 - (iv) The jurisdiction should explore alternative public involvement techniques and quantitative ways to measure efforts that encourage citizen participation in a shared vision for change in communities and neighborhoods, and the review of program performance; e.g., use of focus groups and the Internet.
- (3) *Citizen comment on the citizen participation plan and amendments.* The jurisdiction must provide citizens with a reasonable opportunity to comment on the original citizen participation plan and on substantial amendments to the citizen participation plan, and must make the citizen participation plan public. The citizen participation plan must be in a format accessible to persons with disabilities, upon request.
- (4) The citizen participation plan shall describe the jurisdiction's procedures for assessing its language needs and identify any need for translation of notices and other vital documents. At a minimum, the citizen participation plan shall require that the jurisdiction take reasonable steps to provide language assistance to ensure meaningful access to participation by non-English-speaking residents of the community.

(b) *Development of the consolidated plan.* The citizen participation plan must include the following minimum requirements for the development of the consolidated plan:

- (1)
 - (i) The citizen participation plan must require that at or as soon as feasible after the start of the public participation process the jurisdiction will make the HUD-provided data and any other supplemental information the jurisdiction plans to incorporate into its consolidated plan available to its residents, public agencies, and other interested parties. The jurisdiction may make the HUD-provided data available to the public by cross-referencing to the data on HUD's website.

- (ii) The citizen participation plan must require that, before the jurisdiction adopts a consolidated plan, the jurisdiction will make available to residents, public agencies, and other interested parties information that includes the amount of assistance the jurisdiction expects to receive (including grant funds and program income) and the range of activities that may be undertaken, including the estimated amount that will benefit persons of low- and moderate-income. The citizen participation plan also must set forth the jurisdiction's plans to minimize displacement of persons and to assist any persons displaced, specifying the types and levels of assistance the jurisdiction will make available (or require others to make available) to persons displaced, even if the jurisdiction expects no displacement to occur.
 - (iii) The citizen participation plan must state when and how the jurisdiction will make this information available.
 - (2) The citizen participation plan must require the jurisdiction to publish the proposed consolidated plan in a manner that affords its residents, public agencies, and other interested parties a reasonable opportunity to examine its content and to submit comments. The citizen participation plan must set forth how the jurisdiction will publish the proposed consolidated plan and give reasonable opportunity to examine each document's content. The requirement for publishing may be met by publishing a summary of each document in one or more newspapers of general circulation, and by making copies of each document available on the internet, on the jurisdiction's official government website, and as well at libraries, government offices, and public places. The summary must describe the content and purpose of the consolidated plan and must include a list of the locations where copies of the entire proposed document may be examined. In addition, the jurisdiction must provide a reasonable number of free copies of the plan to residents and groups that request it.
 - (3) The citizen participation plan must provide for at least one public hearing during the development of the consolidated plan. See paragraph (e) of this section for public hearing requirements, generally.
 - (4) The citizen participation plan must provide a period, not less than 30 calendar days, to receive comments from residents of the community on the consolidated plan.
 - (5) The citizen participation plan shall require the jurisdiction to consider any comments or views of residents of the community received in writing, or orally at the public hearings, in preparing the final consolidated plan. A summary of these comments or views, and a summary of any comments or views not accepted and the reasons why, shall be attached to the final consolidated plan.
- (c) **Consolidated plan amendments.**
- (1) The citizen participation plan must specify the criteria the jurisdiction will use for determining what changes in the jurisdiction's planned or actual activities constitute a substantial amendment to the consolidated plan. (See § 91.505.) The citizen participation plan must include, among the criteria for a substantial amendment, changes in the use of CDBG funds from one eligible activity to another.
 - (2) The citizen participation plan must provide community residents with reasonable notice and an opportunity to comment on substantial amendments to the consolidated plan. The citizen participation plan must state how reasonable notice and an opportunity to comment will be given. The citizen participation plan must provide a period, of not less than 30 calendar days, to receive comments on the consolidated plan substantial amendment before the consolidated plan substantial amendment is implemented is submitted to HUD for review.
 - (3) The citizen participation plan shall require the jurisdiction to consider any comments or views of residents of the community received in writing, or orally at public hearings, if any, in preparing the substantial amendment of the consolidated plan. A summary of these comments or views, and a summary of any comments or views not accepted and the reasons why, shall be attached to the substantial amendment of the consolidated plan.
- (d) **Performance reports.**
- (1) The citizen participation plan must provide citizens with reasonable notice and an opportunity to comment on performance reports. The citizen participation plan must state how reasonable notice and an opportunity to comment will be given. The citizen participation plan must provide a period, not less than 15 days, to receive comments on the performance report that is to be submitted to HUD before its submission.
 - (2) The citizen participation plan shall require the jurisdiction to consider any comments or views of citizens received in writing, or orally at public hearings in preparing the performance report. A summary of these comments or views shall be attached to the performance report.
- (e) **Public hearings -**
- (1)

- (i) **Consolidated plan.** The citizen participation plan must provide for at least two public hearings per year to obtain residents' views and to respond to proposals and questions, to be conducted at a minimum of two different stages of the program year. Together, the hearings must address housing and community development needs, development of proposed activities, proposed strategies and actions for affirmatively furthering fair housing, and a review of program performance.
- (ii) **Minimum number of hearings.** To obtain the views of residents of the community on housing and community development needs, including priority nonhousing community development needs and affirmatively furthering fair housing, the citizen participation plan must provide that at least one of these hearings is held before the proposed consolidated plan is published for comment.
- (2) The citizen participation plan must state how and when adequate advance notice will be given to citizens of each hearing, with sufficient information published about the subject of the hearing to permit informed comment. (Publishing small print notices in the newspaper a few days before the hearing does not constitute adequate notice. Although HUD is not specifying the length of notice required, it would consider two weeks adequate.)
- (3) The citizen participation plan must provide that hearings be held at times and locations convenient to potential and actual beneficiaries, and with accommodation for persons with disabilities. The citizen participation plan must specify how it will meet these requirements.
- (4) The citizen participation plan must identify how the needs of non-English speaking residents will be met in the case of public hearings where a significant number of non-English speaking residents can be reasonably expected to participate.
- (f) **Meetings.** The citizen participation plan must provide residents of the community with reasonable and timely access to local meetings, consistent with accessibility and reasonable accommodation requirements, in accordance with section 504 of the Rehabilitation Act of 1973 and the regulations at 24 CFR part 8; and the Americans with Disabilities Act and the regulations at 28 CFR parts 35 and 36, as applicable.
- (g) **Availability to the public.** The citizen participation plan must provide that the consolidated plan as adopted, consolidated plan substantial amendments, and the performance report will be available to the public, including the availability of materials in a form accessible to persons with disabilities, upon request. The citizen participation plan must state how these documents will be available to the public.
- (h) **Access to records.** The citizen participation plan must require the jurisdiction to provide residents of the community, public agencies, and other interested parties with reasonable and timely access to information and records relating to the jurisdiction's consolidated plan and use of assistance under the programs covered by this part during the preceding 5 years.
- (i) **Technical assistance.** The citizen participation plan must provide for technical assistance to groups representative of persons of low- and moderate-income that request such assistance in developing proposals for funding assistance under any of the programs covered by the consolidated plan, with the level and type of assistance determined by the jurisdiction. The assistance need not include the provision of funds to the groups.
- (j) **Complaints.** The citizen participation plan shall describe the jurisdiction's appropriate and practicable procedures to handle complaints from its residents related to the consolidated plan, amendments, revisions, and the performance report. At a minimum, the citizen participation plan shall require that the jurisdiction must provide a timely, substantive written response to every written resident complaint, within an established period of time (within 15 working days, where practicable, if the jurisdiction is a CDBG grant recipient).
- (k) **Use of citizen participation plan.** The jurisdiction must follow its citizen participation plan.

(Approved by the Office of Management and Budget under control number 2506-0117)

[60 FR 1896, Jan. 5, 1995; 60 FR 10427, Feb. 24, 1995, as amended at 71 FR 6962, Feb. 9, 2006; 76 FR 75967, Dec. 5, 2011; 80 FR 42360, July 16, 2015; 81 FR 91011, Dec. 16, 2016; 85 FR 47906, Aug. 7, 2020]

MEMORANDUM
City Council Agenda Item

FROM: Mary Davis, Division Director

DATE: February 10, 2022

SUBJECT: Order 149-21/22 Setting the Public Hearings on 2022-2026 Housing and Urban Development Five-Year Consolidated Plan, Fiscal Year 2023 Annual Action Plan and Appropriations for Community Development Block Grant Program, HOME Program, and Emergency Solutions Grant Program - 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 2/28/2022 **Final Action 2/28/2022**

Can action be taken at a later date: No The City's Citizen Participation Plan requires at least 15 days of notice prior to a public hearing. Approving this item at a later date will not allow sufficient time for notice to be given to the public.

PRESENTATION: Mary Davis and Heidi McCarthy will give a brief overview of this item. A slide deck will not be used.

I. SUMMARY

The U.S. Department of Housing and Urban Development (HUD) requires at least two public hearings to be held during the development of the Five-Year Consolidated Plan and Annual Action Plan.

II. AGENDA DESCRIPTION

The United States Housing and Urban Development Department (HUD) requires that the City create a Consolidated Plan outlining the needs, goals, and proposed activities for Community Development Block Grant (CDBG), Emergency Solutions Grant (ESG), and HOME funding. It is revised every five years to reflect the changing needs and priorities of the community. During the approval process, HUD requires the City to provide at least two opportunities for the public to comment on the proposed Consolidated Plan.

In addition, as required under our HUD approved citizen participation process, Public Hearings are held each spring to consider the City's Housing and Community Development Program proposal for the ensuing year. The CDBG Annual Allocation Committee, appointed by the Council, reviewed each application and made funding recommendations. They are given an opportunity to make a presentation to the Council at this meeting, and citizens may comment on the City's annual plan for the use of CDBG, HOME and ESG funds.

Public Hearings will be held on March 21, 2022 and on April 11, 2022 at a City Council Meeting to be held at 5:00 pm.

Five affirmative votes are required for passage after public comment.

III. BACKGROUND

The 2022-2026 Consolidated Plan will provide a framework for allocating Community Development Block Grant (CDBG), Emergency Solutions Grant (ESG), and HOME funding for the next five years. The plan is created by identifying community needs through data provided by HUD, the Census, existing plans, and significant public outreach.

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

The Public Hearing process directly affects the City's eligibility for continued federal HUD funding. This funding is used to provide public services for unhoused individuals, development of community assets, and affordable housing.

V. FINANCIAL IMPACT

There is no additional financial impact as a result of this item; however, this item directly affects eligibility for federal HUD funding.

VI. STAFF ANALYSIS AND BACKGROUND

The City of Portland Housing and Community Development Division takes seriously the responsibility to encourage public review, consideration, and feedback. During the approval process, HUD requires the City to provide at least two opportunities for the public to comment on the proposed Consolidated Plan and Annual Action Plan. Once approved, the Consolidated Plan is then used to create an Annual Action Plan each year, which the public may also review and comment on. The City follows its Citizen Participation Plan to ensure all who wish to provide input have the opportunity.

VII. RECOMMENDATION

Staff recommends that the public hearings be set and approved by the Council on March 21, 2022 and on April 11, 2022.

VIII. LIST ATTACHMENTS

1. 1 CDBG Order Public Hearings FY2023

Prepared by:

Mary Davis, Division Director

Date: 02/10/2022

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

CITY OF PORTLAND
IN THE CITY COUNCIL

MARK DION (5)
PIOUS ALI (A/L)
APRIL FOURNIER (A/L)
ROBERTO RODRIGUEZ (A/L)

**ORDER SETTING PUBLIC HEARINGS ON
FISCAL YEAR 2023 ANNUAL ACTION PLAN
AND APPROPRIATIONS FOR COMMUNITY DEVELOPMENT
BLOCK GRANT PROGRAM, HOME PROGRAM, AND EMERGENCY SOLUTIONS
GRANT PROGRAM**

ORDERED, that public hearings be held on the Fiscal Year 2023 Annual Action Plan and appropriations for the Community Development Block Grant Program, HOME Program, and the Emergency Solutions Grant Program; and

BE IT FURTHER ORDERED, that such hearings be held on March 21, 2022, and April 11, 2022 at City Council Meetings held at 5:00 p.m., in Portland City Hall Council Chambers, 389 Congress Street, or remotely as outlined in the City's Remote Participation Policy.

MEMORANDUM
City Council Agenda Item

FROM:

DATE: February 11, 2022

SUBJECT: Order 150-21/22 Approving the Purchase and Sale Agreement with Dorothy Hale for Property at 834 Riverside Street, Accepting a \$23,000 Donation from Allagash Brewing Company for that Purchase, and Placing that Land in the Portland Land Bank - 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 2/28/2022

Final Action 3/7/2022

Can action be taken at a later date: No The Land Bank Commission would like to proceed with due diligence.

PRESENTATION: There will be a Land Bank Commissioner present to present this order to the City Council.

I. SUMMARY

Approval of 834 Riverside Street Purchase and Sale Agreement to acquire these parcels to be added to the city-owned Riverton Trolley Park to protect the ecological, historical, and scenic values of the park.

II. AGENDA DESCRIPTION

This order would approve the Hale Parcel at 834 Riverside Street Purchase and Sale Agreement for land to be added to the Portland Land Bank, to protect the ecological, historical, and scenic values of the park. The acquisition was approved by the Land Bank Commission by a vote of 8-0 on February 9th 2022, and will use a donation from Allagash Brewery Company of \$23,000 and \$27,000 from the Land Bank Fund.

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

III. BACKGROUND

The Land Bank Commission (LBC), on February 9th 2022, voted (8/8) to recommend to the City Council the City acquisition of 834 Riverside Street to be added to the existing Riverton Trolley Park.

The project evaluation included significant considerations. All LBC property evaluations include a standardized “scorecard” that ranks the benefits and constraints of proposed property acquisitions. The scorecard for 834 Riverside Street indicates that the property would contribute to healthy forest, wetlands, and climate mitigation benefits as it is forested with mature, native trees. The scorecard also indicates the property would contribute to protecting the aesthetics and historical value of Riverton Trolley Park. This parcel would become part of the larger Presumpscot River Preserve, and it would contribute towards sustainable land use as this area has been designated for significant open space. associated with the Preserve. While this parcel does not provide additional access for underserved communities since Riverton Trolley Park already exists, and there is already waterfront access for hand-carried boats, the park itself provides these values. The property is within a 10-minute walk of the Portland Housing Authority’s Riverton Park facilities.

The City’s Economic Development Director, along with other City staff, assessed the potential for affordable

housing associated with 834 Riverside Street and determined that the small size (about 1 acre), combined with the fact that it abuts a paper street that remains undeveloped, did not warrant further consideration for pursuing affordable housing options. The Portland Housing Authority has submitted plans to the City of Portland to add 40 affordable housing units in the Riverton neighborhood. The City staff recommendation was for 834 Riverside to be acquired by the LBC to become part of the Riverton Trolley Park.

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

The intended result is to acquire this property to incorporate it into the existing City Park, Riverton Trolley Park.

V. FINANCIAL IMPACT

There is minimal fiscal impact to the City since the LBC would cover the appraised value portion of the acquisition (\$27,000) and Allagash Brewing Company has agreed to cover the remaining portion of the acquisition (\$23,000). The LBC is requesting that the environmental due diligence be covered by the City using existing funds from the Housing and Economic Development Department.

VI. STAFF ANALYSIS AND BACKGROUND

Staff Analysis that will not appear in the Agenda Description.

VII. RECOMMENDATION

The LBC and City staff recommend the City Council votes to approve the acquisition of 834 Riverside Street.

VIII. LIST ATTACHMENTS

1. P&S, Allagash Donation, 834 Riverside into Land Bank 2.28.2022and
2. PSA TFJ clean 020422
3. Riverton Trolley Park Letter (1)
4. Land Bank Priority Property Summary-Hale (2)
5. Hale Scorecard - Sheet1
6. Copy of RTP-Hale Parcels (1) (5)
7. City Review per G. Mitchell

Prepared by:

Date: 02/11/2022

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 THE PURCHASE AND SALE AGREEMENT
WITH DOROTHY HALE FOR PROPERTY AT 834 RIVERSIDE STREET,
ACCEPTING A \$23,000 DONATION FROM ALLAGASH BREWING COMPANY FOR
THAT PURCHASE, AND
PLACING THE LAND IN THE PORTLAND LAND BANK**

ORDERED, that the Purchase and Sale Agreement with Dorothy Hale in the amount of \$50,000.00 for certain land located at 834 Riverside Street is hereby approved in substantially the form attached hereto; and

BE IT FURTHER ORDERED, that the donation from Allagash Brewing Company for \$23,000 toward this purchase is hereby accepted and appropriated as a portion of the purchase price for the land in accordance with the provisions of the attached January 31, 2022 letter from Allagash Brewing Company; and

BE IT FURTHER ORDERED, that that land will be placed in and is to be maintained as part of the City's Land Bank; and

BE IT FURTHER ORDERED, that the Interim City Manager or her designee is hereby authorized to execute the Purchase and Sale Agreement and whatever other documents are necessary to effect the intent and purpose of this order.

CONTRACT FOR THE SALE OF REAL ESTATE

Date: January, 2022

RECEIVED OF: City of Portland whose mailing address is 389 Congress Street, Portland, ME 04101, Attn: Danielle P. West, City Manager hereinafter called the Purchaser(s), the sum of Two Thousand Five Hundred Dollars (\$2,500.00) as earnest money deposit and in part payment of the purchase price of the following described real estate, situated in the municipality of Portland, County of Cumberland, State of Maine and located at Rear 834-842 Riverside Street; assessor 325-C-1-7; CCRD Plan 10, Page 141 Lots 21-27), and described at said County's Registry of Deeds Book 6251, Page 202 and further described as: 39,150 square feet of vacant land, hereinafter called the Property, being property owned by Dorothy Hale, whose mailing address is 446 Commercial Street, Portland, ME 04101, hereinafter called the Seller(s). The purchase and sale of the Property is upon the terms and conditions indicated below:

1. PERSONAL PROPERTY: The following items of personal property are included in this sale (if applicable): none.
2. PURCHASE PRICE: The TOTAL purchase price being Fifty Thousand Dollars (\$50,000.00) to be paid as follows: at closing.
3. EARNEST MONEY/ACCEPTANCE: Ainsworth, Thelin & Raftice, PA shall hold said earnest money in a non-interest bearing account and act as Escrow Agent until closing, at which time said earnest money shall be credited toward the purchase price; this offer shall be valid until 5 days after the date set forth above 1//2022 at 5:00 PM; and, in the event of the Seller's non-acceptance, this earnest money shall be returned promptly to the Purchaser(s).
4. TITLE: That a deed, conveying good and merchantable title in accordance with standards adopted by the Maine Bar Association shall be delivered to the Purchaser(s) and this transaction shall be closed and the Purchaser(s) shall pay the balance due and the parties shall execute all necessary papers on or before 6/1/2022. If Seller(s) is unable to convey in accordance with the provisions of this paragraph, then the Seller(s) shall have a reasonable time period, not to exceed thirty (30) days, from the time the Seller(s) receives written notice of the defect, unless otherwise agreed to by both parties, to remedy the title, after which time, if such defect is not corrected so that there is merchantable title, the Purchaser(s) may, within fifteen (15) days thereafter, at Purchaser's option, declare the contract null and void and any earnest money shall be returned to the Purchaser(s) and neither party shall have any further obligation hereunder. If the Purchaser(s) does not declare the contract void within the period set forth above, the Purchaser(s) shall have waived the right to object to title. The Seller(s) hereby agrees to make a good-faith effort to cure any title defect during such period.
5. DEED: That the property shall be conveyed by a Quitclaim with Covenant deed, and shall be free and clear of all encumbrances except building and zoning restrictions of record, restrictive covenants and conditions of record and usual public utilities servicing the property and shall be subject to applicable land use and building laws and regulations.
6. POSSESSION /OCCUPANCY: Possession/occupancy of premises shall be given to Purchaser(s) immediately at closing unless otherwise agreed by both parties in writing.

7. LEASES/TENANT SECURITY DEPOSITS: N/A
8. PRORATIONS: The following items shall be prorated as of the date of closing:
 - a. Real Estate Taxes based on the municipality's tax year. Seller is responsible for any unpaid taxes for prior years.
 - b. Seller(s) shall pay its transfer tax as required by the State of Maine. Purchaser is exempt from paying transfer taxes.
9. INSPECTIONS: The Purchaser(s) is encouraged to seek information from professionals regarding any specific issue of concern. The Agent makes no warranties regarding the condition, permitted use or value of the Seller's real or personal property. This Contract is subject to the following inspections, with the results being satisfactory to the Purchaser(s):

TYPE OF INSPECTION	YES	NO	RESULTS	TYPE OF INSPECTION	YES	NO	RESULTS
			REPORTED				REPORTED
a. General Building	☐	☐	Within <u>#</u> days	g. Lead Paint	☐	☐	Within <u>#</u> days
b. Sewage Disposal	☐	☐	Within <u>#</u> days	h. Pests	☐	☐	Within <u>#</u> days
c. Water Quality	☐	☐	Within <u>#</u> days	i. ADA	☐	☐	Within <u>#</u> days
d. Radon Air Quality	☐	☐	Within <u>#</u> days	j. Wetlands	☐	☐	Within <u>#</u> days
e. Radon Water Quality	☐	☐	Within <u>#</u> days	k. Environmental Scan	☒	☐	Within <u>90</u> days
f. Asbestos Air Quality	☐	☐	Within <u>#</u> days	l. Other: <u>survey</u>	☒	☐	Within <u>90</u> days

The use of days is intended to mean from the effective date of this Contract. All inspections will be done by inspectors chosen and paid for by the Purchaser(s). If the result of any inspection or other condition specified herein is unsatisfactory to the Purchaser(s), in Purchaser(s) sole discretion, Purchaser(s) may declare the Contract null and void by notifying Seller(s) in writing within the specified number of days, and any earnest money shall be returned to the Purchaser(s). If the Purchaser(s) does not notify the Seller(s) that an inspection is unsatisfactory within the time period set forth above, this contingency is waived by the Purchaser(s). In the absence of inspection(s) mentioned above, the Purchaser(s) is relying completely upon Purchaser's own opinion as to the condition of the property.

11. FINANCING: N/A
12. AGENCY DISCLOSURE: The Purchaser(s) and Seller(s) acknowledge that there are no agent(s) representing either party incident to this transaction.
13. .DEFAULT: If Purchaser(s) fails to perform any of the terms of this Contract or is otherwise in default of any of its obligations, Seller's sole remedy shall be to retain the earnest money as full and complete liquidated damages. In the event Seller fails to perform any of the terms of this Contract or is otherwise in default of any of its obligations, Purchaser shall have the right to pursue all legal and equitable remedies available to it, including, without limitation, specific performance, but at all times may elect in substitution therefor, the right to a return of the earnest money. Notwithstanding any other provision of this agreement, Escrow Agent shall have the right to require written releases from both parties prior to releasing the earnest money to either party. If a dispute arises between Purchaser(s) and Seller as to the existence of a default hereunder and/or the release of the earnest money and said dispute is not resolved by the parties within (30) days, Escrow Agent may elect to file an action in interpleader and deposit the earnest money in the court to resolve said dispute, or otherwise disburse the earnest money pursuant to Maine Real Estate Commission regulations. Purchaser(s) and Seller, jointly and severally, shall indemnify Escrow Agent for all costs, losses, expenses, and damages, including reasonable attorneys' fees, incurred by Escrow Agent in

connection with said action and/or in connection with any dispute relating to this Contract and/or the Deposit. This provision shall not be deemed a waiver of any defenses, immunities or limitations of liability or damages available to the Purchaser under the Maine Tort Claims Act, other Maine statutory law, judicial precedent, common law, or any other defenses, immunities or limitations of liability available to the Purchaser.

14. **MEDIATION:** Any dispute or claim arising out of or relating to this Contract or the premises addressed in this Contract shall be submitted to mediation. This clause shall survive the closing of this transaction.
15. **PRIOR STATEMENTS:** Any verbal representations, statements and agreements are not valid unless contained herein. This Contract completely expresses the obligations of the parties. This is a Maine contract and shall be construed according to the laws of Maine.
16. **HEIRS/ASSIGNS:** This Contract is assignable YES ☒ NO ☐. This Contract shall extend to and be obligatory upon heirs, personal representatives, successors, and assigns (if assignment is allowed by the terms of this Contract), of the respective parties.
17. **COUNTERPARTS:** This Contract may be signed on any number of identical counterparts, including telefacsimile copies, with the same binding effect as if the signatures were on one instrument. Original or telefacsimiled signatures are binding.
18. **BINDING CONTRACT:** This Contract is a binding contract when signed by both Seller(s) and Purchaser(s) and when that fact has been communicated to all parties or to their agents. The Effective Date of the Contract is noted below. Time is of the essence of this Contract.
19. **REVIEW OF LEASES AND INCOME AND EXPENSE INFORMATION:** N/A
20. Intentionally Omitted.
21. **OTHER:** The Buyer's obligations are subject to approval by the Portland City Council.

A COPY OF THIS CONTRACT IS TO BE RECEIVED BY ALL PARTIES AND, BY SIGNATURE, RECEIPT OF A COPY IS HEREBY ACKNOWLEDGED. IF NOT FULLY UNDERSTOOD CONSULT AN ATTORNEY.

Seller(s) acknowledges that the laws of the State of Maine provide that every buyer of real property located in Maine must withhold a withholding tax equal to 2 % of the consideration unless the Seller(s) furnishes to the Buyer(s) a certificate by the Seller(s) stating, under penalty of perjury, that Seller(s) is/are a resident of Maine or the transfer is otherwise exempt from withholding.

Purchaser *Date*

Name/Title *Soc. Sec # or Tax I.D.*

The Seller(s) accepts the offer and agrees to deliver the above-mentioned property at the price and upon the terms and conditions set forth above.

Signed this: day of January, 2022. Effective date of Contract: , day of January, 2022.

The Listing Licensee is N/A

The Selling Licensee is N/A

Seller Date

Name/Title Soc. Sec # or Tax I.D.

Seller Date

Name/Title Soc. Sec # or Tax I.D.

Offer reviewed and refused on _____, _____.
_____, Seller

January 31, 2022

Rob Tod
Allagash Brewing Company
50 Industrial Way
Portland, ME 04103

Re: Donation for Riverton Trolley Park Acquisition

Mayor Snyder and Members of the Portland City Council:

Allagash Brewing is very supportive of the efforts of the City's Land Bank Commission to expand the Riverton Trolley Park to include the parcel of land that immediately abuts the park near West and Prim Streets, and with the address of 834 Riverside Street. The open space of the existing Trolley Park, including the current effort to add additional park space, provides a significant amenity for people who visit or reside in the increasingly popular Riverton area. The park provides valuable open space along the Presumpscot River, while also preserving Portland's long history of tourism.

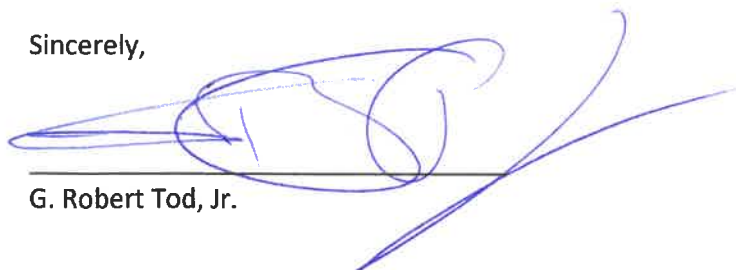
To assist with acquiring the parcel abutting the Trolley Park, Allagash Brewing is pleased to donate \$23,000 to the City of Portland to assist the City in acquiring the land parcel at 834 Riverside Street. We look forward to working with the City to complete this endeavor.

Regarding the logistics of our donation, our understanding is that the funds will be set aside in a dedicated fund solely for purpose of acquiring this parcel. If the acquisition of the land parcel does not occur within a reasonable period, we further understand that the funds will be returned. Once the City Council has formally approved the purchase and sale agreement for the parcel, please let us know and Allagash Brewing will mail or deliver a check for \$23,000 to the Department of Parks, Recreation and Facilities to assist with the acquisition. We will plan to deliver these funds within 3 days of receiving notice.

Allagash Brewing greatly appreciates the City's efforts to preserve open space in Portland, which contributes to a thriving economy, environmental stewardship, and health benefits for both residents and visitors. We also are very pleased to be able to assist the City in helping to enlarge public open space at Riverton Trolley Park.

If you have questions or need anything else, please let us know.

Sincerely,



G. Robert Tod, Jr.

PORTLAND LAND BANK HIGH PRIORITY PARCEL SUMMARY

PROPERTY NAME: Hale (Riverton Trolley Park)

Location: 834 Riverside St. behind West St. and Prim St. just east of 302 and Riverside St. intersection

Size: 0.9 acre

Priority Scorecard: This site was ranked using the Land Bank prioritization process and matrix (scorecard) that is on file with the Land Bank's records. The site is ranked as a medium priority site since it meets several of the criteria for Land Bank properties. The property abuts Riverton Trolley Park and is within a 10-minute walk of a residential neighborhood that includes Portland Housing Authority facilities at Riverton Park. The Hale property has access via paper streets off of Riverside Street; however the cost to develop the paper street to required standards would be a considerable expense. There is demand for residential development since the property is close to a pending residential and commercial development that also abuts the park and has access via Riverside Street.

Ownership: The parcel (CBL 325 C001 to 007) is owned by Dorothy Hale from Scarborough, Maine and identified as 834 Riverside Street. The assessed value of the property is \$31,300 and the annual tax assessment is \$729.60.

Characteristics and Values:

This undeveloped property abuts Riverton Trolley Park and includes a nearby Portland Trails / Sebago to the Sea access point and trail that traverses the park. The park is an historic recreation area for Portland area residents, and adds to the park's forested park setting. The proposed property acquisition is currently forested and would add an undeveloped land buffer between the park and the existing residential houses on West and Prim streets.

The property is close to the Presumpscot River and the park provides waterfront access to the river. The forested land cover provides wildlife habitat for birds and small mammals as well as stormwater runoff buffering benefits between development on Riverside Street and drainage to the Presumpscot River. The Riverton area is becoming increasingly developed and Riverton Trolley Park offers an undeveloped, forested park area for recreation along the Presumpscot River, with the Hale property providing an important forested buffer area between existing residential and commercial development along Riverside Street.

Figure 1. Overview of the parcel showing the extent of the proposed acquisition.

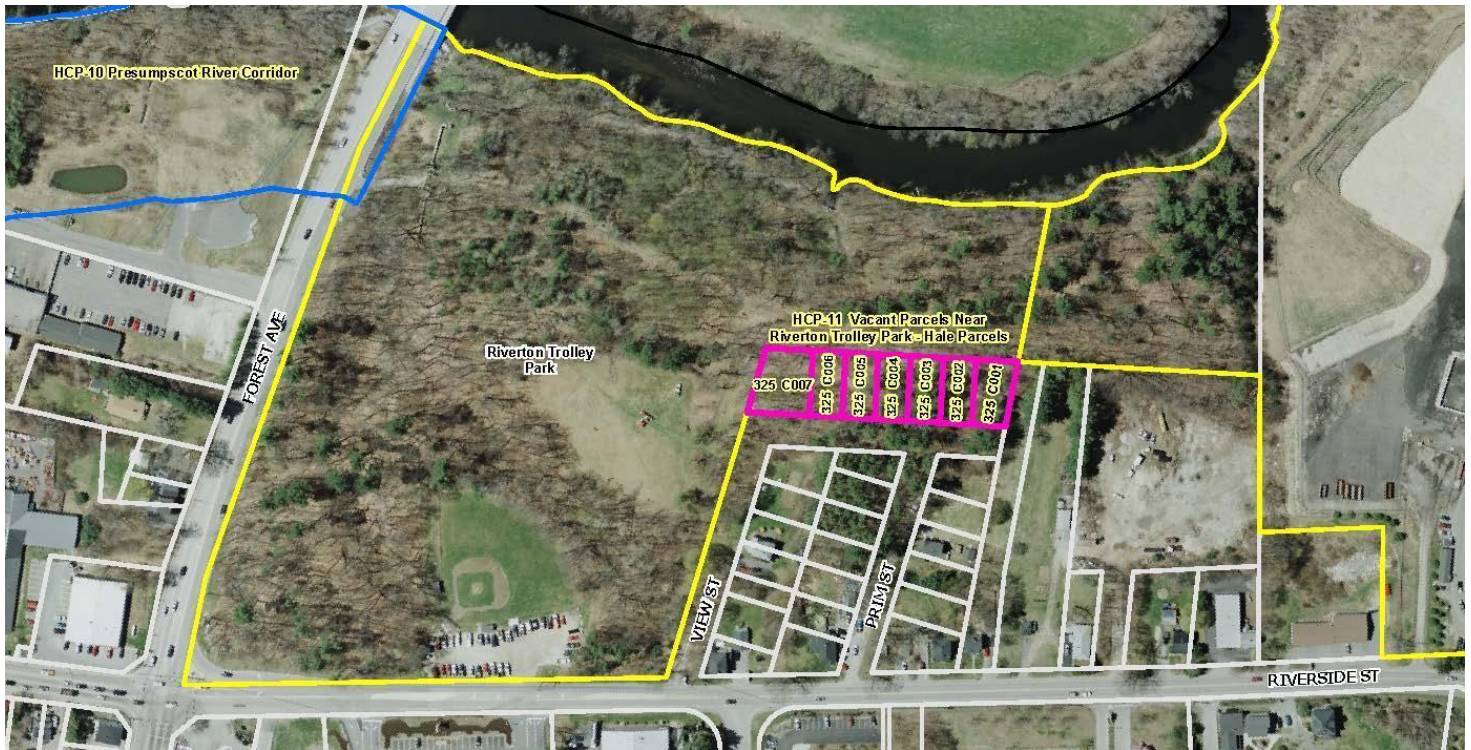


Figure 2. Photo of the site showing the intersection of Riverside Street and West Street that leads to the Hale property.

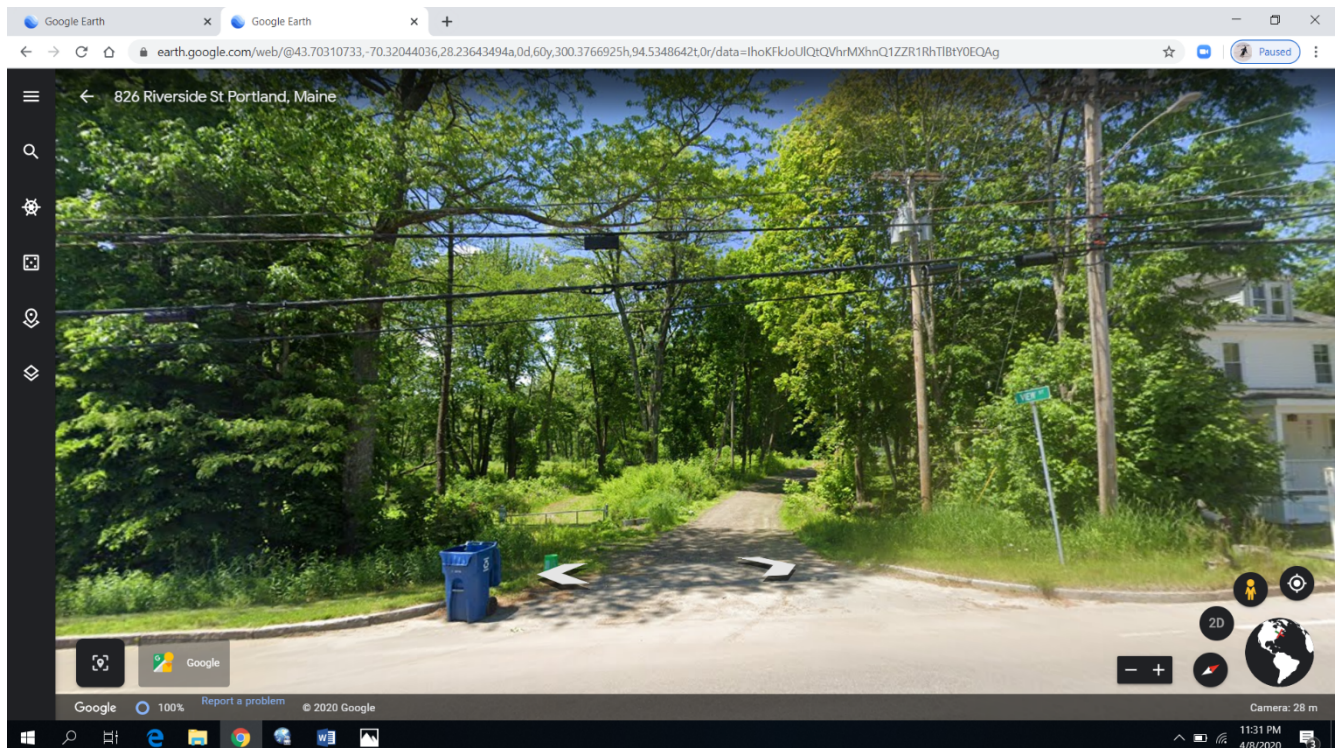


Figure 3. Photos of the site showing the intersection of Riverside Street and Prim Street that leads to the Hale property.

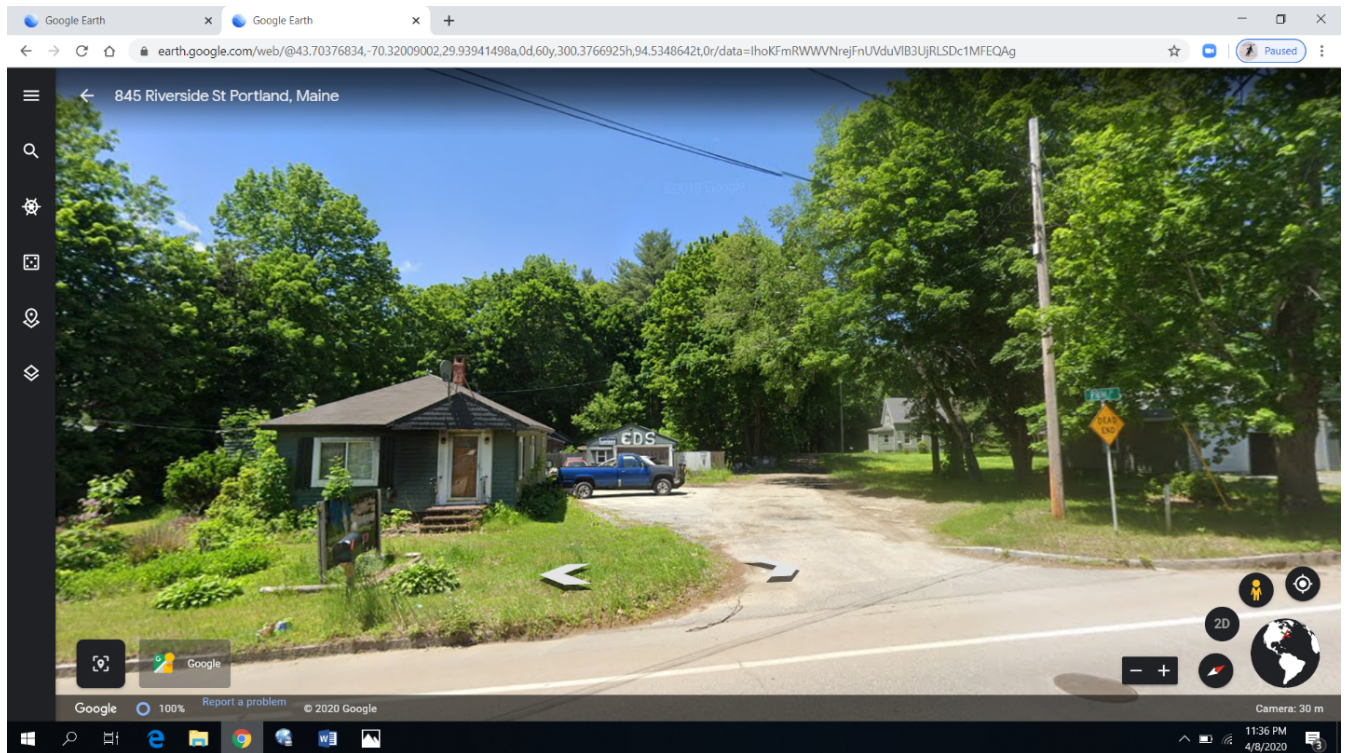


Figure 4. Riverton Trolley Park forested trail and Sebago to the Sea access adjacent to Hale property.



Priorities for Land Bank activities	YES	MAYBE	NO	Notes
Does the property have, or contribute to, healthy forest ecosystem?	x			Forested and abuts of Riverton Trolley Park
Does the property have, or contribute to, healthy wetlands, streams, river, ocean, aquifers or other water bodies?			x	Not far from Presumpscopt River but not directly abutting river
Does the property help mitigate or adapt to climate change impacts? (CO2 storage, storm impacts, tidal impacts)	x			Forested so some C02 storage
Does the property provide an opportunity to protect or improve a healthy ecosystem?	x			Preserves forested land abutting park
Does the property create a connection or link between nearby Parks or Land Bank properties?	x			Abuts Riverton Trolley Park
Does protecting the property support Portland's desired sustainable land use pattern of a dense core with developed corridors and nodes?	x			Abuts existing park space and historic site

Does protecting the property support Portland's desire for equal access to undeveloped natural space in every neighborhood? (all residents within a X minute walk)			x	Riverton Trolley Park already exists so no significant gain
Does the property provide water access for the fishing industry OR for recreation?			x	Not waterfront
Does the property provide passive recreation opportunities?	x			Would be added to Riverton Trolley Park

Other considerations

Is this a time-limited opportunity?	Maybe
Cost	
Maintenance needs, short or long term	Minimal
Are there opportunities for leverageing collaboration	City Riverton Trolley Park
Is there significant stakeholder support/opposition?	None known
Are there other competing land uses?	Potentially but low since the lots need road building
Are there opportunities to achieve multiple goals of Land Bank &/or other City entiti	Yes, abuts existing park
Are there underserved areas where geography is a priority for ecological health or human w	Yes, Riverton public housing
Historical significance (humans)	Riverton Trolley Park
Geologic significance	None known
Is there potential for urban agricultural use	None known



HCP-10 Presumpscot River Corridor

FOREST AVE

Riverton Trolley Park

HCP-11 Vacant Parcels Near
Riverton Trolley Park - Hale Parcels

325 C007

325 C006

325 C005

325 C004

325 C003

325 C002

325 C001

VIEW ST

PRIM ST

RIVERSIDE ST

Re: LBC-Riverton Trolley Park

 Greg Mitchell <gmitchell@portlandmaine.gov>
 To Pat Bailey
 Cc Mike Murray; Lori Paulette; Jon Kachmar; Ethan Hipple; Michael Goldman

Pat,

City staff completed their review of these properties and staff supports City property acquisition for the Land Bank.

Please let me know if you have any questions or require additional information.

Greg A. Mitchell, Director
 Housing and Economic Development Department
 City of Portland
 389 Congress Street
 Portland, Maine 04101
 Tel. 207.874.8945
 Fax 207.756.8217

On Fri, Nov 13, 2020 at 11:26 AM Greg Mitchell <gmitchell@portlandmaine.gov> wrote:
 Good morning Pat,

This is under review by city staff to formulate city staff's position.

Land Bank Commissioner Jon Kachmar had previously emailed me with this same request. The staff review has taken longer than anticipated. I will update you next week.

Greg A. Mitchell, Director
 Housing and Economic Development Department
 City of Portland
 389 Congress Street
 Portland, Maine 04101
 Tel. 207.874.8945
 Fax 207.756.8217

From: **George Rheault** <george.rheault@gmail.com>

Date: Fri, Feb 25, 2022 at 3:19 PM

Subject: Public Comment for Order 150-21/22: Housing vs Open Space

To: Kate Snyder <ksnyder@portlandmaine.gov>, Pious Ali <pali@portlandmaine.gov>, April Fournier <afournier@portlandmaine.gov>, Roberto Rodríguez <rodriguez@portlandmaine.gov>, Anna Trevorrow <atrevorrow@portlandmaine.gov>, <vpelletier@portlandmaine.gov>, Andrew Zarro <Azarro@portlandmaine.gov>, Mark Dion <mdion@portlandmaine.gov>, Tae Chong <tchong@portlandmaine.gov>, Dena Libner <dlibner@portlandmaine.gov>

Cc: Danielle West-Chuhta <dwchuhta@portlandmaine.gov>, Mary Davis <mpd@portlandmaine.gov>, Hipple, Ethan <EHIPPLE@portlandmaine.gov>

See attached a case study prepared in May 2008 highlighting a major showdown in Portland in which 220 potential units of affordable housing were whittled down to ZERO due to NIMBY opposition. Land conservation, using the Land Bank ordinance as a vehicle, was used as the excuse to kill the badly needed housing rather than achieve a balanced outcome.

I urge each member of the Council to find time to read this in the run-up to your March 7th meeting (2nd read for Order 150-21/22) as it highlights all the same issues that the Council confronts today with respect to the fate of the 0.9 acre parcel now up for grabs adjacent to Riverton Park.

FYI: The white paper was written by a master's student with the supervision of Richard Barringer who is generally well-regarded. The analysis still holds up very well despite some flaws (inexplicably they mis-spelled Cheryl Leeman's last name throughout). Also, I am not sure this debate received all that much media attention at the time - so the fact this document exists may be one of the few pieces of remaining evidence that a controversy ever existed there.

Source:

<https://digitalcommons.usm.maine.edu/cgi/viewcontent.cgi?article=1005&context=planning>

"Portland ME: Affordable Housing v. Open Space" (2008): Prepared by Patrick Wright with the assistance of Brett Richardson for the New England Environmental Finance Center's "Next Communities Initiative," Richard Barringer, ed., Edmund S. Muskie School of Public Service, University of Southern Maine, Portland ME, May 2008.

5-2008

Portland ME: Affordable Housing v. Open Space

Patrick Wright

Brett Richardson

Richard Barringer
*University of Southern Maine*Follow this and additional works at: <https://digitalcommons.usm.maine.edu/planning> Part of the [Architectural History and Criticism Commons](#), [Business Administration, Management, and Operations Commons](#), [Cultural Resource Management and Policy Analysis Commons](#), [Environmental Design Commons](#), [Finance and Financial Management Commons](#), [Growth and Development Commons](#), [Historic Preservation and Conservation Commons](#), [Landscape Architecture Commons](#), [Natural Resources and Conservation Commons](#), [Recreation, Parks and Tourism Administration Commons](#), [Sustainability Commons](#), [Urban, Community and Regional Planning Commons](#), [Urban Studies Commons](#), and the [Urban Studies and Planning Commons](#)

Recommended Citation

Wright, Patrick; Richardson, Brett; and Barringer, Richard, "Portland ME: Affordable Housing v. Open Space" (2008). *Planning*. 6.
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Portland ME: Affordable Housing v. Open Space¹



A case from the library of “smart growth” leadership case studies prepared by the New England Environmental Finance Center, available at efc.muskie.usm.maine.edu/docs

Abstract. Amid an acknowledged “affordable housing crisis”, a first-time developer approaches the City to release part of a tax-acquired property, promising a smart-growth development that would provide sorely needed starter homes for working families. The case highlights the complications of balancing competing interests in Portland ME. It shows where rational planning fails in the presence of strong neighborhood opposition, a disjointed city staff structure, and the absence of political will among City Councilors. It highlights the need for champions within local government when a project evokes competing interests. It demonstrates the extent to which “words matter” to policy outcomes, and who gets to define them – in this case, in the fateful difference between “preservation” and “conservation.” Finally, it suggests that NIMBY responses to development proposals may depend as much upon *how* and by *whom* it is put forward as by *what*.

¹ Prepared by Patrick Wright with the assistance of Brett Richardson for the New England Environmental Finance Center’s “Next Communities Initiative,” Richard Barringer, ed., Edmund S. Muskie School of Public Service, University of Southern Maine, Portland ME, May 2008. Aerial photo of the Portland peninsula courtesy of the Maine Office of GIS. Copyright © 2008 by the Muskie School of Public Service.

Portland. Portland is a city composed of an urban peninsula, inner-ring suburbs, and several offshore islands. The peninsula is densely developed, centered on the vibrant downtown with its historic Old Port, working waterfront, and arts district, surrounded by four distinct, high density, suburban neighborhoods. According to the city's comprehensive plan, Portland has a population of just over 64,000 people served by 31,864 housing units. The plan notes a trend towards smaller household occupancy rates and a modest increase in population. The surrounding residential suburbs in Cumberland County show a similar trend towards smaller households, but a much greater increase in population, an indicator of sprawl.

The implementation section of the Portland comprehensive plan states the need for an additional 4,267 housing units, based on population projections. The plan recommends several approaches to reaching this goal, including infill development, senior citizen housing, creation of affordable housing units, and importantly, support of market rate, single family starter-homes for middle income citizens.²

The Land Bank. As the public perception grows that Portland is near to being completely built-out, there is felt need to protect or preserve open space for the benefit of both human and natural populations.³ In 1998, an off-peninsula development in Councilor Tom Kane's district carved out a woody area long used by neighbors for passive recreation. The issue grew contentious, and Kane sought a mechanism to anticipate and avoid such conflicts in the future.

In the following year, at the urging of now-Mayor Tom Kane, a Land Bank Commission (LBC) was established to identify and inventory undeveloped land, public and private, with significant conservation value. Its official website states that the LBC

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. The Commission responsibilities include: working for the acquisition and conservation of open space within the City; recommending to the City Council on a priority basis acquisition or conservation of significant properties; and the pursuit of gifts and funds from private and public sources for the acquisition of open space as approved by the City Council.... It is engaged in an ongoing effort to proactively protect properties from development through easement, deed restriction, or acquisition. (emphasis added)

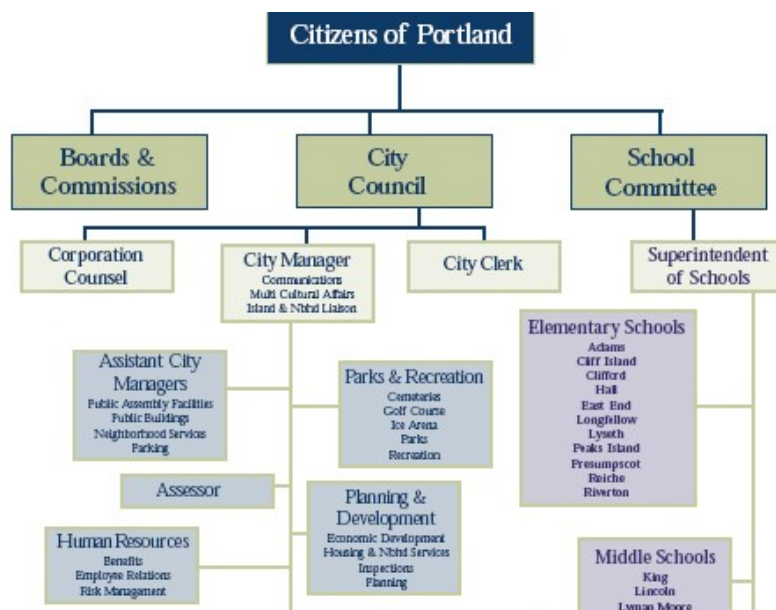
² The comprehensive plan is available online at <http://www.portlandmaine.gov/planning/complanbook.asp>

³ A recent analysis of Lewiston-Auburn ME found 12,185 acres of vacant and currently zoned residential land that could accommodate at least 8,000 new housing units. See www.brookings.edu/metro/maine.

Specifically, the LBC was created by the City Council “to ensure the conservation and preservation of limited open space with important wildlife, ecological, environmental, scenic or outdoor recreational values.”⁴ It is authorized to inventory vacant lands within the city and set priorities among them on the basis of their value for conservation and/or preservation, and of any threat to them, according to standards established by the Council. Today it annually presents to the Council a “registry” of these properties, prioritized by quality and imminence of threat.

Within the City’s departmental organization (see chart below), the LBC is accountable to the City Manager, and was originally assigned to Larry Mead, Assistant City Manager and former Director of the Parks & Recreation Department; today, after Meade’s departure to become manager of a nearby town, it reports to Denise Clavette, the City’s Parks & Recreation Director. It is chaired by Roger Berle, the highly-respected past president of Portland Trails, member of the State’s Land for Maine’s Future board, and a dedicated conservationist; he is in the last of three terms as chair.

The source of the LBC’s influence is the reputation of its member and their skill in lobbying Council members and the general public. They recently petitioned successfully for an annual appropriation of some \$50,000 to leverage the purchase of properties for the City, for which Council approval remains necessary.



⁴ See Ord. No. 659-86, § 1, 6-16-86, Article III-A, Portland Land Bank Commission.

The Parcel. A 35 acre parcel of undeveloped land in the off-peninsula Ocean Avenue neighborhood surrounding a capped landfill had been acquired by the City through tax delinquency. The parcel was recognized by the Land Bank Commission and placed on its high priority (but not *very* high priority) list for protection. In Spring 2006, a developer approached the City with a proposal to devote a portion of the parcel to affordable housing for city residents. According to Larry Meade, the proposal promptly sent the parcel to the top of the LBC's priority list for protection.

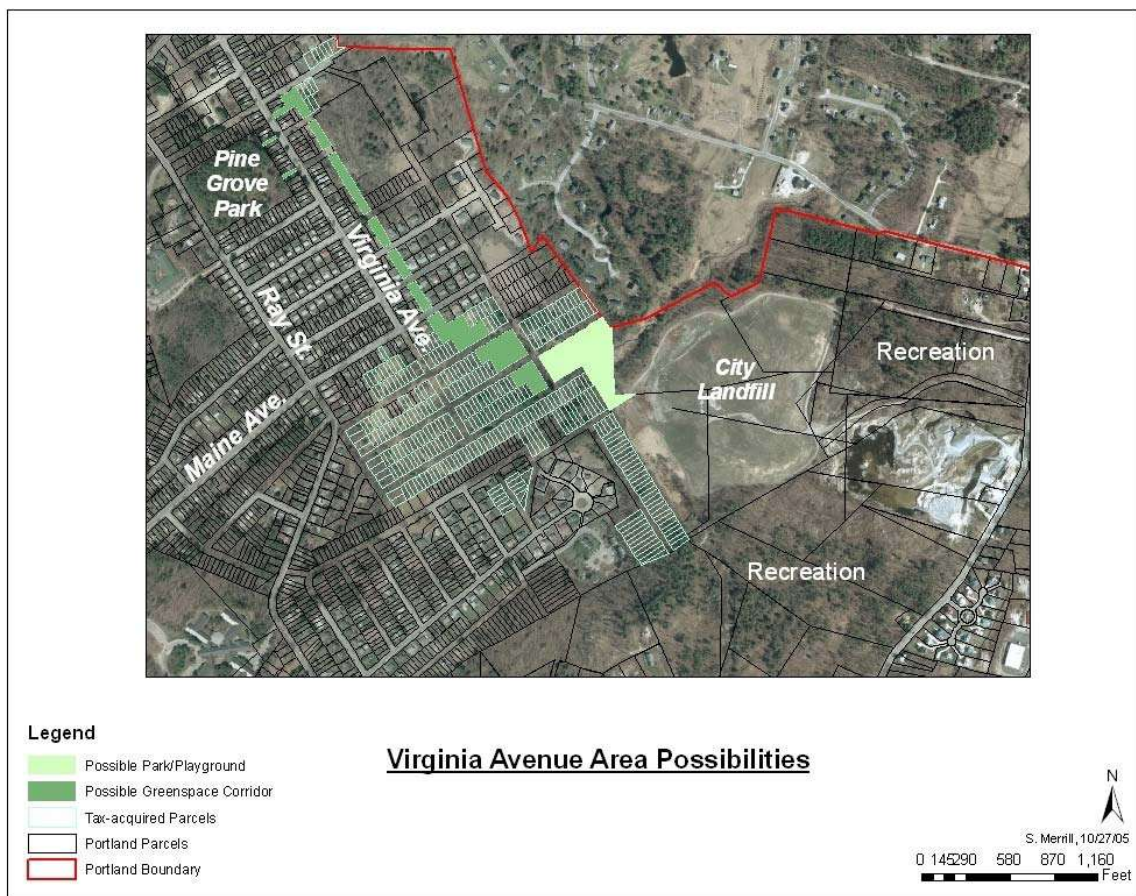


Aerial Photo Courtesy of Maine Office of GIS and Google Earth

The parcel is the largest contiguous tract of undeveloped land in the city, valued from a conservation perspective for its unique features: its proximity to the Casco Bay Estuary and mix of meadowland, mature tree growth, and wetlands make it excellent sanctuary for bird life. As a result, the Maine Audubon Society would back protection of the parcel, and environmentalists championed its diverse wildlife habitat within the city.

The Developer. The first-time developer, Sam Merrill of nearby Pownal ME, is a trained wildlife scientist and was previously executive director of a prominent, mid-coast Maine land trust. The concept plan he presented to the City (see below) proposed to balance open space and wildlife habitat with 220 appropriately-sited, affordable housing units.

As neighborhood and conservation opposition mounted, however, and especially upon the arrival of an updated wetlands map, the developer's proposal was scaled back to between 70 and 150 units, built on the most suitable land along the Virginia Avenue side of the parcel.



Note: Map prepared by the prospective developer to open conversations with the City and stakeholders. It shows 1) the "paper streets" that were part of the City's earlier vision for residential development of the area; 2) a possible green corridor to connect existing open spaces; and 3) a possible new playground location. Subsequent environmental analyses showed wetland configurations would dictate locations and densities of any development.

The developer's revised proposal might have generated the optimum value for the site: critical habitat would be preserved along with the recreational opportunities treasured by

neighbors; and the City would be closer to its goal of more family-oriented, below-market housing units within the city limits. Ultimately, however, the housing proposal failed due to a confluence of local and environmental interests that overrode the broader public interest in the express City goal.

The Neighbors. Even in its reduced form, the neighbors opposed the proposed development. For years they had relied on the parcel for various forms of active and passive recreation. Their collective voice spoke out to preserve the land. City Councilor Cheryl Lehman, who represents the district, became their champion.



Access point to recreational resource treasured by neighbors

Photo by Patrick Wright

In an interview a year later, Lehman recalled several reasons that the development proposal did not suit the land. It was, in a word, too “conceptual.” The developer, on the other hand, had purposefully submitted the proposal in concept form, expecting to flesh out details through a consensus-building process with neighbors and other stakeholders, once the City had given preliminary approval. Lehman’s response was, “The only thing the neighbors would have told him is, “We want open space!”

Lehman was also concerned that the developer had no prior experience in housing development. Though he was partnered on the project with a well-established affordable housing group, his inexperience was one more roadblock for Lehman and the neighbors. Finally, Lehman complained that the proposed development form – “cluster” housing – would be out of keeping with the first-wave suburban character of the neighborhood.

When asked for her solution to the affordable housing issue in Portland, Lehman offered that the Greater Portland region *as a whole* needs more affordable, single family, “starter”

homes; and that it should be built outside the City of Portland, where undeveloped land is more plentiful and less expensive.

The Project Champions. Despite push-back from the neighbors, the developer's proposal appeared to be gaining traction. He had built a coalition in its support, including the Trust for Public Land and the popular Portland Trails organization.

Leading the support for the project was Karen Geraghty, at-large City Councilor and chair of the Council's Housing Committee. Working against the project was that its future occupants, or beneficiaries, were not yet personally identified and present, much less organized. While there are advocates for affordable housing, they were not as passionate or well-organized as the citizens in the neighborhood. When Geraghty spoke out for the project, it was without an organized citizens' group behind her to "beat the drum".

Other Council members became project champions, as well, though the developer did not secure a champion on the City Hall staff. Wendy Cherubini, the City's housing specialist and advocate at the time, left early in the project for another position outside city government. Lee Urban, the City's Director of Planning and Development, was generally aware of the project proposal, but remained largely uninvolved in discussions with City Councilors and others about the proposal.

The debate between Councilors Geraghty and Lehman became heated at times. At what would be the final Council meeting on the proposal, Lehman moved that before the Council might make a decision, the neighbors should have another series of meetings to clarify their position about housing development in the area. Despite the City's well-documented need for affordable housing, the rest of the Council was unwilling to stand against Lehman and the neighbors; so, development of the City-owned land was tabled. It subsequently became clear that the issue could not be resolved before current Council terms expired; and Geraghty had decided not to seek re-election to the Council.

By mid-2006, the developer had dropped the proposal, citing the additional investment of time and money needed to see it through. The uncertain will of the Council to pursue new housing within the city limits presented too much risk for him to continue.

Postscript. In February 2007, following the election of new City Council members, Councilor Lehman and the Land Bank Commission suggested that the Virginia St. parcel be placed into the City's Land Bank; the motion passed unanimously. In response, at-large Councilor Jill Duson, now chair of the Housing Committee, moved that the Land Bank set aside the most build-able portion for future consideration as housing; the motion failed, 5-2. While the designation of the parcel as a holding of the Land Bank does not place the land into permanent preservation, its designation is another political barrier to its development.

TEACHING NOTES:

Important ideas illustrated in the Portland case include:

1. Organization and accountability matter: The placement of the Land Bank in the City's organization compromised the opportunity to advance the express needs of the City.
2. Public leadership matters. The loss of the Housing Committee chair's leadership compromised the project. Where was the head of the Planning and Development Office?
3. Influence matters. Potential influence is made actual only through its skillful, concerted application. How else might the developer have exerted influence? Were "back channels" used effectively in this case?
4. Words matter! As Benjamin Disraeli is quoted as having said "It is by words that we govern;" and how words are interpreted matters. For 100 years there has been maintained a distinction in land management circles between "preservation" (or, maintenance in its original or existing state) and "conservation" (or, planned use according to established principles, as "wise use" or "multiple use"). How did the preservation community come to capture the Land Bank?
5. Planning does not equal implementation. Why did the City's comprehensive plan intentions, so clearly stated, not translate into policy "on the ground?"
6. Timing matters. Turnover on the Council came at a bad time. The are needed through successive administrations.
7. Trust is the coin of the realm when it comes to overcoming resistance to change. Did the developer enjoy trust? How might he have gained it?
8. Are NIMBY'S always what they seem? Public recreational use of the Virginia Ave. property occurred spontaneously, without planning on the City's part, and became a rallying-cry for opponents to development. As open land becomes increasingly scarce in Portland's inner suburbs, access to recreational opportunity is increasingly valuable, and any threat to it is likely to meet resistance. How might the developer have overcome this resistance?

MEMORANDUM
City Council Agenda Item

FROM: Melissa Graffam
DATE: February 3, 2022
SUBJECT: Order 151-21/22 Traffic Schedule Amendment Re: 101 York Street - Sponsored by Danielle P. West, Interim City Manager
SPONSOR: Danielle 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 **Final Action**

Can action be taken at a later date: No Yes

PRESENTATION: N/A

I. SUMMARY

City Council is being asked to amend the parking schedule at 101 York Street from five (5) unrestricted spots to three (3) two-hour parking spots and two (2) commercial loading zones.

II. AGENDA DESCRIPTION

The City Council is being asked to approve a reassignment of the five (5) on-street parking spaces in front of 101 York Street. Currently, these five (5) spaces are unrestricted and the owner of 101 York Street stated that there are many cars that park here for extended periods of time. The City's recommendation is to have the two (2) spaces adjacent to the parking garage at 101 York Street be 30-minute commercial loading zones between 9 AM to 12 PM and 2-hour parking from 12 PM to 5 PM. The remaining three (3) spaces will be 2-hour spaces.

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

III. BACKGROUND

Currently there are five (5) unscheduled on-street parking spots directly in front of 101 York Street, the owner of a new business at 101 York Street would like these parking spaces to be scheduled as two-hour parking and include commercial loading zone hours for the two (2) spots closest to the parking garage.

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

Currently there are five (5) unscheduled on-street parking spots directly in front of 101 York Street. The intended result of this request is to have two (2) on-street parking spaces include commercial loading zone hours in support of a new business opening at 101 York Street. The other three (3) existing spaces would be two-hour parking spaces. These changes would facilitate higher turnover parking and commercial operations for the new business which will be opening in a space that has been vacant for quite some time.

V. FINANCIAL IMPACT

The financial impact of this parking change is minimal, there would need to be four (4) signs installed at this location, for a total cost of approximately \$1,000, including installation costs and staff time. There is also a positive financial impact from this change due to the addition of five (5) time-restricted parking spaces in a heavily trafficked area.

VI. STAFF ANALYSIS AND BACKGROUND

When 101 York Street was originally approved by the Planning Board, no on-street parking regulations were associated with the approval, as there was an understanding these uses would be determined by a specific tenant to locate to this building. Now that a tenant will be occupying this space, these are the recommended uses.

VII. RECOMMENDATION

The Department of Public Works recommends approving the parking schedule change for these five (5) spots with the support of directly abutting businesses.

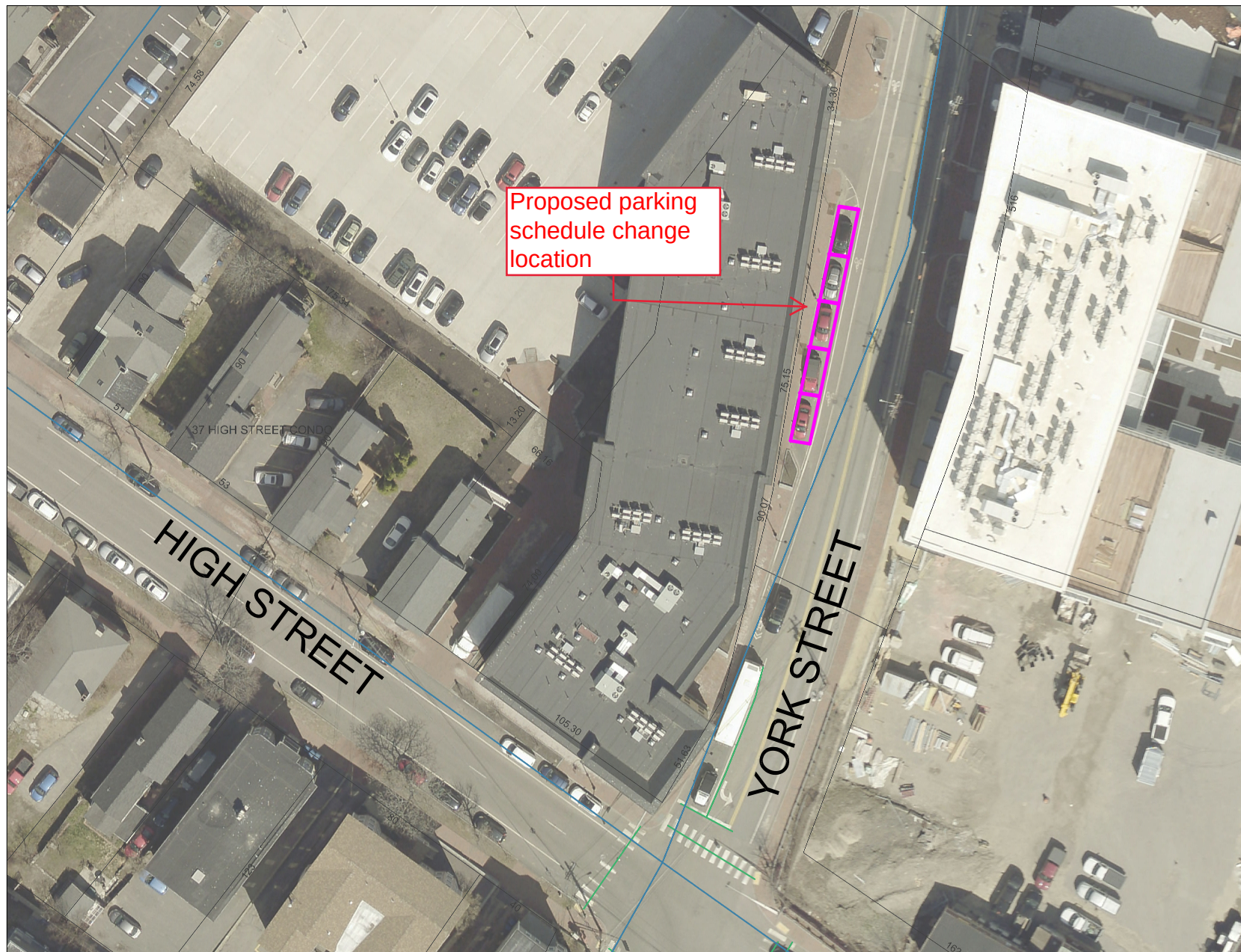
VIII. LIST ATTACHMENTS

1. Attachment 1 - Location Map
2. Attachment 2 - Traffic Schedule Amendment
3. Attachment 3 - Letter of Support

Prepared by:

Melissa Graffam

Date: 02/03/2022



Location Map: 101 York Street Parking Schedule Change

KATE SNYDER (MAYOR)
ANNA TREVORROW (1)
VICTORIA L. PLETTIER (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)

**TRAFFIC SCHEDULE AMENDMENT
RE: 101 YORK STREET**

ORDERED, that the City of Portland's Traffic Schedule be and hereby is amended as follows:

By Adding under York Street, from a point approximately 150 feet north of High Street for a distance of 120 feet:

North Side - Southmost 3 spots:

- **Schedule XVIII - 2 Hour Parking**

North Side - Northmost 2 spots:

- **Schedule XI – Commercial Loading Zone**
- **Schedule XVIII - 2 Hour Parking**

Dear City Council Members,

I am writing to express my support for the proposed parking change in front of my business at 101 York St.

Metering these spots and or changing them to 2 hour parking, would be beneficial for the operation of X-Golf for a number of reasons. In addition to providing parking for X-Golf Patrons, I also need 2-3 of the 5 spots in front of the building to be designated as a commercial loading zone during the morning hours, as I will need to receive weekly deliveries from food and beverage distributors.

Thank you for your consideration of this request.

Sincerely Appreciated,
Joe Atwood
X-Golf Portland Owner

A handwritten signature in black ink, appearing to read "Joe Atwood", with a stylized flourish at the end.

1/24/2022

MEMORANDUM
City Council Agenda Item

FROM: Melissa Graffam

DATE: February 14, 2022

SUBJECT: Order 152-21/22 Approving the Agreements between the Maine Department of Transportation and the City of Portland Re: Forest Avenue Paving -- Sponsored by Danielle P. West, Interim City Manager

SPONSOR: Daielle 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 2/28/2022

Final Action 3/7/2022

Can action be taken at a later date: No This agreement must be approved by City Council and signed by the City Manager as soon as possible to allow Maine Department of Transportation (MaineDOT) to put the contract out to bid immediately to meet target construction start date for this project and hopefully receive better bid pricing due to the earlier bid date.

PRESENTATION: N/A

I. SUMMARY

City Council is being asked to approve the attached Two-Party Municipal/State Agreement and authorize the City Manager to sign it, which would allow MaineDOT to move ahead with its plans to pave Forest Avenue between Congress Street and Park Avenue in 2022.

II. AGENDA DESCRIPTION

This agreement, between the Maine Department of Transportation (MaineDOT) and the City of Portland, obligates MaineDOT to mill and fill Forest Avenue, update and/or install new pedestrian curb ramps to meet ADA requirements, and all appurtenances when MaineDOT's contractor paves Forest Avenue. The agreement obligates the City to pay for 25% of the work as its municipal share, or an estimated \$65,575.00. A separate Utility Agreement for the approximately \$16,800 cost to adjust the manhole frame and covers will be paid from an already funded Water Resources account.

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

III. BACKGROUND

The Forest Avenue paving project is part of MaineDOT's 2021-2024 work plan. The scope of work includes milling and paving with a 1 ½ inch hot mix asphalt overlay. Construction work on this project is scheduled to begin after April 15, 2022 and be completed in 2022. This project is classified as a pavement preservation project on an urban collector street.

As such, PACTS will pay 75% of the cost of paving as part of its Collector Paving Program. The City will be responsible for 25% of the paving cost and 100% of the cost of making adjustments to its sanitary sewer facilities in the project area.

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

The Forest Avenue paving project will improve the pavement surface and ride quality on a regionally important major urban collector street. PACTS funds will pay for 75% of the paving costs.

V. FINANCIAL IMPACT

The City is obligated to pay 25% of the total construction cost. The total City cost of this work, estimated to be \$65,575.00, would be paid from a FY23 CIP account established for this project. Please see the attached fiscal impact note for additional information. A separate Utility. Agreement for the cost to adjust the manhole frame and covers will be submitted later; The City is obligated to pay 100% of the utility adjustment cost; funding for that cost will come from a currently available Water Resources account.

VI. STAFF ANALYSIS AND BACKGROUND

Urban collector paving projects such as this one, where MPO pays 75% of the paving costs, are one of the best alternatives for the City in terms of getting the most street paving done for the least expense of City funds. This is an important location in the City of Portland due to its high AADT and designation as a major collector; without this work, this section of Forest Avenue will continue to deteriorate.

VII. RECOMMENDATION

The Department of Public Works recommends approving and signing the subject agreement to allow MaineDOT to pave approximately 0.28 miles of Forest Avenue (from Congress Street to Park Avenue) in 2022.

VIII. LIST ATTACHMENTS

1. MDOT 2-party Forest Ave Paving 2.28.2022
2. Forest Ave - Congress to Park - Location Map
3. Municipal State Agreement - WIN 24997
4. Fiscal Impact Note - Forest - Congress to Park
5. 24997 Forest Ave - Utility Agreement

Prepared by:

Melissa Graffam

Date: 02/14/2022

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 THE TWO-PARTY AGREEMENTS
BETWEEN THE MAINE DEPARTMENT OF TRANSPORTATION
AND THE CITY OF PORTLAND
RE: FOREST AVENUE PAVING**

ORDERED, that the Two-Party Agreements between the Maine Department of Transportation and the City of Portland are hereby approved, in substantially the forms attached, for paving and other work on Forest Avenue:

- WIN 24997.00, Proposed Improvements to Forest Avenue

BE IT FURTHER ORDERED, that the Interim City Manager or her designee is hereby authorized to sign the two-party agreements and any other documents necessary to effect the purpose of this order.



public
works

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

Forest Avenue Park St to Congress St

MDOT Paving



Feb 2022

0 75 150 300
Feet



MaineDOT use only	
CTM #:	_____
CSN #:	_____
PROGRAM:	<u>Highway Program</u>

MAINE DEPARTMENT OF TRANSPORTATION
MUNICIPAL/STATE AGREEMENT
PROPOSED IMPROVEMENTS TO FOREST AVENUE

(MaineDOT Use Only)

Project Location: Portland

State WIN #: 24997.00

Federal Aid Project #: 2499700

Estimated Municipal Share: \$65,575.00

Vendor Customer #: 17A12984

Agreement Begin Date: _____

Agreement End Date: (5 years from the date last signed below)

This Agreement is entered into between the **Maine Department of Transportation** (hereafter **MaineDOT**) and the **Municipality of Portland**, a municipal corporation located in the County of Cumberland (hereafter the "Municipality") (collectively hereinafter the "Parties").

RECITALS

- A. The scope of work that is the subject of this Agreement consists of making improvements to Forest Avenue, beginning at Congress Street and extending north 0.28 of a mile to Park Avenue, in Portland, Maine, (hereafter the "Project").
- B. The Parties have a mutual interest in ensuring that the Project is delivered on a reasonable schedule and within the programmed budget, using a process that maximizes communication and cooperation between the Parties.
- C. This Agreement is intended to cover the roles and responsibilities of the Parties during the design, permitting and right-of-way phases of Project development from Project inception through completion of the Project's Plans, Specifications and Estimate (PS&E). This Agreement is further intended to establish the financial obligations of each Party, including that of full Project development through construction.

AGREEMENT

NOW, THEREFORE, in accordance with the foregoing, the Parties agree as follows:

- D. The following checked appendices are hereby incorporated into this Agreement by reference, and any perpetual maintenance appendices shall survive the expiration of this Agreement:
 - ☒ Appendix A – Project scope, cost sharing, and payment schedule (*not required for non-monetary agreements.*)
 - ☐ Appendix B – Perpetual Bicycle/Pedestrian Facility Maintenance
 - ☐ Appendix B – Perpetual Drainage Maintenance
 - ☐ Appendix B – Perpetual Landscape Maintenance
 - ☐ Appendix B – Perpetual Operation and Maintenance of Lighting/Flashing Beacon and/or signage with associated light(s)
 - ☐ Appendix B – Perpetual Traffic Signal Operation and Maintenance
 - ☐ Appendix B – Perpetual Traffic Signal Operation and Shared Maintenance

- ☐ Appendix B – Perpetual Bridge Lighting/Approach Lighting Maintenance & Snow Plowing
- ☐ Appendix C – Additional work requested by Municipality

E. Agreement Administration:

1. MaineDOT agrees to procure and administer a contract to construct the Project in accordance with the plans and specifications developed by MaineDOT. This would include any additional plans, specifications and estimates furnished by the Municipality and approved by MaineDOT. When applicable, refer to Appendix A of this Agreement for the outline of the scope, limits of work and cost sharing.
2. MaineDOT shall be the sole administrator of the contract to construct the Project. MaineDOT will pay all Project costs, subject to cost sharing by the Municipality, when applicable, as specified in this Agreement. Neither MaineDOT nor its contractors will be required to pay for inspections and permits from the Municipality.
3. The Municipality agrees that MaineDOT and its contractors are exempt from all local ordinances, including but not limited to the Municipality Noise Ordinance.
4. Upon acceptance of plans, specifications and estimates (PS&E), MaineDOT shall solicit competitive bids for the Project. Upon acceptance of the lowest acceptable responsive, responsible bid to construct the Project and fulfillment of all terms set forth herein, MaineDOT will submit the information to the Municipality, who will have up to five (5) business days to review the information and notify MaineDOT of any questions or concerns. If MaineDOT is not presented with any questions or concerns in the time allotted all decisions pertaining to the acceptance of the bids, the award and administration of the contract and all payments thereunder shall be the sole discretion of MaineDOT.

F. Changes to Project Scope:

5. The Municipality, at its election, may request that changes be made or work added to the Project during the period of construction, provided the Municipality agrees in writing to pay any additional cost plus an amount not to exceed ten (10%) percent of such construction cost to cover all necessary engineering, inspection and administrative costs associated therewith, unless specified otherwise. All such requests shall be subject to MaineDOT approval. In the event that the cost of these changes or work are approved for federal participation, the Municipality's additional cost may be reduced by the amount of the federal contribution.

G. Traffic Control:

6. The Municipality agrees to allow MaineDOT's contractor to control all traffic through the work areas in accordance with the Traffic Control Plan approved by MaineDOT. The development of the Traffic Control Plan will follow the process outlined below:
 - i. MaineDOT's Project Manager (PM) will, when possible, submit the Project for Traffic Analysis and Movement Evaluation (TAME), approximately one year prior to advertisement. Once the results are received, the PM/Regional Traffic Engineer will discuss the proposed Project with the Municipality (scope, limits, day or night work, work window, etc).

- ii. The Municipality will comment on their concerns/issues related to the Traffic Control Plan within two (2) weeks of receipt.
- iii. MaineDOT's PM & Designer will incorporate these comments where practical based on engineering judgment.
- iv. If the Municipality desires, a meeting will be held prior to PS&E to review the Project design, Special Provision 105 – Limitations of Operations, Special Provision 107 - Time, etc.

H. Utilities:

- 7. The Municipality will, at no cost to MaineDOT, assure proper adjustment, relocation, or repair of any portion of a utility service, whether above or below ground, that is located within the limits of the highway right-of-way and connected to any municipal utility, which might become necessary to permit construction of the Project. The Municipality agrees to hold MaineDOT harmless from any claims for damages occurring as a result thereof.
- 8. The Municipality agrees that during and after construction it will apply the requirements of the most recent version of MaineDOT's "Utility Accommodation Rules" as the minimum guidelines not withstanding any municipal rules that are more lenient.
- 9. To the extent that it is statutorily responsible therefore, the Municipality agrees to provide utilities, and to maintain all improvements and fixtures constructed, installed or furnished as a part of the Project in such a manner as necessary to preserve the use and function thereof for the expected period of their normal useful life as determined by accepted engineering and/or industry standards. To the extent any warranty exists for said improvements or fixtures, said warranty shall be first relied on by MaineDOT to address maintenance and/or repairs described in this paragraph.

I. Governing Law:

- 10. The Municipality agrees that except for an emergency, or as allowed in 23 M.R.S.A. § 3351-A, it will prohibit the excavation of the highway within the limits of the Project for a period of at least five (5) years after completion of the Project, and agrees to make all necessary notifications to abutters and occupants of the highway as otherwise required of any municipal government under the provisions of 23 M.R.S.A. § 3351. Thereafter, all future excavations within the right-of-way of the Project shall be regulated and controlled in the manner specified by MaineDOT in its most recent "Utility Accommodation Rules", which is incorporated herein and made a part hereof by reference.
- 11. The Parties agree to: comply with and abide by all applicable State and Federal laws, statutes, rules, regulations, standards and guidelines, including the MUTCD and OSHA standards, and Agreement provisions; avoid hindering each other's performance; fulfill all obligations diligently; and cooperate in achievement of the intent of this Agreement.

J. Municipality's Responsibility:

- 12. When applicable, if the Municipality withdraws its financial support for the Project, leading MaineDOT to terminate the Project, the Municipality shall reimburse MaineDOT fully for all

Project costs incurred in reliance on the Municipality's financial obligations outlined herein, including, but not limited to, reimbursement of all federal and state funds expended up to the time of such termination. If the Municipality fails to reimburse MaineDOT for such costs incurred, after receiving an invoice seeking such reimbursement, MaineDOT may exercise its rights of set-off to recover the requested amount.

13. The Municipality agrees to alter, move, relocate or remove, or cause to be, at no cost to the Project, any municipal property, including all fixtures, facilities or monuments, located on, under or above the ground, as necessary to permit construction of the Project, which has not otherwise been provided for during the development of the Project. Any work necessary to do so during the period of construction shall be coordinated with the contractor for the Project.
14. The Municipality will be responsible to keep new or replaced/rehabilitated pedestrian facilities in usable condition including snow and ice control.
15. The Municipality agrees to keep the right-of-way of the Project inviolate from all encroachments and agrees to remove, or cause to be removed, anything that may encroach thereon.
16. When applicable, the Municipality agrees to regulate all entrances to the highway within the limits of the Project in accordance with the provisions of 23 M.R.S.A. § 704.
17. When applicable, the Municipality agrees to limit all on-street parking to the parking spaces as designed and constructed under the Project.

K. Termination:

18. MaineDOT reserves the right to terminate the Project for any reason prior to the award of a contract to construct the Project. MaineDOT also reserves the right to terminate all provisions pertaining to work requested by the Municipality at any time prior to the award of a contract to construct the Project due to failure by the Municipality to comply with any of the conditions and stipulations set forth in this Agreement.
19. MaineDOT may postpone, suspend, abandon or otherwise terminate this Agreement upon thirty (30) days written notice to the Municipality and in no event shall any such action be deemed a breach of contract. Postponement, suspension, abandonment or termination may be taken for any reason by MaineDOT or specifically as the result of any failure by the Municipality to perform any of the services required under this Agreement to MaineDOT's satisfaction.

In the event of Project termination, all provisions of this Agreement shall become null and void except for the financial obligations set forth herein, as well as those *provisions that by their very nature are intended to survive*.

L. Miscellaneous Provisions:

20. **Debarment.** The Municipality certifies, by signing this Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal department or agency. If the Municipality is unable to certify to this statement, it shall attach an explanation to this Agreement. The Municipality shall promptly notify MaineDOT if it or its principals becomes

debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

21. All provisions of this Agreement, *except those that by their very nature are intended to survive*, shall expire at Project final voucher, or upon final payment by the Municipality of any Project costs as hereinbefore provided, whichever occurs later.
22. **State of Maine's Rights of Set-Off.** MaineDOT shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State of Maine's option to withhold for the purposes of set-off monies due the Municipality under a specific project contract up to any amounts due and owed to MaineDOT with regard to this Agreement, and any other agreement/contract with any State of Maine department or agency, including any agreement/contract for a term commencing prior to the term of this Agreement, plus any amounts due and owed to the State of Maine for any reason including without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. MaineDOT shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by MaineDOT, its representatives, or the State Controller. When applicable, MaineDOT reserves the right to withhold or reduce future Local Road Assistance payments to the Municipality for purposes of set-off to recover the amount owed.
23. **Non-Appropriation.** Anything herein to the contrary notwithstanding, the Municipality acknowledges and agrees that although the execution of this agreement by MaineDOT manifests its intent to honor its terms and to seek funding to fulfill any obligations arising hereunder, by law any such obligations are subject to available budgetary appropriations by the Maine Legislature and, therefore, this agreement does not create any obligation on behalf of MaineDOT in excess of such appropriations.
24. **Assignment.** No assignment of this agreement is contemplated, and in no event shall any assignment be made without the express written permission of MaineDOT.
25. **Notice.** Any communications, requests or notices required or appropriate to be given under this Agreement shall be in writing and may be sent via email which shall satisfy the delivery requirements of this section through express acknowledgement of receipt by the receiving party. Alternatively, communications can be mailed via U.S. Mail, Certified or Registered, Return Receipt Requested or sent via a recognized commercial carrier such as, but not limited to Federal Express, that requires a return receipt delivered to the sending party. Said communications, requests or notices shall be sent to the other party as follows:

MaineDOT: Maine Department of Transportation
 24 Child Street
 16 State House Station
 Augusta, ME 04333-0016
 Attn.: LaRay L. Hamilton
 Email: laray.hamilton@maine.gov

Municipality: City of Portland
389 Congress Street #208
Portland, ME 04101
Attn.: Danielle P. West
Email: citymanager@portlandmaine.gov

IN WITNESS WHEREOF, the Parties hereto have executed this AGREEMENT effective on the day and date last signed below.

MUNICIPALITY OF PORTLAND

MAINE DEPARTMENT OF TRANSPORTATION

By: _____
Danielle P. West, Interim City Manager

By: _____
Richard J. Crawford, P.E., Director
Bureau of Project Development

(Date Signed)

(Date Signed)

I certify that the signature above is true and accurate. I further certify that the signature, if electronic: (a) is intended to have the same force as a manual signature; (b) is unique to myself; (c) is capable of verification; and (d) is under the sole control of myself.

Original **Y** Modification **N/A** MOD No. **N/A**

APPENDIX A
PROJECT SCOPE AND COST SHARING
MAINE DEPARTMENT OF TRANSPORTATION
MUNICIPAL/STATE AGREEMENT
Transportation Improvement Project

MUNICIPALITY OF **PORTLAND**

PROPOSED IMPROVEMENTS TO **FOREST AVENUE**

FEDERAL AID PROJECT NO. **2499700**

STATE PROJECT IDENTIFICATION NUMBER (WIN) **24997.00**

Project Scope:

Mill & Fill on Forest Avenue, beginning at Congress Street and extending north 0.28 of a mile to Park Avenue.

Funding Outline:

The Total Project Estimated Cost is \$ 262,300.00 , and the Parties agree to share costs through all stages of the Project under the terms outlined below.

Work Element	Municipal Share		Project Share				Total Cost
			Federal	Portion	MaineDOT (State) Portion		
	%	\$	%	\$	%	\$	\$
Preliminary Engineering	25.0%	\$ 2,325.00	75.0%	\$ 6,975.00	0.0%	\$ -	\$ 9,300.00
Right of Way	25.0%	\$ -	75.0%	\$ -	0.0%	\$ -	\$ -
Construction	25.0%	\$ 58,575.00	75.0%	\$ 175,725.00	0.0%	\$ -	\$ 234,300.00
Construction Engineering	25.0%	\$ 4,675.00	75.0%	\$ 14,025.00	0.0%	\$ -	\$ 18,700.00
PROJECT SHARES		\$ 65,575.00		\$ 196,725.00		\$ -	\$ 262,300.00
Total Cost of Additional Work Requested by Municipality (Below)	100.0%	\$ -					
TOTAL ESTIMATED MUNICIPAL SHARE (Receivable Amount)		\$ 65,575.00					

(Check if applicable)
☒ **Additional Work as outlined in Appendix C to this Agreement.**

Funding Outline: The Municipality agrees to pay 100% of the costs for the work outlined below.

Additional Work		Cost: 100% Municipal Share	
TYPE OF WORK		\$	-
TYPE OF WORK		\$	-
TYPE OF WORK		\$	-
TOTAL COST OF ADDITIONAL WORK REQUESTED BY MUNICIPALITY		\$	-

Payment:

The Municipality shall submit payment to MaineDOT within 30 days from the invoice date.

1. Prior to award of the contract for Project construction, the Municipality will be invoiced a portion of its share of the cost of the Project.

Invoicing will include the following:

- a. 100% of the local share of the Preliminary Engineering and Right of Way costs; plus
- b. Fifty percent (50%) of the local share of the Construction and Construction Engineering cost based on the total bid price of the Project; plus
- c. 100% of all additional work requested by the Municipality.

2. Final Voucher Payment to the Contractor. A final bill will be created following MaineDOT's final voucher payment to the Contractor, after all quantities are verified, and any required adjustments have been made. The cost of the work for which MaineDOT will bill the Municipality shall be determined by the contract prices and the completed quantities of the work items or, in the event of termination, the local share of Project development cost to the point of termination as stipulated above. The final invoice will include the Municipality's share of any remaining costs.

Invoicing Schedule: The Municipal Payment Schedule shown below includes estimated invoicing dates based upon the estimated schedule and estimated cost of the Project:

Municipality Name	Receivable Amount	Estimated Invoice Date
City of Portland	\$33,950.00	5/1/2022
City of Portland	\$31,625.00	8/1/2022
City of Portland	Balance	9/1/2023
Total Receivable Amount:	\$65,575.00	

Formula for New Program Costing on Tax R

1) FY22 Valuation:	14,629,000,000	\$14,629,000
2) FY22 Tax Rate (Total City & School): <u>Levy / (Valuation/1000)</u>		\$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		\$0		\$4,079		\$4,079
LESS: TOTAL NEW ITEM ANNUAL REVENUES		\$0		\$0		\$0
=NEW ITEM NET TAX RATE IMPACT PROJECTION	\$0	\$0	\$4,079	\$4,079	\$4,079	\$4,079
New Program Impact to the Tax Rate	\$0.0000	\$0.0000	\$0.0003	\$0.0003	\$0.0003	\$0.0003
New Program % Impact on Tax Rate	0.0000%	0.0000%	0.0045%	0.0021%	0.0045%	0.0021%
Tax Rate Including New Program	\$6.22	\$12.99	\$6.22	\$12.99	\$6.22	\$12.99

Notes: The CIP impact will actually begin in 2023 and remain for the 20 year life of the bond.

TEDOCS #: _____

CT#: _____

CSN#: _____

Program: Highway Program

MAINE DEPARTMENT OF TRANSPORTATION UTILITY RECEIVABLE AGREEMENT

(MaineDOT Use Only)

Project Location: Portland
 State WINs #: 024997.00
 Federal Aid Project #: 2499700

Estimated Agreement Amount: \$ 16,800.00
 Vendor Customer #: 17A12144
 MaineDOT Signed Date: _____
 Forecasted Agreement End Date: October 31, 2022

THIS AGREEMENT entered into the last date signed herein at the end of this agreement, between the **Maine Department of Transportation** (hereafter the “Department”) and **City of Portland**, duly authorized and existing under the Laws of the State of Maine and having an office in the City of **Portland**, County of **Cumberland** (the “Utility”) (the Department and the Utility are collectively referred to as the “Parties”).

1. The Department is implementing a transportation project identified as “Federal Aid Project Number **2499700**; WIN: **024997.00** (the “Project”) for highway improvements in the City of **Portland, Cumberland** County;

2. In connection with the Project, the Department has prepared plans and specification for the Project that resulted in the following determination:

X The Department has identified the locations of existing utility facilities owned and maintained by the Utility and lawfully installed within the limits of the public highway right-of-way and the impact limits of the Project that must be relocated to accommodate the Project (the “Affected Facilities”).

_____ The Utility has expressed an interest in installing new utility facilities within the limits of the public highway right-of-way and the impact limits of the Project (the “Affected Facilities”).

3. **Project Scope:** Affected facilities consist of **six (6)** Sewer Manholes on Forest Avenue, **one (1)** of which needs to be **Rebuilt**, **one (1)** of which needs to be **Modified**, and **four (4)** of which need to be **Adjusted**. The City of Portland will provide all new frames and covers, if needed. Exact locations may be found within the Construction Notes. Old and unused frames and covers will be returned to the City for disposal.

4. The Utility has prepared and provided to the Department the scope of work necessary for relocating or installing the Affected Utilities (the “Utility Work”) and the estimated costs associated therewith, which are outlined in **Appendix A**, attached hereto, and made a part hereof. The costs associated with the Utility Work are the sole responsibility of the Utility.
5. The Parties wish to establish a process for including the Utility Work in the Department’s construction contract for the Project.

NOW, THEREFORE, the Parties agree as follows:

6. Plans, Specifications and Estimate:

- a. The Utility shall, at its own expense, perform and provide all engineering, design and related services related to the Utility Work necessary to enable the Department and/or its consultant to generate construction plans, specifications and an estimate of material quantities for the Utility Work to be included in the Project contract. The Utility will be responsible for locating and recording the location of all Utility Work, including services and other appurtenances within the Project area. To the extent possible and consistent with laws, practices and policies of the Department and the industry, the Utility Work shall be performed in accordance with the plans and specifications provided by the Utility and, if applicable, the most recent version of the Department’s Standard Specifications.
- b. All plans shall be on sheets of the same size used by the Department and be reproducible by black and white printing. Specifications shall be on 8 ½ x 11-inch paper, suitable for binding with the Department’s specifications. The estimate of quantities shall be in the form prescribed by the Department. In the event of field changes to the Utility Work, the Utility shall prepare any additional plans and specifications and the Department shall prepare a Project change order and amend this Agreement incorporating any changes therein. All plans and specifications will be marked with the Federal Aid Project Number referenced in this Agreement.
- c. The Utility will provide the Department with the plans, specifications and an updated estimate as described in Appendix A no later than one month prior to the scheduled advertise date for the Project.
- d. The Utility shall be responsible for obtaining a Utility Location Permit from the Department in accordance with Title 35-A M.R.S.A. Chapter 25 and for recording the location of all utilities in a manner and form to be specified by the Department.
- e. **Standard Approach:** The Department will prepare the Project contract documents to include the Utility Work specified in Appendix A. The Utility agrees to have these items included in the Department’s Project construction contract. Bidders will be required to bid both the Project work and the Utility Work. The Utility Work will be paid for by the Utility, and any changes that increase the Utility Work estimate or

amount will be paid for through a written modification of this agreement approved by both the Utility and the Department.

7. Inspection:

- a. The Utility shall be responsible for providing all engineering and inspection associated with the Utility Work including computing quantities for payment and other incidental and related work unless otherwise stated herein. By the end of each work day, whenever Utility Work is performed, the Utility will provide the Department's on-site representative with an itemized summary of all the Utility Work completed.
- b. The Department shall provide inspection of the quality and compaction of backfill installed in connection with the construction contract, excluding bedding and other special backfills and materials used in the installation of the Utility Work.
- c. If the Utility Work is included in the Project contract pursuant to Section 6.e. above, the Utility agrees to the following:
 - i. Should the Utility find the Project contractor's materials or workmanship to be insufficient in any way, the Utility agrees to inform the Department's on-site representative as soon as possible, but no later than the end of the day in which the problem is identified.
 - ii. As administrator to the construction contract, the Department's on-site representative shall be responsible for authorizing all payments relating to the Utility Work, issuing all directives to the Project's contractor and making the final determination in the event of any disagreements.

8. Ownership of Completed Utilities: Upon completion of the Utility Work the Utility shall assume complete ownership of, and responsibility for, the utility facilities installed in connection with the Utility Work.

9. Claims: The Utility shall be responsible for the prompt review and settlement of any claims arising from or related to the Utility Work or its impact on the Project.

10. Indemnification: The Utility shall indemnify, defend and hold harmless the Department and its officers, employees, agents and assigns, from and against any and all claims, liability or expenses, including but not limited to reasonable attorney's fees and litigation costs (the "Claims"), to the extent such Claims are caused, or alleged to have been caused, by acts or omissions of the Utility or any of its officers, employees, agents, representatives, supervisors, contractors, subcontractors or consultants in connection with the performance of its obligations under this Agreement. Nothing in this Agreement is intended or shall be

construed to waive any defense, immunity or limitation of liability that may be available to the Department or the Utility pursuant to the Maine Tort Claims Act (14 M.R.S. § 8101 *et seq.*) or any other privileges or immunities provided by law. The terms outlined in this section shall survive any termination or expiration of this Agreement.

11. **Buy America Requirements:** This agreement is subject to the requirements of Buy America in accordance with Federal Regulation 23 CFR 635.410 Section 1518. Specific requirements are presented in MaineDOT Standard Specification Section 100, Appendix A, Section 3.A., Buy America which are incorporated and made a part hereof by reference.
12. **Subsequent Excavations and/or Installations:** Except in the case of an emergency, the Utility acknowledges and agrees to refrain from applying for a permit for the excavation of the highway within the limits of the Project for a period of at least **three (3)** years following the completion of the Project and agrees to make all necessary notifications to abutters and occupants of the highway as otherwise required of any municipal government under the provisions of 23 M.R.S.A. § 3351. In all cases, whether an excavation moratorium as described above applies, or as in the case of Light Capital Paving projects where no excavation moratorium applies, the Utility further acknowledges and agrees that all subsequent excavations and/or installations within the right-of-way of the Project limits shall be regulated and controlled in the manner specified by the most recent version of the Department's "*Utility Accommodation Rules*", which are incorporated and made a part hereof by reference. The terms outlined in this section shall survive any termination or expiration of this Agreement.
13. **Non-Appropriation and Termination:** Anything herein to the contrary notwithstanding, the Utility acknowledges and agrees that, although the execution of this Agreement by the Department manifests the Department's intent to honor its terms and to seek funding to fulfill any obligations arising hereunder, by law any such obligations are subject to available budgetary appropriations by the Maine Legislature and, therefore, this Agreement does not create any obligation on behalf of the Department in excess of such appropriations. In the event of unanticipated impacts on the Project, such as, changes in the Project design, or a loss in Project funding, or a delay in advertising or awarding of the contract, the Department may postpone, suspend, abandon or otherwise terminate this Agreement upon thirty (30) days written notice to the Utility and in no event shall any such action be deemed a breach of contract.
14. **Payment:** If the Utility Work is included in the Project contract pursuant to Section 6.e. above, the Utility agrees to reimburse the Department for the full amount of the cost of the utility work. A detailed breakdown of the anticipated cost of the Utility Work is attached hereto and incorporated herein as Appendix A. The Department will issue a final invoice after all the Utility Work is complete, all quantities are verified, and any required adjustments have been made. The Department, at its sole discretion, may issue periodic invoices for portions of the Utility Work as it is being completed. The final invoice will include any

remaining costs or credits. The Utility shall submit payment to the Department within 30 days from the invoice date.

15. Contact Information:

For the Department:		For the Utility:	
Name:	Mark McCue	Name:	Brad Roland
Address:	16 State House Station Augusta, ME 04330	Address:	212 Canco Rd. Portland, ME 04103
E-mail:	mark.j.mccue@maine.gov	E-mail:	brad@portlandmaine.gov
Telephone:	(207) 446-8474	Telephone:	(207) 874-8840

16. No Relief of Responsibilities: Nothing in this agreement is intended, nor shall be interpreted, to relieve the Utility of any responsibilities or duties imposed upon it by law.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement effective on the date last signed below.

CITY OF PORTLAND

By: _____

Print Name: Danielle West

Title: Acting City Manager
Duly Authorized

DATE: _____

**STATE OF MAINE
DEPARTMENT OF TRANSPORTATION**

By: _____

Print Name: LaRay Hamilton

Title: Senior Project Manager
Duly Authorized

DATE: _____

APPENDIX A

PROJECT SCOPE

MAINE DEPARTMENT OF TRANSPORTATION UTILITY RECEIVABLE AGREEMENT

City of Portland
Forest Avenue

FEDERAL AID PROJECT NOs. **2499700**
STATE PROJECT IDENTIFICATION NUMBER (WINs) **024997.00**

Project Scope: Affected facilities consist of **six (6)** Sewer Manholes on Forest Avenue, **one (1)** of which needs to be **Rebuilt**, **one (1)** of which needs to be **Modified**, and **four (4)** of which need to be **Adjusted**. The City of Portland will provide all new frames and covers, if needed. Exact locations may be found within the Construction Notes. Old and unused frames and covers will be returned to the City for disposal.

ESTIMATE OF UTILITY WORK:

Item #	Pay Item	Estimated Quantity /Unit	Unit Price	Utility Cost
812.162	Adjusting Sewer Manholes to Grade	4 / ea.	\$2,000.00	\$8,000.00
812.163	Modify Sewer Manhole & Adjust to Grade	1 / ea.	\$2,800.00	\$2,800.00
812.164	Rebuild Sewer Manhole & Adjust to Grade	1 / ea.	\$6,000.00	\$6,000.00
Total Cost:				\$16,800.00

ESTIMATED PAYMENT SCHEDULE:

Utility	Payment Amount	Estimated Invoice Date
City of Portland	Final Quantities	10/31/2022

MEMORANDUM
City Council Agenda Item

FROM:

DATE: February 4, 2022

SUBJECT: Order 153-21/22 Amendment to Portland City Code Chapter 14 Re: Height Bonus in India Street Form-Based Code Zone - Sponsored by the Planning Board, Maggie Stanley, Chair

SPONSOR: The Portland Planning Board, Maggie Stanley, 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 2/28/2022

Final Action 3/7/2022

Can action be taken at a later date: Yes 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

Zoning text amendment to the India Street Form- Code Zone to allow a height bonus in the Urban Active Subdistrict along Commercial Street.

II. AGENDA DESCRIPTION

On January 11, 2022, the Portland Planning Board unanimously voted 6-0 (Smith recused) to recommend to the City Council adoption of the text amendment to allow a height bonus in the Urban Active Subdistrict along Commercial Street within the India Street Form-Based Code Zone. Maine Public Broadcasting Corporation applied for this zoning text amendment to allow for an additional floor for a future building at 35 Commercial Street.

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

III. BACKGROUND

Maine Public Broadcasting Corporation applied for this zoning text amendment to allow for an additional floor for a future building at 35 Commercial Street.

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

The Planning Board unanimously voted to recommend this zoning text amendment of the India Street Form-Based Code Zone to the City Council intending for final approval and adoption.

V. FINANCIAL IMPACT

None

VI. STAFF ANALYSIS AND BACKGROUND

Included in the City Council packet would be the Planning Board report, the applicant's original submission documents and drawings, and all public comment submitted to the Planning & Urban Development Department.

VII. RECOMMENDATION

Approve and adopt the proposed Zoning Text Amendment

VIII. LIST ATTACHMENTS

1. Ch. 14 Commercial Street Height Bonus in India Street Form-Based Code Zone 2.28.2022
2. Commercial St. - 35 (Attachments)
3. 2.28.2022 India St form based code report

Prepared by:

Date: 02/04/2022

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: HEIGHT BONUS IN INDIA STREET FORM-BASED CODE ZONE**

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

*That Chapter 14, Section 9.1.7.C.1.a and Table 9-C are
hereby amended to read as follows, on the following pages:*

TABLE 9-C: HEIGHT BONUSES

Subdistrict	Pre-Bonus Height (max.)	Mid-Block Permeability ¹	Residential Density	Green Roof	Affordable Housing	Height With Bonus (max.)	Bonus Floor Stepback ² (min.)
UN	45 ft. and 4 stories	n/a	n/a	n/a	1 story up to 12 ft.	57 ft. up to 5 stories	15 ft.
UT	65 ft. and 6 stories	1 story up to 12 ft.	1 story up to 12 ft.	1 story up to 12 ft.	1 story up to 12 ft.	77 ft. up to 7 stories	15 ft.
UA (Congress Street and Commercial Street only)	50 ft. and 4 stories	1 story up to 12 ft.	1 story up to 12 ft.	1 story up to 12 ft.	1 story up to 12 ft.	62 ft. up to 5 stories	15 ft.

¹ Must be publicly accessible.

² Measured from the ground floor building edge facing any public right-of-way.

A. Height standards

1. Height bonus applicability

- a. If a frontage faces a UT street, UN street, or ~~Congress Street~~ allowed UA street according to Table 9-C, then the portion of the building facing that street is eligible for a height bonus. For lots with multiple frontages where a frontage faces an ineligible street, bonus story must be stepped back at least 35 feet from ineligible street line. (See Subsection 9.1.8(D).)
- b. Only one height bonus may be applied per structure.

2. One additional story of up to 12 feet in height is allowed if one of the following provisions is met:

- a. For residential development with residential density equal to or greater than 150 dwelling units per acre (density may be achieved with the bonus floor).
- b. For any development providing a green roof, where:
 - i. At least 50% of the cumulative lot area is pervious.
 - ii. At least 50% of the cumulative roof area is a green roof. Green roof area may be applied towards the 50% lot area requirement.
 - c. For residential development where 20% of the units meet the definition of either “Workforce Housing Unit for Sale” or “Low-income Housing Unit for Rent” as per Article 3.

B. Parking standards

1. Parking shall be provided as per Article 19.
2. Structured parking must meet the Building Design Standard for structured parking. (See City of Portland *Design Manual*.)
3. In the case of a building addition, non-conforming existing surface parking may remain. In the case of new construction, surface parking must be brought into conformance with IS-FBC standards.

CITY OF PORTLAND
Planning & Urban Development Department

MAP AND TEXT AMENDMENT SUBMISSION CHECKLIST	
* Please submit each document <u>and</u> drawing as a separate PDF file * Please submit all drawings in a <u>24 x 36 sheet size</u> * Please confirm each item by electronically checking the boxes to the left for each document/drawing	
GENERAL APPLICATION DOCUMENTS	
☒	Project Description Cover Letter with detailed project description
☒	Consistency with Comprehensive Plan Analysis of the consistency of the zone change request with the goals, policies and land use plan of Portland's Comprehensive Plan.
☒	Proposed Text Amendment Provide proposed language for text amendment(s) and cite the relevant sections to be revised in the Land Use code.
☒	Completed Checklist – Map and Text Amendment Application (this document)
☒	Right, Title and Interest Deeds, leases, or purchase and sales agreements
PLANS	
☒	Vicinity Map
☐	Proposed Map Amendment (please use the Portland zoning map as a reference)
☒	Site Plan (if applicable) On a separate sheet, please provide a site plan of the property showing existing and proposed improvements, including such features as buildings, parking, driveways, walkways, landscape and property boundaries.

This document has been recorded electronically
 on 09/24/2021 at 08:19:09 AM
 Please see the attached copy to view the
 Recorder's Stamp as it now appears in the public record.
 State: ME Jurisdiction: Cumberland County Registry of Deeds
 Instrument # 68164
 Book: 38692 Page: 244
 Submitted by Monument Title Company

DLN: 1002140163804
QUITCLAIM DEED WITH COVENANT

ESSEXNORTH 25 COMMERCIAL LLC, a Maine limited liability company, having a mailing address of P.O. Box 394, Topsfield, MA 01983 (the "Grantor"), FOR CONSIDERATION PAID, grants to MAINE PUBLIC BROADCASTING CORPORATION, a Maine nonprofit corporation, having a mailing address of 1450 Lisbon Street, Lewiston, ME 04240 (the "Grantee"), with QUITCLAIM COVENANT, certain real property, together with any improvements thereon, located on Commercial Street, City of Portland, County of Cumberland and State of Maine, more particularly described on Exhibit A attached hereto and made a part hereof.

For Grantor's source of title see Quitclaim Deed with Covenant granted by Auto Europe, LLC to EssexNorth 25 Commercial LLC dated October 25, 2019 and recorded in the Cumberland County Registry of Deeds in Book 36156, Page 203.

IN WITNESS WHEREOF, EssexNorth 25 Commercial LLC has caused this instrument to be executed by Terri Lee Carabillo, Manager of EssexNorth Portland LLC, Manager of EssexNorth 25 Commercial LLC, thereunto duly authorized, as of this 23rd day of September, 2021.

ESSEXNORTH 25 COMMERCIAL LLC
 By: EssexNorth Portland LLC, its Manager

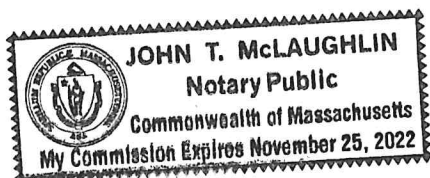
Brian M. Duggan
 Witness

By: [Signature]
 Terri Lee Carabillo, Manager

Commonwealth of Massachusetts
 County of ESSEX, ss

September 23, 2021

PERSONALLY APPEARED the above-named Terri Lee Carabillo, Manager of EssexNorth Portland LLC, Manager of EssexNorth 25 Commercial LLC as aforesaid, and acknowledged the foregoing instrument to be his/her free act and deed in his/her said capacity and the free act and deed of said limited liability companies.



Before me,
[Signature]
 Notary Public/Attorney at Law
 Commission Expires:
 Print Name:

Exhibit A

A certain lot or parcel of land with the buildings thereon, situated on the northwesterly side of Commercial Street, in the City of Portland, County of Cumberland, Maine, comprising the premises numbered 23-31 on said Commercial Street and being bounded and described as follows:

Beginning on said Commercial Street at the center of the brick wall at the easterly end of the block of stores erected by Samuel Tyler, the center of said brick wall being distant from the easterly side of Franklin Street a distance of 100.85 feet; thence northwesterly through the center of said brick wall and in continuation of the same course to the southerly side of a passageway, which said passageway extends from said Franklin Street northeasterly; thence northeasterly by said passageway by various courses a distance of 112.65 feet, more or less, to line of land now or formerly of the heirs of Lemuel Dyer as established July 13, 1853 by deed recorded in the Cumberland County Registry of Deeds in Book 248, Page 183; thence southeasterly by said Dyer line a distance of ninety (90) feet to said Commercial Street; thence westerly by the northerly side line of said Commercial Street 105.27 feet, more or less, to the point of beginning, together with all its right, title and interest in and to all structures on the lot hereby conveyed which may extend into the limits of said passageway as originally laid out, also the right to the use in common with others of said passageway.

The above-described premises is subject to the following:

1. Certificate of Variance of Approval dated August 11, 1988 and recorded in the said Registry of Deeds in Book 8422, Page 121.
2. Rights and easements granted by Auto Europe Inc. to Central Maine Power Company and New England Telephone and Telegraph Company by instrument dated January 25, 1996 and recorded in the Cumberland County Registry of Deeds in Book 12368, Page 67.
3. Rights of others in and to the 20' common passageway located in the rear of the above described parcel.
4. Rights of the owners of the property next westerly thereof on Commercial Street to maintain one-half of the easterly wall of the building on said adjoining premises along the westerly line of the premises above described.
5. Rights and easements set forth in the Easement Deed granted by EssexNorth 25 Commercial LLC to EssexNorth 35 Commercial LLC dated November 4, 2019 and recorded in the Cumberland County Registry of Deeds in Book 36156, Page 206.

This document has been recorded electronically
 on 09/24/2021 at 08:18:08 AM
 Please see the attached copy to view the
 Recorder's Stamp as it now appears in the public record.
 State: ME Jurisdiction: Cumberland County Registry of Deeds
 Instrument # 691670
 Book: 38692 Page: 246
 Submitted by Monument Title Company

DLN: 1002140163867
QUITCLAIM DEED WITH COVENANT

ESSEXNORTH 35 COMMERCIAL LLC, a Maine limited liability company, having a mailing address of P.O. Box 394, Topsfield, MA 01983 (the "Grantor"), FOR CONSIDERATION PAID, grants to MAINE PUBLIC BROADCASTING CORPORATION, a Maine nonprofit corporation, having a mailing address of 1450 Lisbon Street, Lewiston, ME 04240 (the "Grantee"), with QUITCLAIM COVENANT, certain real property, together with any improvements thereon, located on Commercial Street, City of Portland, County of Cumberland and State of Maine, more particularly described on Exhibit A attached hereto and made a part hereof.

For Grantor's source of title see Quitclaim Deed with Covenant granted by Auto Europe, LLC to EssexNorth 35 Commercial LLC dated October 25, 2019 and recorded in the Cumberland County Registry of Deeds in Book 36156, Page 200.

IN WITNESS WHEREOF, EssexNorth 35 Commercial LLC has caused this instrument to be executed by Terri Lee Carabillo, Manager of EssexNorth Portland LLC, Manager of EssexNorth 35 Commercial LLC, thereunto duly authorized, as of this 23rd day of September, 2021.

ESSEXNORTH 35 COMMERCIAL LLC
 By: EssexNorth Portland LLC, its Manager

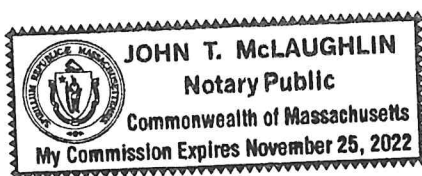
Kristin M. Dugan
 Witness

By: [Signature]
 Terri Lee Carabillo, Manager

Commonwealth of Massachusetts
 County of Essex, ss

September 23, 2021

PERSONALLY APPEARED the above-named Terri Lee Carabillo, Manager of EssexNorth Portland LLC, Manager of EssexNorth 35 Commercial LLC as aforesaid, and acknowledged the foregoing instrument to be his/her free act and deed in his/her said capacity and the free act and deed of said limited liability companies.



Before me, [Signature]
 Notary Public/Attorney at Law
 Commission Expires:
 Print Name:

Exhibit A

PARCEL 1

A certain lot or parcel of land with the buildings thereon, situated in the City of Portland, County of Cumberland, Maine, bounded and described as follows:

Beginning at the junction of the northwesterly side of Commercial Street and northeasterly side of Franklin Street; thence running easterly on Commercial Street fifty (50) feet to the middle of a partition wall; thence northerly by the middle line of said wall about ninety (90) feet to the common passageway hereinafter named; thence westerly on the line of said passageway to Franklin Street; thence southerly by Franklin Street to the point begun at, together with the right of way in a common passageway twenty (20) feet wide laid out and reserved in the rear of said lot.

PARCEL 2

A certain lot or parcel of land, with the buildings thereon situated on the northerly side of Commercial Street in said Portland, and bounded and described as follows:

Commencing at the center of the partition wall of two brick stores in the block situated at the corner of Commercial and Franklin Streets, and formerly owned by A. and S.E. Spring; thence running northerly through the center of said brick wall ninety (90) feet to a passageway in the rear of said premises; thence easterly on the line of said passageway a distance of fifty (50) feet, more or less, to the outer or easterly face or outside of the wall forming the foundation wall on the easterly side of the block on the premises hereby conveyed; thence southeasterly by said wall ninety (90) feet, more or less, to said Commercial Street; thence southerly by said Commercial Street fifty (50) feet, more or less, to the point begun at; intending hereby to convey the third and fourth stores in the block of four stores fronting on Commercial Street at its intersection with Franklin Street, together with a right of way in common passageway twenty (20) feet in width, extending in the rear of said premises.

The above-described premises is subject to the following:

1. Certificate of Variance of Approval dated August 11, 1988 and recorded in the said Registry of Deeds in Book 8422, Page 121.
2. Rights and easements granted by Auto Europe Inc. to Central Maine Power Company and New England Telephone and Telegraph Company by instrument dated January 25, 1996 and recorded in the Cumberland County Registry of Deeds in Book 12368, Page 67.
3. Rights of others in and to the 20' common passageway located in the rear of the above described parcels.
4. Rights of the owners of the property next westerly thereof on Commercial Street to maintain one-half of the easterly wall of the building on said adjoining premises along the westerly line of the premises above described.
5. Rights and easements set forth in the Easement Deed granted by EssexNorth 25 Commercial LLC to EssexNorth 35 Commercial LLC dated November 4, 2019 and recorded in the Cumberland County Registry of Deeds in Book 36156, Page 206.



75 York Street
Portland, Maine 04101
phone 207 772 4656
fax 207 828 4656
www.simonsarchitects.com

Memorandum – Consistency with Comprehensive Plan

date: Friday, October 08, 2021
project: Maine Public 2019-0090
To: Portland Planning Department
From: Steve Hoffman, Simons Architects
 Maine Public

RE. Text Amendment for the Urban Active designation within the India Street Form Based Code
Property: 35 Commercial Street. Parcel: 029-P027
 29 Commercial Street. Parcel: 029-P031

Consistency with Portland's Comprehensive Plan 2030

The vision of Portland's Plan 2030 is represented by the venn diagram of the city's core belief that Portland is equitable, sustainable, connected, dynamic, authentic and secure. This proposed application and text amendment aligns with the specific Comprehensive Plan goals outlined below:

Dynamic

- Vibrant arts and cultural life will be central to our identity
Maine Public Mission Statement includes this vision:
"Maine Public will inform, inspire and delight" In addition to news, Maine Public delivers a variety of cultural content across radio, television, web and print. The proposed Commercial Street facility will include a public engagement space for up to 150 people to view live broadcasts, performances and programs.
- We will embrace innovation in order for our community too thrive
Maine Public Mission Statement includes a core value of:
"Life Long Learning — We believe in the power of knowledge to transform lives and promote greater understanding. We endeavor to maximize the opportunities available to the public to participate in a culture of learning throughout their lives."
- We will encourage an active and informed citizenry and facilitate civil discourse
Maine Public Mission Statement includes a core value of:
Civic Engagement — "We view our responsibility to promote awareness and participation in the democratic process as supremely important. We actively seek to make workings of government and the public conversation as accessible as possible."

Secure

- We will prepare for emergencies and ready for a changing climate
Maine Public serves as the state's emergency broadcast facility. It will be 'hardened' to insure operation under any number of emergencies. The height exception of the text amendment will allow critical components to be positioned on upper floors as protection against any flooding associated with a category 4 hurricane.

Authentic

- The uniqueness and integrity of our neighborhoods will be maintained and enhanced

project: Maine Public Memo 10062021

date: 10/8/21
Page 1 of 2

The scale and fabric of Commercial Street will be reinforced with the proposed Maine Public Facility. An existing surface parking lot will be replaced with a new infill building matching the scale and detailing of its adjacent neighbors, the Galt Block and the Workingmen's Club.

Connected

- Our Success will be tied to our connections to each other, our state, and our region
Maine Public utilizes Web, radio, television and print to connect the people of Maine
- Diverse forums for community engagement will remain essential to a strong civil society
Maine Public Mission Statement includes a core value of:
Civic Engagement — “We view our responsibility to promote awareness and participation in the democratic process as supremely important. We actively seek to make workings of government and the public conversation as accessible as possible.”

Under Future Land Use / Land Use Context

29 Commercial Street is shown as Mixed-Use / Commercial Offices (page 81). Maine Public will be a mixture of both broadcast studios and office space.

Under Future Land Use / Priority Nodes and Corridors

29 Commercial Street has been labeled in the “Enhance” designation (page 86). By replacing the surface parking lot with a new five story infill building Commercial Street will be given additional density and the existing streetscape and urban fabric will be complete.



75 York Street
 Portland, Maine 04101
 phone 207 772 4656
 fax 207 828 4656
 www.simonsarchitects.com

Memorandum

date: Monday August 16, 2021 **Revised November 30, 2021**
project: Maine Public 2019-0090
To: Portland Planning Department
From: Scott Simons, Simons Architects
 Maine Public

RE. Text Amendment for the Urban Active designation within the India Street Form Based Code
Property: 35 Commercial Street. Parcel: 029-P027
 29 Commercial Street. Parcel: 029-P031

Maine Public is currently in negotiations with the owner of 29 & 35 Commercial Street for the purchase on the Galt Block Building and the adjacent surface parking lot. The area in consideration is located at the corner of Commercial Street and Franklin Arterial. Both parcels are included in a single sale.

29 Commercial Street has an area of 9,476 SF and Maine Public is considering building a 31,000 sf office and broadcast facility to serve as the center of its statewide system. The Galt Block, a four story masonry building to the west, would be separated and sold.

Within the India Street Form Based Code there are three designations of subdistricts; Urban Active, Urban Transitional and Urban Neighborhood, (Figure 9-A IS-FBC Regulating Plan). 29 Commercial Street is located within the Urban Active Zone (UA) and has a height limitation of 50 feet, maximum. The ISFBC does, however, have a height bonus within the UA subdistrict for Congress Street. Height bonuses are granted for mid-block permeability, residential density, green roofs, and affordable housing. (Table 9-C)

Our request is that the same bonus floor provision be granted to Commercial Street that exists for Congress Street.

In Table 9-C Height Bonuses, Commercial Street would be added to the UA Subdistrict. **Under 9.1.7 General Development Standards, C.1.a Height Bonus Applicability, I. first sentence, delete “or Congress Street”. Substitute “or allowed UA street according to Table 9-C”.**

The Commercial Street height bonus criteria would be the same as those for Congress Street.

The results for Maine Public is, if meeting the exception criteria of an amended Table 9-C, that they would have a larger building-by-right envelope. Also of note, the adjacent existing Galt Block has a 50 foot street elevation. With the requested height bonus Maine Public would maintain a 50 foot street elevation. The bonus 12 feet of height would be recessed 15 feet from the street façade, and would be considerably lower than the roof structure on the Galt Block building.

project: Maine Public Memo 08122021

date: 12/6/21
 Page 1 of 2



75 York Street
 Portland, Maine 04101
 phone 207 772 4656
 fax 207 828 4656
 www.simonsarchitects.com

Memorandum – Proposed Text Amendment

date: Wednesday, October 06, 2021 **Revised November 30, 2021**
project: Maine Public 2019-0090
To: Portland Planning Department
From: Steve Hoffman, Simons Architects
 Maine Public

RE. Text Amendment for the Urban Active designation within the India Street Form Based Code
Property: 35 Commercial Street. Parcel: 029-P027
 29 Commercial Street. Parcel: 029-P031

Within the India Street Form Based Code there are three designations of subdistricts; Urban Active, Urban Transitional and Urban Neighborhood, (Figure 9-A IS-FBC Regulating Plan). 29 Commercial Street is located within the Urban Active Zone (UA) and has a height limitation of 50 feet, maximum. The ISFBC does, however, have a height bonus within the UA subdistrict for Congress Street. Height bonuses are granted for mid-block permeability, residential density, green roofs, and affordable housing. (Table 9-C)

Our request is that the same bonus floor provision be granted to Commercial Street that exists for Congress Street.

In Table 9-C Height Bonuses, Commercial Street would be added to the UA Subdistrict.

The Commercial Street height bonus criteria would be the same as those for Congress Street.

PROPOSED TEXT AMENDMENT

At Table 9-C Height Bonuses

Under UA Subdistrict: Change: “Congress Street Only” to “Congress Street **and Commercial Street** Only”

Under 9.1.7 General Development Standards, C.1.a Height Bonus Applicability

Delete “or Congress Street”, substitute “or allowed UA street according to Table 9-C”

project: Maine Public Memo 10062021

date: 12/6/21
 Page 1 of 2

Proposed Text Amendment 11302021



TABLE 9-C: HEIGHT BONUSES

Subdistrict	Pre-Bonus Height (max.)	Mid-Block Permeability ¹	Residential Density	Green Roof	Affordable Housing	Height With Bonus (max.)	Bonus Floor Stepback ² (min.)
UN	45 ft. and 4 stories	n/a	n/a	n/a	1 story up to 12 ft.	57 ft. up to 5 stories	15 ft.
UT	65 ft. and 6 stories	1 story up to 12 ft.	1 story up to 12 ft.	1 story up to 12 ft.	1 story up to 12 ft.	77 ft. up to 7 stories	15 ft.
UA (Congress Street only)	50 ft. and 4 stories	1 story up to 12 ft.	1 story up to 12 ft.	1 story up to 12 ft.	1 story up to 12 ft.	62 ft. up to 5 stories	15 ft.

¹ Must be publicly accessible.

² Measured from the ground floor building edge facing any public right-of-way.

C. Height standards

1. Height bonus applicability

- a. If a frontage faces a UT street, UN street, ~~or Congress Street~~, then the portion of the building facing that street is eligible for a height bonus.
For lots with multiple frontages where a frontage faces an ineligible street, bonus story must be stepped back at least 35 feet from ineligible street line. (See Subsection 9.1.8(D).)
- b. Only one height bonus may be applied per structure.
2. One additional story of up to 12 feet in height is allowed if one of the following provisions is met:
 - a. For residential development with residential density equal to or greater than 150 dwelling units per acre (density may be achieved with the bonus floor).
 - b. For any development providing a green roof, where:
 - i. At least 50% of the cumulative lot area is pervious.

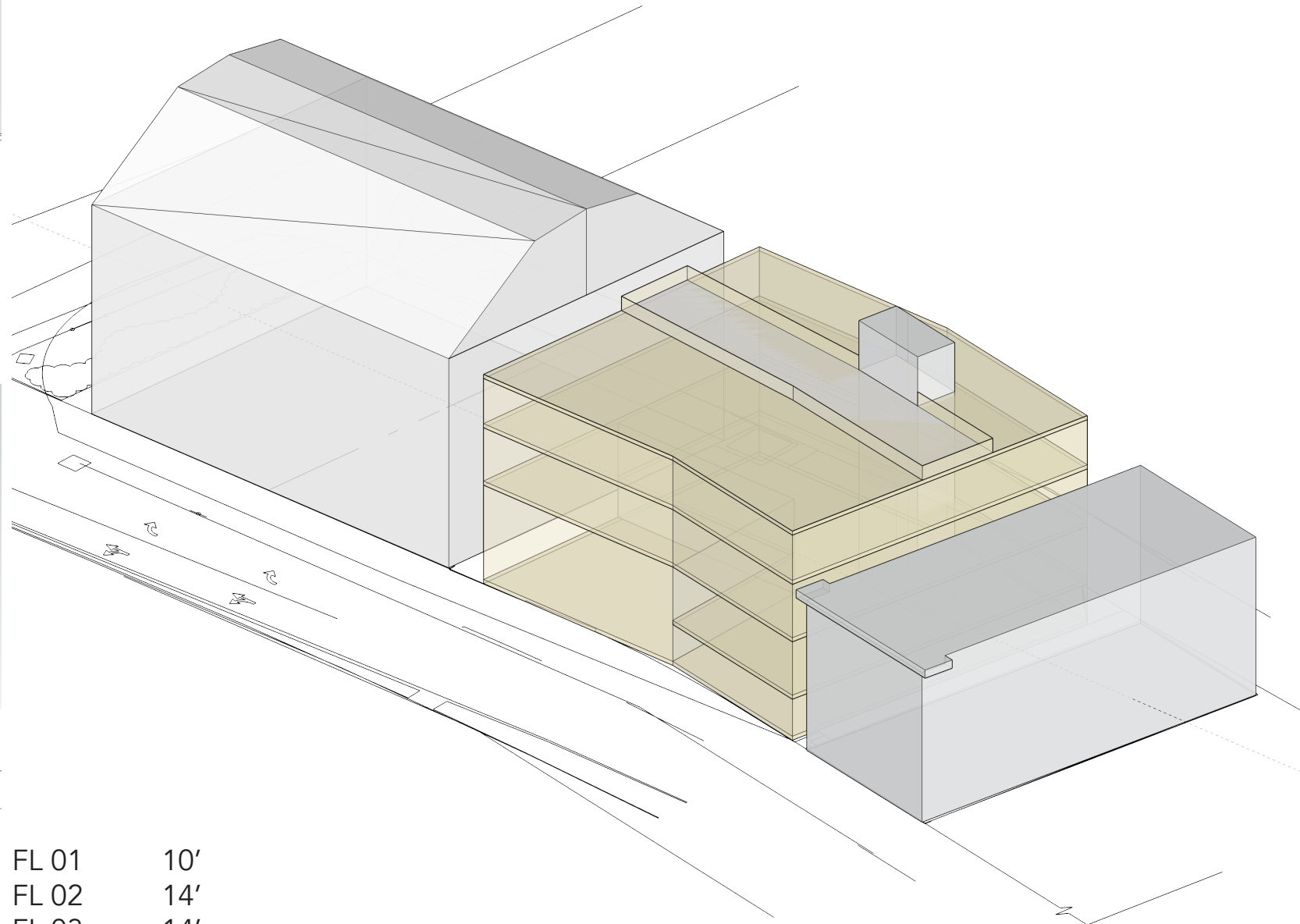
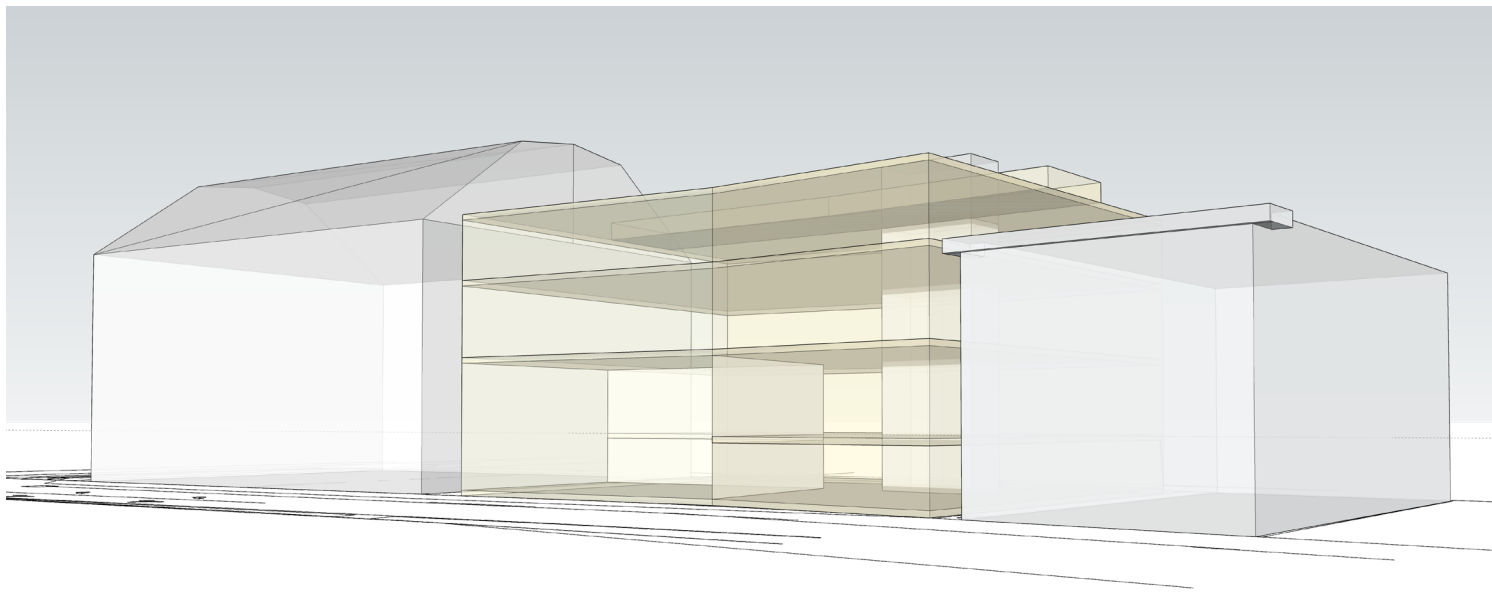
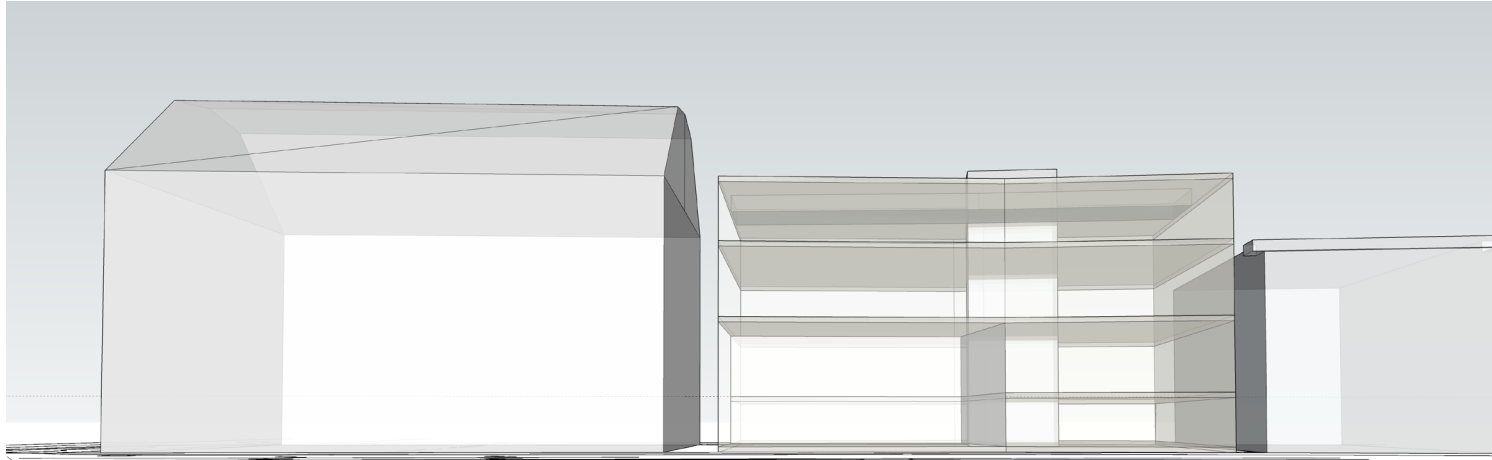
Change from "Congress Street Only" to "Congress Street and Commercial Street Only"

Delete "or Congress Street". Substitute "or allowed UA street according to Table 9-C,"

- ii. At least 50% of the cumulative roof area is a green roof. Green roof area may be applied towards the 50% lot area requirement.
- c. For residential development where 20% of the units meet the definition of either "Workforce Housing Unit for Sale" or "Low-income Housing Unit for Rent" as per Article 3.

D. Parking standards

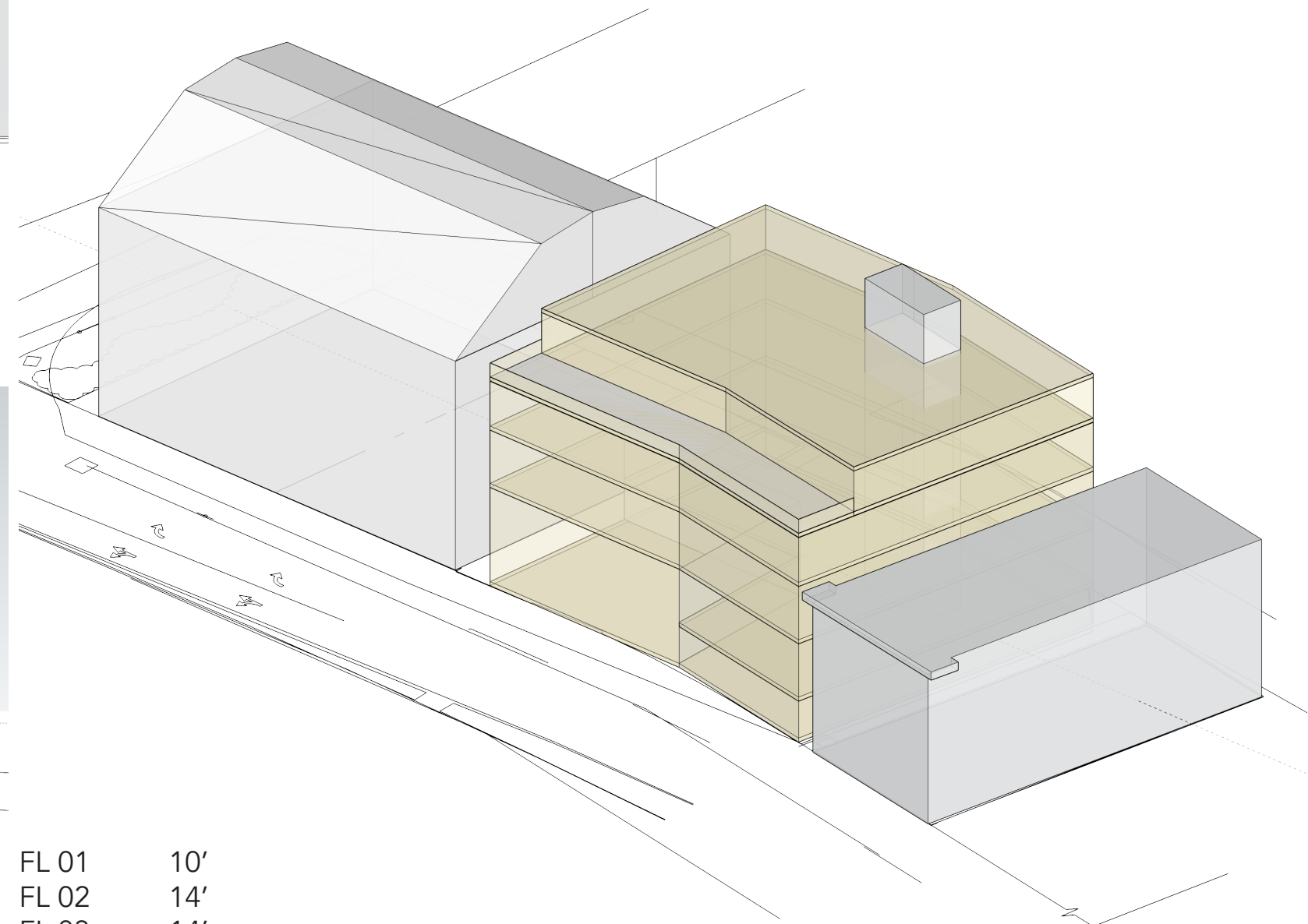
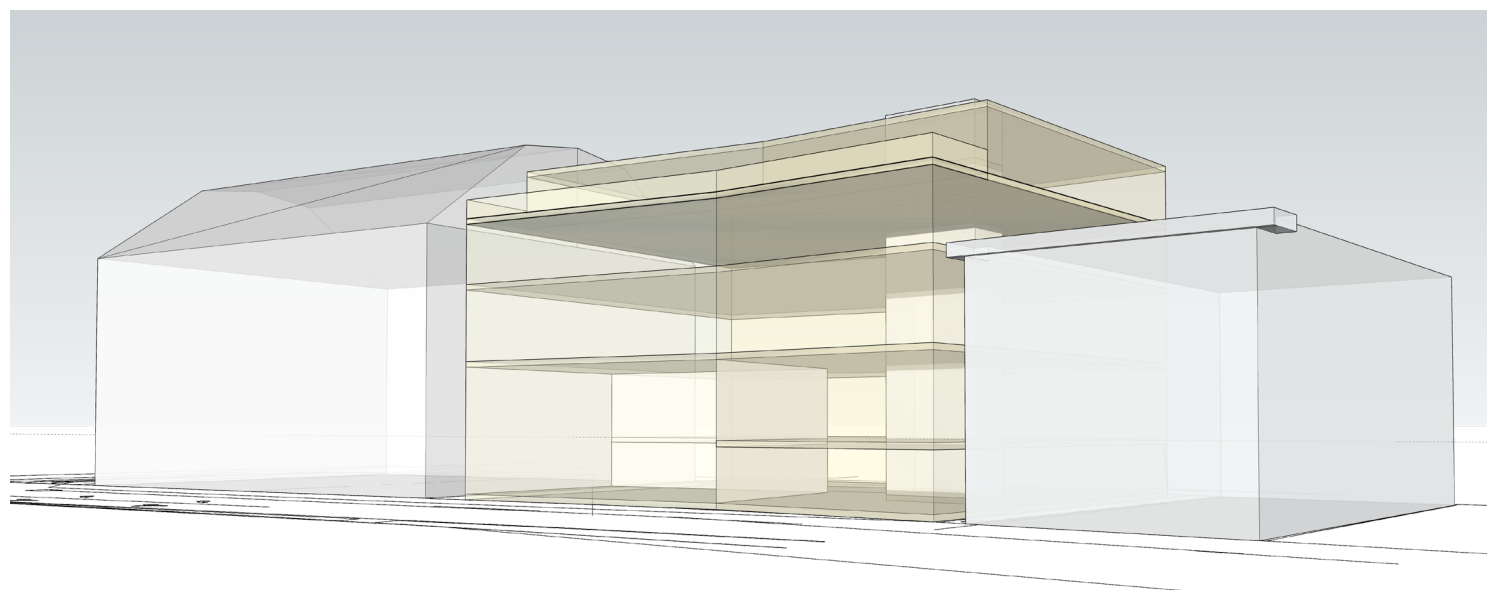
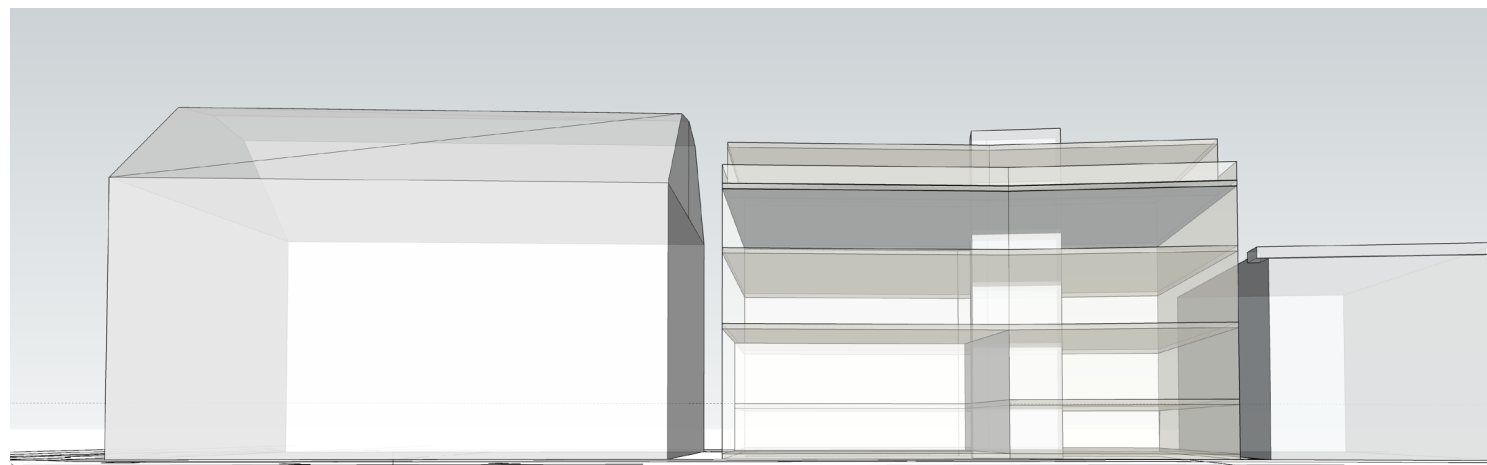
1. Parking shall be provided as per Article 19.
2. Structured parking must meet the Building Design Standard for structured parking. (See City of Portland *Design Manual*.)
3. In the case of a building addition, non-conforming existing surface parking may remain. In the case of new construction, surface parking must be brought into conformance with IS-FBC standards.



FL 01 10'
 FL 02 14'
 FL 03 14'
 FL 04 12'

SCHEME A: "AS OF RIGHT" ALLOWED BY ZONING

Ground Floor	7800
Second Floor	7800
Third Floor	7800
Fourth Floor	7800
TOTAL	31,200

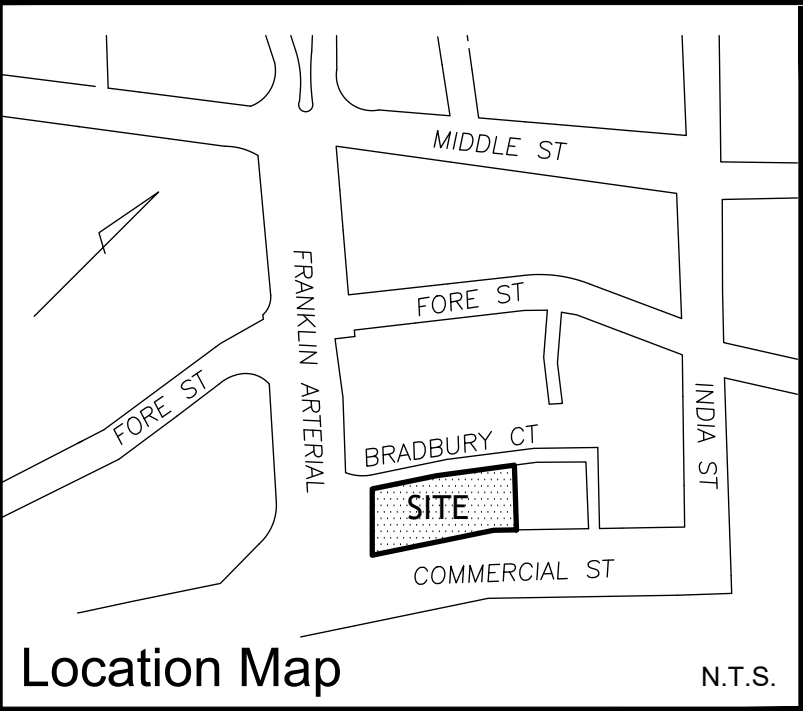


FL 01	10'
FL 02	14'
FL 03	14'
FL 04	12'
FL 05	12'

SCHEME B: TEXT AMMENDMENT TO UA SUB-DISTRICT TO ALLOW
BONUS FLOOR; 4th FLOOR 15' SET BACK

Ground Floor (01)	7800
Mezzanine (02)	4680
Second Floor (03)	7800
Third Floor (04)	7800
Fourth Floor (05)	6400 (MAX AS-OF-RIGHT)
TOTAL	34,480





Legend

- IRON PIPE OR ROD FOUND
- CAPPED IRON ROD TO BE SET
- ⊗ UTILITY POLE
- ⊗/GM ELECTRIC OR GAS METER
- ORD ROOF DRAIN
- GAS VALVE
- ⊗ WATER VALVE
- ⊗ HYDRANT
- ⊗ UTILITY POLE
- MANHOLE
- ⊗ CATCH BASIN
- ⊗ SIGN
- ⊗ DECIDUOUS TREE
- ⊗ METAL GUARDRAIL
- ⊗ FENCE
- ⊗ CURB
- OHW OVERHEAD WIRES
- UGE UNDERGROUND ELETRIC
- SS SANITARY SEWER
- 60 1' CONTOUR
- CIRF CAPPED IRON ROD FOUND
- N/F NOW OR FORMERLY
- 000/000 DEED BOOK / PAGE
- CONC. CONCRETE
- △ POSSIBLE ENCROACHMENT
- ① SCHEDULE B EXCEPTION
- P.O.B. POINT OF BEGINNING

Flood Zone Note

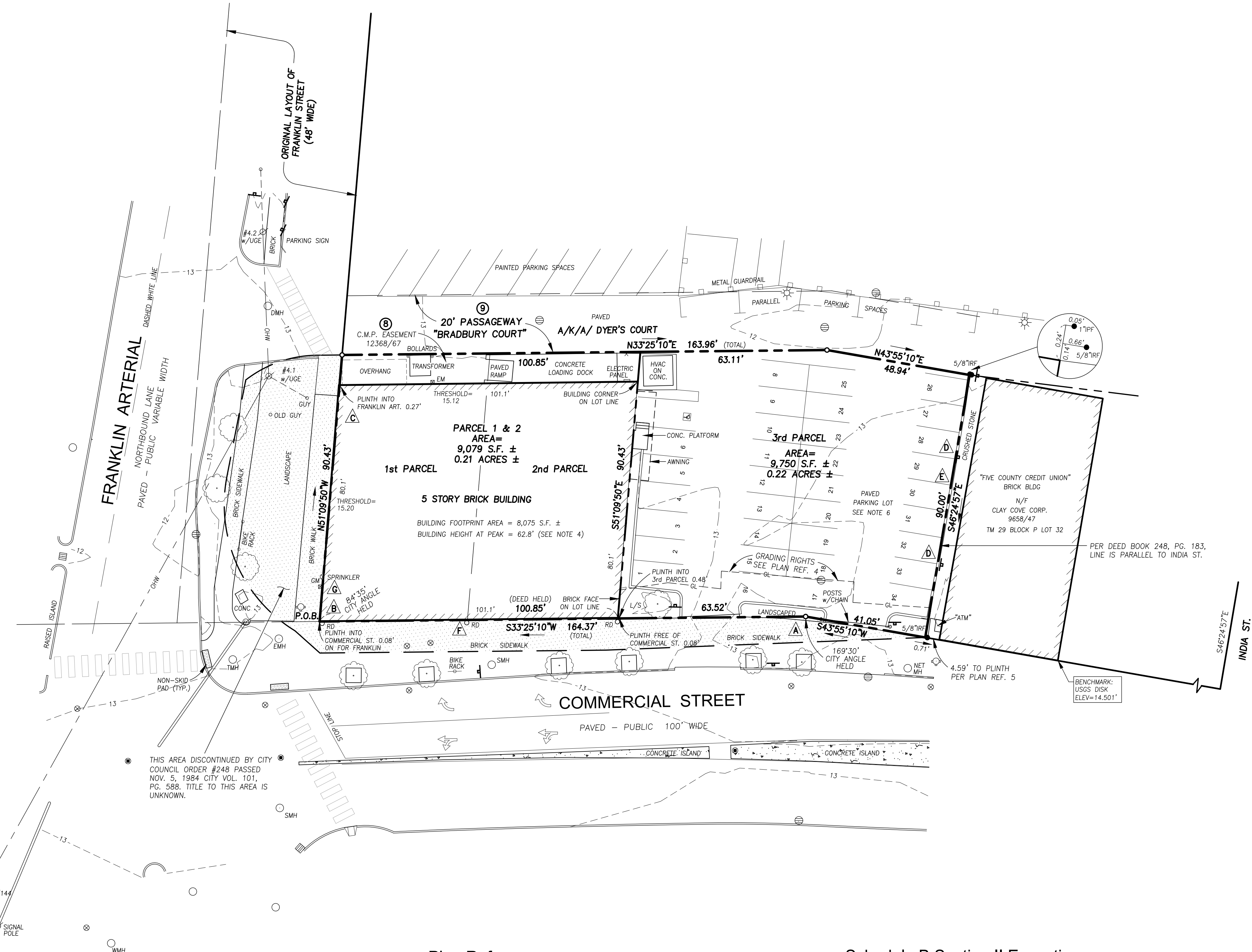
BY GRAPHIC PLOTTING ONLY, THIS PROPERTY IS LOCATED IN ZONE C. AREAS OF MINIMUM FLOODING) ON THE FLOOD INSURANCE RATE MAP, COMMUNITY PANEL NO. 230051 0014B, WHICH BEARS AN EFFECTIVE DATE OF JULY 17, 1986.

Zoning Information

NONE PROVIDED

Possible Encroachments

- △ LANDSCAPED ISLAND WITHIN LIMITS OF COMMERCIAL STREET 1.3'±
- △ PLINTH AT BUILDING CORNER INTO COMMERCIAL STREET 0.08' ±
- △ PLINTH AT BUILDING CORNER INTO FRANKLIN ARTERIAL 0.27'±
- △ PARKING SIGNS ONTO LAND OF THE ABUTTER 1.3'±
- △ BACK OF CURB ONTO LAND OF THE ABUTTER 0.5'±
- △ ROOF DRAINS INTO COMMERCIAL STREET 1'±
- △ GAS METER LIES ENTIRELY WITHIN THE LIMITS OF FRANKLIN ARTERIAL



Plan References

- PLAN OF PROPERTY IN PORTLAND, MAINE MADE FOR CHASE TRANSFER CO. DATED JANUARY 1940 BY H.I. JORDAN.
- TITLE PLAN OF PROPERTY IN PORTLAND, MAINE MADE FOR CHASE TRANSFER CORP. DATED SEPT. 1950 BY H.I. AND E.C. JORDAN.
- STATE OF MAINE DEPARTMENT OF TRANSPORTATION RIGHT OF WAY MAP DATED AUGUST 1985 DOT FILE NO. 3-339.
- ALTA/ACSM LAND TITLE SURVEY, 29 COMMERCIAL ST., PORTLAND, MAINE DATED FEBRUARY 19, 2004 BY INTERNATIONAL LAND SERVICES, INC./OWEN HASKELL, INC.
- PLAN OF PROPERTY IN PORTLAND, MAINE MADE FOR THE ROMAN CATHOLIC BISHOP OF PORTLAND, BY H.I. & E.C. JORDAN, DATED NOV. 1974.
- PLAN DEPICTING THE RESULTS OF A BOUNDARY SURVEY MADE FOR B.I.W. FIVE COUNTY CREDIT UNION, 13-19 COMMERCIAL STREET, PORTLAND, MAINE, PREPARED BY NADÉAU & LODGE, DATED 05/09/2001.
- PLAN OF PROPERTY, COMMERCIAL STREET, PORTLAND, MAINE MADE FOR W.L. BLAKE & CO., BY ROBERT P. TITCOMB, INC., SHEET 2 OF 3, DATED 7/02/81.

Schedule B Section II Exceptions

OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY
COMMITMENT FILE NO. 22956.2 EFFECTIVE DATE: SEPTEMBER 1, 2019

1 - 7. NON SURVEY ITEMS

8. EASEMENT DEED FROM AUTO EUROPE INC. TO CENTRAL MAINE POWER COMPANY DATED 1-25-1996, RECORDED IN THE REGISTRY IN BOOK 12368, PAGE 67. -AFFECTS SURVEYED PARCEL AS SHOWN HEREON.

RIGHTS OF OTHERS, IN COMMON WITH THE INSURED, TO THE USE OF (I) A COMMON PASSAGEWAY TWENTY (20) FEET WIDE AND (II) A COMMON PASSAGEWAY TWENTY-SIX (26) FEET WIDE TO THE "REAR" OR WESTERLY SIDE OF THE PREMISES, ALL AS RECITED IN PRIOR DEEDS IN THE TITLE RECORDED IN BOOK 3992, PAGE 18 (PARCEL 1, THEREIN; PARCEL 3 OF INSURED PREMISES), AND BOOK 2970, PAGE 847 (PARCEL 1 AND PARCEL 2, THEREIN, AND IN INSURED PREMISES) AND DEEDS THEREAFTER. -BENEFITS SURVEYED PARCEL AS SHOWN HEREON. HISTORICALLY, BRADBURY (DYERS COURT) HAS BEEN SHOWN AS 20 FEET WIDE. NO INDICATION OF A 26 FOOT WIDE PASSAGEWAY COULD BE FOUND.

9. SUCH STATE OF FACTS, NOTES OR CONDITIONS AS SHOWN ON A PLAN PREPARED BY INTERNATIONAL LAND SERVICES, INC. DATED FEBRUARY 19, 2004, PROJECT ADDRESS: 29 COMMERCIAL STREET, PORTLAND, MAINE, JOB NO. 03-11-036:001. -ALL PERTINENT ITEMS ARE SHOWN.

Legal Description

PARCEL 1.

A CERTAIN LOT OR PARCEL OF LAND WITH THE BUILDINGS THEREON, SITUATED IN SAID PORTLAND, BOUNDED AND DESCRIBED AS FOLLOWS:
BEGINNING AT THE JUNCTION OF THE NORTHWESTERLY SIDE OF COMMERCIAL STREET AND NORTH-EASTERLY SIDE OF FRANKLIN STREET; THENCE RUNNING EASTERLY ON COMMERCIAL STREET FIFTY (50) FEET TO THE MIDDLE OF A PARTITION WALL; THENCE NORTHERLY BY THE MIDDLE LINE OF SAID WALL ABOUT NINETY (90) FEET TO THE COMMON PASSAGEWAY HEREINAFTER NAMED; THENCE WESTERLY ON THE LINE OF SAID PASSAGEWAY TO FRANKLIN STREET; THENCE SOUTHERLY BY FRANKLIN STREET TO THE POINT BEGUN AT; TOGETHER WITH THE RIGHT OF WAY IN A COMMON PASSAGEWAY TWENTY (20) FEET WIDE LAID OUT AND RESERVED IN THE REAR OF SAID LOT.

PARCEL 2.

A CERTAIN LOT OR PARCEL OF LAND, WITH THE BUILDINGS THEREON SITUATED ON THE NORTHERLY SIDE OF COMMERCIAL STREET IN SAID PORTLAND, AND BOUNDED AND DESCRIBED AS FOLLOWS:
COMMENCING AT THE CENTER OF THE PARTITION WALL OF TWO BRICK STORES IN THE BLOCK SITUATED AT THE CORNER OF COMMERCIAL AND FRANKLIN STREETS, AND FORMERLY OWNED BY A. AND S.E. SPRING; THENCE RUNNING NORTHERLY THROUGH THE CENTER OF SAID BRICK WALL NINETY (90) FEET TO A PASSAGEWAY IN THE REAR OF SAID PREMISES; THENCE EASTERLY ON THE LINE OF SAID PASSAGEWAY A DISTANCE OF FIFTY (50) FEET, MORE OR LESS, TO THE OUTER OR EASTERLY FACE OR OUTSIDE OF THE WALL FORMING THE FOUNDATION WALL ON THE EASTERLY SIDE OF THE BLOCK ON THE PREMISES HEREBY CONVEYED; THENCE SOUTHEASTERLY BY SAID WALL NINETY (90) FEET, MORE OR LESS, TO SAID COMMERCIAL STREET; THENCE SOUTHERLY BY SAID COMMERCIAL STREET FIFTY (50) FEET, MORE OR LESS, TO THE POINT BEGUN AT; INTENDING HEREBY TO CONVEY THE THIRD AND FOURTH STORES IN THE BLOCK OF FOUR STORES FRONTING ON COMMERCIAL STREET AT ITS INTERSECTION WITH FRANKLIN STREET, TOGETHER WITH A RIGHT OF WAY IN A COMMON PASSAGEWAY TWENTY-SIX (26) FEET IN WIDTH, EXTENDING IN THE REAR OF SAID PREMISES.

PARCEL 3.

ALSO, ANOTHER CERTAIN LOT OR PARCEL OF LAND WITH THE BUILDINGS THEREON SITUATED ON THE NORTHWESTERLY SIDE OF COMMERCIAL STREET, IN PORTLAND, COUNTY OF CUMBERLAND AND STATE OF MAINE, COMPRISING THE PREMISES NUMBERED 23-31 ON SAID COMMERCIAL STREET AND BEING BOUNDED AND DESCRIBED AS FOLLOWS, TO WIT: BEGINNING ON SAID COMMERCIAL STREET AT THE CENTER OF THE BRICK WALL AT THE EASTERLY END OF THE BLOCK OF STORES ERECTED BY SAMUEL TYLER, THE CENTER OF SAID BRICK WALL BEING DISTANT FROM THE EASTERLY SIDE OF FRANKLIN STREET A DISTANCE OF ONE HUNDRED AND EIGHTY-FIVE HUNDREDTHS (100.85) FEET; THENCE NORTHWESTERLY THROUGH THE CENTER OF SAID BRICK WALL AND IN CONTINUATION OF THE SAME COURSE TO THE SOUTHERLY SIDE OF A PASSAGEWAY, WHICH SAID PASSAGEWAY EXTENDS FROM SAID FRANKLIN STREET NORTHEASTERLY; THENCE NORTHEASTERLY BY SAID PASSAGEWAY BY VARIOUS COURSES A DISTANCE OF ONE HUNDRED TWELVE AND SIXTY-FIVE HUNDREDTHS (112.65) FEET, MORE OR LESS, TO LINE OF LAND NOW OR FORMERLY OF THE HEIRS OF LEMUEL DYER AS ESTABLISHED JULY 13, 1853 BY DEED RECORDED IN THE CUMBERLAND COUNTY REGISTRY OF DEEDS IN BOOK 248, PAGE 183; THENCE SOUTHEASTERLY BY SAID DYER LINE A DISTANCE OF NINETY (90) FEET TO SAID COMMERCIAL STREET; THENCE WESTERLY BY THE NORTHERLY SIDE LINE OF SAID COMMERCIAL STREET ONE HUNDRED FIVE AND TWENTY-SEVEN HUNDREDTHS FEET, MORE OR LESS, TO THE POINT OF BEGINNING, TOGETHER WITH ALL ITS RIGHT, TITLE AND INTEREST IN AND TO ALL STRUCTURES ON THE LOT HEREBY CONVEYED WHICH MAY EXTEND INTO THE LIMITS OF SAID PASSAGEWAY AS ORIGINALLY LAID OUT, ALSO THE RIGHT TO THE USE IN COMMON WITH OTHERS OF SAID PASSAGEWAY.

THE ABOVE DESCRIBED PARCEL IS HEREBY CONVEYED SUBJECT TO THE RIGHT OF THE OWNERS OF THE PROPERTY NEXT WESTERLY THEREOF ON COMMERCIAL STREET TO MAINTAIN ONE-HALF OF THE EASTERLY WALL OF THE BUILDING ON SAID ADJOINING PREMISES ALONG THE WESTERLY LINE OF THE PREMISES ABOVE DESCRIBED.

Utility Note

THE UNDERGROUND UTILITIES SHOWN HAVE BEEN LOCATED FROM FIELD SURVEY INFORMATION AND EXISTING DRAWINGS. THE SURVEYOR MAKES NO GUARANTEES THAT THE UNDERGROUND UTILITIES SHOWN COMPRISE ALL SUCH UTILITIES IN THE AREA, EITHER IN SERVICE OR ABANDONED. THE SURVEYOR FORMERLY DOES NOT WARRANT THAT THE UNDERGROUND UTILITIES SHOWN ARE IN THE EXACT LOCATION INDICATED ALTHOUGH HE DOES CERTIFY THAT THEY ARE LOCATED AS ACCURATELY AS POSSIBLE FROM INFORMATION AVAILABLE. THE SURVEYOR HAS NOT PHYSICALLY LOCATED THE UNDERGROUND UTILITIES. CALL 1-888-DIGSAFE AT LEAST THREE BUSINESS DAYS BEFORE PERFORMING ANY CONSTRUCTION. DUE TO OSHA CONFINED SPACE REQUIREMENTS, ALL INVERTS AND PIPE SIZES MUST BE VERIFIED PRIOR TO ANY CONSTRUCTION.

ALTA / NSPS Land Title Survey

29-39 Commercial Street
Portland, Cumberland County, Maine
Made For
EssexNorth Portland, LLC
P.O. Box 394, Topsfield, MA 01983

Surveyor's Certification

TO: ESSEXNORTH 35 COMMERCIAL LLC, ESSEXNORTH 25 COMMERCIAL LLC,
NET BANK, NATIONAL ASSOCIATION AND OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

THIS IS TO CERTIFY THAT THIS MAP OR PLAT AND THE SURVEY ON WHICH IT IS BASED WERE MADE IN ACCORDANCE WITH THE 2016 MINIMUM STANDARD DETAIL REQUIREMENTS FOR ALTA/NSPS LAND TITLE SURVEYS, JOINTLY ESTABLISHED AND ADOPTED BY ALTA AND NSPS, AND INCLUDES ITEMS 1, 2, 3, 4, 6(A), 11, 13, 14, 16, 17, 19 AND 21 OF TABLE A THEREOF. THE FIELD WORK WAS COMPLETED ON OCTOBER 3, 2019.

Samuel D. Glidden
SAMUEL D. GLIDDEN
PROFESSIONAL LAND SURVEYOR NO. 2520

DATE OF PLAT OR MAP: NOVEMBER 6, 2019
DATE OF LAST REVISION:



OWEN HASKELL, INC. PROFESSIONAL LAND SURVEYORS			
390 U.S. ROUTE 1, UNIT 10, FALMOUTH, ME 04105 TEL. 207-774-0424			
DRAWN BY: JCS / JLW	FIELD BOOK: FILE	JOB NO. 2019-256 P	
CHECKED BY: JCS	SCALE: 1" = 20'	DRWG. NO. 1	

Charles Tetelman - Planner
Planning Board, Portland Maine

Re: Plan Number ZN-001756-2021

Dear Mr. Tetelman,

We understand that you are the planner in charge of the proposed subject project along with the suggested zoning text amendment. We have reviewed the documents submitted by Maine Public Broadcasting Corporation that were available on the citizen portal. It appears that the property owner would like to modify the Land Use Code to allow an additional 12 feet of additional building height.

We live at 207 Fore Street, a block away from the proposed project and consider 35 Commercial Street to be a part of our neighborhood. We oppose the City of Portland granting a Land Use Code amendment for the following reasons:

- 1) Commercial Street is not downtown Congress Street. Simply because Congress Street has a bonus provision for projects meeting certain requirements does not mean Commercial Street should also have a bonus. To suggest that the Land Use Code be changed to allow additional building height is not consistent with the building height and character of existing buildings in the project area including the adjacent Workingmens' Club building.
- 2) Because of the ongoing pandemic, there is an abundance of office space available on the peninsula that would seem to meet the operational needs of the Maine Public Broadcasting Corporation. At this time, there is no reason to change the Land Use Code when plenty of commercial space is already available.
- 3) The City's Land Use Code including building height restrictions is important and is in place for a reason. The City's Comprehensive Plan states that *"over the past several years, the City has amended its zoning ordinance to ... increase allowable heights in some parts of downtown..."* The Plan does not appear to contain language or otherwise promote allowance of increased building heights on Commercial Street. Further, the City should not decide to loosen existing height restrictions absent demonstration of real need by the applicant.

Sincerely,

Paula Foley-Stelmack
Mark Stelmack
207 Fore Street, Unit 1
Portland, Maine

On Thursday November 4th, 2021, the Planner received a voicemail from a Wireless Caller:

Good Afternoon,

I was calling to comment, Charles, on Commercial Street Text Amendment. I am a fourth generation Portlander and am so disheartened by what the town has just allowed to occur and reoccur and amend and add to and I'm shocked here reading another 12 feet added to a height that already people opposed back when it was approved. I mean where does it end? Do you want New York City? That's what's happening. Really disappointed and I just think Portland is robbing us who've been here of the historic charm that we all consider home and have for generations. It's a working waterfront – it should not be this metropolitan city urban gardens the whole works. So disappointed.



Charles Tetelman <ctetelman@portlandmaine.gov>

Fwd: Maine Public Broadcasting Corporation development at 35 Commercial Street

jmy <jmy@portlandmaine.gov>

Mon, Nov 22, 2021 at 8:05 AM

To: Charles Tetelman <ctetelman@portlandmaine.gov>

Hi, this was saved to the project file.

Jen

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

From: Kevin Mahoney <kevin@cascoworks.com>

Date: Friday, November 19, 2021 at 9:01:02 AM UTC-5

Subject: Maine Public Broadcasting Corporation development at 35 Commercial Street

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

Cc: 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>, dga@portlandmaine.gov <dga@portlandmaine.gov>, hcd@portlandmaine.gov <hcd@portlandmaine.gov>, Christine Grimando <cdg@portlandmaine.gov>, kkraft@portlandmaine.gov <kkraft@portlandmaine.gov>, rwiener@portlandmaine.gov <rwiener@portlandmaine.gov>, permitting@portlandmaine.gov <permitting@portlandmaine.gov>, hanscombe@portlandmaine.gov <hanscombe@portlandmaine.gov>, mdisanto@portlandmaine.gov <mdisanto@portlandmaine.gov>, mbud@portlandmaine.gov <mbud@portlandmaine.gov>, psf@portlandmaine.gov <psf@portlandmaine.gov>, kah@portlandmaine.gov <kah@portlandmaine.gov>, msarapas@portlandmaine.gov <msarapas@portlandmaine.gov>, inspections@portlandmaine.gov <inspections@portlandmaine.gov>, drm@portlandmaine.gov <drm@portlandmaine.gov>, amachado@portlandmaine.gov <amachado@portlandmaine.gov>, Stacey Tutorow <StaceyTutorow@epcs.com>, Christina V. Nguyen (<Christina.Nguyen@eciusa.com>), Christina.Nguyen@eciusa.com>, publiccomment@portlandmaine.gov <publiccomment@portlandmaine.gov>

Dear Members of the Portland Planning Board,

I am a resident of Portland's East End who is being directly impacted by the proposed Maine Public Broadcasting Corporation development at [35 Commercial Street](#). While I fully respect the right of any landowner to develop their property, **I strongly object to the proposed zoning amendment** to modify Land Use Code Table 9-C: Height Bonuses to include Commercial Street in addition to Congress Street, allowing 12 feet of additional building height for qualifying developments located within the Urban Active (UA) sub-district of the India Street Form-Based Code Zone (IS-FBC).

Taller buildings allowed on Congress Street are simply not appropriate in the historic Old Port. Development of other buildings in the area have generally respected pre-existing zoning requirements and I am against exceptions for a specific project. There is no reasonable basis for allowing an even taller structure to overshadow the surrounding buildings and must not be permitted.

Preserving the character of the Old Port is critical to the quality of life for residents and appeal to tourists. The cumulative effect of small changes to the existing regulations will continue to "chip away" at this unique and vibrant cityscape! Save the Portland we love for future generations.

Thank you,

Kevin Mahoney

11/29/21, 11:49 AM

City of Portland Mail - Fwd: Maine Public Broadcasting Corporation development at 35 Commercial Street

Kevin Mahoney

[207 Fore Street](#)

[Portland, ME 04101](#)

Cell [207-712-0590](#)



Charles Tetelman <ctetelman@portlandmaine.gov>

Maine Public Broadcasting Plan - Five County Credit Union 19 Commercial St.

1 message

Mike Foley <mfoley@fivecounty.com>

Tue, Nov 23, 2021 at 10:06 AM

To: "ctetelman@portlandmaine.gov" <ctetelman@portlandmaine.gov>

Good Morning Charles,

Thank you for taking the time to speak with me this morning about Plan Number ZN-001756-2021, the Maine Public Broadcasting proposal for the lot adjacent to [19 Commercial St.](#)

Five County Credit Union has been a tenant at [19 Commercial St](#) since 1999 and has operated an ATM on the west side of the building, with approval from the City of Portland, for the last twenty years. At this early stage of the planning process for the Maine Public Broadcasting project, our current concerns are specific to the visibility and accessibility of the existing ATM for credit union members and employees, and all aspects of security relating to the use and servicing of the machine that may be impacted by the construction of a new building. These security considerations would include but not be limited to lighting, camera accessibility (we have a camera on the side of the [19 Commercial St.](#) building, about halfway down, for a wide angle view), and general visibility without blind spots or alleys that could contribute to unsafe use of the ATM. Secondly, I should note that multiple tenants of 19 Commercial St. do have signage on the west side of the building that may be impacted by the construction of a new building.

Should this project move forward to the site-plan phase, we look forward to seeing what the Maine Public Broadcasting team proposes.

Sincerely,

Mike

Michael J. Foley

Senior Vice President,

Support Services

Five County Credit Union

1-800-750-0959 Ext. 2207

mfoley@fivecounty.com

IMPORTANT MESSAGE TO RECIPIENT: This email, along with any attached files, is intended only for the use of the individual or individuals to which it is addressed. This email may contain information that is confidential, subject to copyright or constitutes a trade secret. If you are not the intended recipient, you are hereby notified that any dissemination, copying or distribution of this email or files associated with this email, is strictly prohibited. If you have received this email in error please notify the sender immediately by replying to the message and deleting it from your computer. Messages sent to and from employees in our organization may be monitored.

PLANNING BOARD REPORT TO CITY COUNCIL PORTLAND, MAINE



35 Commercial Street
ZN-001756-2021
Maine Public Broadcasting Corporation, Applicant

Submitted to:	Mayor Snyder & the City Council	Prepared By:	Charles Tetelman, Planner
Council Hearing Date:	February 28 and March 7, 2022	Date:	January 24, 2022

I. INTRODUCTION

Maine Public Broadcasting Corporation (“Maine Public”) submitted a zoning text amendment application to amend Chapter 14, Article 9 of the City’s Land Use Code to allow a height bonus in the Urban Active (UA) Subdistrict along Commercial Street within the India Street Form-Based Code Zone (IS-FBC). This application was referred to the Planning Board for compliance with the City of Portland’s Comprehensive Plan *Portland’s Plan 2030* and adopted zoning policies stated in the IS-FBC section 9.1.

The Planning Board held a Workshop on December 14, 2021 and a Public Hearing on January 11, 2022. At the January 11, 2022 Public Hearing, the Planning Board unanimously voted 6-0 (Smith Recused) to recommend to the City Council adoption of the text amendments (Attachments E & F) to allow a height bonus in the Urban Active (UA) Subdistrict along Commercial Street within the India Street Form-Based Code Zone (IS-FBC). The Planning Board found the proposed text amendment to be consistent with the city’s Comprehensive Plan. The Planning Board also believes that the proposal advances many of the shared goals and themes outlined in the city’s Vision Statement, which includes six interconnected themes (Equitable, Sustainable, Dynamic, Secure, Authentic, and Connected).

II. BACKGROUND

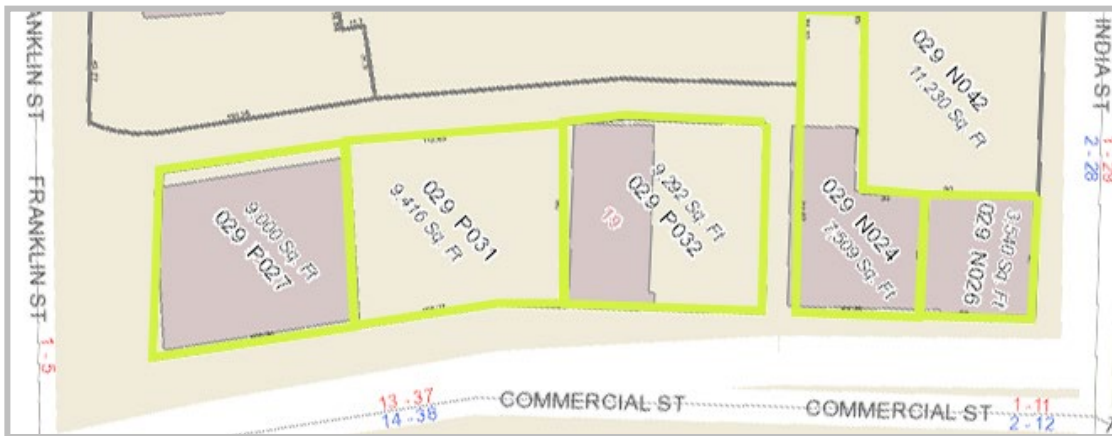
Recommended by the Planning Board and formally adopted by the City Council (Order 83-15/16) in 2015, the India Street Form-Based Code Zone (IS-FBC) serves as a zoning district that encourages a vibrant, walkable, mixed-use, urban district, preserves and values the existing historic neighborhood fabric, and fosters and supports local businesses and residential areas. Form-based zones differ from standard Euclidean zoning and focuses on form, dimensional, and design elements of zoning. Where traditional zoning includes dimensional and use requirements with a focus on land use, the IS-FBC emphasizes a building’s physical form with its relationship to the street and de-emphasizes land use.

In 2021, Maine Public purchased 29 and 35 Commercial Street which includes the Galt Block Building and the adjacent surface parking lot. The applicant plans to construct a new building to serve as the new Portland Headquarters for Maine Public Radio in the location of the surface parking lot, which would be reviewed under a forthcoming Site Plan application.

III. EXISTING CONDITIONS AND SURROUNDING AREA

There are five lots that would be impacted by the proposed text amendment. These lots are shown below:

- Lot 029-P027 (9,000 square feet) contains the Galt Block Warehouse building, a **five story** office building on the corner of Commercial and Franklin Street. The building was purchased by Maine Public in 2021.
- Lot 029-P031 (9,416 square feet) is currently a surface parking lot and will be the site for Maine Public's new Portland headquarters.
- Lot 029-P032 (9,292 square feet) contains the **three story** Workingmen's Club building which has three office buildings inside. The lot also includes a surface level parking lot.
- Lot 029-N024 (7,509 square feet) is a **one story** building containing two units for commercial use.
- Lot 029-N026 (3,540 square feet) is a **four story** mixed-use building that formerly functioned as the New England House Hotel and is currently vacant.



The IS-FBC applies to all new development designated on the India Street Regulating Plan (Section 9.1.3, Figure 9-A: IS-FBC Regulating Plan). The regulating plan shows the location of the zone boundary and subdistricts subject to regulation by the IS-FBC and is divided into three subdistricts: (i) Urban Neighborhood (UN) Subdistrict (ii) Urban Transitional (UT) Subdistrict (iii) Urban Active (UA) Subdistrict. With respect to height, the three subdistricts have the following standards:

Subdistrict	Pre-Bonus Height (max)	Bonus Height (max)	Bonus Floor Stepback (min)
UN	45 ft. and 4 stories	57 ft. up to 5 stories	15 ft.
UT	65 ft. and 6 stories	77 ft. up to 7 stories	15 ft.
UA (Congress Street Only)	50 ft. and 4 stories	62 ft. up to 5 stories	15 ft.

If a buildings frontage faces a UT street, UN street, or Congress Street, then the portion of the building facing that street is eligible for a height bonus. For lots with multiple frontages where a frontage faces an ineligible street, the bonus story must be set back at least 35 feet from the ineligible street line. For lots fronting an eligible street, the bonus story must be set back at least 15 feet from the street line (Section 9.1.7; Tables 9-C Height Bonuses; Footnote 2). Only one height bonus may be applied per structure.

Commercial Street is a primary corridor for tourism, commercial activity, and economic development. Access and proximity to the Portland waterfront is a significant draw for many businesses located in and around the Old Port. The block itself contains a variety of commercial uses including restaurants, a bank,

and office space. The surrounding India Street neighborhood is characterized by a variety of mixed-use, commercial, and residential buildings.



Figure 2: Street View of Commercial Street

The block being considered is also within the Portland Waterfront (Old Port) Historic District. The block includes the Galt Block Warehouse building, Workingmen's Club Building, and the former New England House Hotel which are all contributing structures to the historic district.

IV. PROPOSED TEXT AMENDMENT

Text Amendment

The proposed text amendment would allow a Height Bonus of up to one story or 12 feet along Commercial Street in the Urban Active (UA) Subdistrict of the IS-FBC. As shown below, the Commercial Street UA District includes five parcels between Franklin Street and India Street. Currently, UA Subdistrict height bonuses are only allowed along Congress Street.

There are two proposed text changes associated with this application (Attachment F and G):

- 1) A text amendment to 'Table 9-C: Height Bonuses' shown in the table below.
- 2) A text amendment to the Land Use Code Section 9 (9.1.7.C.1.a):

"If a frontage faces a UT street, UN street, ~~or Congress Street~~ or allowed UA street according to Table 9-C, then the portion of the building facing that street is eligible for a height bonus. For lots with multiple frontages where a frontage faces an ineligible street, bonus story must be stepped back at least 35 feet from ineligible street line."

TABLE 9-C: HEIGHT BONUSES

Subdistrict	Pre-Bonus Height (max.)	Mid-Block Permeability ¹	Residential Density	Green Roof	Affordable Housing	Height With Bonus (max.)	Bonus Floor Stepback ² (min.)
UN	45 ft. and 4 stories	n/a	n/a	n/a	1 story up to 12 ft.	57 ft. up to 5 stories	15 ft.
UT	65 ft. and 6 stories	1 story up to 12 ft.	1 story up to 12 ft.	1 story up to 12 ft.	1 story up to 12 ft.	77 ft. up to 7 stories	15 ft.
UA (Congress Street and Commercial Street only)	50 ft. and 4 stories	1 story up to 12 ft.	1 story up to 12 ft.	1 story up to 12 ft.	1 story up to 12 ft.	62 ft. up to 5 stories	15 ft.

¹ Must be publicly accessible.² Measured from the ground floor building edge facing any public right-of-way.

Staff Analysis

As mentioned above, only a small section of Commercial Street falls within the IS-FBC and this change would impact five parcels in the zone. However, two of the parcels will still be partially restricted due to frontages along the UA Subdistrict portions of Franklin Street and India Street. *“For lots with multiple frontages where a frontage faces an ineligible street, bonus story must be stepped back at least 35 feet from ineligible street line.”* The dominant, or more restrictive, dimensional requirements take precedent in the IS-FBC. With this change, Lots 029-P027 and 029-No26 will have height restriction setbacks 35 feet from Franklin Street and India Street respectively. In addition, the subject block contains a mix of building types that range from one- to five-stories.

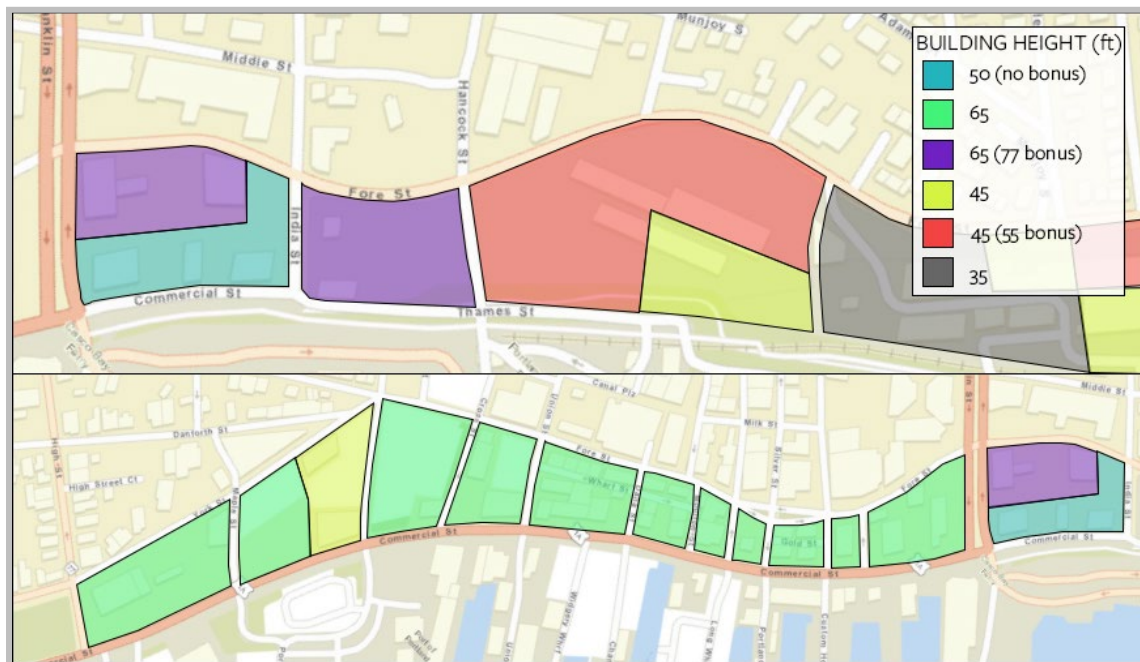


Figure 4: Building Height along Commercial Street

Staff also considered the height bonus in relation to the rest of Commercial Street as well as Thames Street moving towards the Eastern Promenade. The Downtown Height Overlay map dictates building heights within the B-3 zone on Commercial Street west of Franklin Street to Center Street, which allows maximum

building heights up to 65 feet. The B-5b zone, mapped along Commercial Street between State Street and Maple Street roughly to a depth of 250 feet also has a permitted maximum height of 65 feet. To the east, Thames Street, between India Street and Hancock Street, is part of the IS-FBC Urban Transitional Subdistrict with a maximum height of 65 feet (and up to 77 feet with a height bonus). The proposed text amendment to allow a height bonus of 12 feet or one story on Commercial Street within the IS-FBC (62 foot maximum building height up to 5 stories) would be consistent with the rest of Commercial Street and Thames Street along the waterfront and would create continuity in the street wall, enhancing the pedestrian streetscape. Furthermore, the bonus floor would be required to step back 15 feet from the building edge (Section 9.1.7; Table 9-C Height Bonuses; Footnote 2)

As part of the original IS-FBC adoption process in 2015, a key development principle was to ensure that neighborhood growth would carefully consider form and scale. This would include graduation of building form to vary by location so that future development would be appropriately scaled to its surrounding context. In conducting its review of the application staff also evaluated the surrounding context to ensure compatibility. As mentioned above the majority of Commercial Street allows building heights of 65 feet. To the west, north, and east of the subject block nearby Franklin, Fore, and Thames streets allow buildings to be constructed up to 65 feet or 77 feet up to seven stories max. Furthermore, the subject block is located along Commercial Street and near the confluence of Franklin Street and Commercial Street, both wide major thoroughfares that run perpendicular and parallel to the expansive waterfront, respectively. This context contributes to the appropriateness of increasing height at this location.

Staff note that the proposed text amendment would encourage a range of building forms, allowing sufficient flexibility for building envelopes to facilitate feasible development within the India Street neighborhood and along the waterfront that can produce the multiple shared goals and objectives outlined in the Comprehensive Plan for these areas. Including, ensuring that employment and housing growth can be supported. Additional flexibility within the zoning envelope is critical to ensuring that buildings are able to accommodate a variety of uses, activities, and experiences within the same building or achieve optimal floor to floor heights for a variety uses, potentially attracting a wider range of businesses across multiple sectors and creating the opportunity for mixed-use development. The proposed text amendment would increase building heights along Commercial Street one additional story up to 12 feet in height for buildings that incorporate either mid-block permeability, residential density, a green roof, or include 20 percent of residential units as workforce. These bonus provisions encourage development that further supports the city's shared goals of increasing housing opportunities, particularly in walkable transit oriented locations and incorporating sustainable design features such as green roofs.

Staff also notes that the existing pre-bonus height, bonus heights, and setback requirements along with other design controls allows for articulation of buildings that would relate to the surrounding context. This graduated bulk envelope approach allows the bases of buildings and additional floors to relate to its immediate context and streets by requiring the bonus story to stepback from the building edge above the pre-bonus height.

V. COMPREHENSIVE PLAN CONSISTENCY

Portland's Plan 2030

As part of their application, the applicant highlighted a variety of elements from *Portland's Plan 2030* as it relates to the proposed text amendment (Attachment D). Many elements of this attachment relate more directly to the future use associated with 29 Commercial Street. However, the applicant cites objectives outlined in the City's Historic Resources guide related to *Authenticity* and *Security*.



Figure 5: *Portland's Plan 2030 Vision Statement*

Secure

"We will prepare for emergencies and ready for a changing climate."

The height bonus along Commercial Street will allow for more space protected against any flooding associated with a category 4 Hurricane or larger. Potentially including important broadcasting infrastructure during emergencies.

Authentic

"The uniqueness and integrity of our neighborhoods will be maintained and enhanced."

The height bonus along the Urban Active Subdistrict of the IS-FBC will match the scale and style of other buildings along Commercial Street include the Galt Block building and the Workingmen's Club.

In conducting its review of the application, Staff identified a number of objectives outlined in *Portland's Plan 2030* that support the requested text amendment. Those sections include the Plan's stated desire to stabilize and enhance historic areas of the city by ensuring quality investment in existing structures and compatible infill development and ensuring both an appropriate balance of continuity and change as Portland grows and evolves (*Portland's Plan Historic Resources Policy Guide, Local Goals*). The Plan also highlights the importance of promoting and fostering an economic climate that increases job opportunities and overall economic well-being as well as evaluating zoning to ensure employment and housing growth can be supported. Furthermore, the proposed change supports and advances the principles of future land use outlined in Portland's Plan 2030 including the vision for One Portland, where the form and characteristics of neighborhoods vary, but the City functions as a whole and Complete Neighborhoods by creating opportunities for all residents to have access to services. The proposed text amendment is consistent with the city's vision statement and supports the Comprehensive Plan in the following ways:

Historic Resources

"Stabilize and enhance historic areas of the city by ensuring quality investment in existing structures and compatible infill development."

"Ensure an appropriate balance of continuity and change as Portland grows and evolves."

Environment:

"Adopt sustainable land use and transportation policies that support connectivity, walkable neighborhoods, and multi-modal transportation."

Waterfront:

“Prioritize and promote Portland’s unique mix of water-dependent, marine-related uses and compatible non-marine uses.”

Economy:

State Goal: *“Promote an economic climate that increases job opportunities and overall economic well-being.”*

“Support sustainable growth in our educational, medical, and cultural institutions.”

“Invest in, attract, and retain human capital to support a growing economy.”

“Respect that our unique quality of place is key to our current and future economic success.”

“Pursue policies that create, nurture, and retain local businesses.”

“Evaluate zoning and the condition of existing infrastructure in priority areas – downtown, identified neighborhood nodes, and along transit corridors – to ensure that employment and housing growth can be supported.”

Housing:

“Increase, preserve, and modify the overall supply of housing city-wide to meet the needs, preferences and financial capabilities of all Portland residents.”

“Encourage additional contextually appropriate housing density in and proximate to neighborhood centers, concentrations of services, and transit nodes and corridors as a means of supporting complete neighborhoods.”

“Pursue policies to enable people who work in Portland to have the option to live in Portland.”

VI. PUBLIC COMMENT

Throughout the Planning Board’s review there were four public comments submitted regarding the proposed text amendment (Attachments PC 1 - 4).

Three of the public comments were opposed to the proposed text amendment citing the differences between Congress Street as a downtown urban location and Commercial Street as a historic working waterfront. These comments were concerned that taller building heights are not appropriate in the historic Old Port and worry that continued expansion of height bonuses in the area could impact the character and future cityscape. One final comment noted the applicant’s lack of reasoning or applicant’s need to add a height bonus.

The fourth public comment (from an abutting tenant), while out of scope for the action before the Planning Board wrote neither for nor against the text amendment, but asked how a new building could impact the use of the existing ATM on the side of the Five County Credit building.

VII. PLANNING BOARD RECOMMENDATION

The Planning Board considered the proposed zoning text amendment at a hearing on January 11, 2022. After deliberation, and on the basis of staff reports, public testimony, and review of applicable policies, the Planning Board voted unanimously 6-0 (Smith Recused) to find that the following zoning text amendment is consistent with the Comprehensive Plan and recommended adoption to the City Council:

1. Text amendments to Chapter 14 Section 9 to allow Bonus Heights in the UA Subdistrict of the IS-FBC along Commercial Street.

As noted above, the Planning Board believes that the proposal advances many of the shared goals outlined in the Comprehensive Plan and the city's Vision Statement. The Planning Board believes that the proposal would provide flexibility to accommodate a mix of uses that may require varying floor to floor heights potentially attracting a wider range of businesses across multiple commercial sectors. The Planning Board also notes that the height bonus encourages property owners to incorporate additional housing units, workforce or low-income housing units, or providing a green roof, which further advances a number of goals expressed in the Comprehensive Plan. The Planning Board believes the additional height is appropriate. The project area is located along Commercial Street and near the confluence of Franklin Street and Commercial Street, both wide major thoroughfares that run perpendicular and parallel to the expansive waterfront. The Planning Board also notes that the subject block is surrounded by blocks which allow heights up to 65 feet and 77 feet. The subject block is within walking distance to many services and residences as well as public transit options, which advances the shared goal of adopting sustainable land use and transportation policies that support connectivity, walkable neighborhoods, and multi-modal transportation.

VIII. ATTACHMENTS

Applicant Submittal

- A. Application Check-List
- B. Deed QC with Covenant (EssexNorth 25)
- C. Deed QC with Covenant (EssexNorth 35)
- D. MP Consistency with Comprehensive Plan 10082021
- E. MP Proposed text amendment 11302021
- F. Table 9-C IS-FBC 11302021

Drawings

- Plan 1. SITE PLAN & Massing
- Plan 2. Location – 35 Commercial Street
- Plan 3. ALTA_NSPS Land Title Survey 2019

Public Comment

- PC 1 – PFS + MS
- PC 2 – Voicemail
- Pc 3 – KM
- Pc 4 - MF

Order 153-21/22 - Public Comment Submission

Public Comment inbox



Sarah Hansen <s... Feb 24, 2022, 4:08 PM (18 hours ago)
to publiccomment@portlandmaine.gov

Attached please find our comments in reference to Order 153-21/22.

Many thanks,
Sarah

Sarah Hansen

Executive Director

Greater Portland Landmarks

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February 24, 2022

Mayor Snyder and members of City Council:

Thank you for the opportunity to comment on the Order 153-21/22, the amendment to Portland City Code Chapter 14, allowing a height bonus in the Urban Active Subdistrict along Commercial Street.

Located in the Waterfront Historic District, 35 Commercial Street is known as the Galt Block. Designed in 1859-60 by Charles Alexander in the Greek Revival style, it is a simple, strong example of the mid-19th Century warehouses lining Commercial Street. It is notable for having one of the few remaining roofs of those structures without dormers, and the basic form and features of the building are still very present.

The Waterfront Historic District includes, virtually intact, the history of Commercial Street's development – the history of Portland's mid-19th century commercial evolution. With the arrival of the Atlantic and St. Lawrence Railroad (later known as the Grand Trunk) in the 1840s, Portland became the winter port for Canada. This catapulted Portland into a new era of growth and prosperity. The entire waterfront downhill from Fore Street was filled, creating a mile-long, hundred foot wide street to accommodate train tracks, wagon traffic and the business blocks and warehouses to support Portland's growing economy.

As this neighborhood continues to evolve, Landmarks believes that the proposed height bonus allowance will have a positive impact on the development of this infill project (adjacent to the Galt Block at 35 Commercial Street) for Maine Public Broadcasting Corporation and will not detract from any historic building or view shed in the area. Landmarks fully supports the proposed text amendment and urges City Council to vote in favor of Order 153-21/22.

Cordially,



Sarah Hansen
Executive Director