MICHAEL F. BRENNAN (MAYOR)
KEVIN J. DONOGHUE (1)
DAVID A. MARSHALL (2)
EDWARD J. SUSLOVIC (3)
CHERYL A. LEEMAN (4)

JOHN R. COYNE (5)
JILL C. DUSON (A/L)
JON HINCK(A/L)
NICHOLAS M. MAVODONES, JR (A/L)

AGENDA
REGULAR CITY COUNCIL MEETING
JUNE 2, 2014

The Portland City Council will hold a regular City Council Meeting at 7:00 p.m. in the City Council Chambers, City Hall. The Honorable Michael F. Brennan, Mayor, will preside.

PLEDGE OF ALLEGIANCE:

ROLL CALL:

ANNOUNCEMENTS:

RECOGNITIONS:

APPROVAL OF MINUTES OF PREVIOUS MEETING:

(Tab 1) May 19, 2014

PROCLAMATIONS:

Proc 36-13/14 (Tab 2) **Proclamation Honoring Ava Koenigsberg as One of Casco Bay High School's Two Top-Ranking Seniors – Sponsored by Mayor Michael F. Brennan.**

Proc 37-13/14 (Tab 3) **Proclamation Honoring Meghan Suslovic as One of Casco Bay High School's Two Top-Ranking Seniors – Sponsored by Mayor Michael F. Brennan.**

Proc 38-13/14 (Tab 4) **Proclamation Honoring Senior Zachary Duperry as the 2014 Deering High School Valedictorian – Sponsored by Mayor Michael F. Brennan.**

Proc 39-13/14 (Tab 5) **Proclamation Honoring Senior Jordan Roche as the 2014 Deering High School Salutatorian – Sponsored by Mayor Michael F. Brennan.**

Proc 40-13/14 (Tab 6) **Proclamation Honoring Senior Annette Pelikan Denekas as the 2014 Portland High School Valedictorian – Sponsored by Mayor Michael F. Brennan.**

Proc 41-13/14 (Tab 7) **Proclamation Honoring Senior Monica D. Reno as the 2014 Portland High School Salutatorian – Sponsored by Mayor Michael F. Brennan.**

APPOINTMENTS:

CONSENT ITEMS:

Order 250 – 13/14 (Tab 8) **Order Declaring Friday, July 4, 2014 as July 4th "Stars and Stripes Spectacular" Festival – Sponsored by Mark H. Rees, City Manager.**

The City has sponsored the July 4th Fireworks and activities on the Eastern Promenade for a number of years, attracting 60,000+ individuals, a large percentage of which are families.

This year's Festival, which is being funded by private donations and fundraising activities by the July 4th Portland Foundation, will include:

- 25 Minute Fireworks Display;
- Portland Symphony Orchestra Concert;
- Food & Entertainment Vendors; and
- Fife & Drum concert at City Hall Plaza followed by march up Congress Street to Eastern Promenade

The Festival runs from 7:00pm – 10:00pm **Rain date is Saturday, July 5th.**

Fundraising activities on the day of the event will include the sale of alcoholic beverages by Famous Dave's BBQ (in designated area near stage) and the sale of reserved seating in front of the stage.

In order for the Festival to be held, a portion of the Eastern Promenade needs to be barricaded to traffic. **The Festival area is the Fort Allen Park area, the Eastern Promenade, (including sidewalk areas on both sides of the street), from Morning St. to Loring Memorial near East End Community School. Festival area also includes the Payson Park area, as well as Baxter Blvd. area**, as many families take in the fireworks display from those areas as well.

The following streets will be closed to vehicular traffic from approximately 10:00am to 10:00pm, on Friday, July 4th: Eastern Prom, from Morning Street to Walnut Street; Morning Street at Eastern Prom, Wilson St., Moody St., Congress St., and Turner St.; Emerson Street at Quebec St. and Melbourne St.; and Willis Street at Melbourne St., Montreal St., and Walnut St.

All of Munjoy Hill and the Eastern Prom will be closed to traffic (from Washington Ave. up), starting at 4pm. Streets will be opened up again after the fireworks display (at approximately 10pm)

With the addition of the PSO concert, **Cutter Street will be closed to public traffic, including boat launching, on July 4th.** This will begin at 10 p.m. on Thursday, July 3rd. In the event of rain, these street closings would be in effect for Saturday, July 5th.

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

<u>**LICENSES:**</u>

Order 251 – 13/14 (Tab 9)

Order Granting Municipal Officers' Approval of GK Food d/b/a Benkay Japanese Restaurant at 2 India Street Application to add Outdoor Dining on Public Property – Sponsored by Katherine L. Jones, City Clerk.

Application filed 4/22/14. New City application. Applicant holds current Class I FSE license.

Five affirmative votes are required for passage after public comment.

Order 252 – 13/14 (Tab 10)

Order Granting Municipal Officers' Approval of Fat Dragon LLC d/b/a Empire at 575 Congress Street Application to add Outdoor Dining on Public Property – Sponsored by Katherine L. Jones, City Clerk.

Application filed 5/2/14. New City application. Applicant holds current Class XI Restaurant/Lounge license with Entertainment with Dance.

Five affirmative votes are required for passage after public comment.

Order 253 – 13/14 (Tab 11)

Order Granting Municipal Officer's Approval of Porthole Restaurant & Pub LLC at 20 Custom House Wharf Renewal Application for a Class XI Restaurant/Lounge License with Entertainment with Dance and Outdoor Dining of Private Property – Sponsored by Katherine L. Jones, City Clerk.

Renewal application filed on 3/24/14. Applicant holds a current Class XI Restaurant/Lounge license with Entertainment with Dance and Outdoor Dining on Private Property. Fire Inspection and Code Enforcement Departments are recommending denial of license.

Five affirmative votes are required for passage after public comment.

BUDGET ITEMS:

COMMUNICATIONS:

RESOLUTIONS:

UNFINISHED BUSINESS:

Order 220-13/14 (Tab 12) **Amendment to Zoning Map Re: Bramhall, Boothby, Congress, Longfellow, and Monument Squares; Lobsterman Plaza; and Lincoln, Tommy's, Post Office, and Bell Buoy Parks – Sponsored by the Planning Board, Stuart O'Brien, Chair.**

On March 17, 2014, the City Council unanimously voted (8-0, Coyne absent) to request that the Planning Board review and prepare a recommendation on rezoning Portland's Urban Squares from the current underlying zoning to the Recreation Open Space (ROS) zone.

Green Spaces, Blue Edges, the City's most recent open space plan, calls for an integrated system that serves all residents throughout the city and includes implementation recommendations for physical improvements for the urban parks and plazas.

Downtown Vision , the City's plan for the future of downtown Portland, addressed the range of urban open spaces that provide both passive and active recreation opportunities and the importance of the pedestrian links in the system for an integrated park system throughout Portland. The open spaces are defined as urban parks, plazas, pocket parks, and linear parks.

All of the sites recommended to be rezoned are included within the recommendations for open space in Downtown Vision and the sites are all owned by the City of Portland.

The Planning Board held a workshop on the zoning map revisions to the Recreation and Open Space (ROS) Zone on March 25, 2014 and held a public hearing on the proposed amendments on April 8, 2014.

The Planning Board voted (5-1, O'Brien opposed, Boepple absent) to recommend to City Council the adoption of the proposed map amendments to rezone Bramhall, Boothby, Congress, Longfellow, and Monument Squares; Lobsterman Plaza; and Lincoln, Tommy's, Post Office, and Bell Buoy Parks to the Recreation and Open Space.

This item must be read on two separate days. It was given a first reading on April 28th. At the May 5, 2014, Council meeting this item was postponed to this meeting to allow notification of neighbors. Five affirmative votes are required for passage after public comment.

Order 221-13/14 (Tab 13)

Amendment to Portland City Code Chapter 14. Land Use Article III. Zoning, Division 8.5 R-OS Recreation and Open Space, Sections 14-153, 14-154, 14-157, and 14-158 Re: Revising the Recreation and Open Space Standards - Sponsored by the Planning Board, Stuart O'Brien, Chair.

This is a companion order to Order 220-13/14 above.

The proposed text amendments to the Recreation and Open Space zone eliminate the 2-acre minimum lot size, so the provisions of the zone are applicable to the smaller public open spaces located throughout the city and the purpose statement is revised to reflect the open space goal contained in Downtown Vision.

The Planning Board found the proposed changes to be consistent with the Comprehensive Plan and that it is good land use policy to include the urban open spaces in the ROS zone for the city's stewardship. Planning Board Chairman Stuart O'Brien voted against the proposed motions based upon the fact that he would like a more comprehensive analysis of all of the City's open spaces before recommending zoning map and text amendments.

The Planning Board voted (5-1, O'Brian opposed, Boepple absent) to recommend the proposed text amendments to the Land Use Code, Division 8.5. R-0S Recreation and Open Space Zone, which revise the purpose statement, dimensional requirements, and development standards.
This item must be read on two separate days. It was given a first reading on April 28th. At the May 5, 2014, Council meeting this item was postponed to this meeting to allow notification of neighbors. Five affirmative votes are required for passage after public comment.

Order 249-13/14 (Tab 14)

Order Approving the Allocation and Appropriation of $25,000 from the Housing Trust Fund Re: Community Housing of Maine (CHOM)– Sponsored by the Housing and Community Development Committee, Councilor Kevin J. Donoghue, Chair.

The Homelessness Task Force Report submitted to the City Council in November 2012, outlined four recommended actions, one of which was "Rapid Rehousing". Under the Task Force Implementation Plan, the Housing and Community Development Committee was assigned "Rapid Rehousing", with the development of three new "housing first" projects as an identified task.

In February, the City Council approved the allocation of $50,000 from the Housing Trust Fund to be allocated in a RFP for predevelopment activities associated with the development of a Housing First Project. The RFP was issued on February 27th, and two proposals were received on March 27th.

A review committee consisting of Jeff Levine, Planning and Urban Development Department Director, Mary Davis, Housing and Community Development Division Director, Doug Gardner, Health and Human Services Department Director, and Sean Dundon, Portland Planning Board member met on April 18th to review the proposals.

The concept proposed by CHOM has the potential to yield units quickly using a scattered site approach.

Community Housing of Maine (CHOM) proposes "blending the population quickly and seamlessly into a combination of rehabilitated existing multifamily apartment buildings and larger Low Income Housing Tax Credit and/or Historic Tax Credit funded properties aimed at serving the general public". They identified Elm Terrace and Danforth on High, two of their recently completed projects as examples of the larger model. CHOM's timeline for a larger project is estimated at two years, and the timeline for smaller projects would be approximately four months after securing development financing.

Staff is seeking approval from the City Council to provide additional $25,000 in Housing Trust Funds for the CHOM proposal. If approved, the RFP will make available an additional $25,000 from the Housing Trust Fund to be used to assist with predevelopment activities associated with the construction of a "housing first" project. The current balance in the Housing Trust Fund is $724,301.

The Housing and Community Development Committee met on April 23, 2014 and voted unanimously (3-0) to forward this item to the City Council with a recommendation for passage.

This item must be read on two separate days. It was given a first reading on May 19th. Give affirmative votes are required for passage after public comment.

ORDERS:

Order 254-13/14 (Tab 15) **Order Approving Portland International Jetport Rental Car Concessionaire Agreement – Sponsored by Mark H. Rees, City Manager.**

The Portland International Jetport is requesting approval of the standard agreement between the City of Portland and its On-Airport Automobile Rental Concessionaires. The current agreements expire on June 30, 2014 and the new agreements will be for a five year term ending on June 30, 2019. In anticipation of the expiration of the current agreement the City issued competitive Bid # 4314 for automobile rental concessionaires. Only the current rental car concessionaires attended the mandatory pre-bid meeting. These are: Avis Budget Car Rental, LLC; Hertz Corporation d/b/a Hertz and Dollar; Enterprise Rent-A-Car Company of Boston, LLC d/b/a Enterprise Rent-A-Car; and Enterprise Rent-A-Car of Boston, LLC d/b/a Alamo Car Rental & National Rent A Car. The proposed agreement is based upon the existing agreement with the following changes:

- Like the prior contract, the proposed contract allows for "dual branding", a relatively new concept that has cropped up in the rental car industry through bankruptcy and merger consolidation. Dual branding allows a single concessionaire to have two brands at a single counter. This benefits the Jetport because it allows more brands to be "on-airport" without further investment in counter and parking facilities. Under this agreement we havc allowed Hertz to dual brand using their recently acquired Dollar brand.

- The proposed contract payment to the Jetport remains 10% of gross annual sales, but incorporates new Minimum Annual Guarantees (MAGs) for each concessionaire in the following amounts:
  1. Avis Budget - $869,039/year totaling $4.35 million over the five year contract.
  2. Enterprise (d/b/a Enterprise) - $438,325/year totaling $2.19 million over the five year contract.
  3. Hertz (d/b/a Hertz & Dollar) - $951,633/year totaling $4.76 million over the five year contract.
  4. Enterprise (d/b/a Alamo & National) - $486,411/year totaling $2.43 million over five year contract.

Five affirmative votes are required for passage after public comment.

Order 255-13/14 (Tab 16) **Order Designating 134 Washington Avenue Affordable Housing Development District and Tax Increment Financing District and Adopting the Municipal Development Program for the District – Sponsored by the Housing and Community Development Committee, Councilor Kevin J. Donoghue, Chair.**

134 Washington Avenue Affordable Housing TIF (AHTIF) Development District is being proposed for property located on the corner of Washington Avenue and Fox Street. The development consists of 18 affordable units.

The proposal is for a 20 year TIF with 50% of the total projected new taxes captured, estimated at $8,524, as a reimbursement to the Developer through a CEA. The Developer's share of TIF revenue will be used to pay operating costs for the project.

The remaining TIF revenues will be allocated to the City's General Fund.

With the establishment of this AHTIF District there will be the creation of 18 units of rental housing, 10 of which will be available to households at or below 40% of the area median income and the remaining 8 units will be available to households at or below 50% of the area median income.

When completed, this project's new assessed value is estimated at $1 Million, which will yield approximately $844,400 in increased annual property assessed value over the course of the 20-year TIF District. 50% of the increased taxes will be captured and returned to the Developer through a Credit Enhancement Agreement. The remaining revenue will be returned to the City's General Fund.

Total development costs are estimated at $3,021,686. At full build-out, the development is projected to have a total increased assessed valuation of approximately $844,400 and will pay approximately $17,048 annually in increased property taxes, or $414,232 over the life of the district.

The following is an overview of the TIF proposal related to the share of future estimated property taxes.

	Dev. Share	**City General Fund Share**
Years 1-20	**$207,116 or 50%**	**$207,116**

In addition, with the tax sheltering benefits of TIF Districts, overall savings to the City during the term of the district averages an estimated annual amount of $3,787+, or $75,742+ over the life of the district.

At its meeting on May 14, 2014, the Housing and Committee Development Committee voted 3-0 to recommend this AHTIF request to the City Council for approval.

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

Order 256-13/14 (Tab 17) — **Order Approving and Authorizing the City Manager to Enter into the 134 Washington Avenue Credit Enhancement Agreement with Avesta Washington Ave. LP – Sponsored by the Housing and Community Development Committee, Councilor Kevin J. Donoghue, Chair.**

This is a companion Order to Order 255 above. Please see the preceding agenda description.

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

Order 257-13/14 (Tab 18)

Order Adopting Development Program for the Portland Downtown District for Fiscal Year 2014-2015 – Sponsored by Mark H. Rees, City Manager.

This order adopts the development program (as outlined in the agenda backup materials) for the Portland Downtown District for fiscal year 2014-2015, submitted by the City Manager, pursuant to 30-A M.R.S. Section 5224 (1).

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

Order 258-13/14 (Tab 19)

Order Assessing Maintenance and Implementation Assessments in the Portland Downtown District for Fiscal Year 2014-2015 – Sponsored by Mark H. Rees, City Manager.

This order assesses the sum of $725,880 to be raised and appropriated from the special assessments on all real estate situated within the boundaries of the Portland Downtown District to fund maintenance and implementation costs for such district for the period beginning July 1, 2014 and ending on June 30, 2015. The mill rate to raise this assessment will be 92 cents per $1000 of property value, the same rate charged in FY14.

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

Order 259 -13/14 (Tab 20)

Order Approving and Authorizing the City Manager to Enter into Master Agreement and Supplemental Services Agreement with Portland's Downtown District – Sponsored by Mark H. Rees, City Manager.

This order approves and authorizes the City Manager to enter into a Master Agreement, with the Baseline Services provided in Exhibit B, with the Downtown Improvement District Corporation d/b/a Portland's Downtown Improvement District, to carry out the development plan for Portland's Downtown Improvement District for the period and also a Supplemental Services Agreement to implement Supplemental Public Works Services as approved in the Fiscal Year 2014 Appropriation Resolve, from and after July 1, 2014 and ending June 30, 2015.

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

AMENDMENTS:

Order 260-13/14 (Tab 21)

Amendment to Portland City Code Chapter 12 Garbage, Wastes, and Junk Article IX. Waste Reduction Sections 12-230 through 12-237 Re: Disposable Bag Fee - Sponsored by the Transportation, Sustainability and Energy Committee, David A. Marshall, Chair.

The proposed ordinance establishes a mandatory $0.05 fee on carry out bags provided by retailers at point of sale. The ordinance would apply at stores that sell food items including grocery stores, convenience stores, pharmacies, and vendors at Farmer's Markets.

In June, 2012 the Transportation, Sustainability and Energy Committee (TS&E) established the Green Packaging Working Group to recommend methods to reduce the use of polystyrene foam packaging and disposable bags. After recommending an ordinance to ban foam packaging the working group held four meetings devoted to bags. They examined a variety of options ranging from increasing education about the need to reduce bag use, banning bags, or placing a fee on bags. The majority of the committee believed that a fee on bags would be an effective way to reduce use of disposable bags and increase the use of reusable bags.

The TS&E Committee discussed the recommended ordinance over the course of two meetings, making amendments to the language proposed by the GPWG. These include:

- Reducing fee to $0.05
- Allowing retailers to keep the entire fee
- Removing restaurants and dry cleaners from the ordinance

The Committee voted to advance the revised ordinance to the full Council at their meeting on May 21, 2014.

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

Order 261-13/14 (Tab 22)

Amendment to Portland City Code Chapter 12 Garbage, Wastes and Junk Article VII and Article VIII. Polystyrene Re: Polystyrene Foam - Sponsored by The Transportation, Sustainability and Energy Committee, David A. Marshall, Chair.

The proposed ordinance prohibits food service establishments from serving food in packaging or containers made from polystyrene foam. It also prohibits the retail sale of polystyrene food service products. If adopted, the ordinance would not go into effect until July, 2015 in order to allow merchants to deplete their existing inventory of polystyrene foam service ware.

In June, 2012 the City Council requested that the TS&E Committee to consider an ordinance or recommendation to ban the use of polystyrene foam containers and to take whatever further action committee members deemed appropriate. To this end, the TS&E Committee created the Green Packaging Working Group which consisted of industry representatives, local businesses, environmental advocates and citizens. This group held three meetings to discuss the issue and review draft ordinance language. During the third meeting a majority recommended adoption of an ordinance. The Working Group chair, Councilor Suslovic, invited the minority to submit a minority report to explain their position.

The TS&E Committee took public comment regarding the proposed ordinance during their meeting on June 19, 2013 and recommended adoption by the full Council on July 17, 2013. (2-1, Anton absent) The full Council reviewed the proposed ordinance during their meeting on September 15, 2013 and referred it back to the TS&E Committee. After further public comment and deliberation the committee, voted on April 16 to recommend a revised ordinance to the full Council (3– 1). The revised language addresses concerns raised by the Council by clarifying that the ordinance does not apply to wholesale seafood operations. It also more clearly defines the retailers affected by the ordinance.

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

Order 262-13/14 (Tab 23)

Amendment to Portland City Code Chapter 14. Land Use Article III. Zoning, Division 17.5. Eastern Waterfront Port Zone, Sections 14-301 and 14-301.1 Re: Food Trucks – Sponsored by the Planning Board – Stuart O'Brien, Chair.

The proposed amendment would list "street vendors" (which include food trucks and pushcarts) as "permitted uses" in the Eastern Waterfront Port Zone. Under this change, street vendors would be licensed by the City Clerk's office, participate in the City's RFP process, and be awarded the ability to operate in Compass Park.

This change will make the zoning in the Eastern Waterfront Port Zone consistent with the zoning in the City's ROS zones.

Food truck operators have requested expanded areas of operation in the City of Portland, and revisions to the Food Truck Rules have been made to this end. An ordinance change is required to allow food trucks and pushcarts to operate at Compass Park on the Maine State Pier. The change has been reviewed by the Public Safety, Health and Human Services (PSHHS) Committee and the Transportation, Sustainability & Energy (TS&E) Committee and public hearings have been held. Those Committees supported the change and requested that the Planning Board review the proposed amendment. The Planning Board has done that review, has considered whether the food truck and pushcart operations are consistent with marine and water-dependent uses, as well as with the comprehensive plan and on May 13, 2014, voted to recommend the change.

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

Order 263 - 13/14 (Tab 24)

Amendment to Portland City Code Chapter 14. Land Use Article III. Zoning, Division 10. B-1 and B-2b Community Business Zone, Sections 14-182, 14-185, 14-186 and 14-188 Re: Multi-Family Density Standards– Sponsored by the Planning Board – Stuart O'Brien, Chair.

The Planning Board is unanimously recommending zoning text amendments to the City Council for adoption. The amendments include listing the required dimensional standards in a table, streamlining dimensional standards, permitting a higher residential density for off-peninsula locations with active street fronts, allowing multi-family dwellings as a permitted use regardless of the adjoining residential zone, and stronger prohibitions on parking in front yard setbacks.

The proposed text amendments aim to foster a viable multi-family density standard in the B-2 zone, by removing the requirement that the ground floor use of a building be commercial in order to qualify for this higher density (a change the current 1,000 square feet per unit requirement to 435 square feet per unit), while adding some additional criteria to insure a lively, engaging presence of the building at street level. In addition, stronger language was proposed to prohibit parking within the front yard. There are changes proposed to the setback requirements to streamline and simplify setbacks by zone, and the dimensional standards are now in a table format.

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

6-2-14
Tab 1

ROLL CALL: Mayor Brennan called the meeting to order at 7:10 P.M. All Councilors were present.

ANNOUNCEMENTS:

RECOGNITIONS:

APPROVAL OF MINUTES OF PREVIOUS MEETING:

Motion was made by Councilor Suslovic and seconded by Councilor Duson for approval of the May 5, 2014 minutes. Passage 9-0.

******

PROCLAMATIONS:

Proc 32-13/14 **Proclamation Honoring Michael Taylor, Public Services Department, as Employee of the Month for May, 2014 – Sponsored by Mayor Michael F. Brennan.**

Proc 33-13/14 **Proclamation Honoring Arbor Week – Sponsored by Mayor Michael F. Brennan.**

Proc 34-13/14 **Proclamation Declaring Public Works Week – May 18-24, 2014 – Sponsored by Mayor Michael F. Brennan.**

Proc 35-13/14 **Proclamation Honoring Portland Fire Department Emergency Medical Services Providers – Sponsored by Mayor Michael F. Brennan.**

******

APPOINTMENTS:

Order 245-13/14 **Order Appointing Police Cadets as Constables for 2014 – Sponsored by Mark H. Rees, City Manager.**
This order appoints the following Police Cadets as Constables:
Aaron Costar and Dylan Matthews

Motion was made by Councilor Suslovic and seconded by Councilor Marshall for passage. Passage 9-0.

Order 246-13/14 **Order Appointing Park Rangers as Constables for 2014 – Sponsored by Mark H. Rees, City Manager.**
This order appoints the following Park Rangers as Constables:

Russel Groh	Jill Mulkern
Travis Wade	Christian Wilkins

Motion was made by Councilor Marshall and seconded by Councilor Suslovic for passage. Passage 9-0.

******

CONSENT ITEMS:

Order 247-13/14 **Order Declaring Portland's Downtown District's "Alive at 5/Arts and Arts Alive Series 2014" as a Festival – Sponsored by Mark H. Rees, City Manager.**

Order 248-13/14 **Order Declaring "Portland Pride! Pride Celebration and Festival" – Sponsored by Mark H. Rees, City Manager.**

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

*****

LICENSES:

BUDGET ITEMS:

COMMUNICATIONS:

Com 13-13/14 **Communication Re: Appointment of Deputy City Manager, Sheila Hill-Christian to the PACTS Policy Committee – Sponsored by Mayor Michael F. Brennan.**

Com 14-13/14 **Communication Re: Appointment of Community Advisors for the State and High Street Two-Way Conversion Study – Sponsored by Mayor Michael F. Brennan.**

Traffic Solutions – Bill Bray
Portland Society of Architects – Chris Cantwell
St. John/Valley Neighborhood Association – Designee Official
Libbytown Neighborhood Association – Zack Barowitz
St. Luke's Church – Designee Official
YMCA – Designee Official

******

RESOLUTIONS:

UNFINISHED BUSINESS:

BUDGET ITEMS:

Order 227-13/14 **Order Authorizing FY 2015 Administrative Fees in Various Departments - Sponsored by the Finance Committee, Councilor Nicholas M. Mavodones, Jr., Chair. This item was postponed on May5th.**

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

Order 228-13/14 **Order Authorizing City Manager to Enter into Certain Agreements to Implement the FY 2015 Human Resources and Certain Fringe Benefits Budgets - Sponsored by the Finance Committee, Councilor Nicholas M. Mavodones, Jr., Chair. This item was given first reading on May 5th, 2014.**

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

Order 229-13/14 **Order Re: Self-Insured Liability Program - Sponsored by the Finance Committee, Councilor Nicholas M. Mavodones, Jr., Chair. This item was postponed on May 5, 2014. This item was postponed on May 5, 2014.**

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

Order 230-13/14 **Order Authorizing City Manager to Enter into Certain Agreements to Implement the FY 2015 Health and Human Services Budget - Sponsored by the Finance Committee, Councilor Nicholas M. Mavodones, Jr. Chair. This item was given first reading on May 5, 2014.**

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

Order 231-13/14	**Order Authorizing City Manager to Accept Scholarship Trust Donations and Enter into Trust Agreements - Sponsored by the Finance Committee, Councilor Nicholas M. Mavodones, Jr., Chair. This item was postponed on May 5, 2014.** Motion was made by Councilor Mavodones and seconded by Councilor Duson for passage. Passage 9-0.
Order 232-13/14	**Order Authorizing Corporation Counsel to Undertake Civil Actions to Collect Delinquent Personal Property Taxes - Sponsored by Councilor Nicholas M. Mavodones, Jr., Chair. This item was postponed on May 5, 2014.** Motion was made by Councilor Mavodones and seconded by Councilor Duson for passage. Passage 9-0.
Order 233-13/14	**Order Authorizing Non-Union Wage Adjustment – Sponsored by the Finance Committee, Councilor Nicholas M. Mavodones, Jr., Chair. This item was given first reading on May 5, 2014.** Motion was made by Councilor Mavodones and seconded by Councilor Duson for passage. Passage 9-0.
Order 234-13/14	**Order Designating FY15 Funds for Specific Island Services - Sponsored by the Finance Committee, Councilor Nicholas M. Mavodones, Jr., Chair. This item was given first reading on May 5, 2014.** Motion was made by Councilor Mavodones and seconded by Councilor Duson for passage. Passage 9-0.
Order 235-13/14	**Order Authorizing General Obligation Bonds in an Amount not to Exceed $500,000 – Sponsored by Councilor Nicholas M. Mavodones, Jr., Chair. This item was given first reading on May 5, 2014.**

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

Order 236-13/14 **Order Appropriating $500,000 of Bond Proceeds – Sponsored by the Finance Committee, Councilor Nicholas M. Mavodones, Jr., Chair. This item was given first reading on May 5, 2014.**

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

Order 237-13/14 **Order for Fiscal Year 2014-2015 Appropriating $830,000 From Excess Fund for Casco Bay Transit District (CBITD) - Sponsored by the Finance Committee, Councilor Nicholas M. Mavodones, Jr., Chair. This item was given first reading on May 5, 2014.**

Councilor Mavodones recused himself. He stated that he is employed by Casco Bay Transit District.

Motion was made by Councilor Duson and seconded by Councilor Donoghue for passage. Passage 8-0. (Mavodones recused himself).

******

BUDGET RELATED ORDINANCE AMENDMENTS:

Order 238-13/14 **Amendment to Portland City Code Chapter 6 (Buildings and Building Regulations), Article II. Building Code) Section 17 Re: Fees Schedule - Sponsored by the Finance Committee, Councilor Nicholas M. Mavodones, Jr., Chair. This item was given first reading on May 5, 2014.**

Motion was made by Councilor Mavodones and seconded by Councilor Duson to amend order 238 by striking out $75.00 fee in Chapter 6 Sec. 6-2. Passage 9-0.

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

Order 239-13/14 **Amendment to Portland City Code Chapter 24 Sewers Article IV. Sewer User Charges Re: Sewer User Charges- Sponsored by the Finance Committee, Councilor Nicholas M. Mavodones, Jr., Chair. This item was given first reading on May 5, 2014.**

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

Order 240-13/14 **Amendment to Portland City Code Chapter 28, (Traffic), Division 1, Section 51 Re: Revised Fees – Sponsored by the Finance Committee, Councilor Nicholas M. Mavodones, Jr., Chair. This item was given first reading on May 5, 2014.**

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

******

APPROPRIATION RESOLVE:

Order 241-13/14 **Fiscal Year 2014-2015 Appropriation Resolve - Sponsored by the Finance Committee, Councilor Nicholas M. Mavodones, Jr., Chair. This item was given first reading on May 5, 2014.**

Motion was made by Councilor Mavodones and seconded by Councilor Duson to amend order 240 by changing the tax rate from 20.03 per $1,000 of valuation (3.2 % increase) to $20.00 per $1,000 of valuation (3% increase). Which changed the aggregate amounts. Passage 9-0.

Motion was made by Councilor Mavodones and seconded by Councilor Duson for passage as amended. Passage 7-2, (Hinck, Leeman).

Order 244-13/14 **Amendment Zoning Map Amendment Re: R-6 Zone in Vicinity of of Boyd, Oxford, and Mayo Streets -Sponsored by the Planning Board, Stuart O'Brien, Chair. This item was given first reading on May 5, 2014.**

Motion was made by Councilor Donoghue and seconded by Councilor Suslovic for passage. Passage 9-0.

******

ORDERS:

Order 249-13/14 **Order Approving the Allocation and Appropriation of $25,000 from the Housing Trust Fund Re: CHOM Housing Trust Fund – Sponsored by the Housing and Community Development Committee, Councilor Kevin J. Donoghue, Chair.**

This is its first reading.

Motion was made by Councilor Coyne and seconded by Councilor Duson to adjourn. Passage 9-0, 9:25 P.M.

A TRUE COPY.

Katherine L. Jones, City Clerk

Proc 36-13/14
Tab 2 6-2-14

P R O C L A M A T I O N

HONORING

Ava Koenigsberg

****

WHEREAS: Ava Koenigsberg is one of Casco Bay High School's two top-ranking seniors, based on Grade Point Average; and

WHEREAS: Ava has excelled in Casco Bay High School's most demanding courses while working 15 to 25 hours a week at a local grocer; and

WHEREAS: Ava was the lead student organizer on her class' Junior Journey to Appalachia to volunteer with Habitat for Humanity and to create multimedia oral histories of local senior citizens; and

WHEREAS: Ava is a National Merit finalist and was inducted into the National Honor Society; and

WHEREAS: Ava serves as captain of the Casco Bay High School tennis team, interned with the Maine Department of Environmental Protection, has tutored other students and played on the school's soccer, swim and ultimate frisbee teams; and

WHEREAS: Ava will attend the University of Virginia in the fall.

NOW, THEREFORE, BE IT RESOLVED, THAT I, Michael F. Brennan, Mayor of the City of Portland, Maine, and members of the Portland City Council do hereby proclaim and honor Ava Koenigsberg for her achievement.

Signed and sealed this 2nd of June, 2014

____

Michael F. Brennan, Mayor
City of Portland, Maine

Proc 37 - 13/14
Tab 3 6-2-14

PROCLAMATION

HONORING

Meghan Suslovic

******

WHEREAS: Meghan Suslovic is one of Casco Bay High School's two top-ranking seniors, based on Grade Point Average; and

WHEREAS: Meghan has excelled academically while interning at Woodward & Curran, a local engineering firm, participating in a biomedical research program at Maine Medical Center, tutoring high school students, participating in numerous varsity sports (cross country, tennis and soccer), taking three college courses, creating dispositions in the district's restorative justice Youth Court and co-producing a documentary of long-time residents of rural West Virginia as part of a junior class Habitat for Humanity trip; and

WHEREAS: Meghan has been inducted into the National Honor Society and she was selected to represent Casco Bay High School at the Stupski Foundation National Learning Lab in San Francisco; and

WHEREAS: Meghan will attend Smith College next year.

NOW, THEREFORE, BE IT RESOLVED, THAT I, Michael F. Brennan, Mayor of the City of Portland, Maine, and members of the Portland City Council do hereby proclaim and honor Meghan Suslovic for her achievement.

Signed and sealed this 2nd of June, 2014

Michael F. Brennan, Mayor
City of Portland, Maine

Proc 38-13/14
Tab 4 6-2-14

PROCLAMATION

HONORING

Zachary Duperry

****

WHEREAS: Senior Zachary Duperry has been named the 2014 Deering High School Valedictorian; and

WHEREAS: Zachary has served as the Senior Senate class president, the Key Club president, the Outdoors Club co-president, a member of the varsity soccer team and as an algebra tutor; and

WHEREAS: Zachary is a National Merit finalist, has earned High Honors and an Academic Letter all four years of high school and was chosen as a U.S. Senate Youth Program delegate; and

WHEREAS: Zachary will attend Bowdoin College in the fall.

NOW, THEREFORE, BE IT RESOLVED, THAT I, Michael F. Brennan, Mayor of the City of Portland, Maine, and members of the Portland City Council do hereby proclaim and honor Zachary Duperry for his achievement.

Signed and sealed this 2nd of June, 2014

____

Michael F. Brennan, Mayor
City of Portland, Maine

Proc 39-13/14
Tab 5 6-2-14

PROCLAMATION

HONORING

Jordan Roche

****

WHEREAS: Senior Jordan Roche has been named the 2014 Deering High School salutatorian; and

WHEREAS: Jordan is the captain of the Deering Math Team, a Youth Soccer referee, a Maine Medical Center junior volunteer and participates on the school tennis team, Nordic skiing team and Chess Club; and

WHEREAS: Jordan has earned Academic Letters all four years of high school as well as the Phi Beta Kappa Book Award and a National Merit Parker Hannifin Scholarship; and

WHEREAS: Jordan will attend Northeastern University in the fall.

NOW, THEREFORE, BE IT RESOLVED, THAT I, Michael F. Brennan, Mayor of the City of Portland, Maine, and members of the Portland City Council do hereby proclaim and honor Jordan Roche for his achievement.

Signed and sealed this 2nd of June, 2014

Michael F. Brennan, Mayor
City of Portland, Maine

Proc 40 - 13/14
Tab 6 6-2-14

PROCLAMATION

HONORING

Annette Pelikan Denekas

****

WHEREAS: Senior Annette Pelikan Denekas has been named the 2014 Portland High School Valedictorian; and

WHEREAS: Annette has been a member of the Portland High School Executive Board, served as president of Key Club, editor of the yearbook, captain of varsity tennis and participated in varsity indoor track and Anatomy of Leadership; and

WHEREAS: Annette has volunteered monthly and on holidays at nursing homes and at Maine Medical Center, performing piano recitals; and

WHEREAS: Annette was inducted into the National Honor Society, achieved High Honors throughout her high school career, received the Yale University Book Award, an AP Scholar Award and National Latin, Greek, and Mythology Exam Awards and was chosen for the Maine Principal's Award, which recognizes one senior at each high school for academic achievement and citizenship; and

WHEREAS: Annette will attend Dartmouth College in the fall.

NOW, THEREFORE, BE IT RESOLVED, THAT I, Michael F. Brennan, Mayor of the City of Portland, Maine, and members of the Portland City Council do hereby proclaim and honor Annette Pelikan Denekas for her achievement.

Signed and sealed this 2nd of June, 2014

____

Michael F. Brennan, Mayor
City of Portland, Maine

Proc 41- 13/14
Tab 7 6-2-14

PROCLAMATION

HONORING

Monica D. Reno

****

WHEREAS: Senior Monica D. Reno has been named the 2014 Portland High School Salutatorian; and

WHEREAS: Monica is a member of the Portland High Executive Board, secretary of the Student Council, captain of outdoor track, a member of the indoor track team, the Math Team and the Yearbook Committee and a peer tutor; and

WHEREAS: Monica has been a volunteer at the Children's Museum and Theatre of Maine, a counselor at First Lutheran Day Camp and a soccer referee; and

WHEREAS: Monica has been inducted into the National Honor Society, earned High Honors throughout her high school career and won the National Latin and Greek Exam Awards, a Citizenship Award and the Harvard Book Award; and

WHEREAS: Monica will attend Wellesley College.

NOW, THEREFORE, BE IT RESOLVED, THAT I, Michael F. Brennan, Mayor of the City of Portland, Maine, and members of the Portland City Council do hereby proclaim and honor Monica D. Reno for her achievement.

Signed and sealed this 2nd of June, 2014

Michael F. Brennan, Mayor
City of Portland, Maine

Order 250-13/14
Tab 8 6/2/14

MICHAEL F. BRENNAN (MAYOR)
KEVIN J. DONOGHUE (1)
DAVID A. MARSHALL (2)
EDWARD J. SUSLOVIC (3)
CHERYL A. LEEMAN (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

JOHN R. COYNE (5)
JILL C. DUSON (A/L)
JON HINCK (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

ORDER DECLARING FRIDAY, JULY 4, 2014 AS JULY 4TH "STARS AND STRIPES SPECTACULAR" FESTIVAL

ORDERED, that a Fourth of July Festival be and hereby is declared for Friday, July 4, 2014 from 7:00 p.m. – 10:00 p.m. in the City of Portland and the City Manager is authorized to grant permits to July 4th Portland pursuant to Sec. 25-27 of the Portland City Code for the Festival, with the festival area being as follows: on the Fort Allen Park area, the Eastern Promenade (including sidewalk areas on both sides of the street) from Morning Street to Loring Memorial near East End Community School, and all of Eastern Prom Park, as well as Payson Park area and Baxter Boulevard, in the City of Portland, with a rain date of Saturday, July 5, 2014; and

BE IT FURTHER ORDERED, that the City Manager be and hereby is authorized to issue such temporary licenses and revocable permits, including but not limited to, licenses for food service establishments, as may be required by the Municipal Code, provided that all other applicable requirements of said Code have been met regarding the operation of the activities; all such licenses are subject to the limitations in §19-17 of the City Code; and

BE IT FURTHER ORDERED, that fundraising activities on the day of the event will include the sale of alcoholic beverages by a licensed vendor (in designated area near stage) and the sale of reserved seating in front of the stage; and

BE IT FURTHER ORDERED, that the following streets will be closed to vehicular traffic from 10:00 a.m. to 10:00 p.m. on Friday, July 4, 2014, with a rain date of Saturday, July 5, 2014:

-Eastern Prom from Morning to Walnut Street;

-Morning Street at Eastern Prom, Wilson Street, Moody Street, Congress Street and Turner Street;

-Emerson Street at Quebec Street and Melbourne Street;

-Willis Street at Melbourne Street, Montreal Street and Walnut Street; and

BE IT FURTHER ORDERED, that all of Munjoy Hill and the Eastern Prom will be closed to traffic (from Washington Avenue up) starting at 4:00 p.m on

Friday, July 4, 2014. Streets will open up again after the fireworks display (at approximately 10:00 p.m.); and

BE IT FURTHER ORDERED, that with the addition of the Portland Symphony Orchestra concert, Cutter Street will be closed to public traffic, including boat launching, beginning at 10:00 p.m. on Friday, July 4, 2014. In the event of rain, these street closing would be in effect on Saturday, July 5, 2014; and

BE IT FURTHER ORDERED, that the Festival area shall be closed to licensed street vendors as provided in §19-17 of the City Code and is reserved for the use of the Festival organizers and July 4th Portland for the purpose of administering the Festival. Festival organizers will charge a fee to the vendors to participate in the festival.

CITY OF PORTLAND, MAINE
CITY COUNCIL AGENDA REQUEST FORM

Two copies to be submitted (with supporting material) at least 12 days before Council meeting:

Copies to:	Sonia Bean	Nancy English
	Mark Rees	Danielle West-Chuhta
	Michael Brennan	Sheila Hill - Christian

1. Council Meeting at which action is requested (date): June 2, 2014
2. Can action be taken at a later date? ____Yes X___ No
   The event will take place on July 4th..

If a memo addresses the following issues, you may attach and reference the memo, but please highlight it so that staff may easily answer I-V.

I. SUMMARY OF ISSUE

- Declare Friday, July 4, 2014, as July 4th "Stars and Stripes Spectacular." (Rain date is Saturday, July 5, 2014.)
- Festival area is the Fort Allen Park area, the Eastern Promenade (including sidewalk areas on both sides of the street) from Morning Street to Loring Memorial, near East End Community School, and all of Eastern Prom Park, as well as Payson Park area and Baxter Boulevard.
- Fireworks and Concert funded by private donations.
- Fife & Drum Concert at City Hall Plaza followed by march up Congress Street to Eastern Promenade
- P.S.O. to perform concert in conjunction with fireworks display.
- Alcohol sales in designated area near stage.
- Closure of major roads leading up to Munjoy Hill.
- Fundraising activities taking place on July 4th to sustain the festival.
- No boats launching at East End Beach on July 4th (or July 5 if rain date used) to accommodate the Portland Symphony Orchestra performance.
- Fireworks launched this year from East End Trail.
- "Scoops for Kids" Ice Cream Fest from 3-6 p.m. to benefit Mercy Hospital and Share our Strength.

Memo with additional information attached.

II. REASON FOR SUBMISSION (What issue / problem will this address?)

- A Festival Declaration
- Allowance for control of vendors
- Granting approval for alcohol sales
- Closing of streets: Morning Street at the Eastern Promenade, Wilson, Moody, Congress and Turner Streets; Eastern Promenade at Wilson, Moody, Congress, Turner, Quebec, Melbourne Streets; Willis Street at Montreal and Walnut Streets.

III. INTENDED RESULT (How does it resolve the issue / problem?)
See above.

IV. FINANCIAL IMPACT
All costs are being covered by private donations.

V. STAFF ANALYSIS & RECOMMENDATION
Participants from all over Greater Portland area will be attending. Staff strongly recommends passage.

Anita R. LaChance
Director
Department of Recreation & Facilities Management

Andrew J. Downs
Director
Public Assembly Facilities

TO: Mark Rees, City Manager
FROM: Andrew Downs, Director of Public Assembly Facilities
DATE: May 19, 2014
RE: July 4th "Stars and Stripes Spectacular"

I am requesting that the following order be placed on the (June 2nd) City Council agenda:

Order declaring Friday, July 4, 2014, as July 4th "Stars and Stripes Spectacular."
(Rain Date: Saturday, Jnly 5, 2014)

The City, has sponsored the July 4th Fireworks and activities on the Eastern Promenade for a number of years, attracting 60,000+ individuals, a large percentage of which are families.

This year's Festival, which is being funded by private donations and fundraising activities by the July 4th Portland Foundation, will include:

- 25 Minute Fireworks Display
- Portland Symphony Orchestra Concert
- Food & Entertainment Vendors
- Fife & Drum concert at City Hall Plaza followed by march up Congress St. to Eastern Promenade

The Festival runs from 7:00pm – 10:00pm **Rain date is Saturday, July 5th.**

Fundraising activities on the day of the event will include the sale of alcoholic beverages by Famous Dave's BBQ (in designated area near stage) and the sale of reserved seating in front of the stage.

In order for the Festival to be held, a portion of the Eastern Promenade needs to be barricaded to traffic. **The Festival area is the Fort Allen Park area, the Eastern Promenade, (including sidewalk areas on both sides of the street), from Morning St. to Loring Memorial near East End Community School. Festival area also includes the Payson Park area, as well as Baxter Blvd. area**, as many families take in the fireworks display from those areas as well.

The following streets will be closed to vehicular traffic from approximately 10:00am to 10:00pm, on Friday, July 4th: Eastern Prom, from Morning Street to Walnut Street; Morning Street at Eastern Prom, Wilson St., Moody St., Congress St., and Turner St.; Emerson Street at Quebec St. and Melbourne St.; and Willis Street at Melbourne St., Montreal St., and Walnut St.

All of Munjoy Hill and the Eastern Prom will be closed to traffic (from Washington Ave. up), starting at 4pm. Streets will be opened up again after the fireworks display (at approximately 10pm)

Anita R. LaChance
Director
Department of Recreation & Facilities Management

Andrew J. Downs
Director
Public Assembly Facilities

With the addition of the PSO concert, **Cutter Street will be closed to public traffic, including boat launching, on July 4th.** This will begin at 10 p.m. on Thursday, July 3rd. In the event of rain, these street closings would be in effect for Saturday, July 5th.

The Festival area will also be closed to street vendors pursuant to Section 19-17 of the Portland City Code and is reserved for the use of the Festival organizers and July 4th Portland Foundation for the purpose of administering the Festival. Festival organizers will charge a fee to the vendors to participate in the festival.

The City Manager is also authorized to issue such other temporary licenses and temporary permits, including licenses for food service establishments and permits for sales of non-food related items, as may be required by the Portland City Code, provided that all applicable requirements of said code have been met regarding the operation of said event.

Order 251-13/14
Tab 9 6/2/14

CITY OF PORTLAND
IN THE CITY COUNCIL

ORDER
GRANTING MUNICIPAL OFFICER'S
APPROVAL OF:

GK Food d/b/a/ Benkay Japanese Restaurant at 2 India St. Application to add Outdoor Dining on Public Property.

April 15, 2014

2014 APR 22 PM 1:49

To the Mayor of Portland and the Portland City Council,

I am Hyon Kim. I am the owner of Benkay Japanese Restaurant, 2 India St. Portland. I currently have a Class 1 Restaurant License in good standing. Maine is known as Vacationland and Portland is a vacation destination for thousands of people each year, we would like to offer our customers the choice of dining inside our restaurant or outside with the beautiful views of the Portland Harbor and the Old Port.

Our current license allows for service inside the restaurant. We would like to apply for a change to our current liquor license so we can serve customers at tables outside the restaurant. We will continue to follow all of the regulations and requirements for the service of alcohol

Thank you for your consideration

Hyon Kim
Owner Benkay Japanese Restaurant

Hyon K

Office of the City Clerk
389 Congress Street
Portland, ME 04101
(207) 874-8557

2014 APR 22 PM 1:49

Application for Food Service Establishment With Alcoholic Beverages

Type of Liquor License Applying for: Class 1

Please check one: (Corporation/ LLC/ Non-profit org. X) (Sole Proprietor ___) (Partnership ___)

Business Name (d/b/a): BenKay Japanese Restaurant Phone: 207-773-5555

Location Address: 2 India St Portland ME ZIP 04101

If new, what was formerly in this location: ______

Mailing Address: 2 India St. Portland ME ZIP 04101

Contact Person: Hyon Kim Phone: 207-773-5555

Manager of Establishment: Jeff Foltmer Home Phone # 207-329-3606

Owner of Premises (landlord): Albert B. Glickman Associates

Address of Premises Owner: 136 Commercial St Portland ZIP 04101

Does the Issuance of this license directly or indirectly benefit any City employee(s)? Yes___ No X
If yes, list name(s) of employee(s) and department(s).

______

Have any of the applicants, including the corporation if applicable, ever held a business license with the City of Portland? Yes X No ___. If yes, please list business name(s) and location(s):
SK Food dba Kushiya Benkay 153 Congress St, Portland 04101

Is any principal officer under the age of 18? ______ Yes X No

Have applicant, partners, associates, or corporate officers ever been *arrested*, *indicted*, or *convicted* for any violation of law? NO If yes, please explain: ______

SOLE PROPRIETOR / PARTNERSHIP INFORMATION: (if corporation, leave blank)

Name of Owner(s): ______ DOB ______ Residence Address ______
Name of Owner(s): ______ DOB ______ Residence Address ______
Name of Owner(s): ______ DOB ______ Residence Address ______

CORPORATE / LLC / NON-PROFIT ORGANIZATION APPLICANTS: (if sole proprietor, leave blank)

Corporation Name: G K Food

Corporation Mailing Address: 2 India St Portland ZIP 04101

Contact Person: Hyon Kim Phone Number: 207-773-5555

PRINCIPAL OFFICERS: (if more space is needed, please attach a separate page)

Name	Title	DOB	Residence Address
Hyon Kim	Owner/President	4/9/69	~~18 Woodspell Rd Scarborough~~ 18 Woodspell Scarborough

(Please see reverse side)

Type of Food Served: Japanese Cuisine

Please check all that will be served: Beer X Wine X Liquor X

Percentage of sales – Generated from Food : 60 Generated from Alcohol: 40

Hours and Days of operation: M-Thur 11:30-9:30, Fri-Sat 11:30-11, Sun 11:30-9:00

Will full-course meals, only capable of consumption with the use of tableware, be served the entire time the establishment is open? Yes X No ______.

If no, please explain ____

Is the establishment less than 300 feet from a school, dormitory, church or parish house, or similar establishment? Yes ________ No X. If yes, give the distance ________________.

Will you have entertainment on the premises? Yes _____ No X (If yes, a separate application is required.)

Will you permit dancing on the premises? Yes ____ No X

Will you permit dancing after 1:00am? Yes _____ No X

Will you have outside dining? Yes X No ______. If yes, please indicate location on diagram.
Also, will the outside dining be on PUBLIC X or PRIVATE _____ property?
Have you applied for an Outdoor Dining Permit? Yes X No _____

Will you have any amusement devices (pinball, video games, juke box)? Yes ______ No X.

If yes, please list, # of pinball: _______ # of amusements: _______ # of pool tables: ____________.

What is your targeted opening date? : June 3, 2014

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

It is understood that this and any application(s) shall become public record and the applicant(s) hereby waive(s) any rights to privacy with respect thereto.

I/We, hereby authorize the release of any criminal history record information to the City Clerk's Office or licensing authority. I/We, hereby waive any rights to privacy with respect thereto.

Signature [signature] Title President Date 4/14/14

Outdoor Dining Permit Application

If you or the property owner owes real estate or personal property taxes or user charges on any property within the City, payment arrangements mnst be made before permits of any kind are accepted.

☒ **New** Application for Outside Dining
☐ **Renewal** Application for Outside Dining

City Clerk signature for liquor license approval: ____________________

Pending Council Date: ~~5/19/2014~~ 6/2/2014 (16)

Location Name & Address: BenKay Japanese Restaurant, 2 India St. Portland ME 04101	**Chart** **Block** **Lot**
Owner & Phone #: Hyon Kim	**Total Square Footage of Proposed Seating Area:**[1] 204
Applicant *must* be owner or lessee Name: Hyon Kim Address: 2 India St. City, State & Zip: Portland, ME 04101 E-Mail:	**Annual Fee:** **$80** Total Sq. Ft.: 204 Sq. Ft. Fee: (sq ft x $2) $ 408.00 *(Due when issued)* **Total Fees:** $ 488.00 (Permit not issued until <u>all</u> fees are paid)

Current use: Restaurant

Business name: BenKay Japanese Restaurant

Seating area dimensions: ~~[illegible]~~ / - 204' ft2

How many chairs? ~~[illegible]~~ 36 How many tables? ~~[illegible]~~ 9

☒ Yes Alcohol is served.
☐ No Alcohol being served.

RECEIVED
APR 1 1 2014
Dept. of Building Inspections
City of Portland Maine

Who should we contact for the pre-inspection: Jeffrey Foltmer jfoltmer@maine.rr.com

Mailing address: 2 India St. Portland ME Phone: 207-329-3606

Please submit all of the information outlined in the Outdoor Dining Application Checklist. Failure to do so will result in the automatic denial of your permit.

In order to be sure the City fully understands the full scope of the project, the Planning and Development Department may request additional information prior to the issuance of a permit. For further information visit us on-line at www.portlandmaine.gov, stop by the Building Inspections office, room 315 City Hall or call 874-8703.

I hereby certify that I am the Owner of record of the named property, or that the owner of record authorizes the proposed work and that I have been authorized by the owner to make this application as his/her authorized agent. I agree to conform to all applicable laws of this jurisdiction. In addition, if a permit for work described in this application is issued, I certify that the Code Official's authorized representative shall have the authority to enter all areas covered by this permit at any reasonable hour to enforce the provisions of the codes applicable to this permit.

Signature of Applicant: H K	Date: 4/2/14

[1] ***In no instance shall the total square footage of dining area equal more than 10% of park space, unless the applicant receives a waiver from the Director of Parks and Recreation or his or her designee.***

This is not a permit; you may not commence ANY work until the permit is issued.

Revised 06-14-12

☐ The permit holder is responsible for keeping the outdoor seating area clean. The sidewalk area where the tables and chairs are located must be kept neat and free from liter and debris.

☐ Nofood shall be prepared outside.

☐ If alcohol is to be served, the permit holder must notify the City's Business Licensing Office in room 203 of City Hall or by telephone at 874-8557 and obtain approval for the service of alcohol outdoors. Additionally, State law requires that any outdoor area serving alcohol be segregated from the rest of the public.

☐ All tables and chairs shall be removed prior to a predicted snowfall and while any snow or ice exists within the designated outdoor seating area or within four feet from the boundaries thereof. The City will not be responsible for damage to any tables, chairs or other property that is not properly removed when the City is engaged in sidewalk maintenance activities.

☐ The permit holder shall comply with all applicable rules and regulations implemented by the city regarding outdoor dining.

Failure to comply with any of the above conditions will result in revocation or non-renewal of the permit.

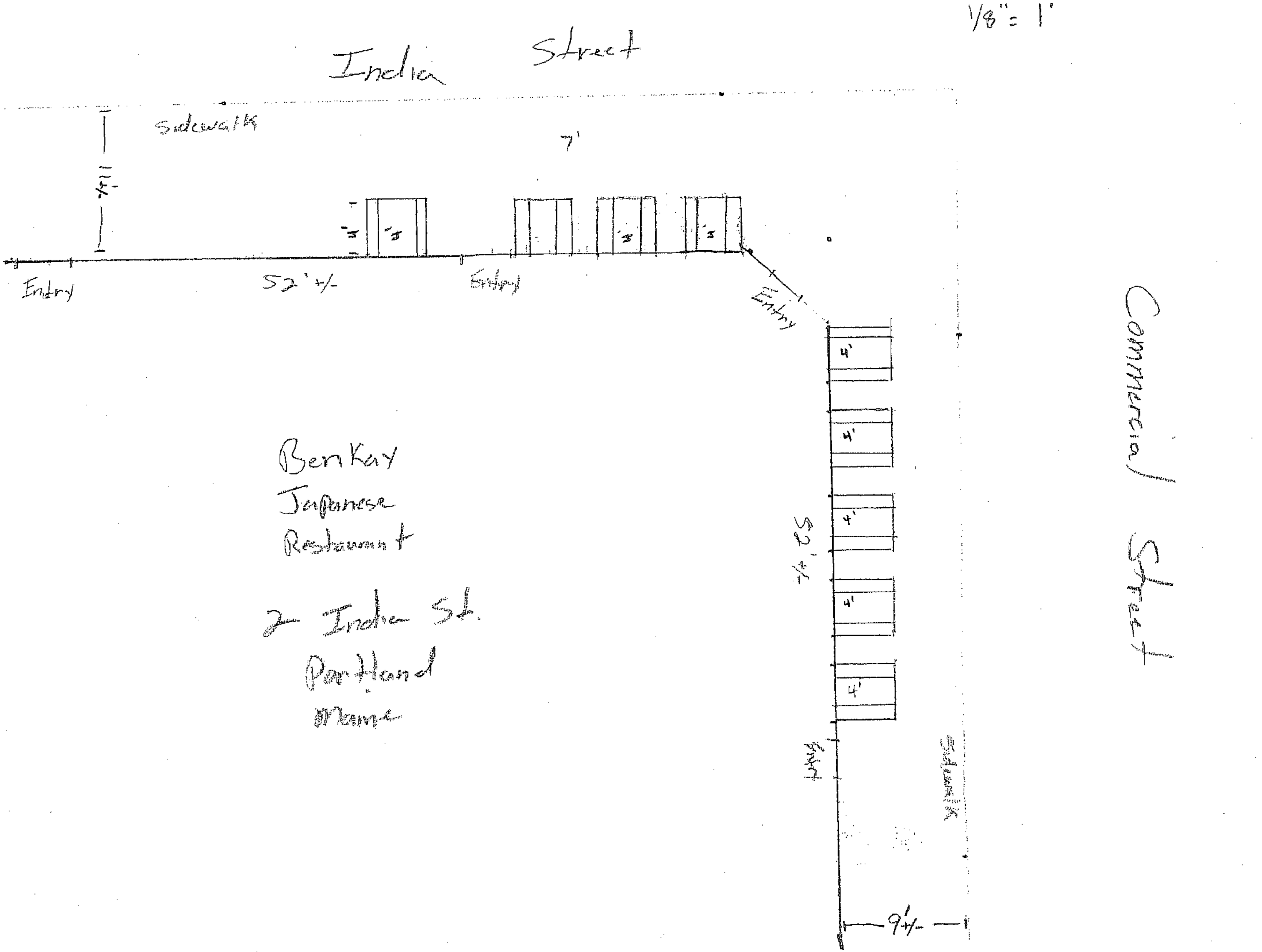
I/We fully understand that the City of Portland, its agents, officers and employees accept no responsibility and will not be liable for any injury, harm or damage to my/our person or property arising out of the establishment's occupancy of the sidewalk or park space. To the fullest extent permitted by law, I/We do hereby agree to assume all risk of injury, harm or damage to my/our person or property (including but not limited to all risk of injury, harm or damage to my/our property cause by the negligence of the City of Portland, its agents, officers or employees) arising out of the establishment's occupancy of the sidewalk or park space. I/We hereby agree, to the fullest extent permitted by law, to defend, indemnify and hold harmless the City of Portland, its agents, officers and employees, from and against all claims, damages, losses and expenses, just or unjust, including, but not limited to costs of defense and attorney's fees, arising out of the establishment's occupancy of the sidewalk or park space, provided that any such claims, damage, loss or expense (1) is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property including the loss of use there from, and (2) is caused in whole or in part by any negligent act or omission of the establishment, anyone directly or indirectly employed by it, or anyone for whose act it may be liable.

Signed and acknowledged: HK Date: 4/2/14

Printed name Hyon Kim

Establishment BenKay Japanese Restaurant

Location 2 India St. Portland ME 04101


1/8" = 1'
India Street
Sidewalk
7'
11' +/-
3'
3'
3'
3'
Entry
52' +/-
Entry
Entry
4'
4'
4'
4'
4'
52' +/-
Entry
Sidewalk
Commercial Street
9' +/-
Benkay
Japanese
Restaurant
2 India St.
Portland
Maine

PORTLAND MAINE
Strengthening a Remarkable City, Building a Community for Life · www.portlandmaine.gov

Office of the City Clerk
Katherine L. Jones, CCM
City Clerk

Carolyn M. Dorr
Deputy City Clerk

May 14, 2014

GK Food d/b/a Benkay Japanese Restaurant
Attn: Hyon Kim
2 India St.
Portland, ME 04101

Re: GK Food d/b/a Benkay Japanese Restaurant application to add Outdoor Dining on Public Property

Dear Ms. Kim,

This letter shall serve as a reminder of the Public Hearing before the Portland City Council on **Monday, June 2nd at 7:00 p.m.** for the review of the application to add outdoor dining on public property to Benkay Japanese Restaurant's Class I FSE license. The meeting will take place in Council Chambers on the 2nd floor of City Hall, 389 Congress Street, Portland, ME 04101.

You or a representative of the business must be present at this meeting in the event that the City Council has questions regarding the license application. If there is no representation and questions arise, the issue could be postponed.

Should you have any questions or concerns, please do not hesitate to contact our office directly at (207) 874-8557 or by email, BL@portlandmaine.gov

Sincerely,

Janice Gardner

Janice Gardner
Business License Administrator

Ad ID 5065766 Date 05/19/2014 Time 11:16 AM

PUBLIC NOTICE

Notice of Public Hearing City of Portland

A Public Hearing will be held on June 2nd at 7:00 P.M., in City Council Chambers, 389 Congress St., on the application of GK Food d/b/a/ Benkay Japanese Restaurant, 2 India St. Application to add Outdoor Dining on Public Property. Sponsored by Katherine L. Jones, City Clerk.

#5065766

Ad shown is not actual print size

Business Licensing - BENKAY Business License Approval

From: Gary Hutcheson
To: Business Licensing
Date: 4/29/2014 2:34 PM
Subject: BENKAY Business License Approval

BENKAY is for their Business License Inspection by the Police Dept.

Date:

Zone:
Comments: Outdoor Dining approved.

Lt. Gary L Hutcheson
Portland Police Department
109 Middle St
Portland, Maine 04101
(207) 756-8295

Order 252-13/14
Tab 10 6-2-14

CITY OF PORTLAND
IN THE CITY COUNCIL

ORDER
GRANTING MUNICIPAL OFFICER'S
APPROVAL OF:

Fat Dragon LLC d/b/a Empire at 575 Congress St. Application to add Outdoor Dining on Public Property.

May 1, 2014

Theresa Chan
Empire
575 Congress St
Portland, ME 04101

Mayor Michael Brennan
and Portland City Council
389 Congress St. Suite 208
Portland, ME 04101

Dear Mayor Brennan and Members of City Council,

Since re-opening under new ownership in September of 2013, Empire has quickly become a Portland go-to spot for great food and entertainment.

We hope to continuously improve our restaurant space, and would like to obtain an outdoor dining permit. We would like to serve full meals outside in a thoughtfully designed outdoor space. An outdoor dining permit would allow us to take full advantage of the warm weather and activity on Congress Street this summer.

Thank you for your attention.

Sincerely,

Theresa Chan

PD $105 . C-CARD
$70 - Legal AD
$35 - APP
BR

CITY CLERK

Office of the City Clerk
389 Congress Street
Portland, ME 04101
(207) 874-8557

2014 MAY -2 AM 9:14

Application for Food Service Establishment With Alcoholic Beverages

Type of Liquor License Applying for: Class XI Restaurant/Lounge

Please check one: (Corporation/ LLC/ Non-profit org. ____) (Sole Proprietor ____) (Partnership ____)

Business Name (d/b/a): Empire Phone: 207-406-0344

Location Address: 575 Congress St ZIP 04101

If new, what was formerly in this location: ____

Mailing Address: 575 Congress St, Portland, ME 04101 ZIP 04101

Contact Person: Theresa Chan Phone: 207-406-0344

Manager of Establishment: Theresa Chan Home Phone # " "

Owner of Premises (landlord): 571 Enterprises LLC

Address of Premises Owner: 138 Grant Rd, Freeport ME ZIP 04032

Does the Issuance of this license directly or indirectly benefit any City employee(s)? Yes ___ No ✓
If yes, list name(s) of employee(s) and department(s).

____

Have any of the applicants, including the corporation if applicable, ever held a business license with the City of Portland? Yes ____ No ✓. If yes, please list business name(s) and location(s):

____

Is any principal officer under the age of 18? ________ Yes ____✓ No

Have applicant, partners, associates, or corporate officers ever been *arrested*, *indicted*, or *convicted* for any violation of law? NO If yes, please explain: ____

SOLE PROPRIETOR / PARTNERSHIP INFORMATION: (if corporation, leave blank)

Name of Owner(s): ____ DOB ____ Residence Address ____
Name of Owner(s): ____ DOB ____ Residence Address ____
Name of Owner(s): ____ DOB ____ Residence Address ____

CORPORATE / LLC / NON-PROFIT ORGANIZATION APPLICANTS: (if sole proprietor, leave blank)

Corporation Name: Fat Dragon LLC

Corporation Mailing Address: 575 Congress St, Portland ME ZIP 04101

Contact Person: ____ Phone Number: ____

PRINCIPAL OFFICERS: (if more space is needed, please attach a separate page)

Name Theresa Chan Title President DOB 5/24/86 Residence Address 138 Grant Rd
Name ____ Title ____ DOB ____ Residence Address Freeport, ME 04032
Name ____ Title ____ DOB ____ Residence Address ____
Name ____ Title ____ DOB ____ Residence Address ____
Name ____ Title ____ DOB ____ Residence Address ____
Name ____ Title ____ DOB ____ Residence Address ____
Name ____ Title ____

(Please see reverse side)

Type of Food Served: Chinese Cuisine

Please check all that will be served: Beer ✓ Wine ✓ Liquor ✓

Percentage of sales – Generated from Food : 70% Generated from Alcohol: 30%

Hours and Days of operation: 6 Days 11:30am – 10pm, Closed Tuesdays

Will full-course meals, only capable of consumption with the use of tableware, be served the entire time the establishment is open? Yes ______ No ✓.

If no, please explain Food service ends at 10pm

Is the establishment less than 300 feet from a school, dormitory, church or parish house, or similar establishment? Yes ________ No ✓. If yes, give the distance __________________.

Will you have entertainment on the premises? Yes ✓ No _____ (If yes, a separate application is required.)

Will you permit dancing on the premises? Yes ✓ No _____

Will you permit dancing after 1:00am? Yes _____ No ✓

Will you have outside dining? Yes ✓ No ______. If yes, please indicate location on diagram.
Also, will the outside dining be on PUBLIC ✓ or PRIVATE _____ property?
Have you applied for an Outdoor Dining Permit? Yes ✓ No _____

Will you have any amusement devices (pinball, video games, juke box)? Yes ______ No ✓.

If yes, please list, # of pinball: _______ # of amusements: ________ # of pool tables: _____________.

What is your targeted opening date? : opened 9/2013

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

It is understood that this and any application(s) shall become public record and the applicant(s) hereby waive(s) any rights to privacy with respect thereto.

I/We, hereby authorize the release of any criminal history record information to the City Clerk's Office or licensing authority. I/We, hereby waive any rights to privacy with respect thereto.

Signature [signature] Title Manager Date 5/1/14

Application attachment to other City license

$485. With Dance
$270. Without Dance
$545. After Hours (1AM-3AM).
Total due: ___________

Office of the City Clerk
389 Congress Street
Portland, ME 04101
207-874-8557

Supplemental Application for Dancing and Entertainment

Please attach a diagram of floor plan showing where in the facility the entertainment will be setup, the direction of any speakers and where dance floor, if any, will be located.

Business Name (d/b/a): Empire

Location Address: 575 Congress St, Portland ZIP 04101 Phone 207-406-0344

Will music be electric or acoustical or both? Both

Will amplification used? Yes ✓ No ________

If yes, where and at what level ? upper Floor, amplification at 90 decibals

Will you permit dancing on the premises? Yes ✓ No ________

Will you permit dancing or entertainment after 1:00AM? Yes ________ No ✓

Will recorded music be played: Inside ✓ Outside ______ Both ______

What is the distance to the nearest residential dwelling unit both inside and outside the building from where the entertainment will take place? 150 ft from nearest resident Apt.

Please describe in detail the type and nature of the business and proposed entertainment:

This two story commercial space will serve as a restaurant on the ground floor serving lunch and dinner. The upper floor will be a multi-use event space with catering, private events, and live music.

If new applicant, what is your targeted opening date? : ________________

Does the issuance of this license directly or indirectly benefit any City employee? Yes___ No ✓
If yes, list names of employee(s) and department(s).

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

It is understood that this and any application(s) shall become public record and the applicant(s) hereby waive(s) any rights to privacy with respect thereto.

I/ We hereby authorize the release of any criminal history record information to the City Clerk's Office or licensing authority. I/ We hereby waive any rights to privacy with respect thereto.

Signature [signature] **Title** Manager **Date** 5/1/14

Revised: 7.7.2008

Outdoor Dining Permit Application

If you or the property owner owes real estate or personal property taxes or user charges on any property within the City, payment arrangements must be made before permits of any kind are accepted.

☑ **New** Application for Outside Dining
☐ **Renewal** Application for Outside Dining

City Clerk signature for liquor license approval: ____________________

Pending Council Date:

Location Name & Address: Empire; 575 Congress Street, Portland 04101	**Chart** 037 **Block** A **Lot** 045
Owner & Phone #: Yue Chan (207) 406-0344	**Total Square Footage of Proposed Seating Area:**[1] 150 sq ft
Applicant *must* be owner or lessee Name: Theresa Chan Address: 575 Congress Street City, State & Zip: Portland, ME 04101 E-Mail: theresa@portlandempire.com	**Annual Fee:** **$80** Total Sq. Ft.: 150 Sq. Ft. Fee: (sq ft x $2) $ 300 *(Due when issued)* **Total Fees:** $ 380 (Permit not issued until <u>all</u> fees are paid)

Current use: Restaurant

Business name: Empire Chinese Kitchen

Seating area dimensions: 6' x 23.5'

How many chairs? 12 How many tables? 4

☐ **Yes** Alcohol is served.
☑ **No** Alcohol being served.

Who should we contact for the pre-inspection: Theresa Chan

Mailing address: 575 Congress St Phone: 207-406-0344

Please submit all of the information outlined in the Outdoor Dining Application Checklist. Failure to do so will result in the automatic denial of your permit.

In order to be sure the City fully understands the full scope of the project, the Planning and Development Department may request additional information prior to the issuance of a permit. For further information visit us on-line at www.portlandmaine.gov, stop by the Building Inspections office, room 315 City Hall or call 874-8703.

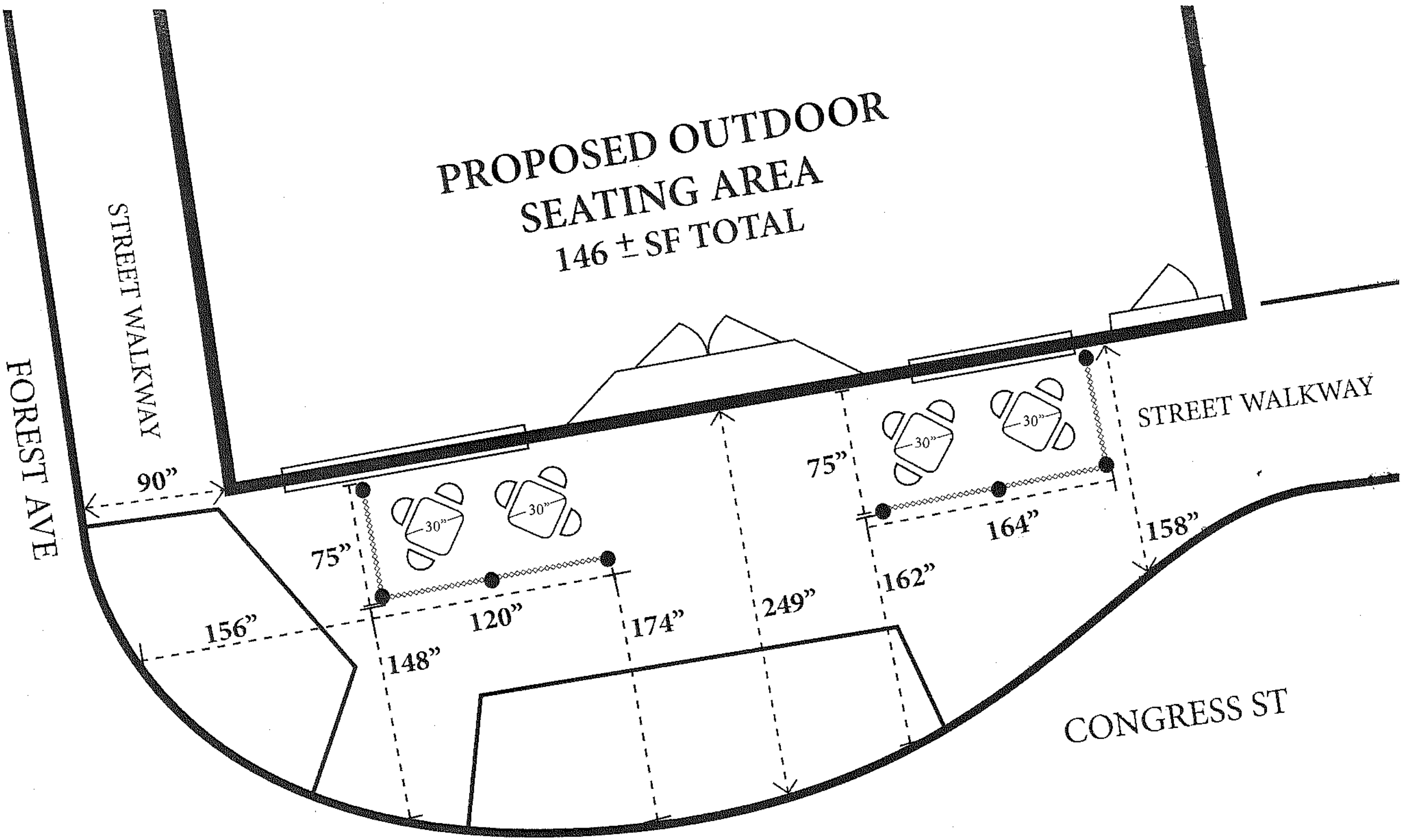
I hereby certify that I am the Owner of record of the named property, or that the owner of record authorizes the proposed work and that I have been authorized by the owner to make this application as his/her authorized agent. I agree to conform to all applicable laws of this jurisdiction. In addition, if a permit for work described in this application is issued, I certify that the Code Official's authorized representative shall have the authority to enter all areas covered by this permit at any reasonable hour to enforce the provisions of the codes applicable to this permit.

Signature of Applicant: Theresa Chan	Date: 4/15/14

[1] ***In no instance shall the total square footage of dining area equal more than 10% of park space, unless the applicant receives a waiver from the Director of Parks and Recreation or his or her designee.***

This is not a permit; you may not commence ANY work until the permit is issued.

Revised 06-14-12



PROPOSED SEATING PLAN

575 Congress St

Office of the City Clerk
Katherine L. Jones, CCM
City Clerk

Carolyn M. Dorr
Deputy City Clerk

May 14, 2014

Fat Dragon LLC d/b/a Empire
Attn: Theresa Chan
575 Congress St.
Portland, ME 04101

Re: Fat Dragon LLC d/b/a Empire at 575 Congress St application to add Outdoor Dining on Public Property.

Dear Ms. Chan,

This letter shall serve as a reminder of the Public Hearing before the Portland City Council on **Monday, June 2nd at 7:00 p.m.** for the review of the application to add outdoor dining on public property to Empire's Class XI Restaurant/Lounge License. The meeting will take place in Council Chambers on the 2nd floor of City Hall, 389 Congress Street, Portland, ME 04101.

You or a representative of the business must be present at this meeting in the event that the City Council has questions regarding the license application. If there is no representation and questions arise, the issue could be postponed.

Should you have any questions or concerns, please do not hesitate to contact our office directly at (207) 874-8557 or by email, BL@portlandmaine.gov

Sincerely,

Janice Gardner

Janice Gardner
Business License Administrator

Ad ID 5065737 Date 05/19/2014 Time 11:00 AM

PUBLIC NOTICE

Notice of Public Hearing City of Portland

A Public Hearing will be held on June 2nd at 7:00 P.M., in City Council Chambers, 389 Congress St., on the application of Fat Dragon LLC d/b/a Empire at 575 Congress St. Application to add Outdoor Dining on Public Property. Sponsored by Katherine L. Jones, City Clerk.

#5065737

Ad shown is not actual print size

Business Licensing - EMPIRE Business License Approval

From: Gary Hutcheson
To: Business Licensing
Date: 5/19/2014 2:27 PM
Subject: EMPIRE Business License Approval

EMPIRE is In Review for their Business License Inspection by the Police Dept.

Date:

Zone:
Comments: Out door dining request approved.

Lt. Gary L Hutcheson
Portland Police Department
109 Middle St
Portland, Maine 04101
(207) 756-8295

Order 253-13/14
Tab 11 6-2-14

CITY OF PORTLAND
IN THE CITY COUNCIL

ORDER
GRANTING MUNICIPAL OFFICER'S
APPROVAL OF:

Porthole Restaurant & Pub LLC at 20 Custom House Wharf. Renewal application for a Class XI Restaurant/Lounge License with Entertainment with Dance and Outdoor Dining on Private Property.

City of Portland, Maine
Office of the City Clerk

License No. 5113 **Issue Date** May 13, 2014

To all Whom These Presents May Concern:

This is to certify that the Municipal Officers have granted a license to

PORTHOLE RESTAURANT & PUB LLC

Doing business as THE PORTHOLE RESTAURANT & PUB

at 20 CUSTOM HOUSE WHARF

for CLASS XI FSE RESTAURANT/LOUNGE /

and at that place only on the following conditions:

ENTERTAINMENT WITH DANCE; OUTDOOR DINING ON PRIVATE PROPERTY. LICENSE ADMINISTRATIVELY RENEWED UNTIL 6/3/2014.

This license is granted subject to strict observance of all laws, ordinances and regulations enacted for the protection of the City of Portland so far as they may apply and is to continue in force until 06/03/2014 unless sooner revoked.

RESURGAM. SIGILLUM CIVITATIS PORTLANDIÆ

City Clerk

THIS LICENSE IS NOT TRANSFERABLE
PLEASE POST IN A CONSPICUOUS PLACE

CITY OF PORTLAND
OFFICE OF THE CITY CLERK

389 Congress Street ~ Portland Maine 04101
207-874-8557 FAX 874-8612

DATE: ____________
INSP: ____________
FIRE: ____________
PPD: ____________
TAXES: ____________

EXP DATE: 05/12/2014
LICENSE FEES: $2,615.00
APP FEE: $25.00
TOTAL DUE: $2,640.00

CORPORATION/NON-PROFIT ORGANIZATION

CLASS XI FSE RESTAURANT/LOUNGE

OUTSIDE SEATING
ENTERTAINMENT W/DANCE

Business Name: PORTHOLE RESTAURANT & PUB, THE

Business Address: 20 CUSTOM HOUSE   Bus Tel: (207)773-4653

Mailing Address: 20 CUSTOM HOUSE WHARF
PORTLAND ME 04101

Owner: PORTHOLE RESTAURANT & PUB LLC   Bus. Tel: (207)831-0169   DOB: ____________

Address: 18 CUSTOM HOUSE WHARF
PORTLAND ME 04101

Business Manager: BETH POITRAS   Home Tel: 831-1324

Days and Hours of Operation: ____________

DOES THE AWARD OF THIS LICENSE BENEFIT ANY CITY EMPLOYEE? YES ____ NO ____

Capacity or Number of Seats: ON PRIVATE PROPERTY   Outdoor Seating? YES ____ NO ____

Landlord of Premises: ____________

Landlord's Address: ____________

Are you requesting an Entertainment License (including DJ) Yes ____ No ____

If yes, check all that apply: with Dance ____ without Dance ____ Amplified ____ Acoustic ____
Inside only ____ Inside and Outside ____ After hours (1am - 3am) ____

If no, will recorded music be played Inside only ____ Inside and Outside ____

Explain: ____________

Date opened: 04/12/2013

NUMBER OF: **PINBALL MACHINES** ____ **POOL TABLES** ____
AMUSEMENT DEVICES ____ **ADULT AMUSEMENT DEVICES** ____

DISTRIBUTOR: ____________

Is any principal officer under the age of 18? Yes ____ No ____

Give a description of where the beverages are consumed and kept. ____________

Does the owner or business manager have any convictions? Yes ____ No ____

********** **PLEASE ATTACH A DETAILED DRAWING OF THE FLOOR PLAN.** **********

If corporation please include a list of all principle officers, their date of birth and town of residence.

DATE: ____________
INSP: ____________
FIRE: ____________
PPD: ____________
TAXES: ____________

CITY OF PORTLAND
OFFICE OF THE CITY CLERK

389 Congress Street ~ Portland Maine 04101
207-874-8557 FAX 874-8612

EXP DATE: 05/12/2014
LICENSE FEES: $2,615.00
APP FEE: $25.00
TOTAL DUE: $2,640.00

CORPORATION/NON-PROFIT ORGANIZATION

Exact Corporation Name: PORTHOLE RESTAURANT & PUB LLC

Date of Incorporation: ____________

State in Which you are Incoporated: ____________

LIST ALL PRINCIPAL OFFICERS:

NAME	TITLE	DOB	RESIDENCE
KEN MACGOWAN	PRESIDENT	56-09/10	FALMOUTH ME 04105
KATHRYN MACGOWAN	VICE PRESIDENT	59-04/22	FALMOUTH ME 04105
BETH POITRAS	MANAGER		PORTLAND ME 04101
PROP. OF CUSTOM HOUSE WHARF	OWNER OF PREMISES		PORTLAND ME 04101

DATE: ___________
INSP: ___________
FIRE: ___________
PPD: ___________
TAXES: ___________

CITY OF PORTLAND
OFFICE OF THE CITY CLERK

389 Congress Street ~ Portland Maine 04101
207-874-8557 FAX 874-8612

EXP DATE: 05/12/2014
LICENSE FEES: $2,615.00
APP FEE: $25.00
TOTAL DUE: $2,640.00

CORPORATION/NON-PROFIT ORGANIZATION

I/WE HEREBY CERTIFY THAT ALL STATEMENTS MADE IN THIS APPLICATION ARE TRUE. I/WE AGREE AND UNDERSTAND THAT ANY MISTATEMENTS OR OMISSIONS OF MATERIAL FACT HEREIN WILL RESULT IN REFUSAL OF LICENSE OR REVOCATION OF LICENSE IF ONE HAS ALREADY BEEN ISSUED. IN ADDITION, I/WE HEREBY AUTHORIZE THE RELEASE OF ANY CRIMINAL HISTORY RECORD INFORMATION TO THE CITY CLERK'S OFFICE OR LICENSING AUTHORITY. IT'S UNDERSTOOD THAT THIS INFORMATION SHALL BECOME PUBLIC RECORD, AND I/WE HEREBY WAIVE ANY RIGHTS OF PRIVACY WITH RESPECT THERETO.

SIGNATURE ___________________ DATE 5-13-14

City of Portland, Maine

Office of the City Clerk

License No. 5113 **Issue Date** 4/11/2014

ENTERTAINMENT W/DANCE

To all Whom These Presents May Concern:

This is to certify that the Municipal Officers have granted a license to

PORTHOLE RESTAURANT & PUB LLC

Doing business as THE PORTHOLE RESTAURANT & PUB

at 20 CUSTOM HOUSE

for CLASS XI FSE RESTAURANT/LOUNGE / ENTERTAINMENT W/DANCE

and at that place only on the following conditions:

ENTERTAINMENT WITH DANCE; OUTDOOR DINING ON PRIVATE PROPERTY; LICENSE ADMINISTRATIVELY RENEWED UNTIL 5/12/14. ALL CONDITIONS OF ATTACHED LETTER MUST BE MET BY THIS DATE OR LICENSE WILL NOT BE RENEWED.

This license is granted subject to strict observance of all laws, ordinances and regulations enacted for the protection of the City of Portland so far as they may apply and is to continue in force until 5/12/2014 **unless sooner revoked.**

RESURGAM. SIGILLUM CIVITATIS PORTLANDIAE

Katherine L Jones

City Clerk

THIS LICENSE IS NOT TRANSFERABLE

PLEASE POST IN A CONSPICUOUS PLACE

DATE: ____________
INSP: ____________
FIRE: ____________
PPD: ____________
TAXES: ____________

CITY OF PORTLAND
OFFICE OF THE CITY CLERK

389 Congress Street ~ Portland Maine 04101
207-874-8557 FAX 874-8612

EXP DATE: 04/12/2014
LICENSE FEES: $2,615.00
APP FEE: $25.00
TOTAL DUE: $2,640.00

CORPORATION/NON-PROFIT ORGANIZATION

CLASS XI FSE RESTAURANT/LOUNGE $2130 *OUTSIDE SEATING*
ENTERTAINMENT W/DANCE $485

Business Name: PORTHOLE RESTAURANT & PUB, THE

Business Address: 20 CUSTOM HOUSE Bus Tel: (207)773-4653

Mailing Address: 20 CUSTOM HOUSE WHARF
PORTLAND ME 04101

Owner PORTHOLE RESTAURANT & PUB LLC Bus. Tel: (207)831-0169 DOB: ____________

Address: 18 CUSTOM HOUSE WHARF
PORTLAND ME 04101

Business Manager: BETH POITRAS Home Tel: 831-1324

Days and Hours of Operation: ____________

DOES THE AWARD OF THIS LICENSE BENEFIT ANY CITY EMPLOYEE? YES ____ NO ____

Capacity or Number of Seats: ON PRIVATE PROPERTY Outdoor Seating? YES ____ NO ____

Landlord of Premises: ____________

Landlord's Address: ____________

Are you requesting an Entertainment License (including DJ) Yes ____ No ____

If yes, check all that apply: with Dance ____ without Dance ____ Amplified ____ Acoustic ____
Inside only ____ Inside and Outside ____ After hours (1am-3am) ____

If no, will recorded music be played: Inside only ____ Inside and Outside ____

Explain: ____________

Date opened: 04/12/2013

NUMBER OF: PINBALL MACHINES ____ **POOL TABLES** ____
AMUSEMENT DEVICES ____ **ADULT AMUSEMENT DEVICES** ____

DISTRIBUTOR: ____________

Is any principal officer under the age of 18? Yes ____ No ✓

Give a description of where the beverages are consumed and kept. ____________

Does the owner or business manager have any convictions? Yes ____ No ✓

********** **PLEASE ATTACH A DETAILED DRAWING OF THE FLOOR PLAN.** **********

If corporation please include a list of all principle officers, their date of birth and town of residence.

2014 MAR 2? PM 1:36 CITY CLERK

DATE: ____________
INSP: ____________
FIRE: ____________
PPD: ____________
TAXES: ____________

CITY OF PORTLAND
OFFICE OF THE CITY CLERK

389 Congress Street ~ Portland Maine 04101
207-874-8557 FAX 874-8612

EXP DATE: 04/12/2014
LICENSE FEES: $2,615.00
APP FEE: $25.00
TOTAL DUE: $2,640.00

CORPORATION/NON-PROFIT ORGANIZATION

Exact Corporation Name: PORTHOLE RESTAURANT & PUB LLC

Date of Incorporation: ____________

State in Which you are Incoporated: ____________

LIST ALL PRINCIPAL OFFICERS:

NAME	TITLE	DOB	RESIDENCE
KEN MACGOWAN	PRESIDENT	56-09/10	FALMOUTH ME 04105
KATHRYN MACGOWAN	VICE PRESIDENT	59-04/22	FALMOUTH ME 04105
BETH POITRAS	MANAGER		PORTLAND ME 04101
PROP. OF CUSTOM HOUSE WHARF	OWNER OF PREMISES		PORTLAND ME 04101

DATE: ____________

INSP: ____________

FIRE: ____________

PPD: ____________

TAXES: ____________

CITY OF PORTLAND
OFFICE OF THE CITY CLERK

389 Congress Street ~ Portland Maine 04101

207-874-8557 FAX 874-8612

CORPORATION/NON-PROFIT ORGANIZATION

EXP DATE: 04/12/2014

LICENSE FEES: $2,615.00

APP FEE: $25.00

TOTAL DUE: $2,640.00

I/WE HEREBY CERTIFY THAT ALL STATEMENTS MADE IN THIS APPLICATION ARE TRUE. I/WE AGREE AND UNDERSTAND THAT ANY MISTATEMENTS OR OMISSIONS OF MATERIAL FACT HEREIN WILL RESULT IN REFUSAL OF LICENSE OR REVOCATION OF LICENSE IF ONE HAS ALREADY BEEN ISSUED. IN ADDITION, I/WE HEREBY AUTHORIZE THE RELEASE OF ANY CRIMINAL HISTORY RECORD INFORMATION TO THE CITY CLERK'S OFFICE OR LICENSING AUTHORITY. IT'S UNDERSTOOD THAT THIS INFORMATION SHALL BECOME PUBLIC RECORD, AND I/WE HEREBY WAIVE ANY RIGHTS OF PRIVACY WITH RESPECT THERETO.

SIGNATURE ____________ DATE 3-12-14

Department of Public Safety
Division

Promise by any person that he or she can expedite a liquor license through influence should be completely disregarded.
To avoid possible financial loss an applicant, or prospective applicant, should consult with the Division before making any substantial investment in an establishment that now is, or may be, attended by a liquor license.

Liquor Licensing & Inspection

BUREAU USE ONLY
License No. Assigned:
Class:
Deposit Date:
Amt. Deposited:

PRESENT LICENSE EXPIRES ____________

INDICATE TYPE OF PRIVILEGE: ق MALT ق SPIRITUOUS ق VINOUS

INDICATE TYPE OF LICENSE:

ق RESTAURANT (Class I,II,III,IV)
ق HOTEL-OPTIONAL FOOD (Class I-A)
ق CLASS A LOUNGE (Class X)
ق CLUB (Class V)
ق TAVERN (Class IV)
ق RESTAURANT/LOUNGE (Class XI)
ق HOTEL (Class I,II,III,IV)
ق CLUB-ON PREMISE CATERING (Class I)
ق GOLF CLUB (Class I,II,III,IV)
ق OTHER: ____________

REFER TO PAGE 3 FOR FEE SCHEDULE

ALL QUESTIONS MUST BE ANSWERED IN FULL

1. APPLICANT(S) –(Sole Proprietor, Corporation, Limited Liability Co., etc.) Porthole Restaurant + Pub LLC DOB:	**2. Business Name (D/B/A)** Porthole Restaurant & Pub
DOB:	
DOB:	**Location (Street Address)** 20 Custom House Wharf
Address 20 Custom House Wharf	**City/Town** Portland **State** ME **Zip Code** 04101
	Mailing Address 18 Custom House Wharf
City/Town Portland **State** ME **Zip Code** 04101	**City/Town** Portland **State** ME **Zip Code** 04101
Telephone Number 207.831.0169 **Fax Number** 207.253.5111	**Business Telephone Number** 207.773.4653 **Fax Number** 207.253.5111
Federal I.D. # 46.1835331	**Seller Certificate #** 1161158

3. If premises are a hotel, indicate number of rooms available for transient guests: ________
4. State amount of gross income from period of last license: ROOMS $ ______ FOOD $ 642,000 LIQUOR $ 361,000
5. Is applicant a corporation, limited liability company or limited partnership? YES ✓ NO ق

complete Supplementary Questionnaire ,If YES

6. Do you permit dancing or entertainment on the licensed premises? YES ✓ NO ق
7. If manager is to be employed, give name: Beth Poitras
8. If business is NEW or under new ownership, indicate starting date: ____________
   Requested inspection date: ____________ Business hours: ____________
9. Business records are located at: 18 Custom House Wharf
10. Is/are applicants(s) citizens of the United States? YES ✓ NO ق

STATE OF MAINE
Liquor Licensing & Inspection Unit
164 State House Station
Augusta, Maine 04333-0164
Tel: (207) 624-7220 Fax: (207) 287-3424

SUPPLEMENTARY QUESTIONAIRE FOR CORPORATE APPLICANTS, LIMITED LIABILITY COMPANIES AND LIMITED PARTNERSHIPS

1. **Exact Corporate Name:** Porthole Restaurant + Pub LLC

   Business D/B/A Name: The Porthole Restaurant & Pub

2. **Date of Incorporation:** ~~[illegible]~~ 12-28/13

3. **State in which you are incorporated:** Maine

4. **If not a Maine Corporation, date corporation was authorized to transact business within the State of Maine:** __________

5. **List the name and addresses for previous 5 years, birth dates, titles of officers, directors and list percent of stock owned:**

Name	Address Previous 5 Years	Birth Date	% of Stock	Title
Kenneth Macgowan	172 Middle Road	9/10/56	50	President
Kathryn Macgowan	2037 Carnoustie Drive	04/22/59	50	Vice President
	Falmouth ME			

6. **What is the amount of authorized stock?** 100 **Outstanding Stock?** 0

7. **Is any principal officer of the corporation a law enforcement official?** ( ) YES (✓) NO

8. **Has applicant(s) or manager ever been convicted of any violation of the law, other than a minor traffic violation(s), of the United States?** ( ) YES (✓) NO.

9. **If yes, please complete the following: Name:** __________

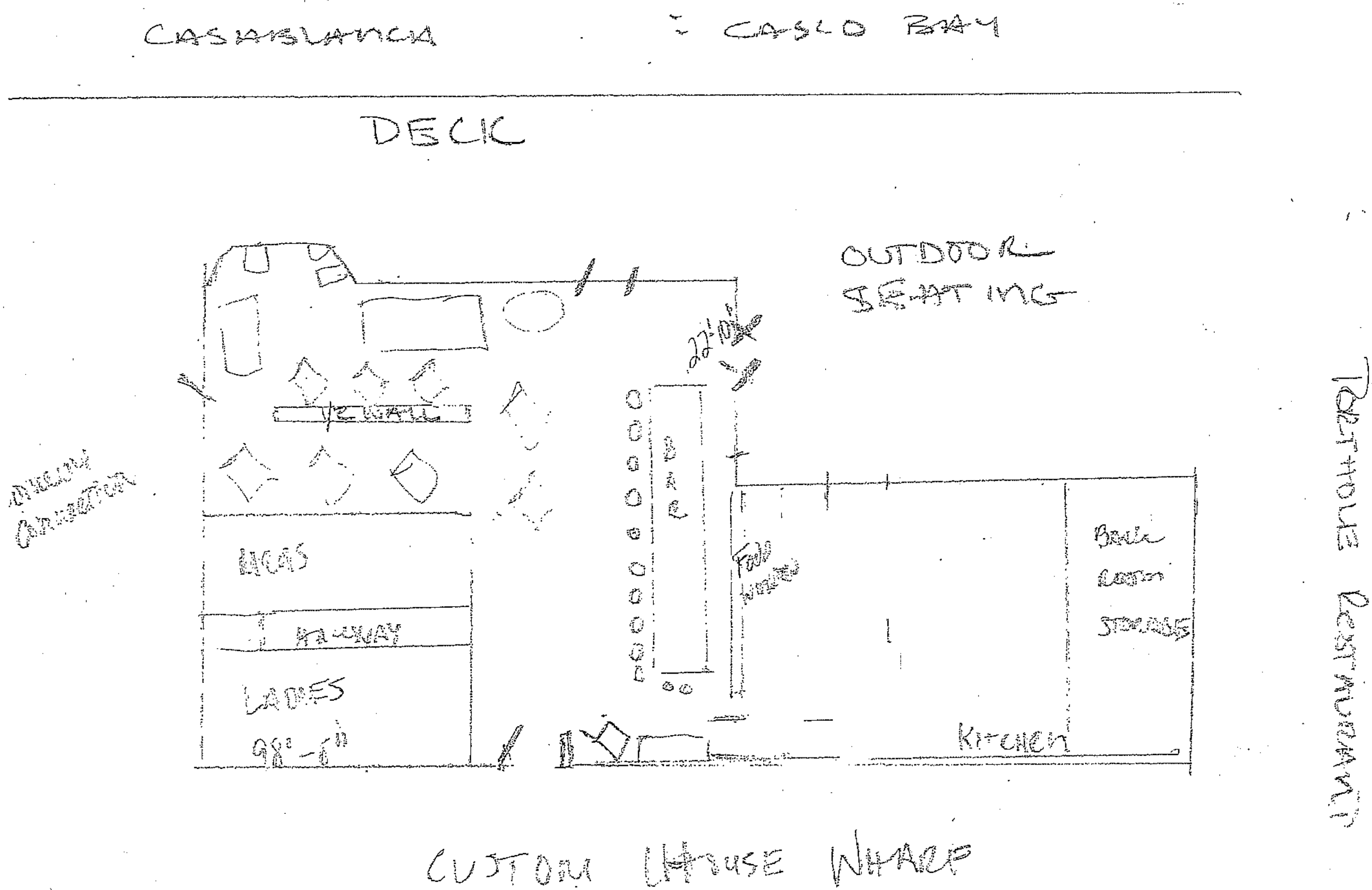
Date of Conviction: __________ Offense: __________

Location: __________ Disposition: __________

Dated at: Portland **On:** __________
City/Town **Date**

[signature] **Date:** 3-12-14
Signature of Duly Authorized Officer

Kenneth N Macgowan
Print Name of Duly Authorized Officer



PREMISE DIAGRAM

Business Licensing - PORTHOLE RESTAURANT & PUB, THE Business License Approval

From: Gary Hutcheson
To: Business Licensing
Date: 2/22/2014 4:42 PM
Subject: PORTHOLE RESTAURANT & PUB, THE Business License Approval

PORTHOLE RESTAURANT & PUB, THE is Approved for their Business License Inspection by the Police Dept.

Date: 2/22/2014

Zone:
Comments: Liquor license.

Lt. Gary L Hutcheson
Portland Police Department
109 Middle St
Portland, Maine 04101
(207) 756-8295

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

Planning & Urban Development Department

MEMORANDUM

TO: **Tammy Munson, Division Director**

FROM: **Jonathan Rioux, Deputy Director of Inspection** JR

DATE: **05/29/2014**

SUBJECT: **86 Commercial St., CBL 030 A001001- Stop_Work_Order**

Date Range from 11/18/2013 through 5/29/2014

11/18/2013 Complaint and Inspection for building without a permit & structure issue

- Stop Work Order Issued, Certified Letter 70101870000281366134 sent and received.

04/04/2014 Follow-up on stop work order issued 11/18/13; Owner walkthrough with Fire Prevention.

04/11/2014 Met with Owner and served City Clerk Letter dated 04/11/2014.

- No Action from Owner

04/15/2014 Follow-up on land-use violations (Stop-Work-Order); scheduled for 10AM.

- Met with Owner on site

05/02/2014 Phone Call: Contacted Owner for status update and offered a plan review meeting

05/06/2014 Plan Review Meeting requested by Jonathan Rioux and held to streamline the permitting process.

- No building permit on file or new documentation provided to the City

05/14/2014 Second Notice of Violation Sent to Owner, See Letter dated 05/14/2014

05/14/2014 Phone Call(s): Spoke with Owner to memorialize letter, he acknowledged receipt.

05/20/2014 Phone Call: Contacted Owner for status of the required building permit application

- No building permit on file

05/29/2014: Phone Call: Spoke with Ryan Kanteras, AIA he asked what minimal info. was a priority and stated he would be able to submit the permit by the days-end

City of Portland
Inspection Services
RETURN OF SERVICE

On the 11th day of **April, 2014,** I made service of **Ken McGowan**

at **389 Congress St. Rm 203**

_X_ By delivering a copy in hand

______ By leaving copies at the individual's dwelling house or usual place of abode with a person of a suitable age or discretion who resides therein and whose is named______________________.

______ By delivering a copy to an agent authorized to receive service of process, and whose name is______________________.

______ By (describe other manner of service)______________________

DATED 04/11/14

____
Signature of Person Making Service

Deputy Director of Inspections
Title

I have received the above referenced documents

____
Person Receiving Service

______ Refused to Sign
______ Unable to Sign

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

Planning & Urban Development Department

May 14, 2014

Porthole Restaurant & Pub LLC
Attn: Ken MacGowan
20 Custom House Wharf
Portland, ME 04101

Hand Delivered

CBL: 030 A001001
Re: Second Notice of Violation (Stop Work Order)
Located At: 86 Commercial St.

Dear Mr. MacGowan:

On April 15, 2014 an evaluation of 86 Commercial St. revealed that building (including electrical and plumbing) work was being conducted without benefit of a valid building permit and in violation of a Stop Work Order for un-permitted work on 11/18/2013. As a result, your property is in violation of 105.1 of the IBC, 2009 (MUBEC), and Section 6-21 of the City of Portland Building and Building Regulations.

This notice shall also serve is a Stop Work Order pursuant to § 115 of the 2009 IBC (MUBEC) (incorporated by the Portland City Code), and so all construction activity at your property must stop immediately. You may resume construction activity only after the following building conditions are met:

1. Immediately submit an after-the-fact building permit application for any construction, and or alterations including but not limited to: the kitchen area near Boones, the bar area adjoining the kitchen, the stairwell area abutting Boones, and the wall opening(s) to the kitchen;
2. Electronic media documents are required for submittal; the construction documents shall be of sufficient clarity to indicate the location, nature and extent of the work proposed and show in detail that it will conform to the provisions of City Building Code (available at: http://www.portlandmaine.gov/planning/applicantsubmittalelectronicplanreview.pdf);
3. All building permit construction documents also shall be prepared by a Design Professional and bear their seal;
4. Pay a $75.00 assessed fee;
5. Immediately submit an after-the-fact plumbing permit for all work that was conducted without benefit of a plumbing permit;

6. Complete work permitted under electrical permit # 2014-00676 by May 23, 2014; and
7. A re-inspection is scheduled for May 23, 2014 at which time compliance with all of the above terms is required.

Please note that the aforementioned building violations were similar to previous notices sent to the Proprietors of Custom House. In fact, City staff met with you on April 11, 2014 (See City Clerk letter dated 04/11/2014), and held a plan review meeting on May 6th, 2014 to help streamline the permitting process.

In addition, based on the above inspection, the following Fire Department conditions that must also be met:

1. Apply for a Building Permit which will need to include an NFPA 101 Code (adopted pursuant to City Code Chapter 10) analysis and life safety/key plan created by a registered design professional. More specifically, your design professional will need to address the following NFPA 1 and 101 (adopted pursuant to City Code Chapter 10) requirements:

   a. The need for a supervised automatic sprinkler system if live entertainment is proposed to occur an assembly occupancy;
   b. Proper fire separation between other occupancies and use groups;
   c. Means of egress on the second floor; and
   d. Any separation issues that are present as a result of vertical openings between the first and second floors.

2. Provide a copy of the State Fire Marshal Office (SFMO) Construction Permit.

Failure to comply with the conditions listed above by May 23, 2014 will result in this office referring the matter to the City of Portland Corporation Counsel for legal action and possible civil penalties, as provided for in § 1-15 of the Code and in Title 30-A of M.R.S.A. § 4452. This constitutes an appealable decision pursuant to § 6-127 of the City of Portland Building Code.

Portland, Maine Yes. Life's good here.

Planning & Urban Development Department

Sincerely,

Jonathan Rioux,
Deputy Director of Inspections

cc: Sheila Hill-Christian, Deputy City Manager
Katherine Jones, City Clerk
Trish McAllister, Neighborhood Prosecutor
Chris Pirone, Captain/ Fire Prevention Officer

Director of Planning and Urban Development
Jeff Levine

Inspection Services, Director
Tammy M. Munson

PROPRIETORS OF CUSTOM HOUSE
5 EASTERN PROMENADE
PORTLAND, ME 04101

CBL: 030 A001001
Located at: 86 COMMERCIAL ST

Certified Mail 70101870000281366134

Dear PROPRIETORS OF CUSTOM HOUSE,

STOP WORK ORDER

An evaluation of the above-referenced property on 11/18/2013 revealed that building construction was being conducted without benefit of a valid building permit as required by Section 105.1 of the 2003 International Building Code and the 2003 International Residential Code of the City of Portland.

Appropriate permitting has not been issued for the property listed above, therefore all construction activity at that property must STOP immediately. This is a STOP WORK ORDER pursuant to Section 114. of 2003 International Building Code and the 2003 International Residential Code of the City of Portland.

You may resume construction activity only after issuance of the appropriate building permit and the subsequent lifting of this order. Building Permit Applications are available in this office, Room 315 at Portland City Hall, from 8:00 a.m. to 4:00 p.m. weekdays except holidays.

Failure to comply will result in this office referring the matter to the City of Portland Corporation Counsel for legal action and possible civil penalties, as provided for in Section 1-15 of the Code and in Title 30-A of M.R.S.A. Section 4452. This constitutes an appealable decision pursuant to Section112 of the City of Portland Building Code.

If you wish to discuss this matter, or you have any questions, please feel free to contact me.

Sincerely,

George Froehlich

Office of the City Clerk
Katherine L. Jones, CCM
City Clerk

Carolyn M. Dorr
Deputy City Clerk

May 20, 2014

Porthole Restaurant & Pub LLC
Attn: Ken Macgowan
20 Custom House Wharf
Portland, ME 04101

Re: Porthole Restaurant & Pub LLC at 20 Custom House Wharf. Renewal application for a Class XI Restaurant/Lounge License with Entertainment with Dance and Outdoor Dining on Private Property.

Dear Mr. Macgowan,

This letter shall serve as a reminder of the Public Hearing before the Portland City Council on **Monday, June 2nd at 7:00 p.m.** for the review of the renewal application for the Porthole Restaurant & Pub's Class XI Restaurant/Lounge License with Entertainment with Dance and Outdoor Dining on Private Property. The meeting will take place in Council Chambers on the 2nd floor of City Hall, 389 Congress Street, Portland, ME 04101.

You or a representative of the business must be present at this meeting in the event that the City Council has questions regarding the license application. If there is no representation and questions arise, the issue could be postponed.

Should you have any questions or concerns, please do not hesitate to contact our office directly at (207) 874-8557 or by email, BL@portlandmaine.gov

Sincerely,

Janice Gardner
Business License Administrator

Ad ID 5065754 Date 05/19/2014 Time 11:08 AM

PUBLIC NOTICE

Notice of
Public Hearing
City of Portland

A Public Hearing will be held on June 2nd at 7:00 P.M., in City Council Chambers, 389 Congress St., on the application of Porthole Restaurant & Pub LLC at 20 Custom House Wharf. Renewal application for a Class XI Restaurant/Lounge License with Entertainment with Dance and Outdoor Dining on Private Property. Sponsored by Katherine L. Jones, City Clerk.

#5065754

Ad shown is not actual print size

Portland, Maine Yes. Life's good here.

Office of the City Clerk
Katherine L. Jones, CCM, City Clerk

May 20, 2014

RE: NOTICE OF PUBLIC HEARING

A Public Hearing will be held on Monday, June 2, 2014 at 7:00 P.M. in City Council Chambers, 389 Congress Street, on the application of Porthole Restaurant & Pub LLC d/b/a The Porthole Restaurant & Pub at 20 Custom House Wharf.

The owner of The Porthole Restaurant & Pub is requesting renewal of a Class XI Restaurant/Lounge License with Entertainment with Dance and Outdoor Dining on Private Property.

Public comment will be taken at this meeting.

If you have any questions, please call (207) 874-8557.

Janice Gardner
Business License Administrator
bl@portlandmaine.gov

Order 220-13/14
~~Tab 26 4-28-14~~
~~Tab 30 5-5-14~~
Tab 12 6-2-14

MICHAEL F. BRENNAN. (MAYOR)
KEVIN J. DONOGHUE (1)
DAVID A. MARSHALL (2)
EDWARD J. SUSLOVIC (3)
CHERYL A. LEEMAN (4)

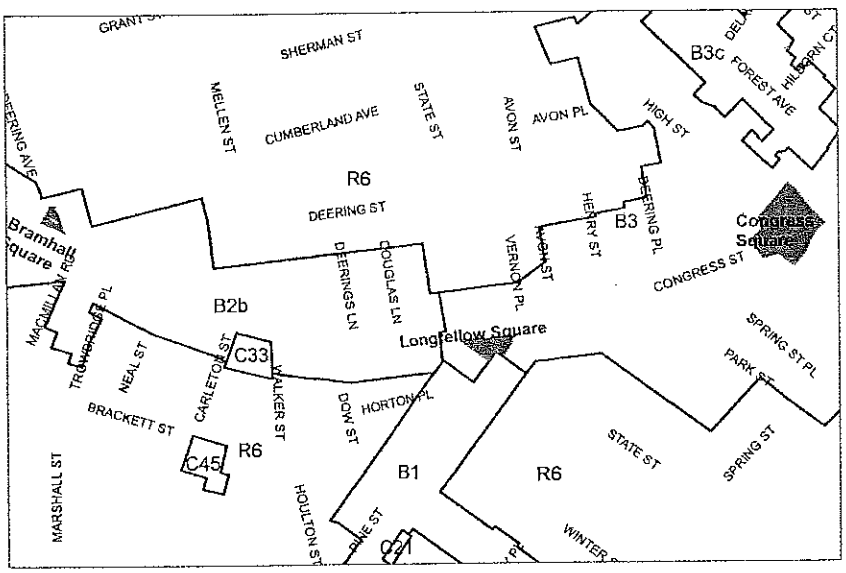
CITY OF PORTLAND
IN THE CITY COUNCIL

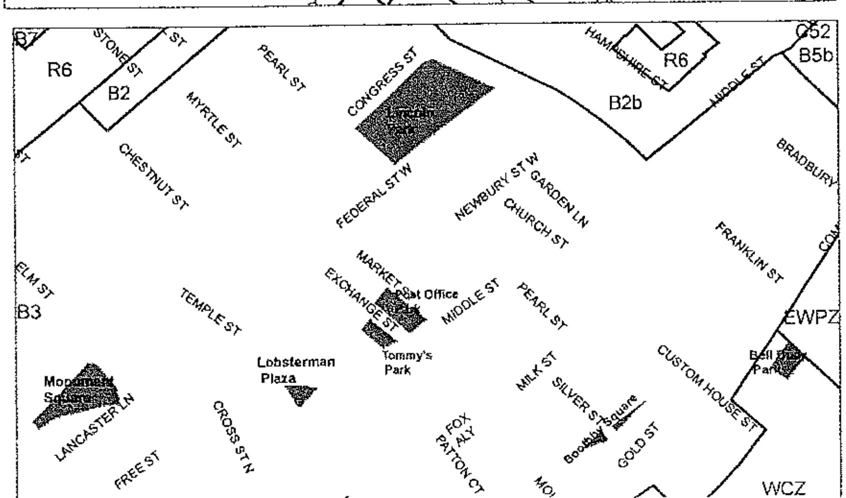
JOHN R. COYNE (5)
JILL C. DUSON (A/L)
JON HINCK (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

AMENDMENT TO ZONING MAP
RE: BRAMHALL, BOOTHBY, CONGRESS, LONGFELLOW, AND MONUMENT SQUARES; LOBSTERMAN PLAZA; AND LINCOLN, TOMMYS', POST OFFICE, AND BELL BUOY PARKS

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

That the Zoning Map of the City of Portland, dated December 2000, as amended and on file in the Department of Planning and Urban Development, and incorporated by reference into the Zoning Ordinance by §14-49, be and hereby is amended by adopting the following map change amendment as depicted in the two area maps below; and specifically adding Bramhall, Boothby, Congress, Longfellow, and Monument Squares; Lobsterman Plaza; and Lincoln, Tommys', Post Office, and Bell Buoy Parks (identified in green on the maps) as Recreation and Open Space.





MEMORANDUM
City Council Agenda Item

TO: Mayor Brennan and Portland City Council

FROM: Alexander Jaegerman, Planning Division Director

DATE: April 11, 2014

DISTRIBUTION: Mark Rees, City Manager, Mayor Brennan, Danielle West- Chuhta, Corporation Counsel, Sonia Bean, Nancy English

SUBJECT: Zoning Map Amendments to Recreation and Open Space Zone for Bramhall, Boothby, Congress, Longfellow, and Monument Squares; Lobsterman Plaza; and Lincoln, Tommys', Post Office, and Bell Buoy Parks and Text Amendments to the Land Use Code, Division 8.5. R-0S Recreation and Open Space Zone

SPONSOR: Stuart O'Brien, Chair, Planning Board

COUNCIL MEETING DATE ACTION IS REQUESTED:
1st reading: April 28, 2014 **Final Action:** May 5, 2014

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

PRESENTATION: Stuart O'Brien will make a five minute oral presentation on the Planning Board's recommendation. Alexander Jaegerman will be available to answer questions.

I. SUMMARY OF ISSUE (Agenda Description)

On March 17, 2014, the City Council unanimously voted (8-0, Coyne absent) to request that the Planning Board review and prepare a recommendation on rezoning Portland's Urban Squares from the current underlying zoning to the Recreation Open Space (ROS) zone.

The Planning Board held a workshop on the zoning map revisions and text amendments to the Recreation and Open Space (ROS) Zone on March 25, 2014 and held a public hearing on the proposed amendments on April 8, 2014. The Planning Board voted (5-1, O'Brien opposed, Boepple absent) to recommend to City Council the adoption of the proposed map amendments to rezone Bramhall, Boothby, Congress, Longfellow, and Monument Squares; Lobsterman Plaza; and Lincoln, Tommys', Post Office, and Bell Buoy Parks to the Recreation and Open Space. The Planning Board voted (5-1, O'Brian opposed, Boepple absent) to recommend the proposed text amendments to the Land Use Code, Division 8.5. R-0S Recreation and Open Space Zone, which revise the purpose statement, dimensional requirements and development standards.

II. REASON FOR SUBMISSION (Summary of Issue/Background)

The Council Request form for the March 17, 2014 City Council meeting states that the Council is seeking the Planning Board's recommendation for "...rezoning urban squares (for example, Longfellow Square, Congress Square, Monument Square or Boothby Square,) to Recreation Open Space ("ROS")". The City Council requested that the Planning Board complete its review prior to April 14, 2014.

III. INTENDED RESULT

As stated in the Council Request form (dated March 11, from Danielle West-Chuhta), the intended result of rezoning of urban squares to ROS is to ensure that the zoning of urban squares is appropriately aligned with their current uses and the City's zoning ordinance. The Planning Board has recommended the rezoning of 10 urban open spaces on the peninsula in order to support those areas as public open spaces. The Planning Board also recommends revisions to the ROS zoning text, which allow smaller scaled public open spaces to be included in the zone and incorporates development standards for public open spaces on the peninsula.

IV. COUNCIL GOAL ADDRESSED

The proposed zoning map and text amendments addresses the City goal to Advance an environmental program that safeguards our natural resources, promotes a healthy lifestyle and supports a sustainable economy.

V. FINANCIAL IMPACT

There is no financial impact.

VI. ANALYSIS

Green Spaces, Blue Edges, the City's most recent open space plan, calls for an integrated system that serves all residents throughout the city and includes implementation recommendations for physical improvements for the urban parks and plazas. Downtown Vision , the City's plan for the future of downtown Portland, addressed the range of urban open spaces that provide both passive and active recreation opportunities and the importance of the pedestrian links in the system for an integrated park system throughout Portland. The open spaces are defined as urban parks, plazas, pocket parks, and linear parks. All of the sites recommended to be rezoned are included within the recommendations for open space in Downtown Vision and the sites are all owned by the City of Portland. The proposed text amendments to the Recreation and Open Space zone eliminate the 2 acre minimum lot size, so the provisions of the zone are applicable to the smaller public open spaces located throughout the city and the purpose statement is revised to reflect the open space goal contained in Downtown Vision. The Planning Board found the proposed changes to be consistent with the Comprehensive Plan and that it is good land use policy to include the urban open spaces in the ROS zone for the city's stewardship. Stuart O'Brien voted against the proposed motions based upon his statement that he suggests a more comprehensive analysis of all of the City's open spaces is required before recommending zoning map and text amendments.

VII. PLANNING BOARD RECOMMENDATIONS

On April 8, 2014, the Planning Board voted (5-1, O'Brien opposed, Boepple absent) that the proposed map amendments to rezone Bramhall, Boothby, Congress, Longfellow, and Monument Squares; Lobsterman Plaza; and Lincoln, Tommys', Post Office, and Bell Buoy Parks to the

Recreation and Open Space zone are consistent with the Comprehensive Plan and recommends their adoption to the City Council.

On April 8, 2014, the Planning Board voted (5-1, O'Brien opposed, Boepple absent) that the proposed text amendments to the Land Use Code, Division 8.5. R-0S Recreation and Open Space Zone with the addition of the term public in 1,2 and 5 of the purpose statement are consistent with the Comprehensive Plan and recommends their adoption to the City Council.

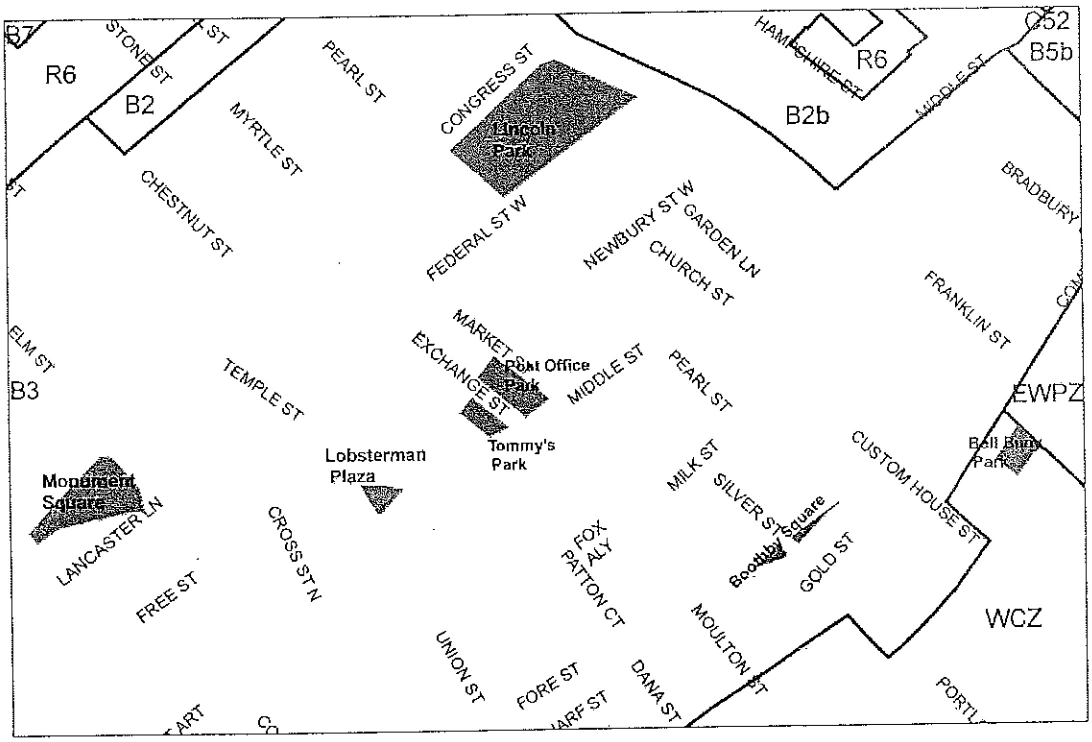
VIII. LIST ATTACHMENTS

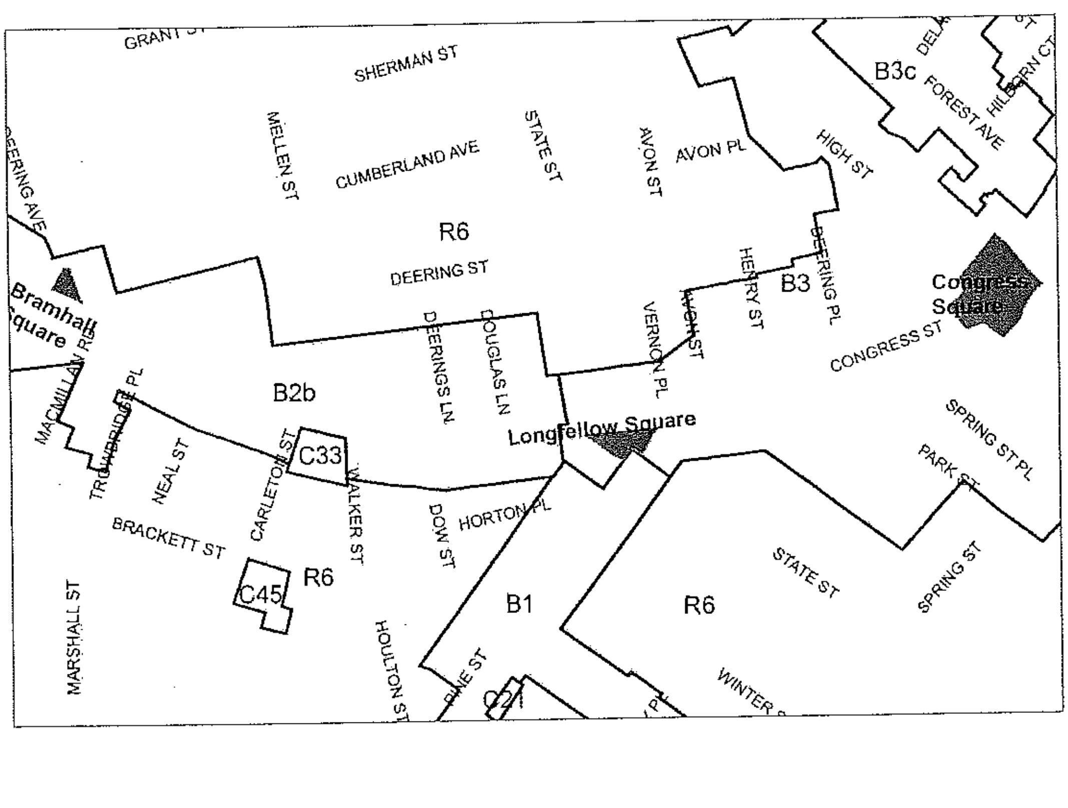
1. Planning Board Report to City Council

Prepared by:

__________________________ ____________________
Signature Date

Zoning Map Amendments to Recreation and Open Space Zone for Bramhall, Boothby, Congress, Longfellow, and Monument Squares; Lobsterman Plaza; and Lincoln, Tommys', Post Office, and Bell Buoy Parks
Portland Maine





PLANNING BOARD REPORT TO
CITY COUNCIL
PORTLAND, MAINE

Rezoning of Portland's Urban Squares
Zoning Map Amendments to Recreation and Open Space Zone for Bramhall, Boothby, Congress, Longfellow, and Monument Squares; Lobsterman Plaza; and Lincoln, Tommys', Post Office, and Bell Buoy Parks
and
Text Amendments to the Recreation and Open Space Zone
City of Portland, Applicant

Submitted to: Portland City Council Submitted by: Portland Planning Board	Prepared by: Barbara Barhydt, Development Review Services Manager Date: April 11, 2014

I. INTRODUCTION

On March 17, 2014, the City Council unanimously voted (8-0, Coyne absent) to request that the Planning Board review and prepare a recommendation on rezoning Portland's Urban Squares from the current underlying zoning to the Recreation Open Space (ROS) zone. The Council Request form states that the Council is seeking the Planning Board's recommendation for "…rezoning urban squares (for example, Longfellow Square, Congress Square, Monument Square or Boothby Square,) to Recreation Open Space ("ROS")". The City Council requested that the Planning Board complete its review prior to April 14, 2014.

The Planning Board held a workshop on the zoning map revisions and text amendments to the Recreation and Open Space Zone on March 25, 2014 and held a public hearing on the proposed amendments on April 8, 2014. The Planning Board voted (5-1, O'Brien opposed, Boepple absent) to recommend to City Council the adoption of the proposed map amendments to rezone Bramhall, Boothby, Congress, Longfellow, and Monument Squares; Lobsterman Plaza; and Lincoln, Tommys', Post Office, and Bell Buoy Parks to the Recreation and Open Space. The Planning Board voted (5-1, O'Brian opposed, Boepple absent) to recommend the proposed text amendments to the Land Use Code, Division 8.5. R-0S Recreation and Open Space Zone, which revise the purpose statement, dimensional requirements and development standards. Stuart O'Brien voted against the proposed motions based upon his statement that he suggests a more comprehensive analysis of all of the City's open spaces is required before recommending zoning map and text amendments.

A total of 665 notices were sent to property owners within 500 feet of the urban squares and the legal ad appeared in the Portland Press Herald on March 17 and 18, which provided notice for the workshop and the public hearing. Notices will be sent for the City Council public hearing.

II. RECREATION AND OPEN SPACE (ROS) MAP AMENDMENTS

Green Spaces, Blue Edges includes urban open spaces in its inventory of public lands (refer to section IV, Comprehensive Plan Analysis of this report). In general, the policy recommendations of the plan focus on the larger parks and facilities in the overall system and highlight the natural environment and environmental qualities of the City's open spaces. The plan does call for an integrated system that serves all residents throughout the city and includes implementation recommendations for physical improvements for the urban parks and plazas.

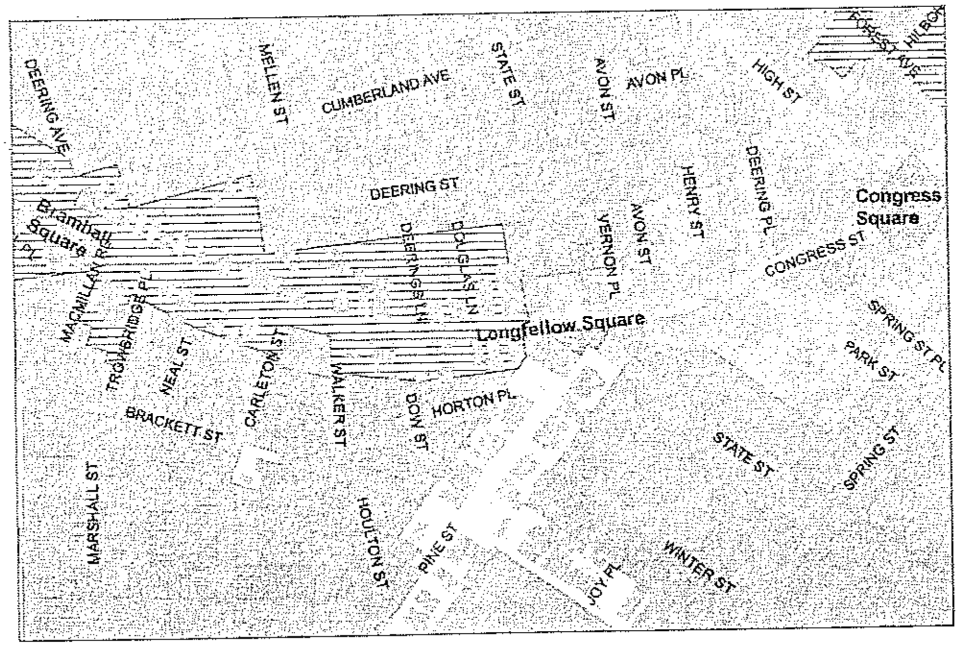
Downtown Vision addressed the range of urban open spaces that provide both passive and active recreation opportunities and the importance of the pedestrian links in the system for an integrated park system throughout Portland (refer to Section IV, Comprehensive Plan Analysis of this report). The open spaces are defined as urban parks, plazas, pocket parks, and linear parks. All of the sites recommended to be rezoned are included within the recommendations for open space in Downtown Vision and the sites are all owned by the City of Portland.

The City Council requested that the Planning Board provide a recommendation on "…rezoning urban squares (for example, Longfellow Square, Congress Square, Monument Square or Boothby Square,) to Recreation Open Space ("ROS"). The Planning Staff developed a list of ten parks and plazas on the peninsula in coordination with Department of Public Services and Corporation Counsel's office based upon a list of parks presented at the Council meeting (Attachment 1). The chart below includes the list of ten public open spaces considered for rezoning, the current zoning classifications, and whether the site has a historic designation or is within a historic district , if applicable.

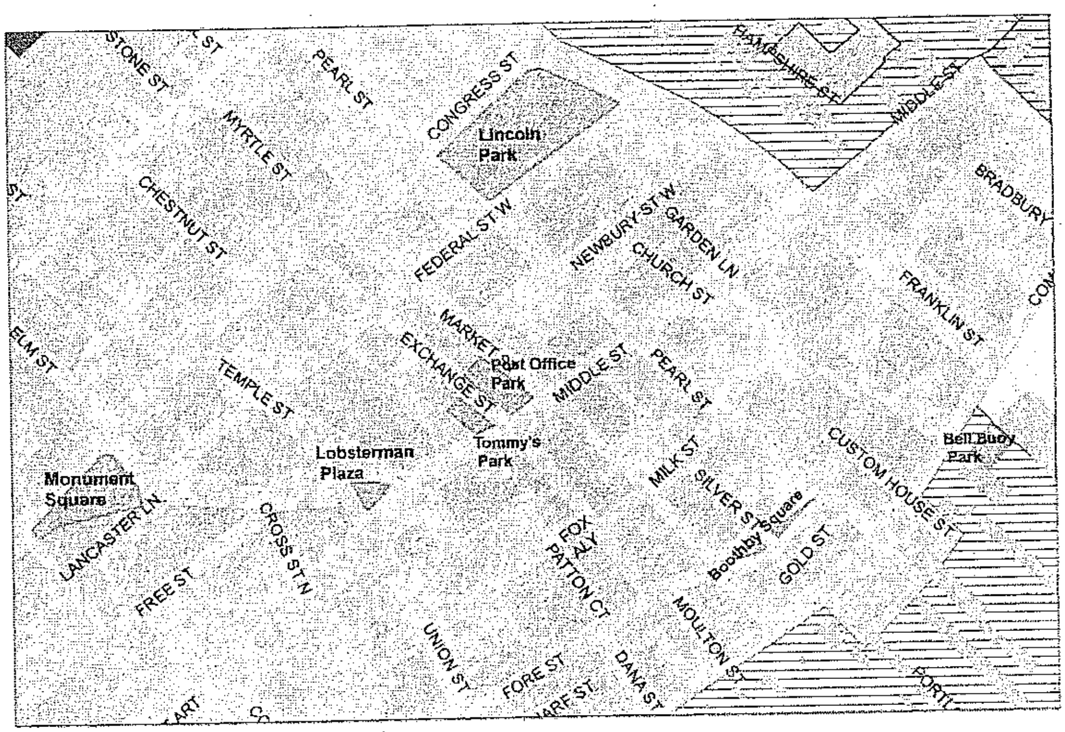
Name of Open Space	Current Zone Classification	Historic District/Landscape
Bell Buoy Park	Waterfront Central Zone	NA
Boothby Square	Downtown Business B-3	Waterfront Historic District
Bramhall Square	Community Business B-2b	Congress Street Historic District
Longfellow Square	Downtown Business B-3	Congress Street Historic District
Congress Square	Downtown Business B-3	Congress Street Historic District
Lincoln Park	Downtown Business B-3	Individually Designated Historic Landscape and within Congress Street Historic District
Lobsterman's Park	Downtown Business B-3	NA
Post Office Park	Downtown Business B-3	Waterfront Historic District
Tommy's Park	Downtown Business B-3	Waterfront Historic District
Monument Square	Downtown Business B-3	Individually Designated and within Congress Street Historic District

Andrews Square on Pine Street is excluded from the list as it is at the tip of the intersection in front of a school converted to housing. There is insufficient land area to define an area for rezoning, but it is within an historic district. As noted at the Planning Board workshop and public hearing, the focus of the proposed zoning amendments is on the public urban squares and small parks located on the peninsula. There are small parks off the peninsula, which were not included in this proposal. The City Council is evaluating open spaces throughout the City. It is anticipated the Council will be seeking the Planning Board's recommendations on zoning designations for public open spaces off-peninsula, including those properties held or overseen by the Land Bank and Parks Commission.

Following are two vicinity maps that show the proposed map amendments for the peninsula. The majority of the public open spaces are along or near the Congress Street corridor with the other sites in the Old Port area. Individual maps for the proposed map amendments follow the vicinity maps.



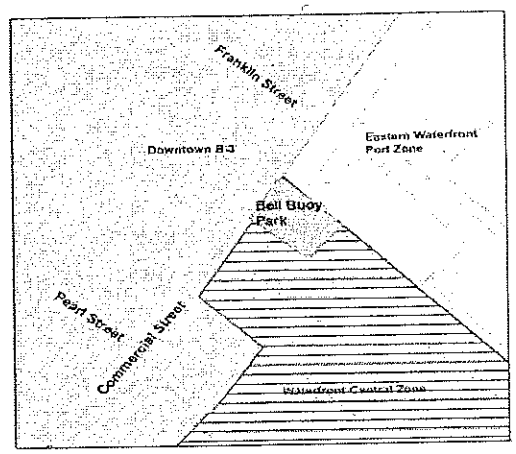
Bramhall, Longfellow and Congress Squares along Congress Street



Monument Square, Lobsterman Plaza, Lincoln Park, Tommy's Park, Post Office Park, Boothby Square and Bell Buoy Park.

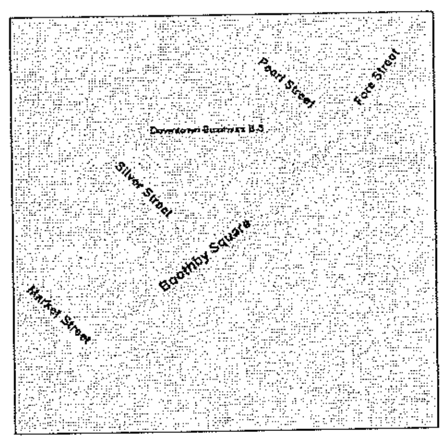
Proposed Individual Map Amendments

1. *Bell Buoy Park: Currently zoned Waterfront Central Zone (WCZ)*



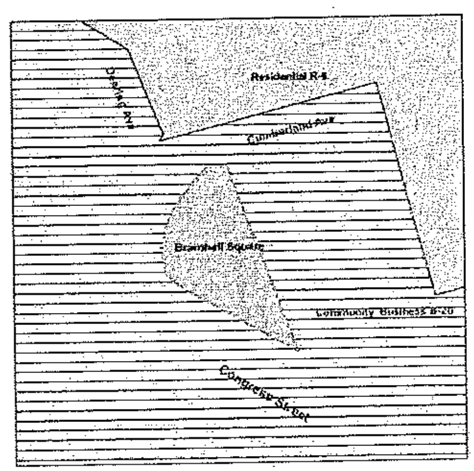
Proposed Map Amendment to
Bell Buoy Park
Rezone from Waterfront Central Zone (WCZ)
to Recreation Open Space (ROS)

2. *Boothby Square – Currently zoned Downtown Business Zone (B-3)*



Proposed Map Amendments to
Boothby Square
Rezone from Downtown Business B-3 to
Recreation Open Space (ROS)

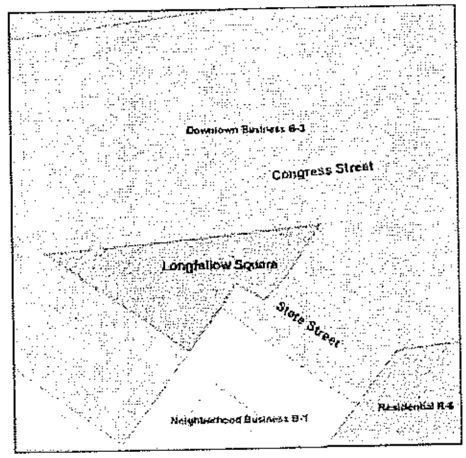
3. *Bramhall Square: Currently zoned Community Business Zone (B-2b)*



Proposed Map Amendment
Bramhall Square
Rezone from Community Business B-2b
to Recreation Open Space (ROS)

4. *Longfellow Square: Currently zoned Downtown Business Zone (B-3)*

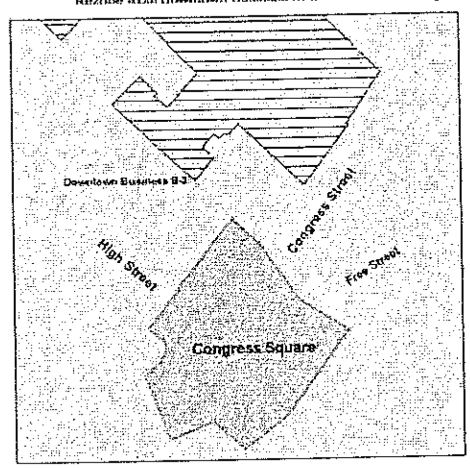
   Please note that the Longfellow Square proposal includes areas on both sides of State Street..



Proposed Map Amendment
Longfellow Square
Rezone from Downtown Business (B-3)

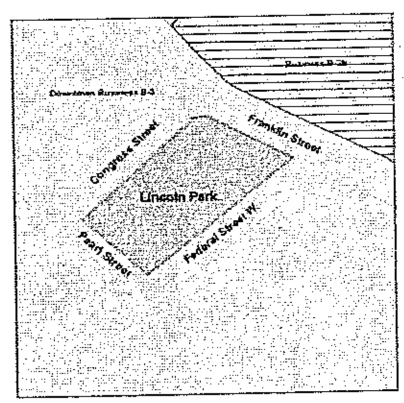
5. *Congress Square: Currently zoned Downtown Business Zone (B-3)*

   Please note that the Congress Square proposal includes areas on both sides of the converging streets. The Congress Square proposal incorporates 40 feet of plaza area along Congress Street, but it does not incorporate the area that is part of the purchase and sale agreement with Rockbridge.



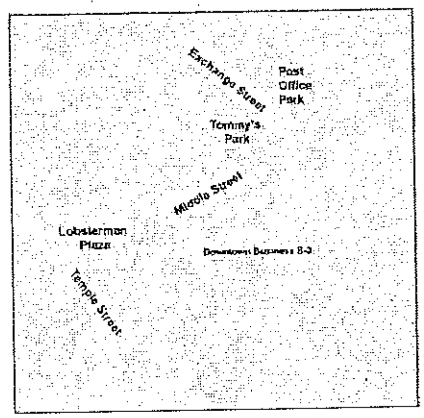
Proposed Map Amendment
Congress Square
Rezone from Downtown Business (B-3)
to Recreation Open Space (ROS)

6. *Lincoln Park: Currently zoned Downtown Business Zone (B-3)*



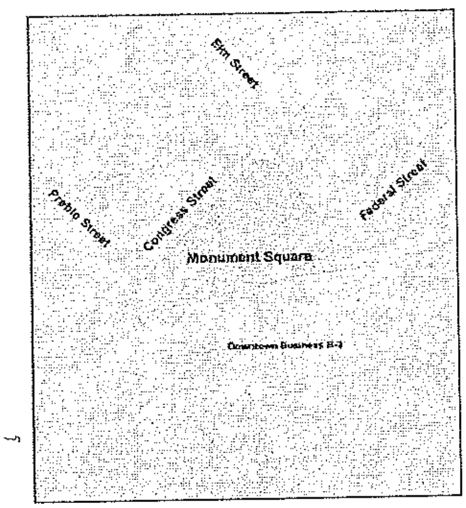
Proposed Map Amendment
Lincoln Park
Rezone from Downtown Business (B-3)
to Recreation Open Space (ROS)

7. *8. And 9. Lobsterman's Park, Tommy's Park and Post Office Park; Currently zoned Downtown Business Zone (B-3)*



Proposed Map Amendments to
Lobsterman Plaza, Tommy's Park and Post Office Park
Rezone from Downtown Business B-3 to
Recreation Open Space (ROS)

10. *Monument Square: Currently zoned Downtown Business Zone (B-3)*



Proposed Map Amendments to
Monument Square
Rezone from Downtown Business B-3 to
Recreation Open Space (ROS)

III. <u>RECREATION AND OPEN SPACE ZONE: TEXT AMENDMENTS</u>

The proposed amendments to Division 8.5 R-OS Recreation and Open Space are summarized below and the complete text with proposed amendments is included as <u>Attachment 3</u>.

1. <u>Purpose Statement</u>:
   a. The purpose section of the ROS zone (Sec. 14-153) currently has four purpose statements. A fifth statement is proposed, which is based upon one of the Open Space Goals from the <u>Downtown Vision</u> plan (refer to Comprehensive Plan below). In <u>Downtown Vision</u> the overarching term used is open space, which is then articulated as urban parks, plazas and pocket parks (refer to Section IV, Comprehensive Plan). At the public hearing, the Planning Board recommended that the term "public" be inserted in paragraphs 1, 2 and 5 to

clarify the purpose statement and which is consistent with the Comprehensive Plan terminology. The revised purpose section is as follows:

Sec. 14-153. Purpose.

(a)The purpose of this division is:

1. To preserve and protect public open space as a limited and valuable resource;

2. To permit the reasonable use of public open space, while simultaneously preserving and protecting its inherent open space characteristics to assure its continued availability for public use as scenic, recreation, and conservation or natural resource area, and for the containment and structuring of urban development;

3. To coordinate with and carry out federal, state, regional, and city recreation and open space plans; ~~and~~

4. To provide a suitable location for large-scale regional sports and athletic facilities; and~~.~~

5. To develop a public open space system throughout the Downtown, which provides the highest quality parks, plazas, and pedestrian environment.

b. The ROS purpose statement also provides guidance on potential sites suitable for the ROS zone, which specifically identifies parcels over 2 acres. The proposal is to eliminate the 2 acre minimum, so that the ROS could apply to smaller parks throughout the City. This is consistent with recommendations for public improvements contained within Green Space, Blue Edges, and supports the Downtown Vision goal for an integrated open space system, including the full range of urban open spaces.

(b) The recreation open space zone may include ~~major~~ parcels ~~(over two (2) acres)~~ of public property, and private property legally restricted from intensive use or development through deed, covenant, or otherwise.

2. Permitted Uses:
The permitted uses of the ROS zone are listed under Section 14-154. Examples of the uses include municipal parks, public open spaces, picnic areas, playgrounds and play lots; cemeteries; arboretums, golf courses, excluding miniature golf; boat landings, beaches and marinas for public use; and etc (refer to Attachment 3). The current list of permitted uses does not include events, markets, festivals etc., and these events have been permitted in public opens spaces throughout the city under the City's licensing procedures. A new permitted use category is proposed as follows:

(q). Events, activities, and uses licensed by the city, including but not limited to markets, festivals, café seating, concerts, and other gatherings.

3. <u>Space and Bulk Requirements</u>:
There are two proposed amendments to the space and bulk requirements of the ROS zone. The first revision is to exempt public open spaces that are less than 2 acres and that are located on the peninsula from the space and bulk requirements. The proposed language focuses the exemption on the peninsula where open space in the urban center are intensively developed. The proposed language does extend this exemption for off-peninsula locations, which may be more sensitive to development due to environmental conditions or neighborhood context.

The second revision is to eliminate the 2 acre minimum lot size. All other requirements remain the same. The two revisions to Section 14-157 Space and bulk requirements are as follows (refer to Attachment 5 for complete text):

Revision 1

> No building or structure of a permanent nature shall be erected, altered, enlarged, rebuilt, or used unless it meets the following requirements <u>except that public open spaces that are less than 2 acres and are on the peninsula are not required to meet the following space and bulk requirements</u>:

Revision 2

> ~~(d) *Minimum lot size:* Two (2) acres, except that sewage treatment facilities are not required to meet this standard.~~

4. <u>Development standards for recreation and open space zone.</u>
The development standards for the Recreation and Open Space zone contain development standards to be met and the requirement that the proposals, "… will be reviewed by the Planning Board in conjunction with the site plan review:" Currently, the development standards and Planning Board review would apply to parks with 2 acres or more of land area. In 2010, the site plan ordinance was updated and included revised thresholds for development, including provisions for park improvements.

An administrative review of a Level II site plan is required for the following park improvements:

> Park improvements consisting of new structures or buildings of less than 10,000 square feet and/or facilities encompassing an area of greater than 7,500 square feet and less than 20,000 square feet, excluding the rehabilitation or replacement in kind of existing facilities.

A Planning Board review of a Level III site plan is required for the following park improvements:

> Park improvements consisting of new structures greater than 10,000 square feet and /or facilities encompassing an area of 20,000 square feet or greater, excluding the rehabilitation ore replacement of existing facilities. Any park improvements including the provision of new nighttime outdoor lighting or sports, athletic or recreation facilities not previously illuminated.

The Planning Board is recommending that the amendments eliminate the reference to the Planning Board review and cross reference the site plan ordinance, as applicable.

Based upon a review of the Comprehensive Plan, the Planning Board is recommending that the development standards include language that addresses the design objectives for urban open spaces and consistency with adopted city policies and master plans. The proposed amendments are as follows:

Sec. 14-158. Development standards for recreation and open space zone.

All development in the recreation and open space zone shall comply with the following development standards, ~~which shall be reviewed by the Planning Board in conjunction with~~ and shall be reviewed under the site plan ordinance~~review~~, as applicable:

(a) All ground areas not used for parking, loading, vehicular or pedestrian areas and not left in their natural state shall be suitably landscaped and designed with quality materials that are consistent with adopted city policy or master plans, and which provide a comfortable, durable, accessible, readily maintainable, and aesthetically pleasing environment.

IV. COMPREHENSIVE PLAN POLICIES

The proposed zoning map amendments and the text amendments were presented At the Planning Board March 25, 2014 workshop. The Board sought more information about the Recreation and Open Space Zone, a definition of urban squares or urban open spaces, and clarity on the term quality materials. Green Spaces, Blue Edges and Downtown Vision are the two comprehensive plan documents relevant to the proposed zoning amendments are summarized below.

A. Green Spaces, Blue Edges

Green Spaces/Blue Edges was first prepared in 1994 and updated in 2002. In the inventory of open space, the plan include cemeteries, the golf course, open space (Fore River Sanctuary and adjoining environmentally sensitive lands), parks, playgrounds, sports center, squares, and schools. The squares listed include Longfellow Square, Congress Square, Monument Square, Boothby Square, Caldwell Square and Andrews Square. There are a number of parks listed on the peninsula, including Lincoln Park, Bramhall Park, Lobsterman Park, Tommy's Park and Post Office Park.

The three Guiding Principles of the Green Spaces, Blue Edges plan address neighborhoods, park management and the interconnected system. The guiding principles and relevant policies are excerpted below:

- Neighborhoods form the foundation of Green Spaces, Blue Edges. The plan exists to serve the health and enjoyment of neighborhood residents.
  - Neighborhoods should have open space focal points.
  - Recreation opportunities should be available for all ages and genders.
  - Neighborhood open space should be within walking distance.
  - Portland residents appreciate their park system.

- Parks and open spaces must be cared for under a sound management system driven by both environmental and human needs. (3 of 7 policies listed below)
    - o Appropriate resources must be available for maintenance. The report advocated an increase in operating budget resources for park and facility maintenance.
    - o Long-term open space and recreation needs must be defined to insure an adequate share of the ten-year capital improvement budget.
    - o Public and private partnerships should be fostered to increase available resources and bolster stewardship of Portland's parks.
- The City and regional parks, open space, recreation and natural features comprise an environmental whole physically connected and interdependent.
    - o Green Space, Blue Edges supported a greenbelt of linkage concept for the City's entire park system as a desirable and efficient way to organize and improve the park system.
    - o Protection of natural resources as open space has an inherent value to the community beyond its aesthetic or recreation role.

One of the Goals of the Green Space, Blue Edges is as follows:

- Provide a wide range of recreation and open space opportunities to address the athletic, recreation, leisure, ecological, and scenic needs of Portland's diverse population.

Staff Comment: In general Green Spaces, Blue Edges addresses the natural environment, athletic facilities and the full range of recreational opportunities for Portland. It also seeks to support an interconnected system throughout the city. Urban open spaces are not defined nor have specific opolicy recommendations in the plan; however the public open spaces located on the peninsula are included in the inventory and recommendations for physical improvements to these open spaces are listed in the implementation section. While the policies do not define quality materials, the management policies address the need for adequate resources from multiple sources to support the long-term maintenance of park facilities.

B. Downtown Vision

Downtown Vision was adopted as part of the Comprehensive Plan in 1991. The plan addresses urban spaces in the chapter titled Open Space and Pedestrian Environment (chapter included as attachment 2). It defines a full range of existing open spaces in the Downtown including urban parks, plazas, pocket parks, entry plazas, gardens, and linear parks. Examples include Lincoln Park as an urban park; Monument and Congress Squares as plazas; and Tommy's Park as a pocket park. Downtown Vision also defines interior spaces such as atriums and through-block connections within buildings, as open spaces that promote pedestrian connections. The definitions are as follows:

1. Urban Park: Urban parks are large, predominantly natural, park-like gathering places in or near the Downtown, such as Lincoln Park and Deering Oaks Park.
2. Plaza. Plazas provide an opening in the dense urban fabric, functioning as an outdoor room where people gather to enjoy the quality of the space and to watch other people. Examples Downtown include Monument and Congress Squares and City Hall Plaza.

3. Pocket Park. Pocket parks are smaller open spaces generally framed by buildings and often the result of making creative use of space which remained following the demolition of another structure. Tommy's Park is such a pocket park.
4. Entry Plaza. Entry plazas are open spaces which generally emphasize entry circulation to a building, sometimes with or without landscaping or seating, such as the entrances to the Casco Bank Building and Maine Savings Plaza.
5. Garden Gardens are intimate, sheltered landscaped areas intended for quiet recreational pursuits such as reading, chess, and brown-bagging by individuals and small groups. An example is the Longfellow House Garden.
6. Interior Atrium. Interior atriums can be dramatic interior open spaces which provide sheltered access to shopping and dining activity during inclement weather, as well as convenient through block passage. Examples include Once City Center.
7. Through-block Connection. Through-block connections facilitate the convenient movement of pedestrians by shortening walking distances between streets. These connections can be extremely valuable during winter months when the pedestrian wishes to minimize exposure to cold or inclement weather. These can be formal and provide access to multiple retail or service business, such as One Monument Way, or for the familiar Downtown pedestrian can be less forma and include passing through businesses which have entrances on two streets…
8. Linear Park. Linear Parks are open spaces which tend to follow an extended linear path either linking specific areas or serving as access to a series of amenities. Examples include the shoreway access route being extended along the central waterfront providing immediate access to a variety of harbor views and activities, the potential connections along abandoned rail lines in both the India Street and Bayside areas, and the Franklin Street Arterial which offers similar open space connection opportunities.
9. Pedestrian Sidewalk Linkages. Perhaps the most common of open spaces, sidewalks along public streets throughout the Downtown are vital open space connections linking other open spaces and various Downtown activities. These connections are also the critical lines of movement between the Downtown and its surrounding neighborhoods. Certain streets, because of the volume of pedestrian activity and because of adjacent cultural facilities, a concentration of businesses, other major open spaces, or important visitor attractions, have been identified as primary pedestrian linkages. Policies regarding ground-floor pedestrian uses, protection of view corridors affecting these linkages, and high levels of pedestrian amenity along these routes are put forward in this Downtown Vision. Examples of these linkages are Congress and Exchange Streets.

The chapter called Open Space and Pedestrian Environment in Downtown Vision includes the following two open space goals:

2. Encourage excellence in urban design and sensitivity to pedestrian scale and interest throughout the Downtown in the construction, renovation, and rehabilitation of streets, pedestrian ways, and open space.
3. Develop an open space system throughout the Downtown which provides the highest quality parks, plazas, and pedestrian environment. Pedestrian

improvements and amenities should utilize the best materials and be carefully-designed to provide a comfortable, durable, accessible, readily maintainable, and aesthetically-pleasing environment.

Downtown Vision also includes a chapter titled "A Design Framework For Downtown", which forms the basis for the B-3 Design Standards. Under the section "A Design Framework for Future Growth, the following subsection provides guidance on the type and quality of materials for open space and the pedestrian environment.

Designing for the Public Realm: Creating a Rich Urban Fabric

d. Sidewalks, open spaces and pedestrian amenities: New development and City investments should contribute to the quality of the urban streetscape. Brick sidewalks, or a combination of brick with granite or concrete sections are the standard for Downtown. Ornamental pedestrian lighting should be introduced throughout the downtown, with a thematic pedestrian lighting fixture to provide a sense of security, elegance, and vitality into the evening hours. A limited number of lighting standards should be established to provide continuity and identity for gradual distribution throughout the Downtown. Attractive street furniture including benches, bollards, planters and trash receptacles should be installed and maintained. The cylindrical trash receptacle has proved to be an acceptable standard, with the recently introduced "Ironsite" fixture a desirable option where resources permit. Street trees with guards and grates are a valuable contribution to the sidewalk environment. Plazas and pocket parks should be integrated within larger scale development. The location and design of such spaces should promote public use and tie into the Downtown open space network. Care should be taken not to disrupt significant streetwalls with plazas, where continuity of sidewalk, possibly widened, is more appropriate.

The goal from urban design chapter reflects the wording in the open space chapter:

- Develop an open space system throughout the Downtown which provides the highest quality parks, plazas, and pedestrian environment. Pedestrian improvements and amenities should utilize the best materials and be carefully designed to provide a comfortable, durable, accessible and aesthetically pleasing environment. Buildings fronting on pedestrian open space should be of high quality materials, of significant detail and interest to enhance the walking environment, and readily accessible from the pedestrian way.

Staff Comment: Downtown Vision defines the public open spaces on the peninsula and identifies the pedestrian network as components of Portland's interconnected open space system, as referred to in Green Spaces, Blue Edges. The squares, plazas, and parks proposed for the map amendments to Recreation and Open Space (ROS) are the squares and urban open spaces listed in both plans, Downtown Vision and Green Spaces, Blue Edges.

The term quality material is used in the Open Space policies and the Urban Design chapter of Downtown Vision. The chapters state the improvements should be designed to provide a comfortable, durable, accessible and aesthetically pleasing environment. Since the adoption of Downtown Vision, Portland has adopted policies, master plans and the Congress Street Historic District, which address quality design for the Downtown. For example, the sidewalk material policy adopted by City Council specifies brick sidewalks on the peninsula and the

Technical Manual identifies the type of street light fixtures required in Downtown neighborhoods. There are master plans for Spring Street and Congress Street that articulate streetscape improvements and the recent Rapid Bus Corridor study guides choices regarding street improvements and bus shelter facilities. The recently established Congress Street Historic District extends from Lincoln Park to Bramhall Square, thus exterior improvements on private and public property (including within the street right-of-way) require a certificate of appropriateness under the Historic Preservation Ordinance.

V. PLANNING BOARD RECOMMENDATION

1. Zone Map Amendments:

On April 8, 2014, the Planning Board voted (5-1, O'Brien opposed, Boepple absent) that the proposed map amendments to rezone Bramhall, Boothby, Congress, Longfellow, and Monument Squares; Lobsterman Plaza; and Lincoln, Tommys', Post Office, and Bell Buoy Parks to the Recreation and Open Space zone are consistent with the Comprehensive Plan and recommends their adoption to the City Council.

2. Zoning Text Amendments to the Recreation and Open Space Zone:

On April 8, 2014, the Planning Board voted (5-1, O'Brien opposed, Boepple absent) that the proposed text amendments to the Land Use Code, Division 8.5. R-0S Recreation and Open Space Zone with the addition of the term public in 1,2 and 5 of the purpose statement are consistent with the Comprehensive Plan and recommends their adoption to the City Council.

Attachments:
1. List of Parks for the Council Meeting
2. Downtown Vision: Open Spaces and Pedestrian Environment
3. Proposed Text Amendments to Portland Land Use Code, Division 8.5. R-OS Recreation and Open Space Zone

Attachment 1

Approximate Park Acreages: Mainland Portland

East End	Acres
1812 Cemetery	(E. Prom.)
Adams School	1.5
Adams Street/Munjoy South PG	1
Bayside/Fox St. Playfield	4
Boyd St. Open Space	2
Cummings Community Ctr.	0.4
East End Beach	(E. Prom.)
Eastern Cemetery	5.3
Eastern Promenade	68.2
Fort Allen Park	9.33
Fort Sumner Park	1.25
Franklin St. Arterial	1
East End School (formerly Jack School)	5
Loring Memorial	(E. Prom.)
Marginal Way Lot/Festival	3.5
Peppermint Park/Smith St PG	0.5
Portland Observatory	0.1
Total Acres	**103.08**
Downtown	**Acres**
Bell Bouy Park	0.11
Boothby Square	0.11
City Hall Plaza	0.15
Congress Square	0.34
Free St. Park/Ford Mnt.	0.22
Lincoln Park	2.5
Lobsterman Plaza	0.34
Longfellow Square	0.25
Monument Square	0.65
Pleasant St. PG	0.5
Post Office Park	0.15
Preble St. Field	3.5
Stone St. PG	0.06
Tommy's Park	0.15
Total Acres	**8.27**
West End	**Acres**
Andrews Square	0.05
Bramhall Square	0.2
Clark St. PG	0.26
Deering Oaks	54
Fitzpatrick Stadium	7
Hadlock Field	5
Harbor View Park	2.5
King Middle School	2
McIntyre/Taylor St. Park	0.5
Reiche School	5
Tyng/Tate PG	0.25
Valley Street PG/OLA	2

Western Cemetery	12
Western Prom.	18.5
Total Acres	**104**
Oakdale	***Acres***
Bedford Park	0.52
Belmeade Park	0.25
Burrow's Park	0.25
Devonshire Park	0.3
Fessenden Park	0.46
Longfellow Park	0.34
Nathan Clifford School	1.53
Pedro Field/Oakleigh Park	1.26
Preble St. Field	3.5
Winslow Park	1.26
Total Acres	**9.67**
Rosemont	**Acres**
Caldwell Square	0.12
Capisic Park	1.1
Capisic Pond Park	18
Dougherty Field	12
Edward Street Cemetery	0.62
Fore River Park	2.1
Hobart St. Parcel	6.1
Thomas Square	0.46
Total Acres	**40.5**
Deering Center	*Acres*
Baxter Pines	5.9
Baxter Woods	30
Deering Memorial HS Complex	12
Evergreen Cemetery	239
Lincoln School	2.3
Longfellow School	1.1
Presumpscot Park (at Deering HS)	6.3
Total Acres	**296.6**
Ocean Avenue	***Acres***
Barrows/Sundial Park	0.53
Baxter Boulevard/Back Cove Park	33.36
Baxter School Playfield	5.63
George Street Cemetery	0.25
Heseltine Park	0.82
Payson Park	47.75
Trinity Park	0.1
Total Acres	**88.44**
East Deering	***Acres***
East Deering Cemetery	0.6
Martin's Point/School Dept.	1
Presumpscot School	5.4
Total Acres	**7**
North Deering	Acres
Auburn Street Open Space	???
Fobes Cemetery	0.2
Lyseth/Lyman Moore Field	18
Oatnuts Park	15

Ocean Ave Landfill/Quarry Run Dogpark	40
PATH School (PRVTC)	22.3
Pine Grove Park	6.5
Presumpscot River Preserve	60
University Park	8.6
Total Acres	**170.6**
Riverton	Acres
Bailey Cemetery	1.2
Letson's Purchase	29.25
Quaker Park	0.8
Reed School Warehouse Open Space	0.65
Riverside Golf Course	242
Riverton Park	19
Riverton School	20
Total Acres	**312.9**
Nason's Corner	Acres
Hall School	12
Nason's Corner Park	1.8
Sagamore Village PG	???
Total Acres	**13.8**
Stroudwater	Acres
Stroudwater Cemetery	1.22
Stroudwater Park	0.75
Stroudwater Park II (State-owned)	0.5
Total Acres	**1.97**
	1156.8
Total Acreage for All Parks on Mainland Portland	

Total City Mainland Acres **11749.2**

OPEN SPACE AND PEDESTRIAN ENVIRONMENT

Introduction

Open space in Downtown Portland is made up of a variety of large and small publicly-accessible spaces, as well as the network of streets, sidewalks and through-block connections which tie these areas together and with other Downtown activities and neighborhoods. These open spaces form the gathering places where people downtown come together and interact. The livability of a city is mirrored in the character and quality of its parks and open spaces. Each of Portland's open spaces offers a respite from the buildings and urban hustle around it and a chance to step back and admire the streets, architecture, and general appearance of the City.

Where these public spaces promote human comfort and safety, accommodate and encourage diverse activities, and are located in relation to other activities and pedestrian circulation patterns, they should be full of people and exhibit the vitality and excitement of being Downtown. Downtown Portland is livable to the extent that these parks and pedestrian corridors are used and enjoyed.

Open spaces, including Lincoln Park, Monument, Longfellow and Boothby Squares, City Hall Plaza and nearby Deering Oaks Park contribute an historical context reflecting the growth of the City. These public open spaces reflect the tradition of open space planning which began with City Engineer William Goodwin, Mayor James Phinney Baxter, and the Olmsted Brothers at the turn of the century. More recent open spaces, including Canal Plaza and the plazas at Maine National Bank, Portland Square, and Maine Savings Bank have been incorporated within private development projects.

Connecting these various parks and plazas, the pedestrian sidewalk areas throughout the Downtown are important threads that tie this open space and building fabric together. Every sector of the Downtown economy demands a safe, pleasant and vibrant pedestrian environment to encourage retention and recruitment of businesses, employees, residents, customers and visitors.

Walkable City

The scale of the central business area and the relatively short distances between districts and activities Downtown allow at most a five-to-ten minute walk from any one point to another. Figure ___ provides a general sense of Downtown walking distances and average walking time. This immediate accessibility encourages face to face interactions, browsing and lunchtime shopping, and the frequent use of parks, plazas and cultural amenities.

Figure ___: Walking Distances

A variety of studies from other cities suggest that the average person has a comfortable walking radius of between 900 and 1,300 feet - a range most of Downtown Portland's major employment and activity centers fall within. The Downtown Parking Study found that the average walking distance of a commuter parking in the Temple Street, Congress Square and Spring Street garages is a relatively short 1.6 blocks, or approximately 600 feet.

Distances which an individual is willing to walk, however, can increase or decrease in response to the pedestrian environment and are affected, too, by expectations and past-practices. Acceptable walking distances can be increased where sidewalks and parks are maintained, street-level activity both on the sidewalk and in the ground-floor uses of buidings are interesting and the character of building, paving, lighting and other elements are inviting. Acceptable walking distances decrease where significant gaps in pedestrian-level uses or a lack of activity or interest to the pedestrian occur, where sidewalks are poorly maintained or the street life uninviting.

In addition, varying weather conditions affect comfort and desirable distances on a day to day basis. The challenge facing the Downtown is to assure a street-level experience that is sufficiently inviting and interesting to encourage walking and to overcome the automobile-oriented expectations of many who use the Downtown.

Existing Open Space

For a detailed inventory of existing Downtown open space, consult the Downtown Vision Technical Report #4: Urban Form, Open Space and Pedestrian Environment. The Downtown can be categorized into the following general types of public and private open space:

1. Urban Park. Urban parks are large, predominantly natural, park-like gathering places in or near the Downtown, such as Lincoln Park and Deering Oaks Park.

2. Plaza. Plazas provide an opening in the dense urban fabric, functioning as an outdoor room where people gather to enjoy the quality of the space and to watch other people. Examples Downtown include Monument and Congress Squares and City Hall Plaza.

3. Pocket Park. Pocket Parks are smaller open spaces generally framed by buildings and often the result of making creative use of space which remained following the demolition of another structure. Tommy's Park is such a pocket park.

4. Entry Plaza. Entry plazas are open spaces which generally emphasize entry circulation to a building, sometimes with or without landscaping or seating, such as the entrances to the Casco Bank Building and Maine Savings Plaza.

5. Garden. Gardens are intimate, sheltered landscaped areas intended for quiet recreational pursuits such as reading, chess, and brown-bagging by individuals and small groups. An example is the Longfellow House garden.

6. Interior Atrium. Interior Atriums can be dramatic interior open spaces which provide sheltered access to shopping and dining activity during inclement weather, as well as convenient through-block passage. Examples include the One City Center.

7. Through-block Connection. Through-block Connections facilitate the convenient movement of pedestrians by shortening walking distances between streets. These connections can be extremely valuable during winter months when the pedestrian wishes to minimize exposure to cold or inclement weather. These can be formal and provide access to multiple retail or service busnesses, such as One Monument Way, or for the familiar Downtown pedestrian can be less formal and include passing through businesses which have entrances on two streets, such as Porteous, Carroll Reed or Maine National Bank. These connections are enlivened by the merchandise and daily activity of the respective businesses and, in the case of Maine National Bank, by rotating exhibits of local artists which have been placed along the connection.

8. Linear Park. Linear Parks are open spaces which tend to follow an extended linear path either linking specific areas or serving as access to a series of amenities. Examples include the shoreway access route being extended along the central waterfront providing immediate access to a variety of harbor views and activities, the potential connections along abandoned rail lines in both the India Street and Bayside areas, and the Franklin Street Arterial which offers similar open space connection opportunities.

9. Pedestrian Sidewalk Linkages. Perhaps the most common of open spaces, sidewalks along public streets throughout the Downtown are vital open space connections linking other open spaces and various Downtown activities. These connections are also the critical lines of movement between the Downtown and its surrounding neighborhoods. Certain streets, because of the volume of pedestrian activity and because of adjacent cultural facilities, a concentration of businesses, other major open spaces, or important visitor attractions, have been identified as primary pedestrian linkages. Policies regarding ground-gloor pedestrian uses, protection of view corridors affecting these linkages, and high levels of pedestrian amenity along these routes are put forward in this Downtown Vision. Examples of these linkages are Congress and Exchange Streets.

Open Space Network

In a discussion of Downtown open space, two different perspectives are useful in developing policies which promote and enhance livability. The first perspective is "the big picture" of open space throughout the Downtown. Downtown Vision calls for the recognition and enhancement of a Downtown Open Space Network of distinctive individual plazas and parks connected through a network and hierarchy of sidewalk linkages and through-block connections. See Figure ___. Characterizing these open spaces in a network asserts that these spaces work together in a variety of ways to establish the character of the Downtown.

Existing individual open spaces have been inventoried and general recommendations for their improvement are identified in the policy discussion which follows. Specific recommendations for the establishment of new individual open spaces are discussed as well. The placement of these open spaces and the placement of any additional open spaces must be in coordination with this open space network to assure a supporting relationship and to avoid redundancy and detrimental competition for pedestrian activity.

Linkages are designated based on the locations of principal open spaces and on preferred pedestrian connections between open spaces and from open spaces to other pedestrian activity centers. Where possible, pedestrian linkages are coordinated with existing view corridors, historic building resources, and key commercial and institutional uses. This plan for Downtown open space includes and enhances existing linkages, and also identifies specific additional linkages that are now important or will become important as other elements of Downtown Vision evolve.

The second perspective focuses on the individual park or plaza or other open space and improvements which are needed to make that open space successful. Commitment to a high quality Downtown pedestrian environment must include standards and guidelines addressing what makes a successful open space and what makes a desirable and vibrant sidewalk setting. Appropriate guidance increases the likelihood that funding for park improvements will result in a usuable and enjoyable park.

Open space is a benefit to both the general public and private development. Downtown is fortunate to have several privately-developed but publicly-accessible open spaces which enrich the pedestrian experience. The city must encourage the retention and enhancement of these private open spaces. With intensifying periods of fiscal austerity at the State and local levels in municipalities across the country, the private sector has recognized the benefits of open space and stepped forward in many communities to provide and maintain public spaces.

Figure ___: Downtown Open Space Network

Programming of Open Space

Much of what we enjoy in Portland's open spaces we come upon by chance, such as an encounter with an old friend, the opening of flowers on a warm spring day, the changing colors of autumn foliage, or simply the opportunity to sit back and watch people passing by. A street musician, mime or juggler, and even a haranguing preacher can provide entertainment and diversity.

Many people are also attracted to the Downtown and to particular open spaces by street festivals, craft fairs, and organized musical performances. Programming of activities and events within these open spaces is an important element of the managing and enhancing the Downtown. The crowds drawn into the Downtown for such events as the Old Port Festival, New Years Portland, and other annual events provide opportunities to promote the area's livability and Downtown retail and cultural economy. Cooperative efforts by the City, Intown Portland Exchange, Maine Arts, Inc., and other sponsors have made these events both popular and successful, and have brought added vitality to Downtown open spaces.

Somewhat more controversial is the shared use of open space by private vendors and sidewalk cafes. Vendors complement the lunch crowds by selling food, newspapers, and in other cities, flowers. Sidewalk cafes provide a relaxed setting in which to be served and watch city life go on around us. The seasonal sidewalk cafe helps to attract people to parks and sidewalk areas and, with proper management, can provide a high level of oversight and supervision. Consideration should be given to licensing public space for this purpose. Suitable responsiblity for cleanliness and litter patrol should be part of any vendor or cafe licensing scheme. Vendors, while arguably competing with businesses facing higher overhead costs, do provide service to the public and help attract crowds of people. Encouraging and accommodating people, after all, is the point of an open space system.

OPEN SPACE POLICIES

Goals

1. Establish as a top priority the quality and character of the Downtown pedestrian environment in discussions of management, funding, maintenance, and amenity.

2. Encourage excellence in urban design and sensitivity to pedestrian scale and interest throughout the Downtown in the construction, renovation, and rehabilitation of streets, pedestrian ways, and open space.

3. Develop an open space system throughout the Downtown which provides the highest quality parks, plazas, and pedestrian environment. Pedestrian improvements and amenities should utilize the best materials and be carefully-designed to provide a comfortable, durable, accessible, readily maintainable, and aesthetically-pleasing environment.

4. Buildings fronting an open space play a vital role in the success of that open space. They should provide pedestrian-oriented uses and be of high-quality materials, significant detail and interest to enhance the walking environment, be readily accessible from the open space through frequent building entrances and window openings, and should not detract significantly from solar access to open space during hours of heavy use.

Policies

OS1 Open space. Adopt a comprehensive open space component of Downtown Vision with the following policies:

a.) Link large and small open spaces within the Downtown by designating and enhancing specific priority sidewalks and through-block connections;

i. Priority sidewalk linkages

Several key streets serve as the most important pedestrian routes in the Downtown. Figure __ illustrates the Downtown Open Space Network, highlighting primary sidewalk linkages. Most prominent of these are Congress Street linking Longfellow Square to Lincoln Park, Exchange and Moulton Streets linking City Hall and Congress Street to the waterfront, and Middle Street linking Monument Square and the Old Port. These routes are fully developed and historically have received the greatest attention in pedestrian improvements. Additional important pedestrian routes in the Downtown are Free Street linking Congress Square with Monument Square and the Old Port and Fore Street linking Gorhams Corner with the Old Port. Portions of each of these streets are important pedestrian connections today and are fronted by sites which, over the next several years, will introduce substantial new development and building rehabilitation making these streets even more important.

Crosswalks along these priority routes are critical to smooth and safe pedestrian movement, and should be carefully located, well-defined, and clearly suggest a pedestrian presence.

These pedestrian routes must be continually and thoroughly maintained and a wide program of improvements including additional lighting and landscaping, amenities such as benches and trash receptacles, and informational and directional signage should be developed to enhance these areas.

Where possible, pedestrians should be protected from inclement weather by awnings, canopies and internal connections between buildings and streets. Heating elements within sidewalks along priority pedestrian areas should be evaluated as potential long-term improvements.

Special amenities such as public art and pedestrian route markers are encouraged to add to the special character of these streets. These streets also are the primary areas identified for mandatory ground floor pedestrian-oriented uses with the objective of actively reinforcing the pedestrian environment.

ii. Other sidewalk linkages

While this plan encourages substantial improvements to primary pedestrian linkages, every pedestrian way Downtown should receive attention. The many streets and sidewalks that weave together the primary linkages and provide access to businesses, institutions and parking areas are part of everyone's normal daily movement through the Downtown. As described in City Services, maintenance in these areas cannot be overemphasized.

iii. Through-block connections

Existing property owners and developers are encouraged to maintain and create through-block connections. The Downtown Urban Design Guidelines provide guidance for the design and placement of these important pedestrian connections.

b) Integrate this open space system with nearby open space elements such as the shoreway access system, Deering Oaks, and other open space resources, and provide convenient and attractive pedestrian connections to surrounding neighborhoods;

With implementation of Downtown Vision and continued improvements in nearby neighborhoods, several additional streets become more important as pedestrian connections between growth areas, redevelopment areas and surrounding neighborhoods. Forest Avenue, High Street and State Street all offer excellent opportunities to tie the Downtown to Deering Oaks Park. Forest Avenue capitalizes on its role as a Gateway entrance into the Downtown and the presence of major cultural facilities (the Performing Arts Center and the YMCA). High Street links the cultural heart of the Downtown along an historic residential area to the Oaks. State Street links Longfellow Square and the Upper Congress Street area with the Oaks, again passing through an historic residential neighborhood.

Portland Street from Deering Oaks to Preble Street and Preble Street from Portland Street to Monument Square allow an important pedestrian connection between Deering Oaks and the Downtown along a route with a variety of redevelopment and rehabilitation opportunities. On a somewhat longer time frame, Chestnut Street connects redevelopment potential in the Bayside area, including a possible major new open space, with the Downtown.

In an east-west direction, Spring Street, Middle Street, Congress Street and Cumberland Avenue provide important connections to the East and West End neighborhoods. Commercial Street provides connections for the Downtown in an east-west direction with the Shoreway Public Access system, including the improvements in place and envisioned along the central waterfront, as well as connecting along railroad rights-of-way to eventually complete a path around the perimeter of the peninsula.

Franklin Street should be improved to become an important pedestrian link and boulevard between Back Cove and the central waterfront(See policy OS 2(f.)).

c) Examine the opportunity to develop new publicly-accessible open spaces within the Downtown and in perimeter areas around the Downtown;

In developing the Downtown Open Space Network, several locations have been identified which support the concept of open spaces along primary pedestrian routes and in areas that now have very little or no designated open space. The City should examine these potential sites, refine a development program based on the needs of the surrounding area and make plans for the acquisition, design and development of these open spaces.

i. High and Spring Street Park

Currently, a City-owned parking lot at the corner of High and Spring Streets offers an opportunity for re-use as a public park and playground along the Spring Street pedestrian linkage to the West End and at the edge of a residential neighborhood. This location also offers a corridor to the Harbor along High Street and the surrounding historic district. Demand for parking in this area should be evaluated and balanced with the opportunity for public open space.

ii. Shepley Park

In support of over 200 existing residences and potentially new residential units in the mid-block area bounded by Shepley, Brown and Oak Streets and Cumberland Avenue, a small public park would provide needed open space to this neighborhood. Coupled with other pedestrian improvements, such open space would enhance the character and quality of life in this residential area.

iii. Bayside Common

Open Space should be an integral part of an area development plan and program for the Bayside area. A framework of open space improvements including individual parks and pedestrian connections should be one of the tools used to establish a sense of organization for the entire area and provide amenity attracting private investment.

With a large parcel of railroad property sweeping through the Bayside area, an opportunity for a major public open space existings which could give focus to the entire area's redevelopment. Such an open space could separate automobile-related commercial development which might occur along Marginal Way, from intensive mixed-use office, retail and residential development on land moving up the slope toward Downtown. The City recognizes a need for publicly accessible open space capable of accomodating large crowds at events such as the Deering Oaks and Maine Arts Festivals. This area could provide open space specifically designed for City festivals in a centrally located and easily accessible area.

iv. India Street and Gorhams Corner

The perimeter areas of both India Street and Gorhams Corner currently have no designated public open space. Area Development Plans for these areas must outline opportunities for individual open spaces and pedestrian linkages.

d) Develop a program to improve landscaping and pedestrian amenities throughout the Downtown, including enhancing accessible open spaces, providing street trees, planters, landscaping, ornamental lighting, public art (See Arts and Culture Policy 6) and street furnishings such as seating and trash receptacles;

In some areas, provision of benches or other amenities by private property owners which can be taken in at night could provide for active day-time use while avoiding potential evening or late-night problems. Care should be taken to assure that such amenities are consistent with an overall program for these items.

e) Develop a comprehensive program of regular and emergency maintenance of pedestrian amenities (sidewalks, lighting, benches, trash receptacles, bus shelters, kiosks, etc.) and landscaping; (See City Services, Maintenance) and

f) Encourage the enhancement of the open space system as a component of proposed new development.

Open space is an important element of the Downtown's infrastructure. New development within the Downtown should enhance the use and vitality of these areas. New buildings are encouraged through the Downtown Urban Design Guidelines and through mandatory ground floor pedestrian-oriented uses to add pedestrian activity to the individual parks and sidewalk connections. While added use enhances the safety and vitality of these areas, maintenance costs increase. The City should explore ways to encourage private development to contribute to the maintenance of the pedestrian environment, including a "Percent for Amenities" and an open space impact fee program.

OS2 <u>Specific park improvement plans</u>. Develop and implement specific park improvement plans for public and private parks thoughout the Downtown.

Several prominent publicly-owned open spaces within the central Downtown area need substantial improvements. The following public open spaces need special attention:

a) <u>Congress Square Plaza</u> - The original plan for Congress Square, which included an outdoor cafe and additional amenities, was only partially executed. Since its development, this plaza has suffered from a lack of carefully-programmed activity and maintenance. Congress Square Plaza demands a careful re-assessment of what role the Plaza can and does play in the life of Upper Congress Street, what design alterations are needed to attain that role, and what on-going maintenance and programming will assure the Plaza's continued use.

b) <u>Lincoln Park</u> - One of the City's historic public parks, Lincoln Park was created following the Great Fire of 1866 as a precautionary fire break between the Downtown and Munjoy Hill. Through much of its history, the Park was the focal point of a strong residential neighborhood to the east and of a civic area dominated by public buildings to the west. As major roadway improvements along Franklin Street were implemented, and as a variety of other businesses and activities in the immediate area changed or disappeared, activity, interest and attention to the Park disappeared as well. Over the last few years, renewed attention has been focused on the Park. The City has partially restored the centerpiece fountain, the Lincoln Square development proposal has made a commitment to make improvements within the Park, and Lincoln Park has been designated on the National Register of Historic Places.

Before further work is undertaken in Lincoln Park, the City should develop a comprehensive plan for the Park's historic rehabilitation, its adaption for contemporary uses, and its on-going maintenance.

c) Boothby Square - Located in the heart of the Old Port area, the City's Waterfront Historic District, Boothby Square was first developed at the turn of the century as a watering spot for horse drawn wagons hauling goods to Commercial Street. Over the years, this green space served as both a welcome public open space, and more recently as a dirt parking area used by patrons and service vehicles of the various surrounding businesses. Within the past year, the City has recovered the square as a public open space, resetting the curbing and installing posts around the perimeter to prohibit vehicular abuse, replanting grass throughout, and providing benches. The City is also pursuing reacquisition of the historic fountain which graced the park until 1946. A broader opportunity exists in this area of the Old Port to reconsider the entire Boothby Square area as bordered by the many buildings which front thereon. Before completing any additional long-term improvements in Boothby Square, the City should undertake a comprehensive plan for the rehabilitation of this area of the Old Port. Such a program might include sidewalk, pedestrian crosswalk and street improvements, street tree planting, ornamental lighting, benches and other pedestrian amenities.

   View corridors leading to the waterfront and focused on the Custom House must also be considered. Any proposed facade improvements and new construction on each of two under-utilized lots will be reviewed under the Historic Preservation Ordinance standards.

d) Post Office Park - Plans are currently underway to convert the existing parking lot at Exchange and Middle Streets to a public park. The City should move forward with completion and implementation of those plans.

e) Tommy's Park - In coordination with improvements to plans for Post Office Park, the City has developed concept plans for the enhancement of Tommy's Park. Following completion of Post Office Park, the City should move forward with completion and implementation of those plans.

f) Franklin Street Arterial - By its very form and presence, the Franklin Street Arterial is a major open space component of the Downtown. The Arterial serves as a major Gateway entrance to the Downtown and waterfront, and is an important view corridor. The City should undertake a comprehensive study of the opportunities presented by this linear area, considering the possibility for a richly-landscaped boulevard with pedestrian walkways and bicycle paths in addition to vehicular routes. This linear open space could tie the Downtown more closely to the waterfront, the pedestrian path along the Back Cove, and with multiple uses found along the east of the Arterial.

   Several sites offer redevelopment opportunities directly abutting the Arterial. Their urban design plans should reinforce and contribute to those area's open space opportunities. While recognizing the importance of this route for moving traffic into and out of the Downtown, significant pedestrian needs including adequate and safe crosswalks must be met.

g) Longfellow Square - The City, in cooperation with area property owners and tenants, should prepare a comprehensive plan for improvements to Longfellow Square. The plan should consider a reconfiguration of the plaza and pedestrian circulation patterns, landscaping and its impact on the visibility of the Longfellow monument, lighting and other pedestrian amenities.

h) Waterfront - The City has developed plans for substantial improvements to the Maine State Pier (partially installed), a significant component of Portland's waterfront walkway system and an important destination relative to Downtown pedestrian amenities. Implementation of proposed open space amenities should move forward. The City should also consider expanding public access network along the waterfront for Downtown residents, employees, and visitors. Particularly extending connections between the Maine State Pier, the Carroll Block and incorporating the abandoned Canadian National Railway properties as open space between the Downtown and Eastern Promenade. Pedestrian connections to the west of the Million Dollar Bridge along West Commercial Street should also be strengthened, extending to the Western Promenade Park, Harbor View Park, and the Fore River public access trail.

The City should examine developing a major public open space as part of redevelopment on the waterfront in the vicinity of Long Wharf immediately adjacent to the Downtown. Also, the City should look again at carefully integrating public access to the Fish Pier, which was originally part of the pier's plan. The entire waterfront and shoreway access system will soon have signage that will promote greater public use.

i) Private Open Space - Private owners of publicly accessible open spaces must, with encouragement from the City, maintain and enhance those spaces. Substantial improvements have largely been completed for the Maine Savings Plaza including improved access into adjacent stores and the enhancement of a seating area through landscaping and improved visibility to the street. The Two Portland Square development has created a second plaza area adjacent to the Cross Street pedestrian and view corridor. The future success of this plaza depends upon a build-out of the overall Portland Square development that focuses pedestrian-oriented activities along these open space improvements, and avoids shadowing the space during critical-use periods.

The management and ownership of other Downtown open spaces, such as Canal Plaza, are encouraged to make a careful evaluation of these spaces, and implement improvements which will make these spaces more effective and desirable for active pedestrian use.

OS3 Winter Park Design. Too often parks and plazas are ignored or become an eyesore during winter months. Creative design features which result in parks and open spaces that are visually appealing during that half of the year are encouraged.

OS4 Urban design guidelines. Adopt Downtown Urban Design Guidelines which provide a frame of reference for the City and the development community when reviewing or bringing forward development proposals which are sensitive to the pedestrian and open space needs of the Downtown.

Guidelines are included as Addendum ___ and were developed as a part of this Downtown Vision and revised Downtown zoning. These Guidelines mandate the creation and maintenance of a high quality pedestrian environment. The Guidelines address the following:

1. Pedestrian relationship to buildings
2. Relationship to existing development
3. Sidewalk areas and open space
4. Landscaping, planters, and irrigation
5. Lighting
6. Hardscape, including paving and curbing
7. Pedestrian amenities including such details as benches, trash receptacles, bus shelters, kiosks, artwork and signage.

OS5 Open Space Programming. Develop, as a component of a broader Downtown mangement program, an expanded and well-supported programming effort for the Downtown's diverse open spaces which attract and entertain visitors from the Greater Portland community on a year-round basis.

OS6 Historic open spaces. Integrate the City's concern for preservation and creative re-use of our historic resources with comprehensive planning and management of the Downtown.

In order to encourage the creative, appropriate rehabilitation of historic open space resources, the following steps are recommended:

- as a component of the Historic Preservation Design Manual, develop a clear discussion of guidelines for the rehabilitation of historic open spaces and of site features within historic districts and related to landmark properties;

- examine existing open spaces throughout the Downtown in order to evaluate the appropriateness of designating additional sites for coverage under the historic preservation ordinance; and

- undertake a study examining the potential use of financial incentives at the local, state, and federal levels as well as mechanisms at the local level which could provide incentive or assistance in the rehabilitation of historically significant open spaces.

OS7 Cafes and Vendors. Sidewalk and plaza cafes and street vendors help to enliven public open spaces, attract the public, and provide a measure of security and control. These uses should be encouraged where appropriate, with proper licensing and regulation to ensure that location, maintenance, character, and hours of operation are appropriate.

Open Space Implementation Action Chart

Recommendation	Timing: Adopt with Plan	Timing: Next 3 Years	Timing: 3 to 10 Years	How: Ordinance	How: Program	Implementing Body
OS1 Open Space						
a. Linkages within Downtown	x	x			x	City
b. Linkages to other areas	x	x			x	City
c. New open space		x	x	x	x	City/Private
d. Provision of amenities	x	x	x	x	x	City/Private
e. Maintenance	x				x	City/Private
f. Private contribution	x			x	x	Private
OS2 Specific Park Improvements						
a. Congress Square Plaza		x			x	City
b. Lincoln Park		x			x	City
c. Boothby Square		x			x	City/Private
d. Post Office Park		x			x	City/Private
e. Tommy's Park		x			x	City
f. Franklin Street Arterial		x	x		x	City/State
g. Longfellow Square		x			x	City
h. Waterfront		x	x		x	City/Private
OS3 Winter Park Design	x				x	City/Private
OS4 Urban Design Standards and Guidelines	x			x	x	City
OS5 Open Space Programming	x	x			x	Manage/City
OS6 Historic Open Spaces	x	x		x	x	City
OS7 Cafes and Vendors						

DIVISION 8.5. R-OS RECREATION AND OPEN SPACE ZONE

Sec. 14-153. Purpose.

(a) The purpose of this division is:

1. To preserve and protect public open space as a limited and valuable resource;

2. To permit the reasonable use of public open space, while simultaneously preserving and protecting its inherent open space characteristics to assure its continued availability for public use as scenic, recreation, and conservation or natural resource area, and for the containment and structuring of urban development;

3. To coordinate with and carry out federal, state, regional, and city recreation and open space plans; ~~and~~

4. To provide a suitable location for large-scale regional sports and athletic facilities; and~~.~~

5. To develop a public open space system throughout the Downtown, which provides the highest quality parks, plazas, and pedestrian environment.

(b) The recreation open space zone may include ~~major~~ parcels ~~(over two (2) acres)~~ of public property, and private property legally restricted from intensive use or development through deed, covenant, or otherwise.

(Ord. No. 232-81, § 602.7B.1, 11-16-81; Ord. No. 187-01/02, § 2, 4-17-02)

Sec. 14-154. Permitted uses.

The following uses are permitted uses within the recreation and open space zone, subject to the development standards contained herein:

(a) Municipal parks, public open spaces, picnic areas, playgrounds and play lots;

(b) Cemeteries;

(c) Arboretums;

(d) Golf courses, excluding miniature golf;

(e) Boat landings, beaches, and marinas for public uses;

(f) Outdoor ballfields and public athletic fields;

(g) Swimming pools and tennis courts;

(h) Picnic groves and areas;

(i) Natural parks and scenic overlooks;

(j) Hiking, walking, bicycling or cross-country ski trails;

(k) Community gardens for cultivation by and for city residents;

(l) Sewage pumping stations and sewage treatment facilities;

(m) Sports complexes;

(n) Accessory uses, including structures or buildings of less than two thousand five hundred (2,500) square feet of floor area.

(o) Wind energy systems, as defined and allowed in Article X, Alternative Energy.

(p) Street vendors licensed pursuant to Chapter 19 as a result of a competitive bid process conducted pursuant to Chapter 2 of the City Code.

(q) Events, activities, and uses licensed by the city, including but not limited to markets, festivals, café seating, concerts, and other gatherings.

(Ord. No. 232-81, § 602.7B.2, 11-16-81; Ord. No. 60-91, § 1, 8-5-91; Ord. No. 187-01/02, § 3, 4-17-02; Ord. No. 33-11/12, 1-18-12; Ord.No. 10-12/13, 7-16-12)

Sec. 14-155. Conditional uses.

The following uses are conditional uses in the recreation and open space zone, subject to approval by the board of appeals.

(a) Accessory uses with structures or buildings of two thousand five hundred (2,500) square feet or more of floor area;

(b) Other recreational facilities and uses that are open to the public;

(c) Water pumping stations.

(d) Temporary wind anemometer towers, as defined in Sec 14-47, are permitted provided the following standards are met in addition to Sec 14-430:

1. Towers may be installed for the purpose of wind data collection for no more than two (2) years after the issuance of a Certificate of Occupancy for the tower. At the conclusion of the aforementioned two (2) years, the tower must be dismantled and removed from the site within sixty (60) days; and

2. Towers shall be constructed according to plans and specifications stamped by a licensed professional engineer, which shall be provided to the Board of Appeals with the application; and

3. Towers shall be set back from habitable buildings by a distance equal to 1.1 times the tower height; and

4. The applicant shall provide a safety report prepared and stamped by a licensed professional engineer to the Board of Appeals with their application for conditional use, which demonstrates how the proposed temporary wind anemometer tower is safe in terms of strength, stability, security, grounding, icing impacts and maintenance; and

5. The applicant shall provide evidence of commercial general liability insurance, such insurance to be satisfactory to Corporation Counsel and cover damage or injury resulting from construction, operation or dismantling of any part of the temporary wind anemometer tower; and

6. Towers and associated guy wires shall be sited to minimize their prominence from and impacts on public ways (including pedestrian ways); and

7. Towers shall be used for installing anemometers and similar devices at a range of heights from the ground to measure wind characteristics (speed, direction, frequency) and related meteorological data, but shall not be used for any other purpose; and

8. A performance guarantee shall be required for the cost of removal of the tower, guy wires and anchors. This requirement may be satisfied by surety bond, letter of credit, escrow account or by evidence, acceptable to the City, or the financial and technical ability and commitment of the applicant or its agents to remove the facility at the end of the use period.

(e) Wind energy systems, as defined and allowed in Article X, Alternative Energy.

(Ord. No. 232-81, § 602.7B.3, 11-16-81; Ord. No. 67-89, § 1, 8-7-89; Ord. No. 60-91, § 2, 8-5-91; Ord. No. 29-09/10, 8-3-09, emergency passage; Ord. No. 33-11/12, 1-18-12)

Sec. 14-156. Standards for conditional uses.

In addition to the criteria listed in section 14-474(c), the board of appeals shall consider the following criteria when reviewing conditional uses specified in section 14-155(a), (b) and (c):

(a) The use shall be in conformity with or satisfy a deficiency identified in a federal, state, regional, or city recreation and open space plan, including but not limited to the state comprehensive outdoor recreation plan, as such plans may from time to time be created or revised.

(b) Buildings and structures shall not obstruct significant scenic views presently enjoyed by nearby residents, passersby, or users of the site.

(c) Indoor recreation or nonrecreational uses shall serve a significant public purpose that cannot reasonably be accommodated outside of the recreation and open space zone.

(Ord. No. 232-81, § 602.7B.4, 11-16-81; Ord. No. 29-09/10, 8-3-09, emergency passage)

Sec. 14-157. Space and bulk requirements.

No building or structure of a permanent nature shall be erected, altered, enlarged, rebuilt, or used unless it meets the following requirements, except that public open spaces that are less than 2 acres and are on the peninsula are not required to meet the following space and bulk requirements:

(a) *Minimum front yard:*

1. Principal buildings or structures: Twenty-five (25) feet.

2. Accessory buildings or structures: Twenty-five (25) feet.

(b) *Minimum rear yard:*

1. Principal buildings or structures: Twenty-five (25) feet.

2. Accessory buildings or structures: Twenty-five (25) feet.

(c) *Minimum side yard:*

1. Principal buildings or structures: Twelve (12) feet.

2. Accessory buildings or structures: Twelve (12) feet.

~~(d) *Minimum lot size:* Two (2) acres, except that sewage treatment facilities are not required to meet this~~

~~standard.~~

(e) *Maximum building height:* Thirty-five (35) feet, unless more than one thousand (1,000) feet from a shoreland zone. The maximum building height for buildings located more than one thousand (1,000) feet from a shoreland zone shall be forty-five (45) feet.

(f) *Maximum coverage of lot* by buildings, structures and other impervious site improvements such as paved sidewalks, drives and parking lots:

1. Sewage treatment facilities: No limit on maximum coverage.

2. Sports complexes: Seventy-five (75) percent of lot area.

3. All other uses: Twenty-five (25) percent of lot area.

(g) *Maximum floor area ratio:* Five-tenths (0.5).
(Ord. No. 232-81, § 602.7B.5, 11-16-81; Ord. No. 67-89, § 2, 8-7-89; Ord. No. 205-93, 2-2-93; Ord. No. 187-01/02, § 4, 4-17-02)

Sec. 14-158. Development standards for recreation and open space zone.

All development in the recreation and open space zone shall comply with the following development standards, ~~which shall be reviewed by the Planning Board in conjunction with~~ and shall be reviewed under the site plan ordinance~~review~~, as applicable:

(a) All ground areas not used for parking, loading, vehicular or pedestrian areas and not left in their natural state shall be suitably landscaped and designed with quality materials that are consistent with adopted city policy or master plans, and which provide a comfortable, durable, accessible, readily maintainable, and aesthetically pleasing environment.

(b) Natural features, such as mature trees and natural surface drainageways, shall be preserved to the greatest possible extent consistent with the uses of the property.

(c) Loading areas shall be screened and parking areas shall be screened and landscaped so as to avoid a large continuous expanse of paved area.

(d) Buildings and structures shall be sited to avoid obstructing significant scenic views presently enjoyed by nearby residents, passersby, and users of the site.

(e) Storage of commodities and equipment shall be completely enclosed within buildings or provided with screening by a fence, wall, or landscaping.

(f) The outer perimeter of playfields, play lots, and other active recreational areas shall be screened, or shall be located a reasonable distance from any residential use.

(g) *Off-street parking*: Off-street parking is required as provided in division 20 (off-street parking) of this article.

(Ord. No. 232-81, § 602.7B.6, 11-16-81; Ord. No. 240-09/10, 6-21-10)

Attachment 3

DIVISION 8.5. R-OS RECREATION AND OPEN SPACE ZONE

Sec. 14-153. Purpose.

(a) The purpose of this division is:

1. To preserve and protect public open space as a limited and valuable resource;

2. To permit the reasonable use of public open space, while simultaneously preserving and protecting its inherent open space characteristics to assure its continued availability for public use as scenic, recreation, and conservation or natural resource area, and for the containment and structuring of urban development;

3. To coordinate with and carry out federal, state, regional, and city recreation and open space plans; ~~and~~

4. To provide a suitable location for large-scale regional sports and athletic facilities; and~~.~~

5. To develop a public open space system throughout the Downtown, which provides the highest quality parks, plazas, and pedestrian environment.

(b) The recreation open space zone may include ~~major~~ parcels ~~(over two (2) acres)~~ of public property, and private property legally restricted from intensive use or development through deed, covenant, or otherwise.

(Ord. No. 232-81, § 602.7B.1, 11-16-81; Ord. No. 187-01/02, § 2, 4-17-02)

Sec. 14-154. Permitted uses.

The following uses are permitted uses within the recreation and open space zone, subject to the development standards contained herein:

(a) Municipal parks, public open spaces, picnic areas, playgrounds and play lots;

(b) Cemeteries;

(c) Arboretums;

(d) Golf courses, excluding miniature golf;

(e) Boat landings, beaches, and marinas for public uses;

(f) Outdoor ballfields and public athletic fields;

(g) Swimming pools and tennis courts;

(h) Picnic groves and areas;

(i) Natural parks and scenic overlooks;

(j) Hiking, walking, bicycling or cross-country ski trails;

(k) Community gardens for cultivation by and for city residents;

(l) Sewage pumping stations and sewage treatment facilities;

(m) Sports complexes;

(n) Accessory uses, including structures or buildings of less than two thousand five hundred (2,500) square feet of floor area.

(o) Wind energy systems, as defined and allowed in Article X, Alternative Energy.

(p) Street vendors licensed pursuant to Chapter 19 as a result of a competitive bid process conducted pursuant to Chapter 2 of the City Code.

(q) Events, activities, and uses licensed by the city, including but not limited to markets, festivals, café seating, concerts, and other gatherings.

(Ord. No. 232-81, § 602.7B.2, 11-16-81; Ord. No. 60-91, § 1, 8-5-91; Ord. No. 187-01/02, § 3, 4-17-02; Ord. No. 33-11/12, 1-18-12; Ord.No. 10-12/13, 7-16-12)

Sec. 14-155. Conditional uses.

The following uses are conditional uses in the recreation and open space zone, subject to approval by the board of appeals.

(a) Accessory uses with structures or buildings of two thousand five hundred (2,500) square feet or more of floor area;

(b) Other recreational facilities and uses that are open to the public;

(c) Water pumping stations.

(d) Temporary wind anemometer towers, as defined in Sec 14-47, are permitted provided the following standards are met in addition to Sec 14-430:

1. Towers may be installed for the purpose of wind data collection for no more than two (2) years after the issuance of a Certificate of Occupancy for the tower. At the conclusion of the aforementioned two (2) years, the tower must be dismantled and removed from the site within sixty (60) days; and

2. Towers shall be constructed according to plans and specifications stamped by a licensed professional engineer, which shall be provided to the Board of Appeals with the application; and

3. Towers shall be set back from habitable buildings by a distance equal to 1.1 times the tower height; and

4. The applicant shall provide a safety report prepared and stamped by a licensed professional engineer to the Board of Appeals with their application for conditional use, which demonstrates how the proposed temporary wind anemometer tower is safe in terms of strength, stability, security, grounding, icing impacts and maintenance; and

5. The applicant shall provide evidence of commercial general liability insurance, such insurance to be satisfactory to Corporation Counsel and cover damage or injury resulting from construction, operation or dismantling of any part of the temporary wind anemometer tower; and

6. Towers and associated guy wires shall be sited to minimize their prominence from and impacts on public ways (including pedestrian ways); and

7. Towers shall be used for installing anemometers and similar devices at a range of heights from the ground to measure wind characteristics (speed, direction, frequency) and related meteorological data, but shall not be used for any other purpose; and

8. A performance guarantee shall be required for the cost of removal of the tower, guy wires and anchors. This requirement may be satisfied by surety bond, letter of credit, escrow account or by evidence, acceptable to the City, or the financial and technical ability and commitment of the applicant or its agents to remove the facility at the end of the use period.

(e) Wind energy systems, as defined and allowed in Article X, Alternative Energy.

(Ord. No. 232-81, § 602.7B.3, 11-16-81; Ord. No. 67-89, § 1, 8-7-89; Ord. No. 60-91, § 2, 8-5-91; Ord. No. 29-09/10, 8-3-09, emergency passage; Ord. No. 33-11/12, 1-18-12)

Sec. 14-156. Standards for conditional uses.

In addition to the criteria listed in section 14-474(c), the board of appeals shall consider the following criteria when reviewing conditional uses specified in section 14-155(a), (b) and (c):

(a) The use shall be in conformity with or satisfy a deficiency identified in a federal, state, regional, or city recreation and open space plan, including but not limited to the state comprehensive outdoor recreation plan, as such plans may from time to time be created or revised.

(b) Buildings and structures shall not obstruct significant scenic views presently enjoyed by nearby residents, passersby, or users of the site.

(c) Indoor recreation or nonrecreational uses shall serve a significant public purpose that cannot reasonably be accommodated outside of the recreation and open space zone.

(Ord. No. 232-81, § 602.7B.4, 11-16-81; Ord. No. 29-09/10, 8-3-09, emergency passage)

Sec. 14-157. Space and bulk requirements.

No building or structure of a permanent nature shall be erected, altered, enlarged, rebuilt, or used unless it meets the following requirements, except that public open spaces that are less than 2 acres and are on the peninsula are not required to meet the following space and bulk requirements:

(a) *Minimum front yard:*

1. Principal buildings or structures: Twenty-five (25) feet.

2. Accessory buildings or structures: Twenty-five (25) feet.

(b) *Minimum rear yard:*

1. Principal buildings or structures: Twenty-five (25) feet.

2. Accessory buildings or structures: Twenty-five (25) feet.

(c) *Minimum side yard:*

1. Principal buildings or structures: Twelve (12) feet.

2. Accessory buildings or structures: Twelve (12) feet.

~~(d) *Minimum lot size:* Two (2) acres, except that sewage treatment facilities are not required to meet this standard.~~

(e) *Maximum building height:* Thirty-five (35) feet, unless more than one thousand (1,000) feet from a shoreland zone. The maximum building height for buildings located more than one thousand (1,000) feet from a shoreland zone shall be forty-five (45) feet.

(f) *Maximum coverage of lot* by buildings, structures and other impervious site improvements such as paved sidewalks, drives and parking lots:

1. Sewage treatment facilities: No limit on maximum coverage.

2. Sports complexes: Seventy-five (75) percent of lot area.

3. All other uses: Twenty-five (25) percent of lot area.

(g) *Maximum floor area ratio:* Five-tenths (0.5).
(Ord. No. 232-81, § 602.7B.5, 11-16-81; Ord. No. 67-89, § 2, 8-7-89; Ord. No. 205-93, 2-2-93; Ord. No. 187-01/02, § 4, 4-17-02)

Sec. 14-158. Development standards for recreation and open space zone.

All development in the recreation and open space zone shall comply with the following development standards, ~~which shall be reviewed by the Planning Board in conjunction with~~ and shall be reviewed under the site plan ordinance~~review~~, as applicable:

(a) All ground areas not used for parking, loading, vehicular or pedestrian areas and not left in their natural state shall be suitably landscaped and designed with quality materials that are consistent with adopted city policy or master plans, and which provide a comfortable, durable, accessible, readily maintainable, and aesthetically pleasing environment.

(b) Natural features, such as mature trees and natural surface drainageways, shall be preserved to the greatest possible extent consistent with the uses of the property.

(c) Loading areas shall be screened and parking areas shall be screened and landscaped so as to avoid a large continuous expanse of paved area.

(d) Buildings and structures shall be sited to avoid obstructing significant scenic views presently enjoyed by nearby residents, passersby, and users of the site.

(e) Storage of commodities and equipment shall be completely enclosed within buildings or provided with screening by a fence, wall, or landscaping.

(f) The outer perimeter of playfields, play lots, and other active recreational areas shall be screened, or shall be located a reasonable distance from any residential use.

(g) *Off-street parking*: Off-street parking is required as provided in_divisio—n_20 (off-street parking) of this article.

(Ord. No. 232-81, § 602.7B.6, 11-16-81; Ord. No. 240-09/10, 6-21-10)

Order 221-13/14
~~Tab 27 4-28-14~~
~~Tab 31 5-5-14~~
Tab 13 6-2-14

MICHAEL F. BRENNAN. (MAYOR)
KEVIN J. DONOGHUE (1)
DAVID A. MARSHALL (2)
EDWARD J. SUSLOVIC (3)
CHERYL A. LEEMAN (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

JOHN R. COYNE (5)
JILL C. DUSON (A/L)
JON HINCK (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

AMENDMENT TO PORTLAND CITY CODE
CHAPTER 14. LAND USE
ARTICLE III. Zoning,
DIVISION 8.5. R-OS Recreation and Open Space,
Sections 14-153, 14-154, 14-157 and 14-158
Re: Revising the Recreation and Open Space Standards

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

That Chapter 14, Article III, Division 8.5, Sections 14-153, 14-154, 14-157 and 14-158 of the Portland City Code is hereby amended to read as follows:

DIVISION 8.5. R-OS RECREATION AND OPEN SPACE ZONE

Sec. 14-153. Purpose.

(a) The purpose of this division is:

1. To preserve and protect public open space as a limited and valuable resource;

2. To permit the reasonable use of public open space, while simultaneously preserving and protecting its inherent open space characteristics to assure its continued availability for public use as scenic, recreation, and conservation or natural resource area, and for the containment and structuring of urban development;

3. To coordinate with and carry out federal, state, regional, and city recreation and open space plans; ~~and~~

4. To provide a suitable location for large-scale regional sports and athletic facilities; and~~.~~

5. To develop a public open space system throughout the

downtown, which provides the highest quality parks, plazas, and pedestrian environment.

(b) The recreation open space zone may include ~~major~~ parcels ~~(over two (2) acres)~~ of public property, and private property legally restricted from intensive use or development through deed, covenant, or otherwise.

Sec. 14-154. Permitted uses.

The following uses are permitted uses within the recreation and open space zone, subject to the development standards contained herein:

(a) Municipal parks, public open spaces, picnic areas, playgrounds and play lots;

(b) Cemeteries;

(c) Arboretums;

(d) Golf courses, excluding miniature golf;

(e) Boat landings, beaches, and marinas for public uses;

(f) Outdoor ballfields and public athletic fields;

(g) Swimming pools and tennis courts;

(h) Picnic groves and areas;

(i) Natural parks and scenic overlooks;

(j) Hiking, walking, bicycling or cross-country ski trails;

(k) Community gardens for cultivation by and for city residents;

(l) Sewage pumping stations and sewage treatment facilities;

(m) Sports complexes;

(n) Accessory uses, including structures or buildings of less than two thousand five hundred (2,500) square feet of floor area.

(o) Wind energy systems, as defined and allowed in Article X, Alternative Energy.

(p) Street vendors licensed pursuant to Chapter 19 as a result of a competitive bid process conducted pursuant to Chapter 2 of the City Code.

(q) Events, activities, and uses licensed by the city, including but not limited to markets, festivals, café seating, concerts, and other gatherings.

...

Sec. 14-157. Space and bulk requirements.

No building or structure of a permanent nature shall be erected, altered, enlarged, rebuilt, or used unless it meets the following requirements, except that public open spaces that are less than 2 acres and are on the peninsula are not required to meet the following space and bulk requirements:

(a) *Minimum front yard:*

1. Principal buildings or structures: Twenty-five (25) feet.

2. Accessory buildings or structures: Twenty-five (25) feet.

(b) *Minimum rear yard:*

1. Principal buildings or structures: Twenty-five (25) feet.

2. Accessory buildings or structures: Twenty-five (25) feet.

(c) *Minimum side yard:*

1. Principal buildings or structures: Twelve (12) feet.

2. Accessory buildings or structures: Twelve (12) feet.

~~(d) *Minimum lot size:* Two (2) acres, except that sewage treatment facilities are not required to meet this~~

~~standard.~~

(e) *Maximum building height:* Thirty-five (35) feet, unless more than one thousand (1,000) feet from a shoreland zone. The maximum building height for buildings located more than one thousand (1,000) feet from a shoreland zone shall be forty-five (45) feet.

(f) *Maximum coverage of lot* by buildings, structures and other impervious site improvements such as paved sidewalks, drives and parking lots:

1. Sewage treatment facilities: No limit on maximum coverage.

2. Sports complexes: Seventy-five (75) percent of lot area.

3. All other uses: Twenty-five (25) percent of lot area.

(g) *Maximum floor area ratio:* Five-tenths (0.5).

Sec. 14-158. Development standards for recreation and open space zone.

All development in the recreation and open space zone shall comply with the following development standards, ~~which shall be reviewed by the Planning Board in conjunction with~~ and shall be reviewed under the site plan ordinance~~review~~, as applicable:

(a) All ground areas not used for parking, loading, vehicular or pedestrian areas and not left in their natural state shall be suitably landscaped and designed with quality materials that are consistent with adopted city policy or master plans, and which provide a comfortable, durable, accessible, readily maintainable, and aesthetically pleasing environment.

(b) Natural features, such as mature trees and natural surface drainageways, shall be preserved to the greatest possible extent consistent with the uses of the property.

(c) Loading areas shall be screened and parking areas shall be screened and landscaped so as to avoid a large continuous expanse of paved area.

(d) Buildings and structures shall be sited to avoid obstructing significant scenic views presently enjoyed by nearby residents, passersby, and users of the site.

(e) Storage of commodities and equipment shall be completely enclosed within buildings or provided with screening by a fence, wall, or landscaping.

(f) The outer perimeter of playfields, play lots, and other active recreational areas shall be screened, or shall be located a reasonable distance from any residential use.

(g) *Off-street parking*: Off-street parking is required as provided in division 20 (off-street parking) of this article.

MICHAEL F. BRENNAN. (MAYOR)
KEVIN J. DONOGHUE (1)
DAVID A. MARSHALL (2)
EDWARD J. SUSLOVIC (3)
CHERYL A. LEEMAN (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

JOHN R. COYNE (5)
JILL C. DUSON (A/L)
JON HINCK (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

Amendment to Order No. 221-13/14 prepared by Corporation Counsel

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

That Chapter 14, Article III, Division 8.5, Sections 14-153, 14-154, 14-157 and 14-158 of the Portland City Code is hereby amended to read as follows:

DIVISION 8.5. R-OS RECREATION AND OPEN SPACE ZONE

Sec. 14-153. Purpose.

(a) The purpose of this division is:

1. To preserve and protect ~~public~~ open space as a limited and valuable resource;

2. To permit the reasonable use of ~~public~~ open space, while simultaneously preserving and protecting its inherent open space characteristics to assure its continued availability for public use as scenic, recreation, and conservation or natural resource area, and for the containment and structuring of urban development;

3. To coordinate with and carry out federal, state, regional, and city recreation and open space plans; ~~and~~

4. To provide a suitable location for large-scale regional sports and athletic facilities; and~~.~~

5. To develop a ~~public~~ open space system throughout the downtown, which provides the highest quality parks, plazas, and pedestrian environment.

(b) The recreation open space zone may include ~~major~~ parcels ~~(over two (2) acres)~~ of public property, and private property legally restricted from intensive use or development through deed, covenant, or otherwise.

Sec. 14-154. Permitted uses.

The following uses are permitted uses within the recreation and open space zone, subject to the development standards contained herein:

(a) Municipal parks, public open spaces, picnic areas, playgrounds and play lots;

(b) Cemeteries;

(c) Arboretums;

(d) Golf courses, excluding miniature golf;

(e) Boat landings, beaches, and marinas for public uses;

(f) Outdoor ballfields and public athletic fields;

(g) Swimming pools and tennis courts;

(h) Picnic groves and areas;

(i) Natural parks and scenic overlooks;

(j) Hiking, walking, bicycling or cross-country ski trails;

(k) Community gardens for cultivation by and for city residents;

(l) Sewage pumping stations and sewage treatment facilities;

(m) Sports complexes;

(n) Accessory uses, including structures or buildings of less than two thousand five hundred (2,500) square feet of floor area.

(o) Wind energy systems, as defined and allowed in Article X, Alternative Energy.

(p) Street vendors licensed pursuant to Chapter 19 as a result of a competitive bid process conducted pursuant to Chapter 2 of the City Code.

(q) Events, activities, and uses licensed by the city, including but not limited to markets, festivals, café seating, concerts, and other gatherings.

...

Sec. 14-157. Space and bulk requirements.

No building or structure of a permanent nature shall be erected, altered, enlarged, rebuilt, or used unless it meets the following requirements, except that public open spaces that are less than 2 acres and are on the peninsula are not required to meet the following space and bulk requirements:

(a) *Minimum front yard:*

1. Principal buildings or structures: Twenty-five (25) feet.

2. Accessory buildings or structures: Twenty-five (25) feet.

(b) *Minimum rear yard:*

1. Principal buildings or structures: Twenty-five (25) feet.

2. Accessory buildings or structures: Twenty-five (25) feet.

(c) *Minimum side yard:*

1. Principal buildings or structures: Twelve (12) feet.

2. Accessory buildings or structures: Twelve (12) feet.

~~(d) *Minimum lot size:* Two (2) acres, except that sewage treatment facilities are not required to meet this standard.~~

(e) *Maximum building height:* Thirty-five (35) feet, unless more than one thousand (1,000) feet from a shoreland zone. The maximum building height for buildings located more than one thousand (1,000) feet from a shoreland zone shall be forty-five (45) feet.

(f) *Maximum coverage of lot* by buildings, structures and other impervious site improvements such as paved sidewalks, drives and parking lots:

1. Sewage treatment facilities: No limit on maximum coverage.

2. Sports complexes: Seventy-five (75) percent of lot area.

3. All other uses: Twenty-five (25) percent of lot area.

(g) *Maximum floor area ratio:* Five-tenths (0.5).

Sec. 14-158. Development standards for recreation and open space zone.

All development in the recreation and open space zone shall ~~which shall be~~ comply with the following development standards, ~~reviewed by the Planning Board in conjunction with~~ and shall be reviewed under the site plan ordinance~~review~~, as applicable:

(a) All ground areas not used for parking, loading, vehicular or pedestrian areas and not left in their natural state shall be suitably landscaped and designed with quality materials that are consistent with adopted city policy or master plans, and which provide a comfortable, durable, accessible, readily maintainable, and aesthetically pleasing environment.

(b) Natural features, such as mature trees and natural surface drainageways, shall be preserved to the greatest possible extent consistent with the uses of the property.

(c) Loading areas shall be screened and parking areas shall be screened and landscaped so as to avoid a large continuous expanse of paved area.

(d) Buildings and structures shall be sited to avoid obstructing significant scenic views presently enjoyed by nearby residents, passersby, and users of the site.

(e) Storage of commodities and equipment shall be completely enclosed within buildings or provided with screening by a fence, wall, or landscaping.

(f) The outer perimeter of playfields, play lots, and other active recreational areas shall be screened, or shall be located a reasonable distance from any residential use.

(g) *Off-street parking*: Off-street parking is required as provided in division 20 (off-street parking) of this article.

Order 249-13/14
~~Tab 28 5-19-14~~
Tab 14 6-2-14

MICHAEL F. BRENNAN. (MAYOR)
KEVIN J. DONOGHUE (1)
DAVID A. MARSHALL (2)
EDWARD J. SUSLOVIC (3)
CHERYL A. LEEMAN (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

JOHN R. COYNE (5)
JILL C. DUSON (A/L)
JON HINCK (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

ORDER APROVING THE ALLOCATION AND APPROPRIATION OF $25,000 FROM THE HOUSING TRUST FUND RE: CHOM HOUSING FIRST PROJECT

ORDERED, that $25,000 in funds from the Housing Trust Fund are hereby allocated and appropriated in order to fund a Community Housing of Maine proposal to assist in the development of housing for the homeless.

MEMORANDUM
City Council Agenda Item

TO: City Council

FROM: Planning and Urban Development Department
Housing and Community Development Division

DATE: May 5, 2014

DISTRIBUTION: (City Manager, Mayor, Corporation Counsel, Sonia Bean, Nancy English)

SUBJECT: Order Approving the Allocation of $25,000 from the Housing Trust Fund to Fund Pre-Development Activities associated with the development of a Housing First Project

SPONSOR: Kevin Donoghue, Chair, Housing and Community Development Committee

COUNCIL MEETING DATE ACTION IS REQUESTED:
1st reading May 19 Final Action June 2

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

PRESENTATION: City Staff will be available questions

I. SUMMARY OF ISSUE (Agenda Description)

The Homelessness Task Force Report submitted to the City Council in November 2012, outlined four recommended actions, one of which was "Rapid Rehousing" (Attachment 1). Under the Task Force Implementation Plan, the Housing and Community Development Committee was assigned "Rapid Rehousing", with the development of three new "housing first" projects as an identified task.

In February, the City Council approved the allocation of $50,000 from the Housing Trust Fund to be allocated in a RFP for pre-development activities associated with the development of a Housing First project. The RFP was issued on February 27 and two proposals were received on March 27. A review committee consisting of Jeff Levine, Planning and Urban Development Department Director, Mary Davis, Housing and Community Development Division Director, Doug Gardner, Health and Human Services Department Director and Sean Dundon, Portland Planning Board member met on April 18 to review the proposals.

The review committee was impressed with both proposals agreeing that each application had strengths and weaknesses across the criteria noted in the RFP. The review committee recommended funding the proposal from Avesta Housing which envisioned the creation of a traditional Housing First development. (A copy of the Avesta proposal is attachedyou're your information.) However, the team also felt that the proposal received from Community Housing of Maine (CHOM) was also worthy of funding. While it does not propose a traditional Housing First development, the concept proposed by CHOM has the potential to yield units more quickly using a scattered site approach.

Community Housing of Maine (CHOM) proposes "blending the population quickly and seamlessly into a combination of rehabilitated existing small multifamily apartment buildings and larger Low Income Housing Tax Credit and/or Historic Tax Credit funded properties aimed at serving the general public." They identified Elm Terrace and Danforth on High, two of their recently completed projects as examples of the larger model. CHOM's timeline for a larger project is estimated at 2 years and the timeline for smaller projects would be approximately 4 months after securing development financing.

Staff is seeking approval from the City Council to provide an additional $25,000 in Housing Trust Funds for the CHOM proposal.

The Housing and Community Development Committee met on April 23, 2014 and voted unanimously (3-0) to forward this item to the City Council with a recommendation for passage.

II. REASON FOR SUBMISSION (Summary of Issue/Background)

The Housing Trust Fund [Sec.14-489] was established "...for the promotion, retention and creation of an adequate supply of housing, particularly affordable housing, for all economic groups and to limit the net loss of housing units in the City."

III. INTENDED RESULT

To allocate the use of Housing Trust Fund assets in a way consistent with the Trust Fund's purpose.

IV. COUNCIL GOAL ADDRESSED

(1) Promote Housing Availability. (2) Prevent and End Homelessness

V. FINANCIAL IMPACT

If approved, the RFP will make available an additional $25,000 from the Housing Trust Fund to be used to assist with pre-development activities associated with the construction of a "housing first" project. The current balance in the Housing Trust fund is $724,301.

VI. STAFF ANALYSIS

The intent of the RFP is to make funds available to assist with pre-development activities associated with the creation of a housing first project. Such activities would include appraisals, architect services, engineering services, environmental assessment services, legal fees, consultant/developer staff costs, market studies, and relocation expenses. The consultant will also be awarded development rights for any proposed project approved by the City.

Once the consultant completes the pre-development activities and site(s) have been selected, the consultant will prepare a Preliminary Development Proposal for review by the HCDC. If the HCDC approves the Preliminary Development Proposal, it will be forwarded to the City Council for approval.

VII. RECOMMENDATION

Staff recommends approval of this request.

It is recommended that the City Council set the Public Hearing for the City Council meeting on June 2, 2014 at 7:00 p.m.

VIII. LIST ATTACHMENTS

Copy of the Housing First Pre-Development RFP
Copy of CHOM's proposal
Excerpt from Homelessness Task Force Report
Copy of the Housing Preservation and Replacement Ordinance
Copy of the Housing Trust Fund Ordinance.
Copy of Avesta proposal

Prepared by:

Mary PhQ

Signature
Mary Davis, Division Director
Housing and Community Development

Revised May 5, 2014
Date

ATTACHMENT 1

CITY OF PORTLAND, MAINE

REQUEST FOR PROPOSALS
FOR
DESIGN AND PLANNING SERVICES
HOUSING FIRST PRE-DEVELOPMENT GRANT
RFP #4614

The City of Portland, Maine is seeking proposals from a consultant or consultant team in the field of Permanent Supportive Housing (PSH) development, specifically the development of projects utilizing the "housing first" model. See Attachment 1 for the definition of a "housing first" project. This project will require a consultant or consultant team with expertise in this type of affordable housing development.

Sealed Proposals plainly marked "**Housing First Pre-Development Grant**" will be submitted to the City of Portland Purchasing Office at City Hall on 389 Congress Street in Portland, Maine 04101. Eight (8) copies of the proposal will be submitted before **3:00 p.m., Thursday, March 27, 2014**. The City of Portland reserves the right to accept or reject any/or all proposals. Late, unsigned proposals or proposals submitted electronically shall not be accepted. Proposals shall remain open to acceptance for thirty days from their opening.

All questions shall be directed to the City of Portland Purchasing Office by telephone at 207-874-8654 or by email at mff@portlandmaine.gov . All questions must be received at least five business days before the opening date. Questions received after this time will not be addressed. Responses that substantially alter this RFP will be issued in the form of written addenda to all those that have registered and received an RFP from the City of Portland Purchasing Office. Oral explanations or interpretations given before the proposal submittal deadline will not be binding.

Proposals from vendors not registered with the Purchasing Office may be rejected; receipt of this document directly from the City of Portland indicates registration. Should a vendor receive this Request from a source other than the City, please contact 207-874-8654 to ensure that your firm is listed as a vendor for this RFP.

Equal Employment Opportunities

Vendor shall comply fully with the Nondiscrimination and Equal Opportunity Provisions of the Workforce Investment Act of 1998, as amended (WIA, 29 CFR part 37); the Nontraditional Employment for Women Act of 1991; title VI of the Civil Rights Act of 1964, as amended; section 504 of the Rehabilitation Act of 1973, as amended; the Age Discrimination Act of 1975, as amended; title IX of the Education Amendments of 1972, as amended; and with all applicable requirements imposed by or pursuant to regulations implementing those laws, including but not limited to 29 CFR part 37 and all other applicable laws, including the Maine Human Rights Act, ordinances and regulations regarding equal opportunity and equal treatment.

The successful bidder shall agree to defend, indemnify and save the City harmless from all losses, costs or damages caused by its acts or those of its agents, and, before signing the contract, will produce evidence satisfactory to the City's Corporation Counsel of coverage for General Public and Automobile Liability insurance in amounts not less than $400,000 per person, for bodily injury, death and property damage, protecting the contractor and the City, and naming the City as an additional insured from such claims, and shall also procure Workers' Compensation insurance.

All materials and equipment used as well as all methods of installation shall comply at a minimum with any and all Federal, OSHA, State and/or local codes, including applicable municipal ordinances and regulations.

Pursuant to City procurement policy and ordinance, the City is unable to contract with businesses or individuals who are delinquent in their financial obligations to the City. These obligations may include but are not limited to real estate and personal property taxes and sewer user fees. Bidders who are delinquent in their financial obligations to the City must do one of the following: bring the obligation current, negotiate a payment plan with the City's Treasury office, or agree to an offset which shall be established by the contract which shall be issued to the successful bidder.

It is the custom of the City of Portland, Maine to pay its bills 30 days following equipment delivery and acceptance, and following the receipt of correct invoices for all items covered by the purchase order. In submitting bids under these specifications, bidders should take into account all discounts; both trade and time allowed in accordance with this payment policy and quote a net price. The City is exempt from the State's sales and use tax as well as all Federal excise taxes.

February 27, 2014 | Matthew F. Fitzgerald
Purchasing Manager

I. Background

In November 2011, the Portland City Council created the Task Force to Develop a Strategic Plan to Prevent and End Homelessness. The Task Force created an implementation plan which included a recommendation for the development of three (3) new 35-unit Housing First projects in the Greater Portland Area as one long-term strategy to address homelessness in the City.

The City requests proposals from developers and institutions with interest and experience in facilitating the planning, design, pre- development and final development activities for a "housing first" development. Pre-development activities include architectural and engineering work, site control planning, and other planning activities related to the development of a "housing first" project.

II. Goals for This RFP

The focus of the desired pre-development activities includes locating a potential site or sites, identifying construction financing, identifying sustainable funding source(s) for the required support services and providing a preliminary design concept for a "housing first" development. The City Council has authorized the use of $50,000 for these pre-development activities. Funds will be disbursed on a reimbursement basis based on actual invoices for services performed. Activities that are eligible for funding include:

1. Appraisals. The consultant's cost to establish the fair market value of the proposed site completed by a qualified and licensed appraiser
2. Architect Services. The design fees charged by licensed architectural/engineering firms for architectural services regarding the project. Project must meet the accessibility requirements of Section 504 of the Rehabilitation Act of 1973, the Fair Housing Act, and the Americans with Disabilities Act, as applicable.
3. Engineering Services. Actual cost of boundary survey, topographic survey, soil borings and tests.
4. Environmental Site Assessment. Actual cost incurred for the environmental site assessment, i.e., Phase I and Phase II.
5. Consultant Services. Expenses related to the development and submission of an approvable project.
6. Cost Analysis. Expenses associated with cost estimation,
7. Legal Fees. The cost for legal services and title binder fees.
8. Market Studies. Costs for a study completed by an independent, third party, market research firm for purposes of examining the need for and verifying the marketability of the proposed project.
9. Organizational Expenses. The actual costs associated with the creation of an owner entity for the proposed project.
10. Relocation Expenses. Cost of relocation assistance if the project involves displacement of site occupants.

Funds may not be used to pay taxes and/or fees due to the City of Portland.

The City of Portland seeks development projects with a high standard of quality, design, and livability. Developments should promote efficient use of land, locations proximate to transportation, shopping, work places and community facilities. They should also incorporate high standards of energy efficiency and "green" design criteria.

The selection process will result in awarding development rights for the project to the selected Consultant. The Consultant selected will prove through its submittal that it possesses the qualifications necessary to implement a comprehensive development plan. Consultant shall be responsible for all design, planning, financing, pre-development and final development activities.

III. Proposal Narrative

The Proposal Narrative must address each of the following topics:

Phase I:

1. Identification of Developer Entity. Describe the type of organization and provide name and contact information for the primary RFP Contact Person, as well as names and titles of other key principals;

2. Developer's Organizational and Management Capacity. Describe the overall management expertise of the organization. Provide a resume of relevant experience and education for each principal in the firm. Identify the key personnel and their roles in the project and describe their experience with respect to various phases of green development and home building. Include an organizational chart that shows how the Development staff will work together and the lines of responsibility. Describe the organization's experience in developing permanent supportive housing projects specifically a "housing first" type development, and in developing relationships with diverse and sometimes competing interests leading to support for a project. Include organizational documents and financial statements listed in the Checklist.

3. Development Team Members. Identify co-developers, contractor, primary sub-contractors if known, architect, and other team members in the narrative. (Details of their responsibilities and compensations should be provided.)

4. Experience. Provide an overview of the Developer's prior history of performance in similar housing development projects and indicate the following:
   a. Project name and address;
   b. Project Team, specifically Architect, Contractor (s), Construction and Mortgage Lenders,;
   c. Number of square feet of developed space, dollar amount of real estate valuation created;
   d. Sustainable and or green components if applicable;
   e. Evaluation of completed project and whether it was completed according to the original project schedule and original project budget, and community benefits derived;
   f. Summary of partnerships with government and/or other entities;
   g. Elevation drawings or photographs of previous projects, for the purpose of illustrating the quality of architectural design. All drawings and photos will be retained by the City;
   h. Detailed explanation of all sources of funding for the project, both public and private, debt and equity. Including conventional financing, equity, bond financing, government loan guarantees, or other government assistance required in the projects. Developers may provide

additional information that illustrates the Developer's capacity to deliver project financing from public and private sources in an effective manner.

i. State names, telephone numbers and addresses of owners, government officials or others knowledgeable of the projects for verification purposes; and

j. Describe any problems encountered during the planning, design and development of the project and the ways in which such problems were solved.

5. Target Population. Describe how the Project design, marketing, and services will be provided to the target population of chronically homeless individuals as identified in the "Report of the Task Force to Develop a Strategic Plan to Prevent and End Homelessness in Portland".

6. Project Timeline. Describe the timing of key phases of the work and state the total time period required for completion. Provide a detailed task analysis with timeline of the proposed services offered by the Developer and the proposed time period for completing the development on the vacant parcels. The timelines shall include detailed project schedules for closing, securing development approvals, construction and occupancy.

Phase II Once Phase I is complete, Consultant/Developer must submit a Preliminary Development Proposal for approval by the Portland City Council. A Preliminary Development Proposal will include:

1. Market Analysis. Describe the Developer's methods for analyzing the market to ascertain the target market(s), determining the size of the market(s) and the way in which the market analysis was used to establish the unit size mix and income mix.

2. Development Approach with Preliminary Site Plan, Typical Building Elevations and Outline Specs. Provide a narrative overview of the proposed conceptual plan and development approach including the general rationale for the site layout, the locations of various building types, the proposed architectural style and concept for the building facades, the types and locations of public space and open space, landscaping and any other amenities, and any other key features of the development plan. The proposal should describe how the proposed development responds to the development intent of this RFP, and how the development interacts with the existing neighborhood and adjacent developments. This narrative will be accompanied with 3 copies of a preliminary site development plan indicating all the general requirements of a site development plan required by the City, number of units, square footage, lot layout, parking, ingress and egress and traffic circulation within the site. **NOTE:** Once a proposal is selected, a complete site development plan will be required for approval by the City.

3. Green Building Ordinance. Describe the ways in which the proposed project will comply with the City of Portland's Green Building Ordinance.

4. Financial Pro Forma. A detailed financial pro forma including a project budget, an estimate of total development costs broken out by hard and soft costs, sources of funds, including equity, construction financing, permanent financing, and support services required to complete the project. Please use attached Forms. This project budget must include all costs associated with completing the development, including the cost of any on-site or off-site infrastructure improvements, grading, drainage and utility relocation.

5. Project Timeline. Describe the timing of key phases of the work and state the total time period required for completion. Provide a detailed task analysis with timeline of the proposed services offered by the Developer and the proposed time period for completing the development on the vacant parcels. The timelines shall include detailed project schedules for closing, securing development approvals, construction and occupancy.

IV. Evaluation and Selection Process

Proposals will be reviewed by an evaluation team that will include City of Portland staff. The following process will be used:

1. Upon closing of the RFP application period, all proposals will be reviewed for completeness.

2. Complete proposals will be reviewed under the scoring factors in order to recommend the most qualified proposals based on the information submitted. The proposal review team may confer with the applicants and/or third parties to clarify or verify information and request additional information.

3. Recommendations, along with all proposals and scoring information, will be forwarded to the Portland City Council's Housing and Community Development Committee and Public Safety, Health and Human Services Committee for review and approval. Their recommendations will be forwarded to the Portland City Council for final review and approval.

4. Applicants will be kept informed throughout the review process, specifically in regard to recommendations and funding levels.

5. The evaluation and review process should be substantially complete by April 15, 2014. Applicants will be notified of their proposal status as soon as possible.

Instructions and Other Information

A. The City of Portland reserves the right, at its sole discretion, to extend deadlines and timeframes, as needed.

B. Confidentiality: Proposals received by the City of Portland shall become a matter of public record subject to public inspection, except to the extent, which an applicant designates in writing, proprietary data to be confidential and submits that data under separate cover, such information may be held from public inspection, as provided in Maine law: 5 MRSA Sections 13119-A and 13119-B

C. Compliance with Federal Law: The selected applicant will be required to certify that the development and management of the proposed housing will be in compliance with all applicable laws, executive orders, OMB Circulars and federal regulations, including but not limited to: Fair Housing Act, Equal Opportunity and Non-discrimination, National Environmental Policy Act (NEPA), the Uniform Relocation Assistance and Real Property Acquisition Policies Act, the

Davis-Bacon Act, the Lead Based Paint Poisoning Prevention Act, Flood Disaster Protection Act, Conflict of Interest, Contractor Debarment and Cost Principles.

V. Consultant Selection Criteria

The City intends to use a quality based selection process to select a consultant to work on this project. A selection committee made up of City staff members will review the submitted consultant proposals and rank them in terms of the criteria listed below. The selection committee may or may not conduct interviews with the proposers.

Selection Criteria	**Maximum Score**
Firm's qualifications and experience relating to similar housing first projects	50
Availability and ability to meet project deadlines	25
Have a demonstrated satisfactory record of performance	25

If City staff members determine they cannot negotiate a satisfactory contract with the best qualified firm, the City will terminate negotiations with that firm and begin contract negotiations with the second best qualified firm. The City intends to follow this process until a satisfactory consultant services contract can be negotiated and signed for the project.

VI. Project Resources

Below is a list of resource materials that are important in understanding City efforts and the context in which the project is taking place.

1. Report of the Task Force to Develop a Strategic Plan to Prevent & End Homelessness in Portland, (November 2012) (http://www.portlandmaine.gov/homelesstaskforce.htm)

2. Homelessness Prevention Task Force Web Page (http://www.portlandmaine.gov/homelesstaskforce.htm)

PROPOSAL FORM

The UNDERSIGNED hereby declares that he/she or they are the only person(s), firm or corporation interested in this proposal as principal, that it is made without any connection with any other person(s), firm or corporation submitting a proposal for the same.

The UNDERSIGNED hereby declares that they have read and understand all conditions as outlined in the invitation for bids, and that their proposal is made in accordance with same.

The UNDERSIGNED hereby declares that any person(s) employed by the City of Portland, Maine, who has direct or indirect personal or financial interest in this proposal or in any portion of the profits that may be derived there from, has been identified and the interest disclosed by separate attachment. (Please include in your disclosure any interest which you know of. An example of a direct interest would be a City of Portland employee who would be paid to perform services under this proposal. An example of indirect interest would be a City of Portland employee who is related to any officers, employees, principal or shareholders of your firm or to you. If in doubt as to status or interest, please disclose to the extent known).

The proposer acknowledges the receipt of Addenda numbered: ___________________

COMPANY NAME: ____

AUTHORIZED SIGNATURE: _____________________________DATE: ______________________

PRINT NAME & TITLE: ____

ADDRESS: ____

PHONE NUMBER: __________________________ FAX NUMBER: _________________________

TYPE OF ORGANIZATION - PARTNERSHIP, CORPORATION, INDIVIDUAL, OTHER:

____

STATE OF INCORPORATION, IF APPLICABLE: __________________________

FEDERAL TAX IDENTIFICATION NUMBER (Required):____________________

DUNS Number:______________________

NOTE: Proposals must bear the handwritten signature of a duly authorized member or employee of the organization submitting a proposal. This form must be signed and returned with the Proposal.

ATTACHMENT 1

Housing First, which is distinct and separate from "rapid re-housing", is a relatively recent innovation in human service programs and social policy regarding treatment of the homeless and is an alternative to a system of emergency shelter/transitional housing progressions. Rather than moving homeless individuals through different "levels" of housing, known as the Continuum of Care, whereby each level moves them closer to "independent housing" (for example: from the streets to a public shelter, and from a public shelter to a transitional housing program, and from there to their own apartment in the community) Housing First moves the homeless individual or household immediately from the streets or homeless shelters into their own apartments.

Housing First approaches are based on the concept that a homeless individual or household's first and primary need is to obtain stable housing, and that other issues that may affect the household can and should be addressed once housing is obtained. In contrast, many other programs operate from a model of "housing readiness" — that is, that an individual or household must address other issues that may have led to the episode of homelessness prior to entering housing.

https://en.wikipedia.org/wiki/Housing_first

WHAT IS THE HOUSING FIRST APPROACH?

Housing First programs may be constructed in a number of ways, but share the following features:

- The direct, or nearly direct, placement of targeted homeless people into permanent housing. Even though the initial housing placement may be transitional in nature, the program commits to ensuring that the client is housed permanently.
- While supportive services are to be offered and made readily available, the program does not require participation in these services to remain in the housing.
- The use of assertive outreach to engage and offer housing to homeless people with mental illness who are reluctant to enter shelters or engage in services. Once in housing, a low demand approach accommodates client alcohol and substance use, so that "relapse" will not result in the client losing housing (Marlatt and Tapert, 1993). 5
- The continued effort to provide case management and to hold housing for clients, even if they leave their program housing for short periods.

"The Applicability of Housing First Models to Homeless Persons with Serious Mental Illness". Prepared for the U.S. Department of Housing and Urban Development Office of Policy Development and Research, July 2007. http://www.huduser.org/portal/publications/hsgfirst.pdf

ATTACHMENT 2

CHOM

Community Housing of Maine

Community Housing of Maine
is pleased to present
this application
in response to the

CITY OF PORTLAND, MAINE

REQUEST FOR PROPOSALS
FOR
DESIGN AND PLANNING SERVICES
HOUSING FIRST PRE-DEVELOPMENT GRANT
RFP #4614

1. **Identification of Developer Entity:**

Community Housing of Maine (CHOM) is a 501 (c) 3 non-profit organization founded in 1993 and is proudly celebrating its ***20th year*** as a successful developer of affordable, supportive housing. CHOM develops, owns, and maintains high quality, affordable, service-enriched housing for people with low incomes and special needs. CHOM provides advocacy, supportive housing, community inclusion, and stability for homeless and special needs populations across the state.

CHOM's mission is to acquire, sell, lease, finance, construct, develop, rehabilitate, own, manage, and maintain housing which is decent, safe, and affordable for low-to moderate-income persons, including homeless persons and persons with special needs; and to foster and support additional housing opportunities for low- to moderate-income persons, homeless persons and persons with special needs through public education.

The primary point of contact for this RFP is:

Erin Cooperrider
Development Director
Community Housing of Maine
309 Cumberland Ave., Suite 203
Portland, ME 04101
(207) 720-0181
erin@chomhousing.org

Other key principals:

Cullen Ryan, Executive Director
Jim Gwilym, Chief Financial Officer
Kyra Walker, Asset Management Director

2. **Developer's Organizational and Management Capacity:**

Since 1993, CHOM has developed more than 75 supportive housing projects. Eight of these were developed for others, and CHOM continues to own and manage the remaining 67 projects. CHOM is a Community Housing Development Organization (CHDO), certified by the City of Portland and by MaineHousing (the Maine state housing finance agency). CHOM has developed housing in 39 communities spanning 12 counties, creating more than 687 units of low-income and special needs housing. CHOM collaborates with more than 35 agencies for service provision and works with more than 19 different subsidy agents.

CHOM is the largest supportive housing provider in Maine, and is the largest housing provider for homeless populations in the state. Within that last group, CHOM is also the largest housing provider for victims of domestic violence, homeless Veterans, and homeless Native Americans.

CHOM advocates for people with special needs, and collaborates on their behalf to produce and maintain community-based housing that fosters a sense of pride, dignity, and respect.

CHOM partners with service providers to ensure that tenants receive consistent, supportive services for successful independent living. CHOM teams with property management companies to ensure that all homes are maintained to rigorous quality standards.

CHOM is entirely premised on collaboration. Referrals into CHOM's supportive housing, which are fundamental to its mission and budget, are entirely dependent on CHOM's partners. CHOM's success is interwoven with 35 other organizations, including service providers, DHHS, and the Department of Veteran's Affairs. CHOM works diligently to set the stage for collaborations through its advocacy and reputation as an effective collaborator in its housing. CHOM also works tirelessly to keep its partners active in the collaboration, and engaged in their role. CHOM's advocacy and broad collaborations with service providers across the state allow for strong relationships across a wide array of organizations.

CHOM has extensive experience developing Housing First, permanent supportive housing projects for chronically homeless populations. CHOM works closely with homeless shelters and outreach providers throughout the state to move individuals directly from homelessness into its housing. Moreover, CHOM uses unique strategies to incorporate supportive housing into larger, tax credit projects for a seamless blend of populations, and uses smaller, four- to ten-unit scattered site projects for targeted populations that blend naturally into their communities, creating truly inclusive communities.

In August 2013, leasing began at a new CHOM tax credit project in Portland called Danforth on High. CHOM encouraged service provider partners to make referrals of chronically homeless individuals at local shelters. Ultimately, 10 chronically homeless individuals, with a collective 16 years of overnights in the shelter, were housed in this building, comprising one-third of all its residents. Support services and case management are available as needed and provided by area social service agencies including the City of Portland, Preble Street's Clinical Intervention Program, and the Opportunity Alliance. The residents and their neighbors are doing very well. No one can tell who was homeless – as it should be. This is a unique approach to housing first, and a model that is easily replicable. It also means that we don't need to waste years fighting NIMBY battles to create specially dedicated large buildings to serve the chronically homeless population; we can blend this population into any large multifamily property. This is a key part of CHOM's strategy, one which will expedite our success.

Through small, dedicated supportive housing properties that are indistinguishable on their streets – hidden in plain sight within neighborhoods, and through blending of special needs populations into larger multifamily properties, CHOM has now done exactly what this RFP is requesting some 67 times. CHOM has expertise, dedication, commitment, and a proven record of success in keeping challenging populations stably housed in its 67 properties. And because of efforts to blend populations in communities, there are no stigmas permanently attached to residents. No one knows that any CHOM tenants were homeless for any period of time. From the neighbors' perspective, they are just people living in a very nice, well-kept building.

It is inherent to CHOM's mission to ensure that its tenants will be successful in their housing. CHOM's housing makes everyone proud; it is of high quality, and is constantly updated to meet the evolving needs of tenants and service providers. In addition, CHOM's experience bears out the results reported in The Bamberger Study, which found that, "the more beautiful the housing, the stronger the healthcare impact" for homeless populations. CHOM encourages tenants to have a strong sense of ownership of their housing -- this is their home. This sense of ownership directly correlates with tenants' willingness to connect with service providers and achieve or maintain sobriety; residents have the desire to better their lives while in CHOM housing.

CHOM partners with social service agencies that work diligently to address the needs of individual tenants once housed. CHOM's model of collaborative partnerships is a proven success. The Housing First model described in this RFP, and as laid out by the Task Force to Develop a Strategic Plan to Prevent and End Homelessness, is consistent with CHOM's model in serving chronically homeless populations. But the true Housing First Model is a harm reduction model at its core. Services are passive; they are there should the tenant opt for them. CHOM's "Community Housing First" model differs here slightly, though not from what is requested in the RFP). Going beyond just a "harm reduction" model (CHOM plays an active role in encouraging tenants to connect with support services and achieve goals they may want to pursue. These goals can include achieving and maintaining sobriety. Should sobriety be the goal, any relapses, which are part of recovery, do not mean a person will lose their housing, it means they may be offered additional support for success with their goal. CHOM and its service provider partners work together creatively to support the success of each tenant, and ensure stability in their housing. Residents have responded very well to this; they have not minded a nudge or our engaged assertive approach.

CHOM is committed to gre n building design and construction not only for reasons of energy efficiency – which is critical to long-term sustainability – but also for reasons of indoor air quality and natural lighting, which residents appreciate. Overall, green building makes economic sense, contributes to better buildings and happier tenants, and improves market appeal. In all its development work, CHOM strives to conserve natural resources, use land efficiently, and design housing to use new technologies and materials that reduce costs and increase energy efficiency. CHOM has partnered with Thornton Tomasetti, a green design consultant, to maximize energy efficiency, indoor air quality, and durability for previous development projects in Portland and Bangor. With careful "green" design and development, CHOM's 38 unit Elm Terrace project in Portland met the Secretary of the Interior's Standards for Rehabilitation, and was the first affordable, multi-family, Maine historic rehabilitation project to achieve LEED Platinum certification.

Elm Terrace has approximately 18 formerly chronically homeless individuals currently residing within it. Sixteen are sober and benefit from AA meetings held regularly in the community room. There are other residents that were formerly homeless as well, and once again, neighbors see them as upstanding neighbors living in a well-kept building. There is no reason for it to occur to them that their neighbors had any history of homelessness.

CHOM and its development team work closely to complete projects on time and on budget. This results in the housing being made available to those in need in the most efficient timeframe possible. CHOM consistently delivers excellence in new and carefully renovated housing that communicates dignity and respect to the individuals served. Last year alone, CHOM brought on line 8 projects with a total of 127 units, with about 35 serving people who were chronically homeless. Within that group was one individual who had been homeless living outside for 12 years prior to the housing. An article describing that individual's success is attached as Exhibit 7.

- *Please refer to Exhibit 1, "Resumes," for the qualifications of each principal involved in development as requested in the RFP.*

- *Please refer to Exhibit 2, "Organizational Chart," for the CHOM staff list.*

- *Please refer to Exhibit 3, "CHOM Organization Information," for organizational documents requested in the RFP.*

- *Please refer to Exhibit 4, "CHOM 2013 Financial Statement," as requested in the RFP.*

- *Please refer to Exhibit 7, "Homeless Veteran finds Waterville housing after 12 years in the woods."*

3. Development Team Members:

A complete list of the development team, with contact information and a description of roles and responsibilities is attached at Exhibit 5.

4. Experience:

A resume detailing the experience of CHOM Development Corporation is attached as Exhibit 6, and includes the information requested in the RFP to which this proposal is responding. Listed below are names and contact information for the lenders and investors listed on the attached resume.

Maine State Housing Authority
William Glover, Manager of Lending, Development Division
626.4634

Federal Home Loan Bank of Boston
Tobi Goldberg, Senior Community Investment Manager
617.292.9653

US Department of Agriculture, Rural Development
Robert Nadeau, Multi-family Housing Specialist
990.9114

Genesis Community Loan Fund

William Floyd, Executive Director
563.6073

Coastal Enterprises, Inc. (CEI)
John Egan, Director of Housing Development
882.7552

Boston Capital Corporation
Jeannine Ranaghan, Vice President
617.624.8876

Northern New England Housing Investment Fund
William Shanahan, President
772.8255

TD Bank
Kimberly Twitchell, Senior Vice President Commercial Lending
761.8648

Camden National Bank
Vera Roberts, Senior Vice President Commercial Lending
230.2170

Gorham Savings Bank
Matt Early, Senior Vice President
222.1493

City of Portland
Mary Davis, Division Director, Housing & Neighborhood Services
874.8711

City of Bangor
Jeremy Martin, Development Coordinator, Code Enforcement Division
992.4228

5. **Target Population:**

CHOM staff, including development and asset management, will work in concert with property management staff, area social service providers, and area shelters to target chronically homeless individuals for stable housing. CHOM's current collaboration for the chronically homeless population at Danforth on High, as previously described, will act as one of two models for this endeavor. The other model will be CHOM's smaller multifamily (4-10 unit buildings, most typically 4 units) collaborations which have proven highly successful in serving chronically homeless populations, and have been developed with project based Section 8, offered through MaineHousing in its supportive housing development. CHOM will work with the Portland Housing Authority as well as other subsidy providers to secure a mixture of project based and tenant based Rental Assistance, which will include Section 8, Shelter Plus Care, and Bridging

Rental Assistance (BRAP). CHOM typically has 3-6 of these properties under development around the state at any one time. Last year alone, CHOM brought on line 8 projects with a total of 127 units, with about 35 serving people who were chronically homeless. While working on a larger multi-family development, CHOM will focus its efforts on Portland and surrounding locations offering access to the bus line and walkability to goods and services. Many neighborhoods in and around Portland meet that criteria, and there are hundreds of suitable existing multifamily buildings offering rapid turnaround opportunities for repurposing to serve the target population. This flexible, two-model approach should expedite our success in developing the target 105 units of housing first apartments, and accomplish community inclusion at the same time.

CHOM has established excellent working relationships with design professionals throughout the State. This is critical to CHOM's success as a developer of supportive housing. The architects and contractors who are members of CHOM's development team respect and understand the needs of the tenants for whom the housing is being developed, and work to develop designs that provide universal accessibility, maximize resources, blend seamlessly into the neighborhood, and ensure long-term success. The team builds on learned knowledge from CHOM's 20 years of experience in creating excellent quality housing for homeless and special needs populations.

CHOM is the largest housing provider for homeless populations in the state. CHOM has 67 properties with 687 units of housing and over 35 collaborative partnerships with local service agencies, including the City of Portland Social Service Division. CHOM has been specifically targeting and stably housing chronically homeless populations since 2004, currently housing over 100 individuals in that category.

The target population for this series of projects will come from the Oxford Street Shelter, as well as Milestone Shelter, and the Florence House shelter for women. All three shelters are active in working to find housing in the community for their populations, and all have a history of working collaboratively with CHOM. All three have staff that work in conjunction with other community support providers that follow and deliver support services ensuring the success of the individuals housed. An example of this model is Danforth on High which drew populations that spent time in each shelter, though all ultimately were last staying at the Oxford Street Shelter. Service providers that follow the people in that project are based at the Oxford Street Shelter, Preble Street, and the Opportunity Alliance. This has worked very well, and everyone (11 people referred in total, with one passing away, and the 11^{th} referral taking his place) has remained successful in the housing after more than 6 months.

Working with an array of community support providers and shelter staff, CHOM will identify those members of the chronically homeless population that have stayed at shelters or outside for the longest period of time. This will be determined though Homeless Management Information System data, which is summarized and provided at regular intervals through the Maine State Housing Authority. Known as Long Term Stayers, as of July, 2013, the entire group in the state included 262 people. The group called Long Term Stayers includes and very closely overlaps people who meet the HUD chronically homeless definition. It is very nearly the identical population, but is far easier to identify. It is important to note that one can meet the chronically homeless definition of HUD through 4 shelter stays, not necessarily adding up to a length of stay reaching the 180 days; the Long Term Stayers by definition have stayed over 180 days in any 365 day period. By targeting Long Term Stayers in this fashion, and working from longest stays to shortest stays, this housing will have the biggest measurable effect on emptying homeless shelters, and the highest impact on ending chronic homelessness in Portland. Within this strategy, there will be room for service providers to be flexible with their referral choices. Some will be based on the Service Prioritization Decision Assistance Tool (SPDAT) assessment for selecting the best and most needy candidate for housing. CHOM will use the longest stay as a primary, though not rigid guideline.

Services will be delivered on an as needed basis, with regular and consistent outreach, and perseverance in service delivery irrespective of the mood of the person housed on any given day. This will meet the criteria outlined in the RFP for the Housing First model, with housing provided with no expectations of sobriety or lack of symptoms of mental illness or other "readiness" prior to housing. Each individual selected will move right in "as is". The services will be assertive, though not mandatory. Outreach to housed individuals will be in an effort to continue a relationship based on engagement and support. The outreach will not be passive, however. It will not be the case that staff will simply be on premises in case clients happen to want to meet with them. The outreach will involve direct, purposeful visits to clients within their housing. Services will be delivered in an effort to engineer success in the housing for each person housed. This is a model proven to work with the 100 plus people currently served within the CHOM portfolio who were chronically homeless. CHOM has remained at or about a 95% occupancy in its chronically homeless population supportive housing for the last 5 years. With the exception of people passing away, that is essentially full.

In July 2013, 116 of the 262 Long Term Stayers in the state were residing at the Oxford Street Shelter. At that time, the shelter's functional capacity (with space taken up by reasonable accommodations for people needing cots vs. mats, etc.) was 130 people. This meant that 116 of the 2166 people who passed through the Oxford Street Shelter stayed night after night, using 116 of the beds, and leaving only 14 beds for the remaining 2050 people to pass through. This explains the need for three emergency shelter overflows. In the summer and fall of 2013, in response to advocacy by Community Housing of Maine, the City of Portland changed its strategy to target outreach, rental subsidy, and community support resources to the specific group called Long Term Stayers, working essentially from longest to shortest within that group.

In most cases, 180 days in a 365 day period has meant a shelter stay that is considerably longer, and in some cases, shelter stays for Long Term Homeless have spanned many years. Three weeks ago an individual was housed who was at the Oxford Street Shelter for 17 years. The strategy is working. Services and an effective strategy currently exists in Portland; what is lacking is landlords willing to accept the population. CHOM is that landlord. CHOM will target the longest stayers within the chronically homeless population because the longer the stay, the greater the impact of successful community housing. This greater impact carries beyond just a significant reduction in numbers at the shelter; it also means a direct reduction in a wide array of community services including police, rescue, emergency room, and detoxification.

Low self-esteem is as abundant as poverty and stigma in the chronically homeless population. The model proposed in this response to the RFP works to cure all three through multiple approaches. The primary approach is through active and assertive relationship work. Individuals won't be successful in pushing people away and self-isolating. Services will persist despite mood or presentation of the individual. That alone communicates value and worth. Individuals will feel that they matter, that they are important, and that they are not alone.

But beyond that will be the housing itself, which will constantly communicate dignity and respect – externally and internally. Individuals living there will have a sense of ownership in their housing, as well as a sense of belonging and pride. This will be nice, universally desirable housing. Anyone will want to live there. CHOM will target one bedroom units, not just efficiencies or single room occupancy units. Anyone will feel proud to call this their home. That makes a meaningful and lasting difference in self-esteem.

Layered on top of that that will be location. Rather than clustering volumes of individuals in three large outstanding locations to achieve 105 units, CHOM proposes blending the population quickly and seamlessly into a combination of rehabilitated existing small multifamily apartment buildings, and larger Low Income Housing Tax Credit and/or Historic Tax Credit funded properties aimed at serving the general public. This housing will be an active part of nice neighborhoods. CHOM will work to quietly blend in people who have experienced chronic homelessness as a significant fraction, such as 1/3 of the larger developments. Elm Terrace and Danforth on High are two good examples of how this part will be done. By these two approaches, no one will come to see any of this housing as "where the homeless people live". The fact that individuals will have experienced a period of long term homelessness will be no more a part of who they were than if they experienced athlete's foot, or a broken leg at one point in their lives, or whether they wore braces, didn't own a car, or had long or short hair for a period of time. Those facets won't serve to be their identity. When housed, these individuals will be included as part of our community in a true and level fashion, as we at CHOM think it should be.

6. Project Timeline – Larger project:

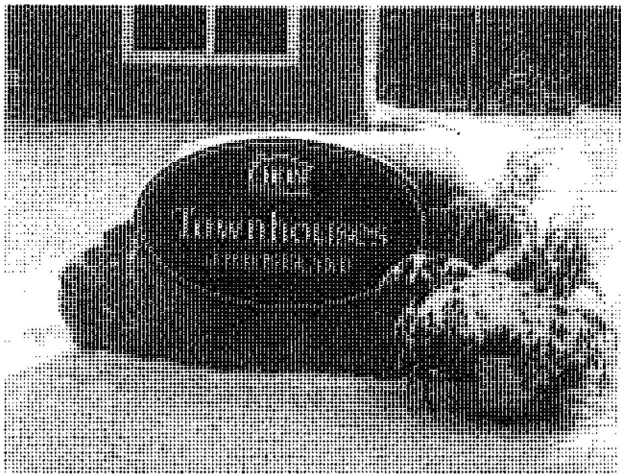
Site Selection complete	5/01/14
Option Agreement fully executed	5/15/14
Construction Manager at-Risk selection process begins	5/15/14
Construction Manager Selected	7/01/14
Design development begins	7/01/14
MaineHousing LIHTC pre-application due	8/10/14
Planning Board – discuss sketch plan	8/15/14
RLP and LIHTC application	9/26/14
Subdivision and Site Plan applications submitted	10/15/14
Neighborhood meeting – discuss plans	11/01/14
Tax credit investor selected /terms of investment est.	12/15/14
Construction lender selected / terms established	1/01/15
City of Portland permitting completed	2/01/15
Construction documents finalized	3/01/15
Bidding begins	3/10/15

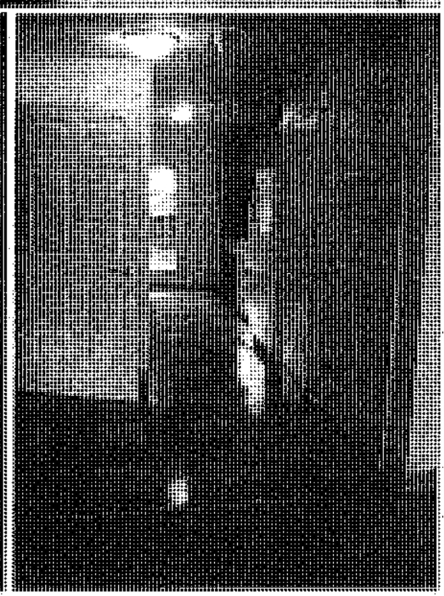
Bidding complete	4/01/15
GMP established and construction contract finalized	4/15/15
Acquisition and construction loan closing	5/01/15
Construction starts	5/01/15
Leasing begins	1/01/16
Construction complete	2/01/16
Initial occupancy	2/01/16
Permanent loan closing	3/31/16

7. **Project Timeline – Smaller projects:**

CHOM is constantly identifying a variety of good prospects of currently listed and to be listed small multifamily apartment buildings in the Portland market. CHOM will seek funds through the MaineHousing Supportive Housing RFP, when it comes out in 2014, 2015, 2016, and beyond, and will seek to develop multiple 4-10 unit projects in each of the upcoming years. CHOM will also seek acquisition and rehabilitation funding through Federal Home Loan Bank (FHLB) of Boston, among other sources. Typically, using MaineHousing or FHLB funds, CHOM can complete construction within about 4 months of construction loan closing on these smaller projects.

Townhouses at Davis Island



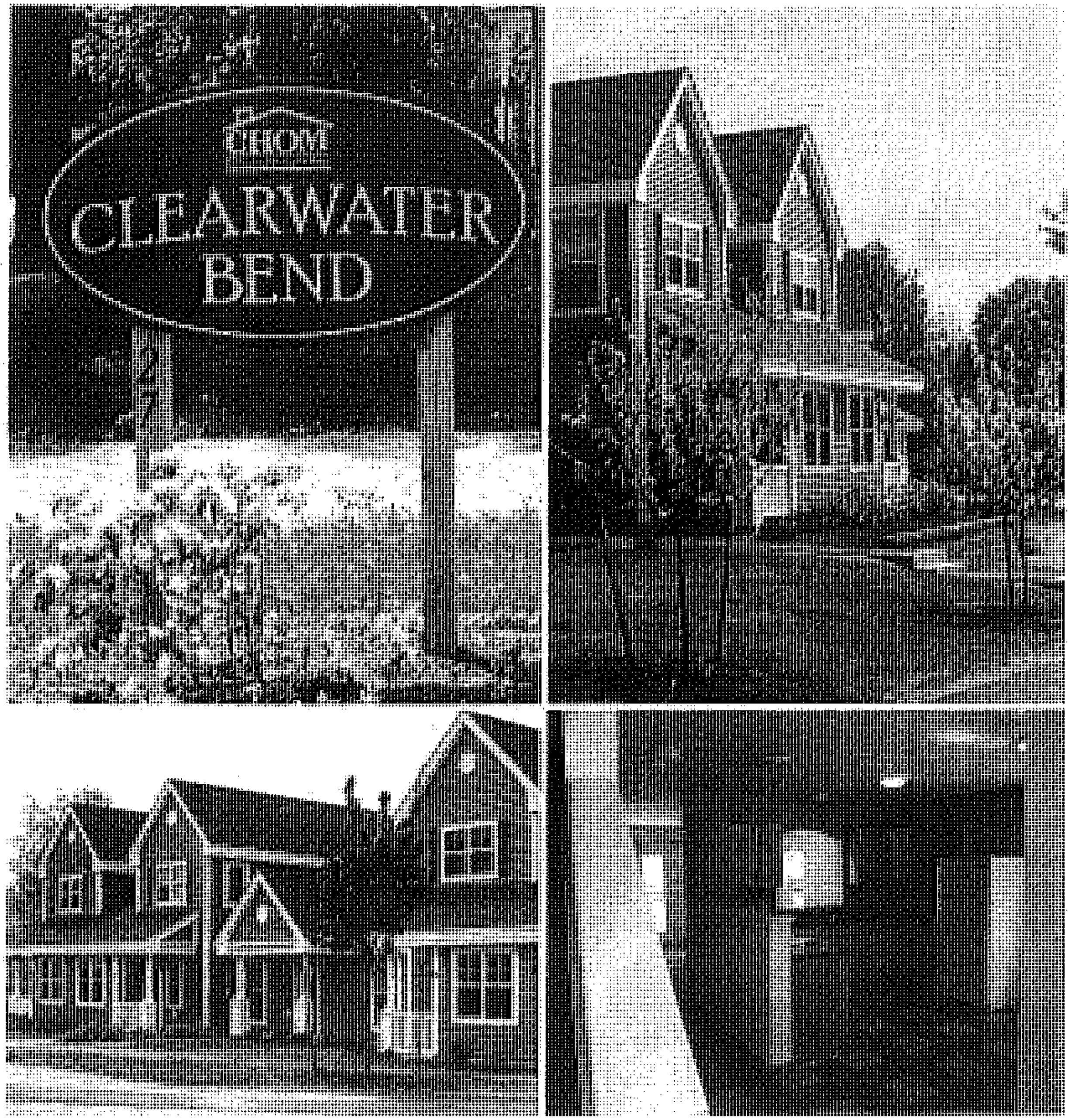



2006 / Davis Island Housing Partners, L.P.
9% tax credits / 26 family units, 27,376 Sq. Ft., 45 US Route 1, Edgecomb, Maine
New construction, $5.5 million total development cost
Delivered early and on budget / Portland Builders as General Contractor by Select Bid
Initial occupancy October 2007
Architect: Ben Walter, CWS Architects
Construction Lender: Camden National Bank
Syndicator: Boston Capital Corporation
Property Manager: Preservation Management, Inc.
Project Manager: Erin Cooperrider for CHOM Development Corporation
Meets MaineHousing's green design requirements

An affiliate of Community Housing of Maine, Inc.

Exhibit 6

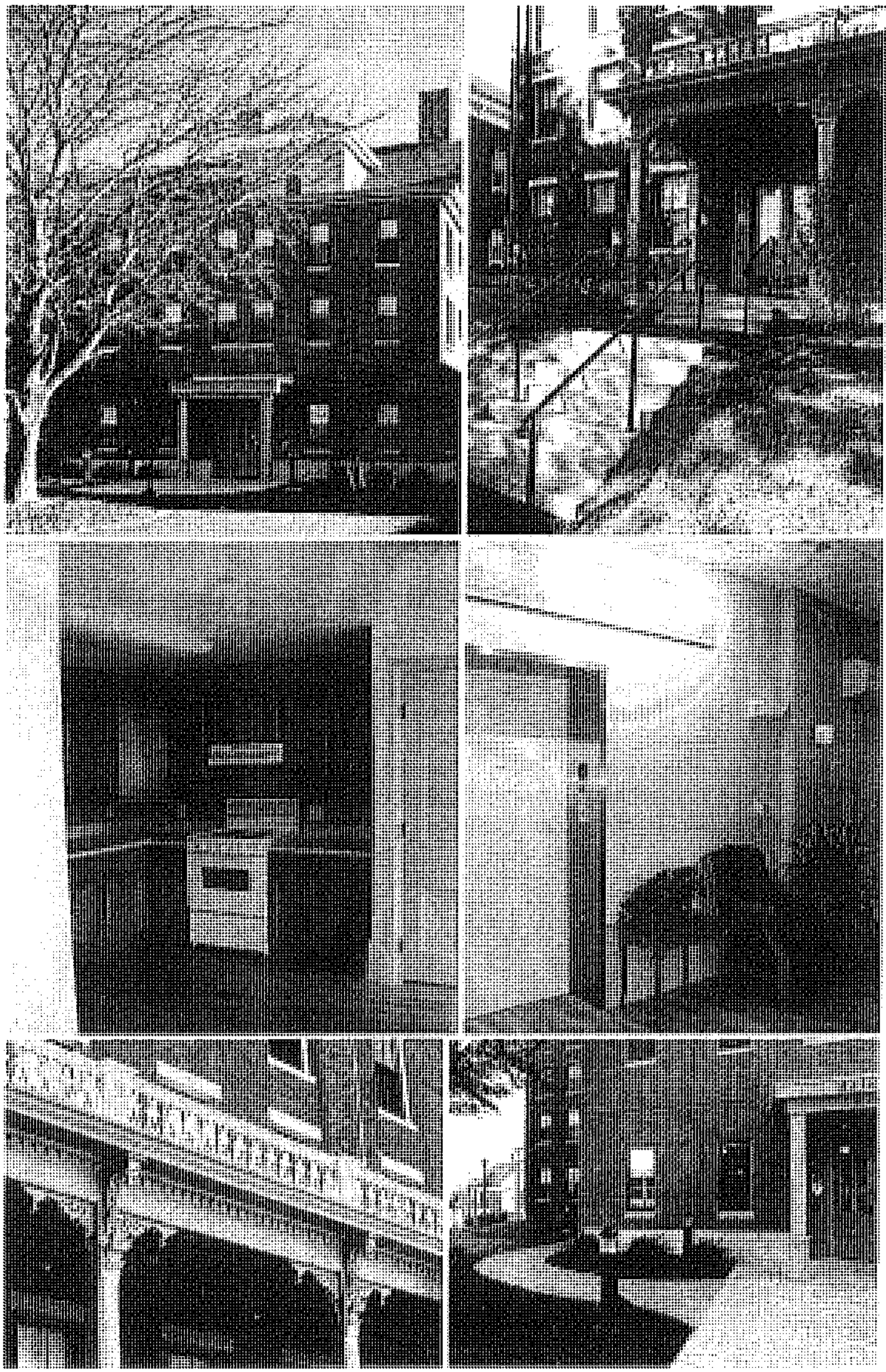
Clearwater Bend



2007 / Reed Street Neighborhood Housing, L.P.
9% tax credits / 23 family units, 26,190 Sq. Ft., 27 Reed Street, Westbrook, Maine
New construction, $5.5 million total development cost
Delivered early and under budget / Benchmark as Construction Manager-at-Risk
Initial occupancy July 2008
Architect: Ben Walter, CWS Architects
Construction Lender: Camden National Bank
Syndicator: Boston Capital Corporation
Property Manager: Preservation Management, Inc.
Project Manager: Erin Cooperrider for CHOM Development Corporation
Meets MaineHousing's green design requirements

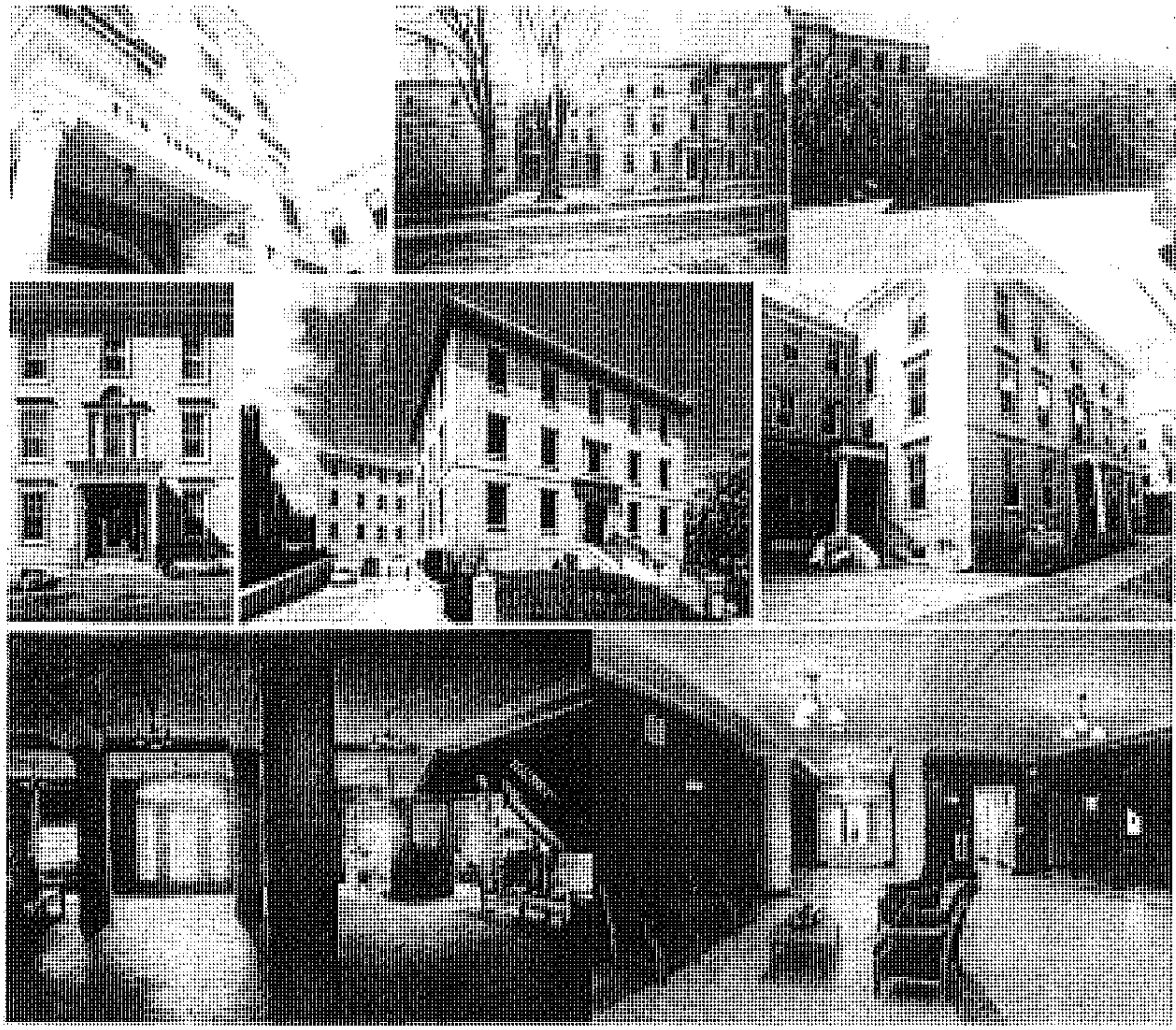
Exhibit 6

Maine Hall



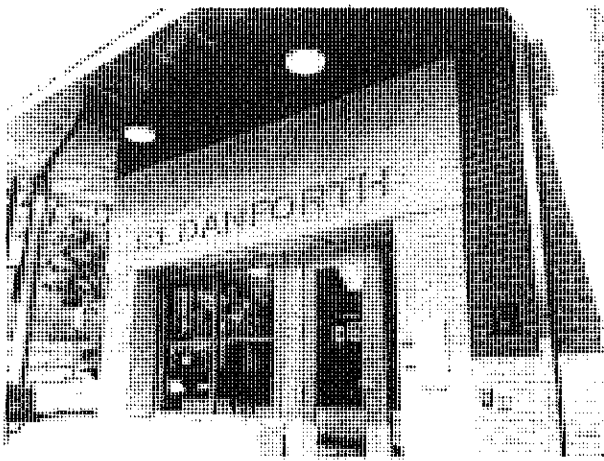
2009 / Seminary Housing Partners, L.P.
9% tax credits / state and federal historic tax credits / 28 senior units, 25,350 Sq. Ft., 288 Union Street, Bangor, Maine
Acquisition and rehabilitation of historic brick building with new construction addition
$6 million total development cost
Delivered on time and on budget / Nickerson O'Day as Construction Manager-at-Risk
Initial occupancy August 2011
Architect: Ben Walter, CWS Architects
Construction Lender: People's United Bank
Syndicator: Boston Capital Corporation
Property Manager: Preservation Management, Inc.
Project Manager: Erin Cooperrider for CHOM Development Corporation
Certified by the U.S. Green Building Council (USGBC) and achieved Leadership in Energy and Environmental Design (LEED) Silver Certification

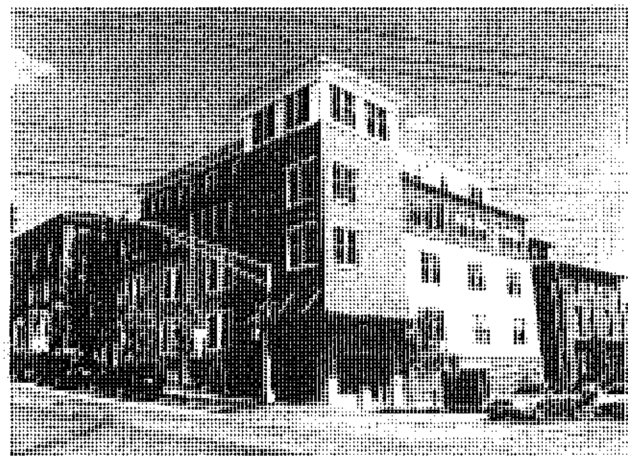
Elm Terrace

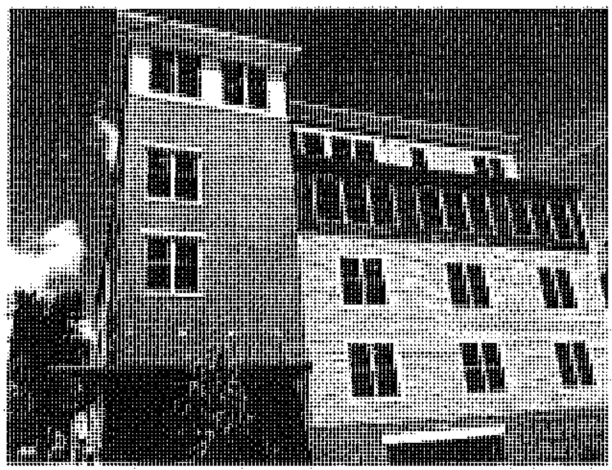


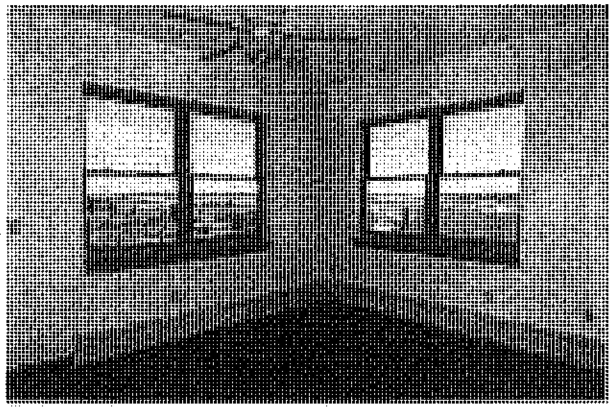
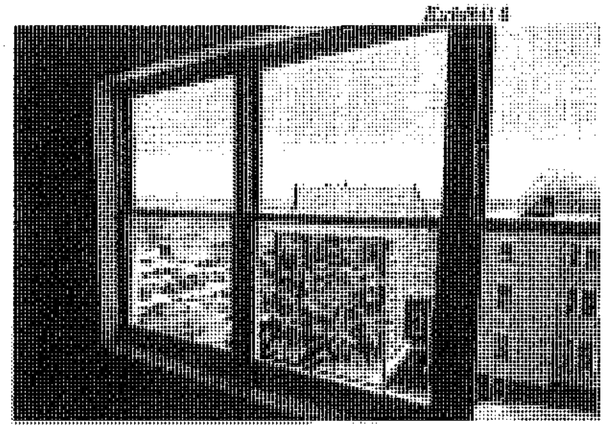
2010 / Children's Hospital Housing Partners, L.P.
9% tax credits / state and federal historic tax credits / 38 family units, 42,864 Sq. Ft., 68 High Street, Portland, Maine
Acquisition and rehabilitation of historic brick building with new construction addition
$10.5 million total development cost
Delivered on time and on budget / Wright-Ryan as Construction Manager-at-Risk
Initial occupancy February 2013
Architect: Ben Walter, CWS Architects
Construction Lender: TD Bank
Syndicator: Boston Capital Corporation
Property Manager: Preservation Management, Inc.
Project Manager: Erin Cooperrider for CHOM Development Corporation
Certified by the U.S. Green Building Council (USGBC) and achieved Leadership in Energy and Environmental Design (LEED) Platinum Certification

Danforth on High



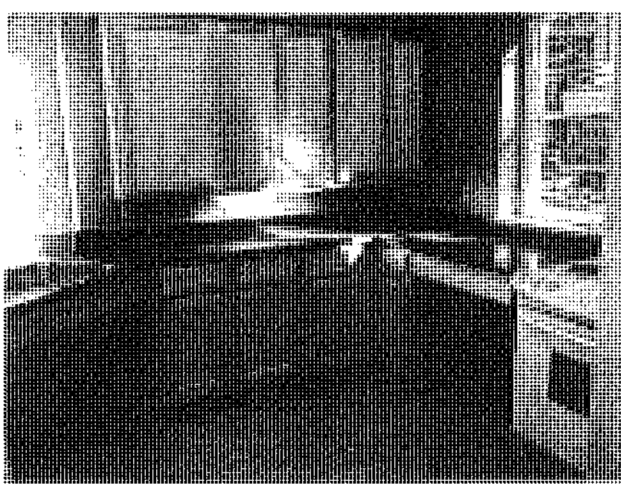
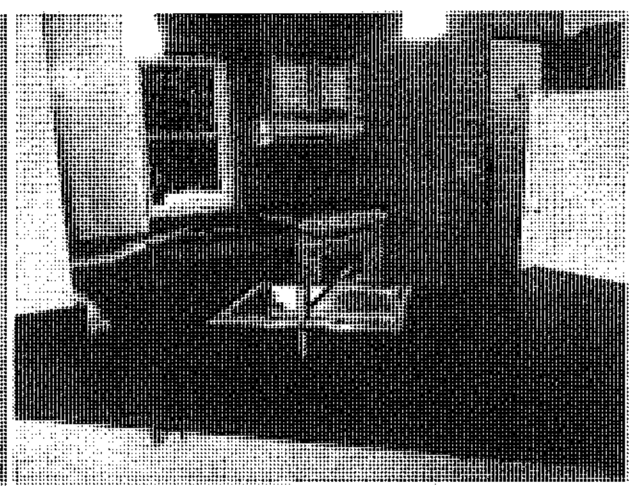


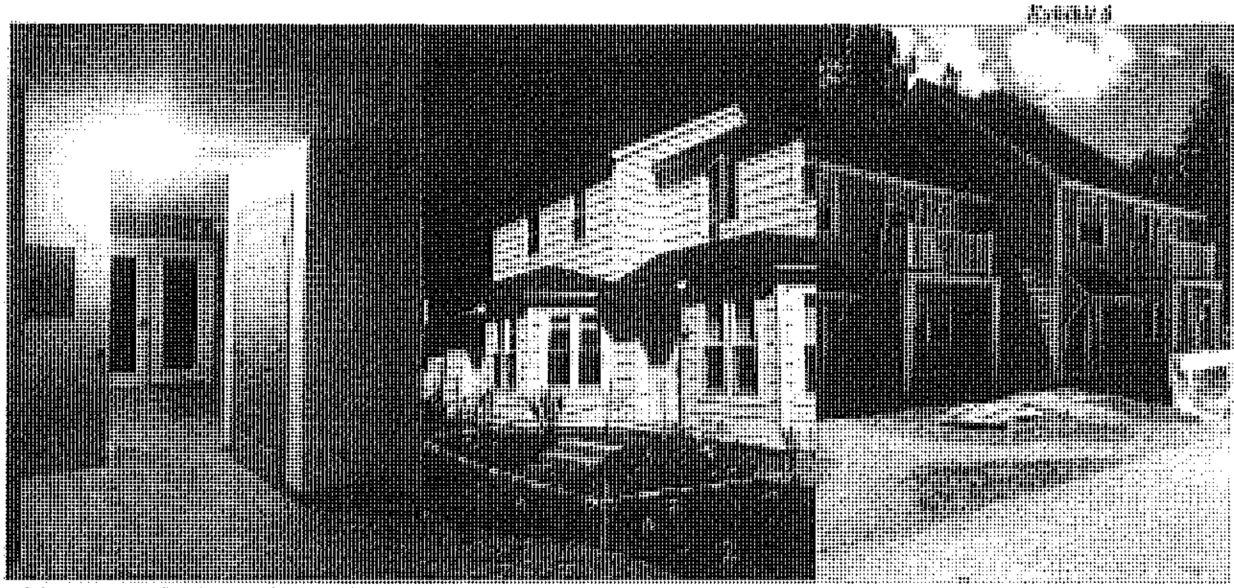


2011 / Danforth on High, L.P.
4% bond deal / 30 senior units, 23,450 Sq. Ft., 81 Danforth Street, Portland, Maine
New construction, $5.6 million total development cost
Delivered on time and under budget / Hebert Construction as General Contractor by Select Bid
Initial occupancy July 2013
Architect: David Lloyd, Archetype
Construction Lender: Gorham Savings Bank
Syndicator: Boston Capital Corporation
Property Manager: Preservation Management, Inc.
Project Manager: Erin Cooperrider for CHOM Development Corporation
Meets MaineHousing's green design requirements

Campbell Creek Village (formerly Harbor Pines and West Harbor Pines)

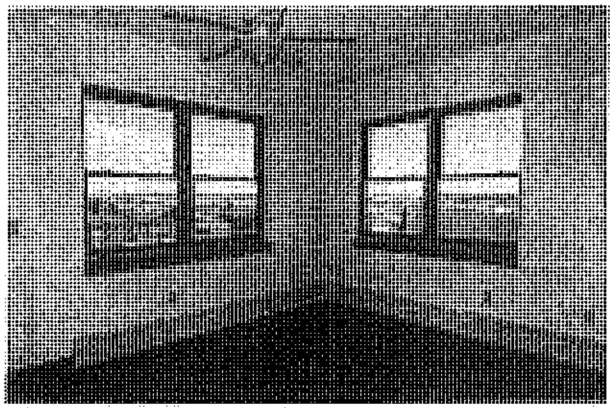



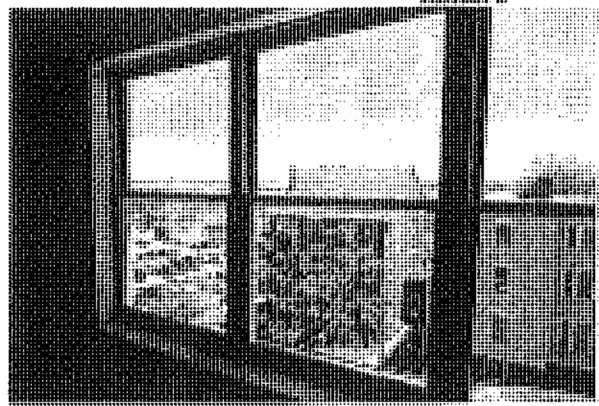


2012 / Campbell Creek Housing Partners, L.P.
4% bond financing and tax credits / USDA Rural Development Multifamily Revitalization Program
16 family units and 20 senior units, 31,165 Sq. Ft., Andrea Lane, Boothbay Harbor, Maine
Acquisition and occupied rehabilitation; $ 4.8 million total development cost
Delivered early and on budget / Great Falls Construction as General Contractor by Open Bid
Initial Occupancy September 2012 (occupied renovation)
Architect: Ben Walter, CWS Architects
Construction Lender: Maine State Housing Authority
Syndicator: Northern New England Housing Investment Fund
Property Manager: Preservation Management, Inc.
Project Manager: Erin Cooperrider for CHOM Development Corporation
Meets MaineHousing's green design requirements

Village Center Family Apartments
2014 / Village Center Housing Partners, L.P.
9% tax credits / 48 family units, 55,683 Sq. Ft., 131 State Street, Brewer, Maine
New construction, $9.5 million total development budget
General Contractor by select bid in October 2014
Initial occupancy targeted for January 2016
Architect: Ben Walter, CWS Architects
Construction Lender: TBD
Syndicator: TBD
Property Manager: Preservation Management, Inc.
Project Manager: Erin Cooperrider for CHOM Development Corporation

Exhibit 6





2011 / Danforth on High, L.P.
4% bond deal / 30 senior units, 23,450 Sq. Ft., 81 Danforth Street, Portland, Maine
New construction, $5.6 million total development cost
Delivered on time and under budget / Hebert Construction as General Contractor by Select Bid
Initial occupancy July 2013
Architect: David Lloyd, Archetype
Construction Lender: Gorham Savings Bank
Syndicator: Boston Capital Corporation
Property Manager: Preservation Management, Inc.
Project Manager: Erin Cooperrider for CHOM Development Corporation
Meets MaineHousing's green design requirements

Campbell Creek Village (formerly Harbor Pines and West Harbor Pines)

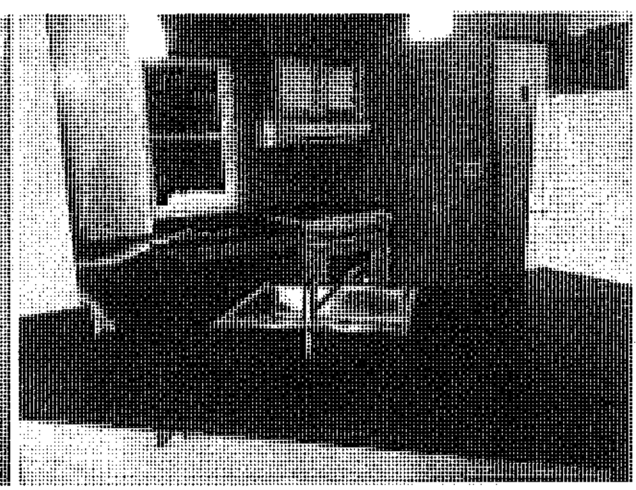
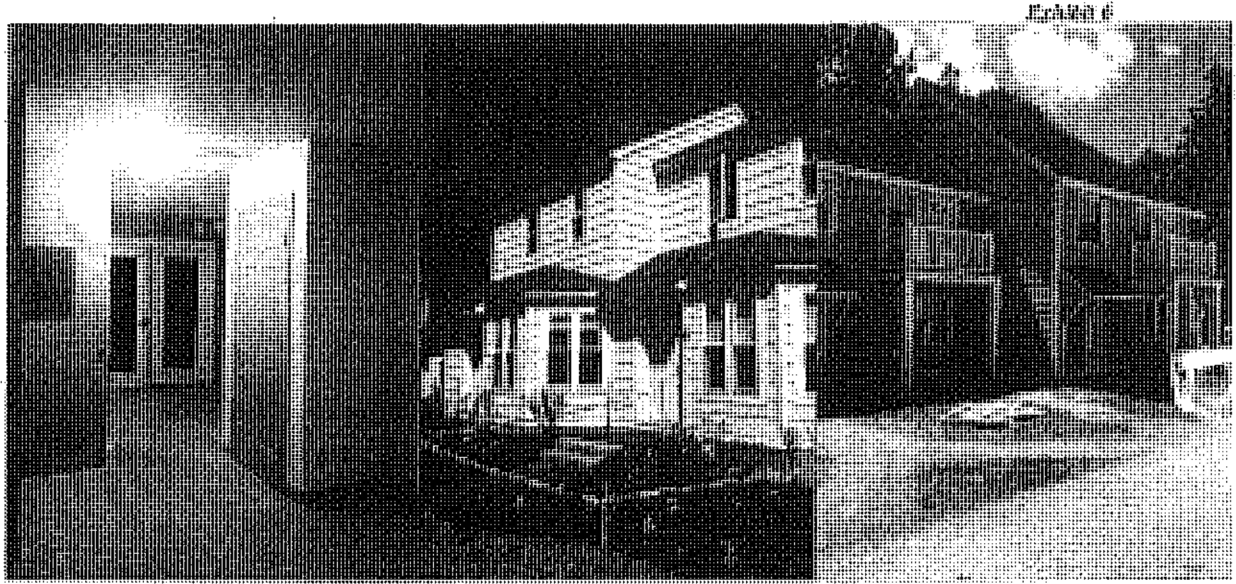


Exhibit 6



2012 / Campbell Creek Housing Partners, L.P.
4% bond financing and tax credits / USDA Rural Development Multifamily Revitalization Program
16 family units and 20 senior units, 31,165 Sq. Ft., Andrea Lane, Boothbay Harbor, Maine
Acquisition and occupied rehabilitation; $ 4.8 million total development cost
Delivered early and on budget / Great Falls Construction as General Contractor by Open Bid
Initial Occupancy September 2012 (occupied renovation)
Architect: Ben Walter, CWS Architects
Construction Lender: Maine State Housing Authority
Syndicator: Northern New England Housing Investment Fund
Property Manager: Preservation Management, Inc.
Project Manager: Erin Cooperrider for CHOM Development Corporation
Meets MaineHousing's green design requirements

Village Center Family Apartments
2014 / Village Center Housing Partners, L.P.
9% tax credits / 48 family units, 55,683 Sq. Ft., 131 State Street, Brewer, Maine
New construction, $9.5 million total development budget
General Contractor by select bid in October 2014
Initial occupancy targeted for January 2016
Architect: Ben Walter, CWS Architects
Construction Lender: TBD
Syndicator: TBD
Property Manager: Preservation Management, Inc.
Project Manager: Erin Cooperrider for CHOM Development Corporation

Exhibit 7

Morning Sentinel
MONDAY, FEBRUARY 10, 2014

February 8

Homeless veteran finds Waterville housing after 12 years in the woods

Steve McFarland spent time at the YMCA developing friendships with state senators who had no idea he was homeless before a medical emergency during a snowstorm nearly killed him.

By Matt Hongoltz-Hetling mhhetling@centralmaine.com
Staff Writer

On April 1, 2011, a snowstorm took much of the Northeast by surprise. But for Steve McFarland, a homeless veteran who had been living in the woods for more than a decade, it was nearly a death sentence.

More than a foot of wet, heavy snow fell in Bangor, sending cars off the road and shutting down power of more than 10,000 area customers. McFarland woke up that morning in his tent, pitched in a patch of woods a few miles outside of town, near the railroad tracks.

homeless person Steve McFarland speaks about the factors in his life that led him to take part in living in one of three housing units that provide shelter to veterans and adults with disabilities in Waterville.

Staff photo by David Leaming

He was in great pain — a shooting, sharp pain that went from the base of his spine all the way down to his ankle.

Frightened, McFarland headed for the hospital, about a five-mile walk. In nice weather, when he was healthy, he enjoyed walking into Bangor. There, he would pass time in the library or at the local YMCA, where he took advantage of his membership to shower or do physical therapy for some old injuries.

In the heavy snow, though, with a leg so painful he could barely walk, McFarland thought he might wind up entombed in a snowbank.

"I said to myself, 'I'm going to die today,'" he said.

But the storm ultimately became McFarland's salvation, touching off a chain of events that landed him in a Waterville apartment operated by Community Housing of Maine, a

Exhibit 7

nonprofit organization that provides housing for veterans and disabled adults who have been homeless for extended periods.

service: A U.S. Marine flag waves beside formerly homeless veteran Steve McFarland at a shelter in Waterville that provides housing for veterans with disabilities.

Staff photo by David Leaming

The group, the largest provider of housing to the homeless in the state, wants to eliminate long-term homelessness in Maine within four years.

"We could get it done," Cullen Ryan said. "We could end chronic homelessness in Maine."

Ryan is the executive director of Community Housing of Maine, a group that, with a staff of just nine people, provides housing to 1,000 people in the state.

While there are about 7,000 homeless people in the state each year, the large majority of them are going through a transition and only homeless for a short period.

The number of people who are homeless for longer periods is much smaller. There were 262 last year, Ryan said.

The organization, which is bolstered through partnerships with the Maine State Housing Authority, the Department of Veterans Affairs programs and other social service agencies, is growing. It owns 10 properties, including three in Waterville, that are dedicated to homeless veterans, housing a total population of 42 veterans at any given time.

The homes are designed not just to shelter veterans, but to be a place where they can be reached with other services, including mental health counseling that they might need to reintegrate into society. The strategy has significant upfront costs, but Ryan said the approach saves the government money. The group undertook a study of some of its own clients and found a net savings of about $4,400 per resident, based on reduced need for emergency services, shelters and detoxification programs.

McFarland's apartment is spacious and clean, one of four units in an unassuming white house on Gilman Street in Waterville funded by the Maine State Housing Authority. Unlike some public housing projects, the house and its residents are indistinguishable from the houses surrounding it, part of what allows its residents to integrate into the community more successfully, Ryan said.

"They're some of the best neighbors you could imagine," he said. "Our people are finding their place within the community. They're mowing each others lawns, bringing pies over, the whole thing."

NOWHERE TO GO

McFarland, a Bangor native, now 56, always had struggled to put together a professional career. When he was 18, he joined the Marines for four years, most of which he spent stationed in Okinawa. He didn't like what he called the barracks life, living among a group of other young men without family or much to do. He and his friends often wound up at the E-Club, a nightclub for enlisted Marines, drinking to pass the time.

(Continued on page 2)

1 | 2 | 3 | 4 | NEXT >>
Single Page

Exhibit 7

Morning Sentinel
MONDAY, FEBRUARY 10, 2014

18°
Mostly Sunny
RealFeel® 9°
High: 25° | Low: 2°
High Tide: 8:25PM
Low Tide: 2:10PM

February 8

Homeless veteran finds Waterville housing after 12 years in the woods

Steve McFarland spent time at the YMCA developing friendships with state senators who had no idea he was homeless before a medical emergency during a snowstorm nearly killed him.

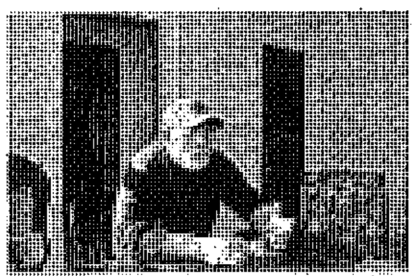
By Matt Hongoltz-Hetling mhhetling@centralmaine.com
Staff Writer

(Continued from page 1)

When he left the military, he returned to Maine and spent five or six years working in shoe shops in the Bangor area.

By the end of the 1980s, the shoe shops closed down. McFarland wandered, sometimes to Southwestern states, including Arizona, working as a builder on construction sites. He always returned to the Bangor area. He never stopped drinking, a habit that eventually cost him jobs and his driver's license.

He thinks drinking is what drove him into homelessness.



homeless person Steve McFarland speaks about the factors in his life that led him to take part in living in one of three housing units that provide shelter to veterans and adults with disabilities in Waterville.
Staff photo by David Leaming

In 2000, McFarland was working a gig cleaning chain stores such as Rite Aid, all throughout the Northeast. One day, his co-worker was driving him and another man in a van through Ossipee, N.H., on the way to a job, when he got into a car accident. The driver was killed.

"The other guy in the van, he got stoved up pretty bad," McFarland said. "I got stoved up pretty good."

He suffered compression fractures in his back, dislocated his leg and his knee, broke his jaw and lost some teeth. In addition, some of the cleaning chemicals in the van splashed into his left eye, blinding it.

beside formerly homeless veteran
Steve McFarland at a shelter in Waterville that provides

When McFarland got out of the hospital, he entered a physical rehabilitation center. When

Exhibit 7

he left the rehabilitation center, he had nowhere to go, so he landed in a homeless shelter in Bangor.

housing for veterans with disabilities.

Staff photo by David Leaming

It was the barracks life all over again.

"I couldn't live in a shelter environment," he said. "'Cause, I don't know, I was going through a lot mentally. I couldn't deal with all the people, the crowds, the fastness of it, you know."

INTO THE WOODS

McFarland canvassed the area, looking for a place in the woods where he could live without being noticed. He found a spot he felt was secure, where he could hear but not see the traffic.

He borrowed a sleeping bag from a social worker and spent his first night in the woods.

"At first, I struggled because of the pain I was going through; but I said to myself, 'I can take it.'"

He saw hunters once in a while. He walked into town every day to the library or to shower at the YMCA, where he was a member. He got a tent and a bunch of sleeping bags, which he said were adequate protection from the cold, even when it was 20 below zero.

"I had a pretty good supply of wood, you know, broken branches," he said. "I didn't usually light a fire, but if I needed one, I could light one."

Looking back now, he said, his time in the woods was a period of healing. When he first went in, he was a mess.

"I couldn't walk well. I couldn't see well. I couldn't talk well. I couldn't eat well," he said. "I fought for two years pretty hard to survive."

He lived on food stamps and on whatever odd jobs he could get. He said it was difficult to find work because his age and his eye, which was a milky white from the cleaning chemicals, made supervisors reluctant to hire him.

"I was on and off of food stamps," he said. "I'd work a little, I'd lose food stamps. Work a little, I'd lose food stamps."

He spent his money on laundry, food and the YMCA membership, where he struck up casual friendships with other members from all walks of life.

"Lawyers, a couple of judges, a couple of senators," he said. "They didn't know I was homeless. I never let on."

When they asked, he told them he was a builder and contractor. Sometimes they would offer him jobs, but he was too embarrassed to let on that he lived in the woods and had no transportation.

(Continued on page 3)

<< Previous | 1 | 2 | 3 | 4 | NEXT >>
Single Page

You May Like

Exhibit 7

Morning Sentinel
MONDAY, FEBRUARY 10, 2014

February 8

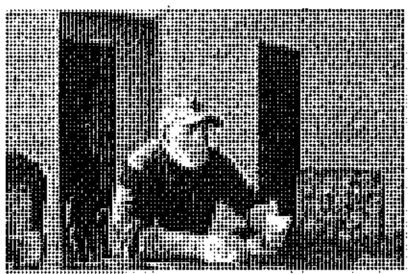
Homeless veteran finds Waterville housing after 12 years in the woods

Steve McFarland spent time at the YMCA developing friendships with state senators who had no idea he was homeless before a medical emergency during a snowstorm nearly killed him.

By Matt Hongoltz-Hetling mhhetling@centralmaine.com
Staff Writer

(Continued from page 2)

"'I'll come look at it when I have time, but I can't come look at it right away,'" he would tell them. "Little white lies, you know."



homeless person Steve McFarland speaks about the factors in his life that led him to take part in living in one of three housing units that provide shelter to veterans and adults with disabilities in Waterville.

Staff photo by David Leaming

McFarland said he continued to keep his physical appearance up so that he could blend in and protect himself from the stigma of homelessness.

"I told a buddy of mine — he was homeless too and he camped out with me for a while — I said, 'Nope, you have to present yourself decently in the public. Take care of your clothes. Go to the Y. Clean yourself. You're going to be in public all the time. If you stink like piss and you look like crap, people are going to be scornful of you. Kids are probably going to throw rocks at you.' You need some homeless etiquette, I call it."

While in the woods, he saw lots of wildlife. Wild turkeys, moose and deer were regular sights.

Once, a bear he estimates weighed 200 pounds entered his camp.

"I actually barked like a dog," he said. "He turned tail and ran like crazy."

He also worked on anger issues. "I think I went through a screaming stage," he said. "I'd be out in the woods screaming, 'Goddammit! This sucks!'"

He said the natural setting helped calm him.

beside formerly homeless veteran Steve McFarland at a shelter in Waterville that provides

Exhibit 7

"Being in the woods helped me," he said. "It's peaceful. The birds are singing. It would be tranquil."

housing for veterans with disabilities.

Staff photo by David Leaming

At first the physical demands of his life strengthened him and helped him rehabilitate himself.

Over time, though, as the years passed, they began to take their toll.

"I was getting tired in the woods. I was having physical problems," he said.

Then came the day of the snowstorm. He woke up to such a pain in his leg that he couldn't walk, isolated, six miles from the hospital.

As incredible as McFarland's story of life in the woods sounds, Ryan said it isn't unique among Maine's population of long-term homeless veterans.

In fact, he said, McFarland is a textbook example of the veterans the group serves. The typical client, Ryan said, is in his 50s, "has been homeless for a long period of time, was in the armed service a long time ago, came out of armed service, came back to society, made a go of it on his own, tried to be productive, may have had some success; but then things fell apart."

OUT OF THE WOODS

In 2011, when McFarland left his camp with his leg pain and limped through the snow toward the hospital, it was the beginning of the end of his life in a tent.

"Cars weren't moving," McFarland said. "You couldn't walk down the street. Nothing was plowed."

He was trying to get to Eastern Maine Medical Center, but the Bangor Community Based Outpatient Clinic, part of the VA Maine Healthcare Systems, was on his way, so he went there instead.

The doctor in the clinic diagnosed McFarland with inflammation of the sciatic nerve and gave him some pills to ease the pain. She told him the root cause was sleeping on the ground, and helped put McFarland in touch with other veterans services.

"I didn't really want to get food stamps or housing paid for," he said. "I didn't really know a lot about the programs until I came down to the VA."

Months later, he traveled to Augusta to an event for homeless veterans put on by the Togus VA and Bread of Life Ministries.

Before long, he boarded a Greyhound bus from Bangor to Augusta, returning to barracks life for the last time — a homeless shelter operated by Bread of Life.

(Continued on page 4)

<< Previous | 1 | 2 | 3 | 4 | NEXT >>
Single Page

Exhibit 7

Morning Sentinel

MONDAY, FEBRUARY 10, 2014

February 8

Homeless veteran finds Waterville housing after 12 years in the woods

Steve McFarland spent time at the YMCA developing friendships with state senators who had no idea he was homeless before a medical emergency during a snowstorm nearly killed him.

By Matt Hongoltz-Hetling mhhetling@centralmaine.com
Staff Writer

(Continued from page 3)

After some months there, a spot opened up in the Community Housing of Maine program, and in late 2012, he moved into his own apartment for the first time in 12 years.

"The homeless program was a lifesaver for me," he said. "It got me here."

homeless person Steve
McFarland speaks about the factors in his life that led him to take part in living in one of three housing units that provide shelter to veterans and adults with disabilities in Waterville.
Staff photo by David Leaming

Today McFarland is looking toward the next chapter in his life. He walks without a limp and has gotten treatment for his eye, which had regained much of its sight and is no longer discolored. He arrived at the apartment with little more than a backpack, but he has accumulated a few possessions, including a bicycle and a shelf of books he purchased for a quarter apiece.

He still isn't working regularly. He says he wants to, but it's a difficult time for a person without a college degree to find a job in Waterville.

A beginning position with a fast-food retailer isn't a realistic option, he said.

"You have to pay for a car, pay for insurance, pay for clothes, pay for laundry, pay for utilities, little things like toilet paper, stuff like that," he said. "I've tried it. It's impossible."

Being in permanent housing also has helped him to give up drinking, he said. When a doctor told him his liver was beginning to show the negative effects of a lifetime of abuse, he stopped several months ago.

beside formerly homeless veteran
Steve McFarland at a shelter in Waterville that provides

Without Community Housing of Maine and the other services that have helped get him out of the woods, McFarland said he didn't know where he would have turned for help.

housing for veterans with disabilities.

Staff photo by David Leaming

"I'd be out in the woods, or maybe head for the warmer weather," he said. "Hop a freight train or something."

Ryan said he hears stories like McFarland's every day.

"We serve 1,000 people," he said. "I could tell you 1,000 stories of how someone became homeless and came back."

Matt Hongoltz-Hetling — 861-9287 mhhetling@centralmaine.com Twitter: @hh_matt

<< Previous | 1 | 2 | 3 | 4
Single Page

Were you interviewed for this story? If so, please fill out our accuracy form

Send question/comment to the editors

Further Discussion

Here at OnlineSentinel.com we value our readers and are committed to growing our community by encouraging you to add to the discussion. To ensure conscientious dialogue we have implemented a strict no-bullying policy. To participate, you must follow our Terms of Use.

Questions about the article? Add them below and we'll try to answer them or do a follow-up post as soon as we can. Technical problems? Email them to us with an exact description of the problem. Make sure to include:

- Type of computer or mobile device your are using
- Exact operating system and browser you are viewing the site on (TIP: You can easily determine your operating system here.)

ATTACHMENT 3

Strengthening a Remarkable City, Building a Community for Life www.portlandmaine.gov

Executive Office
Mark H. Rees, City Manager

Com 5-12/13
Tab 11 11-19-12

TO:	Mayor Brennan and City Councilors
FROM:	Mark H. Rees, City Manager
	Douglas Gardner, Director, Health & Human Services Department
DATE:	November 9, 2012
RE:	Homelessness Task Force Communication

At its November 21, 2011 meeting, the Portland City Council passed an order establishing a Task Force to develop a strategic plan to prevent and end homelessness. The Task Force was charged with completing the following tasks:

1. Review and gain an understanding of the causal factors associated with homelessness, as well as the current community resources available to meet the unique needs of individuals experiencing homelessness;
2. Develop a multi-year strategic plan, including measureable objectives to reduce, prevent and end homelessness in Greater Portland;
3. The strategic plan should focus on three areas; access to healthcare services, supportive and affordable housing, and prevention;
4. Convene a larger stakeholder group to include social service providers, advocates, consumers, community and business leaders, and public safety representatives to inform the work of the Task Force;
5. Develop a strategic plan to prevent and end homelessness that can be endorsed by the Portland City Council and one that can be evaluated over time and modified if needed.

The Task Force, which has become commonly known as the Homelessness Task Force, formally began its work on January 24, 2012 and subsequently met eight (8) times. The Task Force subdivided into four committees focused on the following aspects of homelessness and specific groups impacted by homelessness: 1) *Retooling the emergency shelter system*, 2) *Access to physical and behavioral health*, 3) *Services to youth, families and Veterans* and 4) *Supportive and affordable housing*. In addition to the regular meetings of the Task Force, there were also two public meetings convened to seek input from the interested stakeholders.

As you know, the City Council held a workshop on October 15, 2012 at which time the Task Force presented its draft report. What you now have before you for consideration is the final work product from the Task Force's efforts. There have been no substantive changes made to the report from its previous version; the edits have included formatting changes and typo corrections. The report is coming to the City Council in the form of an official communication.

The Task Force has created an Implementation Plan comprised of four overarching Recommended Actions: 1) Retooling the Emergency Shelter System, 2) Rapid Rehousing, 3) Increased Case Management and 4) Report Monitoring. After reviewing the document and contemplating implementation steps, staff is recommending that the first three major components of the plan be forwarded to Council Subcommittees for action. In terms of action item #4, Report Monitoring, staff is recommending that a legacy group from the original Task Force be identified and formally noticed of any committee work related to the Plan. The legacy group will be expected to participate and inform the work of the Council Committees and ultimately the action of the full City Council. This strategy will allow for continued public input, as well as ongoing Task Force monitoring and ensure that the report guides the work of the Council.

Although there will inevitably be overlap with the work and some shared responsibility in terms of implementation, staff is recommending the Public Safety, Health & Human Services Committee receive action items #1, Retooling of the Emergency Shelter System and #2, Increased Case Management and the Housing and Community Development Committee receive action item #3, Rapid Rehousing. Although it is not recommended that the Legislative Committee receive any specific piece of the plan at this time, it is clear that it will have a role in implementation and will likely be called upon by the PSHHS and HCD Committees to assist in the advancing certain aspects of the plan. Similarly, the Finance Committee will most surely be called upon to assist; particularly related to contemplating City financial support.

This approach will allow the PSHHS and HCD Committees to develop a set of priorities based on the recommendations from the Task Force for consideration. In addition to the aforementioned legacy group, this approach will also allow the City Council to act as monitoring body; one that will receive regular updates on a defined schedule from the individual Council Committees. Finally, I am recommending that each Council Committee consider the recommendations from the Task Force when developing their 2013 Committee Work Plans.

Develop several temporary housing units which serve the needs of people who present at the intake center. Temporary housing units may include respite housing for those discharged from local hospitals, housing for veterans, short term housing for people with substance abuse issues, housing for people with mental illness, housing for families, etc.	Convene a group of stakeholders to explore the opportunity to create additional temporary shelter alternatives.	DHHS, HUD, MaineHousing, private funding, affordable care act, accountable care organizations	Convene first meeting by November 2012. Develop first new site by December 2013.	ESAC-(lead) Preble Street City of Portland Maine Medical Center Family Crisis Center Avesta Milestone Mercy Hospital Opportunity Alliance

Rapid Rehousing

Strategy	Action Items	Potential Funding Source	Timeline	Responsible Party
Create three new housing, 35 housing first units and appropriate supports for people who are homeless within the Greater Portland Region.	Develop, locate and site 3 projects.	HUD, DHHS, City of Portland,	Phase 1- first building complete July 2015, final building completed July 2018.	Avesta Housing-(lead) City of Portland Preble Street Portland Housing Authority Shalom
Enlarge diversion and prevention opportunities such as short term rental vouchers, assistance with back rent and security deposits and legal services for people who have been homeless for 14 days or less and are in the emergency shelter system.	Develop flexible funding source. Implement wrap around funding for eligible clients;	HUD using the HPRP model, HUD VASH,	Pilot of funding and program implementation by December 2012, full implementation with July 2013.	Preble street Veterans Assistance Shalom Portland Housing Opportunity Alliance DHHS

Work in partnership with landlords to increase access to housing stock which will increase available rental opportunities for people who are homeless. Create/expand resources for landlords to work through issues with tenants.	Convene working group to develop housing liaison system for working with local landlords	General assistance, MaineHousing, DHHS, City of Portland, HUD, SSVF for veterans	Ongoing	City of Portland- (lead) Portland Housing Authority Preble Street Shalom

Increased Case Management

Strategy	Action Items	Potential Funding Source	Timeline	Responsible Party
Utilize flexible funding mechanisms to support the delivery of substance abuse and mental health services for clients who are homeless through an ACT that meets chronic homeless fidelity standards.	Create services funded for non MaineCare clients but efficient link and follow up by substance abuse and mental health providers.	DHHS, Mercy, Maine Medical Center	July, 2013.	City Council- (lead) Preble Street Opportunity Alliance Maine Medical Center Mercy
Implement a medical home model of respite and treatment for people who are discharged from the hospital.	Convene a summit of leaders in the health care field in Portland to explore the issue of integrating care to people who are homeless and suffering with health related issues	n/a	November 2012	United Way of Greater Portland- (lead)

ATTACHMENT 4

Sec. 14-475. Reserved.

***Editor's note**—Section 7 of Ord. No. 354-85, adopted Jan. 7, 1985, repealed § 14-475, relative to nonconforming uses, which derived from Code 1968, § 602.24.E, and Ord. No. 437-74, adopted July 1, 1974.

Sec. 14-476. Successive applications.

Whenever any application, appeal or other request filed pursuant to this article has been finally denied on its merits, a second application, appeal or other request seeking essentially the same relief, whether or not in the same form or on the same theory, shall not be brought within one (1) year of such denial unless, in the opinion of the officer or board before which it is brought, substantial new evidence is available or a mistake of law or fact significantly affected the prior denial.
(Code 1968, § 602.24.F; Ord. No. 437-74, 7-1-74)

Sec. 14-477. Violations.

In addition to any other remedies available, the board of appeals after notice and hearing may revoke any variance or other relief granted under this article when the provisions of this article or the conditions under which the relief was granted have not been complied with.
(Code 1968, § 602.24.G; Ord. No. 437-74, 7-1-74)

Sec. 14-478. - 14-482. Reserved.

***Editor's Note**—Pursuant to Council Order 280-09/10 passed on 7/19/10 Division 29 (Preservation and Replacement of Housing Units) was repealed in its entirety and replaced with a new Division 29 (Housing Preservation and Replacement).

DIVISION 29. HOUSING PRESERVATION AND REPLACEMENT

Sec. 14-483. Housing preservation and replacement.

(a) *Purpose*. The purpose of these regulations is:

1. To promote and facilitate an adequate supply of housing, particularly affordable housing for all economic groups;

2. To limit the net loss of housing units in the city;

3. To preserve housing in zones where housing is permitted for in the city for all residents in order to promote the health, safety and welfare of its citizens.

(b) *Definitions.*

Dwelling unit. A dwelling unit is one (1) or more rooms with private bath and kitchen facilities comprising an independent self-contained dwelling unit. For purposes of this section only it also includes single family, two-family and multi-family dwellings and any dwelling units in those dwellings, or dwelling units, or rooms that people rent or sleep in within lodging houses, dormitories, shelters and sheltered care group homes.

Loss of dwelling or dwelling unit for purposes of this section means the elimination or conversion to nonresidential use of a dwelling or dwelling units; elimination includes dwelling units lost due to demolition unless the demolition resulted from accidents outside of the owner's control, fire, natural disasters, or acts of war.

Original site means the location where the demolition or conversion to non-residential use of dwellings and dwelling units will take place.

(c) *Applicability.* Except as otherwise provided in this section, this section shall apply to the loss of three or more dwelling units in a five year period, provided that such dwelling units were a legally registered residential use as of July 1, 2002.

Except as otherwise provided in this section, this section shall also apply to proposals that (a) result in the loss of fewer than three (3) dwelling units which were legally registered residential use as of July 1, 2002, and (b) creates surface parking.

Determination of number of the dwelling units within a strtucture or structures and the number of units lost will be based on records in the Department of Planning and Urban Development indicating the legal, registered use of the property since July 1, 2002 through the time of application. The actual use of the preopety for purposes of applicability of this section may be rebutted by the owner by proof of documentary evidence including but not limited to photographs, letters, and swron affidavits. The Planning Authority may conduct its own investigation of the actual use and shall determine the applicability of this section based on the totality of the evidence.

(d) *Exemptions.*

This section does not apply to:

1. Consolidation, elimination or reconfiguration of one (1) or more dwelling units within an existing structure, as long as all the resulting units remain as dwelling units after such consolidation, elimination or reconfiguration, except as provided by subsection 5 below. Conversion of a dwelling unit to a hotel or motel room shall not qualify for the exemption provided by the paragraph.

   The amendments to paragraph (d)(1) approved by the City Council on June 6, 2011 shall have an effective date of April 25, 2011 but not apply to any final determination regarding the applicability of this section made by the Planning Authority prior to April 25, 2011.

2. Proposals that result in a number of units equal to or greater than the number of units lost as determined by the Planning Authority; or

3. Grandfathered dwelling units existing in zones which no longer permit residential uses.

4. Property which has been ordered demolished by the City, pursuant to 17 M.R.S.A. §2851, et seq., as amended, except where it is determined by the Building Authority that the deterioration was caused by neglect or lack of maintenance.

5. Subparagraph 1, above notwithstanding, the conversion to a non-residential use of any dwelling units located on

the ground floor of a building within a business zone.

(e) *Site plan administrative authorization or approval required.* Notwithstanding any other provision of this section, a person who proposes to demolish or to convert to a nonresidential use three or more dwellings or dwelling units in the City, in a zone where such use is otherwise permitted, must first obtain administrative authorization or site plan approval from the City's Planning Authority or Planning Board pursuant to Sec. 14-521, et. seq.

In addition the requirements of 14-521, et. seq., where this section is applicable, the applicant must also submit a statement certifying the number of dwelling units to be demolished or converted to nonresidential use, as well as a description of the characteristics of each of those units.

(f) *Tenant Notification Requirements.* Prior to elimination as a result of demolition or conversion to non-residential use, the owner shall:

1. Provide the Planning Authority a list containing the name of each tenant currently residing in the dwelling units to be demolished or converted to non-residential use, as well as verification of compliance with tenant notice requirements of this section.

2. Deliver to each tenant who occupies such a dwelling unit a written notice to vacate the unit. The notice shall either be sent by certified mail, return receipt requested, or served in-hand. The notice will grant the tenant not less than ninety (90) days from the date of receipt of the notice to vacate the unit; and

3. File proof of service of the notice with the Planning Authority.

(g) *Housing Replacement Requirements.* In addition to the requirements of 14-521, et. seq, the Planning Authority shall require, as a condition of approval, that an owner shall replace any dwelling units that are demolished or converted to non residential use.

This section may be satisfied in any one of the following ways:

1. Construction of Units. The construction of housing units within a new structure or a new addition either on site or off-site;

2. Residential Conversion. The conversion of a nonresidential building to residential use; or

The applicant may use either of the two methods or a combination of the two to fulfill their replacement requirement.

(h) *Replacement Unit Requirement.* In addition to the foregoing, all replacement units built pursuant to sub-section (g)(1) or (2) above shall:

1. Be located within the City of Portland.

2. Not previously have been on the market as of the date of application.

3. Be situated within a development which has not been a candidate for site plan approval as of the date of the application.

4. Be comparable in size to the units replaced; for the purpose of this section, "comparable in size" means that the aggregate size of the replacement units will be no less than 80% of the size of the aggregate of the original units.

(i) *Contribution to the Housing Trust Fund.*

1. The applicant may meet the requirements of this section by depositing $50,000 for each dwelling unit into the City's Housing Trust Fund in section 14-489.

2. Beginning on January 1, 2004 and annually thereafter, the amount of the contribution shall be adjusted by multiplying this amount originally deposited for each unit by a fraction, the denominator of which shall be the "Consumer Price Index for Urban Wage Earners and Clerical Workers ("CPI-W")," U.S. City Average, "All Items Index," as published by the United States Bureau of Labor Statistics ("the Index") for January 1, 2003 Year, and the numerator of which shall

be the Index for the same month in each subsequent year. In the event that the Index is not then in existence, the parties shall use such equivalent price index as is published by any successor governmental agency then in existence; or, if none, then by such nongovernmental agency as may then be publishing an equivalent price index, in lieu of and adjusted to the Index. If the Index shall cease to use 1982-84 equals 100 as the basis of calculation, or if a substantial change is made in the terms or number of items contained in the Index, the Base Index shall be adjusted to conform to such change, using such computation thereof, if available, as shall be employed by the United States Department of Labor in computing same. Notwithstanding anything herein to the contrary, contributions made after January 1, 2004 shall not be less than the amount originally required to be deposited pursuant to sub-section (i)(1) for each rooming or dwelling unit.

(j) *Performance Guaranty/Letter of Credit.* Owners or affiliates must post a performance guaranty in the form of a letter of credit, or other security acceptable to the city attorney in amount equivalent to the amount the applicant would have been required to contribute to the City's Housing Trust Fund if the applicant had chosen that option pursuant to sub-section g.

(k) *Partial waiver of replacement requirements.* Any owner who has applied for site plan review for elimination or conversion to non-residential use of dwelling units may apply to the Zoning Board of Appeals for a partial waiver from the housing replacement requirements of this section. Such waiver may be a downward adjustment of up to fifty percent (50%) of the owner's housing replacement obligation if the owner establishes to the board's satisfaction that:

1. The proposed development is consistent with the comprehensive plan;

2. The proposed development provides significant value and benefit to the immediate and surrounding neighborhood, including, but not limited to, community enhancement, social benefits or job creation;

3. The applicant demonstrates with objective evidence that

the imposition of the requirements of this section would impose such an economic burden upon the project relative to its scope that it renders the project impossible to develop; and

4. The requested relief does not constitute a grant of a special privilege inconsistent with the limitations upon similar properties.

The Zoning Board of Appeals must make positive findings on each of the four (4) criteria above in order for any such adjustment to be valid. An applicant aggrieved of a decision of the Zoning Board of Appeals may appeal a decision under this sub-section pursuant to Sec. 14-553 of the City Code.

(l) *Effect of Other City Ordinances.*

1. *Historic Preservation.* Nothing in this division shall permit the demolition or conversion to non-residential use, of dwelling units in residential property protected by the Historic Preservation Ordinance (Sections 14-601, et seq.), except as permitted by that ordinance.

2. *Conditional Zone.* A conditional zone may not be used to circumvent the application of this section. The terms of this section shall apply to any conditional zone which involves dwelling units affected by this section. Notwithstanding the foregoing, nothing herein shall be deemed to prevent the City and the applicant from agreeing to terms which exceed those imposed by this section by means of a conditional zone.

(m) *Appeals.* Any applicant aggrieved by a decision of the Planning Authority under this section may appeal to the Zoning Board of Appeals within 30 days of that decision.
(Ord. No. 27-02/03, 10-7-02; Ord. No. 280-09/10, 7-19-10; Ord. No. 241-10/11, 6-6-11)

DIVISION 30. INCENTIVES FOR AFFORDABLE HOUSING

Sec.14-484. Purpose.

The city believes that it is in the public interest to promote an adequate supply of affordable housing for its residents. The purpose of this division therefore is to offer

ATTACHMENT 5

5% up to but not including 10%	5% increase
10% up to but not including 15%	10% increase
15% up to but not including 20%	15% increase
20% up to but not including 25%	20% increase
25% or more	25% increase

(b) Off-street *parking*. Off-street parking is required as provided in Division 20 (off-street parking) of this article.

(c) *Building height bonus.* The maximum structure height for an eligible project building:

1. That is located in a B-2 or B-2b community business zone;

2. That contains five (5) or more dwelling units; and

3. Of which 20% or more of new dwelling units created are affordable units for rent or sale, is an additional ten feet above the maximum structure height that would otherwise apply to the building pursuant to this chapter.

The total height of the eligible project, including any bonus received pursuant to this subsection, may not exceed the maximum height recommended for the location of the project pursuant to a height study that has been adopted as part of the city's comprehensive plan.

(Ord. No. 98-06/07, 12-4-06; Ord No. 240-09/10, 6-21-10)

DIVISION 31. HOUSING TRUST FUND

Sec. 14-489. Housing trust fund.

(a) *Purpose*. The purpose of enacting this section is:

1. To establish a City of Portland housing trust fund for the promotion, retention and cration of an adequate

supply of housing, particularly affordable housing, for all economic groups and to limit the net loss of housing units in the City.

2. To serve as a vehicle for addressing very low, low, and median income housing needs through a combination of funds as set out in section 14-483 of this chapter.

(b) *Definitions.*

Very low income household. A household having an income not exceeding fifty (50%) percent of median income for area of residence as set forth in regulations promulgaged from time to time by the United States Department of Housing and Urban Development pursuant to 42 U.S.C. section 1437 et seq.

Low income household. A household having an income not exceeding eighty (80%) percent of median income for area of residence as set forth in regulations promulgated from time to time by the United States Department of Housing and Urban Development pursuant to 42 U.S.C. sections 1437 et seq.

Moderate income household. A household having an income not exceeding one hundred twenty (120%) percent of median income for area of residence as set forth in regulations promulgated from time to time by the United Sates Department of Housing and Urban Development pursuant to 42 U.S.C. sections 1437 et seq.

(c) *Establishment of the housing trust fund.* The city council shall establish a special revenue account under the name "City of Portland Housing Trust Fund." Deposits into the fund shall include:

1. Contributions from the city's housing replacement ordinance under 14-483(i);

2. Funds appropriated to be deposited into the fund by vote of the city council;

3. Voluntary contributions of money or other liquid assets to the fund;

4. Any federal, state or private grant or loan funds provided to the fund:

5. Interest from fund deposits and investments; and

6. Repayments of loans made from the fund.

(d) *Management of the trust fund.* The city manager, or his or her designee, shall serve as the manager of the housing trust fund. The responsibilities of the manager, subject to the orders of the city council, shall include:

1. Maintaining the financial and other records of the housing trust fund;

2. Disbursing and collecting housing trust fund monies in accordance with the housing trust fund annual plan; and

3. Monitoring the use of monies distributed to successful applicants for housing trust fund support to assure on-going compliance with the purposes of the fund and the conditions under which these monies were granted or loaned.

(e) *Housing trust fund annual plan.* Each fiscal year, the city council shall adopt a housing trust fund annual plan. The city manager shall submit to the city council a recommended housing trust fund annual plan, utilizing the revenues of the housing trust fund as well as any other funds the manager may propose as appropriate. The housing committee of the city council or such other committee as the council shall designate shall conduct public hearings on the recommended plan and refer the matter to the council for action.

The housing trust fund annual plan shall include:

1. A description of all programs to be funded in part or in full by the housing trust fund;

2. A description of how funds from the housing trust fund will be distributed among very-low-income, low-income and moderate income households; and

3. The amount of funds budgeted for programs funded in part or in full from the housing trust fund.

Priority for the expenditure of funds collected pursuant to the housing replacement ordinance (see Sec. 14-483) shall be given to the creation of new housing stock, through either new construction or conversion of non-residential buildings to residential use.

(f) *Distribution and use of the housing trust fund's assets.*

1. All distribution of principal, interest or other assets of the housing trust fund shall be made in furtherance of the public purposes set out in section 14-483.

2. During each year, the housing trust fund shall disburse as grants or loans so much of the housing trust fund's assets as the city council in its discretion has approved in the housing trust fund annual plan.

3. Funds shall not be used for city administrative expenses.

4. Funds shall not be used for property operating expenses or supporting services.

5. No grants or loans shall be awarded by the housing trust fund to corporations, partnerships or individuals who are delinquent, at the time of application in the payment of property taxes or other fees to the city of Portland, who Have been convicted of arson, who have been convicted of discrimination in the sale or lease of housing under the fair housing laws of the State of Maine, or who have pending violations of current city electrical, plumbing building or housing codes or zoning ordinances.

(g) *Term of affordability.*

1. Whenever funds from the housing trust fund are used for the acquisition, construction or substantial rehabilitation of an affordable rental or cooperative unit, the City of Portland shall impose enforceable requirements on the owner of the housing unit that the unit remain affordable for the remaining life of the housing unit, assuming good faith efforts by the owner to maintain the housing unit and rehabilitate it as

necessary. The remaining life of the housing unit shall be presumed to be a minimum of thirty (30) years.

2. Whenever funs from the housing trust fund are used for the acquisition, construction or substantial rehabilitation of ownership housing, the city of Portland shall impose enforceable resale restrictions on the owner to keep the housing unit affordable for the longest feasible time, while maintaining and equitable balance between the interests of the owner and the interests of the city of Portland.

3. The affordability restriction requirements described in this section shall run with the land and the city of Portland shall develop appropriate procedures and documentation to enforce these requirements and shall record such documentation in the Cumberland County Registry of Deeds.

(Ord. No. 281-09/10, 7-19-10)

Sec. 14-490. Reserved.

ARTICLE IV. SUBDIVISIONS*

***Cross reference(s)**--Ordinances dedicating or accepting any plat or subdivision in the city saved from repeal, § 1-4(h).

State law reference(s)--Land subdivisions, 30-A M.R.S.A. § 4403.

Sec. 14-491. Authority and purpose.

This article is adopted pursuant to the terms and provisions of 30-A M.R.S.A. Sections 3001 and 4403, as amended. The purpose of this article is to provide for the harmonious and economic development of the city; for the orderly subdivision of land and its development; for the orderly development of the general area surrounding such subdivision; for the coordination of streets within the general area; for adequate provisions for drainage, flood control, light, air and other public purposes; for the adequate and proper installation of streets, drainage, sanitary sewers, water and other utilities and facilities; for the dedication to the city of land for streets, alleys or other public

AVESTA PROPOSAL

HOUSING FIRST PRE-DEVELOPMENT GRANT

Phase I Proposal Narrative for Logan Place II

Avesta Housing proposes the development of 30-35 efficiency apartments in Portland using a "housing first" approach, and seeks $50,000 in support from the City of Portland for pre-development activities associated with this project.

1. Identification of Developer Entity: The developer of Logan Place II will be Avesta Housing Development Corporation ("Avesta"), a nonprofit 501(c)(3) organization with administrative headquarters in Portland. Founded in 1972 with a shoestring budget and a staff of three, Avesta has grown to become one of the country's most innovative and respected leaders in affordable housing. In 2013 we were named a top 50 Affordable Housing Developer in the country by Affordable Housing Finance Magazine.

   Avesta Housing's mission is to promote and provide housing opportunities primarily for southern Maine people in need. Avesta advocates for affordable housing, develops and manages high quality housing, and helps residents access other needed services. At Avesta, we have a vision of safe, secure and affordable housing for every woman, man and child, and we've spent more than four decades working to make that vision a reality for thousands of Mainers.

   The primary RFP contact person is Greg Payne, Development Officer. Other key principals of the organization include:
   - Dana Totman, President
   - Eric Boucher, CFO
   - Seth Parker, Director of Real Estate Development
   - Avesta's Board of Directors (list attached)

2. Developer's Organizational and Management Capacity: Avesta currently has total assets of $180 million and a $26 million annual budget. Our 15-member Board of Directors is drawn from the financial, business, public-sector community, social-service, and housing spheres, and we have approximately 100 employees.

Avesta's organizational documents (Articles of Incorporation, By-Laws, and IRS 501(c)(3) determination letter) and financial statements (2012 audited financials and 2013 unaudited financials) are attached. 2013 audited financials are expected to be available in May.

Avesta owns and/or manages 69 affordable housing developments in Maine and New Hampshire, for a total of 1,944 units. We have a team of four highly skilled housing development staff members with extensive legal, financial, planning and construction experience who identify new opportunities, secure necessary financing and carry projects through to completion.

Avesta develops hundreds of new units each year; since 1972 we have developed nearly 3,000 affordable apartments – as well as homeownership opportunities – throughout Maine and southern New Hampshire. Over the past two years, we have completed or begun construction on 12 developments, representing over $80 million in economic impact and providing homes for over 400 Maine families.

Avesta Housing has extensive experience working with various funding sources including the U.S. Department of Housing and Urban Development, U.S. Department of Agriculture, Maine State Housing Authority, the federal Low Income Housing Tax Credit Program, and the Federal Home Loan Bank of Boston. We consistently receive high marks from our state, federal and private-sector partners, and we are recognized nationally for groundbreaking work in bringing together nonprofit, for-profit, private and public-sector organizations for the benefit of our communities.

Avesta also has significant experience in, and a deep organizational commitment to, building highly efficient housing communities. Our Pearl Place property was Maine's first Leadership in Energy and Environment Design (LEED) certified affordable development, and the U.S. Green Building Council named Avesta Housing the 2012 Outstanding Affordable Developer for Oak Street Lofts, the first affordable multi-family building in Maine to be certified LEED Platinum. Since 2008, Avesta has built over a dozen projects following MaineHousing's Green Building Standards and also has significant experience in building pursuant to the City's energy efficiency design criteria. It is our belief that green development is key to the long-term health and sustainability of our housing communities.

Qualifications of key principals:

Gregory Payne joined Avesta Housing in 2007 as a Development Officer. In addition to his responsibilities for managing all aspects of multifamily rental projects from concept to completion, Mr. Payne serves as Director of the Maine Affordable Housing Coalition. Mr. Payne has more than 16 years of experience in issues related to housing and homelessness, including work at the Atlanta Task Force for the Homeless and the Massachusetts Coalition for the Homeless. Following his graduation from law school, he worked in Boston for five years as a real estate attorney specializing in affordable housing. Mr. Payne earned a B.A. in Economics from the College of the Holy Cross in Worcester, Massachusetts and a J.D. from Northeastern University School of Law in Boston. He currently serves on the board of directors of the National Low Income Housing Coalition and the Genesis Community Loan Fund.

Seth Parker joined Avesta Housing in 2010 as a Development Officer and was named Director of Real Estate Development in 2013. Seth oversees Avesta's development, financing and construction of affordable housing, as well as the Avesta HomeOwnership Center. Prior to joining Avesta, Mr. Parker worked for five years in New York City as a development manager for the Procida Companies, a developer and builder of affordable and market rate housing and mixed-use projects. At Procida, Mr. Parker managed all phases of the development process for two large scale condominium projects in Brooklyn including: site acquisition, pre-construction and design development, lender negotiations, construction management, and marketing. Mr. Parker's additional past experience includes working as a construction project manager in the Boston area, as a project engineer for the environmental consultant TRC, and as an engineering associate for a civil engineering/surveying company in San Francisco, CA. Mr. Parker earned a B.S. in Civil and Environmental Engineering from the University of Vermont and a M.S. in Real Estate Development from Columbia University in New York.

Dana Totman became the President and CEO of Avesta Housing in 2000. Mr. Totman was the Deputy Director of Maine State Housing from 1994 to 2000 and was employed by Coastal Economic Development Corporation from 1984 to 1994 where he was Executive Director. Dana's career has focused on nonprofit and government management and leadership, specializing in leading organizations through significant change. His current and past community service includes Midcoast Regional Redevelopment Authority Board, Brunswick Planning Board, Federal Home Loan Bank Advisory Council, Maine Real Estate and Development Association, Maine Affordable Housing Coalition, Interagency Task Force on Homelessness, Northern New England Housing Investment Fund, Midcoast Geriatrics Corporation, Bath Chamber of Commerce, Maine Community Action Association, Maine Association of Realtors Foundation, Tedford Shelter and Midcoast Health Services. Mr. Totman has a BA in Public Management from the University of Maine and an MBA from Southern New Hampshire University. He attended Duke University's Government Leadership Program and participated in the Kennedy School of

Government at Harvard University. He was named 2013 Nonprofit Business Leader of the Year by Mainebiz.

Eric Boucher joined Avesta Housing as Chief Financial Officer in October 2010. He oversees Avesta's finance , human resources, IT and communications operations. Prior to joining Avesta, Mr. Boucher was Vice President and Audit Manager for TD Bank, which followed his employment with Liberty Lane Partners, a private equity company, as Controller of Perspecta Trust and Finance Manager for Liberty Lane Advisors. Previously, he was Vice President of Accounting and Financial Reporting at Camden National Corporation. Mr. Boucher began his career as an auditor at PriceWaterhouseCoopers. In 2006, he was awarded the Maine Bankers Association Community Banker of the Year for his participation in community activities including serving as Chairman of the Board of the Waldo County YMCA and as a volunteer in the classroom for Junior Achievement. Mr. Boucher is a CPA licensed in the State of Maine and a graduate of the McIntire School of Commerce at the University of Virginia.

An organizational chart of Avesta is attached to this proposal. Greg Payne, Development Officer, will be primarily responsible for the day-to-day development of this project and will be supervised by Seth Parker, Director of Real Estate Development. Eric Boucher, CFO, will provide support as needed, and Dana Totman, CEO, will provide guidance for the overall effort.

Avesta is the state's leader in the creation of "housing first" permanent supportive housing projects. We opened **Logan Place** on Frederic Street in Portland in 2005, providing homes to 30 individuals who had previously experienced chronic homelessness, often accompanied by extremely disabling substance abuse and mental health issues. It is a community of supportive residents, staff and even neighbors that offers formerly homeless individuals housing first, without strings attached. Beyond that, the opportunity for integration into the neighborhood and the larger community through supportive services, counseling and training is ever-present. Logan Place is an 18,390-square-foot, 3-story building with 30 efficiency apartments. The 390 square-foot units include a kitchenette, ¾-bath and closet. The building has substantial community space, including a community room, library, meeting room and four staff offices.

Supportive services at Logan Place are provided by Avesta's close partner and ally, Preble Street. These services include 24-hour staffing by life skills workers who monitor the stability of residents, provide crisis intervention and assist individuals with living skills. Two life skills staff are on site at all times to monitor the entrance to the building during evening hours and provide assistance to residents and neighbors with concerns about safety. All Logan Place staff is trained to intervene in mental health crises and substance abuse issues, and provide information to residents about essential community resources. A Program Director supervises staff and provides case coordination with the assistance of a Program Aide. Other essential support services available to residents on site or within a few blocks include case management, psychiatry, substance abuse outreach and intervention, health care, meals and food, and employment and vocational services. The success of individuals in maintaining stable living depends on consistent outreach, support and easy access to interventions to help them address problems that interfere with functioning independently in the community.

Sited on Valley Street in Portland and opened in 2010, **Florence House** is Avesta's second housing first project. Florence House uses a three-pronged approach by providing short-term emergency shelter as well as two types of permanent, service-enriched housing for disabled, chronically homeless women: 15 "safe haven" units — semi-private clusters of personal areas with space for a bed, a dresser, an electrical outlet and lighting — and 25 efficiency apartments for residents ready to live more independently.

With a final budget of $7.9 million, the financing structure for Florence House is comprised of an unusually complex combination of temporary and permanent city, state, federal and private grants, loans, tax credits and investments. Among those providing funding and tax credits were Northern New England Housing Investment Fund, MaineHousing, NeighborWorks, Genesis Fund, TD Bank, Federal Home Loan Bank of Boston, HUD, Maine Health and Human Services, Portland Housing Authority and the City of Portland.

To be eligible for an efficiency apartment at Florence House, residents must fit the definition of chronically homeless as well as suffer from a mental or physical disability. The accommodations provided to the residents of Florence House are supplemented by on-site outreach and engagement, mental and physical health and substance abuse services, as well as assistance accessing resources such as food stamps, MaineCare and Social Security. These services are provided and coordinated by Preble Street, which staffs the building 24 hours/day and keeps at least three staff on premises at all times. The staff team includes a Program Coordinator, a Clinical Supervisor, Team Leaders, Life Skills Workers, a Program Assistant, a Meal and Volunteer Program Manager, janitorial and kitchen staff. Florence House removes many of the barriers chronically homeless individuals often face, to establish trust and eliminate stress caused by life on the street fighting for day-today survival. This enables residents to engage in their new community, build relationships and develop skills necessary to improve their lives.

Through our experience in building Logan Place and Florence House, as well as numerous other projects, Avesta has learned the importance of developing meaningful relationships with a wide range of interests in the development and management process. Community involvement is a key aspect of our development efforts. Working with local communities and neighborhoods, we strive to create a positive attitude where affordable housing is seen as an asset. We ensure that development is carried through in a responsible manner, and work with neighbors, city officials, funding providers and advocates to mitigate concerns, make suggested design or programmatic changes, and build support for successful projects. Our strong belief is that open and consistent communication with all stakeholders is the key to winning their trust and support.

In the process of building Logan Place II, we anticipate continued partnerships with many of the organizations which helped to make our first two housing first projects so successful, including Preble Street and Portland Housing Authority.

One of the key lessons we have learned in developing permanent supportive housing projects is the importance of properly timing the various pieces of the development puzzle. These pieces include the (1) acquisition of a feasible site, (2) assembly of an adequate financing package, (3) procurement of project-based rental assistance and (4) commitment of funding for resident support services. Achieving each of these elements requires careful planning and organization. Our experience in balancing these crucial elements is one of the reasons that we believe Avesta is in a unique position to successfully develop Portland's next housing first project.

3. Development Team Members: While it is too early in the development process to identify all team members, including the general contractor and primary subcontractors (each of which will eventually be selected through a comprehensive bid process), Avesta anticipates working with many of the same organizations we have partnered with so effectively in the past:

- Preble Street – to provide on-site support services to residents 24 hours per day; compensation for these services will ultimately depend on the needs of the residents of Logan Place II
- Portland Housing Authority – to provide project-based rental assistance and assistance in managing the applicant waiting list; compensation will not be provided by the project

- Curtis Thaxter – to provide legal counsel throughout the development process; estimated compensation is $40,000-50,000
- CWS Architects – to provide professional design services throughout the development process; compensation is expected to be 4%-5% of the total project development cost

4. Experience: Avesta has built two similar housing first projects, Logan Place and Florence House.

LOGAN PLACE

Address: 52 Frederic Street, Portland, ME 04102
Architect: CWS Architects
General Contractor: Wright-Ryan Construction
Attorney: Cito Selinger, Curtis Thaxter
Financing Partners: TD Bank, Maine State Housing Authority, U.S. Department of Housing & Urban Development, Northern New England Housing Investment Fund, City of Portland
Square feet of developed space: 18,390
Real estate valuation (current): $1,846,240
Sustainable/green components: While Logan Place was built prior to the adoption of MaineHousing's green standards and today's higher building standards, and also prior to the onset of a greater awareness of the importance of green building practices, Logan Place did incorporate spray foam insulation in the exterior wall cavities for a high R-value.
Project evaluation: Logan Place has been an unqualified success. The building was constructed within the budget and schedule laid out by the development team, and the project operations have exceeded budgetary expectations. Occupancy has been at 100% virtually every month since the project opened in 2005. Further, significant community benefits have been documented very clearly in studies and reports that have been published since Logan Place was fully occupied. These benefits are described in the attached press clippings. One study showed that, after one year, Logan Place had reduced total system costs and created better outcomes for formerly homeless tenants. This also helped to relieve stress on Portland's system of emergency care. For example, the study found a reduction of 35% ($84,340) in the total cost of mental health care used by tenants, despite a dramatic 93% increase in contacts. This, along with a 70% ($191,548) reduction in physical health care services, was cited in the study as a demonstration of a shift away from high cost emergency and inpatient services. Additionally, Logan Place residents reported increases in quality of life in their first year of

housing, and those levels of satisfaction with their quality of life continued 7 years later.

Summary of Partnerships: The development and operation of Logan Place has involved, and continues to involve, an extraordinary set of partnerships:

- Preble Street: ongoing support services for residents
- Portland Housing Authority: project-based rental assistance and ongoing management of applicant waiting list
- City of Portland: assistance with project approvals and financing
- Maine State Housing Authority: project financing and ongoing management review
- U.S. Department of Housing & Urban Development: project financing
- Northern New England Housing Investment Fund: project financing and ongoing ownership interests
- Project Design, Construction and Engineering Teams

Drawings/Photos: See attached

Funding Sources: See attached

Contact information for verification:

Mark Adelson, Portland Housing Authority
14 Baxter Blvd
Portland, ME 04101
(207) 773-4753

Bill Shanahan, Northern New England Housing Investment Fund
75 Market Street, Suite 201
Portland, ME 04101
(207) 772-8255

John Gallagher, Maine State Housing Authority
353 Water Street
Augusta, ME 04330
(207) 626-4600

Problems and Resolution: The primary issues encountered in developing Logan Place were neighborhood-based concerns regarding traffic, crime and property values. These issues were resolved through numerous neighborhood meetings, public hearings and studies, which gave stakeholders an opportunity to discuss their concerns and help find solutions. Some solutions were achieved through education and improved understanding of the proposed development, while other solutions were achieved through program or design improvements (for example, in improvements made to building security and access).

<u>FLORENCE HOUSE</u>

Address: 190 Valley Street, Portland, ME 04102
Architect: Gawron Turgeon Architects
General Contractor: Ganneston Construction
Attorney: Cito Selinger, Curtis Thaxter
Financing Partners: TD Bank, Maine State Housing Authority, U.S. Department of Housing & Urban Development, Northern New England Housing Investment Fund, City of Portland, Federal Home Loan Bank of Boston, NeighborWorks
Square feet of developed space: 31,345
Real estate valuation (current): $3,769,500 [includes all elements of the project]
Sustainable/green components: Located on an underutilized site and close to public transportation, Florence House was designed to meet or exceed the MaineHousing Green Building Standards. Components of the building envelope include spray foam insulation, air sealing and energy efficient windows, creating a tight building. At the same time, operable windows in the upper floor apartments allow the building to take advantage of natural ventilation. Six geothermal wells were drilled to a depth of 400 feet, to furnish heating and cooling to the 1st floor safe haven and emergency shelter. Six solar panels have been installed on the roof to absorb energy that will provide domestic hot water to the entire building. In addition, all residential appliances and lighting are energy-star rated and landscaping consists of 75% native species. Low-VOC paints, adhesives and sealants were used to reduce the quantity of indoor air contaminants, and space is provided for recycling containers to facilitate the reduction of waste generated. The building has been commissioned to ensure reduced energy usage and improve occupant comfort.
Project evaluation: Florence House has proven to be highly successful. The building was constructed within the budget and schedule laid out by the development team, and the project operations have exceeded budgetary expectations. Occupancy has been at 100% virtually every month since the project opened in 2010. Preble Street staff report that the project has succeeded in providing stability and security for formerly homeless people and has significantly reduced their utilization of costly emergency services.
Summary of Partnerships: The development and operation of Florence House has involved, and continues to involve, an extraordinary set of partnerships:

- Preble Street: ongoing support services for residents

- Portland Housing Authority: project-based rental assistance and ongoing management of applicant waiting list
- City of Portland: assistance with project approvals and financing
- Maine State Housing Authority: project financing and ongoing management review
- U.S. Department of Housing & Urban Development: project financing
- Northern New England Housing Investment Fund: project financing and ongoing ownership interests
- Federal Home Loan Bank of Boston: project financing
- Project Design, Construction and Engineering Teams

Drawings/Photos: See attached
Funding Sources: See attached
Contact information for verification:

Mark Adelson, Portland Housing Authority
14 Baxter Blvd
Portland, ME 04101
(207) 773-4753

Bill Shanahan, Northern New England Housing Investment Fund
75 Market Street, Suite 201
Portland, ME 04101
(207) 772-8255

John Gallagher, Maine State Housing Authority
353 Water Street
Augusta, ME 04330
(207) 626-4600

Problems and Resolution: The primary issues encountered in developing Florence House involved neighbor concerns as to the building and site. In particular, one abutting landowner claimed that the City's approvals were flawed and filed suit. Avesta and city officials worked together to defend the municipal approvals granted to the project, and the lawsuit was ultimately rejected by the court. Other concerns regarding crime and the placement of the building on the site were resolved through numerous neighborhood meetings, public hearings and studies.

5. Target Population: The specific project design, marketing and services to be provided to the target population of chronically homeless individuals will be

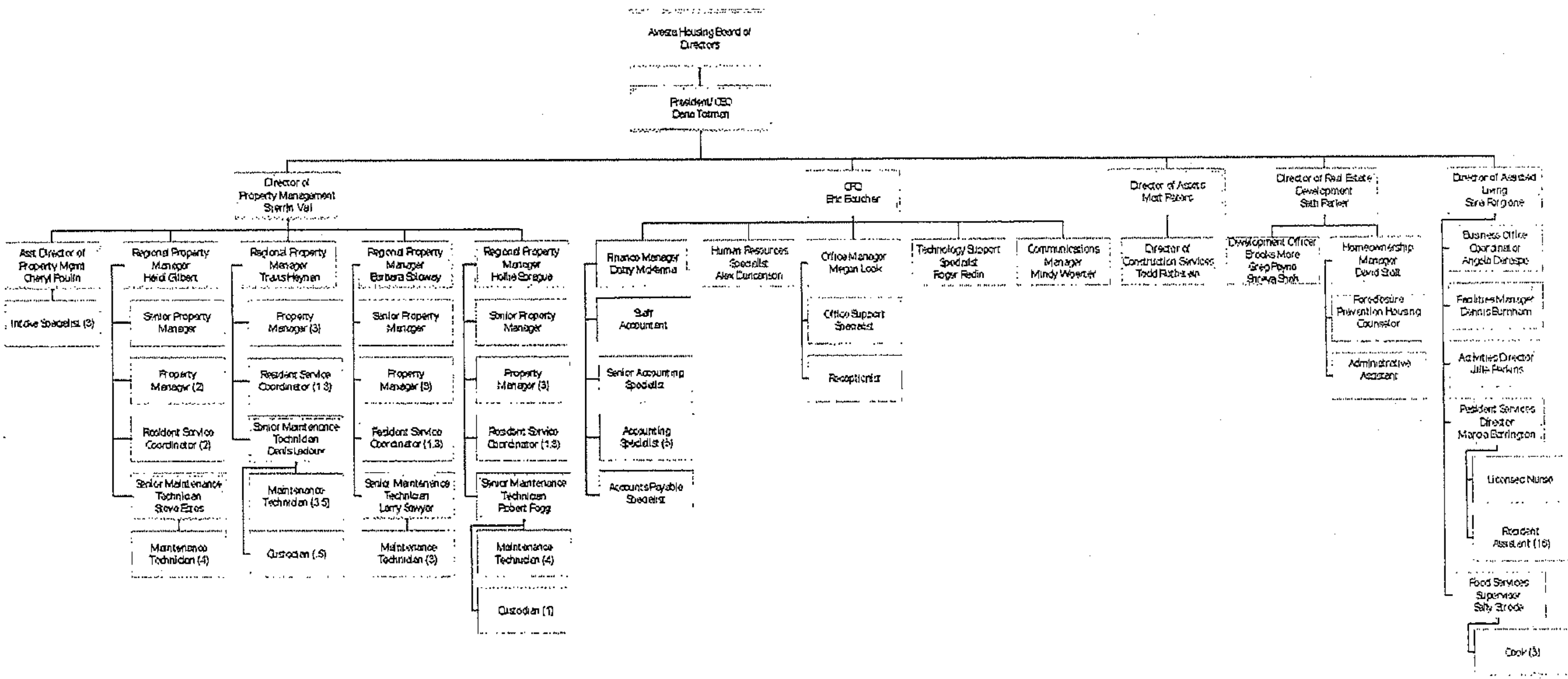
determined over the course of many months, through numerous meetings and discussions with project partners and other experts. However, certain principles learned through the successful development of Avesta's prior housing first projects would likely be adopted with Logan Place II, as described below.

- Design: the development team will work closely with Preble Street staff in ensuring that details such as entry and exit points, lighting, parking, unit layout and community spaces are designed with the needs of this specific population in mind. For example, security cameras and building layout will be set with an eye towards minimizing on-site staffing needs. This effort will occur through meetings and consultations throughout the design and approval stages of development.
- Marketing: Preble Street and Oxford Street Shelter would be utilized for assistance in identifying potential residents for Logan Place II. These community organizations have played critical marketing roles for Logan Place and Florence House, and their continued work at the forefront of addressing chronic homelessness in Portland makes them natural partners for this role as to Logan Place II as well. Avesta, Preble Street, and Portland Housing Authority will work together to see that the application process is as low barrier as possible.
- Services: an extensive array of services would be provided by Preble Street to residents of Logan Place II, likely to include (i) 24-hour life skills and case management; (ii) helping residents identify their needs and coordinating existing resources with which to meet these needs; (iii) creating a network of contact persons within the community's social service agencies to facilitate residents' access to programs; (iv) analyzing unmet needs and identifying sources able to provide or develop new services where indicated; (v) acting as liaison and advocate in the community to ensure that residents receive necessary services, and referring to appropriate social service agencies for case management as needed; (vi) overseeing the coordination and delivery of multiple supportive services to residents; (vii) monitoring and evaluating appropriateness of services delivered; (viii) working with residents to create support systems and social programming which provide opportunities for growth, independence and interdependence; (ix) developing a sense of fellowship and community among the residents using community organization and facilitation skills; (x) assisting the residents in securing and/or creating social programming opportunities that meet their recreational, health and educational needs; (xi) working with residents to resolve individual as well as group conflicts; and (xii) developing

community--oriented activities which build bridges between people, promote active interest in the life of the project and generate self-sufficiency.

6. Project Timeline: Avesta's experience with prior housing first developments has taught us that it can be challenging to establish firm timelines for completion, especially given the strong community interest in such special projects. However, we believe that we can acquire a site, gain all required municipal approvals, gather needed financing, design and construct the project and begin lease-up within a 2.5-3 year time frame. A specific, step-by-step outline of our proposed schedule is attached.

Avesta Housing Organizational Chart

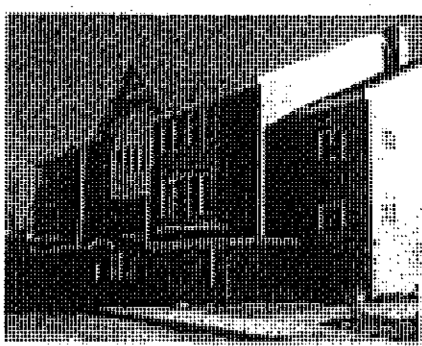


Avesta Housing Receives National Award for Logan Place Project

---

Logan Place, a development providing housing for chronically homeless individuals, has been awarded the 12th Annual Charles L. Edson Tax Credit Excellence Award by the Affordable Housing Tax Credit Coalition of Washington, D.C.

AVESTA HOUSING RECEIVES NATIONAL AWARD FOR LOGAN PLACE PROJECT



PORTLAND – Logan Place, a development providing housing for chronically homeless individuals, has been awarded the 12th Annual Charles L. Edson Tax Credit Excellence Award by the Affordable Housing Tax Credit Coalition of Washington, D.C. Logan Place was developed by a partnership of Avesta Housing and Preble Street, both of Portland Maine.

On March 24th 2005, Logan Place opened its doors for 30 people who were chronically homeless, often with substance abuse and mental health issues that disabled them greatly. The 30 residents at Logan Place are "home for good." All are home for good after living at the Oxford Street Shelter in Portland Maine on floor mats ten inches from their neighbor, on average for six years. And since Logan Place opened its doors, the shelter has not implemented its overflow plan for one night.

Dana Totman, Avesta's President, received the award on behalf of Logan Place, its residents and its service provider, Preble Street, in a ceremony at 1:00 on June 7th, 2006 on Capitol Hill.

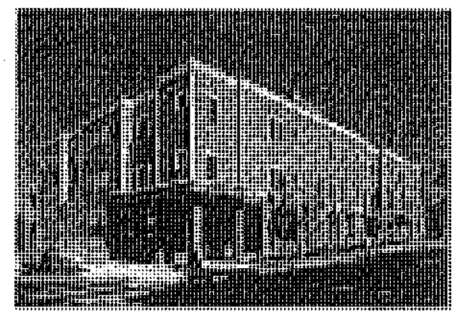
Logan Place won the award for best Special Needs Housing, competing against 56 entries from 26 states. The award comes with a $5,000 grant to bring additional services, facilities or amenities to the development

Avesta's mission is to promote and provide housing opportunities for Southern Maine people in need. Avesta advocates for affordable housing, develops and manages high quality rental housing, and helps residents access other supportive services.

The Affordable Housing Tax Credit Coalition plays a major role in assuring the continuance of the low-income housing tax credit. The Coalition was founded in 1988 with the primary goal of achieving permanent extension of the low-income housing tax credit program.

For Immediate Release
March 27, 2014
Contact: Paige Roth, 207-553-7777 x 210, proth@avestahousing.org

Florence House Receives Honorable Mention in 2011 Edson Awards



Portland, Maine – Avesta Housing's Florence House received an Honorable Mention award in the special needs housing category of the 17th Annual Charles L. Edson Tax Credit Awards. The Affordable Housing Tax Credit Coalition (AHTCC) sponsors this annual award.

Presented to the most outstanding Low Income Housing Tax Credit properties in seven categories, this national awards program celebrates the best in affordable rental housing development.

The AHTCC received forty-eight applications from twenty-one states; a panel of judges selected seven first place finishers and seven honorable mentions. Each winner will be recognized at a Capitol Hill luncheon ceremony on May 11, 2011.

Florence House opened in April 2010 and is a partnership between Avesta Housing and Preble Street. It provides three types of supportive housing without barriers to chronically homeless individuals in Portland, including independent apartments, safe haven spaces and emergency beds. The development employs cutting-edge technologies and sustainable design features including a geothermal heating and cooling system, solar water pre-heat, and heat recovery systems.

Through the intensive collaborative and solutions-oriented services offered, more than forty homeless women have maintained permanent housing at Florence house, and 150 have secured permanent affordable housing elsewhere in the community.

Avesta Housing is a nonprofit organization with headquarters in Portland which provides housing assistance to over 6,000 Maine residents each year.

Avesta Housing's mission is to promote and provide housing opportunities primarily to Southern Maine people in need. Avesta advocates for affordable housing, develops and manages high quality housing, and helps residents access other needed services.

For more information, please contact Avesta Housing at 207-553-7777 or www.avestahousing.org

SPECIAL-NEEDS FINALIST

FLORENCE HOUSE

Developer: Avesta Housing
Architect: Gawron Turgeon Architects
Major Funders: Northern New England Housing Investment Fund; MaineHousing; NeighborWorks America; Genesis Fund; TD Bank; Federal Home Loan Bank of Boston; Department of Housing and Urban Development; Maine Health and Human Services; Portland Housing Authority; the City of Portland

PORTLAND, MAINE

Florence House is a haven for homeless women. In simple terms, the project provides a roof over people's heads. But it is much more complex, delivering three types of housing in a single building—25 efficiency apartments, 15 "safe haven" units, and room for up to 25 emergency shelter beds.

"Florence House has dramatically changed the conversation around homelessness in Portland and in Maine," says Dana Totman, president of nonprofit Avesta Housing. "Portland understands that emergency shelters are not the answer. This is a viable small city model to end chronic homelessness."

The second and third floors contain the 25 low-income housing tax credit (LIHTC) apartments for chronically homeless and disabled individuals who are able to be more independent.

The first floor houses the safe haven units, semi-private clusters of personal areas with a bed and a wardrobe. These are intended as permanent living space for chronically homeless women who are not ready for their own apartments. Some residents have paranoia or claustrophobia, so the clusters are designed to provide privacy without feeling constrained.

While the apartments and safe haven units go a long way to ending homelessness among women in the area, developers included the shelter to respond to episodic homelessness.

Florence House embraces the Housing First model of getting the homeless into their own homes as quickly as possible. It also is the first affordable housing development in the state to use geothermal heating and cooling systems.

Avesta has partnered with Preble Street, the state's main provider of homeless services, to offer a range of programs at Florence House.

Financing for the $7.7 million development included about $4 million in LIHTC equity from the Northern New England Housing Investment Fund and subsidies from MaineHousing, the city of Portland, Federal Home Loan Bank of Boston, TD Bank, and the Department of Housing and Urban Development.

—*Donna Kimura*

SPECIAL-NEEDS FINALIST

MADRONA STUDIOS

Developer: Central City Concern
Architect: William Wilson Architects
Major Funders: U.S. Bank; Wells Fargo Bank; City of Portland; Multnomah County; Oregon Housing and Community Services; Network for Oregon Affordable Housing; Federal Home Loan Bank of Seattle; Homestreet Bank; Enterprise Green Communities; Energy Trust of Oregon; Providence Mother Joseph Fund; Albina Community Bank

PORTLAND, ORE.

A tired 45-year-old Ramada Inn has been transformed into an innovative affordable housing development for the city's neediest residents.

The 176-unit Madrona Studios provides permanent supportive housing, alcohol- and drug-free units, and workforce apartments for program graduates and other low-income residents. Madrona Studios also includes a 70-bed drug and alcohol recovery center. All have rents restricted at 40 percent of the area median income.

By creatively reusing the five-story hotel, developers were able to deliver the units at about half the cost of new construction, according to the local nonprofits behind the project, developer Central City Concern (CCC), which has a history of serving the hardest to house, and consultant Housing Development Center.

"Our theme is changing lives and building communities," says Ed Blackburn, CCC executive director. "This project fits so well into that."

The reuse of the structure is just one of the ways that Madrona Studios is a green development. A transit-oriented project that's helping revitalize the neighborhood, the building features an upgraded solar water heating system, improved insulation with heat reflective roofing, and a bike room for 130 bicycles.

Madrona Studios, which uses 23 funding sources, required a complex financing structure.

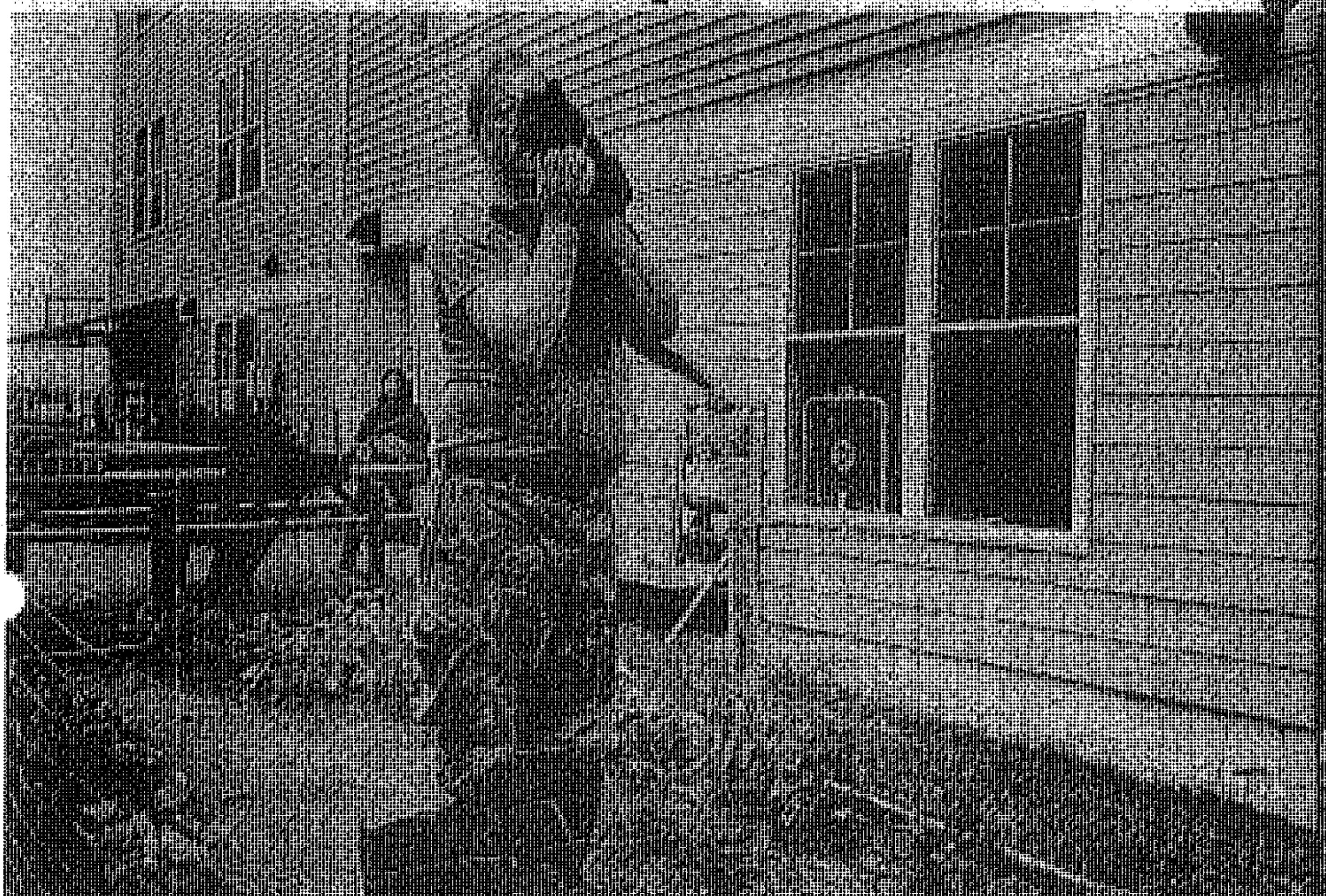
To make the $25 million project work, the ownership of the building was separated into two legal entities, with 132 units—96 workforce and 36 supportive housing—on the top three floors funded largely through $7.1 million in low-income housing tax credit equity from U.S. Bank and $5.2 million in tax increment financing from the Portland Development Commission. In the second entity, 44 drug- and alcohol-free supportive-housing units on the second floor and the first-floor detox center are funded with the help of $2.8 million in New Markets Tax Credit equity from Wells Fargo Bank and $3.7 million in bond financing from the Portland Housing Bureau.

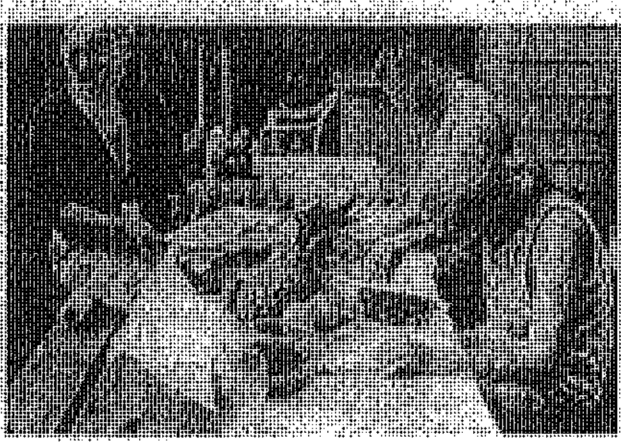
The city of Portland, Multnomah County, and Oregon Housing and Community Services are key financing partners.

—*Donna Kimura*

Photo: Sally Painter

A Clean, Well-Lig



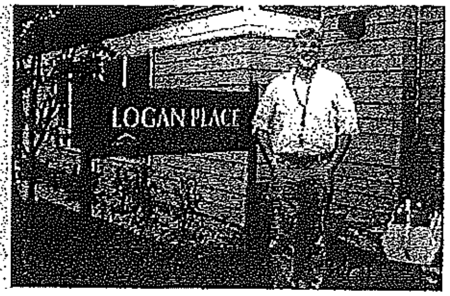


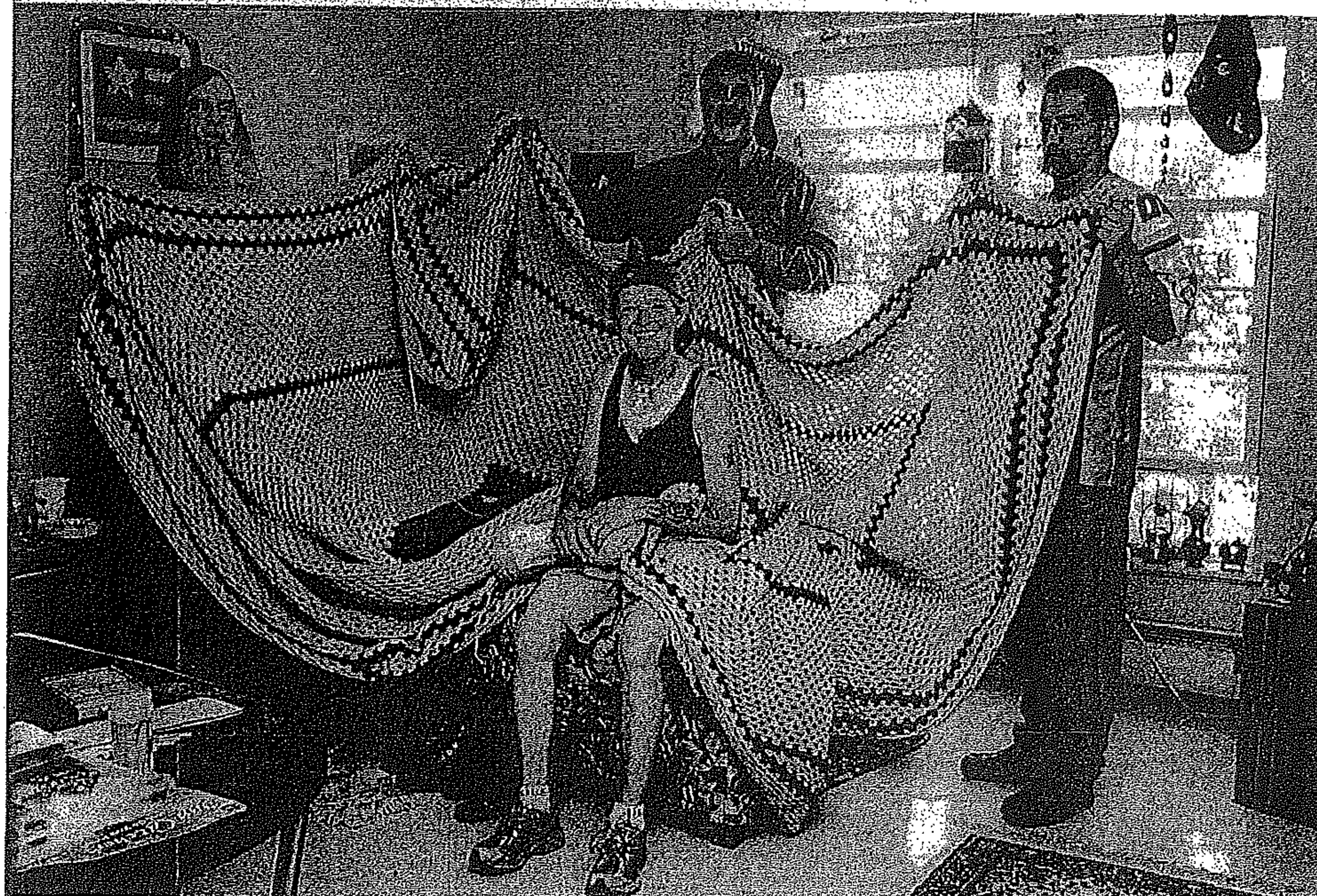
There's a revolution afoot to solve homelessness in America. Portland, Maine, is helping to lead the charge.

Here's this for an idea: Find the thirty filthiest street cases in the city — the least loved of God's creatures, the ones cops know by name. The ones purpled with scars, napping under loading docks, towing barges of trash bags, hectoring mailboxes, and yelling at phone poles. Build a handsome apartment building, staff it with social workers 24/7, and ask these lost, limited souls to move in, one tenant per fresh, furnished unit.

Require nothing. No Medicaid number. No treatment plans.

hted Place





No permissions, no stamps, no forms in triplicate. They don't even have to be sober.

It's called "housing first," a revolutionary concept for ending homelessness. The idea is to offer safe, permanent housing to chronically homeless people as a first rather than last resort, and only then attempt to address their mental illnesses, multiple addictions, and physical depredations. The experiment began about fifteen years ago with a handful of programs in large cities like Washington and New York. Thanks to impressive cost-benefit analyses, other cities have recently joined the front lines — including Portland, home of Logan Place, the only housing-first project in Maine and one of the few in New England. A collaboration between Avesta Housing, the nonprofit developer that owns and operates the building, and Preble Street, the social-service agency that provides the tenants' support, Logan Place has entered its fourth year and appears to be thriving. Twenty-five men and five women occupy the clean, well-lighted efficiency apartments supported by staff who, in the words of one tenant, "treat you like an actual person."

Housing first's crusader-in-chief is Phil Mangano, executive director of the United States Interagency Council on Homelessness. A Bush appointee, Mangano is a freight-train talker and unabashed fan of Mark Swann, director of Preble Street. "Mark met with resistance, as most of us do at first," Mangano tells me. "But he's a forward thinker who wants to change the status quo. You know, he could have lived a good, easy life just managing the programs he already had in place." Instead, he was planning a housing-first exemplar at a time when similar projects were so rare he didn't yet realize the concept had a name.

On a chilly and cheerless Monday morning, I'm waiting to meet Swann at Preble Street's day shelter, where people out of luck and options come for coffee or a pair of mittens or boots that don't fit but will have to do. Temporarily one with the huddled masses, I loiter at a front desk clogged with people in ill-fitting eyeglasses, third-hand hats, and unraveling scarves, some carrying suitcases or backpacks or paper bags, others without a single possession but the clothes on their street-bent backs.

Swann arrives a few moments later, a little harried after a morning spent on the phone. "Every time the temperature drops," he says, "the media call with the same story: look at all these freezing people." He tries to sound patient. "Well, the homeless are here all year-round, and I'd like to change the conversation."

Does he ever. Stylewise, he's Mangano's opposite. Youthful and bearish — teddybearish, actually — with graying hair and a snowy goatee, he begins his rap in the soft-spoken tones of the lifelong do-gooder. But at age forty-six this guy is no pushover, and after two decades in the misery business, he's weary of *addressing* homelessness; he intends to *solve* it. "I run these places," he says, looking around at the teeming shelter, "but shelters and soup kitchens are not the answer. The cots are ten inches from each other. Your cat gets better than this in an animal shelter. These are tragic places. Tragic and awful and wrong, wrong, wrong."

Conceived in the eighties, the soup-and-shelter model aims to work as a way station for luckless souls rocked by personal calamity: lost job, eviction, natural disaster, family violence. For most clients the typical shelter stay lasts two weeks. After that, the "80/20 rule" kicks in: 80 percent of services gobbled up by 20 percent of clients, people for whom shelter life becomes not a stop-gap but a state of being, night after night, year after year, in some cases decade after decade. To Mangano, housing first represents a new technology. "Twenty-five years ago, homelessness exploded after deinstitutionalization," he says, referring to the practice of transitioning mentally ill people from institutions to the community — which often meant the street. "Our 'technology' was soup and a blanket, and we're still using it. Well, I was also using pay phones back then, and a typewriter. There's no lack of compassion out there, but if charity could eliminate homelessness, it would have done so by now."

Conventional wisdom writes off the 20-percenters as a lost cause. "We called them 'service resistant,' " Mangano says, "or 'not housing ready,' as if we were labeling shirts and pants. For housing programs we always took the 'cream,' the ones considered *most* likely to succeed. But research gathered over many years showed us plainly that the cream would have gotten into housing regardless." Housing first is the "anti-cream" strategy, targeting the 20-percenters, the shirts and pants. "People called it foolish, they called it naive. But we have the data now, and the number that comes up again and again, in all these studies, is the same: 85 percent. Eighty-five out of one hundred 'service resistant' people succeed in supported housing. For that last 15 percent, we just haven't gotten creative enough."

As I leave the day shelter and follow Swann across the street to his office, we pass through a logy throng of people smoking cigarettes, hunching against the cold, blowing on their hands. "Hey, Mark! You need a haircut!" calls one of the men, a nearly toothless fellow wearing two coats. A 20-percenter for sure. Swann acknowledges him with a chuckle and a wave. "We've worked with some of these people a long, long time," he says. "They know us and they trust us. That's how something like Logan Place can work."

Swann's office carries a grassroots vibe, no doubt a holdover from his early days at Preble Street, when he was a pony-tailed Bowdoin grad on a staff of two, managing a hundred thousand dollar budget. Today he runs the whole shebang, and though the budget has swelled to $4.5 million, its ratio remains the same: half public funding, half private. "That's not common," he notes, "and it shows a lot of community support — churches, private donors, the United Way, corporate funding. Private support is crucial to creativity, because you get fewer restrictions: you can follow the mission, not the money."

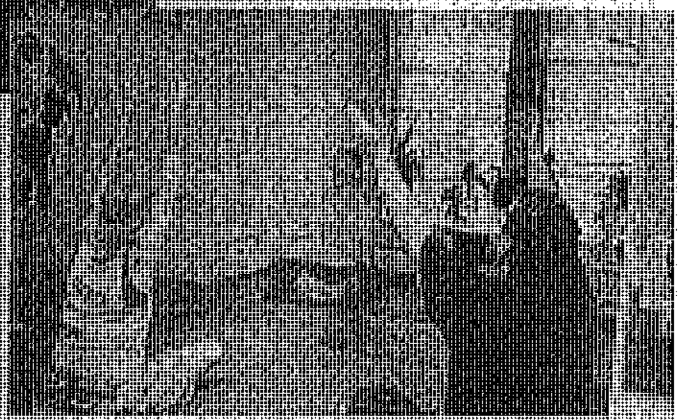
Swann had an epiphany about that mission about ten years ago, after attending twenty-four memorial services at the soup kitchen in a single year, the final one for a man whose frozen fingers had to be uncurled from a shopping cart that held his worldly goods. "I realized we were doing something very wrong if the best we had to offer was a mat and a meal and a sad-sack memorial service in our kitchen." Most revolutions begin with a moment of truth, and that was his. "There was a belief that these people weren't capable of being helped, that nothing we did would make any difference. But what if we built housing for homeless people, period? Not people with this or that diagnosis, this or that level of 'readiness.' "

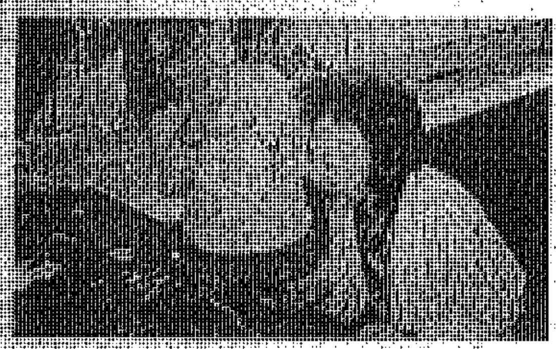
Thus began a creative, unremitting, many-tendriled, $4.1 million campaign of planning and collaboration with Dana Totman, Avesta's president, that culminated on March 24, 2005 with a ribbon-cutting at Logan Place. To skeptics, such intense efforts on behalf of the chanciest people seemed doomed from the get-go. But one of the unspoken tenets of housing first is, in Mangano's words, "the belief that housing is therapeutic *all by itself*."

National research on housing-first projects can be tricky to interpret, because cities design variations on the model, blending heavily-supported tenants into an existing neighborhood, for example, or requiring tenants to pay varying portions of the rent, or none at all. (Logan Place tenants pay 30 percent of their income, if they have one.) Despite this grab-bag of styles, the average retention rate for the studies I looked at was consistent with Mangano's 85 percent. Cost analyses also fall into a pattern, in places as small as Portland and as large as D.C., showing significant cost savings "in every single case." Mangano asks, "Would you rather pay $13,000 to $25,000 per person, per year to provide homeless people with dignified housing that leads to a trajectory of recovery, or $35,000 to $150,000 to keep them on the street?"

Armed with a belief that housing first is the answer to clearing Portland's streets for good, Swann asked for a local cost-benefit study to prime the pump for phase two: Florence House,

[illegible]





a fifty-unit building for homeless women. Thomas McLaughlin, co-director of the Social Work Center for Research and Evaluation at UNE's School of Social Work, co-authored the study and wound up a true believer. "We were able to get detailed cost data on individual people," he says. "Other studies have attempted this but were forced to rely on good-faith estimates. We wanted to get as close to an exact picture as we could."

So far, the picture looks good — astounding, if you consider the hair-raisingly risky participants. The first thirty souls pulled off the street and into Logan Place had occupied a total of 5,163 shelter beds in the previous year. Besides hogging shelter beds, the study's subjects had drained countless hours from the city's system of public health and safety. After one year's tenancy, nights in jail plummeted, from 176 to 21; police contacts, 97 to 19; ambulance calls, 78 to 26; emergency-room visits, 188 to 39. The community saved $972 per tenant, a modest amount compared to some places, but a savings nonetheless. And then there are the less tangible, palliative effects of getting people off the street. "It affects everybody in a community," says Mangano, "to see people lying in doorways. It affects tourists and pedestrians and merchants." He points out that Portland is a smart, literate community that can support five independent bookstores within a few square miles. "Cities like this can look at the irrefutable evidence that housing first is better for the community, the tenants, and the taxpayer. That's a trifecta you can't get at the race track."

Ed Page would certainly agree. "I was the third person to walk through the door," he says of his four-year tenancy at Logan Place. From a comfy chair in his pleasantly cluttered unit, this forty-year-old, bespectacled, chain-smoking "practicing witch" tells me about his twenty-two years on the street. Like many tenants here, he's the product of a fractured upbringing — fourteen foster homes, in his case — and his life on the street consisted of "being drunk every day." He tried to get a GED, but gave up because "when you're living in shelters you don't look too good, you don't smell too great, you don't want to go the way you are." He has since acquired that GED, along with a resuscitated interest in writing and art, thanks to a donated computer and art supplies provided by staff. He still drinks, he admits, but not the way he used to. "I drink in here sometimes, but I don't have to worry about getting beat up or robbed." He points to the fridge. "I've still got two bottles left of a six-pack I bought two months ago. I mean, that's a change."

As a charter tenant, Ed confirms my hunch that Logan Place had a rocky roll-out. The police were there a lot at first, he says, because "people had a lot to learn about being good tenants." As the landlord, Totman, too, learned some "hard lessons" from the experience. "Some residents, or their guests, were misbehaving.

Twenty-five formerly homeless men and five women occupy Logan Place's clean efficiency apartments.

The police took note, the neighbors took note, we had to go before the city council, [then-Police Chief] Mike Chitwood identified Logan Place as a new trouble spot." So he and Swann met with the chief, and after convincing him of their fervor for making the project work, the chief went so far as to hold his monthly officers' meeting at Logan Place. "That was a turning point, when they saw who was actually living here, the same people they used to scrape up off the sidewalks." Some they no longer recognized in their new haircuts and better-fed faces — even after being told their names. "I think it was then they realized that Logan Place was a solution and not a problem."

Over four years Logan Place has housed a total of fifty-two tenants in the thirty units, which reflects the efforts of a work in progress. Eleven were evicted, five moved voluntarily, one went to jail, three returned to the shelter, and two died (cirrhosis is a common malady). This is the story of the street. However, of the thirty tenants currently housed, over half have been there for three or more years, and three-quarters for more than two, a sign that the experiment has found its footing.

"It was a ghost town here at first," says Maria Tripp, the Logan Place service coordinator. "People stayed in their apartments. They didn't know what to do." A program of group activities helped coax people into a sense of community. One of the first was a "stone soup" dinner, at which a staff member read the fable aloud. Most tenants had never heard it, but it resonated. "We got so many requests to read it again that we posted it," Tripp says. "I think it's still up there." In the meantime, Logan Place launched a neighborhood outreach, planting rafts of daffodils along the street and holding neighborhood barbeques. When Florence House, slated for a nearby property on Valley Street, was first proposed, it drew virulent resistance. "Some of the Valley Street owners came down here," Ed says, "and tried to get our neighbors to talk trash. But nobody did."

"We called these people 'service resistant' as if we were labeling shirts and pants."

Four years ago, they might have. To make a Logan Place work requires a terrific concentration of community will — something Portland has plenty of. "It's been easier to persevere through tough scrutiny and resistance," Totman says, "because the city leaders have been incredibly supportive: the city council, the planning board, the police, the fire chief, everybody. Florence House is on its way, and we're already thinking about the next one. Of all our projects, Logan Place is the one we're most proud of, because it's made the biggest difference in people's lives — between living and dying in some cases. If we can get five or six of these around the city, we'll have a *tiny* homeless shelter."

A relative newcomer to Logan Place, Judy Tedford remembers having to pinch herself after waking up in her own bed that first morning. "This ain't no jail, I can tell you that. It's like a family here." In her immaculate unit just down the hall from Ed's, afternoon light floods her pale, wizened face. Her pond-blue eyes are arrestingly kind. She gives me a meticulous tour of her new home: her cupboard filled with cans from the food pantry, her collection of painted rocks, her spotless bathroom where she doesn't have to stand in line to take a shower. From there we move into the common areas as she numbers the perks of living here: the field trips to lakes and museums, the friendships, the group meals, the holiday parties and neighborhood events. Everything in the building still looks new, the walls sunnily painted and festooned with framed prints. She takes me to the third-floor library, a bright, modest room furnished with donated books and plush reading chairs, then out back, where the bird feeder's own tenants plummet and land safely. A large barbeque — which Judy, a onetime forklift driver, helped assemble — gleams on the small patio.

Just over the fence, in a tangle of woods, is "Hobo Jungle," a squatters' camp where Judy lived for almost two years. She still misses all the cats they fed, and keeps a couple of photos from the place on her wall, but it looks cold and barren out there and I hear no trace

One of the unspoken tenets of housing first is the belief that housing is therapeutic all by itself.

of nostalgia in her voice. Between the lines she tells a story of a life wrecked by alcohol, but like Ed, she no longer drinks the way she did. "It's easier not to drink here," she says, "because they give you other things to do. We had a big New Year's party with sparkling water." She spends her days taking long walks, reading, or visiting her sister. Since moving in she's had her first physical in forty years and has been fitted for reading glasses. Also, like Ed and many other tenants, she's in the process of having all her teeth pulled in preparation for dentures.

Not surprisingly, the Logan Place study recorded improvement in tenants' physical health. With a roof over your head, a medicine chest to store your meds, a door that locks, and a social worker to whom you can offer a cup of tea from your own stove, life gets better. Once you can take off your shoes and trust that nobody will steal them, you gain the freedom to address things that sit a bit higher on the hierarchy of needs — health and well-being, for instance. The statistic that intrigued me most in the Logan Place study was a 93 percent *increase* in mental-health contacts that resulted in a one-third *decrease* in cost, because tenants opt for regular outpatient treatment in lieu of cyclical, terrifying, desperate episodes that involve the expense and humiliation of ambulances and trauma teams.

Charlotte Gould, a friendly fifty-year-old with an endearing vocabulary, has been "under the auspices of the psychiatry" for thirty years. Her clinical diagnosis, she tells me, is "broken brain." She gives a complicated account of her bloodlines, a story of planned kidnappings and secret parentage and the influence of her "messiah," who died four years ago, after which Charlotte dropped through the fragile floor of her life and landed in the shelter. "I was scared to come here at first," she says, sipping coffee at a small, sunny dining table a few feet from her bed. "But people were nice. There was this one friend, he taught me to cook, he knew his way around, he was more *acquired* than I was." She also likes the Frederick Street neighbors, especially one with "this *refreshing* little dog, very sassy and feminine, I buy biscuits for her whenever I get groceries." Like many of the tenants, she plans to start working at the front desk, which functions as an informal volunteer-training program. You have to dress appropriately and be professional, and Charlotte longs to be a "*sample gesture* to the program." Ed already works the desk, hoping it will serve as a resume for his goal to volunteer at Mercy Hospital, where "they do a lot with the street." He wants to be a social worker someday, helping the street people to whom he feels a deep connection. "You need your hopes and dreams," he declares.

A week later, on a starless subzero night, I attend a small gathering in a vacant lot to celebrate the groundbreaking of Florence House. Totman and Swann are there, along with others from Avesta and Preble Street, plus board members, volunteers, and Governor John Baldacci, who arrives hatless to join thirty bemittened celebrants huddled around an outdoor heater. The lion's share of funds will come from the state this time around, owing to the promising Logan Place study, to the fact that Logan Place required no state funds, and because, in Baldacci's words, "Mark Swann is a hard guy to say 'no' to." Candles are lighted, one from another, and placed in a mound of fresh snow, a flaming bouquet that illuminates a circle of faces. A former shelter client, wearing a knitted hat and too-small jacket, steps up to read a poem. "I had one dress, and I slept in it," she reads, shivering in the candlelight. In this plunging cold, it's easy — and hard — to imagine. As she slips back into the shadows to mitten-muffled applause, it strikes me that this ceremony might look a lot like one of Swann's "sad sack" memorial services; then Dee Clarke, another former shelter client, literally dances out of the circle to deliver a fulsome, whoop-whoop speech filled with her personal joy in knowing that women like her

In every case it costs a city more to keep a person homeless than to provide housing.

mother, who lived with her children in an abandoned building, will get their chance to live in dignity. "A year from now," she proclaims to one and all, "fifty women will lay down their heads on their own pillow in a safe, secure place they'll call home. And for the first time in a long time, they'll rest easy." She turns to the governor. "And Governor Baldacci, *you* will lay down *your* head on *your* pillow in the Blaine House, and you'll rest easy, too." Visibly moved, the governor steps toward this redeemed and redeeming woman with the booming voice and wild hair. She nods, and he briefly touches his forehead to hers. "It's always better to light a candle," he says, uncharacteristically brief, "than to curse the darkness."

A few days later, I visit the women's night shelter to get a better idea of who, exactly, will be laying down her head one year hence in Portland's second housing-first project. Despite the clearly compassionate staff, one of whom runs the

"Portland's leaders have been incredibly supportive: the city council, the planning board, the police, the fire chief, everybody."

blankets through a warm dryer before handing them out, there's no refuting Swann's characterization of this shelter as a "tragic" place. One of the women here, once a Portland homeowner, is eighty-nine years old. Another is a full-time college student, who sits down in her jammies to tell me that nobody at school knows where she's lived for the last six months. Another, pretty and middle-aged, has come in with two grocery dollies packed with clothes, her routine for the last year and a half. If you didn't know, you might take her for a schoolteacher, but her tale is depressingly familiar: a husband too quick with his fists, a child given away to Grandma for safekeeping. These women move in for the night, some dragging comforts — a sunburst-yellow bedspread, a giant stuffed Mickey Mouse — evading the frosty cold but facing a slow burn of group desperation. "I lost my meds! I lost my meds!" warns a wiry little woman who pushes another woman into a wall, itching for a fight. I look around at these stunned faces — who, really, believes she will end up here? — and think, You won't need a Medicaid number. Or a treatment plan. No permissions, no stamps, no forms in triplicate. You won't even have to be sober.

You just move in. Lay your head on your pillow. Rest easy.

Logan Place is changing the face of homelessness in Portland.

FROM SLEEPING MATS TO HOMES

By SARAH G. RILEY

Mark Swann holds up a green mat with a built-in pillow. It doesn't look very comfortable, and it certainly doesn't look very welcoming. "This is one of the 154 mats that the Oxford Street Shelter uses each night," he explains. "One hundred fifty-four mats, exactly like this one, are laid down on the floor ten inches from one another and that is where 154 homeless people sleep."

Swann is upset that any human being is forced to sleep night after night on little more than an inflatable sleeping bag no more than ten inches away from his or her neighbor. He is bothered that due to the high demand for sleeping space, the shelter was forced to develop an emergency overflow plan that involved waking up ten to twenty people who had been the first to arrive and moving them two blocks away to sleep on the floor of the Preble Street Soup Kitchen. The staff selected these particular people because they wanted to take individuals who were most likely to cooperate, who were least likely to be under the influence of either alcohol or drugs, and who almost always had jobs to go to in the morning. And Swann is particularly saddened by the fact that until March 24 of last year, this emergency plan was necessary 70% of the time.

Indeed, the very fact that homelessness is still an issue in Maine makes Swann angry. "The picture of homeless in Maine is a terrible picture. It's pitiful, it's painful, and as hard as it is to look at the picture, to talk about, it's even harder when you realize that it is entirely solvable."

Swann, Executive Director of the Portland-based Preble Street Resource Center, believes there is a solution. It's called "Housing First," and on March 24, 2005, it became a reality in Maine.

A 1984 graduate of Bowdoin College, Swann began his career in social service driving a truck in Boston in order to learn the city, the different neighborhoods, and agencies serving the poor. He soon became a caseworker at the International Institute of Boston, helping thousands of Southeast Asian families resettle in America. He studied at night for his M.S. degree in Public Affairs from the University of Massachusetts at Boston. Although he loved his work at the Institute, he wanted to work at a smaller organization, a workplace driven by its mission and not its funding sources. When some friends from college told Swann about Preble Street, he leaped at the opportunity to lead a "small but creative organization with a terrific board of directors and great vision" at only 28 years of age. He's been working towards his dream of effectively fighting homeless-we offer them housing first."

It's working. Not only did the number of people needing a mat at the Oxford Street Shelter go down for the first time in 20 years the night Logan Place opened, but that emergency overflow plan has not been used since that same night. Nobody has been awakened in the middle of the night, nobody has had to walk two dark blocks in rain, sleet, or snow. No one has slept on those soup kitchen mats in over a year.

Despite initial concerns from homeowners who share their residential street with the housing complex, residents of Logan Place are benefiting from being in new homes. Swann believes there is a reason for this. "Once a person is safe, is housed, is out of the stress and danger of the streets, then he or she has the luxury of reflecting on his or her life and dealing with his or her illness. Asking, or demanding, that someone see a psychiatrist when his or her single biggest concern is will I be hungry today, or will I get a mat to sleep on tonight, is simply unrealistic for some folks."

Instead of living hand to mouth for days, months, or years on end, several residents are getting their feet back underneath them. Of the 13 active alcoholics living at Logan Place, three have entered and completed treatment and rehabilitation programs, one is trying to make the decision to follow in the footsteps of his friends after witnessing their success, and nine others have significantly decreased their drinking since moving in. Eight residents have established solid connections with mental health services, and three are taking medication, receiving ongoing psychiatric care, and getting in-home support. The number of police calls concerning the residents of Logan Place dropped from 175 in the seven months prior to the opening of the apartments to only 11 in the seven months after, a dip that both Preble Street and Logan Place's neighbors are thrilled about.

There is obvious success in these numbers, and Swann, along with Avesta, is ready to tackle a new initiative: Florence House, a similar apartment building for the 25 to 40 women who sleep most nights alongside more than 100 men at the Oxford Street Shelter. Swann worries about these women more than any of the other homeless people who cross his path.

"These women are the most ill and certainly the most vulnerable of the homeless people we see at Preble Street. There are no separate facilities, no targeted services for these women. It's wrong for anyone to have to sleep on a mat, but it's even more wrong for a woman to have to do so in an overwhelmingly male environment," he says.

Swann is confident that one day Florence House will be a reality. A recent $1,080,000 grant from the Maine State Housing Authority, in cooperation with the Region One Homeless Council, brings the project a step closer to fruition.

"We don't just need one or two champions of this cause. We need lots of champions. All of us need to be saying that homelessness is not okay. It is not enough to feed people at soup kitchens and feel good about it. It's not okay for people to sleep on mats on the floor. It's not okay for women to live for years and years and years on the streets of Portland, Maine."

Sarah Riley, a 2006 graduate of Bowdoin College, wrote this story as part of a semester-long internship at Port City Life. ❋

John Harlow and Bill Lovendale in Bill's apartment at Logan Place.

"Success is staying"

The tenants of Logan Place encounter life after homelessness

By Thomas MacMillan • Photos by Liz Lance

KELLY STANDS by the kitchen counter in the community room, trying to get everyone's attention. "Does anyone want to share their thoughts about the video?" she asks somewhat meekly, playing with the staff ID card hanging around her neck. "Or share how your life has changed since moving into Logan Place?"

It's March 22nd, the evening of Logan Place's second anniversary celebration. A small portion of the apartment building's thirty tenants–mostly men and all formerly homeless individuals–have gathered in the community room. They are all participants in a unique experiment in Maine, the state's debut Housing First project for the chronically homeless of Portland. Part of a national trend in the fight against homelessness, the Housing First model moves homeless individuals directly from the street into their own permanent apartments. Instead of the usual M*A*S*H re-runs, those present have just finished watching A Home For Good, a ten-minute promotional video about Logan Place. The staff had hoped that afterwards the tenants would engage in a reflective discussion about what Logan Place means to them.

At first, no one responds to Kelly's questions. There are a few quiet side conversations, but mostly people are focused on eating their Chinese take-out, the special anniversary dinner. They are seated at the three tables in the bright, linoleum-floored room. In one corner a couch and an easy chair face the television. In the opposite corner, two staff members in the kitchen serve plates of fried rice and egg rolls to the tenants who wander in.

A man with glasses speaks up abruptly: "I'm a lot cleaner, 'cause I have access to showers. Plus being safe within walls, without being vulnerable." Kelly nods and smiles encouragingly. The residents here have all moved into Logan Place within the last two years, after spending significant portions of their lives living on the streets or in emergency shelters.

Maria, Logan Place's program coordinator, poses another question to try to stimulate conversation. She asks how Logan Place has changed since it opened. "The drunks stand out the most," says Rose, who was homeless for 15 years before moving into the building. "It's very positive. The ones that were sloshed all the time now aren't." Logan Place's tenants were selected from among Portland's hardest cases of homelessness: men and women with disabilities, mental illnesses, and addictions, many of whom had for years been unable to remain sober or hold a job.

The conversation about Logan Place gives Ed an idea. "What about inviting some of the neighborhood in for a cookout?" he asks.

"That's a great idea. A neighborhood cookout," says Maria, nodding. "How do other people feel about that?" she asks the room. No one responds. Most of the tenants appear too distracted by their own lives to assess their time at Logan Place or plan a neighborhood event.

There is no distinct end to the discussion. Eventually someone turns the television back on. As people finish their food they drift out of the community room and back to their apartments. Two years into this experiment, Logan Place's tenants are still adjusting to life in their own homes. After years of homelessness, most of them had grown accustomed to life in the streets or in shelters. Moving in has presented the tenants with a whole new set of challenges, from learning to cook for themselves to dealing with untreated mental illness and alcoholism. The tenants are in uncharted territory, learning as they go.

LOGAN PLACE, on the edge of Portland, is the last building on a dead-end street. It is a small apartment building designed to look like a large house. The bulletin boards and warm, pastel color scheme give Lo-

Charlotte gives Geno a hug after he shares his bingo winnings with her.

gan Place the feeling of a retirement home. Upstairs, the brightly lit hallways are quiet, but the muffled sounds of televisions and stereos can be heard through some apartment doors.

Geno sits at the small table in his smoky second-floor apartment, surrounded by Boston Red Sox and New England Patriots paraphernalia: posters, photographs, souvenir footballs and figurines. In the corner, The Munsters flickers quietly across a large television. Having just woken up from an afternoon nap, Geno's thick sandy hair is pushed forward and his small eyes blink blearily behind his big black-framed glasses. Geno is large and round, with thick freckled arms. His face is unshaven and his unkempt reddish moustache partially conceals the fact that he is missing most of his front teeth.

Life in his own apartment is better than living on the streets, according to Geno, who is 51 and spent a decade being homeless. "You don't gotta worry about the weather," he says matter-of-factly. "It's a lot warmer in here, I'll tell you that." Geno breathes heavily through his nose. He has a slightly mushy way of speaking; his words don't have distinct edges. There's no one else in his apartment today, but Geno says he sometimes has his neighbors over. "We usually sit around and drink," he says. "Watch TV."

In accordance with Logan Place's "low barrier" philosophy, there are no restrictions placed on alcohol use, as long as tenants are not a danger to themselves or others. Alcoholic beverages are not allowed in common areas, but in their own apartments tenants are free to imbibe whatever and whenever they like. The staff sometimes encourages tenants to drink less but does not directly intervene unless there is an obvious problem. According to the staff, drinking has decreased for most residents since they moved in. Still, there are a number of tenants who show little desire to change their ways.

Geno hasn't been drinking today. He says he's trying to stay away from beer for a little while so that he can get some temporary work as a day laborer. He wants to put together some money so that he can take a trip to Ohio with a friend. Other times when he's needed some extra money he's gone out "signing," standing at busy intersections with a cardboard sign reading. "Please Help." Geno says he can only do it when he's drinking, "You can't do that straight. Come on…It's better when you're buzzed, then you don't give a shit… about the cops or anybody, you know."

Logan Place represents an inversion of the standard method of dealing with homelessness. Traditionally, homeless persons are placed on a conveyor belt towards permanent housing, passing through a variety of emergency shelters, transitional housing and group homes. Along the way, they are required to meet certain benchmarks: staying sober, becoming mentally stable, finding employment. Few people make it all the way up the conveyor belt without falling off and having to start again at the bottom. Under Housing First, homeless persons bypass all of this and move right into their own home. The theory is based on the belief that housing has to be a precondition for other achievements, that alcohol problems and mental illnesses cannot be treated if a person does not have the stability of permanent housing.

Logan Place is not, strictly speaking, a rehabilitation program. It is not designed to move the chronically homeless out on their own, into their own houses and full-time jobs. Maria says this is a common misunderstanding about the program. "It is not a stepping stone," she says. "Success is staying."

Housing First is gaining popularity across the country not only because it seems to be helping people, but also because it has proven to be cost efficient. It is actually cheaper to supply chronically homeless individuals with permanent housing than to continue to shuttle them between shelters, emergency rooms, and police stations.

During his ten years living in emergency shelters, Geno says he had his share of run-ins with the police. Now he spends most of his time in his apartment, where he can watch television and have friends over to drink. The staff encourages him to spend time socializing in the common areas of the building, but he's not interested. "They want me to go downstairs and watch their TV, or play cards, but jeez, I got my own cable here."

DOWNSTAIRS IN the community room, the television is constantly on. There are usually a handful of residents present, sitting quietly, rolling cigarettes, playing solitaire, or just watching daytime programming. At six o'clock the television is tuned to the evening news, and there is a nightly game of Spades at one of the round tables. After the news, many tenants enjoy watching shirtless men getting arrested on COPS. "'Trash TV,' I call it," says Ron as he unlocks the door to his third-floor apartment. "They gotta watch things that make 'em feel like they got a better life than the actors on TV." Television is just one of many complaints that Ron has about Logan Place.

As he enters his apartment, he returns his ring of keys to the clip on his tight jeans. Ron, 46, is tall and lanky and he wears black Velcro sneakers. Completely bald on top of his head, he has a long brown ponytail that extends down his back.

Ron doesn't think it's right that tenants do so little. "We aren't producing, we aren't being constructive," he says bitterly. "Those people down there, they sit around all day because they can get away with it." Ron thinks that he has, or had, a better plan for a housing program for the homeless. He thinks that tenants should be doing something productive, "anything but sittin' there watching TV all day." Taking a seat on his bed, he pulls out two battered briefcases, and begins searching for the business plan that he drafted while in rehab for his third brain injury. Ron says he had written up a proposal for a project like Logan Place, but with a woodworking program for tenants. Explaining his project as he sorts through dog-eared paperwork, Ron starts getting worked up. "I don't believe in being a bum or supporting bums!" he says loudly.

Ron considers himself a professional woodcarver, which he feels distinguishes him from the tenants downstairs watching television. He wants to move out of Logan Place "Ay-sap," and when asked if he has a job to support himself, he says, "Yeah! Take a look around." In the dim overhead lighting, his cluttered apartment looks more like a woodshop than a living space. Around the bed, on the floor and on homemade shelves, lie scraps of wood, saws, power sanders, and all manner of chisels and hand tools. Ron's woodcarvings are everywhere: bookends and duck decoys, wall pieces and doorstops carved into animal shapes. Among the tools and papers on a small table nearby are hand-written business cards that Ron painstakingly produces one by one to help sell his woodcarvings.

The business plan seems to have been lost for good. But Ron continues to complain in spurts, scowling and raising his voice occasionally. The Lo-

Logan Place resident Charlotte Gould grocery shops weekly at Save-a-Lot.

Tenant Rose Strout at work as a housekeeper at the Sheraton Hotel in South Portland.

gan Place staff is not spared from Ron's criticisms. He says the staff is responsive if approached by a tenant, but otherwise he thinks that they avoid work. "They put in their time," he says dismissively. But despite his complaints, Ron concedes that since moving into Logan Place he has become more "patient, understanding and ambitious."

BILL PACES slowly back and forth in his apartment, pausing occasionally to sip from a glass of warm beer on his kitchen counter. Standing at well over six feet tall, Bill's long arms hang loose, his big hands half closed. He is recounting his life story, speaking slowly through his thick dark beard.

"I lasted long enough to get my kids settled," he says. His low voice seems to come from deep in his mouth. Bill had been living in Boston, putting in long hours as a roofer and working nights for UPS. He held this hectic schedule together until his three sons were all through high school, then something gave way and Bill ended up in a psychiatric hospital. Bill describes it as "roofer burnout." He says the doctors described it as acute depression.

After he got home from the hospital, Bill took off. He left his wife and family and drove across the country until his money ran out. He ended up in Detroit, lost his car and began walking the streets, sleeping anywhere he could find. "Winter set in. I found a spot in a Detroit parking garage where a steam pipe went through," he says. "Me and some other bums slept there." Eventually his sons found out where he was and brought him home to Massachusetts. But after a few months, Bill hit the road again. "I wasn't ready to go back and live with my family yet." This time he ended up in California. Again, he eventually found his way home, stayed for a few months, saved some money, and took off to Maine. He spent most of the summer living out of his truck, parking at night at the Wal-Mart in Windham, just north of Portland. Eventually he ran out of money and found himself homeless again. He stayed that way for three years, living in shelters and walking the streets of Portland, before moving into Logan Place two years ago.

A number of tenants suffer from mental illness,

Geno Caron in his apartment at Logan Place.

which is widespread among the chronically homeless. Psychiatric conditions are handled much the same way as alcohol use at Logan Place. The staff can suggest that a tenant think about seeing a psychiatrist or taking medication, but do not require it. It is up to individual tenants to decide what they need or want.

Bill stops his pacing to light a cigarette and then resumes his slow circuit from his front door to the window overlooking the backyard. Bill's daily routine includes a walk, an afternoon nap and a game of cards in the evening. Now that spring is arriving, he'll start riding his bike and playing horseshoes. "It's quite boring," he says. It's also the best Bill has been doing for years. "I'm not afraid to take on some responsibility again," he says. "First time I've felt up to it." Bill, now 53, feels ready to take some small but significant steps toward rebuilding his life. He plans to get his driver's license back, find a part-time job, and buy a car.

Bill blinks slowly as he looks around the room. He hasn't spoken to his family in a long time. He plans to get in touch, but not yet. "Once I get myself straightened out, I'll feel more worthy of being a father," he says. "At least now I'm not on the streets."

THE SOUND OF his television let's Peggy, a Logan Place staff person, know that Geno is home. But despite her persistent knocking he doesn't answer his door. It's the first Logan Place barbecue of the year and Geno had said that he would man the grill. "There was a Red Sox game on earlier, he's probably passed out," says Peggy, giving up. "He'll be down to eat." She moves down the hall to see if Bill wants to be in charge of the grill.

Winter has taken a long time to leave this year, with a series of late snowstorms and a ferocious windy northeaster in the middle of April. Today is one of the first truly warm and sunny days of spring and some tenants are excited about this evening's barbecue. In the community room kitchen, two tenants are preparing food. Ed mixes potato salad while Charlotte prepares peppers, onions, and mushrooms to go with barbecued sausages. "Like at the carnival," she says happily, stirring a simmering pot on the stove.

Charlotte went to the store earlier and spent thirty dollars on groceries for the barbecue. Another tenant bought hamburgers and pork chops. Geno paid for a package of hot dogs. This willingness to contribute to a building event represents a significant shift. Two years in, a sense of community and ownership has begun to coalesce at Logan Place. Since the beginning, the staff has been organizing weekly and monthly events to encourage community participation and to lure tenants out of the isolation of their individual apartments. There is a pasta dinner every Wednesday, and a monthly celebration of a different foreign culture. Gradually, the staff has begun to take a back seat at these events as Logan Place tenants take on more responsibility and start to run things themselves.

Out back, Bill is starting up the big green gas barbecue on the concrete patio. The middle section won't light, but Bill finally gets it going. "Ta-daa!" he says happily, putting the grill top back in place. "Where's all the food?" Ken and John, two tenants, bring out platters of meat – hamburgers, sausage, hot dogs, pork chops, chicken skewers – and the grilling commences.

"You guys want a radio out here?" asks Peggy, sitting at one of the two picnic tables. There are a half dozen tenants gathered outside to watch the barbecuing, mostly bearded men in winter hats. They decline the radio. Peggy chats with them about camping and fishing. Charlotte comes outside and sits nearby in a plastic chair, talking contentedly to no one in particular. Plate in hand, Ron sits in the shade by the back door, grumbling that the food is late.

As the meat becomes ready, Ken brings it in to the community room, where Ed is cleaning the kitchen. The barbecue culminates in a quiet meal for a dozen tenants in front of the television. Tenants have executed the entire event, from buying the groceries and preparing the grill to cooking the food and cleaning up.

TWO DAYS LATER, Maria sits at the front desk in the lobby and reviews the success of the barbecue. "It was nice," she says, hands folded in front of her. "People are feeling more ownership. They're realizing that this is what we make of it." Logan Place is still young, still evolving, and building a culture of its own. Maria thinks the barbecue is representative

Logan Place staffer Peggy Lynch chats with residents Ron Crabbe, Tim Clark and Bill Lovendale at the first barbecue of the season.

Ken, John and Bill near the Fore River after a game of horseshoes.

of the direction that Logan Place is heading: less staff involvement and more tenant responsibility.

The elevator dings and Bill emerges, wearing sunglasses and wheeling his bicycle. John, a stooped man with a potbelly and a long moustache, follows behind. John and Bill are joined at the back door by Ken, a short bearded man in a grey t-shirt and winter hat. They cross the parking lot, following a winding path under the highway and across the railroad tracks to a sandy spot by the Fore River, where they've set up a horseshoe pitch. Bill removes four horseshoes from his saddlebags and he and Ken begin a game. Bill keeps up a mumbled commentary after every toss: "too far… off to the left…that one flopped in for a point." John stands nearby, repeatedly telling the story of Bill's "double ringer" from yesterday's horseshoe session. It is a close game but Ken wins in the end.

Between games they take a break and Bill pulls a can of Natural Ice beer out of a saddlebag. The three men light cigarettes. Bill recalls the horseshoe game yesterday when, he says, a couple of "shelter people" showed up, sat too close to the pitch and talked too much. Bill didn't know them personally, but he identified them as shelter people. "It takes one to know one," he says. Even after two years living in his own apartment, Bill still thinks of himself as homeless. "Once a shelter person, always a shelter person," he says emphatically.

The three men are quiet. Bill takes a few slow steps, looks at the river and then turns back toward the tracks. The roof of Logan Place is just visible through the trees. "It's not a good life. But it's not a bad life," he says quietly.

Thomas MacMillan grew up in Northampton, Massachusetts and went to college in Vermont. He usually lives in New England. (thomasmac@gmail.com)

Liz Lance is a freelance writer and photographer based in Telluride, Colorado. (lizlance@gmail.com; www.lizlance.com)

415.308.2287

Portland Press Herald

PRINTTHIS

Posted: April 29
Updated: Today at 9:06 PM

Maine Voices: Florence House gives the homeless hope along with shelter

Moving from life on the street to a real apartment is a dream come true for many women.

Special to The Press Herald

PORTLAND - Will I ever find a home? Is there any way to end homelessness? This month marked the first anniversary of an event that answered those questions with a resounding "Yes!"

PPH Opinion

ABOUT THE AUTHOR

The Very Rev. Benjamin Shambaugh, D.Min., is dean of The Cathedral Church of St. Luke and a member of Preble Street's Board of Directors.

It was the anniversary of the day Preble Street welcomed homeless women home for good to Florence House, the comprehensive woman's center on Valley Street.

On that day, women who had all but given up the dream of a home signed leases, set up housekeeping, and began a new life.

We celebrated with Gail Veilleux, who said, "It was cold out there in the woods. Florence House got me off the streets. Now I can get ahead. Learn something."

We celebrated as another woman balanced her grocery bags and fished for the keys to the first apartment she's had in 11 years.

Struggling throughout her life with diabetes and mental health problems and homeless after leaving a violent husband, she was assaulted in the streets. To escape her pain she became a victim of her own drug abuse.

At her lowest point, she took back her life, sought treatment at Mercy Recovery Center, and came to Florence House. Today she is home -- sober and healthy and part of a supportive community.

More than 50 percent of the women at Florence House have experienced domestic abuse, suffer from chronic health problems, and are at great risk of beatings, rape and trauma while homeless.

Those 18 to 44 years old are 10 times more likely to die than housed women, because of poor living conditions, substance abuse, mental illness and social isolation.

On one of the handmade wall tiles that commemorate their troubled lives, a woman wrote that it's like being stuck in a black bottomless pit; like being dead inside.

Each woman arrives at Florence House with a heartrending story of misfortune, abuse, illness, mistakes, helplessness. Each with a broken heart. Each with a dream of home.

We have heard their stories. We have seen the terrible, painful and sometimes overwhelming reality.

We have said homelessness is not OK. And Florence House is a solution: permanent and emergency housing for chronically homeless women.

None of the 25 women who moved into apartments at Florence House when it opened have returned to shelters.

The 150 women who needed the emergency shelter at Florence House have since found permanent affordable housing.

Hundreds have been connected with community resources for mental health, substance abuse treatment, employment and health care.

They are working to develop life skills, take courses, find jobs and reconnect with their families.

Many are involved in the community, volunteer for neighborhood clean-ups or participate in peer advocacy with Homeless Voices for Justice at Preble Street.

As we celebrated how coming together at Florence House helped women feel safe and empowered them to grow and improve their lives, we also celebrated how it has strengthened the community.

Avesta Housing and Preble Street turned an unkempt, untended urban lot into urgently needed housing to support the city's Comprehensive Plan.

The neighborhood gained an aesthetically pleasing, award-winning residential property with a responsible landlord, 24-hour professional staff, a management plan and a solid partnership with the police department.

New residents with a sense of ownership in the community have taken a keen interest in being good neighbors. And a program that opens doors of hope for homeless women has reduced the strain on municipal and emergency services.

Medcu calls and emergency room visits have plunged because many who used emergency services every month while homeless stop when they have supportive housing.

At Florence House hundreds of women have taken hold of opportunities that will continue to allow them to make lasting positive change in their lives and their neighborhood.

As U.S. Secretary of Housing and Urban Development Shaun Donovan said when Florence House opened, "Our challenge is to house everyone -- and Florence House is showing us how we can."

Gloria Woody, an attractive middle-aged woman staying at the shelter who is a breast cancer survivor and is extra careful about eating healthfully, smiled as she sat in the bright dining room for a few minutes to join the anniversary party.

As she wrapped her remaining lunch in a napkin and rushed off to keep an appointment to look at an apartment, she said, "I don't know what I would've done without Florence House. It's amazing!"

the bollard

Sweet Home

From the streets to a place of one's own

March 3, 2014

By Doug Bruns

Editor's Note: Last May, we published "Cornered: Portraits of Portland's Traffic Panhandlers," by local writer and photographer Doug Bruns. This winter, Bruns completed a similar assignment, this one focused on formerly homeless people who have made the transition to housing with the help of local social-service agencies. (One of the subjects of "Cornered," Judy, also appears here.) "Thank you to Amy Gallant and the other good folks at Preble Street for their assistance in pulling this story together," said Bruns. "Their tireless work on behalf of our less-fortunate neighbors enriches our community and serves us all to the positive."

Mike, 56
eight years homeless; two years in housing

Having a roof over my head means I don't have to be in the street anymore. That gives me peace of mind. God knows what I'd do if I was homeless again. I became homeless when my mother was put in a nursing home. I believe she's still alive. She's 101 years old. I was working for a car dealership when I had my stroke in 2007 and couldn't work, and she was in the home. That's how it happened, homelessness.... Homelessness sucks. Nobody should be living on the street. I fell and broke my shoulder and was taken to the hospital. There, somebody filled out paperwork, and then I came here [Logan Place, an affordable housing complex, supported by Avesta Housing and Preble Street, located in Libbytown near one of the interstate off-ramps]. The best thing about living here is having a bed and a shower.

Judy, 49
two years and two months homeless; four-and-a-half months in housing

It's really, really difficult to be homeless. It's like a full-time job.... All I needed was a chance. I'm disabled. Because I was homeless over two years and I could prove it, and the fact that I am disabled, I got one of the 20 vouchers for housing. The sequestration of Section 8 vouchers kind of hurt us. They had 40, but pulled back 20. I got lucky and got one of those 20 and found a place.... The lack of affordable housing is really a problem. The lack of livable wages is really a problem. Back in the '80s, with deinstitution, the mentally ill — and that's my disability — were left on the street and living in the bushes.... Keep trying — that's my advice to the people on the streets. I'm not going to say it's doable, 'cause it's really tough. Even with my disability, I made a deal with myself. I said, "Everyday, you've got to do something towards the future." Who can I talk to? What can I be doing?... If I could put in a plug for the people who helped me when I was on the street: Thank you. I couldn't have made it without your help.

Mark, 56
four years homeless; six-and-a-half months in housing

I was a terrible alcoholic before I became sober. For 35 years, I drank. I almost died from drinking alcohol. One day I woke up at four in the morning — four in the morning is an interesting time — and knew that I had to leave where I was. I was with two lady friends. They were alcoholics. Out of my mouth, I said to myself, *You need to leave here now.* I left where I was, but collapsed on the lawn and went to the hospital. I believed I was going to die.... I was on a different path after that. I knew it was different — it was a spiritual path. I don't know why I felt that way, it just was. I lost my depression and I lost my anxiety. I believe God saved my life for a reason. When you believe you're going to die, everything changes.... I consider my case worker my muse. Her name is Jamie. She was my case worker for 10 years. She was my guide. She pushed me forward.... You have to gravitate to people who are positive, stay away from the negative. You have to have faith. I'm a man of faith.... There is hope. There is always a light at the end of the tunnel…. I pray for my mind to be expanded. I pray to help people. If you can't help, at least don't hurt them.

Geno, 58
eighteen years homeless; nine years in housing

Peggy at Preble Street got me off the street. I don't know what I'd do if that hadn't happened…. I'm not going to die on the street. I'm going to die right there, right on that bed. I've got too many years left, I can feel it…. The best thing is that I've got a place to go when there's no shelter available. The shelters are too crowded. You get there at five at night and hope they have a bed. If not, I'd find a hallway someplace to sleep…. I got my cat four years ago, maybe three. He's my buddy. His name is Casper, but we call him Porker…. The best part of having a roof over my head is my bed. I have a place to sleep. Tell the homeless people that if they can get a place, to do everything they can to keep it. Don't let your buddies screw it up. Make it last till the last picture show.

Suzanne, 59
one year homeless; housing "a life-long effort"

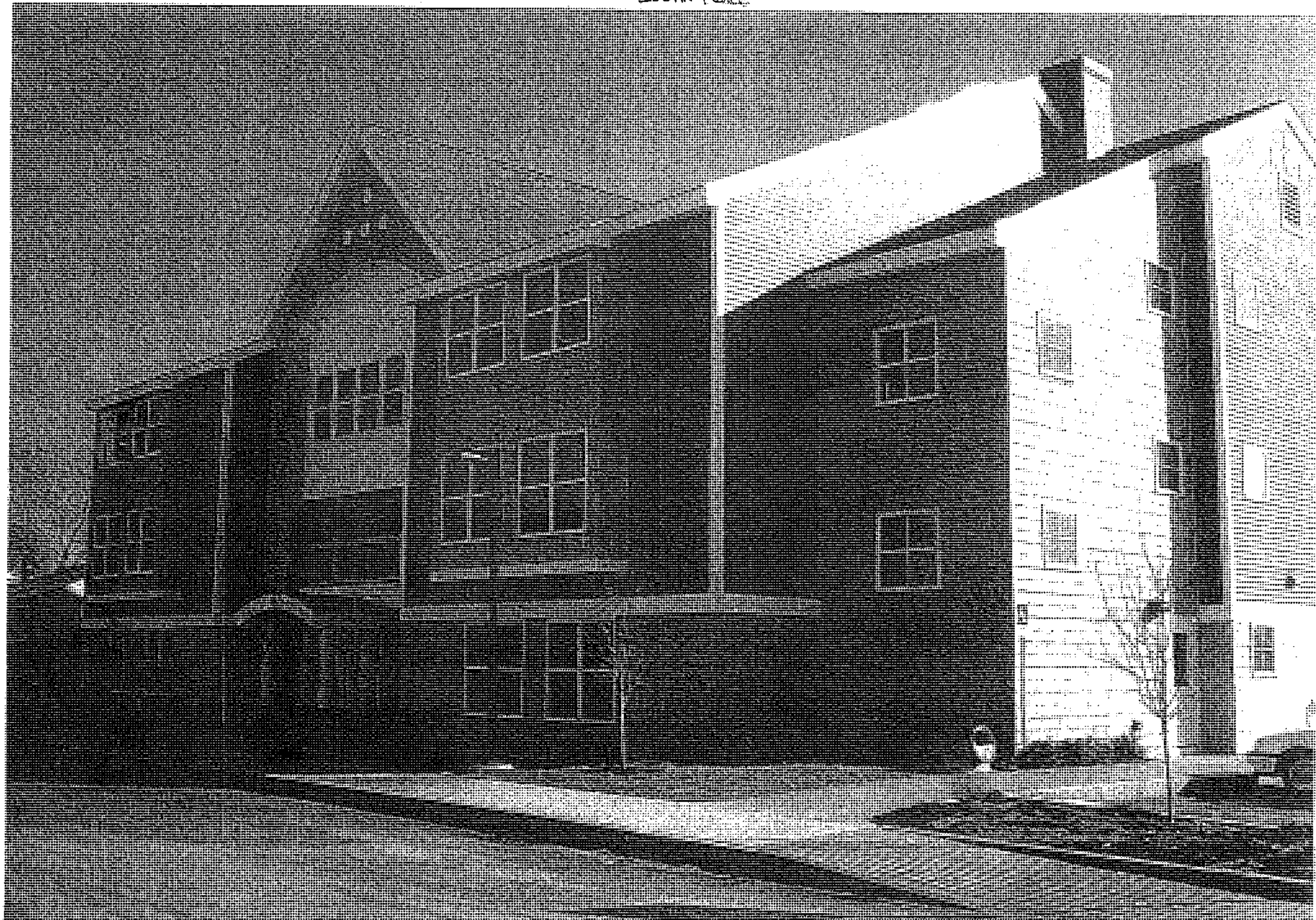
I'm trying to reinvent my life. I'm in a situation where I'm trying to figure out what my life is about…. No one ever told me how to become an adult, how to deal with myself. You know, becoming an adult, and people are asking if you're going to go to college and all that. I was really scared of all that. I went into adulthood from a place that was not a place of strength. I made bad decisions as a result…. I was an abused woman. I was sleeping in my car…. We all have stories. We all think we're OK. But there are things we push to the back of our minds…. For people on the street, things become acute. I was in some strange mental place. How can you live in a dangerous place and think you're going to be OK? It became very acute for me very quickly. My decision-making process was not very sound at the time…. God is love and He wants us to have food and shelter and enjoyment. But you still have to desire it and ask for it and want it. You have to work on having a frame of mind that will support that. You have to work on being positive.

Donna, 47
four years homeless; two years in housing

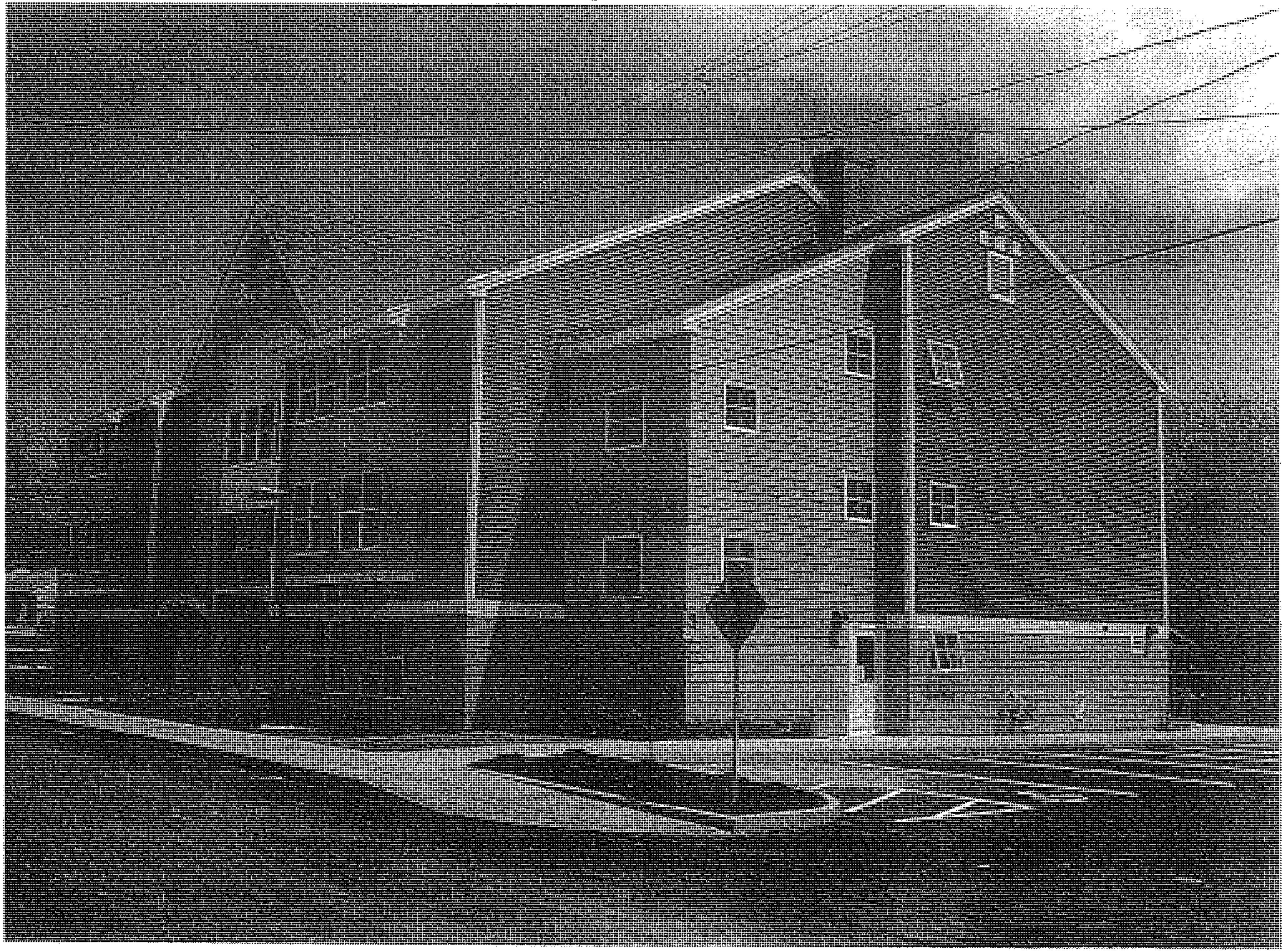
I lost my MaineCare. I'm a diabetic. My foot's infected. I'm scared I'll lose my foot. I'm scared in general. I've never lived on my own.... I was in the shelter and the staff knew about my health problems. They saw my need and pressed for me to get an apartment. The workers here (Florence House, another Avesta/Preble Street project, located in the St. John/Valley Street neighborhood) are tremendous. They're caring. They're great people. I love them.... My father died in 2007. He told me two weeks before he died to keep the family together. My brothers live in a nice house with four bedrooms. My middle brother knew I was in a shelter at the time. But there is no communication. My advice to everyone is, if you have family and one of them is in trouble, try to contact them. Let them know you will help them.... Sometimes in the middle of the night I go outside and just sit on the bench and listen to the night, to Mother Nature. You have to hold on to whatever you can.


LOGAN PLACE

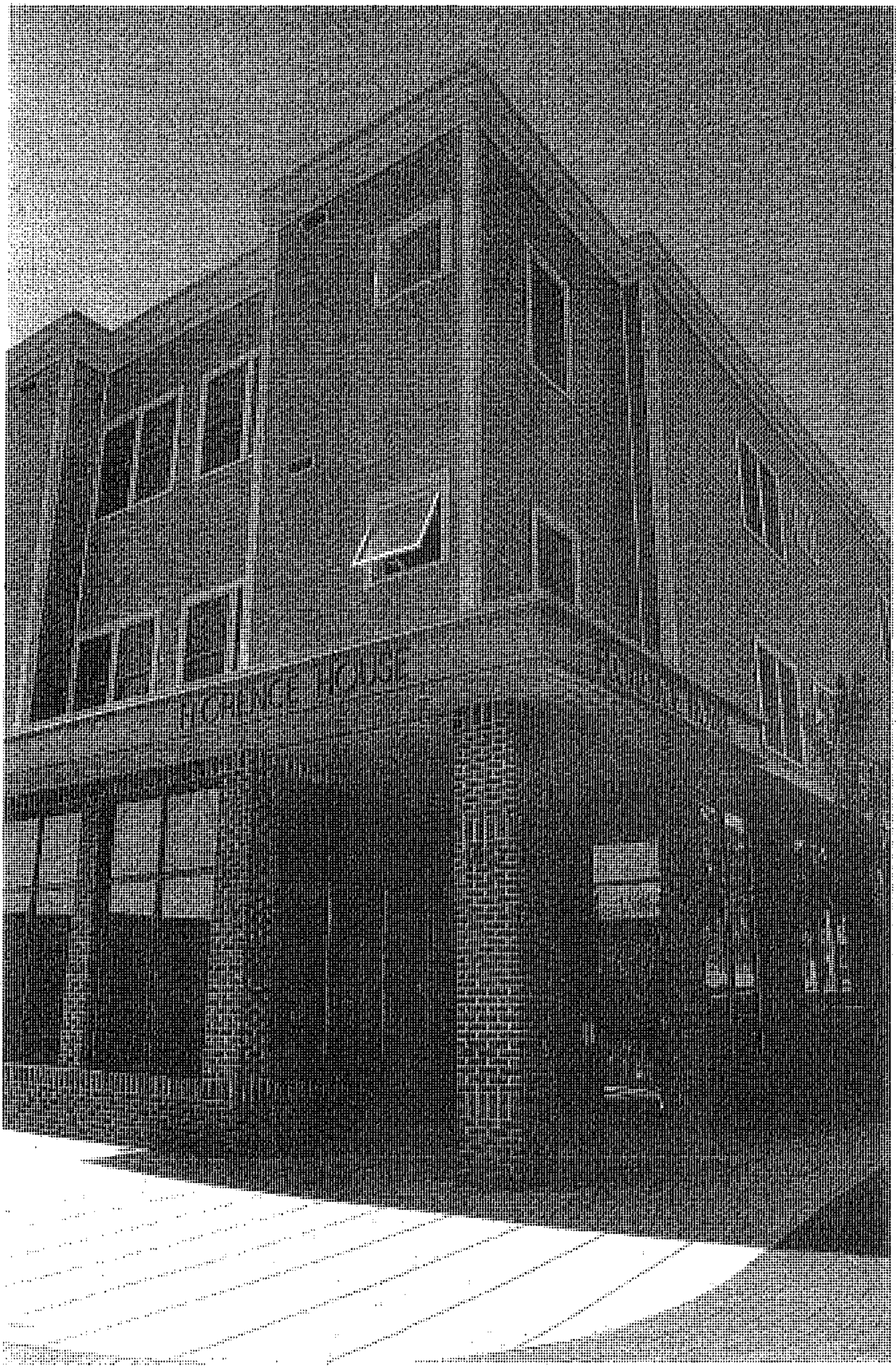
LOGAN PLACE



LOGAN PLACE



FLORENCE HOUSE



FLORENCE HOUSE

FLORENCE HOUSE

Logan Place II Completion Schedule

Activity	Actual/Scheduled Date Month/Year
A. SITE	
Option/Contract	02/20/14
Site Acquisition	07/05/14
Zoning Approval	07/31/14
Development Approval	12/31/14
B. FINANCING	
Construction Loan Commitment	08/01/15
Permanent Loan Commitment	08/01/15
Other Sources Committed	08/01/15
C. PLANS AND SPECIFICATIONS	
50%	02/01/15
90%	05/01/15
100%	07/01/15
D. CONSTRUCTION LOAN CLOSING	09/01/15
E. CONSTRUCTION START	09/01/15
F. SUBSTANTIAL COMPLETION	08/01/16
G. COMPLETION OF CONSTRUCTION	09/01/16
H. LEASE-UP	
Lease-up Begins	09/01/16
Sustained (95%) Occupancy	01/01/17

Order 254-13/14
Tab 15 6-2-14

MICHAEL F. BRENNAN (MAYOR)
KEVIN J. DONOGHUE (1)
DAVID A. MARSHALL (2)
EDWARD J. SUSLOVIC (3)
CHERYL A. LEEMAN (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

JOHN R. COYNE (5)
JILL C. DUSON (A/L)
JON HINCK (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

ORDER APPROVING RENTAL CAR CONCESSIONAIRE AGREEMENTS AT PORTLAND INTERNATIONAL JETPORT

ORDERED, that rental car concessionaire agreements with the following rental car companies are hereby approved, in substantially the form attached hereto:

Hertz
Avis/Budget
Enterprise d/b/a Alamo & National
Enterprise d/b/a Enterprise; and

BE IT FURTHER ORDERED, that the City Council hereby authorizes the City Manager to execute said documents and any other related documents necessary or convenient to carry out the intent of said document.

MEMORANDUM
City Council Agenda Item

TO: City Council

FROM: Paul Bradbury, Airport Director

DATE: May 9, 2014

DISTRIBUTION: Mark Rees, City Manager; Mayor Brennan; Danielle West-Chuhta, Corporation Counsel; Sonia Bean; Nancy English

SUBJECT: Portland International Jetport Rental Car Concessionaire Agreement Approval

SPONSOR: Mark Rees, City Manager

COUNCIL MEETING DATE ACTION IS REQUESTED:
1st reading: June 2, 2014 **Final Action:** June 2, 2014

Can action be taken at a later date: X* **Yes** ____ **No (If no why not?)**
* Yes, but agreements must be executed prior to July 1, 2014 so the June 16, 2014 Council meeting would be the latest date for action.

I. SUMMARY OF ISSUE (Agenda Description)

The Portland International Jetport is requesting approval of the standard agreement between the City of Portland and its On-Airport Automobile Rental Concessionaires. The current agreements expire on June 30, 2014 and the new agreements will be for a five year term ending on June 30, 2019. In anticipation of the expiration of the current agreement the City issued competitive Bid # 4314 for automobile rental concessionaires. Only the current rental car concessionaires attended the mandatory pre-bid meeting. These are: Avis Budget Car Rental, LLC; Hertz Corporation d/b/a Hertz and Dollar; Enterprise Rent-A-Car Company of Boston, LLC d/b/a Enterprise Rent-A-Car; and Enterprise Rent-A-Car of Boston, LLC d/b/a Alamo Car Rental & National Rent A Car. The proposed agreement is based upon the existing agreement with the following changes:

- Like the prior contract, the proposed contract allows for "dual branding", a relatively new concept that has cropped up in the rental car industry through bankruptcy and merger consolidation. Dual branding allows a single concessionaire to have two brands at a single counter. This benefits the Jetport because it allows more brands to be "on-airport" without further investment in counter and parking facilities. Under this agreement we have allowed Hertz to dual brand using their recently acquired Dollar brand.

- The proposed contract payment to the Jetport remains 10% of gross annual sales, but incorporates new Minimum Annual Guarantees (MAGs) for each concessionaire in the following amounts:
    1. Avis Budget - $869,039/year totaling $4.35 million over the five year contract.
    2. Enterprise (d/b/a Enterprise) - $438,325/year totaling $2.19 million over the five year contract.
    3. Hertz (d/b/a Hertz & Dollar) - $951,633/year totaling $4.76 million over the five year contract.
    4. Enterprise (d/b/a Alamo & National) - $486,411/year totaling $2.43 million over five year contract.
- The proposed contract continues to include a Customer Facility Charge (CFC) of $1/day with a maximum charge of $5, but allows the maximum annual collection amount to increase from $425,000 to $500,000. The CFC covers the debt service on the rental car portion of the parking garage.

II. REASON FOR SUBMISSION (Summary of Issue/Background)

This concession contract does not contain a termination at the convenience of the City clause, so it must be approved by the City Council.

III. INTENDED RESULT

The approval of this contract will allow the Jetport to issue new contracts for on-airport automobile rental concessionaires.

IV. COUNCIL GOAL ADDRESSED

The revenues from concessions at the Portland International Jetport allow it to be a self-sustaining enterprise fund of the City of Portland with no reliance on local taxes. The Portland Jetport provides a robust connection to the national air transportation system which helps support the City Council's economic development goals.

V. FINANCIAL IMPACT

The Portland International Jetport receives $3.6 million annually from rental car concessions. This accounts for 18.9% of the Jetport's total annual operating revenues. Approval of the concession agreement is critical to maintaining a fiscally strong and self-sustaining airport.

Approval of this agreement will require concessionaires pay automobile excise tax to the City of Portland for their on-airport rental car fleets. It requires that rental car concessionaires must register any vehicles "principally used in connection with rentals to and from the Airport" and the number "shall not be less than the minimum number of 250 vehicles annually" in the City of Portland. This generates approximately $1.5 million in annual revenue to the City.

VI. STAFF ANALYSIS

Rental car concession revenues are a critically important part of the Jetport's business model. The proposed agreement meets or exceeds all of my expectations for the terms of renewal. It provides a payment of 10% of gross revenues, a CFC of approximately $500,000 annually, with a minimum guarantee of $13.72 million in revenue over the next five years.

VII. RECOMMENDATION

Jetport staff recommends the Council's approval of the On-Airport Automobile Rental Concessionaire agreement.

VIII. LIST ATTACHMENTS

1. Contract for: Rental Car Concessions at the Portland International Jetport

Prepared by:

Signature

5.9.14

Date

CITY OF PORTLAND, MAINE

CONTRACT FOR:

RENTAL CAR CONCESSIONS
AT THE
PORTLAND INTERNATIONAL JETPORT

July 1, 2014

NON-EXCLUSIVE CONCESSION AGREEMENT
FOR ON-AIRPORT AUTOMOBILE RENTAL OPERATIONS
BETWEEN
CITY OF PORTLAND
AND
(CONCESSIONAIRE)

This Concession Agreement ("Agreement") is made and entered into as of this 1st day of July, 2014, by and between the City of Portland ("CITY"), a public body corporate and politic of the State of Maine and ________________ ("CONCESSIONAIRE") doing business as the following brand(s):____________________, a________________ corporation with a principal office at ____________________, and authorized to do business in the State of Maine.

WITNESSETH:

WHEREAS, the CITY owns and operates the Portland International Jetport (the "Airport"), located in the CITY of Portland, Cumberland County, Maine; and

WHEREAS, on-airport automobile rental services at the Airport are necessary for the proper accommodation of passengers arriving at and departing from the main terminal building at the Airport (hereinafter the "Terminal"); and

WHEREAS, the CITY requested bids for on-airport automobile rental services by Bid No. 4314, dated March 19, 2014, including any addenda; and

WHEREAS, CONCESSIONAIRE desires to make on-airport automobile rental services available at the Airport, and CONCESSIONAIRE is qualified, ready and able to perform said services, and to furnish proper facilities in connection therewith;

NOW, THEREFORE, in recognition and reliance upon the foregoing recitals, and in consideration of the mutual covenants and promises hereinafter set forth, and in exchange for other good and valuable consideration, the receipt and sufficiency of all of which is hereby acknowledged by the parties hereto, CITY and CONCESSIONAIRE agree as follows:

ARTICLE I.
DEFINITIONS

Section 1.1 Definitions. For the purpose of this Agreement, the following terms shall, unless the context requires otherwise, have the following meanings (terms defined in the singular shall have the same meaning when used in the plural and vice versa):

Agreement shall mean this Concession Agreement, those documents and agreements referenced in Section 2.1, and all amendments, modifications and supplements hereto and thereto.

Airport shall mean the Portland International Airport located in the City of Portland, Cumberland County, Maine.

Airport Facility Charge shall mean, collectively, the fees and rentals in Section 5.4.

Car Rental Facility shall mean the facility adjacent to the parking garage specifically designed to accommodate car rental services, including both the Car Rental Facility Premises and the Ready Return spaces, which may also be referred to herein as the "Facility" or "Facilities".

Car Rental Facility Premises shall mean the counter space leased to CONCESSIONAIRE to conduct its rental car operations, as provided in Section 5.1 below, which may also be referred to herein as the "Premises".

CONCESSIONAIRE shall mean "named concessionaire", a corporation, its officers, agents and employees.

DBE/WBE DBE shall mean Disadvantaged Business Enterprise as defined in 49 CFR Part 23, and shall include Small Business Concerns which are owned and controlled by Socially and Economically Disadvantaged Individuals; WBE shall mean Women Business Enterprises and shall include Small Business Concerns which are owned and controlled by women, who are presumed to be Socially and Economically Disadvantaged Individuals under Section 8(a) of the Small Business Act (15 U.S.C. section 637) and relevant regulations promulgated pursuant thereto.

DBE/WBE Participation Goals shall mean CITY's goals for participation by DBE/WBEs under the Airport's Federal Aviation Administration program. CITY's goal for combined

DBE/WBE participation is given in the City of Portland Airport Concession Disadvantaged Business Program.

Director shall mean the Director of the Portland International Airport, and his or her authorized designee, also referred to herein as "Airport Director".

Dual Branding shall mean owning or operating two brand names from the same car rental facility.

FAA shall mean the Federal Aviation Administration, an agency of the United States Government, and any successor thereto.

Gross Revenues shall mean any and all time and mileage charges, excluding CONCESSIONAIRE authorized discounts, whether for cash, credit, exchange or otherwise, for the rental of automobiles and rental transactions of every kind by CONCESSIONAIRE within the legal boundaries of the Airport and shall also include all sums received by CONCESSIONAIRE from customers by reason of their acceptance of personal accident insurance or other insurance coverage. Gross revenue further includes all additional driver and youthful driver charges, child restraint seat, ski and luggage rack charges and any equipment rental charge retained by CONCESSIONAIRE, any allowance for bad debts and inter-city revenues. Revenues from rental transactions may be considered received on the date the rental transaction is closed.

The term Gross Revenues shall not mean or include: (i) any sums received from customers for gasoline or refueling service; (ii) the amount of federal, state, county or municipal sales or other similar taxes separately stated and collected and/or reimbursed from customers of CONCESSIONAIRE now or hereafter levied or imposed; (iii) any sums received as insurance or otherwise for damage to automobiles or other property of CONCESSIONAIRE, or for the loss, conversion, or abandonment of such automobiles, or any charges collected from a customer for damages to the automobile rented; (iv) any sums received for waiver by CONCESSIONAIRE of its right to recover from customers for damages to any automobile rented, (v) any sums received by reason of the CONCESSIONAIRE's disposal of operating facilities or personal property (capital assets), including vehicle sales, manufacturer rebates, and franchise rebates, (vi) any sums recovered from customers for the payment of traffic tickets, parking tickets, tolls, towing fees, impound fees, red light tickets and other governmental fines, which are incurred as a result of customers' actions, along with the administrative fee charged for the processing of such payment and recovery, OR (vii) carbon offsets based entirely upon proven amount paid on behalf of a car rental customer to 3rd party carbon offset provider.

Minimum Annual Guarantee (MAG) shall mean the minimum amount of concession fees paid on Gross Revenues as provided in Section 5.4.1 (exclusive of any other charges or rentals for Terminal or other space leased to CONCESSIONAIRE under this or other agreements) due to CITY annually from CONCESSIONAIRE in consideration of the concession rights herein granted to CONCESSIONAIRE.

Ready/Return Premises shall mean the parking space areas to be used by CONCESSIONAIRE as a ready/return area for its automobile rental fleet, all as more specifically set forth in Section 5.2.

Service Facility shall mean a facility that will enable car rental agencies to service their vehicles in close proximity to the passenger terminal.

Small Business Concern shall have the meaning such term has under Section 3 of the Small Business Act (15 U.S.C. section 632) or such other laws or regulations as may be applicable, from time to time, to this transaction.

Socially and Economically Disadvantaged Individuals shall have the meaning such term has under Section 8(a) of the Small Business Act (15 U.S.C. section 637) and relevant regulations promulgated pursuant thereto.

Terminal shall mean the main terminal building at the Airport.

Section 1.2. References. For the purposes of this Agreement, the following references shall, unless the context requires otherwise, have the following meanings:

(a) The words "hereof," "herein," "herewith," "hereunder" and words of similar meaning shall refer to this Agreement as a whole and not to any particular provision of the Agreement, unless otherwise specified.

(b) Where the context requires, the use of singular numbers or pronouns shall include the plural and vice versa, and the use of pronouns of any gender shall include any other gender.

ARTICLE II

AGREEMENT

Section 2.1. Documents. The Agreement between the parties shall consist of this instrument and the following documents, which are incorporated herein as if copied at length:

(a) All insurance certificates and performance and payment bonds or letters of credit required by the terms of this Agreement; and

(b) All exhibits to this Agreement..

Section 2.2. Conflict in Terms. In the event of any conflict between the terms or provisions of this Agreement and the terms or provisions of any of the documents referenced in Section 2.1, the more restrictive on CONCESSIONAIRE shall control.

ARTICLE III
TERM

Section 3.1. The term of this Agreement shall be for sixty (60) months beginning on July 1, 2014 and terminating at 11:59 p.m. on June 30, 2019.

ARTICLE IV
RIGHTS AND PRIVILEGES

CONCESSIONAIRE shall have the following rights and privileges during the term of this Agreement:

Section 4.1. Automobile Rentals. CONCESSIONAIRE shall have the non-exclusive right and privilege to conduct an on-airport automobile rental concession at the Airport from the Car Rental Facilities for the convenience of passengers utilizing the Airport, and patrons and tenants of the Airport. Such right includes the right to rent automobiles to the general public at or on the Airport; provided, however, that said rentals of automobiles shall be consistent with all applicable standards and policies of Airport as such standards and policies may be developed and amended. Such right shall not include the right to sell gasoline or to offer maintenance and/or repair service for automobiles to the general public, to other concessionaires at the Airport, or to any other firm, or individual, except as required to maintain automobiles used by the CONCESSIONAIRES's automobile rental customers.

Section 4.2 Counter Space Area. CONCESSIONAIRE shall have the right to the use and occupancy of the Car Rental Facilities together with the right to construct and install any improvements in and upon the Car Rental Facilities Premises as may be reasonably necessary for the customary operation of an on-airport automobile rental service operation at the Airport, subject to the following conditions:

(a) Any construction or installation in the Car Rental Facilities Premises shall be in accordance with CITY regulations and rules and CONCESSIONAIRE shall obtain, at its own cost and expense, all required CITY permits and approvals therefore, including without limitation a building permit;

(b) CONCESSIONAIRE shall submit to the Airport Director for prior written approval, which approval shall not be unreasonably withheld, detailed plans, drawings and specifications for any construction and installation of improvements, or alternations thereto, in and upon the Car Rental Facilities Premises;

(c) All structural improvements, equipment and interior design and décor constructed or installed in the Car Rental Facility Premises shall be in accord with the approved design of the Car Rental Facility and shall be harmonious with the décor of the parts of the Car Rental Facility of which the Car Rental Facility Premises are a part and shall meet or exceed the quality of such Car Rental Facility;

(d) CONCESSIONAIRE shall submit to the Airport Director for prior written approval, which approval shall not be unreasonably withheld, a copy of any proposed written construction agreement with respect to construction or installation of any improvements, or alterations thereto, on the Car Rental Facility Premises;

(e) CONCESSIONAIRE shall commence construction on the Car Rental Facility Premises within a period of ten (10) days from and after the approval of the plans and specifications therefore by or on behalf of CITY, and shall prosecute such construction to completion with all due diligence;

(f) CONCESSIONAIRE shall construct, install and make alterations to the Car Rental Facility Premises at CONCESSIONAIRE's sole cost and expense;

(g) All improvements made by CONCESSIONAIRE to the Car Rental Facility Premises shall be of high quality, safe, fire resistant and attractive in appearance;

(h) At all times during the construction or installation of any improvements in or upon the Car Rental Faculties Premises, CONCESSIONAIRE shall cooperate with and coordinate activities and work with CITY and other Concessionaires at or near the Car Rental Facility Premises;

(i) CONCESSIONAIRE shall assume full responsibility for any and all damages, injuries and claims which may result to any person or persons or to their property by reason of the construction or installation of any improvements on or in the Car Rental Facility Premises, and, in addition to any other indemnities provided hereunder, CONCESSIONAIRE shall defend, indemnify and hold the CITY, its officers, agents and employees, harmless from any such claim or claims, judgments or decrees resulting there from, and the expenses related thereto, including without limitation costs and reasonable attorneys' fees; CONCESSIONAIRE shall further defend and hold the CITY harmless from any liens by any person by reason of such construction or installation of improvements;

(j) The Car Rental Facility Premises shall be used by CONCESSIONAIRE only to conduct its on-airport automobile rental operations at the Airport and for such other purposes as may be reasonably ancillary in connection with such services; the use of such Premises by others or for other purposes is expressly prohibited; and

(k) All improvements made to the Car Rental Facility Premises and additions and alterations thereto shall be the property of CITY; provided, however, that any trade fixtures, signs and other personal property of CONCESSIONAIRE not permanently affixed to the Car Rental Facility Premises shall remain the property of CONCESSIONAIRE and shall so remain unless CONCESSIONAIRE shall fail within the (10) days following the expiration or earlier termination of this Agreement to remove such trade fixtures, signs and other personal property not permanently affixed to the Car Rental Facility Premises, in which event, at the option of CITY, title to same shall vest in CITY, at no cost to CITY. In the event CITY does not choose to take title, CITY shall have the right to remove and dispose of all such trade fixtures, signs and other personal property and the costs of such removal shall be the responsibility of CONCESSIONAIRE, less any amounts obtained by CITY from sale or disposal of said property; and

(l) All contractors and subcontractors of CONCESSIONAIRE doing work on the Airport shall name the CITY as an additional insured on its commercial general liability insurance in the amount required hereunder and shall provide evidence to CITY of Automobile liability insurance in said minimum amount and workers compensation insurance in the statutory amount; and

(m) CONCESSIONAIRE shall not place any advertising, including pricing information and credit card applications, pamphlets, temporary signs or other materials on the Car Rental Facilities counter space. Drop off boxes and items necessary for the services of customers are allowable subject to prior approval of the Airport Director or his/her designee.

Section 4.3. No Service Facility. Service Facility Premises are not covered by this Agreement. Each CONCESSIONAIRE must operate, maintain, or share a service area facility.

Section 4.4. Ready/Return Parking Areas. CONCESSIONAIRE shall have the right to the exclusive use of a proportionate share of parking spaces to be used for automobile rental parking as provided in Section 5.2 below.

Section 4.5. Signs. CONCESSIONAIRE shall have the right to install and maintain standard corporate identifying signs and graphics in areas designated by the Airport Director. All other signs and graphics in the Car Rental Facilities Premises and the Ready/Return Premises designated for use by CONCESSIONAIRE shall be subject to the prior written approval of the Airport Director. All signage shall conform to any applicable state, CITY, or Airport ordinance or rules.

Section 4.6. Ingress/Egress. CONCESSIONAIRE shall have the non-exclusive right of ingress to and egress from the Car Rental Facility Premises and the Ready/Return Premises over Airport roadways, including common-use roadways, subject to any rules or regulations which may have been established, or may be established in the future, by the CITY, the United States (including, without limitation, the FAA), the County of Cumberland and/or the State of Maine. Such right of ingress and egress shall apply to CONCESSIONAIRE'S employees, guests, patrons, invitees, suppliers and other authorized individuals. Such right of ingress and egress shall likewise apply to the transport of equipment, material, machinery and other property of CONCESSIONAIRE.

ARTICLE V.
CAR RENTAL FACILITY PREMISES, RENTAL FEES, AND OTHER CHARGES

Section 5.1. Car Rental Facility Premises. CITY hereby leases, lets, and demises unto CONCESSIONAIRE, and CONCESSIONAIRE hereby leases from CITY, ____________ (___) square feet in the Car Rental Facility Premises, all as more specifically indicated on Exhibit A attached hereto and made a part hereof, to be used by CONCESSIONAIRE for its counter space to conduct its on-airport rental operations at the Airport.

Section 5.2. Ready/Return Premises. CITY hereby grants CONCESSIONAIRE the exclusive use of _____________ (__) ready car parking spaces near the Car Rental Facility Premises, all as more fully set forth on Exhibit A attached hereto and made a part hereof, to be used by CONCESSIONAIRE as ready/return area for its automobile rental fleet. There are currently a total of Two Hundred Thirty-eight (238) parking spaces. Each on-Airport concessionaire's proportionate share of the ready car parking area, for the first year of the term of the Agreement, shall be in direct proportion to the percentage that the CONCESSIONAIRES' Gross Revenues during the period from June 1, 2013 – May 31, 2014 were to the total Gross Revenues of All on Airport concessionaire's for the same period., The number and locations of the parking spaces allocable to each of the on-Airport concessionaires shall be re-determined, while maintaining the east/west alignment, effective November 1 of each year following the first full year during the term of the concession Agreement ("Adjustment Date"). As of each Adjustment Date, the number of parking spaces allocable to each of the on-airport concessionaires shall be re-determined such that each concessionaire will be entitled to a portion of the total parking spaces which bears the same ratio as the concessionaire's Gross Revenues during the preceding 12 month period ending June 30 of each year bears to the total Gross Revenue of all on Airport concessionaires during such period. The precise location of each concessionaire's parking spaces shall be determined first, by agreement of all on-Airport concessionaires, but if no such agreement, then they will be assigned to each concessionaire by the Airport Director.

Section 5.3. Premises "As Is." CONCESSIONAIRE understands and agrees that it has had the full opportunity to inspect all premises conveyed hereunder and it is explicitly understood and agreed that the Car Rental Facilities Premises and the Ready Return Premises are taken "as is" with no warranty of any type whatsoever from CITY.

Section 5.4. Fees and Rentals. For the privilege of operating its on-airport automobile rental services at the Airport and for the use of the premises hereinabove described, CONCESSIONAIRE agrees to pay to CITY concession fees and rentals as follows:

5.4.1. (a) *Concession Fees.* CONCESSIONAIRE shall pay monthly to CITY, in addition to any other fees or rentals due hereunder, a monthly fee equal to Ten Percent (10%) of CONCESSIONAIRE'S prior monthly Gross Revenues ("Monthly Fee:"). Said payments on an annual basis shall not be less than the Minimum Annual Guarantee as provided herein.

CITY FISCAL YEAR	MINIMUM ANNUAL GUARANTEE
7/1/14 – 6/30/15*	$000,000
7/1/15 – 6/30/16	$000,000
7/1/16 – 6/30/17	$000,000
7/1/17 – 6/30/18	$000,000
7/1/18 – 6/30/19	$000,000

* The 10% payment will be paid on each month of the term of the Agreement beginning as of July 1, 2014, but the MAG will be based on the City's fiscal year.

(b) *Payment.* CONCESSIONAIRE shall absolutely and unconditionally pay the Monthly Fee to CITY, in lawful money of the United States, on or before the twentieth (20^{th}) business day of each calendar month of the term of this Agreement, beginning on August 20, 2014. Along with the payment, CONCESSIONAIRE shall furnish CITY a written statement certifying the Gross Revenues derived from CONSESSIONAIRE'S Airport operations, accompanied by a full payment of the percentage fee due CITY for the preceding month. If CONCESSIONAIRE is operating two brands, it shall report the revenue of each brand separately. Said payment shall be made without need for invoice and shall be delivered to the Office of the Airport Director at the address in Article XIX below. A detailed monthly gross revenues statement of all gross revenues received by CONCESSIONAIRE shall be kept on file for three (3) years at the Airport office of CONCESSIONAIRE for review by the Airport Director or his or her designee during regular business hours.

(c) *Annual Reconciliation.* CONCESSIONAIRE shall furnish CITY a sworn statement certified by a public accountant showing all Gross Revenues derived from CONCESSIONAIRE'S operation of the automobile rental concession at the Airport for said contract year. Said financial statement shall be accompanied by a certification of the statements from an authorized officer of the corporation or a certified public accountant's report expressing his/her opinion as to the fairness of presentation of the Gross Revenues on the basis specified in this Agreement. Within ninety (90) days after the close of each fiscal year, the CITY will reconcile the annual payments. If the aggregate payments made for the fiscal year are less than the MAG, then the CONCESSIONAIRE shall pay the CITY the difference between the amounts previously paid for the prior year and the MAG.

(d) *CITY right to audit.* CITY and/or its designated representatives reserve the right to review and/or audit CONCESSIONAIRE'S books and records at any time during regular business hours for the purpose of verifying the Gross Revenues hereunder, upon reasonable notice. CITY and/or its designated representatives further reserve the right to review the work papers and files of the certified public accountant which were generated or relied upon in expressing his/her opinion, or all similar information used by the authorized officer of the corporation certifying the statements as required by this Agreement. If, as a result of such an audit, it is established by CITY that CONCESSIONAIRE has understated the Gross Revenues received by it by four percent (4%) or more (after the deductions and exclusions provided for herein), the entire expense of said audit shall be borne by CONCESSIONAIRE. Any additional percentage payments due shall forthwith be paid by CONCESSIONAIRE to CITY with interest thereon at the rate of one and one-half percent (1 ½%) per month from the date such additional percentage fee originally was due.

5.4.2. *Car Rental Facility Premises rental.* For use and occupancy of the Car Rental Facility Premises and for the rights and privileges herein granted, CONCESSIONAIRE absolutely and unconditionally agrees to pay, in lawful money of the United States of America, rent to CITY at the rate of Forty-four Dollars and Eighty Three Cents ($44.83) per square foot per annum, which totals

____

(______________) for the Car Rental Facilities Premises per annum. Such annual rent shall be paid in equal monthly installments of ______________ ____ (__________) and shall be due and payable on the twentieth (20th) business day of each calendar month of the term of this Agreement.

5.4.3. *Customer Facility Charge.* A Customer Facility Charge (CFC) will be assessed at one dollar ($1.00) for each twenty-four (24) hour period, or portion thereof for which a full day's rental rate is assessed for each car rental, up to five days commencing on July 1, 2014.

a) *Payment.* CONCESSIONAIRE shall collect the CFC from each customer in the amount mandated by CITY, and shall remit all CFCs collected each month to the CITY, on or before the twentieth (20th) business day of each subsequent calendar month of the term of this Agreement. Along with the payment, CONCESSIONAIRE shall furnish CITY a written statement certifying the amount of CFCs collected from customers accompanied by a full payment of the CFCs collected in the preceding calendar month. CONCESSIONAIRE shall provide disclosure of the CFC on its reservation systems at commencement of this agreement, and shall collect the CFC on all rentals resulting from reservations made on or after that date, which rentals commence on July 1 2014 or thereafter. The CFCs collected and remitted shall not be considered income, revenue or any other asset to CONCESSIONAIRE, and CONCESSIONAIRE shall have no ownership or property interest in such CFCs. However, the CITY will provide, from time to time, information to CONCESSIONAIRE regarding the CFC collections, accumulation of CFC funds, CFC expenditures, and the outstanding debt owed on the bonds covering the car rental portion of the garage.

b) *Annual Adjustment.* The amount collected is estimated to be between $450,000 and $500,000 per year, and shall be used exclusively to fund the car rental portion of the parking garage bonds. Annually, on November 1, the CFC will be adjusted, either upward or downward, to account for the previous year shortfall or overage if the amount collected does not fall between $450,000 and $500,000.

c) *Ready Space Charge.* There will be no additional ready space charge for the term of this agreement.

Section 5.5. Abatement of Minimum Annual Guarantee. In the event that one of the following conditions exists during the term hereof, the Minimum Annual Guarantee shall be reduced as follows:

5.5.1. *Passenger Reduction.* If the total scheduled passengers at the Airport during any contract year during the term of this Agreement is less than ninety percent (90%) of the average total passengers at the Airport during calendar years 2011 (1,675,221 passengers), 2012 (1,616,723 passengers), and 2013 (1,675,978 passengers) (the "Base Years"), (90% of 1,655,974) passengers or 1,490,377 passengers the Minimum Annual Guarantee for such contract year of reduced passenger traffic shall be abated in its entirety during such period of reduced passengers. All other fees due to the Airport shall apply, including but not limited to the 10% of Gross Revenues concession fee.

5.5.2 *Shortage or Disruptions.* If the operation of CONCESSIONAIRE'S automobile rental business at the Airport becomes impractical or impossible because of shortages or other interruptions in the supply of automobiles, gasoline, or other goods necessary for the operation thereof, which persist for at least thirty (30) consecutive days and which are not attributable to conditions within CONCESSIONAIRE'S control or caused by the actions or inactions of CONCESSIONAIRE, the Minimum Annual Guarantee may be equitably adjusted accordingly; provided, however, that CONCESSIONAIRE shall submit to CITY proof and substantiation of such shortages or disruptions and the causes thereof and CITY determines such reduction is necessary and the causes claimed are not attributable to conditions within CONCESSIONAIRE'S control.

Section 5.6. Payment. CONCESSIONAIRE shall pay the fees and charges and shall submit all reports and statements mandated in Section 5.4 above, without notice or demand, within the time limitations set forth in Section 5.4 above, at the place designated by CITY pursuant to Article XIX below.

Section 5.7. Cancellation or Termination of Agreement. In the event of a cancellation or termination of this Agreement based upon circumstances described in Section 13.1, the CONCESSIONAIRE shall be refunded any credit due at the time of such termination or cancellation.

Section 5.8. Delinquency Charge. In the event any payment due the CITY under this Agreement is late, CONCESSIONAIRE shall pay a late charge of one and one-half percent (1 and ½ %) per month on all sums due and unpaid.

ARTICLE VI.
CITY'S COVENANTS

CITY covenants, warrants and agrees that:

(a) CITY has lawful possession of the Car Rental Facilities Premises and the Ready/Return Premises and is authorized to execute this Agreement;

(b) CITY shall maintain all public and common or joint use areas of the Airport in good repair, and shall make such repairs, replacements or additions thereto as it considers, in its sole discretion, necessary for the safe and efficient operation of the Airport;

(c) CITY shall provide for, install and construct, and, throughout the term of this Agreement, maintain and keep in repair, and open to traffic, a road or roads suitable for vehicular traffic connecting the Ready/Return Premises with the Car Rental Facility, which road or roads CONCESSIONAIRE is hereby given the right to use, in common with others, for movement of its vehicles throughout the term of this Agreement; and

(d) Throughout the term hereof, CONCESSIONAIRE may have, hold and enjoy peaceful and uninterrupted possession of the Car Rental Facilities Premises and the rights herein leased and granted, subject to performance by CONCESSIONAIRE of its obligations herein.

ARTICLE VII.
CONCESSIONAIRE'S COVENANTS

CONCESSIONAIRE covenants, warrants and agrees that:

(a) CONCESSIONAIRE is a corporation duly organized and validly existing, authorized to do and doing business in the State of Maine;

(b) CONCESSIONAIRE is authorized by its directors and shareholders, as appropriate, to enter into this Agreement and consummate the transactions contemplated hereby;

(c) CONCESSIONAIRE shall pay the rents, fees and other charges herein provided, and submit all documentation required hereunder, at such times and places as the same are due;

(d) CONCESSIONAIRE shall comply with the provisions of Sections 4.2 and 4.5 and 8.13 when making any alterations or additions to the Car Rental Facility Premises;

(e) CONCESSIONAIRE shall keep and maintain the Car Rental Facilities Premises in good condition, order and repair during the term of this Agreement and shall surrender the same upon the expiration or earlier termination thereof in the condition in which they are required to be kept, reasonable wear and tear excepted;

(f) CONCESSIONAIRE shall observe and comply with all present and future laws, ordinances, orders, directives, rules and regulations of CITY of Portland, Maine, and the respective agencies, departments, authorities or commissions of each which may either directly or indirectly affect CONCESSIONAIRE or its operations on, or in connection with, the Airport and any other rights and privileges herein granted, including but not limited to all federal, state and local environmental protection laws regulations, rules and ordinances;

(g) CONCESSIONAIRE shall furnish good, prompt and efficient service, adequate to meet all reasonable demands for car rental service at the Airport on a competitive basis; and all rental automobiles made available hereunder shall be maintained at CONCESSIONAIRE'S sole cost and expense, in good operative order, free from known mechanical defects, and in clean, neat and attractive condition, inside and outside;

(h) All personnel of CONCESSIONAIRE shall be neat, clean and courteous and shall not conduct business in a loud, noisy, offensive or objectionable manner, nor solicit business outside the space assigned in any manner whatsoever;

(i) CONCESSIONAIRE agrees that the maintenance of good business ethics and public relations in the conduct of a satisfactory automobile rental service are of utmost importance and shall so conduct the services authorized hereunder;

(j) CONCESSIONAIRE shall timely pay for all licenses and permits necessary for, and promptly satisfy all costs and expenses associated with, CONCESSIONAIRE'S operations at the Airport and shall timely pay all fees, taxes and charges assessed or imposed by any governmental authority, insofar as they are applicable to CONCESSIONAIRE'S business, property and/or operations;

(k) CONCESSIONAIRE shall at all times keep accurate and complete records of CONCESSIONARE'S operations at the Airport, which records shall show, in addition to other things, Gross Revenues and services rendered for cash and/or credit by CONCESSIONAIRE at the Airport. CITY, or any of its agents, upon reasonable notice, shall have the right to inspect, audit, check and make extracts from any of the books, records, journals, orders, correspondence, and other data relating to CONCESSIONAIRE'S operations at the Airport, without interference or delay and at CITY cost at reasonable intervals determined by CITY and during regular business hours. CONCESSIONAIRE shall, and upon execution of this Agreement has, notified CITY of the place or places of CONCESIONAIRE'S records. CITY shall have the right to discuss such records and matters of CONCESSIONAIRE'S business with CONCESSIONAIRE'S officers and accountants at all times. CONCESSIONAIRE shall promptly furnish CITY such information and reports regarding CONCESSIONAIRE'S business at the Airport as CITY shall from time to time reasonably request;

(l) CONCESSIONAIRE shall undertake an affirmative action program as may be required by Title 14, Code of Federal Regulations, Part 152, Sub-part E, to insure that no person shall, on the grounds of race, creed, color, national origin or sex, be excluded from participation in any employment activities covered in Title 14, Code of Federal Regulations, Part 152, Sub-part E, or from participation in or receiving the services or benefits of any program or activity covered by said Sub-part E;

(m) No person on the grounds of race, color or national origin, religion, disability or sexual orientation shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination in the use of the Car Rental Facilities Premises or the Ready/Return Premises or in the provision of CONCESIONAIRE'S services; no person on the grounds of race, color or national origin, religion, disability or sexual orientation shall be excluded from participation in, denied the benefits of or otherwise be subjected to discrimination in the construction of any improvements on, over or under the Car Rental Facility Premises the Ready/Return Premises or the furnishing of services thereon; and CONCESSIONAIRE shall use the Car Rental Facilities and the Ready/Return Premises in compliance with all other requirements imposed by or pursuant to

Title 49, Code of Federal Regulations, Part 21, Non-discrimination in Federally Assisted Programs of the Department of Transportation, as amended, and the State of Maine's Human Rights Act;

(n) CONCESSIONAIRE shall exercise all reasonable and necessary steps to meet the CITY'S Participation Goals for the Concession are met through partnership or joint venture with, subcontracting to, procuring materials, equipment or supplies from or other reasonable means of ensuring DBE/WBE participation; and

(o) CONCESSIONAIRE shall include the provisions of the above clauses related to nondiscrimination in all contracts or other agreements related to or connected with this Agreement and shall cause all contractors to include such provisions in any future contracts or other such agreements.

ARTICLE VIII.OPERATING STANDARDS

Section 8.1. Rental Services. CONCESSIONAIRE shall furnish automobile rental services on a fair, reasonable and non-discriminatory basis to all users and patrons of the Airport seven (7) days per week with its customer service counter in the Car Rental Facilities Premises being open and operated at all times required to meet scheduled flights at the Airport. CONCESSIONAIRE shall provide prompt, clean, courteous and efficient services adequate to meet all the reasonable demands for its services at the Airport. CONCESSIONAIRE shall maintain and operate its automobile operations in a first-class manner and shall keep the Car Rental Facilities Premises in a safe, clean, orderly and inviting condition at all times satisfactory to CITY.

Section 8.2. Operations. CONCESSIONAIRE shall conduct its operations in an orderly and proper manner so as not to annoy, disturb or be offensive to customers, patrons and other tenants at the Airport.

Section 8.3. Manager. CONCESSIONAIRE shall select and appoint a full-time manager of its automobile rental operations herein authorized. Such person shall be qualified and experienced, vested with full power and authority to act in the name of CONCESSIONAIRE with respect to the method, manner and conduct of the operation of CONCESSIONAIRE's automobile rental operations at the Airport. Such manager or supervisor shall be available at the

Airport during regular business hours, and during such manager's absence, a duly authorized subordinate shall be in charge and be available at the Airport.

Section 8.4. Conduct. CONCESSIONAIRE shall control the conduct, demeanor and appearance of its officers, agents, employees and representatives. All such officers, agents and employees and representatives, while on duty, shall wear uniforms or identification badges clearly identifying themselves as working for CONCESSIONAIRE, which uniforms shall at all times be maintained in a neat, orderly and clean condition and shall be subject to the prior written approval of the CITY. CONCESSIONAIRE shall train its officers, agents, employees and representatives to render a high degree of courteous and efficient service, and it shall be the responsibility of CONCESSIONAIRE to maintain close supervision over such persons to assure the rendering of a high standard of service to the public and the patrons of CONCESSIONAIRE'S automobile rental operations. Upon objection from CITY concerning the conduct, demeanor or appearance of such persons, CONCESSIONAIRE shall forthwith take all steps necessary to remove the cause of the objection.

Section 8.5. Rental Fleet. CONCESSIONAIRE shall at all times maintain on the Airport, at CONCESSIONAIRE's cost and expense, an adequate supply of automobiles to meet the reasonable public demand therefore. Such automobiles shall at all times be maintained by CONCESSIONAIRE, at its own cost and expense, in good operating order and free from known mechanical defects and shall be kept in a clean, neat and attractive condition, inside and out. CONCESSIONAIRE agrees that it will at no time use automobiles whose year model is more than three (3) years older than the current year model; except that CONCESSIONAIRE shall have until March 31 of each year to eliminate from inventory and use those automobiles whose year model is more than two (2) years older than the current year model. CONCESSIONAIRE agrees that it shall register a minimum of two hundred and fifty (250) passenger motor vehicles as provided in Section 8.6 below.

Section 8.6. Licensing and Taxation. CONCESSIONAIRE shall strictly comply with the licensing and taxation laws of the State of Maine with respect to businesses engaged in the rental of motor vehicles. Any vehicles principally used in connection with rentals to and from the Airport shall be registered in the CITY of Portland and the excise tax paid thereto; provided, however, that such registration and excise tax paid to the CITY of Portland shall not be less than the minimum number of 250 vehicles annually. Nothing herein shall prevent the temporary use of its vehicles which have been registered elsewhere and left at the Airport as a direct result of a contract for hire.

Section 8.7. Solicitation. CONCESSIONAIRE shall not permit its officers, agents, employees or representatives to engage in the solicitation of the services offered by CONCESSIONAIRE at the Airport outside of the Car Rental Facilities Premises. CITY shall be the sole judge on the question as to whether the conduct of CONCESSIONAIRE in the solicitation of business constitutes a violation of this Section, and, upon notice from CITY, CONCESSIONAIRE shall forthwith take all lawful steps necessary to promptly eliminate the condition giving rise to the complaint.

Section 8.8. Relationships With Others. CONCESSIONAIRE shall so conduct and carry on its automobile rental operations at the Airport as to maintain a friendly, cooperative, though competitive, relationship with its competitors, if any, engaged in like business at the Airport and shall not engage in open, notorious or public disputes, disagreements or conflicts tending to deteriorate the quality of the service of CONCESSIONAIRE or its competitors or be incompatible to the best interest of the public at the Airport. CITY shall have the right, but not the obligation, to resolve all such disputes, disagreements or conflicts, and its determination thereof, or the manner in which CONCESSIONAIRE shall thereafter operate, shall be binding on CONCESSIONAIRE.

Section 8.9. Invoices. CONCESSIONAIRE shall operate its business so that a duplicate rental agreement invoice shall be issued with each automobile rental transaction, whether for cash or credit, separately showing CONCESSIONAIRE's receipts or extensions of credit. Any deviation of this requirement shall require the prior written approval of CITY, whose decision in that regard shall be final and absolute.

Section 8.10. Credit Card Payments. CONCESSIONAIRE, if compliance with the requirements applicable to the Payment Card Industry Data Security Standard, shall not be required to use any network other than its own private network, to ensure that customer credit card information is not compromised.

Section 8.11. Janitorial and Cleaning Services. CONCESSIONAIRE shall provide at its own expense such janitorial and cleaning services and supplies as may be necessary or required for the operation and maintenance of the Car Rental Facilities Premises and the Ready/Return Spaces. CONCESSIONAIRE shall keep and maintain the Car Rental Facilities Premises in a clean, neat and sanitary condition, and attractive in appearance. Notwithstanding the above, CITY may require CONCESSIONAIRE to participate in any recycling program which CITY may adopt for all Airport tenants or as required by law.

Section 8.12. Garbage. CONCESSIONAIRE shall provide and use suitable covered or sealed receptacles for all garbage, trash and other refuse in the Car Rental Facilities Premises. Piling of boxes, cartons, barrels and similar items shall not be permitted.

Section 8.13. Repairs. Any repairs performed at the Car Rental Facilities Premises by CONCESSIONAIRE, or on its behalf, shall be of the highest quality in both materials and workmanship. All repairs shall be made in conformity with all laws, rules, regulations and ordinances prescribed from time to time by federal, state or local authorities having jurisdiction over Car Rental Facilities Premises, and shall be subject to prior written approval of the Airport Manager.

ARTICLE IX.

INSPECTION

Section 9.1. Right to Inspect. CITY and its authorized officers, employees, agents, contractors, sub-contractors and other representatives shall have the right to enter upon the Car Rental Facilities Premises for the following purposes:

(a). To inspect the Car Rental Facilities Premises at reasonable intervals during regular business hours (or at any time in case of emergency) to determine whether CONCESSIONAIRE has complied and is complying with the terms and conditions of this Agreement; and

(b). To perform essential maintenance, repair, relocation or removal of existing underground or overhead wires, pipes, drains, cables, conduits and other facilities now or hereafter located on or across the Car Rental Facilities Premises, and to construct, maintain, repair, relocate and remove such facilities in the future if necessary to carry out the master plan of development of the Airport; provided, however, that said work shall in no event unduly disrupt or interfere with the operations of CONCESSIONAIRE, and provided further, that the entire cost of such work, including but not limited to the cost of rebuilding, removing, relocating, protecting or otherwise modifying any improvement at any time erected or installed in or upon the Car Rental Facilities Premises as a result of the exercise by CITY of its right hereunder, and the repair of all damage due to such improvement caused thereby, shall be borne solely by CITY. Notwithstanding the foregoing, CONCESSIONAIRE shall be responsible for the cost of any repairs required as a result of the act or omission of CONCESSIONAIRE.

ARTICLE X

ASSIGNMENT AND SUB-LEASING

Section 10.1. Assignment. CONCESSIONAIRE shall not assign or sublet this agreement or allow the same to be assigned by operation of law or otherwise, or sublet the Car Rental Facilities Premises, the Ready/Return spaces or any portions thereof without the prior written consent of CITY. CITY reserves the right to deny any assignment or subletting by CONCESSIONAIRE for any reason it deems in the best interest of the CITY. Subletting will not be allowed under any circumstances to an entity that is not a current on-airport Concessionaire. Assignment of this Agreement will be allowed within the sole discretion of the Airport Director. Any purported assignment or sublease in violation hereof shall be void.

Section 10.2. Continued Obligations. In the event CITY consents to any assignment or subletting on the part of CONCESSIONAIRE of any rights or privileges granted in this Agreement, CONCESSIONAIRE shall continue to remain responsible for any and all payments due CITY as a result of operations following the assignment or subletting.

Section 10.3. Default. In no case may the activities, uses, privileges and obligations authorized herein on the Airport, the Car Rental Facilities Premises, the Ready/Return Spaces or any portions thereof be assigned for any period or periods after a default by CONCESSIONAIRE of any of the terms, covenants and conditions of this Agreement.

ARTICLE XI

INDEMNIFICATION

Section 11.1 CONCESSIONAIRE shall protect, defend, indemnify and hold CITY, its officers, agents and employees, completely harmless from and against any and all liabilities, demands, suits, claims, losses, damages, fines, penalties, costs and judgments arising by reason of the injury or death of any person or damage to any property of any nature, including but not limited to injury or damage to CITY employees or property, (including but not limited to those relating to or arising out of the violation of any federal, state, or local environmental protection, health or safety law, regulation, rule or ordinance), including all reasonable costs of investigation and defense thereof (including but not limited to attorneys' fees and court costs), arising out of or incidental to any acts, omissions of CONCESSIONAIRE, its officers, employees, agents, representatives, contractors, sub-contractors, licensees or invitees related to (i) this agreement, (ii) CONCESSIONAIRE's use or occupancy of, or operations on or in connection with, the Airport, the Car Rental Facilities Premises, the Ready/Return Spaces, or any portions thereof, or (iii) CONCESSIONAIRE's rights, responsibilities or duties under this Agreement; except to the extent such injury, death or damage is caused by the gross negligence or willful misconduct of CITY, its officers, agents or employees. CITY shall give CONCESSIONAIRE reasonable notice of any such claims or actions. CONCESSIONAIRE, in carrying out its obligations hereunder, shall use counsel reasonably acceptable to, and cooperative with, CITY. The provisions of this Article XI shall survive the expiration or earlier termination of this Agreement.

Section 11.2. CONCESSIONAIRE agrees to procure and maintain throughout the term of this Lease Agreement, an endorsement to its Workers Compensation coverage waiving any and all rights of subrogation against the CITY. CONCESSIONAIRE hereby, expressly and without reservation, waives any defense or immunity to which it might otherwise be entitled under Workers' Compensation laws, the general statutes of Maine or judicial decisions, disallowing or limiting such indemnification, and consents to a cause of action for indemnity. In the event such waiver is not reasonably commercially available, CONCESSIONAIRE shall defend, indemnify and hold the CITY harmless from any such subrogated claims.

ARTICLE XII

INSURANCE AND PERFORMANCE BOND

Section 12.1. Insurance:

12.1.1. *Required Insurance.* CONCESSIONAIRE shall obtain and maintain continuously in effect at all times during the term of this Agreement, and for a period of not less than two (2) years thereafter if written on a claims-made basis, at CONCESSIONAIRE's sole cost and expense, the following insurance:

(a) Comprehensive general liability insurance protecting CITY against any and all liability (whether due to an injury or death to any person or damage to any property of any nature) arising out of or incidental to any acts or omissions of CONCESSIONAIRE, its officers, employees, agents, representatives, contractors, sub-contractors, licensees or invitees related to this Agreement; CONCESSIONAIRE's use or occupancy of, or operations on or in connection with, the Airport, the Car Rental Facilities Premises, the Ready/Return Spaces or any portions thereof; and CONCESSIONAIRE's rights, responsibilities or duties under this Agreement, in the minimum amount of Two Million Dollars ($2,000,000.00);

(b) Workers Compensation insurance and employer's liability insurance insuring against accidental death and disease with limits of not less than Five Hundred Thousand ($500,000.00) each accident and Five Hundred Thousand Dollars ($500,000.00) per disease (per employee and aggregate) or such greater amount as may be required by the laws of the State of Maine;

(c) Fire and extended coverage, with special cause of loss form, insurance on all improvements erected by CONCESSIONAIRE on or about the Car

Rental Facilities Premises including the contents thereof, in an amount not less than the then-current appraised value thereof determined on an annual basis; and

(d) Contractual liability insurance to insure CONCESSIONAIRE's obligation to defend, indemnify, and hold CITY harmless in accordance with the indemnification provisions of this agreement, in the minimum amount of One Million Dollars ($1,000,000.00);

(e) Comprehensive automobile liability insurance, including hired and non-owned vehicles, in an amount not less than One Million Dollars ($1,000,000.00), covering death, bodily injury and property damage.

12.1.2. *Insurance Certificate Requirements.* All insurance certificates required herein shall be issued by a solvent insurance company or companies licensed or admitted to write such insurance in the State of Maine; all liability certificates shall name CITY as an additional insured; and shall be conditioned upon thirty (30) days prior to written notice to CITY before such policies may be altered or canceled. CONCESSIONAIRE shall provide to CITY certificates of insurance evidencing CONCESSIONAIRE's compliance with the provisions of Agreement. All certificates of insurance provided hereunder shall contain the following endorsement:

> It is hereby agreed and understood that the CITY of Portland is named as an additional insured, and that the coverage afforded to CITY of Portland under this certificate shall be primary insurance. If CITY of Portland has other insurance which is applicable to the loss, such other insurance shall be on an excess or contingent basis. The amount of the insurer's liability under this certificate shall not be reduced by the existence of such other insurance.

12.1.3. *Self-insurance; Deductibles.* CONCESSIONAIRE may meet its insurance requirement hereunder in whole or in part through an authorized self-insurance program to the extent that CONCESSIONAIRE provides all such coverage through self-insurance and not solely for this Agreement. All conditions herein shall apply to such self-insurance program, including without limitation adding the City as an additional insured to such program. All insurance certificates may include a reasonable deductible.

12.1.4. *Effects of Noncompliance.* Failure to keep the insurance required pursuant to this Agreement in force or to provide CITY with evidence of such insurance shall constitute a default under the terms of this Agreement entitling CITY, in addition to all other remedies available hereunder, the right to immediately suspend CONCESSIONAIRE's right to access and use of the Car Rental Facilities Premises and the Ready/Return Spaces. In addition, if CONCESSIONAIRE shall at any time fail to insure or to keep insured as aforesaid, CITY may, but shall not be required to, do all things necessary to effect or maintain such insurance and all monies expended by it for that purpose shall be repaid to CITY by CONCESSIONAIRE as additional rentals in the month or months the premium or premiums are paid by the CITY.

12.1.5. *Modifications.* CITY shall have the right to change the insurance coverage and the insurance limits required of CONCESSIONAIRE, without any cost to the CITY, if such changes are reasonable and are recommended or imposed by CITY's insurers.

12.1.6. *Notice.* CITY agrees to notify CONCESSIONAIRE in writing as soon as possible of any claim, demand or action arising out of any occurrence covered hereunder of which CITY has knowledge, and to cooperate with CONCESSIONAIRE in the investigation and defense thereof. CONCESSIONAIRE agrees to notify CITY in writing as soon as possible of any claim, demand or action arising out of any occurrence covered hereunder of which CONCESSIONAIRE has knowledge, and to cooperate with CITY in the investigation and defense thereof.

Section 12.2. Performance and Payment Bond. CONCESSIONAIRE shall deliver to CITY, and maintain throughout the term hereof, a performance and payment bond in the amount of three (3) months of the MAG. Said performance and payment bond shall insure the full and faithful performance of CONCESSIONAIRE of all the covenants, terms and conditions of this Agreement and stand as security for payment by CONCESSIONAIRE of all valid claims by the CITY.

Section 12.3. Letter of Credit. In lieu of a performance and payment bond and at CITY's sole option, CONCESSIONAIRE may establish and maintain, throughout the term hereof, an irrevocable letter of credit payable to CITY, in the amount of One Hundred Twenty-Five Thousand Dollars and No Cents ($125,000.00), with a local banking institution and in a form acceptable to CITY, subject to the conditions stated above in Section 12.2.

Section 12.4. Successors. CITY reserves the right to require any permitted successor, assignee, subtenant or other transferee of CONCESSIONAIRE as tenant under this Lease, as a condition of CITY consent to such succession, assignment, sublease or transfer, to provide CITY with a Surety as provided in Subsections 12.2 and 12.3 above.

Section 12.5. No Waiver of Rights. Notwithstanding the reimbursement of any amounts owed through the bond or letter of credit, CITY reserves the right to declare CONCESSIONAIRE in default under the Lease for the underlying failure of CONCESSIONAIRE to pay any amounts or undertake any obligation required herein, which failure resulted in CITY drawing upon the letter of credit.

ARTICLE XIII

CANCELLATION BY CONCESSIONAIRE

Section 13.1. Events. CONCESSIONAIRE shall have the right upon thirty (30) days prior written notice to CITY to cancel and terminate this Agreement upon the happening of one or more of the following events if said event or events shall then be continuing:

(a) Any court of competent jurisdiction shall issue an injunction, order or decree preventing or restraining the use by CONCESSIONAIRE of all or any substantial part of the Airport, or preventing or restraining the use of the Airport for usual airport purposes, or the use of any portion thereof which may be used by

CONCESSIONAIRE and which is necessary for CONCESSIONAIRE's operations at the Airport, which remains in force for a period of at least ninety (90) consecutive days; provided, however, that any such injunction, order or decree shall not have resulted from any wrongful action or any fault of CONCESSIONAIRE;

(b) CITY shall default in fulfilling any of the terms, covenants or conditions to be fulfilled by it under this Agreement and shall fail to cure said default within

fifteen (15) days following receipt of written demand from CONCESSIONAIRE to do so, except that if the default cannot be cured within said fifteen (15) days by reason of the nature of such default, CONCESSIONAIRE shall then have the right to cancel this Agreement only if CITY shall have failed to commence to remedy such default within said fifteen (15) days following receipt of such written demand, or having so commenced, shall fail thereafter to continue with diligence the curing thereof;

(c) All or a material part of the Airport shall be destroyed by fire, explosion, earthquake, other casualty, acts of God or the public enemy; or

(d) The United States Government or any agency, department or bureau thereof shall occupy the Airport or any substantial part thereof to such an extent as to materially interfere with CONCESSIONAIRE's operations for a period of ninety (90) consecutive days or more.

Section 13.2. Payments. In the event of a cancellation or termination of the Agreement, as described in 13.1., the CONCESSIONAIRE's rents and MAGs will be equitably abated retroactively back to the original commencement of the event leading to the cancellation circumstances.

Section 13.3. Litigation. In the event of any litigation to determine if a condition of default has occurred, CONCESSIONAIRE shall pay the rentals, fees and charges due hereunder into the court having jurisdiction over such litigation, or to CITY, but shall not be relieved from such obligation unless and until a final determination on such litigation is made in CONCESSIONAIRE's favor. Upon final determination, the court having control of such rentals, fees and charges shall pay monies as it deems appropriate, without interest. In the event CITY has received such rentals, fees and charges, CITY shall forthwith return such disputed monies, without interest, to CONCESSIONAIRE to the extent ordered by the court.

ARTICLE XIV
CANCELLATION BY CITY

Section 14.1. Events. CITY shall have the right to immediately cancel and terminate this Agreement in its entirety, upon or after the happening of one or more of the following events, if such event or events is then continuing:

(a) CONCESSIONAIRE shall make a general assignment for the benefit of creditors;

(b) To the extent permitted by law, CONCESSIONAIRE shall file a voluntary petition in bankruptcy or a petition seeking its reorganization or the readjustment of its indebtedness under the Bankruptcy Code (Title 11 of the United States Code) as now in effect or hereafter amended;

(c) An involuntary petition in bankruptcy shall be filed against CONCESSIONAIRE and CONCESSIONAIRE is thereafter adjudicated bankrupt hereunder;

(d) CONCESSIONAIRE shall consent to the appointment of a receiver, trustee or liquidator of all or substantially all of the property of CONCESSIONAIRE;

(e) CONCESSIONAIRE shall default in fulfilling any of the terms, covenants or conditions required of it under this Agreement, or any other agreement executed between CITY and CONCESSIONAIRE and CONCESSIONAIRE shall fail to remedy the default within fifteen (15) days following receipt by CONCESSIONAIRE of written demand from CITY to do so, except that if the default cannot be cured within said fifteen (15) days by reason of the nature of such default, CITY shall then have the right to cancel this Agreement only if CONCESSIONAIRE shall have failed to commence to remedy such default within fifteen (15) days following receipt of such written demand, or having so commenced, shall fail hereafter to continue with diligence the curing thereof. Notwithstanding the foregoing, CONCESSIONAIRE shall cure any failure to pay any rent, fee or charge due hereunder within fifteen (15) days of notice of such default.

(f) Without limiting 14.1.(e), CONCESSIONAIRE shall fail to comply in any material respect with the operating standards set forth in Article VIII;

(g) CONCESSIONAIRE shall abandon all or any part of the Car Rental Facilities Premises or shall discontinue the conduct of its operations in all or any part of the Car Rental Facilities Premises for a period in excess of forty eight (48) consecutive hours, except where such abandonment is due to events which are beyond the reasonable control of CONCESSIONAIRE.

Section 14.2. Repossession. In the event any condition of default shall occur (notwithstanding any waiver, license or indulgence granted by CITY), then, while such condition is continuing, CITY shall have the right, at its election, either to terminate this Agreement as aforesaid or to enter upon and take possession of the Car Rental Facilities Premises and the Ready/Return Spaces or any part thereof, without demand or notice, and repossess the same, expelling CONCESSIONAIRE and those claiming under CONCESSIONAIRE, without prejudice to any remedy for arrears of rent or preceding breach of covenant and without any liability to CONCESSIONAIRE or those claiming under CONCESSIONAIRE for such repossession.

Section 14.3. No Forfeiture. CITY's repossession of the Car Rental Facilities Premises and/or the Ready/Return Spaces shall not be construed as an election to terminate this Agreement nor shall it cause a forfeiture of rents or other charges remaining to be paid during the balance of the term thereof unless a written notice of such intention is given to, or unless such termination is decreed by a court of competent jurisdiction. Notwithstanding any reletting without termination by CITY because of any default by CONCESSIONAIRE, CITY may at any time after such reletting elect to terminate this Agreement for any such default.

Section 14.4. Reletting. Upon repossession, CITY shall in good faith attempt to relet the Car Rental Facilities Premises and/or the Ready/Return Spaces, or any part thereof, for such period or periods (which may extend beyond the term of this Agreement) at such rentals or rents and upon such other terms and conditions as CITY may, in good faith, deem advisable. CITY shall in no event be liable and CONCESSIONAIRE's liability shall not be affected or diminished in any way whatsoever for failure to relet the Car Rental Facilities Spaces, or in the event same are relet, for failure to collect any rental or other sums due under such reletting.

Section 14.5. Application of Rents. In the event that CITY shall elect to relet, then rentals received by CITY from such reletting shall be applied: first, to the payment of any indebtedness other than rent due hereunder from CONCESSIONAIRE to CITY; second to the payment of any cost of reletting; third, to the payment of rent due and unpaid hereunder; and the residue, if any, shall be held by CITY and applied in payment of rent as the same may become due and payable hereunder. Should that portion of such rentals received from such reletting during any month, which is applied to the payment of rent hereunder, be less than the rent payable during that month by CONCESSIONAIRE hereunder, CONCESSIONAIRE shall forthwith pay such deficiency to CITY. Such deficiency shall be calculated and paid monthly. CONCESSIONAIRE shall also pay to CITY, as soon as ascertained, any cost and expenses incurred by CITY in such reletting not covered by the rentals received from such reletting of the Car Rental Facilities Premises and/or the Ready/Return Spaces.

Section 14.6. Removal of Personal Property. If CITY shall terminate this Agreement or take possession of the Car Rental Facilities Premises and/or the Ready/Return Spaces by reason of a condition of Default, CONCESSIONAIRE, and those holding under CONCESSIONAIRE, shall forthwith remove their personal property from the Car Rental Facilities Premises and/or the Ready/Return Spaces, as the case may be. If CONCESSIONAIRE or any such claimant shall fail to effect such removal within the applicable time limitations set forth in Section 4.2 (k), CITY may, at its option, remove such goods and effects and may (a) store the same for the account of CONCESSIONAIRE or of the owner thereof at any place selected by the CITY, (b) retain such goods as the property of CITY free and clear of any claims thereto from or by CONCESSIONAIRE or (c) upon giving fifteen (15) days written notice to CONCESSIONAIRE of the date, time, and location of sale, sell such goods at public auction or private sale on such terms and conditions as to price, payment and otherwise as CITY may in good faith deem advisable. If, in CITY's judgment, the cost of removing and selling any such goods and effects exceeds the value thereof or the probable sales price thereof, as the case may be, CITY shall have the right, without liability for doing so, to dispose of such goods in any manner CITY may deem advisable.

Section 14.7. Costs. CONCESSIONAIRE shall be responsible for all costs of removal, sales, storage and sale and CITY will have the right to reimburse itself from the CITY proceeds of any sale for all such costs paid or incurred by the CITY. If any surplus sale proceeds shall remain after such reimbursement, CITY may deduct from each surplus any other sum due to

CITY hereunder and shall pay over to CONCESSIONAIRE any remaining balance of such surplus sale proceeds.

Section 14.8. Waiver. If CITY shall enter into and repossess the Car Rental Facilities Premises and/or the Ready/Return Spaces for reason of default of CONCESSIONAIRE in the performance of any of the terms, covenants or conditions herein contained, then and in that event, CONCESSIONAIRE hereby covenants and agrees that CONCESSIONAIRE will not claim the right to redeem or re-enter the repossessed areas to restore its operations hereunder and CONCESSIONAIRE hereby waives the right to such redemption and re-entrance under any present or future law and hereby further, for any party claiming through or under CONCESSIONAIRE, expressly waives its right, if any, to make payment of any sum or sums of rent, or otherwise, of which CONCESSIONAIRE shall have made default under any of the covenants thereof by reason of such payment.

Section 14.9. Remedies Cumulative. Any and all remedies of CITY herein created or otherwise existing at law are cumulative and the exercise of one or more rights or remedies shall not be taken to exclude or waive the right to the exercise of any other. All such rights and remedies may be exer5cised and enforced concurrently and whenever and as often as deemed advisable.

Section 14.10. Settlement. If proceedings shall at any time be commenced for recovery of possession as aforesaid and compromise or settlement shall be effected either before or after judgment whereby CONCESSIONAIRE shall be permitted to retain possession of the Car Rental Facilities Premises and/or the Ready/Return spaces, as the case may be, then such proceeding shall not constitute a waiver of any condition or agreement contained herein or of any subsequent breach thereof.

Section 14.11. Additional Rent. Any amount paid or expense or liability incurred by CITY for the account of CONCESSIONAIRE may be deemed to be additional rental and the same may, at the option of CITY, be adding to any rent then due or thereafter due hereunder.

Section 14.12. Cooperation. Upon the termination of this Agreement, through passage of time or otherwise, CONCESSIONAIRE shall aid CITY in all reasonable ways possible in continuing the business of operating an on-airport automobile rental concession at the Airport uninterruptedly.

ARTICLE XV
SECURITY

Section 15.1. Federal Regulations. CONCESSIONAIRE agrees to observe all security requirements of Federal Aviation Regulations, amended hereafter, as approved by the FAA, and to take such steps as may be necessary or directed by CITY to ensure that all officers, employees, representatives, invitees, and guests observe such requirements.

Section 15.2. Fines/Penalties. If CITY incurs any fines and/or penalties imposed by the Federal Aviation Administration or any expense in enforcing the regulations of Federal Aviation Regulations, Part 107, and/or the Airport security program, as a result of the acts or omissions of CONCESSIONAIRE, CONCESSIOANIRE agrees to pay and/or reimburse all such costs and expenses. CONCESSIONAIRE further agrees to rectify any security deficiency as may be determined as such by CITY or the FAA. CITY reserves the right to take whatever action necessary to rectify any security deficiency, at CONCESSIONAIRE'S cost and expense.

ARTICLE XVI
HOLDING OVER

Section 16.1. No Extension. Any holding over by CONCESSIONAIRE after the expiration or earlier termination of this Agreement, without the written consent of CITY, except for the period provided for herein for removal of property, shall not be deemed to operate as an extension or renewal of this Agreement. In the event of such holding over, CONCESSIONAIRE shall be subject to all of the terms of this Agreement, other than term, during such period.

Section 16.2. Rentals. In the event CITY approves holding over by CONCESSIONAIRE, CONCESSIONAIRE shall continue to pay CITY in accordance with the terms and conditions applicable herein to the final year of this Agreement until such time as a new agreement is negotiated or until such time as the month-to-month tenancy is terminated by CITY.

ARTICLE XVII
CASUALTY

If the Car Rental Facility or any part thereof shall be destroyed or damaged by fire or other unavoidable casualty, so that the same shall be thereby rendered unfit for use by CONCESSIONAIRE, then, and in such case, the Rent hereinabove stated or a just and proportional part thereof, according to the nature and extent of injuries sustained, shall be suspended or abated, until the Facility shall have been put in proper condition for use by CONCESSIONAIRE; provided, however, in the event of such destruction or damage as to render such Facility unusable for a period of ninety (90) days or more, either CITY or CONCESSIONAIRE shall have the right to terminate this Lease by giving the other party written notice of such termination, and upon the giving of such notice, the term of this Agreement shall cease and come to an end as of the date of such damage or destruction and any unearned rent shall be returned to CONCESSIONAIRE.

The parties hereby waive any and all rights of action for negligence against the other which may hereafter arise on account of damage to the premises or to property, resulting from any fire, or other casualty of the kind to the extent they are covered by standard fire insurance policies with extended coverage, regardless of whether or not, or in what amounts, such insurance is now or hereafter carried by the parties, or either of them.

ARTICLE XVIII
TAXES

Section 18.1. Payments. CONCESSIONAIRE shall pay, on or before their respective due dates, to the appropriate collecting authority, all federal, state and local taxes and fees, which are now or may hereafter be levied upon CONCESSIONAIRE, upon CONCESSIONAIRE'S operations conducted at the Airport, or upon any of CONCESSIONAIRE'S property used in connection therewith; and shall maintain in current status all federal, state, and local licenses and permits required for the operation of the business conducted by CONCESSIONAIRE.

Section 18.2. Documentation. CONCESSIONAIRE shall furnish to CITY promptly upon request, proof of the payment of any tax, assessment, and other governmental or similar charge, which is payable by CONCESSIONAIRE as provided herein.

ARTICLE XIX
NOTICES: PAYMENT ADDRESS

Section 19.1. Notices. Any notice given hereunder shall be given in writing, signed by the party giving such notice, and shall be sent by facsimile, overnight courier (courier prepaid), or United States certified mail, return receipt requested, with proper postage and registration fees prepaid, addressed to the party for whom intended at the following address:

CITY OF PORTLAND	CONCESSIONAIRE
Airport Director Portland International Jetport 1001 Westbrook Street Portland, Maine 04101 (207) 756-8029 (Tel) (207) 774-7740 (Fax) With a copy to: City Manager 389 Congress Street Portland, Maine 04101	

or such other address as the party being given such notice shall from time to time designate to the other by notice given in accordance herewith. Notices sent by facsimile shall be deemed received at the time and date shown on the sender's facsimile machine-generated confirmation report, unless such date is not a business day, in which event the notice shall be deemed received on the next following business day. Notices sent via overnight courier shall be deemed received on the following business day. Notices sent by United States certified mail shall be deemed received on the fifth (5th) day following deposit in the United States mail, correctly addressed to the party for whom intended with all postage and registration fees paid.

Section 19.2. Payments. All payments required hereunder shall be made out to the CITY of Portland and shall be mailed or hand-delivered to the Airport Director, Portland International Jetport, 1001 Westbrook Street, Portland, Maine 04102.

ARTICLE XX
GENERAL PROVISIONS

Section 20.1. Independent Contractor. CONCESSIONAIRE shall, at all times, be regarded as an independent contractor and shall at no time act as agent for CITY. Nothing contained herein shall be deemed or construed by the parties hereto, or by any third party, as creating the relationship of principal and agent, partners, joint ventures or any other similar such relationship between the parties hereto. The parties understand and agree that neither the method of computation of fees or rentals, nor any other provision contained herein, nor any acts of the parties hereto creates a relationship other than the independent relationship of CITY and CONCESSIONAIRE.

Session 20.2. Approvals. Where this Agreement calls for approval by CITY, such approval shall be evidenced by the written approval of the Airport Director or his/her designee.

Section 20.3. Non-Exclusive Right. It is not the intent of this Agreement to grant to CONCESSIONAIRE the exclusive right to provide car rental services at the Airport at any time during the term of this Agreement. CITY reserves the right, at its sole discretion, to grant certain rights and privileges upon the Airport to others which are identical in part or in whole to those granted to CONCESSIONAIRE.

Section 20.4. United States Requirements. This Agreement is subject and subordinate to the provisions of any agreement hereof or hereafter made between CITY and the United States Government relative to the operation or maintenance of the Airport, the execution of which has been required or is required as a condition precedent to the transfer of federal rights or property to CITY for Airport purposes, or the expenditure of federal funds for the improvement or development of the Airport.

Section 20.5. No Waiver. No delay or omission by CITY in exercising any right, power or remedy hereunder or otherwise afforded by contract, at law, in equity or by statute, shall constitute an acquiescence therein, impair any other right, power or remedy hereunder, or otherwise afforded by contract, at law, in equity or by statute, or operate as a waiver of such right, power or remedy. No waiver by CITY of any default by CONCESSIONAIRE hereunder shall operate as a waiver or any other default or the same default on a future occasion.

Section 20.6. Headings. The article and section headings contained in this Agreement are inserted for convenience of reference only, and shall not be construed as defining, limiting, extending or describing the scope of this Agreement, any article or section hereof, or the intent of any provision hereof.

Section 20.7. Severability. If any provision of this Agreement, or the application thereof to any person or circumstance, shall be held invalid or unenforceable under any applicable law, such invalidity or unenforceability shall not affect any other provision of this Agreement that can be given effect without the invalid or unenforceable provision, or the application of such provision to other persons or circumstances, and, to this end, the provisions hereof are severable.

Section 20.8. Aerial Approaches. CITY reserves the right to take any action it considers necessary to protect the aerial approaches of the Airport against obstruction or interference, together with the right to prevent CONCESSIONAIRE from erecting, or permitting to be erected, any building or other structure on or adjacent to the Airport, the Car Rental Facilities Premises or the Ready/Return Spaces, which in the opinion of CITY, would limit the usefulness of the Airport or constitute a hazard to aircraft.

Section 20.9. Waiver of Claims. CONCESSIONAIRE hereby waives any claim against CITY and its officers, directors, agents, servants, or employees for loss of anticipated profits caused by any suit or proceedings directly or indirectly attacking the validity of this Agreement or any part thereof, or by any judgment or award in any suit or proceeding declaring this Agreement null, void, voidable, or delaying the same or any part thereof, from being carried out. Without limiting the foregoing, in no case shall the CITY be liable to CONCESSIONAIRE or to any third party for any incidental, indirect, consequential, special or punitive damages, including without limitation lost profits, arising out of or relating to this Agreement or compliance with its terms.

Section 20.10. Incorporation of Exhibits. All exhibits referred to in this Agreement are intended to be and hereby are specifically made a part of this Agreement.

Section 20.11. Binding Effect. All terms, covenants, and conditions of this Agreement shall be binding upon and inure to the respective benefit of CITY and CONCESSIONAIRE, their respective officers, employees, agents and representatives, all as the case may be.

Section 20.12. Right to Amend. In the event that the FAA or any other federal or state agency, department or bureau having jurisdiction over CITY or the Airport requires modifications or changes in this Agreement as a condition precedent to the granting of funds for the improvement of the Airport, or otherwise, CONCESSIONAIRE shall make such amendments, modifications, revisions, supplements or deletions of any other the terms, conditions or requirements of this Agreement as may be reasonably required and any expenses resulting from such amendments, modifications, revisions, supplements or deletions shall be borne solely by the CONCESSIONAIRE.

Section 20.13. Time. Time is of the essence with regard to each and every provision of this Agreement.

Section 20.14. Force majeure. Neither CITY nor CONCESSIONAIRE shall be deemed in violation of this Agreement if prevented from performing any of the obligations hereunder by reason of strikes, boycotts, labor disputes, embargoes, shortages of material, acts of the public enemy, acts of superior governmental authority, weather conditions, riots, rebellion, sabotage or any other circumstances for which it is not responsible or which are not within its control. The party claiming "force majeure" shall provide prompt written notice to the other party of such claim and the reason(s) therefore.

Section 20.15. Employee Parking. CITY may provide parking facilities to CONCESSIONAIRE'S employees in common with employees of other concessionaires and users of the Airport and retains the right to institute a nondiscriminatory charge for the privilege of utilizing such parking facilities.

Section 20.16. Additional Space. If space is available, and at the sole option of CITY, CONCESSIONAIRE may lease from CITY additional storage, office, and other space identified by CITY as available for such purposes, on terms to be negotiated by CITY and CONCESSIONAIRE.

Section 20.18. Revenue Diversion Prohibited. CONCESSIONAIRE shall not cause or allow to be diverted from the Airport any of its automobile rental business in any manner to avoid or reduce its Gross Revenues upon which its financial obligations owed to CITY are calculated. In the event CONCESSIONAIRE establishes, owns, operates or manages during the term hereof any automobile rental business within three (3) miles of the Airport, it agrees to make all books, records and other pertinent documents of such automobile rental business available for audit by CITY and/or its designated representative to ensure compliance with this provision.

Section 20.19. Governing Law. This Agreement and the rights and obligations of the parties hereunder shall be constructed in accordance with and governed by the laws of the State of Maine without regard to the principles of conflict of law, and CONCESSIONAIRE hereby agrees and submits to the personal jurisdiction of the state and federal courts within the state of Maine for the purpose of enforcing or construing this Agreement.

Section 20.20. Understanding. The parties hereto acknowledge that they have thoroughly read this Agreement, all exhibits or attachments hereto, and have sought and received competent advice and counsel necessary for them to form a full and complete understanding of all rights and obligations herein.

Section 20.21. Other Use. CONCESSIONAIRE shall not use or permit the use of the Car Rental Facilities Premises or the Ready/Return Premises, or any part thereof, for any purpose or use other than as authorized by this Agreement.

Section 20.22. Liens. Throughout the term of this Lease, CONCESSIONAIRE shall not cause nor permit any lien against the Premises, any portion thereof or any CITY property wherever located, or any improvements thereto, to arise out of or accrue from any action, omission or use thereof by CONCESSIONAIRE. CONCESSIONAIRE may in good faith, however, contest the validity of any alleged lien. CONCESSIONAIRE shall defend and indemnify and hold the CITY harmless from any cost, expense, attorney's fees or other liability arising out of or resulting from any such lien or liens, and shall promptly discharge such lien or stay or prevent its foreclosure by bond or other appropriate legal procedure which is acceptable to the CITY. So long as CONCESSIONAIRE defends CITY in any action concerning any such lien, CONCESSIONAIRE shall not be required to post a bond with respect to such lien prior to the commencement of a foreclosure action against the CITY. This provision shall survive termination or expiration of this Lease Agreement. CITY may, at its sole discretion, pay any amounts secured by any such lien and in such case, CONCESSIONAIRE shall repay all such payments to CITY immediately upon CITY's demand therefore.

Section 20.23. Entire Agreement. This Agreement contains the entire agreement between the parties relating to the subject matter hereof and supersedes all oral statements and prior writings with respect thereto and may be altered, amended, or modified only by written document executed by CITY and CONCESSIONARIE.

Section 20.24. Attorney's Fees. If an action shall be brought to recover any sum due under this Agreement, or an account of any breach of or to enforce or interpret any of the terms, covenants, or conditions of this Agreement, CITY shall be entitled to recover from

CONCESSIONAIRE, as part of CITY's cost, reasonable attorney's fee.

Section 20.25. Interpretation.This Agreement shall not be construed or interpreted in favor of or against either party on the basis of draftsmanship or preparation of the Agreement.

Section 20.26. Approval of Plans and Specifications. No approval by CITY of any plans and specifications required herein shall refer to or be implied to include the approval of architectural or engineering design or compliance with applicable laws or codes. CITY, by approving such plans and specifications, assumes no liability or responsibility therefore or for any defect in any structure or improvement constructed according to such plans and specifications.

Section 20.27. Bankruptcy. If at any time proceeding in bankruptcy or under the Bankruptcy Code (Title 11 of the United States Code) as now in effect or as hereafter amended shall be instituted by CONCESSIONAIRE, or if a petition for relief is granted against CONCESSIONAIRE in any involuntary bankruptcy proceeding, CONCESSIONAIRE shall pay in adequate protection payments the rentals and fees due under this Agreement until such time CONCESSIONARIE elects to assume or reject this Agreement. If CONCESSIONAIRE defaults thereunder and fails to make any such payment due hereunder, (i) this Agreement shall be deemed to be rejected so that the Agreement will be terminated and CITY shall have a claim against CONCESSIONAIRE for the rentals, fees, and other sums then due CITY under this Agreement, and (ii) CITY shall be entitled to relief from the automatic stay to enforce its rights under the terms of this Agreement.

Section 20.28. "Most Favored Nations". CITY agrees that if it contracts with any car rental CONCESSIONAIRE operating at the Airport for any more favorable term in regard to permitted and required uses, or in regard to the fixed and percentage rents payable hereunder (other than the MAG), then CITY agrees, upon CONCESSIONAIRE'S request, to offer such term or terms to CONCESSIONAIRE as an amendment to this Agreement. No more than four (4) car rental CONCESSIONAIRES, plus dual branding as permitted herein, shall be allowed "on-airport" during the term of this Agreement.

Section 20.29. War. During any time of war or national emergency, CITY shall have the right to lease the Airport or any part thereof to the United States Government for military use, and if any such lease or agreement is executed, the provisions of this Lease Agreement insofar as they are inconsistent with the lease or agreement with the Government shall be suspended, and in that event, a just and proportionate part of the rent hereunder shall be abated.

IN WITNESS WHEREOF, the parties hereto have executed this Concession Agreement on the day and year first written above.

WITNESS

CITY OF PORTLAND

____

____

Mark Rees, City Manager

CONCESSIONAIRE

____

____

____

EXHIBIT A

Ready Spaces

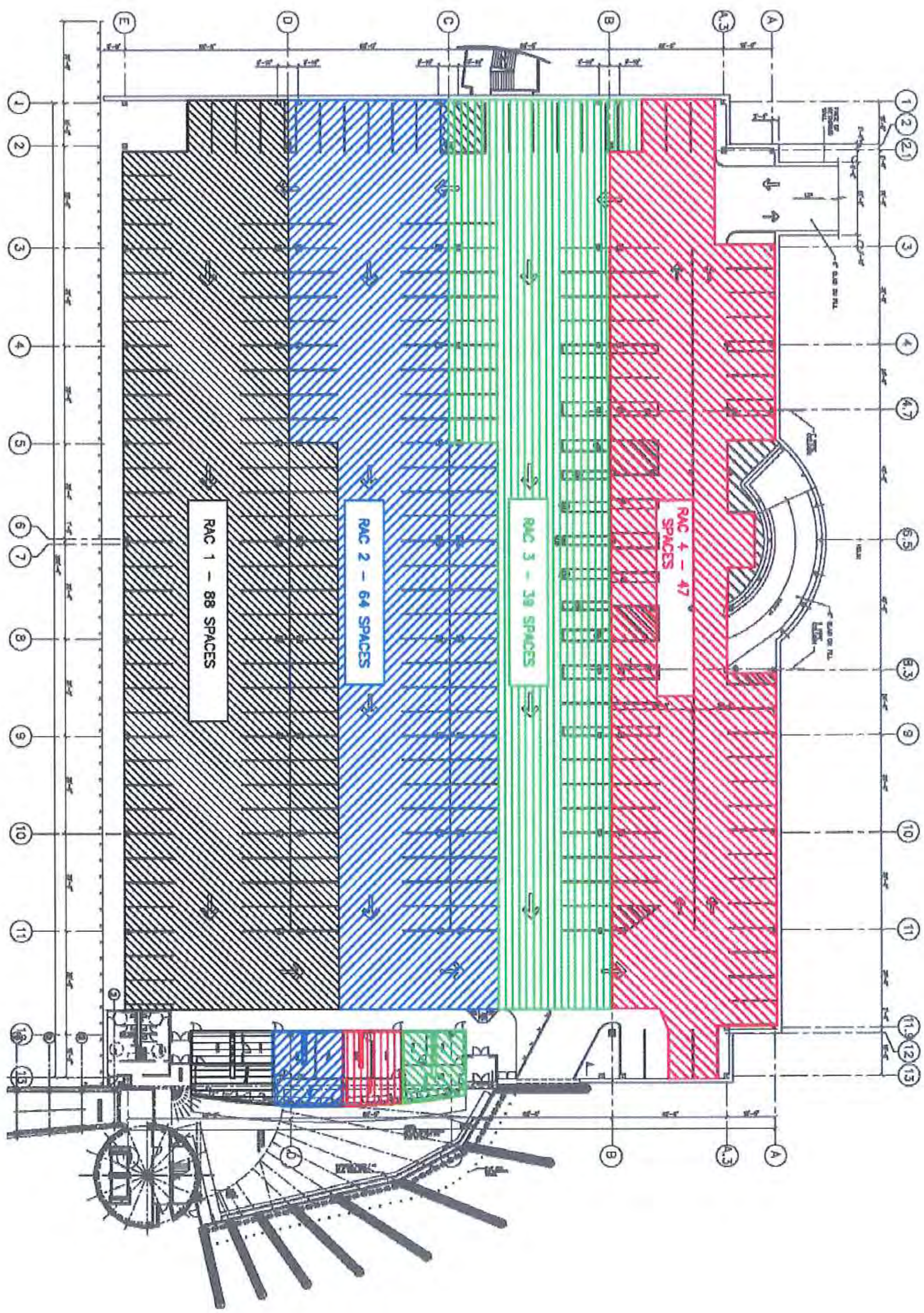
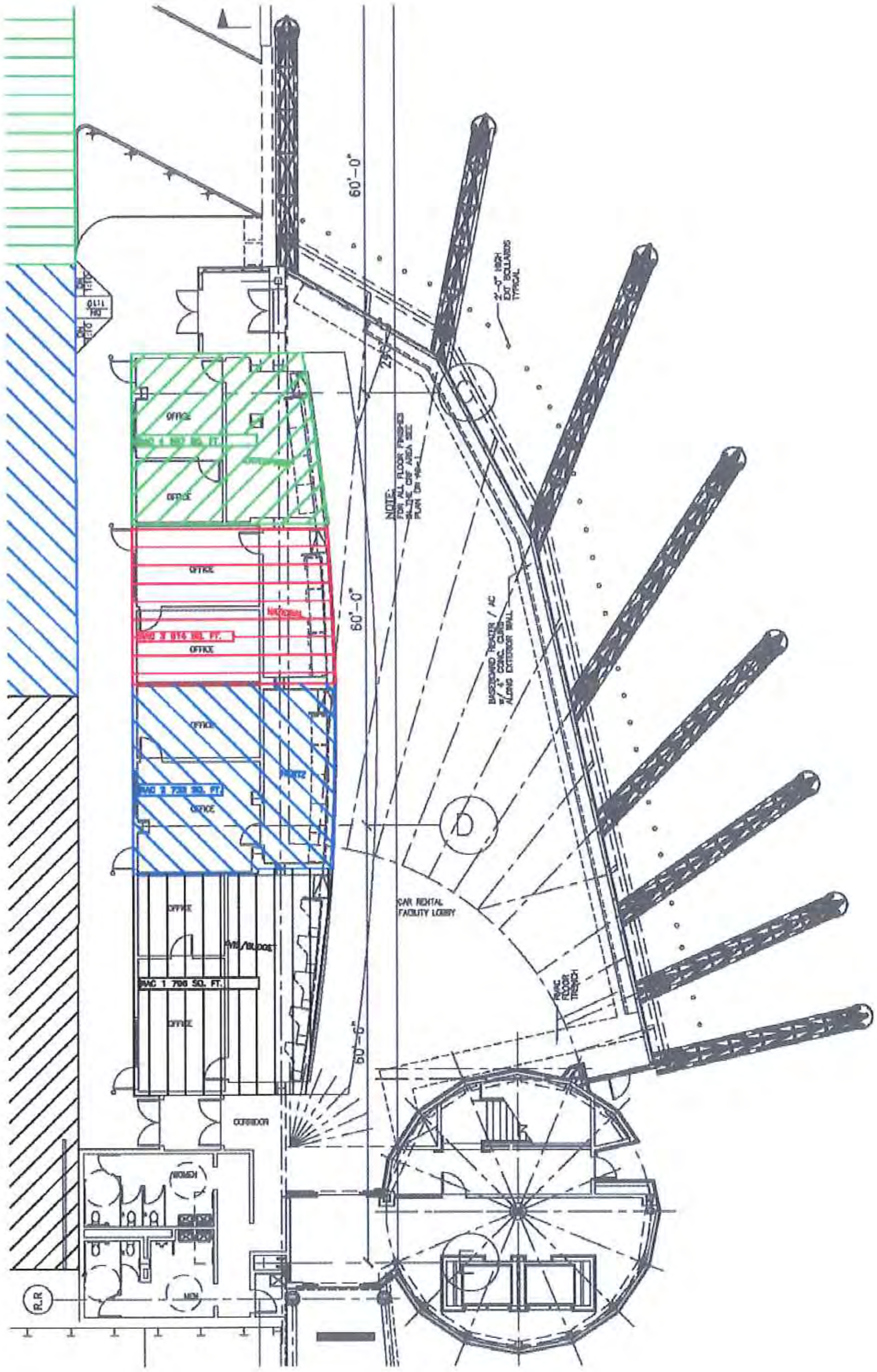


EXHIBIT A

Counter Spaces



Order 255-13/14
Tab 16 6-2-14

MICHAEL F. BRENNAN (MAYOR)
KEVIN J. DONOGHUE (1)
DAVID A. MARSHALL (2)
EDWARD J. SUSLOVIC (3)
CHERYL A. LEEMAN (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

JOHN R. COYNE (5)
JILL C. DUSON (A/L)
JON HINCK (A/L)
NICHOLAS M. MAVODONES, JR (A/L).

ORDER DESIGNATING 134 WASHINGTON AVENUE AFFORDABLE HOUSING DEVELOPMENT DISTRICT AND TAX INCREMENT FINANCING (TIF) DISTRICT AND ADOPTING DEVELOPMENT PROGRAM FOR THE DISTRICT

WHEREAS, the City of Portland is authorized pursuant to Chapter 206, Subchapter 3 of Title 30-A of the Maine Revised Statutes, as amended, to designate specified areas within the City as an Affordable Housing Development Tax Increment Financing District, and to adopt a Development Program for such District; and

WHEREAS, there is a need for affordable housing in the City of Portland and the surrounding region; and

WHEREAS, Avesta Housing intends to construct certain improvements within the 134 Washington Avenue Affordable Housing Development Tax Increment Financing ("TIF") District, including 18 units of affordable housing; and

WHEREAS, the City of Portland will utilize 50% of the tax revenues generated in the District in its General Fund; and

WHEREAS, there is a need to provide continuing affordable housing opportunities for the citizens of Portland and the surrounding region; to improve and broaden the tax base of the City of Portland; and to improve the general economy of the City of Portland, the surrounding region and the State of Maine; and

WHEREAS, the 134 Washington Avenue Affordable Housing Development TIF District will help improve and broaden the tax base in the City of Portland; and improve the economy of the City of Portland and the State of Maine; and

WHEREAS, the City has held a public hearing on the question of establishing the District in accordance with the requirements of 30-A M.R.S.A. § 5223, upon at least ten (10) days prior notice published in a newspaper of general circulation within the City; and

WHEREAS, the City Council has considered the comments provided at the public hearing, both for and against the designation of the 134 Washington Avenue Affordable Housing Development TIF District, if any; and

WHEREAS, it is expected that approval will be sought and obtained from the Maine State Housing Authority, approving the designation of the 134 Washington

Avenue Affordable Housing Development TIF District and Development Program for the District;

NOW THEREFORE BE IT HEREBY ORDERED BY THE CITY COUNCIL AS FOLLOWS:

That, under and pursuant to the provisions of Title 30-A, Chapter 206, Subchapter 3 of the Maine Revised Statutes as amended, the development program and financial plan entitled "134 Washington Avenue Affordable Housing Development District" as presented to this meeting and a copy of which is hereby incorporated herein by reference and as part of the minutes of this meeting, is hereby approved in substantially the form as presented as the Development Program for the District and for the reasons set forth therein, the City, after considering whether the District and the Development Program will contribute to the expansion of affordable housing opportunities within the City and to the betterment of the health, welfare or safety of the inhabitants of the City and whether any detriment to any existing property interest in the City, finds and determines that: designation of the District and pursuit of the Development Program will make a contribution to the expansion of affordable housing opportunities within the City and the betterment of the health, welfare or safety of its inhabitants, constituting good and valid public purposes and any adverse economic effect on or detriment to any existing property interests is outweighed by the contribution made by the District and the Development Program to the availability of affordable housing within the City and to the betterment of the health, welfare and safety of its inhabitants, and the City further makes the other findings and determinations as set forth in said Development Program and the Exhibits thereto; and

BE IT FURTHER ORDERED, that the area of the City of Portland entitled "134 Washington Avenue Affordable Housing Development District" as more particularly described in said Development Program is hereby designated as an affordable housing development district and such designation shall automatically become final and shall take full force and effect upon receipt by the City of approval of the District by the Director of the Maine State Housing Authority, without the requirement of any further action by the City, the Municipal Officers or any party; and

BE IT FURTHER ORDERED, that the percentage of increased assessed value of said District to be retained as captured assessed value in accordance with the Development Program is hereby established as set forth in the Development Program and Financial Plan; and

BE IT FURTHER ORDERED, that the City Manager is hereby authorized and directed, on behalf of the City of Portland, Maine to execute and submit to Director of the Maine State Housing Authority for approval such applications and further documentation as may be necessary or appropriate for final approval and establishment of the "134 Washington Avenue Affordable Housing Development District" and its Development Program and Financial Plan pursuant to 30-A M.R.S.A. chapter 206, Subchapter 3; and the City Manager be, and hereby is, authorized and empowered, at his discretion, from time to time, to make such technical revisions to the Development Program for the District as he deems reasonably necessary or convenient in order to facilitate the process for review and approval of the District by the Director of the Maine State Housing Authority, so long as such revisions are not inconsistent with this Order or the basic structure and intent of the Development Program; and

BE IT FURTHER ORDERED, that the City's Planning and Urban Development Director is authorized to submit annual reports on the status of the "134 Washington Avenue Affordable Housing Development District" on behalf of the municipal legislative body; and

BE IT FURTHER ORDERED, that upon approval of the Director of the Maine State Housing Authority, the City Manager is hereby authorized and directed on behalf of the City of Portland to execute and deliver, a Credit Enhancement Agreement substantially in the form attached to the Development Program hereby approved, with such changes thereto as deemed appropriate by the City Manager.

MEMORANDUM
City Council Agenda Item

TO: Members of the Portland City Council

FROM: Planning and Urban Development Department
Housing and Community Development Division

DATE: May 16, 2014

DISTRIBUTION: (City Manager, Mayor, Corporation Counsel, Sonia Bean, Nancy English)

SUBJECT: **(1) Order Designating 134 Washington Avenue Affordable Housing Development District and Tax Increment Financing District and Adopting the Municipal Development Program for the District**

(2) Order Approving Credit Enhancement Agreement with Avesta Washington Ave. LP

SPONSOR: Kevin Donoghue, Chair
Housing and Community Development Committee

COUNCIL MEETING DATE ACTION IS REQUESTED:
1st reading June 2 Final Action June 16

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

Due to public notice requirements, the City Council meeting for public hearing and vote has been advertised for June 16, 2014.

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

Mary Davis, Housing and Community Development Division Director will be available to provide information as requested.

I. SUMMARY OF ISSUE (Agenda Description)

134 Washington Avenue Affordable Housing TIF (AHTIF) Development District is being proposed for property located on the corner of Washington Avenue and Fox Street. The development consists of 18 affordable units.

The proposal is for a 20 year TIF with 50% of the total projected new taxes captured, estimated at $8,524, as a reimbursement to the Developer through a CEA. The Developer's share of TIF revenue will be used to pay operating costs for the project.

The remaining TIF revenues will be allocated to the City's General Fund.

At its meeting on May 14, 2014, the Housing and Committee Development Committee voted 3-0 to recommend this AHTIF request to the City Council for approval.

II. REASON FOR SUBMISSION (Summary of Issue/Background)

The City Council must: (1) authorize the creation of the AHTIF District; and
(2) approve the Credit Enhancement Agreement

III. INTENDED RESULT

The intended result from the establishment of this AHTIF District is the creation of 18 units of rental housing, 10 of which will be available to households at or below 40% of the area median income and the remaining 8 units will be available to households at or below 50% of the area median income.

IV. COUNCIL GOAL ADDRESSED

Promote Housing Availability - Provide increased availability in all segments of the housing market while insuring that there is a suitable balance housing opportunities among those sectors.

Prevent and End Homelessness – Prevent and end homelessness in the City of Portland by continuing to implement the recommendations of the Homelessness Task Force.

V. FINANCIAL IMPACT

When completed, this project's new assessed value is estimated at $1 Million, which will yield approximately $844,400 in increased annual property assessed value over the course of the 20-year TIF District. 50% of the increased taxes will be captured and returned to the Developer through a Credit Enhancement Agreement. The remaining revenue will be returned to the City's General Fund.

Here is an overview of the TIF proposal related to the share of future estimated property taxes.

	Dev. Share	**City General Fund Share**
Years 1-20	**$207,116 or 50%**	**$207,116**

The Avesta Housing 134 Washington Avenue project consists of 18 units of rental housing. Ten (10) units will be affordable to households earning at or below 40% of the area median income. The remaining eight (8) units will be available to households earning at or below 50% of the area median income. Total development costs are estimated at $3,021,686. At full build-out, the development is projected to have a total increased assessed valuation of approximately $844,400 and will pay approximately $17,048 annually in increased property taxes, or $414,232 over the life of the district.

In addition, with the tax sheltering benefits of TIF Districts, overall savings to the City during the term of the district averages an estimated annual amount of $3,787+, or $75,742+ over the life of the district.

VI. STAFF ANALYSIS

Public Benefits In reviewing this TIF request, staff notes the public benefit associated with the TIF District of an additional 18 units of mixed income housing all of which will be available to households at or below 50% of the area median income.

VII. RECOMMENDATION

Staff recommends approval of this request and asks that the City Manager be authorized to sign and submit the documents, in substantially the form as enclosed, to MaineHousing for approval.

It is requested that the City Council set the Public Hearing for the 134 Washington Avenue AHTIF District and approval of the Credit Enhancement Agreement for the City Council meeting on June 16, 2014 at 7:00 p.m.

VIII. LIST ATTACHMENTS

Maine State Housing Authority's Affordable Housing TIF Application
134 Cumberland Affordable Housing Tax Increment Financing Development Program
Credit Enhancement Agreement.

Prepared by:

Mary P Davis

Mary P. Davis, Director
Housing and Community Development Division

May 16, 2014
Date

APPLICATION
Affordable Housing Tax Increment Financing

All applications to MaineHousing for approval of an affordable housing development district and associated development program must use this form.

Before submitting the form the Applicant's municipal legislative body must approve the substantive contents of the form and its attachments.

Section 1 - Applicant Information

1-1. **Applicant:** City of Portland, Maine

1-2. **Application submittal date:** June   , 2014

1-3. **Municipal official submitting this application:**

Mark H. Rees
Printed name

Signature **Date**

The person signing above attests that the information contained in this application is true and correct to the best of his or her knowledge.

Title	**City Manager**
Mailing address	**389 Congress Street**
Phone number	**(207) 874-8689**
Email address	**MHR@portlandmaine.gov**

1-4. **Name of Affordable Housing Development District and Development Program:**

134 Washington Avenue

1-5. **Date of public notice:** June 2, 2014 *(Notice must be published at least 10 days prior to the public hearing. The actual newspaper page containing the notice and showing the newspaper name and date must be provided as Attachment 1.)*

1-6. **Date of public hearing:** June 16, 2014 *(A copy of the meeting record must be provided as Attachment 2.)*

1-7. **Municipal official with authority to submit annual reports on the status of the Affordable Housing Development District on behalf of the municipal legislative body:**

Name	Jeff Levine
Title	Director, Planning and Urban Development Department
Phone number	(207) 874-8430
Email address	jlevine@portlandmaine.gov

1-8. **Did the municipal legislative body:**

a. **Specifically consider and approve the substantive contents of this form and attachments, after the required 10 day public notice and public hearing? (yes or no)** yes

b. **Consider comments received at the public hearing? (yes or no)** yes *(If an interested party claimed that the district or development program will be detrimental to that party's existing property interests, the legislative body must consider the evidence presented and whether any adverse economic effect is outweighed by the availability of affordable housing or health, welfare or safety improvements for the municipality's residents.)*

c. **Consider whether the district and development program will expand affordable housing opportunities or improve the health, welfare or safety of municipal residents? (yes or no)** Yes *(The municipal legislative body must take these factors into account.)*

1-9. **Date of municipal approval:** June 16, 2014 **(A copy of the municipal resolution or order and vote must be included as Attachment 3.)**

Section 2 - Affordable Housing Development District Characteristics

2-1. **General description of District** *(such as existing residential and nonresidential land uses, adjacent streets, etc. A municipal map or photo showing District boundaries must be included as Attachment 4.)*

The district is a 0.23 acre site on Washington Avenue, near the Fox Street intersection to the south. It falls within the Community Business District (B-2b zone) and abuts the Residential Zone (R-6) to the rear. The neighborhood includes residential and non-residential uses. The development will consist of a four-story building with 18 efficiency apartment units, ground floor common areas and office space, and two on-site parking spaces and open space.

2-2. Tax map and lot number (and block no. if applicable): CBL 012 E006001 ***(A tax map with district boundaries shown must be provided as Attachment 5.)***

2-3. **Acreage of the District:** 0.23

2-4. **District duration:** 20 *(Up to 30 full tax years maximum beginning on the April 1 following the date of MaineHousing approval.)*

2-5. **Municipal fiscal years during which tax increment will be used for approved project costs:**

First fiscal year start date: 2015
Last fiscal year end date: 2034

2-6. **Original assessed value (OAV) and OAV date:** $155,500 as of March 31, 2014. *(The OAV date must be the March 31 immediately preceding MaineHousing approval. A certified letter from the tax assessor with OAV and OAV date must be provided as Attachment 6. Please note that the OAV is based on the taxable value of the property in the district, so the OAV of a tax exempt property is zero.)*

2-7. **Zoning of District land and allowed uses:** *(Please provide a description of any contract zone, if applicable.)*

Multifamily housing as proposed by the applicant is a permitted use in the B-2b zone.

2-8. **Description showing that at least 25% of District area is suitable for residential use; blighted; or in need of rehabilitation/redevelopment:**

Currently the site contains a single-family home and garage. The neighborhood surrounding the site includes residential and on-residential uses. Non-residential uses include commercial and retail space. The proposed redevelopment of the site will be 100% residential with the creation of 18 units rental housing all of which will be rented to households at or below 50% of the area median income.

2-9. **District area as a percentage of total municipal acreage:** *District acreage divided by total municipal acreage = .00186% (Cannot exceed 2%)*

2-10. **Total area of all development districts as a percentage of total municipal acreage:** *Existing and proposed affordable housing + municipal development district acreage divided by total municipal acreage = 1.56% (Cannot exceed 5%)*

2-11. **OAV of all affordable housing development districts as a percentage of all taxable property value:** *Aggregate OAV of existing and proposed affordable housing development districts divided by aggregate taxable property value at April 1 preceding MaineHousing approval date = 1.68% (Cannot exceed 5%)*

Section 3 - Affordable Housing Development Program

Development Characteristics

3-1. **General description of the intended development:** *(Overall character of uses in the District must be primarily residential, i.e., housing and related uses such as child care, recreational and small-scale commercial facilities serving District residents.)*

The development is entirely residential and will consist of 18 efficiency units. 10 of the units will be made available to households at or below 40% of area median income and the other 8 units will be made available to households at or below 50% of area median income. A limited amount of services may be made available solely to residents, in the offices on the ground floor.

3-2. **Number and type of housing units to be developed within the District:**

	Market rate units		Affordable units		
	Number of units	Unit size (# of BR)	Number of units	Unit size (# of BR)	Income Limit(s) (% of AMI)
New rental units			10 8	0 0	40 50
Rehabilitated rental units					
New homes, including condos					
Rehabilitated homes, including condos					
Total units within the District:			18		

3-3. **Affordable housing units as a percentage of total housing units within the District:** 100% *(Minimum of 33%.)*

3-4. **Schedule for development:**

Planning Board approval by mid-June 2014
Bid period by end of July 2014
Close on construction financing and begin construction by end of September 2014
10-month construction schedule with a July 2015 completion date
Start lease-up in August 2015

3-5. **Length of affordability period(s):** *(Minimum of 10 years for owner-occupied homes and condos and 30 years for rental units).* 30

3-6. **Mechanism(s) for ensuring ongoing affordability:** *(Copies of covenants or restrictions for ensuring affordability to households at or below 120% of area median income must be provided as Attachment 7.)*

Declaration of Covenants and Restrictions requiring that at least 56% or 10 of the 18 housing units be for households earning no more that 40% of the area median income and the remaining 44% or 8 of the 18 housing units be for households earning no more than 50% of the area median income.

3-7. **Name of affordable housing developer:** Developer is Berry Park Housing Corporation. Owner is Avesta Washington Ave LP

3-8. **Description of how the housing and facilities to be funded with tax increment revenues will be operated, including responsible entity and funding:**

TIF revenue will be used by the developer as an operating cost subsidy and property will be operated and managed by Avesta Housing Management Corporation.

Related Requirements

3-9. **Description of local affordable housing need and how proposed Development Program meets the need:**

The proposed development is consistent with the Housing Component of the City of Portland's Comprehensive Plan in that it helps to meet the goal of ensuring that "an adequate supply of housing is available to meet the needs, preferences and financial capabilities of all Portland households, now and in the future." This project will provide 18 units of affordable housing. A market study completed by The Signal Group indicates a demand for 18,589 rental units in 2013 with an estimated 17,585 available rental units. More than 55% of the current rental housing stock is now 70 years old.

3-10. **Date of comprehensive plan final adoption** November 2005 **, whether the proposed development is consistent with the plan (yes or no)** Yes**, and whether the Development Program complies with Maine law limiting growth-related capital investments (see 30-A M.R.S.A. §4349-A), (yes or no):** Yes

3-11. **Potential conflict with municipal charter (yes or no):** No

3-12. **Description of plan for relocation of persons displaced by development activities (or statement that no relocation is necessary):**

Not applicable. Property to be developed is vacant and has been since May 2013

3-13. **Description of environmental controls to be applied (or statement of commitment to appropriate environmental controls, such as permitting and licensing, adherence to laws and regulatory conditions, and use of qualified contractors):**

An environmental site assessment addressed environmental issues on the site and to the extent required provided necessary recommendations for environmental controls. The development is required to meet all necessary City regulatory approvals in order to proceed. On March 13, 2014, the U.S. Department of Housing and Urban Development issued a Notice of Removal of Environmental Grant Conditions for the project.

LEGAL ADVERTISEMENT
THE CITY OF PORTLAND
134 WASHINGTON AVENUE AFFORDABLE HOUSING DEVELOPMENT DISTRICT AND TAX INCREMENT FINANCING DISTRICT
PUBLIC NOTICE

Notice is hereby given that the City of Portland will hold a public hearing on June 16, 2014 at 7:00 p.m. at the City Council Chambers, Portland, Maine, for purposes of receiving public comments on the designation of its proposed 134 Washington Avenue Affordable Housing Tax Increment Financing District and the adoption of an Affordable Housing Development Program for said Affordable Housing Development District pursuant to the provisions of M.R.S.A., 30-A §5245 et. seq.

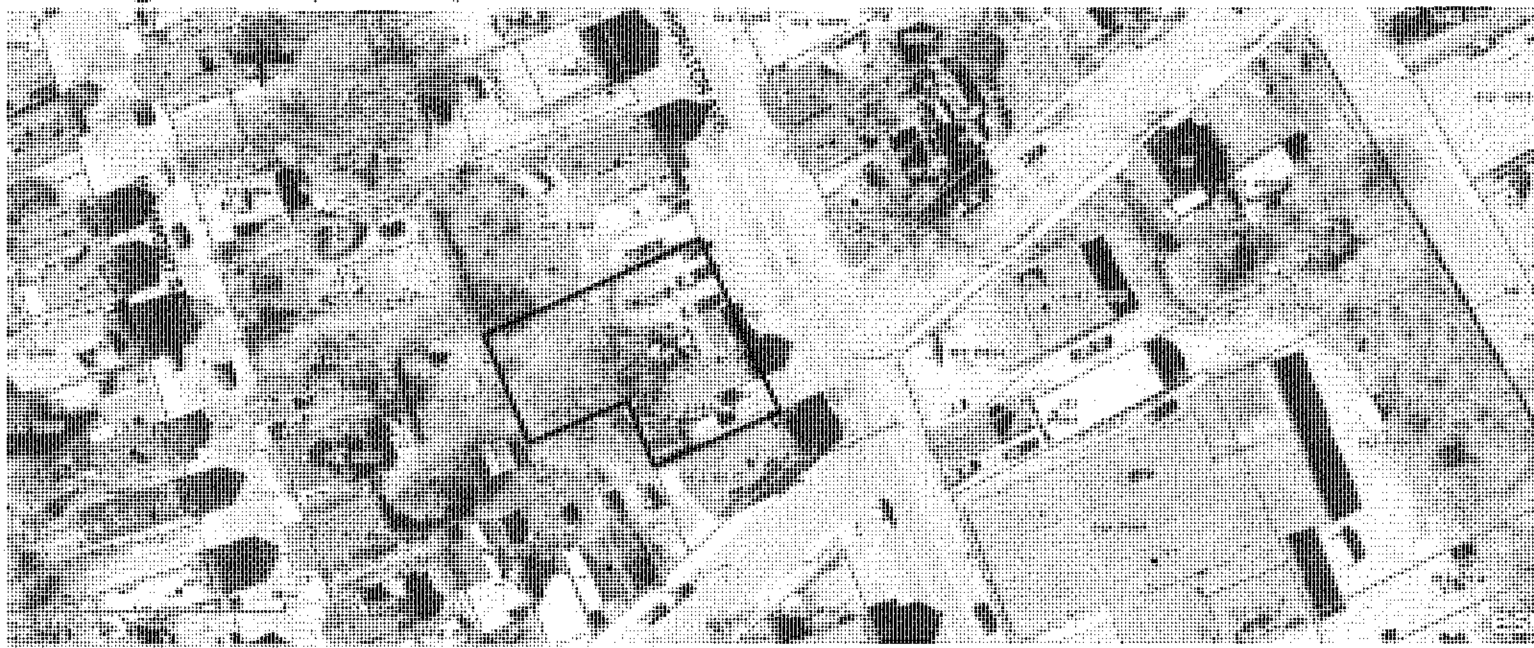
The proposed municipal affordable housing development district consists of .23 acres near the corner of Washington Avenue and Fox Street in Portland.

A copy of the proposed Development Program for the District is on file with the City Clerk and may be reviewed at the office of the City Clerk during normal business hours.

All interested persons are invited to attend the public hearing and will be given an opportunity to be heard at that time.

ty Map

1 Washington Avenue, Portland, ME



gis.dirrm.bat. All rights reserved. Web Sep 18 2013 10:32:58 AM

April 1 2012 fy 2013 Tax Map Index; http://www.portlandassessors.com/taxmaps.htm

Index Number - H10SW

CITY OF PORTLAND
CERTIFICATE OF ASSESSOR

The undersigned assessor of the City of Portland, Maine, does hereby certify pursuant to the provisions of Title 30-A M.R.S.A. Section 5250-A that the Original Assessed Value of the taxable property within the boundaries of the 134 Washington Avenue Affordable Housing Development District, as described in the Development Program for the District, was $155,600 as of March 31, 2014 (which was the March 31st of the tax year preceding the year in which the District was designated).

IN WITNESS WHEREOF this Certificate has been executed as of this 15th day of May, 2014.

Richard W Blackburn
Municipal Assessor

Declaration of Covenants, Conditions and Restrictions

This Declaration of Covenants, Conditions and Restrictions (the "Declaration") is entered into by and between the City of Portland, a public body corporate and politic with its principal place of business at 389 Congress Street, Portland, Maine, 04101 ("City") and Avesta Washington Ave. LP ("Developer") with a mailing address of 307 Cumberland Avenue, Portland, Maine 04101.

WITNESSETH

WHEREAS, the Developer acknowledges that City is providing a loan from HUD HOME funds in City's Housing and Community Development Budget to the Developer (the "Loan") for the construction and development of a total of eighteen (18) units of affordable rental housing located at 134 Washington Avenue (the "Development"); and

WHEREAS the Developer acknowledges City's resulting beneficial interest in the Development, and Developer acknowledges that its ownership and operation of the Development are in furtherance of discharge of the public trust; and

WHEREAS, City has provided the Loan to Developer in consideration of the Developer's agreement to abide by the provisions of this Declaration.

NOW THEREFORE, City and the Developer agree as follows:

1. The covenants and restrictions of the Developer set forth herein are intended to be and shall be considered covenants which run with the real estate described in Exhibit A attached hereto and shall bind all subsequent owners of the real estate described in Exhibit A attached hereto, except to the extent provided herein.

2. The covenants of the Developer set forth herein are enforceable by City as a contract beneficiary whether or not the Developer is or remains indebted to City under the Loan, except to the extent provided herein.

3. The covenants of the Developer set forth herein shall survive a sale, transfer, or other disposition of the Development by the Developer, foreclosure or transfer of title in lieu of foreclosure, or the repayment of the loan, except to the extent provided herein, but shall cease to apply to the Development in the event of involuntary noncompliance caused by fire or other substantial destruction, seizure, requisition or other event that prevents City from enforcing the Developer's covenants contained herein, provided that the Loan is repaid within a reasonable period of time after such involuntary noncompliance.

4. The term "Qualified Project Period" as used herein shall mean the period beginning on the date of completion of the construction of the Development, as determined by City, and terminating on a date ninety (90) calendar years thereafter, except for the shorter period provided in subsection (f) below, for a portion of the Development.

5. The Developer agrees to comply with this Declaration throughout the Qualified Project Period.

6. The Developer hereby covenants and represents to City as follows:

a. The Development shall be located on the real estate described in Exhibit A attached hereto and shall consist of the facilities described in Developer's application to City.

b. The Development shall consist of the land described in Exhibit A together with a building or a portion of a building or structure or several proximate and interrelated buildings or structures and facilities functionally related and subordinated thereto:

i. each containing one or more similarly constructed units and facilities which are functionally related and subordinate to such units; and

ii. all of the eighteen residential units of which will, on a continuous basis, be rented or available on a non-transient basis for rental to members of the general public.

c. The total housing costs including rent and utilities of tenants occupying the rent restricted units in Development as of the date of this Declaration may not increase for twelve months beginning on the date of this Declaration.

d. The Developer shall maintain all of the units included in the Development rented or available for rental on a continuous basis to members of the general public throughout the Qualified Project Period.

e. The Developer acknowledges and represents to City that the Development consists of eighteen (18) residential rental units. Throughout the Qualified

Project Period, the eighteen (18) residential units in the Development must be occupied by individuals or families with the following income requirements:

10 efficiency units occupied by households at or below 40% of area median income
8 efficiency units occupied by households at or below 50% of area median income

Four (4) units in the project will be High HOME Assisted Units. These four units will be floating units. The rents for these units may not exceed limits as required by the HOME program 24 CFR 92.252. In its operation of the Project, Grantor agrees to comply with all applicable federal, state and local laws and regulations.

i. Income and area median income shall be as determined by the United States Department of Housing and Urban Development and income limits shall be adjusted for family size.

ii. Units occupied by a tenant receiving assistance under Section 8 Existing Housing Assistance Payments Program are deemed to and shall be treated as units occupied by individuals or families whose income is at or below sixty percent (60%) of area median income.

iii. At least annually, City shall determine whether the income, based on the current income, of the tenants residing in the Development exceeds the applicable income limits as described in this Section 6 (the "Determination"). The Developer shall furnish to City such information as City shall require, including certification of occupancy and tenant income, in order to assure that the covenants set forth herein are being fully satisfied. Income certifications and related information submitted to and accepted by Maine State Housing Authority shall be acceptable to the City for purposes of this subsection.

iv. A unit occupied by a tenant who, at the commencement of occupancy, met the applicable income limitations shall continue to be treated as occupied by a qualified tenant even though the tenant's income may exceed eighty percent (80%) of the area median income, adjusted for family size, at the time of the most recent Determination, if after such Determination, but before the next Determination , any residential unit of comparable or smaller size is occupied by a new resident whose income does not exceed the applicable income limit.

v. After initial occupancy but upon again becoming vacant, a unit shall be treated as occupied by an individual or family meeting the applicable income limitations until occupied, at which time the character of the unit shall be redetermined in light of the new occupants income, other than occupancy by another tenant for a temporary period not to exceed thirty-one (31) days.

f. For the Qualified Project Period, the Low Income Units must be rent-restricted. A Low Income Unit is rent-restricted if the gross monthly rent does not exceed the rents for the appropriate unit size and geographic area published for the HOME Investment Partnership Program, or successor program, by the United States Department of Housing and Urban Development. Gross monthly shall include any payment under Section 8 of the United States Housing Act of 1937 and utility allowance, where applicable, determined taking into account such determinations under Section 8 of the United States Housing Act of 1937. Once the income of a tenant occupying a Low Income Unit exceeds eighty percent (80%) of the area median gross income, adjusted for family size, the tenant shall be required to pay rent in (i) an amount not less than thirty percent (30%) of their adjusted gross monthly income, certified annually, or (ii) an amount equal to the area market rental rate for a comparable unit, which ever may be less. Throughout the Qualified Project Period, the actual rent charges for Low Income Units are subject to City's approval which must be obtained prior to any assessment or increase.

g. Developer shall not make any change in the nature, size, number or location of the units in the Development or the amount of commercial or non-residential space.

7. Developer agrees to furnish to City such information as City may require in form acceptable to City, including without limitation certifications and/or verification of occupancy and tenant income certifications (subject to Section 6(e)(iii) above), to determine Developer's compliance with the covenants set forth herein.

8. Developer shall maintain and keep current all books, documents, plans and records concerning the Development, including, but not limited to, books and records related to compliance with the covenants contained in this Declaration. Such books, records, documents and plans shall be kept for: (a) a minimum of six (6) years after the expiration of the Qualified Project Period for those books, records, documents and plans pertaining to the rent and occupancy requirements described in Section 6 of this Declaration and the rent roll for all units in the Development; and (b) for a minimum of six (6) years after the end of the fiscal year or calendar year, as applicable, for all other books, records, documents and plans pertaining to the Development. Upon reasonable notice, City may audit and examine these books, records, documents and plans, and may inspect the buildings, grounds, equipment offices of the Development.

9. Developer shall use tenant lease forms acceptable to City, or, if there are no written leases, written and signed certifications by tenants to determine whether tenants meet the applicable income limits. Such leases or certifications shall contain clauses wherein each tenant certifies as to the accuracy of statements made relating to income and agrees that family income

and other eligibility requirements shall be deemed substantial and material obligations of the tenancy, that the tenant will comply with all requests for information with respect thereto from the Developer or City, and that failure to provide accurate information or refusal to comply with a request for information shall be deemed a violation of the tenancy. Lease forms which have been approved by Maine State Housing Authority shall be deemed approved by City.

10. Developer agrees that it shall pay real estate taxes, as assessed by City, on Development. In the event that ownership of the Development or a portion thereof becomes tax exempt, either by transfer, conversion or otherwise, an amount shall be paid annually to City, equal to the amount that would have been assessed as real estate taxes had the Development or a portion thereof remained taxable. Developer shall notify any party to whom it transfers any of its interest in the Development of this requirement.

11. Developer covenants and agrees to take such action as City deems necessary to comply with the covenants herein or to correct or cure any failure of the Developer to comply with the covenants herein, including, without limitation, the eviction of any tenant in accordance with applicable law. The Developer shall immediately notify City if the Developer anticipates that occupancy may fall below the limits set forth in Section 6(e) of this Declaration and agrees to take such action as City deems necessary to prevent non-compliance with such paragraph.

12. In the event the Developer fails to comply with the covenants set forth herein, and fails to cure such non-compliance within any applicable cure period, City shall be able to exercise any of its rights under the documents executed in connection with the Loan, maintain an action in law or in equity against the Developer to recover damages incurred by City from such failure, and to require the Developer (through injunctive relief or specific performance) to comply with the provisions and covenants set forth herein and to immediately cure any failure to comply with the covenants set forth herein by the Developer.

13. Developer shall indemnify and hold City and its agents harmless from and against any and all claims, demands, liability, loss, cost or expense (including, but not limited to attorney's fees and other costs of litigation) which may be incurred by City arising out of or in any way related to the Developer's breach of any of its obligations under this Declaration as a result of such breach. The obligations survive the termination or expiration of this Declaration as necessary to effect its provisions.

14. This Declaration may be amended or modified in whole or in part only by written agreement of Developer and City clearly expressing the intent to modify this Declaration.

15. The validity of any clause, part or provision of this Declaration shall not effect the validity of the remaining portions of thereof.

16. This Declaration shall be binding upon Developer's respective heirs, personal representatives, executors, administrators, successors and assigns and shall inure to the benefit of and be enforceable by City, its successors, transferees and assigns.

17. This Declaration is created pursuant to, and shall be construed in accordance with and governed by the laws of the State of Maine, including but not limited to 33 M.R.S.A. § 121 et. seq.

IN WITNESS WHEREOF, this Declaration has been duly executed by the Developer and City effective ___________________, 2014.

CITY OF PORTLAND

Witness ____________________________ ____________________________

Mark Rees
Its City Manager

AVESTA Washington Ave. LP

BY: Pinecone Housing Corporation
Its General Partner

____________________________ ____________________________

By: Dana Totman
Its: President

[This Space Intentionally Left Blank]

STATE OF MAINE
COUNTY OF CUMBERLAND, ss. ___________, 2014

Personally appeared the above named Mark Rees, City Manager to the City of Portland, and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of said City of Portland.

Before me,

____
Notary Public/Attorney-at-Law

____
(Print or type name)

STATE OF MAINE
COUNTY OF CUMBERLAND, ss. ___________, 2014

Personally appeared the above named Dana Totman, President of Pinecone Housing Corporation, General Partner of Avesta Washington Ave, L.P., a Maine limited partnership, and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of said limited partnership and corporation.

Before me,

____
Notary Public/Attorney-at-Law

____
(Print or type name)

Exhibit A

Property Description
134 Washington Avenue, Portland, Maine

A certain lot or parcel of land, with the buildings thereon, situated in Portland, County of Cumberland, State of Maine, on the westerly side of Washington Avenue a distance northerly of 26.9 feet from the corner formed by the intersection of the westerly side of Washington Avenue with the northerly side of Fox Street; thence from said point of beginning running westerly at right angles to Washington Avenue 72 ¼ feet to a point and other land of Annie Ryan; thence northerly parallel to Washington Avenue 37 feet, more or less, to land now or formerly of the Potter heirs; thence easterly adjoining said Potter heirs' land 72 ¼ feet to the westerly side of said Washington Avenue; thence southerly by the westerly side of Washington Avenue 37 feet, more or less, to the point of the beginning.

Also another lot or parcel of land, in said Portland, County of Cumberland, State of Maine, described as follows:

Land on the west side of Washington Avenue, Nos. 138-140, Portland, Maine, City Assessor's Plan, Plan Book 12, Block E, Lot 6.

Meaning and intending to describe and convey the same premises as conveyed to Avesta Housing Development Corporation by Warranty Deed of Debra L. DiBiase dated May 6, 2013 and recorded in the Cumberland County Registry of Deeds in Book 30618, Page 111.

PROJECT NAME: Washington Avenue Apartments Date: 04/14/14
LOCATION: Portland, ME

DEVELOPMENT ASSUMPTIONS						
Total Units		18	Inflation Adjustments	Yr 1-5	Yr. 6-15	Yr. 16-30
# @ 60% AMI	0.0%	0	Rent	2.00%	2.50%	2.50%
# @ 50% AMI	33.3%	6	Operating Expense	3.00%	3.00%	3.00%
# @ 50% AMI HOME	11.1%	2	Other Income	2.00%	2.50%	2.50%
# @ 40% AMI	55.6%	10	Debt Coverage Ratio	1.15		
# @ Market	0.0%	0	Vacancy	5%		
Appraised Market Value			Market Value / Unit	0		

PRO FORMA DEVELOPMENT BUDGET		Residential	Per Unit	Commercial	Total
Site Improvements		185,000	10,278		185,000
Construction		1,417,923	78,774		1,417,923
Other Construction		0	0		0
Builder Overhead		0	0		0
Builder Profit		0	0		0
Bond Premium		0	0		0
Construction Contingency	5.0%	80,146	4,453		80,146
Subtotal Construction Costs		**1,683,069**	**93,504**	**0**	**1,683,069**
Permits and Impact Fees		13,667	759		13,667
Survey & Engineering		35,950	1,997		35,950
Architectural & Design		136,000	7,556		136,000
Legal, and Title & Recording		41,500	2,306		41,500
Other Construction		213,000	11,833		213,000
Accounting		8,000	444		8,000
Construction Period Tax		7,000	389		7,000
Construction Period Insur. / Builders Risk		7,000	389		7,000
FF&E		50,000	2,778		50,000
Subtotal Soft Costs		**512,117**	**28,451**	**0**	**512,117**
Construction Loan Origination Fees		17,000	944		17,000
Construction Loan Interest		26,889	1,494		26,889
Permanent Loan Fees		4,200	233		4,200
Construction Lender Legal		15,000	833		15,000
Subtotal Finance Costs		**63,089**	**3,505**	**0**	**63,089**
Market Survey		4,000	222		4,000
Appraisal		4,800	267		4,800
Environmental Study		2,500	139		2,500
LIHTC Fees		19,007	1,056		19,007
3rd Party Consultants		15,000	833		15,000
Soft Cost Contingency		15,000	833		15,000
Subtotal Miscellaneous		**60,307**	**3,350**	**0**	**60,307**
Acquisition: Buildings		0	0		0
Acquisition: Land		280,000	15,556		280,000
Acquisition: Carrying Costs		0	0		0
Subtotal Acquisition		**280,000**	**15,556**	**0**	**280,000**
Operating Deficit Escrow		59,378	3,299		59,378
Pre-funded Replacements		14,144	786		14,144
Tax & Insurance Escrow		16,583	921		16,583
Developer Overhead		80,000	4,444		80,000
Developer Profit		235,000	13,056		235,000
Rent Reserve and Marketing		18,000	1,000		18,000
Subtotal Fee and Reserves		**423,105**	**23,506**	**0**	**423,105**
Total Development Costs		**3,021,686**	**167,871**	**0**	**3,021,686**

LIHTC Alloc.	110,288
Equity yield	0.85
Synd. %	99.99%
Equity Raise	937,357

Historic Credit FED	0
Equity yield	0.99
Synd. %	99.99%
Equity Raise	0

Number of Tax-payers	1
Historic Credit STATE	0
Equity yield	0
Synd. %	99.99%
Equity Raise	0

Total Equity:	937,357

Gross Square Footage	13,593
Construction Cost/Sq ft.	**$124**

119754.863
475000
355245.137

MAXIMUM DEVELOPER FEE AVAILABLE	392,003
ACTUAL DEVELOPER FEE	315,000
% OF MAXIMUM DEVELOPER FEE	80.4%
NET DEVELOPER FEE COLLECTED	**315,000**
% OF MAXIMUM DEVELOPER FEE	80.4%
DEV FEE LOAN AS A % OF ACTUAL DEV FEE	**0.0%**

PROJECT NAME: Washington Avenue Apartments   Date: 04/14/14
LOCATION: Portland, ME

FLOW OF FUNDS

Sources	CLC 9/30/14	During Construction 12/29/14	3/29/15	6/27/15	9/25/15	PLC 9/30/15	2014	2015	Total
Beginning Cash	0	0	0	0	0	0	0	0	0
Capital Contribution	140,604	93,736		93,736		501,486	48,743	59,054	937,357
Construction Loan	263,450	327,032	420,767	327,032	420,767				1,759,048
GP Bridge Loan									0
MSHA Subsidy	67,000		0			1,193,000			1,260,000
MSHA Interest-Only Mortgage						60,000			60,000
Conventional First Mortgage						0			0
NW debt	0					241881			241,881
Other: Amortizing Loan 2						0			0
Other: City FedHOME	522,448		0						522,448
Other: City TIF						0			0
Other	0					0			0
Development Fee Loan									0
TOTAL SOURCES	993,502	420,767	420,767	420,767	420,767	1,996,367	48,742	59,053	4,780,734
Uses									
Acquisition	280,000								280,000
Construction		420,767	420,767	420,767	420,767				1,683,069
Soft Costs	512,117								512,117
Financing Costs	63,089								63,089
Miscellaneous	60,307					18,000			78,307
Dev Fee	77,989					129,215	48,743	59,054	315,000
Reserves						90,105			90,105
TOTAL DEV. COSTS	993,502	420,767	420,767	420,767	420,767	237,319	48,743	59,054	3,021,686
Repay GP Bridge Loan						0			0
Repay Construction Loan						1,759,048	0		1,759,048
SUBTOTAL OTHER ITEMS	0	0	0	0	0	1,759,048	0	0	1,759,048
TOTAL USES OF FUNDS	993,502	420,767	420,767	420,767	420,767	1,996,367	48,743	59,054	4,780,734
Ending Cash	0	0	0	0	0	0	0	0	0

PLC - LTV
1,501,881
0
#DIV/0!

70000 subsidy per unit

50% Test used	55%
CLC Loan Amount	1,759,048
Eligible Basis plus Land	2,890,375
% of Construction Loan Participation	90%
MaineHousing Participation	1,589,706
MaineHousing Fee @ 1.5%	23,846

PROJECT FINANCING

Source		Amount	Rate	Amort Term	Lien	Annual D/S Yr. 1-5	Yr. 6-15	Yr. 16-30
Source 1	MSHA Subsidy	1,260,000	0.00%	30	First	0	0	0
Source 2	MSHA Interest-Only Mortgage	60,000	6.00%	30	First	3,600	3,600	4,317
Source 3	Conventional First Mortgage		1.00%	50	First	0	0	0
Source 4	NW debt	241,881	0.00%	30	First	0	0	0
Source 5	Other: Amortizing Loan 2	0	0.00%	15	Second	0	0	0
Source 6	Other: City FedHOME	522,448	0.00%	30	Second	0	0	0
Source 7	Other: City TIF	0					TIF loan	
Source 8	Other	0	0.00%	30	Unsecured		Cash Flow	
Source 9	Development Fee Loan	0			Unsecured		Cash Flow	
Source 10	Net Syndication	937,357	0.85					
	Capitalization Gap (Surplus)	0						
	Total	3,021,686						

COLLATERAL COVERAGE

		Total	Per Unit
	Projected Mortgage	60,000	3,333
70,000	Appraised Market Value	0	0
	Loan to Value Ratio	0%	
	Market Rent Differential	-128,328	(594)
	Supportable Mort.: Unrestricted	-1,723,670	(95,759)
	Subsidy per Unit		70,000
	Subsidy per Low Income Unit		70,000

	ODE	6 mos	RD	MH
debt	0			
oper exp	115,155			
	115,155	57,578	100,871	-43,294

PROJECT NAME: Washington Avenue Apartments DATE: 04/14/14
LOCATION: Portland, ME

PROPOSED RENT SCHEDULE								
				Program		Market		
			Rents from	Max Rents	Gross	Rent	Utility	Total
Type	AMI	# Units	Applicant	2010	Rent		Allow.	Rent
Efficiency	60% LIHTC	0		771	771		0	0
	50% LIHTC	6		668	668		0	48,096
	50% HOME	2		668	668		0	16,032
	40% LIHTC	10		535	535		0	64,200
18	Market							0
1BR	50% HOME					0	0	0
	50% LIHTC					0	0	0
	60% LIHTC					0	0	0
	60% LIHTC					0	0	0
0	Market					0	0	0
2BR	50% w/ RA					0	0	0
	50% w/ RA					0	0	0
	60% HOME					0	0	0
	60% LIHTC					0	0	0
0	Market					0	0	0
3BR	50% HOME					0	0	0
	50% LIHTC					0	0	0
	60% HOME					0	0	0
	60% LIHTC					0	0	0
0	Market							0
4BR	50% HOME					0	0	0
	50% LIHTC					0	0	0
	60% HOME					0	0	0
	60% LIHTC					0	0	0
0	Market							0
Other:								0
								0
Subtotals		18						128,328
			Vacancy Rate		5.00%			(6,416)
			Other Income		prop tax relief			8,524
			Other Income		laundry			750
			Effective Gross Income					131,186

AFFORDABLE MORTGAGE CALCULATION		
Effective Gross Income		131,186
Annual Operating Expense		115,155
Stabilized NOI		16,031
DSC	1.15	2,091
$ Avail for D/S		13,940
Other DS		0
Balance		13,940

BREAKEVEN ANALYSIS:	RENT SENSITIVITY	OCCUPANCY	
	Total		Annual
Operating Expense	115,155	Gross Revenues	137,602
Debt Service	3,600		
Breakeven Rent	550	Breakeven Occupancy	86%

	OPERATING EXPENSES			
			Annual	Monthly
	Expense	Annual	Per Unit	Per Unit
-771	Administrative Expenses:			
-668	Management Fees	8,500	472	39
	Management Charges	9,900	550	46
-535	Marketing Expenses	180	10	1
	Legal Expenses	400	22	2
	Auditing Expenses	5,500	306	25
	Bad Debts	0	0	0
	Other Administrative Expenses	225	13	1
	Administrative Expenses	24,705	1,373	114
(687)	Operating Expenses:			
	Janitorial Payroll		0	0
	Janitorial Supplies and Equipment		0	0
	Janitorial Contractual Services	5,500	306	25
	Fuel and Gas	6,000	333	28
	Electricity	12,100	672	56
	Water and Sewer	3,500	194	16
	Garbage and Trash Removal	1,800	100	8
	Vehicle and Equipment Expenses	0	0	0
	Other Operating Expenses		0	0
	Operating Expenses	28,900	1,606	134
	Maintenance Expenses:			
	Grounds Maintenance Payroll	0	0	0
	Grounds Tools and Supplies		0	0
	Grounds Contractual Services	1,100	61	5
	Miscellaneous Ground Maintenance	0	0	0
	Tenant Damage Charges - Grounds	0	0	0
	Building Maintenance Payroll	0	0	0
	Building Tools and Supplies	1,300	72	6
	Building Contractual Services	6,600	367	31
	Building Systems Maintenance	5,600	311	26
	Miscellaneous Building Maintenance	2,600	144	12
	Tenant Damage Charges - Building	0	0	0
	Maintenance Expenses	17,200	956	80
	General Expenses:			
	Property Taxes	21,500	1,194	100
	Property and Liability Insurance	5,000	278	23
	Common Aree Cable	780	43	4
	Tenant Service Expenses	8,970	498	42
	General Expenses	36,250	2,014	168
	Replacement Reserve Funding	8,100	450	38
	Commercial Expenses (if applicable)	0	0	0
	Total	115,155	6,398	533

PROJECT NAME: Washington Avenue Apartments   Date: 04/14/14
LOCATION: Portland, ME

PROFORMA OPERATING INCOME AND EXPENSE STATEMENT												
		3 Months					Yr 5					Yr 10
	9/30/15	12/31/15	12/30/16	12/30/17	12/30/18	12/31/19	12/30/20	12/30/21	12/30/22	12/31/23	12/30/24	12/30/25
Effective Gross Income		32,796	133,809	136,485	139,215	142,000	144,840	148,460	152,172	155,976	159,876	163,873
Less Operating Expense		28,789	118,610	122,168	125,833	129,608	133,496	137,501	141,626	145,875	150,251	154,759
Net Operating Income		4,008	15,200	14,318	13,382	12,392	11,343	10,959	10,546	10,101	9,625	9,114
Less RLP Repay		900	3,600	3,600	3,600	3,600	3,600	3,600	3,600	3,600	3,600	3,600
Less Other Repay		0	0	0	0	0	0	0	0	0	0	0
Cash Flow		3,108	11,600	10,718	9,762	8,792	7,743	7,359	6,946	6,501	6,025	5,514
Cash Flow per Unit		691	644	595	543	488	430	409	386	361	335	306
Debt Coverage Ratio(RLP)		4.45	4.22	3.98	3.72	3.44	3.15	3.04	2.93	2.81	2.67	2.53
Principal Balance(RLP)	1,320,000	#NUM!	#NUM!	#NUM!	#NUM!	#NUM!	#NUM!	#NUM!	#NUM!	#NUM!	#NUM!	#NUM!
Principal Balance(Other)	764,329	#NUM!	#NUM!	#NUM!	#NUM!	#NUM!	#NUM!	#NUM!	#NUM!	#NUM!	#NUM!	#NUM!
Operating Reserve Balance	59,378	62,346	65,464	68,737	72,174	75,782	79,572	83,550	87,728	92,114	96,720	101,556

488

3.44

Total Cash Flow
Projected over 12 Years

93,440

PROFORMA OPERATING INCOME AND EXPENSE STATEMENT, continued												
						Yr 15					Yr 20	
		12/30/26	12/31/27	12/30/28	12/30/29	12/30/30	12/31/31	12/30/32	12/30/33	12/30/34	12/31/35	12/30/36
Effective Gross Income		167,969	172,169	176,473	180,885	185,407	190,042	194,793	199,663	204,654	209,771	215,015
Less Operating Expense		159,401	164,183	169,109	174,182	179,408	184,790	190,334	196,044	201,925	207,983	214,222
Net Operating Income		8,568	7,985	7,364	6,702	5,999	5,252	4,459	3,619	2,729	1,788	793
Less RLP Repay		3,600	3,600	3,600	3,600	3,600	4,317	4,317	4,317	4,317	4,317	4,317
Less Other Repay		0	0	0	0	0	0	0	0	0	0	0
Cash Flow		4,968	4,385	3,764	3,102	2,399	935	143	(698)	(1,587)	(2,529)	(3,524)
Cash Flow per Unit		276	244	209	172	133	52	8	(39)	(88)	(140)	(196)
Debt Coverage Ratio(RLP)		2.38	2.22	2.05	1.86	1.67	1.22	1.03	0.84	0.63	0.41	0.18
Principal Balance(RLP)	#NUM!	1,319,263	1,318,481	1,317,650	1,316,769	1,315,833	1,314,839	1,313,784	1,312,663	1,311,474	1,310,211	1,308,871
Principal Balance(Other)	#NUM!	#NUM!	#NUM!	#NUM!	#NUM!	#NUM!	#NUM!	#NUM!	#NUM!	#NUM!	#NUM!	#NUM!
Operating Reserve Balance	101,556	106,633	111,965	117,563	123,442	129,614	136,094	142,899	149,346	155,226	160,459	164,958

PROFORMA OPERATING INCOME AND EXPENSE STATEMENT, continued										
		12/30/37	12/30/38	12/31/39	12/30/40	12/30/41	12/30/42	12/31/43	12/30/44	9/29/45
Effective Gross Income		220,390	225,900	231,548	237,336	243,270	249,352	255,585	261,975	201,393
Less Operating Expense		220,649	227,268	234,086	241,109	248,342	255,793	263,466	271,370	209,634
Net Operating Income		(258)	(1,368)	(2,539)	(3,773)	(5,072)	(6,441)	(7,881)	(9,395)	(8,240)
Less RLP Repay		4,317	4,317	4,317	4,317	4,317	4,317	4,317	4,317	3,238
Less Other Repay		0	0	0	0	0	0	0	0	0
Cash Flow		(4,575)	(5,685)	(6,855)	(8,089)	(9,389)	(10,758)	(12,198)	(13,712)	(11,478)
Cash Flow per Unit		(254)	(316)	(381)	(449)	(522)	(598)	(678)	(762)	(850)
Debt Coverage Ratio(RLP)		(0.06)	(0.32)	(0.59)	(0.87)	(1.18)	(1.49)	(1.83)	(2.18)	(2.55)
Principal Balance(RLP)	1,308,871	1,307,448	1,305,937	1,304,332	1,302,629	1,300,821	1,298,901	1,296,863	1,294,699	1,292,402
Principal Balance(Other)	#NUM!	#NUM!	#NUM!	#NUM!	#NUM!	#NUM!	#NUM!	#NUM!	#NUM!	#NUM!
Operating Reserve Balance	164,958	168,631	171,377	173,091	173,656	172,949	170,839	167,183	161,830	158,444

4/10/2014
Original Assessed Value as of 4/1/13: $155,600 (Land and Building)
Estimated Assessed Value at construction completion (8/2015): $1,000,000
Captured Assessed Value: $844,400
50% Capture over 20 years, with that 50% to Business Project Account; 50% uncaptured to General Fund.

Exhibit C1: City of Portland- TIF Projection Table for 134 Washington Avenue

TIF Year	Tax Year-April 1	Increased Assessed Value Real Prop.	% of Value Captured	Captured Valuation	Projected Mill Rate	Total Projected New Taxes Captured	Captured Revenue (50%) to Business Project Account	Captured Revenue (25%) to Municipal Project Account	City Non-Captured (25%) General Fund Revenues
1	2015	$844,400	50.00%	$422,200	20.19	$8,524	$8,524	$0	$8,524
2	2016	$844,400	50.00%	$422,200	20.59	$8,695	$8,695	$0	$8,695
3	2017	$844,400	50.00%	$422,200	21.01	$8,869	$8,869	$0	$8,869
4	2018	$844,400	50.00%	$422,200	21.43	$9,046	$9,046	$0	$9,046
5	2019	$844,400	50.00%	$422,200	21.85	$9,227	$9,227	$0	$9,227
6	2020	$844,400	50.00%	$422,200	22.29	$9,411	$9,411	$0	$9,411
7	2021	$844,400	50.00%	$422,200	22.74	$9,600	$9,600	$0	$9,600
8	2022	$844,400	50.00%	$422,200	23.19	$9,792	$9,792	$0	$9,792
9	2023	$844,400	50.00%	$422,200	23.66	$9,987	$9,987	$0	$9,987
10	2024	$844,400	50.00%	$422,200	24.13	$10,187	$10,187	$0	$10,187
11	2025	$844,400	50.00%	$422,200	24.61	$10,391	$10,391	$0	$10,391
12	2026	$844,400	50.00%	$422,200	25.10	$10,599	$10,599	$0	$10,599
13	2027	$844,400	50.00%	$422,200	25.61	$10,811	$10,811	$0	$10,811
14	2028	$844,400	50.00%	$422,200	26.12	$11,027	$11,027	$0	$11,027
15	2029	$844,400	50.00%	$422,200	26.64	$11,248	$11,248	$0	$11,248
16	2030	$844,400	50.00%	$422,200	27.17	$11,472	$11,472	$0	$11,472
17	2031	$844,400	50.00%	$422,200	27.72	$11,702	$11,702	$0	$11,702
18	2032	$844,400	50.00%	$422,200	28.27	$11,936	$11,936	$0	$11,936
19	2033	$844,400	50.00%	$422,200	28.84	$12,175	$12,175	$0	$12,175
20	2034	$844,400	50.00%	$422,200	29.41	$12,418	$12,418	$0	$12,418
20 Year TIF Total		**$16,888,000**		**$8,444,000**		**$207,116**	**$207,116**	**$0**	**$207,116**

Exhibit C2: Tax Shifts-Avoided Formula Impacts from Sheltering of Valuation: City of Portland TIF Model for 134 Washington Avenue

Model based on 20-Yr Term and 50% Captured Value to Developer Project Account; 50% to General Fund

TIF Year	Tax Year-April 1	Total Added Valuation	Sheltered Valuation	Avoided Formula Impacts from Sheltering of Valuation			
				Avoided Loss of State Aid to for Education	Avoided Loss of State Municipal Revenue Sharing	Avoided Increase in County Tax	Total Avoided Impacts
1	2015	$844,400	$422,200	$3,154	$435	$199	$3,787
2	2016	$844,400	$422,200	$3,154	$435	$199	$3,787
3	2017	$844,400	$422,200	$3,154	$435	$199	$3,787
4	2018	$844,400	$422,200	$3,154	$435	$199	$3,787
5	2019	$844,400	$422,200	$3,154	$435	$199	$3,787
6	2020	$844,400	$422,200	$3,154	$435	$199	$3,787
7	2021	$844,400	$422,200	$3,154	$435	$199	$3,787
8	2022	$844,400	$422,200	$3,154	$435	$199	$3,787
9	2023	$844,400	$422,200	$3,154	$435	$199	$3,787
10	2024	$844,400	$422,200	$3,154	$435	$199	$3,787
11	2025	$844,400	$422,200	$3,154	$435	$199	$3,787
12	2026	$844,400	$422,200	$3,154	$435	$199	$3,787
13	2027	$844,400	$422,200	$3,154	$435	$199	$3,787
14	2028	$844,400	$422,200	$3,154	$435	$199	$3,787
15	2029	$844,400	$422,200	$3,154	$435	$199	$3,787
16	2030	$844,400	$422,200	$3,154	$435	$199	$3,787
17	2031	$844,400	$422,200	$3,154	$435	$199	$3,787
18	2032	$844,400	$422,200	$3,154	$435	$199	$3,787
19	2033	$844,400	$422,200	$3,154	$435	$199	$3,787
20	2034	$844,400	$422,200	$3,154	$435	$199	$3,787
20 Year TIF Total		$16,888,000	$8,444,000	$63,077	$8,694	$3,971	$75,742

This model is based on 50% of incremental valuation captured within the TIF District for 20 years going to the Developer Project Account and 50% going to the Municipal General Fund.

4/10/2014

CITY OF PORTLAND

134 WASHINGTON AVENUE AFFORDABLE HOUSING DEVELOPMENT DISTRICT

DEVELOPMENT PROGRAM

TABLE OF CONTENTS

<u>134 Washington Avenue Affordable Housing Development District Development Program</u>

134 Washington Avenue Affordable Housing Development District Development Program

Article I. Introduction and Summary of Benefits.

A. Affordable Housing Development District. This Development Program provides for the creation of an Affordable Housing Development District located at 134 Washington Avenue at the corner of Washington Avenue and Fox Street in Portland. The area includes approximately .23 acres. By providing for the reinvestment of a portion of the new or incremental tax revenues in the District, the District will provide an impetus for affordable housing development within the District and the development of affordable, livable housing and the containment of the costs of unplanned growth in the City.

B. Benefits of the District.

1. Affordable Housing. This Development Program will provide for the development of affordable housing in the City and the containment of the costs of unplanned growth.

2. No City Bonds or Risks. The District will not involve any borrowings by or the issuance bonds of the City to pay for any of the costs of the Development Program and will not affect existing tax revenues in any way.

3. Additional Tax Revenues. Creation of the District and Development Program will result in additional tax revenues for the City.

4. Shelter of New Tax Base Growth. The captured assessed value of the District will be sheltered from the otherwise negative impacts of new development that result in increased county taxes and loss of State aid to education and revenue sharing when new development occurs without the creation of a Affordable Housing Tax Increment Financing District. The sheltered portion of the tax increment revenues will be used to pay Project Costs.

Article II. Development Program Narrative and Designation of the District.

Section 2.01: Statement of Means and Objectives. The City of Portland ("the City"), like many other Maine municipalities, desires to provide affordable housing in the City and to contain costs of unplanned growth by providing the facilities described in this Development Program.

In order to fulfill these goals, certain property has been proposed as the 134 Washington Avenue Affordable Housing Development District (the "District"). The Development Program described herein will serve the purpose of administering the District as an Affordable Housing Development District pursuant to Chapter 206, subchapter 3 of Title 30-A of the Maine Revised Statutes, as amended (the "Development Program"). Upon approval by the City of Portland designating the District and adoption of this Development Program by the City, the designation of the District and adoption of the Development Program will become final immediately, subject only to approval by the Director of the Maine State Housing Authority. The Development Program provides for affordable housing similar in some respects to the economic development incentives called municipal tax increment financing ("TIF") similar to that adopted by a number of other Maine municipalities including the City. An Affordable Housing Development District involves the creation of a geographically defined district in the City and the "capture" or reinvestment of some of the new increased or "incremental" tax revenues generated on the increased assessed value of property in the District to pay certain costs of the development.

The District is designed to stimulate development of affordable housing in the City by allocating certain tax revenues generated on the increased assessed value in the District to Project Costs, consisting of allowable operating costs per 30-A M.R.S.A. §5249 and described in Section 2.03 hereof by Avesta Washington Ave, LP, its successors and assigns (the "Developer"). Under the Development Program, the City will make portions of the tax increment revenues as set forth in Section 3.04 hereof and under the Credit Enhancement Agreement attached hereto as Exhibit E hereto from the District available to the Developer pursuant to such Credit Enhancement Agreement (the "Credit Enhancement Agreement"). These revenues will be used either to pay or reimburse the Developer for Project Costs per Section 2.03 directly. All additional Project Costs will be the responsibility of the Developer, its successors or assigns. All tax increment revenues following expiration of the term of the Credit Enhancement Agreement will go directly into the City's general fund.

The District will result in significant new tax revenues for the City.

The Development Program thus will provide significant public benefit to the City by providing for the development of affordable housing in the City and for new tax revenues. The means and objectives of the Development Program are to provide: financial assistance towards Project Costs, and the development of affordable housing in the City.

The City, by adopting this Development Program, finds that the Development Program described herein, including the Capital Project, will provide substantial affordable housing in the City, thereby accomplishing an important public purpose.

Section 2.02: Brief Discussion of Financial Plan. The following is a brief summary of the Financial Plan. The Financial Plan is set forth in greater detail in Article III of this Development Program. As described in Section 3.04 hereof and Exhibit A hereof, the property taxes assessed by the City upon the Increased Assessed Value of property in the District (the "Tax Increment") resulting from the investments by the Developer will be captured or used by the City under the Development Program to pay Project Costs described in Section 2.03 hereof. The development costs and sources and uses of funds associated with the Development Program within the District are described in Article III. The Project Costs and any continuing investment by Developer will be financed by Developer through equity of the Developer, its successors or assigns and the tax increment revenues from the District. As part of the Development Program, the City and Developer will enter into a Credit Enhancement Agreement pursuant to which the City will pay to Developer the percentage of all municipal Tax Increment Revenues from all property taxes with respect to property in the District, described herein as the Tax Increment Revenues (Developer's Share) for the term of the District to pay Project Costs related thereto. All tax revenues from the District not payable to Developer under the Credit Enhancement Agreement will be paid to the General Fund of the City. Any tax revenues presently generated on existing property in the District will continue to be paid to the General Fund of the City. The Development Program costs will be paid only from the Tax Increment on assessed value produced by new development in the District occurring after the tax year ending on the March 31st prior to adoption of this Development Program.

Section 2.03: Project Costs Descriptions. A. Project General Description. The Capital Project at 134 Washington Avenue involves the redevelopment of approximately .23 acres at Washington Avenue and Fox Street, Portland, into an affordable housing neighborhood. The objective of the project is that 100% of the units in the District will be affordable housing, meaning a decent, safe and sanitary dwelling, apartment or other living accommodation for a household whose income does not exceed 50% of the median income for the area as defined by the United States Department of Housing and Urban Development. This project consists of 18 units of low income housing tax credit apartments, the targeting for those units will be 56% of the units at 40% Area Median Income and 44% of the units at

50% Area Median Income. The zoning for the project assures that this number of units and this affordability objective will be met.

The project includes the new construction of 18 efficiency apartments in one elevator building.

The 134 Washington Avenue project is projected to have a total local increased assessed valuation at build out of approximately $1,000,000 based upon current real estate values and City assessment practices. Based upon the estimated tax rate upon completion, the project will pay approximately $17,048 in increased property taxes to the City in year 3 at full build out. A portion of this new revenue would be offset by increased county taxes and reduced state revenue sharing and education funding resulting from the increased state valuation, were it not included in a Development District.

"Project Costs" as defined in Title 30-A, Chapter 206, Section 5249 of the Maine Revised Statutes will include operating costs, including but not limited to property management and administration, utilities, routine repairs and maintenance, insurance, real estate taxes and funding of a projects capital reserve account.

B. Need for the Affordable Housing TIF. The annual $8,524 (projected to increase as set forth in Exhibit A) Developer's Share of the Tax Increment Revenue is designated to pay operating costs for the project at 134 Washington Avenue. The Tax Increment Revenue described in section 3.04 will help pay for operating costs over a period of twenty (20) years. Without the TIF and these other funding sources the project could not go forward.

The Municipal Affordable Housing Development District law enacted by the Maine Legislature in 2003 creates an opportunity to fill this gap in the project financing through the mechanism of the TIF program. The program operates essentially the same way that the traditional commercial TIF program has with a few exceptions. The Affordable Housing TIF program is administered by the Maine State Housing Authority.

Section 2.04: Relocation Plan. No businesses or persons will be displaced or relocated as a result of the development activities proposed in the District.

Section 2.05: Environmental Controls. All environmental controls required by law shall apply to development in the District, including any applicable requirements of the City of Portland Zoning Ordinance and all applicable State and Federal environmental laws and regulations.

Section 2.06: District Operation. The day-to-day operations of the District will require no substantial efforts by the City. The Developer, its successor or assigns, will operate the improvements constructed by Developer and pay all maintenance and operational expenses of its facilities. The City, however, will be responsible for maintenance and operation of any part of the District that become a public road or other public facility

Section 2.07: Assurance of Compliance. The City hereby determines that the District and this Development Program complies with the provisions of 30-A M.R.S.A. § 4349-A (growth management). The proposed development in the District is consistent with the Comprehensive Plan for the City of Portland which includes the City's Housing Plan, which calls for additional affordable housing in the City.

Section 2.08: Program Duration. The duration of the District will be 20 years from the designation of the District and the effective date of the approval of the District by the Director of the Maine State Housing Authority.

Section 2.09: Approval Considerations and Characteristics of the District. A. Statutory Considerations for Approval. Before designating the District and before establishing this Development Program, the City has considered any evidence presented at such public hearing and has considered whether the District and Development Program will contribute to the expansion of affordable housing opportunities within the City and to the betterment of the health, welfare or safety of the inhabitants of the City. The City hereby determines and finds that the District created hereunder and this Development Program will make a contribution to the expansion of affordable housing opportunities within the City and the betterment of the health, welfare or safety of its inhabitants, constituting good and valid public purposes and that any adverse economic effect on or detriment to any existing property interests is outweighed by the contribution made by the District and the Development Program to the availability of affordable housing within the City and to the betterment of the health, welfare and safety of its inhabitants.

B. Statutory Conditions for Approval; Physical Characteristics. The City hereby finds and determines that the District satisfies the conditions imposed under Chapter 206, subchapter 3 of Title 30-A of the Maine Revised Statutes, as amended, as a prerequisite to designation of the District, including those relating to the physical description of the District and to certain financial and statistical information as follows:

(i) All of the land in the District is suitable for residential uses, is zoned for residential uses, and is in need of rehabilitation or redevelopment and therefore at least 25%, by area, of the real property within the District meets at least one of the following statutory criteria: (1) be suitable for residential use; (2) be a blighted area; or (3) be in need of rehabilitation or redevelopment;

(ii) The total area of the District is approximately .23 acres and thus such area represents less than 2% of the total acreage of the City. The total area of the District and the total area of all development districts in the City (which combined total is 193.288 acres) is 1.56% of the total acreage of the City and thus does not exceed 5% of the total acreage of the City; the total area of all existing and proposed affordable housing development districts in the City is 0.0135% of the total acreage of the City and does not exceed 5% of the total acreage of the City;

(iii) The Original Assessed Value of the District is as set forth in Exhibit D hereto and the Original Assessed Value of all existing and proposed affordable housing development districts within the City is $1,271,850 and such amount of Original Assessed Value does not exceed 5% of the total value of taxable property within the City as of April 1st preceding the date of the designation of the District;

(iv) The aggregate value of municipal general obligation indebtedness financed by the proceeds from affordable housing development districts within Cumberland County does not exceed $50,000,000 adjusted by a factor equal to the percentage change in the United States Bureau of Labor Statistics Consumer Price Index, United States City Average from January 1, 2002 to the date of calculation; and

C. Community Housing Need. The City finds that this Capital Program will meet a community housing need identified in the City's Housing Plan and Comprehensive Plan. The Credit Enhancement Agreement provides a mechanism to ensure the ongoing affordability for a period of at least 30 years for rental units, which mechanism is the Declaration attached hereto as Exhibit I. The District is primarily a residential development on which 100% of the dwelling units will be affordable housing and that may be designed to be compact and walkable and to include internal open space, other common open space and one or more small-scale nonresidential uses of service to the residents of the development. The Developer and the City shall comply with any rules adopted by the Maine State Housing Authority and with any conditions of approval imposed by the Maine State Housing Authority following designation of the District. The City shall report annually to the Director of the Maine State Housing Authority regarding the status of the District, including the following matters as required by law: (a) certify that the public purpose of the District is being met; (b) account for any sales of property within the District; and (c) certify that rental units within the District remain affordable.

Section 2.10: Designation of the District. The City, by adoption of this Development Program, hereby designates the 134 Washington Avenue Affordable Housing Development District as an Affordable Housing Development District and as an Affordable Housing Tax Increment Financing District. A plan depicting the District is attached hereto as Exhibit C and the District is further described therein.

Article III. Financial Plan.

Section 3.01: Cost Estimates for the Development Program. The estimated expenses of the Project Costs are set forth in Exhibit B.

Section 3.02: Amount of Indebtedness to be Incurred. The City will not incur any indebtedness in connection with the Development Program. The Development Program will be financed through a combination of funds of the Developer, its successors and assigns, various loans and the Tax Increment of the District.

Section 3.03: Sources of Anticipated Revenues. The source of the revenue to be used to pay the Project Costs of this Development Program is the Tax Increment on the Increased Assessed Value of the District. Tax Increment means all Property Taxes assessed by the City, in excess of any state, county or special district tax, upon the Increased Assessed Value of all property in the District. Increased Assessed Value means the valuation amount by which the Current Assessed Value of the District exceeds the Original Assessed Value of the District. Current Assessed Value means the assessed value of the District certified by the municipal assessor as of April 1st of each year that the District remains in effect. Property Taxes means any and all ad valorem property taxes levied, charged or assessed against property by the City or on its behalf.

Original Assessed Value means the assessed value of the District as of March 31, 2014. Attached hereto as Exhibit D is the anticipated form of certification of Original Assessed Value by the Assessor of the City of Portland in accordance with the requirements of Title 30-A § 5250-A of the Maine Revised Statutes. All Property Tax on the Original Assessed Value shall continue to be deposited in the general fund of the City.

The City will deposit the Tax Increment Revenues (Developer's Share) as described in Section 2.02 and Section 3.04 hereof and in Exhibit A into the Developer's Project Cost Account of the Affordable Housing Development Program Fund and pay such Tax Increment (Developer's Share) to Developer in accordance with the terms of the Credit Enhancement Agreement to be entered between the City and the Developer.

Section 3.04: Estimated Increased Assessed Value; Portion Applied to Development Program. The percentage of the Increased Assessed Value of the District to be retained as Captured Assessed Value in each year is 50%. Such Captured Tax Increment Revenues will be returned to the Developer each year in the manner described below.

The Tax Increment Revenues (Developer's Share) to be paid to the Developer each year during the term of this Development Program will be an amount which shall be captured and retained to reimburse the Developer for Project Costs pursuant to the Credit Enhancement Agreement. The Tax Increment Revenues (Developer's Share) shall be equal to the corresponding fiscal year's projected allocation percentage for each payment according to Exhibit A, but Developer's Share will be the entire amount of the 50% of captured revenue. The percentage determination of the Tax Increment Revenues (Developer's Share) as determined as described above shall apply regardless whether the actual Tax Increment Revenues are more or less than the estimated or projected Tax Increment Revenues set forth in Exhibit A.

"Tax Shift Formulas" mean the formulas utilized by the State of Maine in calculating: (a) the county tax payable in accordance with 30-A M.R.S.A. § 706 and 36 M.R.S.A. §§ 305(1), 381, as amended, and any successor provisions; (b) the municipal revenue sharing distribution of the Local Government Fund in accordance with 30-A M.R.S.A. §5681, as amended, and any successor provision, provided, however, that distribution of the Disproportionate Tax Burden Fund (the Revenue II fund), if any, shall not be taken into consideration in such calculation since taxes assessed on captured value within a tax increment financing district are included in the amounts of the property assessed in determining allocations of such Disproportionate Tax Burden Fund; and (c) State aid to education, including aid for total operating costs, total program cost allocation (taking into account the maximum local share or circuit breaker) and total debt service cost allocation (taking into account the maximum local share or circuit breaker), but not taking into account any hold harmless or hardship cushion that results in additional State aid to education to the prior years level even through the calculation would have resulted in a reduction, all as computed in accordance with Maine Department of Education Form ED 261 or any successor form.

The amount of Tax Increment from the total Increased Assessed Value that is to be paid each year to the Developer under Credit Enhancement Agreement to pay or reimburse Project Costs is hereinafter called the "Tax Increment Revenues (Developer's Share)."

The table attached hereto as Exhibit A also sets forth: (i) the annual estimates of the Increased Assessed Value of the District resulting from implementation of the Development Program; (ii) the estimated annual Tax Increment Revenues per year on the Increased Assessed Value following implementation of the Development Program, stated respectively as (a) a total, and (b) the estimated amount of the Tax Increment Revenues (Developer's Share)

Based on the manner in which Tax Increment Revenues (Developer's Shares) are defined, a share of the incremental property tax revenues derived from the increased valuation will be returned to the Developer to cover the Project Costs as described in Section 2.03 hereof.

To comply with the provisions of the State of Maine, the Credit Enhancement Agreement includes a provision for the recapture of certain amounts relating to any affordable rental housing units that are not maintained as affordable for a period of at least thirty years.

The amount of the Tax Increment Revenues on the Increased Assessed Value of all property in the District for each year during the term of the District to be allocated and paid to the Developer each year pursuant to the Credit Enhancement Agreement shall be equal to the product for each year during the term of the District of (a) the relevant Developers Percentage Allocation of the Tax Increment (Developer

Share) for each year as computed as described above, times (b) the actual amount of the Tax Increment for each year. Such percentage allocations shall apply regardless of whether the actual Tax Increment Revenues each year are more or less than the Tax Increment Revenues as estimated or projected in Exhibit A of this Development Program, provided that in no fiscal year will the Developer's Share be less than 50% of the captured revenue through the term of the District.

An Affordable Housing Development Program Fund shall be established by the City consisting of a Project Cost Account. The Project Cost Account shall consist of the Developer's Project Cost Account (the "Developer's Project Cost Account"). The Developer's Project Cost Account will be pledged to and charged with payment of amounts due to Developer under the Credit Enhancement Agreement. Upon receipt of each payment of property tax with respect to property in the District, the City shall deposit into the Developer's Project Cost Account according to the terms of the Credit Enhancement Agreement that portion of each payment constituting the percentage of total actual Tax Increment for such year equal to the Tax Increment Revenues (Developer's Share). The amounts in the Developer's Project Cost Account shall be used and applied solely to fund the payments to Developer under the Credit Enhancement Agreement.

Section 3.05: Description of Terms and Conditions of Agreements. A description of the terms and conditions of the agreements, contracts and obligations to be entered into by the City is set forth in the Credit Enhancement Agreement to be entered into by the City and the Developer which will be substantially in the form attached hereto as Exhibit E. The Credit Enhancement Agreement sets forth the obligations of the City to pay to Developer each year during the term of that Agreement Tax Increment Revenues (Developer's Share) from all Property Tax with respect to all property in the District, as provided in such Credit Enhancement Agreement.

Section 3.06: Calculation of Tax Shifts. In accordance with Maine statutes governing the establishment of affordable housing development districts, Exhibit F identifies the estimated tax shifts which will result during the term of the District from the establishment of the District, using formulas approved by the Director of the Maine State Housing Authority. Exhibit F also contains a summary of the methodology and calculations utilized in calculating such estimated tax shifts.

The 134 Washington Avenue project will pay property taxes to the City based upon the local assessed valuation of the project and the City's annual tax rate. Exhibit A shows the estimated property taxes that will be paid by the project over the next 20 years based upon the estimated local assessed valuation and the estimated tax rate of $20.19/$1000 for the first year of the District. The amount of property taxes paid by owners of property in the District to City will be the same whether the project is included in a TIF district or not.

If the project is not part of a TIF, some of these new tax revenues will be offset by what are commonly called tax shifts. Since the City's total state valuation will be higher as a result of the project, its share of Cumberland County taxes will increase. The increased valuation and population will change the amount the City receives in State Revenue Sharing. The increased valuation and increased school enrollment will change the amount the City receives in state education aid.

Exhibit F thus shows the estimated amount of these tax shifts compared to what they would be if the new valuation is "sheltered' in a TIF and, therefore, does not get counted in the City's state valuation that is used in calculating county tax, revenue sharing and state education aid.

The actual extent and amount of the tax shifts can vary from this estimate since they are controlled by factors outside the City's control such as the rate of increase in the County budget, the amount of state sales and income tax collected, the amount of funding provided by the state for education aid, and the formula used to distribute that aid. So the extent and value of the shifts could be more or less than estimated.

Article IV. Municipal Approvals.

Section 4.01: Public Hearing. Before designating the District, the City legislative body of the City held a public hearing. Notice of the hearing was published on June 2, 2014, a date that was at least 10 days before the hearing, in The Portland Press Herald, a newspaper of general circulation within the City. Attached hereto as Exhibit G is a copy of the Notice of Public Hearing. The Public hearing was held in accordance with the requirements of 30-A M.R.S.A. § 5250 on June 16, 2014. At the public hearing, interested parties were given a reasonable opportunity to present testimony concerning the District and the Development Program.

Section 4.02: Authorizing Votes. Attached as Exhibit H is a copy of the Orders proposed for adoption by the City Council of the City of Portland at a meeting thereof duly called and held on June 16, 2014 designating the District and adopting the Development Plan.

The undersigned, being the City Manager of the City of Portland, certifies that all of the information contained herein is true and correct to the best of my knowledge.

Dated: June ________, 2014

____
Mark H. Rees, City Manager, City of Portland

O:\HCD\HCD Staff\Mary\AHTIF\134 Washington Avenue\134 Washington Avenue Development Program 05.15.14.doc

Exhibit B
ESTIMATED DEVELOPMENT COSTS

	Annual Costs		Tax Increment	Private Funds/Equity/Banks	Other	Total
DEVELOPER'S SHARE						
Project Operating Costs		$ 115,155	8,524		$ 106,631	$ 115,155
Administrative Expenses:		$ 24,705				
Management Fees	$ 8,500					
Management Charges	$ 9,900					
Marketing Expenses	$ 180					
Legal Expenses	$ 400					
Auditing Expenses	$ 5,500					
Other	$ 225					
Operating Expenses		$ 28,900				
Janitorial Payroll	$ -					
Janitorial Supplies and Equipment	$ -					
Janitorial Contractual Services	$ 5,500					
Natural Gas	$ 6,000					
Electricity	$ 12,100					
Water and Sewer	$ 3,500					
Garbage and Trash Removal	$ 1,800					
Vehicle & Equipment Expenses	$ -					
Other	$ -					
Maintenance Expenses		$ 17,200				
Grounds Maintenane Payroll	$ -					
Grounds Tools and Supplies	$ -					
Grounds Contractual Services	$ 1,100					
Misc Ground Maintenance	$ -					
Tenant Damage Charges - Grounds	$ -					
Building Maintenance Payroll	$ -					
Building Tools and Supplies	$ 1,300					
Building Contractual Services	$ 6,600					
Building Systems Maintenance	$ 5,600					
Misc Building Maintenance	$ 2,600					
Tenant Damage Charges - Building	$ -					
General Expenses		$ 36,250				
Property Taxes	$ 21,500					
Property and Liability Insurance	$ 5,000					
Common Area Cable	$ 780					
Tenant Service Expenses	$ 8,970					
Replacement Reserve Funding	$ 8,100	$ 8,100				

Legal Description
134 Washington Avenue, Portland, Maine

A certain lot or parcel of land, with the buildings thereon, situated in Portland, County of Cumberland, State of Maine, on the westerly side of Washington Avenue a distance northerly of 26.9 feet from the corner formed by the intersection of the westerly side of Washington Avenue with the northerly side of Fox Street; thence from said point of beginning running westerly at right angles to Washington Avenue 72 ¼ feet to a point and other land of Annie Ryan; thence northerly parallel to Washington Avenue 37 feet, more or less, to land now or formerly of the Potter heirs; thence easterly adjoining said Potter heirs' land 72 ¼ feet to the westerly side of said Washington Avenue; thence southerly by the westerly side of Washington Avenue 37 feet, more or less, to the point of the beginning.

Also another lot or parcel of land, in said Portland, County of Cumberland, State of Maine, described as follows:

Land on the west side of Washington Avenue, Nos. 138-140, Portland, Maine, City Assessor's Plan, Plan Book 12, Block E, Lot 6.

Meaning and intending to describe and convey the same premises as conveyed to Avesta Housing Development Corporation by Warranty Deed of Debra L. DiBiase dated May 6, 2013 and recorded in the Cumberland County Registry of Deeds in Book 30618, Page 111.

Order 256-13/14
Tab 17 - 6-2-14

CITY OF PORTLAND
IN THE CITY COUNCIL

ORDER APPROVING AND AUTHORIZING THE CITY MANAGER TO ENTER INTO THE 134 WASHINGTON AVENUE CREDIT ENHANCEMENT AGREEMENT WITH AVESTA WASHINGTON AVE. LP

ORDERED, that the credit enhancement agreement between the City of Portland and Avesta Washington Ave. LP related to the 134 Washington Avenue Affordable Housing Tax Increment Financing District is hereby approved and the City Manager be authorized to sign the agreement in substantially the same form as attached hereto and any other related documents that are necessary or convenient to carry out the intent of said agreement..

CREDIT ENHANCEMENT AGREEMENT

This Credit Enhancement Agreement, dated as of June _______, 2014, between the City of Portland, Maine, a municipal body corporate and politic and a political subdivision of the State of Maine (the "City"), and Avesta Washington Ave. LP, a Maine limited partnership (the "Developer").

WITNESSETH THAT

WHEREAS, the City designated the 134 Washington Avenue Affordable Housing Development District (the "District") pursuant to Chapter 206, subchapter 3 of Title 30-A of the Maine Revised Statutes, as amended, by vote of the City Council at a meeting held on June 16, 2014 and pursuant to the same City Council Meeting action adopted a development program and financial plan for the District (the "Development Program"), and

WHEREAS, the Director of the Maine State Housing Authority has reviewed and approved the District and the Development Program, and

WHEREAS, the Development Program contemplates the execution and delivery of a credit enhancement agreement between the City and the Developer and the City approved the execution and delivery of a credit enhancement agreement as described in the Development Program pursuant to such City Council Meeting approval and a resolution of the Municipal Officers, adopted June 16, 2014 by vote of the City Council and the City and the Developer desire and intend that this Credit Enhancement Agreement be and constitute the Credit Enhancement Agreement contemplated by and described in the Development Program;

NOW, THEREFORE, in consideration of the foregoing and in consideration of the mutual promises and covenants set forth herein, the parties hereby agree as follows:

ARTICLE I: DEFINITIONS

Section 1.1. Definitions. The terms defined in this Article I shall, for all purposes of this Agreement, have the meanings herein specified, unless the context clearly requires otherwise:

"Affordable Housing Development Program Fund" means the Affordable Housing Development Program Fund described in Article III of the Development Program and established and maintained pursuant to Article II hereof.

"Agreement" means this Credit Enhancement Agreement between the City and the Developer.

"Captured Assessed Value" means the amount, stated as percentages or stated sums, of the Increased Assessed Value that is utilized from year to year to finance the Capital Program and Public Improvements described in the Development Program; the Captured Assessed Value of the District shall be 50% of the Increased Assessed Value.

"City" means the City of Portland, Maine, a municipality duly organized and existing under the laws of the State of Maine, its successors and assigns.

"Current Assessed Value" means the assessed value of the District certified by the municipal assessor as of April 1st of each year that the District remains in effect.

"Developer" means Avesta Washington Ave. LP, its successors and assigns.

"Development Program" means the Development Program for the District as adopted by the City at a meeting of the City Council held on June 16, 2014, 2014.

"District" means the 134 Washington Avenue Affordable Housing Development District designated by the City pursuant to Chapter 206, subchapter 3 of Title 30-A of the Maine Revised Statutes, as amended, by vote of its City Council at a meeting held on June 16, 2014.

"Financial Plan" means the financial plan described in Article III of the Development Program.

"Fiscal Year" means July 1 to June 30 each year or such other fiscal year as the City may establish.

"Increased Assessed Value" means the valuation amount by which the Current Assessed Value of the District exceeds the Original Assessed Value of the District. If the Current Assessed Value is equal to or less than the Original Assessed Value, there is no Increased Assessed Value.

"Original Assessed Value" means the assessed value of the District as of March 31, 2014, which amount was One Hundred Fifty-Five Thousand Six Hundred Dollars ($155,600).

"Project" means the design, planning, development, acquisition, construction, financing and installation of the Development Program as described in Section 2.03 of said Development Program.

"Project Costs" means any expenditures or monetary obligations incurred or expected to be incurred that are authorized by section 5249 of title 30-A of the Maine Revised Statutes and included in the Development Program.

"Project Cost Account" means the Developer's Project Cost Account described in Article III of the Development Program and established and maintained pursuant to Article II of this Agreement.

"Property Taxes" means any and all ad valorem property taxes levied, charged or assessed against real estate in the District by the City or on its behalf.

"Qualified Investments" means any and all securities, obligations or accounts in which municipalities may invest their funds under applicable Maine law.

"Tax Increment" means all Property Taxes assessed by the City, in excess of any state, county or special district tax, upon the Increased Assessed Value of all property in the District.

"Tax Increment Revenues (Developer's Share)" means that percentage of the Tax Increment with respect to real estate now or hereafter located in the District retained pursuant to the terms of the Development Program to pay Project Costs of the Capital Program, and which amount is to be deposited each year during the term of this Agreement in the Developer's Project Cost Account to fund payments to the Developer due pursuant to this Agreement. The Tax Increment Revenues (Developer's Share) is fifty percent (50%). The Tax Increment Revenues (Developer's Share) will be calculated each year as more particularly described herein and in Exhibit A of the Development Program and will be based on the Increased Assessed Value of the District which percentage or amount shall be captured and retained to pay to the Developer the costs of the Capital Program described in the Development Program.

"Tax Shift" means the sum of the following amounts as calculated under the Tax Shift Formulas, as hereafter defined: (a) the difference between (i) the county tax payable by the City if the Captured

Assessed Value that under the then existing Tax Shift Formulas is not included in the actual calculation of County Tax were included in the City's valuation in calculating the county tax, and (ii) the county tax payable by the City to the extent that the Captured Assessed Value is excluded from the City's valuation in calculating the county tax; plus (b) the difference between (i) the State aid to education that would be received by the City if the Captured Assessed Value that under the then existing Tax Shift Formulas is not included in the actual calculation of State aid to education were included in the City's valuation in calculating State aid to education, and (ii) the State aid to education that received by the City to the extent that the Captured Assessed Value is excluded from the City's valuation in calculating such amounts of State aid to education; plus (c) the difference between (i) the State revenue sharing that would be received by the City if the Captured Assessed Value that under the then existing Tax Shift Formulas is not included in the actual calculation of State revenue sharing were included in the City's valuation in calculating the amount of State revenue sharing, and (ii) the State revenue sharing received each year to the extent that the Captured Assessed Value is excluded in the City's valuation in calculating such amounts of revenue sharing. Examples of the calculation of the estimated Tax Shifts based on the current Tax Shift Formulas are attached as Exhibit F to the Development Program.

"Tax Shift Formulas" means the formulas utilized by the State of Maine in calculating (a) the county tax payable in accordance with 30-A M.R.S.A. § 706 and 36 M.R.S.A. §§ 305(1), 381, as amended, and any successor provisions; (b) the municipal revenue sharing distribution of the Local Government Fund in accordance with 30-A M.R.S.A. §5681, as amended, and any successor provision, provided, however, that distribution of the Disproportionate Tax Burden Fund (the Revenue II fund), if any, shall not be taken into consideration in such calculation since taxes assessed on captured value within a tax increment financing district are included in the amounts of the property assessed in determining allocations of such Disproportionate Tax Burden Fund; and (c) State aid to education, including aid for total operating costs, total program cost allocation (taking into account the maximum local share or circuit breaker) and total debt service cost allocation (taking into account the maximum local share or circuit breaker), but not taking into account any hold harmless or hardship cushion that results in additional State aid to education to the prior year's level even through the calculation would have resulted in a reduction, all as computed in accordance with Maine Department of Education Form ED 261 or any successor form.

"Tax Payment Date" means the date(s) on which Property Taxes levied by the City are due and payable from owners of property located within the City.

Section 1.2. Interpretation and Construction. In this Agreement, unless the context otherwise requires:

(a) The terms "hereby," "hereof," "hereto," "herein," "hereunder" and any similar terms, as used in this Agreement, refer to this Agreement, and the term "hereafter" means after, and the term "heretofore" means before the date of delivery of this Agreement.

(b) Words importing a particular gender mean and include correlative words of every other gender and words importing the singular number mean and include the plural number and vice versa.

(c) Words importing persons mean and include firms, associations, partnerships (including limited partnerships), limited liability companies, trusts, corporations and other legal entities, including public or governmental bodies, as well as any natural persons.

(d) Any headings preceding the texts of the several Articles and Sections of this Agreement, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall not affect its meaning, construction or effect.

(e) All notices to be given hereunder shall be given in writing and, unless a certain number of days is specified, within a reasonable time. All approvals, consents and acceptances required to be given or made by any signatory hereto shall not be withheld unreasonably.

(f) If any clause, provision, Article or Section of this Agreement shall be ruled invalid by any court of competent jurisdiction, the invalidity of such clause, provision, Article or Section shall not affect any of the remaining provisions hereof.

ARTICLE II: DEVELOPER'S PROJECT COST ACCOUNT OF THE AFFORDABLE HOUSING DEVELOPMENT PROGRAM FUND AND FUNDING REQUIREMENTS

Section 2.1. Creation of Developer's Project Cost Account of the Affordable Housing Development Program Fund. The City hereby confirms the creation and establishment of (a) the 134 Washington Avenue Affordable Housing Development District Affordable Housing Development Program Fund; and (b) a segregated fund in the name of the City designated as the "134 Washington Avenue Affordable Housing Development District Developer's Project Cost Account of the Affordable Housing Development Program Fund" (the "Developer's Project Cost Account") pursuant to, and in accordance with the terms and conditions of the Development Program. The Affordable Housing Development Program Fund shall consist of the Developer's Project Cost Account as described in the Development Program.

Section 2.2. Deposits into Developer's Project Cost Account of the Affordable Housing Development Program Fund. The City shall deposit into the Developer's Project Cost Account contemporaneously with each payment of Property Tax by owners of property in District during the term of the District an amount equal to that portion thereof constituting the Tax Increment Revenues (Developer's Share) for the period or year to which the payment relates and shall allocate the amount so deposited to fund fully and pay the payments due to Developer under Article III of this Agreement.

Section 2.3. Use of Monies in Developer's Project Cost Account of the Affordable Housing Development Program Fund. Monies deposited in the Developer's Project Cost Account shall be used and applied exclusively to fund the City's payment obligation described in Article III hereof.

Section 2.4. Monies Held in Trust. All monies required to be deposited with or paid into the Developer's Project Cost Account to fund payments of the Developer under the provisions hereof and the provisions of the Development Program, shall be held by the City in trust, for the benefit of the Developer.

Section 2.5. Investments. The monies in the Developer's Project Cost Account shall be invested and reinvested in Qualified Investments as determined by the City. The City shall have discretion regarding the investment of such monies, provided such monies are invested in Qualified Investments. As and when any amounts thus invested may be needed for disbursements, the City shall cause a sufficient amount of such investments to be sold or otherwise converted into cash to the credit of such account. The City shall have the sole and exclusive right to designate the investments to be sold and to otherwise direct the sale or conversion to cash of investments made with monies in the Developer's Project Cost Account.

Section 2.6. Liens. The City shall not hypothecate or grant or create any liens, security interests, encumbrances, or other interests of any nature whatsoever, with respect to the Developer's Project Cost Account or any funds therein, other than the interest granted to the Developer hereunder in and to the amounts on deposit therein.

ARTICLE III: PAYMENT OBLIGATIONS

Section 3.1. Credit Enhancement Payments. (a) The term of this Agreement shall be for twenty (20) years as described below. The City agrees to pay to the Developer within 30 days of the end of each fiscal year (ends June 30 each year) this Agreement is in effect payments equal to the Tax Increment Revenues (Developer's Share) beginning with the designation and approval of the District by the Director of the Maine State Housing Authority, that being the City Fiscal Year beginning July 1, 2014 and ending June 30, 2015 (FY15) and continuing with each Fiscal Year of the City thereafter through and including June 30, 2035 (FY35). The City shall make all such payments of the Tax Increment Revenues (Developer's Share) to the Developer, its successors and assigns according to Exhibit A of the Development Program, based upon the corresponding fiscal year's projected allocation percentage for each payment. The Developer's share will be 100% of the captured revenue (based on 50% of the value captured) as indicated on Exhibit A. The obligation of the City to make such payments shall be a limited obligation payable solely from that portion of the Tax Increment Revenues (Developer's Share) payable to the Developer hereunder, whether or not actually deposited into the Developer's Project Cost Account, and shall not constitute a general debt or obligation on the part of the City or a general obligation or charge against or pledge of the faith and credit or taxing power of the City, the State of Maine or any political subdivision thereof.

(b) If, with respect to any Tax Payment Date, the owner or owners of property in the District fail(s) to pay any portion of the Property Taxes assessed by the City, because of a valuation dispute or otherwise, the Property Taxes actually paid with respect to such Tax Payment Date shall first be applied to taxes due on account of the Original Assessed Value and second shall constitute Tax Increment Revenues.

(c) Annually, Developer will provide operating cash flow statements as back-up documentation of Projects Costs for its TIF payments, which documentation will be kept confidential by the City.

Section 3.2. Completion of Development Program. Prior to receiving the first payment under this Agreement, Developer shall provide evidence reasonably satisfactory to the City of the Company's ability to complete the Project in accordance with State law. Reasonably satisfactory evidence shall include the Company's having closed on the financing for the Project.

Section 3.3. Failure to Make Payment. In the event the City should fail to, or be unable to, make any of the payments required under Section 3.1 hereof, the item or installment so unpaid shall continue from year-to-year, as a limited obligation of the City, under the terms and conditions hereinafter set forth, until the amount unpaid shall have been fully paid and the City agrees to pay the same with interest thereon at the rate equal to the interest rate per annum payable by owners of property in the City on Property Taxes that are not paid when due, but only from Tax Increment Revenues (Developer's Share) paid to the City by the Developer from time to time, and any earnings thereon, whether or not deposited into the Developer's Project Cost Account of the Affordable Housing Development Program Fund. Payments shall be applied first against accrued interest and then against principal. The Developer shall have the right to initiate and maintain an action to specifically enforce the City's obligations hereunder, including without limitation, the City's obligation to deposit all Tax Increment Revenues (Developer's Share) to the Developer's Project Cost Account and its obligation to make payments to the Developer.

Section 3.4. Manner of Payments. The payments provided for in this Article III shall be paid in immediately available funds directly to the Developer in the manner provided hereinabove for its own use and benefit, for qualified Project Costs.

Section 3.5. Obligations Unconditional. The obligations of the City to make the payments described in this Agreement in accordance with the terms hereof shall be absolute and unconditional irrespective of any defense or any rights of setoff, recoupment or counterclaim it might otherwise have against the Developer. The City shall not suspend or discontinue any such payment or terminate this Agreement for any cause, including without limitation, any acts or circumstances that may constitute failure of consideration or frustration of purpose or any damage to or destruction of the Project or any change in the tax or other laws of the United States, the State of Maine or any political subdivision of either thereof.

Section 3.6. Limited Obligation. The City's obligations of payment hereunder shall be limited obligations of the City payable solely from monies on deposit in the Developer's Project Cost Account, and any earnings thereon, pledged therefor under this Agreement. The City's obligations hereunder shall not constitute a general debt or a general obligation or charge against or pledge of the faith and credit or taxing power of the City, the State of Maine, or of any municipality or political subdivision thereof, but shall be payable solely from that portion of the Tax Increment Revenues (Developer's Share) payable to the Developer hereunder, and any earnings thereon, whether or not actually deposited into the Developer's Project Cost Account. This Agreement shall not directly or indirectly or contingently obligate the City, the State of Maine, or any other municipality or political subdivision to levy or to pledge any form of taxation or to levy or to make any appropriation for their payment, excepting the City's obligation to levy Property Taxes upon the property in the District and the pledge of the Tax Increment Revenues (Developer's Share), and earnings thereon, established under this Agreement.

ARTICLE IV: PLEDGE AND SECURITY INTEREST

Section 4.1. Pledge of Developer's Project Cost Account. In consideration of this Agreement and other valuable consideration and for the purpose of securing payment of the amounts provided for hereunder to the Developer by the City, according to the terms and conditions contained herein, and in order to secure the performance and observance of all of the City's covenants and agreements contained herein, the City does hereby grant a security interest in and pledge to the Developer the Developer's Project Cost Account to the extent of Developer's Rights under this Agreement to receive funds from the Developer's Project Cost Account and all sums of money and other securities and investments now or hereafter therein.

Section 4.2. Perfection of Interest. The City authorizes the Developer to file and, if necessary, shall cooperate with the Developer in causing appropriate financing statements and continuation statements naming the Developer as pledgee of all amounts from time to time on deposit in the Developer's Project Cost Account to be duly filed and recorded in the appropriate state offices as required by and permitted under the provisions of the Maine Uniform Commercial Code or other similar law as adopted in the State of Maine and any other applicable jurisdiction, as from time to time amended, in order to perfect and maintain the security interests created hereunder. To the extent deemed necessary by the Developer, the City will at such time and from time to time as requested by Developer establish the Developer's Project Cost Account as a segregated fund under the control of an escrow agent, trustee or other fiduciary so as to perfect Developer's interest therein.

Section 4.3. Further Instruments. The City shall, upon the reasonable request of the Developer, from time to time execute and deliver such further instruments and take such further action as may be reasonable and as may be required to carry out the provisions of this Agreement; provided, however, that no such instruments or actions shall pledge the credit of the City.

Section 4.4. No Disposition of Developer's Project Cost Account. Except as permitted hereunder, the City shall not sell, lease, pledge, grant a security interest in, assign or otherwise dispose, encumber or hypothecate any interest in the Developer's Project Cost Account and will promptly pay or cause to be discharged or make adequate provision to discharge any lien, charge or encumbrance on any part hereof not permitted hereby.

Section 4.5. Access to Books and Records. All books, records and documents in the possession of the City relating to the District, the Development Program, this Agreement and the monies, revenues and receipts on deposit or required to be deposited into the Developer's Project Cost Account shall at all reasonable times be open to inspection by the Developer, its agents, lenders, designees and employees.

ARTICLE V: DEFAULTS AND REMEDIES

Section 5.1. Events of Default. Each of the following events shall constitute and be referred to in this Agreement as an "Event of Default:"

(a) any failure by the City to pay any amounts due to Developer when the same shall become due and payable;

(b) any failure by the City to make deposits into the Affordable Housing Development Program Fund or the Developer's Project Cost Account as and when due;

(c) any failure by the City or the Developer to observe and perform in all material respects any covenant, condition, agreement or provision contained herein on the part of the City or the Developer to be observed or performed, provided, however, that failure of Developer or any other owner of property in the District to pay Property Taxes when due shall not constitute an event of default hereunder; or

(d) if a decree or order of a court or agency or supervisory authority having jurisdiction in the premises of the appointment of a conservator or receiver or liquidator of, any insolvency, readjustment of debt, marshalling of assets and liabilities or similar proceedings, or for the winding up or liquidation of the City's affairs shall have been entered against the City or the City shall have consented to the appointment of a conservator or receiver or liquidator in any such proceedings of or relating to the City or of or relating to all or substantially all of its property, including without limitation, the filing of a voluntary petition in bankruptcy by the City or the failure by the City to have a petition in bankruptcy dismissed within a period of ninety (90) consecutive days following its filing or in the event an order for release has been entered under the Bankruptcy Code with respect to the City.

Section 5.2. Remedies on Default. Whenever any Event of Default referred to in Section 6.1 hereof shall have occurred and be continuing, the non-defaulting party may take any one or more of the following remedial steps: (a) the non-defaulting party may take whatever action at law or at equity as may appear necessary or desirable to collect any amount then due and thereafter to become due, to specifically enforce the performance or observance of any obligations, agreements or covenants of the non-defaulting party under this Agreement and any documents, instruments and agreements contemplated hereby or to enforce any rights or remedies available hereunder; and (b) the Developer shall also have the right to exercise any rights and remedies available to a secured party under the laws of the State of Maine.

Section 5.3. Remedies Cumulative. No remedy herein conferred upon or reserved to any party is intended to be exclusive of any other available remedy or remedies but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law, in equity or by statute. Delay or omission to insist upon the strict performance of any of the covenants and agreements herein set forth or to exercise any rights or remedies upon the occurrence of an Event of Default shall not impair any relinquishment for the future of the rights to insist upon and to enforce, from time to time and as often as may be deemed expedient, by injunction or other appropriate legal or equitable remedy, strict compliance by the City with all of the covenants and conditions hereof, or of the rights to exercise any such rights or remedies, if such Event of Default be continued or repeated.

Section 5.4. Agreement to Pay Attorneys' Fees and Expenses. Notwithstanding the application of any other provision hereof, in the event any party should default under any of the provisions of this Agreement and the non-defaulting party shall require and employ attorneys or incur other expenses or costs for the collection of payments due or to become due or for the enforcement of performance or observance of any obligation or agreement on the part of the City or the Developer herein contained, the defaulting party shall, on demand thereof pay to the non-defaulting party the reasonable attorneys fees, costs and expenses so incurred by the non-defaulting party.

Section 5.5. Disputes. The parties agree that in the event of any dispute or disagreement hereunder the City shall continue to make payment of all amounts due hereunder in the manner and at the times specified herein until final resolution of such dispute, whether by mutual agreement or final decision of a court, arbitrator or other dispute resolution mechanism. The City hereby waives any right to withhold, suspend or setoff payments during the pendency of any such dispute, this waiver being limited and expressly intended to affect only those rights necessarily related to or arising directly under the terms of this Agreement.

ARTICLE VI: EFFECTIVE DATE, TERM AND TERMINATION

Section 6.1. Effective Date and Term. This Agreement shall become effective upon its execution and delivery by the parties hereto and shall remain in full force from the date hereof for the entire term of this Agreement and shall expire upon the payment of all amounts due to the Developer hereunder and the performance of all obligations on the part of the City and the Developer hereunder.

Section 6.2. Cancellation and Expiration of Term. At the termination or other expiration of this Agreement and following full payment of all amounts due and owing to the Developer hereunder or provision for payment thereof and of all other fees and charges having been made in accordance with the provisions to this Agreement, the City and the Developer shall each execute and deliver such documents and take or cause to be taken such actions as may be necessary to evidence the termination of this Agreement.

ARTICLE VII: ASSIGNMENT AND PLEDGE OF DEVELOPER'S INTEREST

Section 7.1. Consent to Pledge and/or Assignment. The City hereby acknowledges that it is the intent of the Developer to pledge and assign and to grant security interests in and to this Agreement and the amounts payable to Developer hereunder and Developer's right, title and interest in, to and under this Agreement as collateral for financing for the Project, although no obligation is hereby imposed on the Developer to make such assignment or pledge or to grant such security interests. Recognizing this intention, the City does hereby consent and agree to the grant of such security interests and to the pledge and assignment of all the Developer's right, title and interest in, to and under this Agreement and in and to the payments to be made to Developer hereunder, to third parties as collateral or security for indebtedness and other obligations or otherwise, on one or more occasions during the term hereof.

Section 7.2. Pledge, Assignment or Security Interest. The City hereby consents to the pledge, assignment or granting of a security interest by the Developer (or the pledge and assignment by any one Developer) of its right, title and interest in, to and under this Agreement. The City agrees to execute and deliver any assignments, pledge agreements, consents or other confirmations required by the prospective secured party, pledgee or assignee, including without limitation, recognition of the secured party, pledgee or assignee as the holder of all right, title and interest herein and as the payee of amounts due and payable hereunder and any and all such other documentation as shall confirm to such secured party, pledgee or assignee the position of such secured party, assignee or pledgee and the irrevocable and binding nature of this Agreement and provide to the secured party, pledgee or assignee such rights and/or remedies as it may deem necessary for the establishing, perfection and protection of its interest herein.

Section 7.3. Assignment. Except as provided in this Article VII, the Developer shall not have the right to transfer and assign to any person or entity all or any portion of its rights in, to and under this Agreement; provided however, that any transfer of the real property within the District shall carry with it the benefit of this Agreement so long as (i) the rental units within the District remain affordable after such transfer; (ii) the prospective owner establishes to the reasonable satisfaction of the City that the financial benefits provided by this Agreement are still necessary to maintain the viability of the Project and (iii) the City Council approves the transfer.

ARTICLE VIII: MISCELLANEOUS

Section 8.1. Successors. The covenants, stipulations, promises and agreements set forth herein shall bind and inure to the benefit of the respective successors and assigns of the parties hereto.

Section 8.2. Severability. In case any one or more of the provisions of this Agreement shall, for any reason, be held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of this Agreement and this Agreement shall be construed and enforced as if such illegal or invalid provision had not been contained herein.

Section 8.3. No Personal Liability of Officials of the City. No covenant, stipulation, obligation or agreement of the City contained herein shall be deemed to be a covenant, stipulation or obligation of any present or future elected or appointed official, officer, agent, servant or employee of the City in his individual capacity and neither the members of the City Council of the City nor any official, officer, employee or agent of the City shall be liable personally with respect to this Agreement or be subject to any personal liability or accountability by reason hereof.

Section 8.4. Counterparts. This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original, but such counterparts shall together constitute but one and the same Agreement.

Section 8.5. Governing Law. The laws of the State of Maine shall govern the construction and enforcement of this Agreement.

Section 8.6. Notices. All notices, certificates, requests, requisitions or other communications by the City or the Developer pursuant to this Agreement shall be in writing and shall be sufficiently given and shall be deemed given when hand delivered or mailed by first class mail, postage prepaid, addressed as follows:

If to the City: City Manager
City Portland
389 Congress Street
Portland, Maine 04101

If to the Developer: Avesta Washington Ave. LP

c/o Avesta Housing Development Corporation
307 Cumberland Avenue
Portland, ME 04101

Any of the parties may, by notice given to the other, designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent hereunder.

Section 8.7. Amendments. This Agreement may be amended only with the concurring written consent of the parties hereto.

Section 8.8. Net Agreement. This Agreement shall be deemed and construed to be a "net agreement," and the City shall pay absolutely net during the term hereof all payments required hereunder, free of any deductions, and without any abatement, deductions or setoffs.

Section 8.9. Benefit of Assignees or Pledgees. The City agrees that this Agreement is executed in part to induce secured parties, assignees or pledgees to provide financing for the Project and accordingly all covenants and agreements on the part of the City as to the amounts payable hereunder are hereby declared to be for the benefit of any such secured parties, assignee or pledgee from time to time of the Developer's right, title and interest herein.

Section 8.10. MaineHousing Rules and Requirements. The Developer and the City shall comply with any rules adopted by the Maine State Housing Authority and with any conditions of approval imposed by the Maine State Housing Authority following designation of the District. The City shall report annually to the Director of the Maine State Housing Authority regarding the status of the District, including the following matters as required by law: (a) certify that the public purpose of the District is being met; (b) account for any sales of property within the District; and (c) certify that rental units within the District remain affordable. The parties shall comply with the rule provisions for recovery of public revenue if conditions for approval of the District are not maintained for the duration of the District, as provided by rules adopted by the Maine State Housing Authority in accordance with applicable law. The Developer agrees to provide all information as required by the City to satisfy its reporting obligations.

Section 8.11. Affordability Covenants. The Developer and the City shall, in order to assure the continued affordability of the rental units as required by the Development Program, Maine State Housing Authority and applicable laws, regulations and ordinances, execute a declaration which is substantially in the same form as the "Declaration of Covenants, Conditions and Restrictions which is attached to the Development Program as Exhibit I.

Section 8.12 Valuation Agreement. The Development Program makes certain assumptions and estimates regarding valuation, depreciation of assets, tax rates, estimated amounts of the Increased Assessed Value and the Tax Increment, estimated amounts of the Tax Increment Revenues (Developer's Share), estimated development costs and other estimates. The City and the Developer hereby covenant and agree that the assumptions, estimates, analysis and results set forth in the Development Program shall in no way (a) prejudice the rights of any party to be used, in any way, by any party in either presenting evidence or making argument in any dispute which may arise with respect to Developer's property for purposes of ad valorem property taxation or any tax abatement proceeding or (b) modify or change in any way the terms of this Agreement even if the actual results differ substantially from the estimates, assumptions or analysis.

Section 8.13. Integration. This Agreement completely and fully supersedes all other prior or contemporaneous understandings or agreements, both written and oral, between the City and the

Developer relating to the specific subject matter of this Agreement and the transactions contemplated hereby.

IN WITNESS WHEREOF, the City and the Developer have caused this Agreement to be executed in their respective names and their respective seals to be hereunto affixed and attested by the duly authorized officers, all as of the date first above written.

WITNESS

CITY OF PORTLAND

____

By:______________________________
Mark H. Rees, Its City Manager

AVESTA WASHINGTON AVE. LP

BY: Pinecone Housing Corporation, its General Partner

____

By:______________________________
Dana Totman, Its President

O:\HCD\HCD Staff\Mary\AHTIF\134 Washington Avenue\134 Washington Avenue CEA Draft v dated 05.15.14.docx

Order 257-13/14
Tab 18 6-2-14

CITY OF PORTLAND
IN THE CITY COUNCIL

ORDER ADOPTING DEVELOPMENT PROGRAM FOR THE PORTLAND DOWNTOWN DISTRICT FOR FISCAL YEAR 2014-2015

ORDERED, pursuant to 30-A M.R.S. Section 5224 (1), after public hearing, the City Council of the City of Portland hereby adopts the development program submitted by the City Manager, a copy of which is attached hereto, for the Portland Downtown District for fiscal year 2014-2015.

Board President
Michael Mastronardi

Executive Director
Steve Hewins

Mayor Brennan and City Councilors
May 2014

It has been a transformative year at Portland's Downtown District. Since this time last year we have turned over the entire full-time staff. We expanded our board to achieve more inclusiveness and to better represent the broad cross section of constituents within the District. Moreover, I am pleased to report that the assessment mil rate of .92 for Portland's Downtown District (PDD) remains flat again this year.

We continue to focus our funds and staff on our core mission:
Portland's Downtown District is in the business of maintaining a clean and safe downtown while building and promoting a vibrant business, residential and tourism destination.

More than ever we understand the value that visitors and residents bring to downtown businesses and property owners. Our vibrant restaurant, shopping, arts and entertainment scene is dependent upon maintaining and growing our residential, visitor and customer base.

PDD is a leader in this effort by focusing on maintaining a clean and safe downtown. In this effort we partner with the City of Portland through our Master, Baseline and Supplemental Service Agreements. For this year we plan to work even more closely with city staff to provide additional oversight and prioritization of work plans and projects. Our mutual goal is to create a downtown environment that exceeds our resident's expectations, allows our businesses to thrive and property owners to continue investing in Portland.

Through our collaboration with the city and local organizations, we market downtown Portland as a destination for visitors near and far. PDD produces free special events, including the Alive at Five concert series in Monument Square, the Christmas Tree Lightning and other Holiday events, Downtown Worker Appreciation Days and the Old Port Festival – this year expanded to three days for the first time in its 41 year history! In January 2015 we will launch a new event called Portland Winterfest!

Our popular police cadet patrol, funded by PDD and managed by the Portland Police Department, and our Downtown Visitor Guides will continue to assist and inform visitors and businesses throughout the peak tourism season. We are working with the Retail Association of Maine to launch Shop 2nd Saturday – a new marketing initiative to support local small businesses. We produce and distribute over 160,000 copies of our Visitor Guide book. Our website, Portlandmaine.com, is one of the most actively visited in the region.

We continue to work collaboratively with property owners, city departments and community organizations to address ongoing issues such as parking, transportation, graffiti removal, recycling, homelessness, open space, nuisance crimes and safety.

These efforts are needed to support residents and to encourage more people to come downtown or to stay after work. Perhaps more importantly these efforts support the Portland 'brand' – Yes, Life's Good Here. The attractiveness of the city, relative safety, accessibility to visitors for food, lodging, shopping, arts and entertainment are all important to the vibrancy of the city. We will continue to advocate for public policies that support these objectives.

Finally, we are very appreciative of our strong working relationship with the City of Portland, both staff and elected officials. We could not accomplish our mission without this cooperation and mutual support. We look forward to an exceptional 2014-15!

Sincerely,

Michael Mastronardi
Board Chair, Portland's Downtown District
Board President

Order 258-13/14
Tab 19 6-2-14

CITY OF PORTLAND
IN THE CITY COUNCIL

ORDER ASSESSING MAINTENANCE AND IMPLEMENTATION ASSESSMENTS IN THE PORTLAND DOWNTOWN DISTRICT FOR FISCAL YEAR 2014-2015

ORDERED, pursuant to 30-A M.R.S. § 5228, after public hearing thereon, that the sum of $725,880 be raised and appropriated from the special assessments on all real estate situated within the boundaries of the Portland Downtown District to fund maintenance and implementation costs for such district for the period beginning July 1, 2014 and ending on June 30, 2015; and

BE IT FURTHER ORDERED, that the said sum be assessed on all real estate within the Portland Downtown District in the amounts set forth on the "List of Maintenance and Implementation assessments" which is attached hereto; and

BE IT FURTHER ORDERED, that the said assessments shall be due July 1, 2014 and payable to the City of Portland at the same time that taxes on other real estate are due; and

BE IT FURTHER ORDERED, that the interest on unpaid assessments shall be at the same rate as interest on other unpaid real estate taxes; and

BE IT FURTHER ORDERED, that the said assessments are hereby committed to the tax collector of the City of Portland for collection, pursuant to 30-A M.R.S.A. § 5228(5); and

BE IT FURTHER ORDERED, that the tax collector is hereby authorized and directed to take all necessary action for the collection of said assessment.

St. No.	Street Name	Owner Name	Taxable Value	Assessment
11	BROWN ST	OLD PORT HOLDING CO LLC	$840,300	$773.08
15	BROWN ST	O'SULLIVAN MICHAEL &	$166,300	$153.00
15	BROWN ST	ADLER JANICE B	$205,900	$189.43
15	BROWN ST	HUNTER BEVERLY C &	$201,800	$185.66
15	BROWN ST	EAKINS JAN	$199,100	$183.17
15	BROWN ST	ESCH TREVOR S &	$257,000	$236.44
15	BROWN ST	SINGER ROBERT B TRUSTEE	$185,100	$170.29
15	BROWN ST	JAFFE MICHAEL M &	$229,300	$210.96
15	BROWN ST	MCILVAIN JOHN &	$153,600	$141.31
15	BROWN ST	MCGLOIN SHERRI	$150,400	$138.37
15	BROWN ST	DOCTOROFF MARK G	$311,800	$286.86
15	BROWN ST	BARBERA SUSAN	$189,800	$174.62
15	BROWN ST	KLEBE KURT E TRUSTEE	$209,300	$192.56
15	BROWN ST	BAUMAN PATRICIA J	$270,300	$248.68
15	BROWN ST	CODERE MARK R	$224,100	$206.17
15	BROWN ST	COFFIN KATHLEEN M	$205,900	$189.43
15	BROWN ST	BERBERIAN LANCE V	$246,400	$226.69
15	BROWN ST	DOCTOROFF MARK G	$283,100	$260.45
15	BROWN ST	EWING DANIELLE M	$341,900	$314.55
15	BROWN ST	TIEMAN JAMES S	$347,900	$320.07
15	BROWN ST	SCHREINER WILLIAM B VN VET &	$399,100	$367.17
15	BROWN ST	PARKER MARK	$351,500	$323.38
15	BROWN ST	GREENEWALT CHARLOTTE	$384,500	$353.74
15	BROWN ST	MCGORRILL DONNA T	$454,300	$417.96
41	BROWN ST	MHS INC	$171,290	$157.59
45	BROWN ST	477 TIME & TEMPERATURE LLC	$2,547,200	$2,343.42
48	BROWN ST	511 PLAZA LIMITED PARTNERSHIP	$874,090	$804.16
0	CANAL PLAZA	COW PLAZA 1 LLC	$70,700	$65.04
1	CANAL PLAZA	COW PLAZA 1 LLC	$15,976,800	$14,698.66
2	CANAL PLAZA	COW PLAZA 2 LLC	$4,650,300	$4,278.28
3	CANAL PLAZA	COW PLAZA 3 LLC	$7,027,400	$6,465.21
15	CASCO ST	15 CASCO STREET LLC	$973,000	$895.16
16	CASCO ST	SOMALUZO LLC	$740,700	$681.44
18	CASCO ST	SHEPLEY LLC	$2,629,600	$2,419.23
37	CASCO ST	QUIRK SHIRLEY F ETALS	$3,203,200	$2,946.94
45	CASCO ST	FORTY FIVE CASCO STREET LLC	$730,100	$671.69
52	CENTER ST	PICTURE ISLAND INC	$413,000	$379.96
58	CENTER ST	STEELE DANIEL L	$500,630	$460.58
59	CENTER ST	B & B REAL ESTATE LLC	$333,600	$306.91
70	CENTER ST	MITCHELL JOHN D	$196,000	$180.32
70	CENTER ST	LARSSON JOHN C	$179,300	$164.96
70	CENTER ST	F & H REALTY PARTNERSHIP	$194,600	$179.03
70	CENTER ST	F & H REALTY PARTNERSHIP	$202,300	$186.12
70	CENTER ST	EAST COAST CONSTRUCTION AND	$203,900	$187.59
70	CENTER ST	MCKERSIE FAMILY LLC	$202,900	$186.67
70	CENTER ST	ALDER RUN DEVELOPMENT	$352,300	$324.12
70	CENTER ST	TCG PROPERTIES LLC	$184,900	$170.11
70	CENTER ST	MAINE BUSINESS SERVICES INC	$181,700	$167.16
104	CENTER ST	BG CARLETON 2/14/91 LLC &	$372,360	$342.57
121	CENTER ST	LEVY VALERIE J	$1,489,300	$1,370.16
15	CHESTNUT ST	BOODILLY LLC	$1,809,800	$1,665.02
17	CHESTNUT ST	CHESTNUT STREET CHAPEL LLC	$195,200	$179.58
21	CHESTNUT ST	PROPERTYONE LLC	$163,800	$150.70
21	CHESTNUT ST	CHESTNUT STREET LOFTS LLC	$199,000	$183.08
21	CHESTNUT ST	JORDAN CARA A	$151,100	$139.01
21	CHESTNUT ST	MOORE EMILY E &	$169,500	$155.94

21	CHESTNUT ST	MORREL VICTOR &	$161,100	$148.21
21	CHESTNUT ST	TISZENKEL KEITH	$169,500	$155.94
21	CHESTNUT ST	CASTANEA PRIME LLC	$164,400	$151.25
21	CHESTNUT ST	TILTON GARRETT K &	$175,500	$161.46
21	CHESTNUT ST	OGDEN JOANNE &	$154,400	$142.05
21	CHESTNUT ST	VANHOEWYK JOHN VN VET &	$169,500	$155.94
21	CHESTNUT ST	HOEFLER HEIDI	$180,500	$166.06
21	CHESTNUT ST	MCDEVITT MARION JEAN	$191,600	$176.27
21	CHESTNUT ST	KAUFMANN CHARLES L	$180,500	$166.06
21	CHESTNUT ST	NYGAARD DANTON D &	$201,600	$185.47
21	CHESTNUT ST	NAQUI ALI &	$193,400	$177.93
21	CHESTNUT ST	YINDRA SARA R	$213,000	$195.96
21	CHESTNUT ST	ANDERSON KARIN	$193,400	$177.93
21	CHESTNUT ST	CURTIN TERESA ANN &	$223,000	$205.16
21	CHESTNUT ST	HAMM LARRY F &	$206,300	$189.80
21	CHESTNUT ST	KRUG ROBERT E WWII VET BLIND &	$206,600	$190.07
21	CHESTNUT ST	SCHWELLENBACH JAMES C &	$206,300	$189.80
21	CHESTNUT ST	MCCARTHY SYBIL R &	$226,600	$208.47
21	CHESTNUT ST	HARDING ALICIA &	$251,400	$231.29
21	CHESTNUT ST	GREENLEAF NANCY P	$216,500	$199.18
21	CHESTNUT ST	FREDERICK LINDEN D &	$246,300	$226.60
21	CHESTNUT ST	PORTA NEIL	$266,600	$245.27
21	CHESTNUT ST	COTSIRILOS STEPHANIE G	$330,000	$303.60
21	CHESTNUT ST	WILLIAMS JAN &	$325,000	$299.00
21	CHESTNUT ST	BUSQUE PETER J	$312,900	$287.87
21	CHESTNUT ST	DUNDAR ERGUN	$164,300	$151.16
21	CHESTNUT ST	NICHOLS VAL E &	$156,800	$144.26
21	CHESTNUT ST	CASSEL CHRISTINE &	$181,400	$166.89
21	CHESTNUT ST	CASTANEA PRIME LLC	$164,500	$151.34
21	CHESTNUT ST	FRAZER LORINDA JANE TRUSTEE	$196,800	$181.06
21	CHESTNUT ST	MATTOZZI BONNIE &	$169,300	$155.76
21	CHESTNUT ST	FULLAM CHARLOTTE	$219,000	$201.48
21	CHESTNUT ST	HUMSTONE ELIZABETH	$181,800	$167.26
21	CHESTNUT ST	MCCULLEY CLYDE &	$212,400	$195.41
21	CHESTNUT ST	EISENBERG AVNER &	$189,600	$174.43
1	CITY CTR	ONE CITY CENTER ASSOCIATES LLC	$29,070,000	$26,744.40
2	CITY CTR	MDA LLC	$3,327,900	$3,061.67
4	CITY CTR	FOUR CITY CENTER	$1,008,200	$927.54
6	CITY CTR	CHASE CUSTOM HOMES &	$2,303,000	$2,118.76
10	CITY CTR	MINA BUILDING LLC	$977,400	$899.21
24	CITY CTR	BROWN J B & SONS	$906,800	$834.26
26	CITY CTR	BROWN J B & SONS	$627,700	$577.48
28	CITY CTR	BROWN J B & SONS	$323,600	$297.71
30	CITY CTR	RODWAY PETER E &	$304,700	$280.32
57	COMMERCIAL ST	OLYMPIA EQUITY INVESTORS V LLC	$10,717,000	$9,859.64
84	COMMERCIAL ST	FINLEY JAMES R &	$537,500	$494.50
90	COMMERCIAL ST	PROPRIETORS OF CUSTOM HOUSE	$269,400	$247.85
94	COMMERCIAL ST	BMC INC	$1,127,400	$1,037.21
100	COMMERCIAL ST	SOLEY WHARF LLC	$5,557,100	$5,112.53
111	COMMERCIAL ST	BLANCHARD BLOCK LLC	$1,509,600	$1,388.83
121	COMMERCIAL ST	MAD COW LLC	$401,200	$369.10
129	COMMERCIAL ST	RSB LIMITED LIABILITY COMPANY	$781,200	$718.70
136	COMMERCIAL ST	CARROLL BLOCK LLC	$2,249,700	$2,069.72
144	COMMERCIAL ST	DIMILLO ARLENE ETALS TRUSTEES	$4,339,000	$3,991.88
145	COMMERCIAL ST	FLEMING CREEK LLC ETALS	$6,509,400	$5,988.65
161	COMMERCIAL ST	ROB DOG REALTY LLC	$1,265,900	$1,164.63
185	COMMERCIAL ST	COMPARK LLC	$217,280	$199.90

205	COMMERCIAL ST	LANDFALL LLC	$695,800	$640.14
211	COMMERCIAL ST	GRANITE FACE LLC	$2,205,900	$2,029.43
217	COMMERCIAL ST	217 COMMERCIAL STREET	$2,637,500	$2,426.50
218	COMMERCIAL ST	PROPRIETORS OF UNION WHARF	$239,080	$219.95
225	COMMERCIAL ST	225 COMMERCIAL ST ASSOC INC	$2,043,400	$1,879.93
230	COMMERCIAL ST	PROPRIETORS OF UNION WHARF	$45,130	$41.52
241	COMMERCIAL ST	SLM PROPERTIES INC	$1,586,800	$1,459.86
245	COMMERCIAL ST	CASCO VIEW HOLDINGS LLC	$3,849,700	$3,541.72
250	COMMERCIAL ST	CM WATERFRONT PROPERTIES LLC	$2,111,800	$1,942.86
260	COMMERCIAL ST	WATERFRONT MAINE BT LLC	$1,194,800	$1,099.22
269	COMMERCIAL ST	MGM OLD PORT LLC	$135,200	$124.38
269	COMMERCIAL ST	MARR JEAN	$137,600	$126.59
269	COMMERCIAL ST	GREEN DESIGN LLC	$150,500	$138.46
269	COMMERCIAL ST	MCDEVITT JERRY S	$143,600	$132.11
269	COMMERCIAL ST	GAGNON TROY R &	$139,900	$128.71
269	COMMERCIAL ST	SERAICHICK PETER J &	$147,600	$135.79
269	COMMERCIAL ST	CAMPBELL STEVEN	$140,900	$129.63
269	COMMERCIAL ST	RICE LEE P	$133,900	$123.19
269	COMMERCIAL ST	LEWIS LAWRENCE &	$151,400	$139.29
269	COMMERCIAL ST	HUDON WILFRED R	$140,400	$129.17
269	COMMERCIAL ST	CONKLIN HENRY C	$170,000	$156.40
269	COMMERCIAL ST	TUCKER HAROLD W III	$143,900	$132.39
269	COMMERCIAL ST	SERNOFFSKY SUSAN	$124,000	$114.08
269	COMMERCIAL ST	EADS TYLER G &	$140,000	$128.80
269	COMMERCIAL ST	MCDEVITT JOHN J IV	$168,100	$154.65
269	COMMERCIAL ST	KIMBLE ELLEN SUE	$127,200	$117.02
269	COMMERCIAL ST	LOWRY KATE	$141,900	$130.55
269	COMMERCIAL ST	WONG ROCKET &	$149,000	$137.08
269	COMMERCIAL ST	BERG ERIC O JR TRUSTEE	$160,100	$147.29
269	COMMERCIAL ST	TARBOX JEFFERY H	$174,500	$160.54
269	COMMERCIAL ST	TALBOT CHELSEA E &	$155,000	$142.60
269	COMMERCIAL ST	WRIGHT HARRY C III &	$198,800	$182.90
269	COMMERCIAL ST	FLAHERTY CHRISTOPHER F	$173,800	$159.90
269	COMMERCIAL ST	MANN CHRISTIANA E	$150,500	$138.46
269	COMMERCIAL ST	MCNULTY BEVIN A	$280,300	$257.88
269	COMMERCIAL ST	JKC LLC	$257,100	$236.53
305	COMMERCIAL ST	BAXTER PLACE LLC	$6,327,600	$5,821.39
311	COMMERCIAL ST	BROWN J B & SONS	$10,745,300	$9,885.68
10	CONGRESS SQ	PLAZA ASSOCIATES AT CONGRESS	$10,029,900	$9,227.51
385	CONGRESS ST	METRO MEDIA PROPERTIES LLC	$2,349,540	$2,161.58
390	CONGRESS ST	PRESS HOTEL LLC	$4,518,200	$4,156.74
396	CONGRESS ST	A & M PARTNERS INC	$9,182,100	$8,447.53
415	CONGRESS ST	415 CONGRESS STREET	$3,497,000	$3,217.24
439	CONGRESS ST	METROPOLITAN APARTMENTS LLC	$3,734,300	$3,435.56
443	CONGRESS ST	JJR 443 CONGRESS LLC	$2,973,400	$2,735.53
465	CONGRESS ST	5 MONUMENT SQUARE LLC	$4,928,900	$4,534.59
477	CONGRESS ST	477 TIME & TEMPERATURE LLC	$5,280,500	$4,858.06
480	CONGRESS ST	SCIOTO DARBY INVESTMENTS INC	$983,700	$905.00
481	CONGRESS ST	477 TIME & TEMPERATURE LLC	$77,500	$71.30
481	CONGRESS ST	477 TIME & TEMPERATURE LLC	$850,300	$782.28
482	CONGRESS ST	BG CARLETON 2/14/91 LLC &	$3,125,600	$2,875.55
486	CONGRESS ST	BARTHE DONNA	$316,000	$290.72
489	CONGRESS ST	MHS INC	$1,226,800	$1,128.66
490	CONGRESS ST	GRACE LLC	$232,600	$213.99
492	CONGRESS ST	ZILKHA MICHAEL S	$260,600	$239.75
498	CONGRESS ST	BEAVER BLOCK LLC	$648,500	$596.62
500	CONGRESS ST	MATERIAL OBJECTS	$177,800	$163.58

500	CONGRESS ST	BARBA NANCY L	$188,600	$173.51
504	CONGRESS ST	KAPLAN 504 LLC	$1,176,200	$1,082.10
510	CONGRESS ST	CENTER CITY PLAZA ASSOC	$3,628,400	$3,338.13
511	CONGRESS ST	511 PLAZA LIMITED PARTNERSHIP	$9,511,500	$8,750.58
516	CONGRESS ST	PACHIOS BROTHERS II LLC	$834,200	$767.46
519	CONGRESS ST	MAINE CHARITABLE MECHANIC	$595,870	$548.20
531	CONGRESS ST	HEGA REALTY LLC	$1,388,800	$1,277.70
531	CONGRESS ST	HEGA REALTY LLC	$2,068,100	$1,902.65
531	CONGRESS ST	HEGA REALTY LLC	$1,639,100	$1,507.97
531	CONGRESS ST	HEGA REALTY LLC	$1,753,700	$1,613.40
531	CONGRESS ST	GRANT SUMNER M &	$433,300	$398.64
531	CONGRESS ST	HEGA REALTY LLC	$336,500	$309.58
531	CONGRESS ST	SHOREY LINDA J &	$491,400	$452.09
531	CONGRESS ST	HEGA REALTY LLC	$806,600	$742.07
531	CONGRESS ST	MAGUIRE MICHAEL P &	$601,500	$553.38
531	CONGRESS ST	HEGA REALTY LLC	$396,800	$365.06
531	CONGRESS ST	HEGA REALTY LLC	$397,600	$365.79
531	CONGRESS ST	HEGA REALTY LLC	$539,500	$496.34
531	CONGRESS ST	HEGA REALTY LLC	$310,900	$286.03
531	CONGRESS ST	PAPAGNI CHRISTOPHER	$439,600	$404.43
536	CONGRESS ST	PICKWICK PROPERTIES	$926,100	$852.01
540	CONGRESS ST	540 CONGRESS STREET LLC	$2,152,700	$1,980.48
540	CONGRESS ST	540 CONGRESS STREET LLC	$142,900	$131.47
540	CONGRESS ST	540 CONGRESS STREET LLC	$145,400	$133.77
540	CONGRESS ST	540 CONGRESS STREET LLC	$142,900	$131.47
540	CONGRESS ST	504 CONGRESS STREET LLC	$160,700	$147.84
545	CONGRESS ST	R & J 545 PARTNERS LLC	$142,800	$131.38
545	CONGRESS ST	R & J 545 PARTNERS LLC	$150,900	$138.83
545	CONGRESS ST	R & J 545 PARTNERS LLC	$161,700	$148.76
547	CONGRESS ST	MOULTON THOMAS W	$638,000	$586.96
547	CONGRESS ST	MARTIN ROGER	$132,100	$121.53
547	CONGRESS ST	LIPPMANN AMY TRUSTEE	$123,900	$113.99
547	CONGRESS ST	RUSSMAN BRETT	$145,500	$133.86
547	CONGRESS ST	WHEELER-BERTA FRANNIE	$204,700	$188.32
547	CONGRESS ST	CAREY EDGAR J II	$143,500	$132.02
547	CONGRESS ST	FRIEDMAN EDWARD M	$199,700	$183.72
547	CONGRESS ST	MACE F CHARLES	$194,400	$178.85
547	CONGRESS ST	PACKARD JEFFREY G &	$266,800	$245.46
547	CONGRESS ST	FITZPATRICK SUSAN E	$197,900	$182.07
547	CONGRESS ST	GRANO ROBERT C TRUSTEE	$160,200	$147.38
547	CONGRESS ST	TYSON BRUCE &	$270,800	$249.14
547	CONGRESS ST	HENRY MICHAEL T &	$592,400	$545.01
547	CONGRESS ST	INNFREE LLC	$254,100	$233.77
550	CONGRESS ST	NEVERMORE LLC	$480,400	$441.97
551	CONGRESS ST	551 CONGRESS STREET LLC	$848,900	$780.99
553	CONGRESS ST	ROCCO HOLDINGS LLC	$325,100	$299.09
555	CONGRESS ST	CORRYMORE ZELLERTON LLC	$355,600	$327.15
559	CONGRESS ST	HER LLC	$287,700	$264.68
562	CONGRESS ST	TERBAX REALTY INC	$5,095,800	$4,688.14
565	CONGRESS ST	PACHIOS BROTHERS I LLC &	$1,821,300	$1,675.60
570	CONGRESS ST	PRIDE RALPH H TRUSTEE	$542,700	$499.28
574	CONGRESS ST	574 ASSOCIATES LLC	$191,800	$176.46
575	CONGRESS ST	571 ENTERPRISES LLC	$402,200	$370.02
576	CONGRESS ST	574 ASSOCIATES LLC	$185,800	$170.94
578	CONGRESS ST	578 CONGRESS LLC	$219,400	$201.85
580	CONGRESS ST	BBB INC	$536,300	$493.40
582	CONGRESS ST	584 CONGRESS STREET LLC	$217,000	$199.64

584	CONGRESS ST	584 CONGRESS ST LLC	$137,000	$126.04
585	CONGRESS ST	TRUSIANI ANNAMARIE & PAUL J	$1,337,300	$1,230.32
594	CONGRESS ST	FITZGIBBONS VIRGINIA S &	$802,600	$738.39
600	CONGRESS ST	RICE GEOFFREY I	$878,100	$807.85
606	CONGRESS ST	RICE GEOFFREY I	$248,200	$228.34
608	CONGRESS ST	19 SOUTH STREET LLC	$289,700	$266.52
610	CONGRESS ST	19 SOUTH STREET LLC	$328,800	$302.50
612	CONGRESS ST	BLUE BAY LLC	$282,400	$259.81
616	CONGRESS ST	614 CONGRESS STREET LLC	$1,029,200	$946.86
619	CONGRESS ST	BAXTER LIBRARY LP	$2,502,600	$2,302.39
622	CONGRESS ST	STONE COAST PROPERTIES LLC	$913,300	$840.24
625	CONGRESS ST	BURNHAM ARMS ANNEX LLC	$227,500	$209.30
626	CONGRESS ST	PARK WONBAE &	$810,700	$745.84
629	CONGRESS ST	BURNHAM ARMS ANNEX LLC	$160,400	$147.57
633	CONGRESS ST	BURNHAM ARMS LLC	$2,218,100	$2,040.65
638	CONGRESS ST	638 CONGRESS STREET	$5,101,800	$4,693.66
645	CONGRESS ST	BAYSIDE MAINE LLC	$3,783,700	$3,481.00
653	CONGRESS ST	RICE GEOFFREY TRUSTEE	$235,600	$216.75
655	CONGRESS ST	TRELAWNY 657 LLC	$5,222,500	$4,804.70
656	CONGRESS ST	RICE GEOFFREY I	$843,000	$775.56
660	CONGRESS ST	A K LONGFELLOW LLC	$309,300	$284.56
664	CONGRESS ST	RANS LLC	$464,900	$427.71
667	CONGRESS ST	MSD PROPERTIES LLC	$671,500	$617.78
670	CONGRESS ST	LONGFELLOW SQUARE	$611,700	$562.76
671	CONGRESS ST	DOUKAS ANDREW J &	$169,900	$156.31
673	CONGRESS ST	DOUKAS ANDREW J	$147,700	$135.88
675	CONGRESS ST	DOUKAS WILLIAM B	$367,700	$338.28
8	COTTON ST	MAXFLO LLC	$1,862,500	$1,713.50
24	COTTON ST	CASCO VIEW HOLDINGS III LLC	$729,500	$671.14
19	CROSS ST	CASCO VIEW HOLDINGS II LLC	$6,759,000	$6,218.28
320	CUMBERLAND AVE	25 PREBLE STREET LLC	$6,259,500	$5,758.74
338	CUMBERLAND AVE	THREE FORTY ASSOCIATES LLC	$1,811,700	$1,666.76
360	CUMBERLAND AVE	SWAN DAVID C	$465,800	$428.54
380	CUMBERLAND AVE	THREE EIGHTY CUMBERLAND	$1,807,000	$1,662.44
7	CUSTOM HOUSE ST	OLYMPIA EQUITY	$5,902,300	$5,430.12
1	DANA ST	ONE DANA LLC	$902,700	$830.48
7	DANA ST	TRANSMAINE	$665,700	$612.44
10	DANA ST	10 DANA STREET LLC	$1,254,500	$1,154.14
1	DANFORTH ST	GIOBBI ARCHIE S &	$394,000	$362.48
10	DANFORTH ST	WRIGHT-RYAN REAL ESTATE LLC	$1,003,100	$922.85
20	DANFORTH ST	BROWN J B & SONS	$2,818,400	$2,592.93
1	EXCHANGE ST	ELEVEN EXCHANGE LLC	$517,600	$476.19
5	EXCHANGE ST	ELEVEN EXCHANGE LLC	$619,500	$569.94
9	EXCHANGE ST	ELEVEN EXCHANGE LLC	$1,421,700	$1,307.96
10	EXCHANGE ST	10 EXCHANGE PROPERTIES LLC	$2,133,700	$1,963.00
30	EXCHANGE ST	MAINELAND REAL ESTATE	$683,100	$628.45
31	EXCHANGE ST	B & C LIMITED	$1,027,000	$944.84
34	EXCHANGE ST	PALACCI SION &	$815,400	$750.17
39	EXCHANGE ST	PALACCI ALBERT	$949,600	$873.63
44	EXCHANGE ST	44 EXCHANGE STREET LLC	$1,679,900	$1,545.51
44	EXCHANGE ST	COW PLAZA 1 LLC	$247,500	$227.70
45	EXCHANGE ST	45 EXCHANGE STREET LLC	$2,130,900	$1,960.43
49	EXCHANGE ST	PALACCI ALBERT	$567,400	$522.01
50	EXCHANGE ST	FITZGIBBONS VIRGINIA S &	$593,000	$545.56
52	EXCHANGE ST	OLD PORT ARMS	$1,557,200	$1,432.62
53	EXCHANGE ST	PALACCI ALBERT	$1,176,800	$1,082.66
57	EXCHANGE ST	57 EXCHANGE STREET LLC	$2,906,700	$2,674.16

80	EXCHANGE ST	MURAL ASSOCIATES	$1,795,300	$1,651.68
85	EXCHANGE ST	TOP OF EXCHANGE LLC	$2,548,400	$2,344.53
88	EXCHANGE ST	WHALEBACK ASSOCIATES LLC	$710,800	$653.94
92	EXCHANGE ST	MAINESCAPE PROPERTIES LLC	$568,300	$522.84
93	EXCHANGE ST	TOP OF EXCHANGE LLC	$1,430,600	$1,316.15
97	EXCHANGE ST	TOP OF EXCHANGE LLC	$1,959,500	$1,802.74
102	EXCHANGE ST	PALACCI JOSEPH	$848,700	$780.80
106	EXCHANGE ST	RICH BUILDING LLC	$682,000	$627.44
107	EXCHANGE ST	TOP OF EXCHANGE LLC	$918,700	$845.20
110	EXCHANGE ST	THE ONETEN COMPANY LLC	$1,176,600	$1,082.47
277	FORE ST	287 FORE STREET LLC	$321,580	$295.85
280	FORE ST	OLYMPIA EQUITY	$12,880,800	$11,850.34
288	FORE ST	EAST BROWN COW LIMITED	$1,103,000	$1,014.76
291	FORE ST	NOVICK SAMUEL L	$812,000	$747.04
300	FORE ST	OLYMPIA EQUITY	$497,800	$457.98
300	FORE ST	FOREST300 LLC	$229,300	$210.96
300	FORE ST	OLYMPIA EQUITY	$98,000	$90.16
300	FORE ST	OLYMPIA EQUITY	$70,000	$64.40
320	FORE ST	FORE STREET INVESTMENTS LLC	$162,100	$149.13
320	FORE ST	FORE STREET INVESTMENTS LLC	$167,700	$154.28
320	FORE ST	FORE STREET INVESTMENTS LLC	$122,100	$112.33
320	FORE ST	FORE STREET INVESTMENTS LLC	$138,200	$127.14
320	FORE ST	FORE STREET INVESTEMENTS LLC	$392,100	$360.73
330	FORE ST	J & R VENTURES LLC	$445,700	$410.04
334	FORE ST	PORT CITY APARTMENTS	$401,100	$369.01
336	FORE ST	DOCK FORE INC	$348,000	$320.16
340	FORE ST	ADB REATLY LLC	$120,000	$110.40
340	FORE ST	HAYEK LEE-ANN C TRUSTEE	$128,000	$117.76
340	FORE ST	ANGOFF RONALD &	$220,000	$202.40
340	FORE ST	ABD REALTY LLC	$141,500	$130.18
340	FORE ST	ADB REALTY LLC	$65,900	$60.63
341	FORE ST	JACKSON MICHAEL	$140,700	$129.44
341	FORE ST	O'CONNOR DENNIS R III &	$127,400	$117.21
341	FORE ST	R & L LLC	$146,800	$135.06
341	FORE ST	CHILDS DONNA W	$140,700	$129.44
341	FORE ST	PENDERS JOHN F IV	$128,600	$118.31
341	FORE ST	KELLER BENJAMIN R &	$139,100	$127.97
341	FORE ST	ALAGIC SUAD	$130,700	$120.24
341	FORE ST	TIRPOK ANDREW G JR ETALS	$129,900	$119.51
341	FORE ST	KNECHT GERALD C	$397,500	$365.70
341	FORE ST	BOOTHBY SQUARE PROPERTIES LLC	$180,000	$165.60
341	FORE ST	BOOTHBY SQUARE PROPERTIES LLC	$118,100	$108.65
363	FORE ST	ELEVEN EXCHANGE LLC	$883,400	$812.73
366	FORE ST	MCGEE CHARLES T &	$2,321,400	$2,135.69
375	FORE ST	ELEVEN EXCHANGE LLC	$467,200	$429.82
375	FORE ST	ELEVEN EXCHANGE LLC	$451,000	$414.92
379	FORE ST	ELEVEN EXCHANGE LLC	$648,800	$596.90
386	FORE ST	386 FORE STREET LLC	$1,197,900	$1,102.07
392	FORE ST	PFEFFER RICHARD A &	$864,600	$795.43
395	FORE ST	395 FORE STREET LLC	$912,300	$839.32
396	FORE ST	BEER GUYS LLC	$166,400	$153.09
396	FORE ST	BEER GUYS LLC	$180,300	$165.88
396	FORE ST	BEER GUYS LLC	$228,300	$210.04
396	FORE ST	BEER GUYS LLC	$151,600	$139.47
398	FORE ST	FORE STREET PARTNERSHIP	$375,100	$345.09
398	FORE ST	FORE STREET PROPERTIES	$300,000	$276.00
398	FORE ST	INGALLS ROGER E	$271,600	$249.87

398	FORE ST	INGALLS ROGER E	$271,600	$249.87
414	FORE ST	GOULD COMPANY LLC	$601,300	$553.20
416	FORE ST	420 FORE LLC	$479,000	$440.68
422	FORE ST	HARDING RICHARD B ETAL	$450,100	$414.09
424	FORE ST	SOLETSKY LIMITED LIABILITY CO	$828,700	$762.40
425	FORE ST	COW PLAZA GARAGE LLC	$5,931,300	$5,456.80
425	FORE ST	BANGOR SAVINGS BANK	$85,000	$78.20
428	FORE ST	428 FORE STREET LLC	$756,200	$695.70
432	FORE ST	DREAM PORT 3 LLC	$423,200	$389.34
433	FORE ST	COW PLAZA HOTEL LLC	$11,204,500	$10,308.14
434	FORE ST	DREAM PORT 3 LLC	$493,300	$453.84
436	FORE ST	DREAM PORT 3 LLC	$1,275,000	$1,173.00
446	FORE ST	DREAM PORT 3 LLC	$1,000,500	$920.46
468	FORE ST	HARBOR PLAZA ASSOCIATES II	$7,658,200	$7,045.54
468	FORE ST	DICTAR ASSOCIATES II	$2,360,900	$2,172.03
470	FORE ST	DICTAR ASSOCIATES II	$2,148,000	$1,976.16
481	FORE ST	RREEF AMERICA REIT III CORP Z4	$3,459,400	$3,182.65
486	FORE ST	RREEF AMERICA REIT III CORP Z4	$3,130,830	$2,880.36
7	FOREST AVE	D & D PARTNERS LLC	$372,500	$342.70
11	FOREST AVE	PACHIOS BROTHERS I LLC &	$499,480	$459.52
25	FOREST AVE	PORTLAND STAGE COMPANY	$822,900	$757.07
28	FOREST AVE	PLAZA ASSOCIATES AT CONGRESS	$197,750	$181.93
32	FOREST AVE	RB PORTLAND LLC	$162,900	$149.87
32	FOREST AVE	PLAZA ASSOCIATES AT CONGRESS	$175,560	$161.52
39	FOREST AVE	39 LLC	$2,957,100	$2,720.53
45	FOREST AVE	NORTHERN NEW ENGLAND	$10,420,800	$9,587.14
10	FREE ST	JBG&H ASSOCIATES	$2,933,800	$2,699.10
10	FREE ST	SOUTHERN MAINE PROPERTIES CO	$713,300	$656.24
22	FREE ST	FREE STREET ASSOCIATES LLC	$2,519,500	$2,317.94
23	FREE ST	ONE CITY CENTER ASSOCIATES LLC	$6,584,700	$6,057.92
41	FREE ST	SURPLUS STORE INC	$117,920	$108.49
46	FREE ST	NEW GMN INC	$2,359,200	$2,170.46
59	FREE ST	JBG & H ASSOCIATES	$448,260	$412.40
110	FREE ST	MAINEHEALTH	$730,800	$672.34
110	FREE ST	MAINEHEALTH	$1,032,900	$950.27
110	FREE ST	MAINEHEALTH	$43,300	$39.84
110	FREE ST	MAINEHEALTH	$239,500	$220.34
120	FREE ST	MAINEHEALTH	$586,840	$539.89
128	FREE ST	ARCAND PROPERTIES LLC	$305,000	$280.60
130	FREE ST	MAINEHEALTH	$723,380	$665.51
133	FREE ST	HUBBARD'S APTS INC	$532,700	$490.08
1	GOLD ST	ADNERB PROPERTIES LLC	$154,800	$142.42
3	GOLD ST	MAINE BODYWORKS LLC	$157,000	$144.44
93	HIGH ST	GREATER PORTLAND	$730,600	$672.15
106	HIGH ST	THIDWICK LLC	$409,300	$376.56
110	HIGH ST	ONE HUNDRED AND TEN HIGH ST	$382,800	$352.18
116	HIGH ST	CUMBERLAND CLUB	$1,317,200	$1,211.82
122	HIGH ST	PACIFIC & SOUTHERN COMPANY INC	$79,500	$73.14
122	HIGH ST	GANNETT KENTUCKY LIMITED	$813,050	$748.01
128	HIGH ST	PACIFIC & SOUTHERN COMPANY INC	$2,817,500	$2,592.10
142	HIGH ST	STONE COAST PROPERTIES LLC	$4,127,000	$3,796.84
157	HIGH ST	RB PORTLAND LLC	$34,831,300	$32,044.80
173	HIGH ST	181 HIGH STREET LLC	$8,309,400	$7,644.65
30	MARKET ST	E L C INC	$511,600	$470.67
36	MARKET ST	36 MARKET ST	$661,600	$608.67
42	MARKET ST	OCEAN BLOCK ASSOCIATES	$809,900	$745.11
43	MARKET ST	PORTLAND REGENCY INC	$285,520	$262.68

46	MARKET ST	MARKET MILK PARTNERS LLC	$721,900	$664.15
75	MARKET ST	WHOLLY COW LLC	$3,643,900	$3,352.39
77	MARKET ST	85 MARKET STREET LLC	$1,647,500	$1,515.70
100	MIDDLE ST	MIDDLE STREET OFFICE TOWER A	$17,130,000	$15,759.60
100	MIDDLE ST	MIDDLE STREET OFFICE TOWER B	$16,178,000	$14,883.76
111	MIDDLE ST	VENTURE III HOLDINGS LLC	$200,100	$184.09
115	MIDDLE ST	BROTHERS THREE LLC	$648,300	$596.44
121	MIDDLE ST	123 LLC	$2,738,300	$2,519.24
130	MIDDLE ST	ELC LIMITED LIABILITY COMPANY	$5,763,200	$5,302.14
131	MIDDLE ST	RACKLEFF BLOCK LLC	$2,168,800	$1,995.30
150	MIDDLE ST	CEDRONE RONALD M	$328,300	$302.04
150	MIDDLE ST	GOLDEN PEGGY	$329,700	$303.32
150	MIDDLE ST	IN FIRM GROUP THE	$290,700	$267.44
150	MIDDLE ST	IN FIRM GROUP THE	$290,700	$267.44
150	MIDDLE ST	FRANK PATRICK J JR	$168,400	$154.93
150	MIDDLE ST	COTSIRILOS BORLAND LLC	$150,800	$138.74
150	MIDDLE ST	MEIL JOAN F &	$158,900	$146.19
150	MIDDLE ST	DURRELL KATHERINE A &	$143,400	$131.93
150	MIDDLE ST	ERNEST PAUL W &	$167,400	$154.01
150	MIDDLE ST	FRANK JANE C	$166,800	$153.46
150	MIDDLE ST	COHEN ARTHUR C & THELMA JTS	$143,300	$131.84
150	MIDDLE ST	JOHNS F ARTHUR T	$168,400	$154.93
150	MIDDLE ST	HARVARD EILEEN W	$139,600	$128.43
150	MIDDLE ST	MILLS S PETER	$137,100	$126.13
150	MIDDLE ST	MILLS S PETER	$160,900	$148.03
150	MIDDLE ST	MOUMENE MISSOUM &	$178,400	$164.13
150	MIDDLE ST	LINDQUIST PETER R &	$150,800	$138.74
150	MIDDLE ST	BELL KEVIN P &	$158,900	$146.19
150	MIDDLE ST	THORNTON JAMES M	$153,400	$141.13
150	MIDDLE ST	WESTERVELT MARIANNE V	$167,400	$154.01
150	MIDDLE ST	M & B 101 INC	$166,800	$153.46
150	MIDDLE ST	M & B 101 INC	$143,300	$131.84
150	MIDDLE ST	HENDERSON HAROLD L &	$145,800	$134.14
150	MIDDLE ST	HARDING WILLIAM TRUSTEE	$149,600	$137.63
150	MIDDLE ST	WALTER MARIA L TRUSTEE	$137,100	$126.13
150	MIDDLE ST	MACBRIDE JENNIFER L	$160,900	$148.03
150	MIDDLE ST	FINDLAY JOHN D JR	$178,400	$164.13
150	MIDDLE ST	FISHER LAURIE	$150,800	$138.74
150	MIDDLE ST	CAMP PETER S	$158,900	$146.19
150	MIDDLE ST	MILLS S PETER	$153,400	$141.13
150	MIDDLE ST	GIUSTRA BETSY M TRUSTEE	$167,400	$154.01
150	MIDDLE ST	FONTANA RAYMOND J JR	$166,800	$153.46
150	MIDDLE ST	GIARRAPUTO CYNTHIA R &	$143,300	$131.84
150	MIDDLE ST	MONTGOMERY JORDAN	$145,800	$134.14
150	MIDDLE ST	NEAL EARL B	$149,600	$137.63
150	MIDDLE ST	GREENZWEIG NEIL TRUSTEE	$137,100	$126.13
150	MIDDLE ST	GIOVINE DONATO &	$160,900	$148.03
150	MIDDLE ST	MIRS PROPERTIES LLC	$799,300	$735.36
150	MIDDLE ST	DUNKERLY ALLAN S TRUSTEE	$402,900	$370.67
150	MIDDLE ST	242 NEWRY PARTNERS	$188,500	$173.42
150	MIDDLE ST	242 NEWRY PARTNERS	$188,500	$173.42
150	MIDDLE ST	DUNKERLY MARY V	$10,100	$9.29
150	MIDDLE ST	GIUSTRA BETSY M TRUSTEE	$5,100	$4.69
150	MIDDLE ST	LINDQUIST PETER R &	$10,400	$9.57
150	MIDDLE ST	MIRS PROPERTIES LLC	$10,100	$9.29
150	MIDDLE ST	MIRS PROPERTIES LLC	$10,100	$9.29
150	MIDDLE ST	IN FIRM GROUP THE	$10,100	$9.29

150	MIDDLE ST	IN FIRM GROUP THE	$10,100	$9.29
150	MIDDLE ST	GIARRAPUTO CYNTHIA R &	$10,100	$9.29
150	MIDDLE ST	MCGOLDRICK RICHARD J	$10,100	$9.29
150	MIDDLE ST	FRANK JANE C	$10,100	$9.29
150	MIDDLE ST	FRANK PATRICK J JR	$10,100	$9.29
150	MIDDLE ST	INFIRM GROUP	$10,100	$9.29
150	MIDDLE ST	MILLS S PETER	$10,100	$9.29
150	MIDDLE ST	ERNEST PAUL W &	$10,100	$9.29
150	MIDDLE ST	FINDLAY JOHN D JR	$10,100	$9.29
150	MIDDLE ST	MACBRIDE JENNIFER L	$10,100	$9.29
150	MIDDLE ST	CAMP PETER S	$10,100	$9.29
150	MIDDLE ST	CEDRONE RONALD M	$10,100	$9.29
150	MIDDLE ST	CEDRONE RONALD M	$10,100	$9.29
150	MIDDLE ST	THORNTON JAMES M	$10,100	$9.29
150	MIDDLE ST	DUNKERLY ALLAN S &	$10,100	$9.29
150	MIDDLE ST	MIRS PROPERTIES LLC	$10,100	$9.29
150	MIDDLE ST	MIRS PROPERTIES LLC	$10,100	$9.29
150	MIDDLE ST	MIRS PROPERTIES LLC	$10,100	$9.29
150	MIDDLE ST	MIRS PROPERTIES LLC	$10,100	$9.29
150	MIDDLE ST	MIRS PROPERTIES LLC	$10,100	$9.29
150	MIDDLE ST	HARDING WILLIAM TRUSTEE	$10,100	$9.29
150	MIDDLE ST	SHIPYARD INC	$10,100	$9.29
150	MIDDLE ST	SHIPYARD INC	$10,100	$9.29
164	MIDDLE ST	164 REALTY LLC	$1,232,900	$1,134.27
178	MIDDLE ST	BUCKSTAR LLC	$1,963,200	$1,806.14
182	MIDDLE ST	BUCKSTAR LLC	$53,700	$49.40
183	MIDDLE ST	SHOEMAKER LLC	$683,900	$629.19
183	MIDDLE ST	LEWIS SAUL & ASSOCIATES PC	$549,700	$505.72
183	MIDDLE ST	MORRISSWITZER-BUILDING	$549,700	$505.72
183	MIDDLE ST	SLEEPY HOLLOW DEVELOPMENT INC	$258,360	$237.69
183	MIDDLE ST	ITM REALTY II LLC	$291,340	$268.03
188	MIDDLE ST	BUCKSTAR LLC	$3,411,800	$3,138.86
193	MIDDLE ST	SAVI REALTY LLC	$2,004,200	$1,843.86
4	MILK ST	4 MILK MHR LLC	$1,414,300	$1,301.16
5	MILK ST	MILK STREET ASSOCIATES LLC	$2,561,900	$2,356.95
11	MILK ST	PORTLAND REGENCY INC	$112,080	$103.11
20	MILK ST	PORTLAND REGENCY INC	$7,901,900	$7,269.75
30	MILK ST	OCEAN BLOCK ASSOCIATES	$1,313,700	$1,208.60
0	MONUMENT SQ	TWO MONUMENT WAY ASSOCIATES	$31,700	$29.16
1	MONUMENT SQ	FINARD MURRAY W TR	$7,527,400	$6,925.21
2	MONUMENT SQ	800 NORTHERN CORP	$15,107,800	$13,899.18
6	MONUMENT SQ	PARCHEGGIO LLC	$187,000	$172.04
16	MONUMENT SQ	MCCURTAIN BRADLEY C	$706,700	$650.16
18	MONUMENT SQ	18 MONUMENT SQUARE LLC	$574,700	$528.72
22	MONUMENT SQ	22 MONUMENT SQUARE LLC	$1,679,700	$1,545.32
28	MONUMENT SQ	BUDDE SCOTT &	$770,900	$709.23
28	MONUMENT SQ	STODDARD ROBERT B &	$566,600	$521.27
28	MONUMENT SQ	28 MSQ LLC	$232,300	$213.72
28	MONUMENT SQ	28 MSQ LLC	$246,300	$226.60
28	MONUMENT SQ	28 MSQ LLC	$116,300	$107.00
50	MONUMENT SQ	50 MONUMENT SQUARE LLC	$3,166,400	$2,913.09
1	MONUMENT WAY	ONE MONUMENT WAY LLC	$3,465,500	$3,188.26
4	MOULTON ST	ADRIENNE-JANE INCORPORATED	$3,521,700	$3,239.96
5	MOULTON ST	MOULTON STREET REALTY LLC	$1,924,200	$1,770.26
7	MOULTON ST	7-9 MOULTON LLC	$283,300	$260.64
44	OAK ST	FRYE ASSOCIATES	$1,131,700	$1,041.16
51	OAK ST	MAINE COLLEGE OF ART	$155,430	$143.00

51	OAK ST	MAINE COLLEGE OF ART	$113,720	$104.62
51	OAK ST	MAINE COLLEGE OF ART	$159,130	$146.40
51	OAK ST	MAINE COLLEGE OF ART	$116,560	$107.24
57	OAK ST	NEKOIE BAHMAN &	$77,300	$71.12
72	OAK ST	AVESTA OAK STREET LP	$2,196,400	$2,020.69
81	OAK ST	HEGA REALTY LLC	$338,940	$311.82
84	OAK ST	NORTHEAST REALTY INC	$341,500	$314.18
95	OAK ST	NORTHERN NEW ENGLAND	$209,880	$193.09
25	PEARL ST	25 PEARL MHR LLC	$13,130,600	$12,080.15
31	PEARL ST	130 LIMITED LIABILITY COMPAMY	$4,582,400	$4,215.81
66	PEARL ST	LEADER PROPERTIES LLC	$3,984,200	$3,665.46
75	PEARL ST	WBFM LLC	$1,020,700	$939.04
75	PEARL ST	WOODMAN BUILDING	$571,300	$525.60
75	PEARL ST	WOODMAN BUILDING	$449,000	$413.08
75	PEARL ST	WOODMAN BUILDING	$352,000	$323.84
75	PEARL ST	WOODMAN BUILDING	$461,900	$424.95
75	PEARL ST	WOODMAN BUILDING	$352,000	$323.84
75	PEARL ST	WOODMAN BUILDING	$571,300	$525.60
119	PEARL ST	PEARL CUMBERLAND LLC	$4,265,900	$3,924.63
1	PLEASANT ST	EMSWORTH PROPERTY LLC	$696,700	$640.96
4	PLEASANT ST	GIOBBI ARCHIE S &	$46,020	$42.34
7	PLEASANT ST	7-19 PLEASANT STREET LLC	$392,200	$360.82
9	PLEASANT ST	7-19 PLEASANT STREET LLC	$79,990	$73.59
9	PLEASANT ST	7-19 PLEASANT STREET LLC	$11,760	$10.82
10	PLEASANT ST	GIOBBI CARLO JR	$15,100	$13.89
14	PLEASANT ST	GIOBBI CARLO JR	$250,700	$230.64
15	PLEASANT ST	7-19 PLEASANT STREET LLC	$811,000	$746.12
1	PORTLAND SQ	RREEF AMERICA REIT III CORP Z4	$15,876,300	$14,606.20
1	PORTLAND SQ	PS ONE REALTY LLC	$12,323,400	$11,337.53
2	PORTLAND SQ	RREEF AMERICA REIT III CORP Z4	$25,707,100	$23,650.53
7	PREBLE ST	5 MONUMENT SQUARE LLC	$57,050	$52.49
22	PREBLE ST	477 TIME & TEMPERATURE LLC	$2,153,900	$1,981.59
24	PREBLE ST	24 PREBLE STREET LLC	$1,221,800	$1,124.06
28	PREBLE ST	EARL APARTMENTS LLC	$2,442,400	$2,247.01
0	SHEPLEY ST	511 PLAZA LIMITED PARTNERSHIP	$322,700	$296.88
0	SHEPLEY ST	511 PLAZA LIMITED PARTNERSHIP	$204,630	$188.26
11	SHEPLEY ST	EVERETT CHAMBERS LP	$1,669,800	$1,536.22
25	SILVER ST	PORTLAND REGENCY INC	$600,550	$552.51
37	SILVER ST	WITT-T LLC	$520,400	$478.77
99	SILVER ST	ARENSBERG LEE C TRUSTEE	$120,400	$110.77
99	SILVER ST	TOZESKI DAVID P	$120,600	$110.95
99	SILVER ST	NORRIS BRENDA W	$121,100	$111.41
99	SILVER ST	THOMS DEBORAH L	$118,100	$108.65
99	SILVER ST	JOSEPH JOEY P	$140,200	$128.98
99	SILVER ST	LEDDY JENNIFER M	$114,700	$105.52
99	SILVER ST	LINCOLN STREET PROERTIES LLC	$106,800	$98.26
99	SILVER ST	FISCHER CHRISTOPHER E	$110,000	$101.20
99	SILVER ST	FLOECKHER PETER W &	$130,500	$120.06
99	SILVER ST	COUSINS DAVID A	$127,900	$117.67
99	SILVER ST	BRAGDON BENJAMIN	$123,800	$113.90
99	SILVER ST	BOROWSKI ROBERT B	$125,500	$115.46
99	SILVER ST	DUMAS JOHN L	$125,500	$115.46
99	SILVER ST	BERG HENRY T TRUSTEE	$125,500	$115.46
99	SILVER ST	DODERER WILLIAM K	$125,500	$115.46
99	SILVER ST	HAAG DARYA I	$107,900	$99.27
99	SILVER ST	KINSMAN JESSICA A	$99,900	$91.91
99	SILVER ST	ZURKAN WILLIAM K	$109,100	$100.37

99	SILVER ST	LEDUC SANDRA J & SOREL &	$112,600	$103.59
99	SILVER ST	LINCOLN STREET PROPERTIES LLC	$129,100	$118.77
99	SILVER ST	KINGRA MICHAEL R &	$129,100	$118.77
99	SILVER ST	BHANDARI AMEESH M &	$138,400	$127.33
99	SILVER ST	LITTLEJOHN CLIFTON T	$126,900	$116.75
99	SILVER ST	FITZPATRICK SUSAN E	$125,500	$115.46
99	SILVER ST	VAN PEURSEM CORINNE M	$125,500	$115.46
99	SILVER ST	MANCHESTER CATHLEEN A &	$91,900	$84.55
99	SILVER ST	PEEL BRUCE H	$102,700	$94.48
99	SILVER ST	DEVINE DEREK	$97,500	$89.70
99	SILVER ST	LINCOLN STREET PROPERTIES LLC	$105,500	$97.06
99	SILVER ST	GINTER DAVID R	$101,600	$93.47
99	SILVER ST	SILVER VICTORIA J	$86,100	$79.21
99	SILVER ST	PROSSER JAMES G	$105,600	$97.15
99	SILVER ST	HEALY ROBERT E &	$115,100	$105.89
99	SILVER ST	CHANDLER PETER H JR	$114,000	$104.88
99	SILVER ST	KATZ JAMES &	$379,600	$349.23
99	SILVER ST	PEAK 5 EQUITIES LLC	$406,200	$373.70
99	SILVER ST	GIARUSSO DAVID P SR	$100,000	$92.00
99	SILVER ST	BEAL PROPERTY MANAGEMENT	$100,000	$92.00
88	SPRING ST	LAFAYETTE PORTLAND LLC	$14,531,800	$13,369.26
188	STATE ST	LONGFELLOW SQUARE	$1,164,200	$1,071.06
190	STATE ST	HUCKSTER'S ROW PROPERTIES LLC	$676,800	$622.66
0	TEMPLE ST	11 TEMPLE MHR LLC	$2,590,200	$2,382.98
1	UNION ST	237 COMMERCIAL STREET LLC	$1,333,000	$1,226.36
1	UNION ST	237 COMMERCIAL STREET LLC	$384,000	$353.28
40	UNION ST	CENTRAL MAINE POWER CO	$868,720	$799.22
1	UNION WHARF	PROPRIETORS OF UNION WHARF	$1,351,100	$1,243.01
34	WHARF ST	GVF PROPERTIES LLC	$369,600	$340.03
42	WHARF ST	DREAM PORT 3 LLC	$381,200	$350.70
50	WHARF ST	DREAM PORT 3 LLC	$802,600	$738.39
14	YORK ST	BROWN J B & SONS	$2,264,000	$2,082.88
40	YORK ST	BROWN J B & SONS	$582,080	$535.51
	Total:		**$789,155,180**	**$726,022.84**

Order 259-13/14
Tab 20 6-2-14

CITY OF PORTLAND
IN THE CITY COUNCIL

ORDER APPROVING AND AUTHORIZING THE CITY MANAGER TO ENTER INTO MASTER AGREEMENT AND SUPPLEMENTAL SERVICES AGREEMENT WITH PORTLAND'S DOWNTOWN DISTRICT

ORDERED, that the Master Agreement of the Downtown Improvement District Corporation, d/b/a Portland's Downtown District is approved and the City Manager hereby authorized to enter into said agreement, in substantially in the form attached hereto, including the Baseline Services as Exhibit B to the Master Agreement, with Portland's Downtown District to carry out the development plan for the Portland's Downtown Improvement District for the period from and after July 1, 2014 and ending June 30, 2015; and

BE IT FURTHER ORDERED, that the Supplemental Services Agreement of the Downtown Improvement District Corporation, d/b/a Portland's Downtown District is approved and the City Manager hereby authorized to enter into said agreement, substantially in the form attached hereto, with Portland's Downtown District to implement Supplemental Public Works Services as approved in the Fiscal Year 2015 Appropriation Resolve.

Economic Development Department
Gregory A. Mitchell, Director

MEMORANDUM

TO: **Mayor and Members of the City Council**

FROM: **Greg Mitchell, Economic Development Director**

DATE: **May 27, 2014**

SUBJECT: **Portland's Downtown District/Annual Assessment Documents**

1. Order Adopting Development Program for PDD;
2. Order Establishing Yearly Assessments; and,
3. Order Authorizing Master Agreement and Supplemental Services Agreement

SPONSOR: Mark Rees, City Manager

COUNCIL MEETING DATE ACTION IS REQUESTED:
June 2, 2014, for a first reading; June 16, 2014 for a second reading, public hearing, and vote.

Can action be taken at a later date? No

If no, why not? This item needs to be acted upon prior to the start of the City's FY2015.

PRESENTATION: Greg Mitchell/5 Minutes

I. SUMMARY OF ISSUE

Each year in June, the City Council acts upon the following three Orders:

(1) adopting the Development Program for Portland's Downtown District (PDD);
(2) establishing the yearly assessment fees to property owners located within the PDD; and
(3) authorizing the Master Agreement and Supplemental Services Agreement with PDD.

II. REASON FOR SUBMISSION

City Council authorization is needed for the above three actions.

III. INTENDED RESULT

The intended result is for the PDD to have a yearly development program adopted by the City Council, have assessment fees levied to property owners in the District in order for the PDD to continue its program of services to support downtown cleanliness, safety, and events, and to formalize agreements between the PDD and the City for services. The City departments, which are involved in the provision of services to the PDD, have reviewed and approved this year's Master Agreement and Supplemental Services Agreement.

IV. COUNCIL GOAL ADDRESSED

Promote Economic Development in the City in a manner that provides for increased property values, diversification across industry sectors, and high paying jobs.

V. FINANCIAL IMPACT

This year's assessment of $725,880 will come from special assessments on all real estate in the PDD to fund PDD Development Program expenses for the period July 1, 2014 to June 30, 2015. ***The mill rate to raise this assessment is .92 cents per $1,000 of property value, which has been the same rate for the past five years.***

VI. STAFF ANALYSIS AND RECOMMENDATION

City Staff recommends the City Council approve the three Orders as presented.

VII. LIST OF ATTACHMENTS

1. PDD Development Program for FY15;
2. Listing of Property Owners and Assessment in PDD District; and,
3. Master Agreement; and,
4. Supplemental Services Agreement

MASTER AGREEMENT BETWEEN

THE CITY OF PORTLAND

AND

DOWNTOWN IMPROVEMENT DISTRICT, INC.
D/b/a PORTLAND'S DOWNTOWN DISTRICT

AGREEMENT made by and between the **CITY OF PORTLAND**, a municipal corporation of the State of Maine, hereinafter referred to as the "**CITY**" and the **DOWNTOWN IMPROVEMENT DISTRICT, INC.**, **d/b/a PORTLAND'S DOWNTOWN DISTRICT**, a Maine non-profit corporation, having its office and place of business at Portland, Maine, and doing business as "Portland's Downtown District", hereinafter referred to as the ''**CORPORATION**"

WHEREAS, the **CITY** has established a Downtown Improvement District; and

WHEREAS, the **CITY** desires to have certain services performed by the **CORPORATION**, as described in this Agreement, within the **CITY's** Downtown Improvement District (hereinafter referred to as the ''District''; and

WHEREAS, the **CITY** desires to contract with the **CORPORATION** for the provision of certain services to be provided in the District;

NOW, THEREFORE, in consideration of the covenants herein contained, the parties hereto mutually agree as follows:

ARTICLE I. FINANCIAL CONSIDERATIONS

1. The **CITY** will levy development district assessments on property in the District, as authorized by the City Council and permitted by law. **CITY**-owned property, as well as property which is tax exempt under Maine law, shall not be assessed by the **CITY**.

2. For the period commencing July 1, 2014 and ending June 30, 2015 the City will pay the **CORPORATION** in four (4) installments, to reflect the assessments collected by the City, less the **CITY**'s direct and indirect costs, such as, but not limited to, postage, publication, lien costs and costs of delinquent collection. Installment payments will be made on August 11, 2014; October 13, 2014; February 2, 2015; and May 4, 2015.

3. The **CITY** may adjust such payments, after an advisory consultation with representatives of the **CORPORATION**: either (i) in order to equal the net assessments collected; or (ii) in the event of any challenge to the assessments which includes a request for a refund, to withhold such amounts as the Director of Finance may deem necessary to protect the City from any order or judgment requiring it to make a refund.

   In addition to the foregoing, the **CITY** will pay in a lump sum, within thirty (30) days from the close of the fiscal year, any amount assessed in a prior year, but collected in a subsequent year. Said payment by **CITY** shall be in the amount of the net assessment collected as provided herein, less any amounts remaining to be reimbursed under a prior year Master Agreement or Supplemental Services Agreement with the **CITY**. **CITY** will provide the **CORPORATION** with written detail as to any deductions taken from payments under this paragraph.

   The **CORPORATION** shall provide a fiduciary bond, payable to the **CITY**, in the minimum amount of Ten Thousand Dollars ($10,000.00).

4. Advancements made hereunder shall be reimbursed to the **CITY** from receipts from development district assessments, net of any of the costs referred to in Paragraph 2.

5. Notwithstanding the foregoing, **CORPORATION** agrees that it will neither encumber funds which it anticipates receiving from development district assessments nor incur expenditures in anticipation of receipt of such funds except in accord with the line items in the budget attached hereto as Exhibit A, or any subsequent amendments thereto approved by the **CITY**.

6. The **CITY** and the **CORPORATION** have accepted the **CORPORATION's** budget in Exhibit A, covering the period beginning on July 1, 2014, and ending on June 30, 2015, with estimated District revenues from the assessments in the amount of $725,880.

7. The parties agree that the acceptance of the budget by the **CITY** is for planning purposes only and does not obligate the **CITY** to pay the **CORPORATION** said amounts. **CORPORATION** specifically acknowledges the **CITY's** right to either terminate or reduce its payments as provided in Paragraph 2.

8. The **CORPORATION** will provide the Director of Finance with a monthly financial statement in a form acceptable to her, including, but not limited to, a statement of its cash position. At a minimum, the statement shall list all income and expenses. The statement shall be due on or before the fifteenth (15th) day of the month following the month to which it relates. In addition, the books and records of the **CORPORATION** shall be audited annually as of the close of business on the thirtieth (30th) day of June by an independent certified public accountant and his report will be delivered to the Director of Finance.

9. The Director of Finance of the City of Portland will advise the **CORPORATION**, from month to month, of the amounts the **CITY** has collected from the assessments referred to herein, so that the **CORPORATION** can amend its budget to conform with the amount of money which may be available to it from the net proceeds of the development district assessments.

10. The **CITY** will maintain the level of "Basic Services" described in the memorandum which is attached hereto as Exhibit B.

11. The **CORPORATION** shall have reasonable access to the **CITY's** assessment collection records, and the **CITY** shall have reasonable access to the **CORPORATION's** books and records.

12. The Director of Finance shall determine the net amount collected by the City from development district assessments. In determining such amount, she shall deduct from the amounts so collected all costs (whether direct or indirect) incurred by the **CITY** both in establishing and also in administering the development district; all costs of assessments and collections; and, if the **CITY** should collect interest on delinquent assessments, such interest shall not be included in the "net amount collected".

13. The Director of Finance shall determine the "net amount collected from development district assessments" as well as the amount to be withheld by the **CITY** in the event of a challenge which includes a request for a refund. The

CORPORATION may appeal his determination within fourteen (14) days to the **CITY** Manager whose decision will be final.

ARTICLE II. SERVICES

A. ORGANIZATION OF CORPORATION.

The **CORPORATION** will:

1. Provide staff and administrative services for supervision of the daily activities and public space management of the District.

2. Establish positions for administration and management of the program; recruit, hire, and pay and otherwise supervise the work force necessary to implement this charge.

3. Establish a corporate Board of Directors whose members fairly represent a cross section of taxpayers in the District.

4. Establish a mechanism for resolving any dispute to the kind and level of services which may arise between the **CORPORATION** and persons subject to development district assessments regarding the kind and level of services provided by the **CORPORATION**.

5. Provide liaison between the **CITY**, the District, property owners, civic groups, interested persons, and other groups and individuals, as directed by the **CITY** Manager and necessary to insure the successful implementation of District services.

6. Maintain all minutes and records of proceedings as may be required.

B. SERVICES AUTHORIZED TO BE PROVIDED BY CORPORATION.

The **CORPORATION** is authorized to provide the following services to supplement the **CITY's** "Basic Services" as described in Exhibit B.

1. Decorate and beautify public places in the District.

2. Sponsor and promote public events to take place on or in public places in the District.

3. Advertise and promote non-profit, cultural, educational and commercial business activities in the District.

4. Maintain information and directional signing for the District in accordance with applicable City codes and ordinances.

5. Improve public relations, generating favorable publicity for the District.

6. Manage vending activities, kiosks and information booths.

7. Sweep and clean sidewalks in the District.

8. Clean and erase graffiti.

9. Maintain vegetation and greenery in the public areas.

10. Remove trash and litter.

11. Wash, maintain and relocate street furniture, trash cans, drinking fountains, street lanterns, telephones and undertake minor repairs to street furniture.

12. Remove snow.

13. Provide for security of public areas.

14. Carry out the downtown improvement program authorized and approved by the **CITY** Council as set forth in this Agreement.

C. AUTHORITY OF CORPORATION.

Nothing in this Agreement shall be construed to limit the **CORPORATION**'s general powers, as set forth in the Maine Nonprofit Corporation Act, Title 13-B of the Maine Revised Statutes Annotated.

ARTICLE III. TERM OF AGREEMENT

This Agreement shall commence on July 1, 2014, and continue through, June 30, 2015.

ARTICLE IV. TERMINATION

This Agreement may be terminated by either party for good cause. Good cause shall be deemed to be found by the **CITY** at such time as the **CORPORATION's** performance under this Agreement has been determined in the exclusive judgment of the **CITY** Manager to be unsatisfactory which determination shall not be unreasonable.

If the **CORPORATION** should fail to perform any material covenant, obligation or agreement hereunder for a period of thirty (30) days after written notice from the **CITY** Manager specifying such failure, then, upon expiration of the thirty (30) day period, the **CITY** Manager may provide the **CORPORATION** with notice of his intention to terminate the Agreement as provided herein.

The **CORPORATION** shall have a ninety (90) day period, computed from the date of receipt of the notice of intent to terminate, within which to provide satisfactory service. In the event the **CITY** Manager should determine, at the expiration of the ninety (90) day period, that the **CORPORATION's** performance is still unsatisfactory and declare that the Agreement is terminated, the **CORPORATION** shall have the right to appeal his decision to the City Council.

The appeal to the **CITY** Council shall be filed with the **CITY** Manager within seven (7) days from the date the **CORPORATION** receives the notice of termination.

The terms and conditions of this Agreement shall remain in full force and effect and binding on both parties until the **CITY** Council has acted on the appeal.

The **CORPORATION** shall be deemed to have good cause to terminate this Agreement if (i) the **CITY**, pursuant to the provisions of Article I, should reduce its anticipated payments by more than 20% of the amount it would otherwise have paid during the periods from July 1, 2014 to December 31, 2014, and January 1, 2015 to June 30, 2015; (ii) if the **CITY** should be more than 30 days in arrears in any payment due hereunder; or (iii) the **CITY** should fail to maintain "Basic Services", as that phrase is defined herein, in a material and substantial way.

In the event the **CORPORATION** should have "good cause" to terminate this Agreement, its relief shall be limited solely to termination of this Agreement, and it shall not be entitled to damages of any kind nor to equitable relief.

Nothing herein shall be construed as giving the **CORPORATION** the right to perform the work contemplated under this Agreement beyond the time when the **CORPORATION's** services become unsatisfactory as determined by the **CITY** Manager, following the ninety (90) day notice period, or, in the event of an appeal, beyond the time the **CITY** Council has affirmed the **CITY** Manager's decision. In case the **CORPORATION** should be discharged before all the services contemplated hereunder have been completed, or the services for any reason should be stopped, either because of the expiration of the term hereof or because of the inability of the **CORPORATION** to fulfill its obligations under this Agreement, the **CORPORATION** shall be reimbursed for all services satisfactorily performed to the date of termination in accordance with Article II hereof. After notice of termination and completion of the appeal process, the **CORPORATION** shall:

A. With respect to existing activities, take only such actions as the **CITY** Manager shall direct;

B. Assign to the **CITY** in the manner, at the times and only to the extent the **CITY**, acting by and through its **CITY** Manager, may direct it to do so, all the rights, title and interest of the **CORPORATION** in and to all existing orders and agreements.

C. To the extent rights, title and interests of the **CORPORATION** in and to existing orders and agreements may be assigned to the **CITY** and accepted by it; obligations incurred on or after such assignment will be assumed by the **CITY**. Otherwise, the **CORPORATION** shall settle all outstanding liabilities and all claims arising out of any terminated orders or agreements.

D. Deliver to the **CITY**, in the manner, at the times and to the extent directed by the **CITY** Manager, all documents and data produced by the **CORPORATION** as part of or in connection with the work.

ARTICLE V. ASSIGNMENT

The **CORPORATION** covenants and agrees that it will neither assign nor transfer any rights hereunder, either in whole or in part, without first obtaining the prior written consent of the **CITY**.

ARTICLE VI. AREA COVERED

The services will be provided by the **CORPORATION** in the area designated by the **CITY** Council as the Downtown Improvement District of the **CITY** (hereinafter the "District"). A description and map thereof are attached as Exhibits C and D respectively and incorporated herein.

ARTICLE VII. STANDARD OF PERFORMANCE

All services performed under this Agreement either by or on behalf of the **CORPORATION** shall be performed in a good, workmanlike fashion to the reasonable satisfaction of the **CITY** Manager.

ARTICLE VIII. MANAGEMENT OF PERFORMANCE

The **CITY**'s Director of Public Services and/or designee and the **CORPORATION'S** Executive Director and/or designee agree to meet and communicate on a monthly basis using a standard meeting agenda format to address regular topic reviews, including but not limited to quality control in service delivery, updated information on service activities, programs and projects. These services are detailed in this Agreement, its Exhibits, and also in the Supplemental Services Agreement - executed contemporaneously with this Master Agreement - and its Exhibit.

ARTICLE IX. COMPLIANCE WITH LAW

The **CORPORATION** will comply with all applicable provisions of Federal, State, and local law, including, but not limited to, the Civil Rights Act of 1964, in its performance under this Agreement. The **CORPORATION** shall include a similar provision in each of its subcontracts.

ARTICLE X. INDEMNIFICATION

The **CORPORATION** shall, at its own cost and expense, defend, indemnify, and hold harmless the **CITY**, its officers, agents, and employees, from and against the following:

(a) to the fullest extent permitted by law, the **CORPORATION** shall indemnify and hold harmless the **CITY**, its officers and employees, from and against all claims, damages, losses, and expenses, just or unjust, including but not limited to costs of defense, including attorney's fees, arising out of or resulting from the performance of this Agreement, provided that any such claims, damage, loss or expense is: (1) attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property, including the loss or use thereof; and (2) is caused in whole or in part by any negligent act or omission of the **CORPORATION**, anyone directly or indirectly employed by it, or anyone for whose act it may be liable;

(b) all claims and liens of the **CORPORATION's** consultants, subcontractors, and their laborers, mechanics, materialmen, and/or suppliers.

Such obligation shall not be construed either to negate or abridge any other obligation of indemnification, and shall not be limited by any provision for insurance contained in this Agreement.

ARTICLE XI. INSURANCE

Neither the **CORPORATION** nor any of its subcontractors shall commence work under this Agreement until they have provided the insurance coverage required by this Agreement and such coverage has been approved by the **CITY**.

(a) Workers' Compensation Insurance. The **CORPORATION** and its subcontractors shall procure and maintain, at their own expense, and show evidence to the **CITY** of Workers' Compensation Coverage, as well as Employer's Liability Coverage, for their employees. All such policies which are in any way related to the services to be provided hereunder and which are secured and maintained by the **CORPORATION** or any subcontractors shall include clauses requiring that each underwriter shall waive all of its rights of recovery under subrogation or otherwise against the **CITY**. The City shall be named as an additional insured in all such policies.

(b) Prior to the execution of this Agreement, **CORPORATION** will procure and maintain Public Liability Insurance coverage and Automobile Insurance coverage in amounts of not less than Four Hundred Thousand Dollars ($400,000) combined single limit for bodily injury, death, and property damage, and also Worker's Compensation Insurance coverage, naming the **CITY** as an additional insured thereon. an additional insured on the certificate, in this way: certificate must say either: A) "the policy actually been endorsed to name the City of Portland as an Additional Insured" and a copy of the endorsement must come to the City of Portland with the certificate, or B) "the policy already includes an endorsement, such as the General Liability Expansion Endorsement, by which the City of Portland is, in fact, automatically made an additional insured." A Certificate which merely has a box checked under ''Addl Insr'', or the like, or which merely states The City of Portland is named as an Additional Insured, will not be acceptable.

(d) Deductible Amount. The **CORPORATION** and its subcontractors will reimburse the **CITY** for any amounts it may be required to pay and hold it harmless from the cost of any losses for which they are responsible and to which a deductible amount may apply. The deductible amount in any such policy may not exceed Two Thousand Five Hundred Dollars ($2,500.00) without the written consent of the **CITY**.

(e) Certificate of Insurance. The **CORPORATION** and its subcontractors will provide the **CITY** with either certificates of insurance or certified copies of the applicable policies, showing that they have complied with these provisions, and such certificates shall provide that thirty (30) days' written notice of non-renewal, material modification, or cancellation must be given to the **CITY**, prior to the effective date of such non-renewal, material modification, or cancellation.

(f) Claims-made Policies. Claims-made policies will not be accepted.

ARTICLE XII. INDEPENDENT CONTRACTOR

The **CORPORATION** either has or will secure, at its own expense, all personnel, materials, and equipment required to perform its obligations under this Agreement. Its personnel shall neither include any employee of the **CITY** nor shall such personnel be deemed to have any contractual relationship with the **CITY** by virtue of this Agreement. This Agreement does not prohibit either the **CORPORATION** or the **CITY** from entering into any contractual relationship. The **CORPORATION**, agreeing expressly that its status is that of an independent contractor, further, agrees that no such personnel shall represent or hold himself or herself out to be an officer or employee of the **CITY** either by reason of this Agreement or by reason of his/her employment by the **CORPORATION** or its subcontractors.

ARTICLE XIII. SUBCONTRACTS

The **CORPORATION** may, after thirty (30) days' notice in advance to the **CITY** Manager of its intention to do so, and with his approval, which shall not be unreasonably withheld, subcontract with third parties for the provision of part or all of the public services, including, but not limited to, security services, trash and litter removal, and snow removal, under this Agreement. The **CORPORATION** shall provide the **CITY** with copies of any third party contracts and with any insurance certificates required under this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this

Agreement as of this ________ day of June, 2014.

WITNESS **CITY OF PORTLAND**

______________________________ By: ________________________
Mark H. Rees
Its City Manager

WITNESS **DOWNTOWN IMPROVEMENT DISTRICT,INC.**
d/b/a PORTLAND'S DOWNTOWN DISTRICT

______________________________ By: ________________________
Michael Mastronardi
Its Board Chairman

PORTLAND'S DOWNTOWN DISTRICT FY2015 BUDGET

Board Approved May 15, 2015

Ordinary Income/Expense

Income

ADMIN FEE INCOME-P&S	12,000	
ASSESSMENT INCOME		
CITY ASSESSMENT PROCESSING COST	0	
ASSESSMENT REVENUE	725,880	
NONPROFIT CONTRIBUTIONS	2,500	
EVENT INCOME		
MERRY MADNESS INCOME	12,000	
LIGHT UP YOUR HOLIDAYS INCOME	5,000	
ALIVE AT FIVE INCOME	20,000	
OLD PORT FESTIVAL INCOME	67,000	
SHOP FOR A CAUSE INCOME	0	
PORTLAND WINTERFEST INCOME	20,000	
TOTAL EVENT INCOME		124,000
INTEREST INCOME	150	
LOCAL THUNDER AD REVENUE	1,000	
MISCELLANEOUS INCOME	300	
P&S INCOME	12,000	
P&W INCOME	1,000	
Total Income	**878,830**	

Expense

BANK SERVICE CHARGES	0	
CLEANING	2,995	
CONFERENCES/PROF DEV	2,000	
CONTRACT LABOR	250	
COPIER MAINTENANCE	900	
DEPRECIATION EXPENSE	0	
DUES AND SUBS	3,000	
EMPLOYEE COSTS		
HEALTH/DENTAL INSURANCE	24,000	
LIFE & DISABILITY INSURANCE	3,000	
PAYROLL PROCESSING FEE	1,000	
PAYROLL TAX EXPENSE	16,984	
SIMPLE EXPENSE	3,000	
TOTAL EMPLOYEE COSTS		20,984
EMPLOYEE PARKING & BUS	3,600	
EQUIPMENT EXPENSE	500	
INSURANCE		
DIRECTORS & OFFICERS	600	
GENERAL LIABILITY INCLUDING EVENTS	11,535	
LIQUOR LIABILITY	1,000	
WORKERS COMPENSATION	1,300	
TOTAL INSURANCE COSTS		14,434

	MEETING EXPENSES	4,000	
	POSTAGE	4,500	
	PROFESSIONAL FEES		
	ACCOUNTING	7,500	
	COMPUTERS	750	
	LEGAL	2,000	
	TOTAL PROFESSIONAL FEES		10,250
	RENT		
	CAM CHARGES	7,700	
	RENT - Other	16,500	
	SALARIES AND WAGES	180,000	
	BONUS AND INCENTIVES	15,000	
	TOTAL COMPENSATION		195,000
	SUPPLIES	4,000	
	TAXES-PROPERTY	800	
	TELEPHONE & INTERNET	3,000	
	UTILITIES		
	ELECTRIC	1,600	
	GAS	1,200	
Total Expense		**324,214**	
Net Ordinary Income		**554,616**	

Other Income/Expense

Other Expense

ADOPT A FLAG EXPENSE	200	
ALIVE AT FIVE		
BEER	0	
MARKETING AND ENTERTAINMENT	6,000	
OTHER BEVERAGE/BAR COSTS	6,000	
PERMITS	600	
PORT-A-POTTIES	1,000	
SECURITY	4,000	
SOUND	6,000	
STAGE	5,000	
TOTAL ALIVE AT FIVE COSTS		28,600
BANNERS EXPENSE	200	
CRUISE CONSORTIUM EXP	2,500	
DOWNTOWN WORKER DAY	750	
GENERAL MARKETING	25,000	
GRAFFITI REMOVAL	3,000	
GUIDES EXPENSES		
GUIDE PROGRAM EXPENSES	1,000	
PAYROLL TAX EXPENSES	2,200	
TELEPHONE STIPEND	375	
WAGES	20,000	
TOTAL GUIDE EXPENSES		23,575
Total GUIDES EXPENSES		

	HOLIDAY LIGHTS	41,500	
	HOMETEAM EXPENSES	5,000	
	LIGHT UP YOUR HOLIDAYS		
	MARKETING	5,500	
	PERFORMERS	4,000	
	SECURITY	850	
	TREE LIGHTING	2,300	
	WINDOW WALK	250	
	MERRY MADNESS EXPENSES	5,500	
	WAGON RIDES	6,000	
	TOTAL LUYH EXPENSES		24,400
	PORTLAND WINTERFEST EXPENSES	14,000	
	OLD PORT FESTIVAL		
	MARKETING	4,500	
	MISCELLANEOUS	7,000	
	PERFORMERS	1,000	
	PERMITS	5,800	
	SECURITY	1,800	
	TOTAL OLD PORT FESTIVAL EXPENSE		20,100
	PARK & SHOP		
	P&S MISCELLANOUS EXP	3,000	
	PARK & SHOP ADMIN EXPENSE	7,000	
	TOTAL PARK AND SHOP EXPENSE		10,000
	PARK AND WORK EXPENSE	700	
	POLICE CADET PROGRAM	14,000	
	PRIOR YEAR ADJUSTMENTS	0	
	SUPPLEMENTAL SERVICES CONTRACT EXPENSE	328,000	
	WEBSITE DEVELOPMENT	12,500	
Total Other Expense		**554,025**	
Net Income		**591**	

EXHIBIT B (BASELINE SERVICES)

MEMORANDUM RELATED TO THE PROVISION OF CERTAIN SERVICES BY THE CITY OF PORTLAND

(July 1, 2014 - June 30, 2015)

This Memorandum relating to the provision of certain services attempts to define the baseline of City services agreed to be provided by the City to the area defined and designated as the Downtown Improvement District as passed by the City Council on March 16, 1992 (Council Order #306, as amended on February 22, 1995, by Council Order #185). This Memorandum is not binding upon the current City Council or any future City Council, but rather is a definition of the City's intent and good faith to provide services to the Downtown Improvement District zone.

It is generally understood that the City shall not reduce any of these usual and normal baseline services, thus requiring the same services to be provided by the Downtown Improvement District, Inc. (d/b/a Portland's Downtown District or its successors, unless these reductions are part of an overall reduction of City services provided by various departments to the City as a whole.

MAINTENANCE SERVICES.

Whereas it is the intention of any downtown improvement district maintenance program to complement existing City services currently provided with a supplementary program of cleaning and/or maintenance, the following information shall comprise the baseline of City services to be provided at City expense. Unless otherwise noted, services to be provided by the City shall apply only to the area(s) considered part of the public way.

1) Horticultural Program.

In all public areas within the downtown improvement district zone, the City will maintain and improve the condition of all flower urns and other flowerbeds, trees, tree wells, bushes, plantings and other like horticultural amenities. Such activity shall include the initial planting, timely and appropriate maintenance, preventative and otherwise, and expeditious replacement of any damaged, destroyed or diseased horticultural products, including grass, flowers, and trees. Specific areas of attention will include Longfellow Square, Congress Square, Monument Square, Tommy's Park, Post Office Park, Boothby Square, and any other public park, square or space which may be developed in the future.

2) Green Space Maintenance.

The City shall execute a green space maintenance program including mowing of all public grassed areas within the District. .

3) Downtown Blitz.

Each year the City shall undertake a dedicated effort to repair, repaint, replace and correct any defects, deficiencies or problems in the district. Items of focus shall include light and utility poles, sidewalks, curbstones, trashcans, benches, signs, crosswalk markings, traffic signals, tree wells, planters, benches, trees, kiosks, shelters, bollards, and any other amenity that is now or at some point in the future may be installed. This program will be undertaken as early as possible each spring and conclude as rapidly as possible. Performance of some activities, i.e. painting, will take place annually as conditions permit. Major capital activity or the reconstruction and/or repair of significant infrastructure (street paving, sewer work, etc.) would not be considered part of this blitz program.

4) Sidewalk Repair.

To the extent it is funded, the City will undertake an on-going sidewalk repair program to re-grout existing sidewalks and replace bituminous sidewalk repairs with permanent repairs.

5) Street Sweeping.

All streets or parts thereof included in the downtown improvement district zone will be swept from curb line to curb line once per week.

6) Trash Removal.

Daily and when necessary emptying of all public trash receptacles in the downtown improvement district zone and disposal of resulting waste.

7) Holiday Decorations.

Installation and removal of downtown Holiday decorations throughout the District to include Christmas trees at Monument Square and City Hall Plaza, string lights on light poles and common area trees such as Tommy's Park, and banners as agreed by the City and PDD, and provide for electrical energy related costs.

8) Snow Plowing.

The City will plow and remove snow as necessary from all streets and parts thereof in the downtown improvement district zone.

9) Streetscape Amenity Maintenance.

The City will repair and correct any defects, deficiencies or problems in the district as necessary. Items of focus include light and utility poles, sidewalks, curbstones, trashcans, signs, crosswalk markings, traffic signals, tree wells, planters, benches, trees, kiosks, shelters, bollards, and any other amenity that are now or at some point in the future may be installed. All repairs, etc. will take place within a reasonable time after notice of need.

10) Lighting.

Maintenance and replacement of all street lights and traffic signals and payment for necessary electrical energy.

11) Graffiti removal on public property.

12) Prioritization

PDD shall have the opportunity to participate with City staff from the Department of Public Services in the prioritization of all proposed capital improvement projects within the District including, but not limited to, tree well reconstruction and sidewalk repairs. PDD officials recognize that City staff also work closely with the City Manager's office and the City Council for project priorities.

POLICE SERVICES.

1) A minimum of four uniformed patrol officers will intersect all or part of the downtown improvement district area. The actual number of officers will vary depending upon time of day and day of week. During periods when calls for service are typically at their peak, the number of officers assigned will increase significantly, for example during weekend evenings and the summer months. This increase will include foot and bicycle patrols. Officers will be supported with additional personnel (supervisors, detectives, evidence technicians) as necessary.

2) As long as the Senior Lead Officer Program is in effect,

at least one Senior Lead Officer will be assigned to the Downtown Improvement District area.

3) From the Friday following Thanksgiving to New Year's Day, patrol efforts will be supplemented by use of a foot patrol. The number of officers and hours of the assignment is dependent upon staffing levels. Every effort will be made to assign two officers during those hours that retail shops are open.

<u>OTHER MUNICIPAL SERVICES</u>.

Whereas it is the intention of any downtown improvement district program to complement existing City services currently provided by departments or divisions, other than those described above, with supplemental services, the following information shall comprise the baseline of other City services to be provided at City expense.

1) Coordination of the use of downtown's public spaces within the District.

2) Coordination and staffing City services required for events occurring in downtown Portland.

3) As previously existing events, the City will provide necessary services to support the annual Tree Lighting Ceremony and the annual one-day Old Port Festival within the boundaries established by City Council order #168-21/13; to wit: the area bordered by Congress, Pearl, Commercial, Center, Union and Temple Streets and including both sidewalks of Commercial Street with no costs charged to the PDD for these events.

Description of Portland's Downtown District

Beginning at Longfellow Square, at the southwesterly corner of Congress Street and State Street, easterly along Congress Street to High Street;

Thence northwesterly along High Street to Deering Street;

Thence along the easterly side of High Street to Cumberland Avenue;

Thence along the southerly side of Cumberland Avenue, beginning at High Street, to the Franklin Street Arterial:

Thence along the westerly side of the Franklin Street Arterial to Congress Street; and

Thence along the westerly side of Congress Street to Myrtle Street;

Thence along the westerly side of Market Street to the southerly side of Newbury Street;

Thence easterly along Newbury Street to the westerly side of the Franklin Street Arterial;

Thence along the westerly side of the Franklin Street Arterial to the southerly side of Commercial Street; thence along Commercial Street to the easterly side of Cross Street;

Thence along the northerly side of Commercial Street to Maple Street;

Thence along the easterly side of Maple Street from Commercial Street to the southerly side of Danforth Street;

Thence along the southerly side of Danforth Street in an easterly direction to York Street;

Thence northeasterly to the intersection of Center Street, York Street, and Pleasant Street;

Thence westerly along Pleasant Street from its intersection with Center Street to a passage way, situated at number 15 Pleasant Street according to the street numbering plan as shown on Chart 38, Block E, Lot 23 of the Assessor's Maps on file at Portland City Hall; and

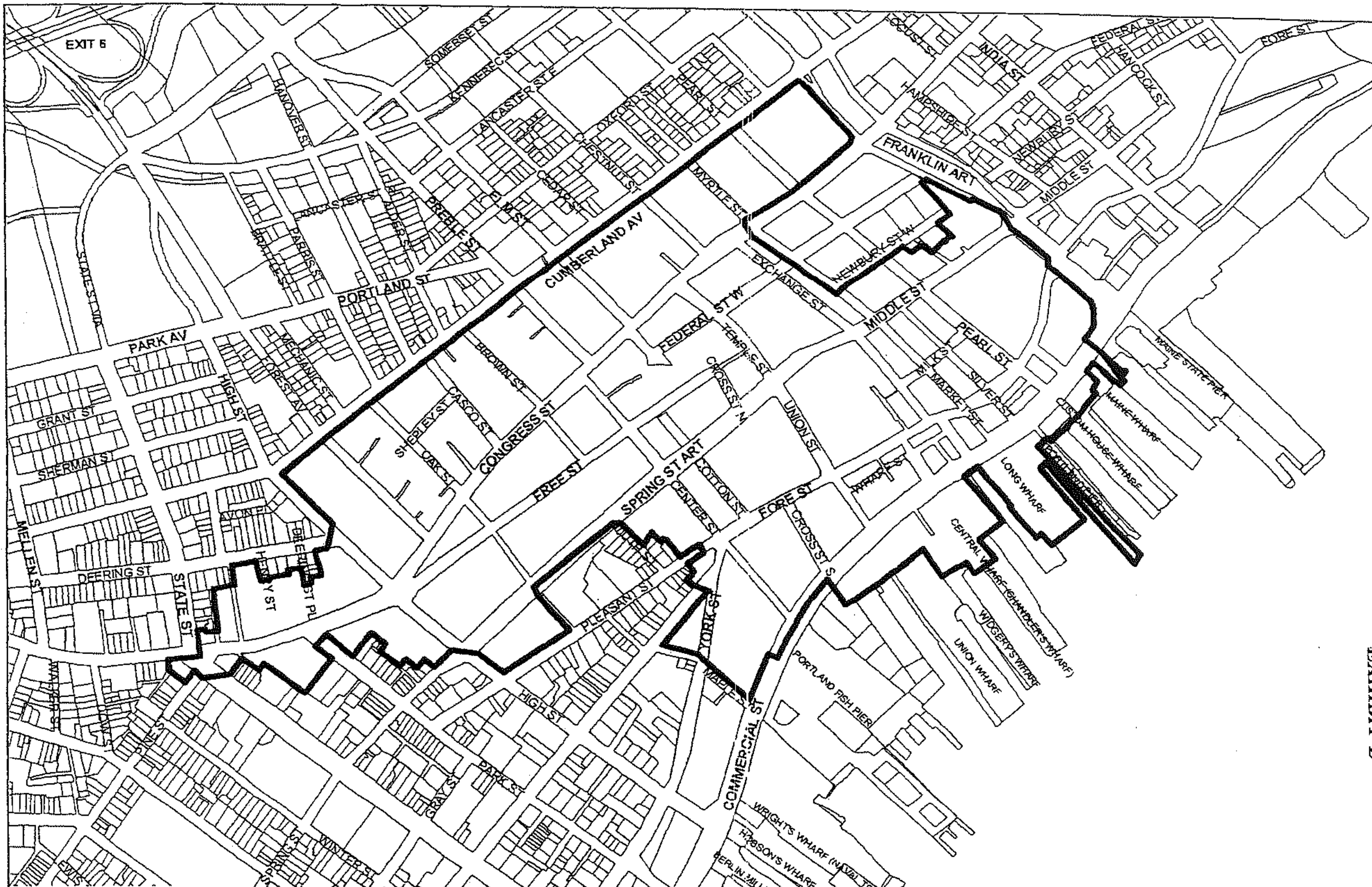
Thence along the easterly side of South Street from number 13 South Street according to the street numbering plan as shown on Chart 38, Block E, Lot 10 of the Assessor's Maps on file at Portland City Hall, to the northerly side of Spring Street;

Thence along the northerly side of Spring Street in a westerly direction to Oak Street;

Thence along the westerly side of Oak Street to its intersection with Pleasant Street;

Thence along Pleasant Street in a westerly direction to the easterly side of High Street; and

Thence along the northerly side of High Street to its intersection with Congress Street.



PORTLAND DOWNTOWN DISTRICT

Effective July 1, 2004

Map produced by the City of Portland's GIS Workgroup March 5, 2004

N W E S

200 0 200 400 60...

EXHIBIT D

SUPPLEMENTAL SERVICES AGREEMENT BETWEEN

DOWNTOWN IMPROVEMENT DISTRICT d/b/a
PORTLAND'S DOWNTOWN DISTRICT CORPORATION

AND

CITY OF PORTLAND

AGREEMENT made this ____ day of June, 2014, by and between the City of Portland, a municipal corporation duly organized under the laws of the State of Maine, Cumberland County (hereinafter the "**City**") and the Downtown Improvement District Corporation, d/b/a Portland's Downtown District, a Maine non-profit corporation, having its office and place of business at 549 Congress Street, Portland, Maine (hereinafter the "**PDD**").

W.I.T.N.E.S.S.E.T.H.

WHEREAS, the **City** and **PDD** entered into a Master Agreement of even date establishing mutual rights and responsibilities for the provision of services in the Downtown Improvement District (hereinafter the "District"); and

WHEREAS, said Master Agreement established the Baseline Services to be provided by **City** in the District; and

WHEREAS, **PDD** wishes to contract with the **City** to have the **City** provide, on a flexible basis depending upon funds available, Supplemental Maintenance Services in addition to those in the Master Agreement;

NOW THEREFORE, the parties do hereby agree as follows:

1. <u>Supplemental Services</u>: The **City** shall provide the following Personnel and Services (hereinafter the "Supplemental Services") in the District in addition to the Baseline Services provided in the Master Agreement:

1.1. Personnel:

One PDD Steward		
One Public Services Supervisor	Days	52 Weeks
Three Maintenance Worker III	Days	52 Weeks
Two Laborers	Days	Seasonal

1.2. Persons providing Supplemental Services hereunder shall be assigned by the **City** after providing reasonable opportunity to **PDD** for requests for service. Such persons are not required to be employees of the **City**. Such persons shall not, however, be considered to be employees of **PDD** and **PDD** is not intended, nor shall it be deemed to be, a joint employer with **City**. As between the **City** and **PDD**, **City** shall be responsible for all aspects of employment for all persons supplied by **City** pursuant to this Agreement, including compensation, liability and workers compensation coverage, employment taxes and any applicable fees.

1.3 Services to be provided are:

*Transportation and set-up of materials and equipment for planned special events activities of **PDD** (with proper notification to coordinator)
*Litter patrol, collection and disposal on streets, sidewalks, and public areas within the District.
*Graffiti removal from City property
*Removal of posters
*Cleaning and painting of all furniture and fixtures
*Sidewalk sweeping
*Cleaning of tree wells
*Weed control in support of other city departments performing 'basic services'
*Snow clearance at crosswalks and from sidewalks during curb to curb snow removal

*Installation of Holiday decoration in the District as agreed with PDD, in addition to those described in the Baseline Services provided in the Master Agreement, including electrical energy costs

*Maintenance and cleaning of Visitor's Booth and Tommy's Park.

*Clean and maintain the bathrooms, located in the Fore Street Garage and Spring Street Garage buildings, when the bathrooms are open to the public

1.3.1. **PDD** Sidewalk Snow Plowing Program. All property owners in the District assessment area are responsible for maintaining their sidewalks in the winter pursuant to Portland City Code §§25-173(C) and 25-174(C), including snow removal from their property line to the street gutter and ice control.

1.3.2. Following a snow storm, the **City** will provide a clear walkway no less than the width of a Holder's capability. To the extent reasonable, the **City** will clear the sidewalk area but it is not the intent of the parties that the **City** will clear the snow from the full width of the sidewalk area. The City will provide ice control to the extent possible. If weather conditions are so severe that the area cannot be plowed due to equipment capability, the **City**, in its discretion, may choose not to provide sidewalk snow plowing without penalty.

1.3.3. Management of Supplemental Services. The City's Public Services Director and/or Designee and PDD's Executive Director and/or Designee agree to meet and communicate on a monthly basis with meeting agendas to ensure quality control in service delivery is meeting expectations; providing updated information on service activities, programs and projects. The Public Services Department will provide a staff contact to PDD for direct communications, which is identified as the Districting Supervisor and

PDD Supervisor. A point of contact for PDD officials is the PDD Supervisor and District Coordinator. Conversely, the City of Portland Department of Public Services looks to the PDD Executive Director or designee as the City's point of contact on all issues involving PDD matters. A complete work plan and list of Services provided under this FY2015 agreement is provided in Exhibit A hereto.

2. Term: The term of this Agreement is from July 1, 2014 through June 30, 2015.

3. Budget and Payment: In consideration for these Supplemental Services, **PDD** agrees to pay the **City**, in equal monthly installments, for all Supplemental Services provided hereunder the total sum of $ 328,000 for FY2015. The **City** shall bill and **PDD** shall pay the **City** beginning July 1, 2014, a quarterly payment of $82,000.

3.1. In the event **PDD** requests services from **City** in addition to those included herein, **City** shall have the option, in its sole discretion to provide such services, with payment to be made by **PDD** for any such services on a Time and Materials basis, or such other basis as the parties may agree in writing. "Time" as used herein shall mean all of the **City**'s employee costs, i.e. hourly wages or salary. "Materials" as used herein shall mean the actual cost to the **City** of equipment, materials and/or supplies provided or used, with no additional markup.

4. Modifications: It is understood and agreed by the parties that **City** has adopted an expenditure budget which includes the cost of these Supplemental Services and has adopted a revenue budget which provides for the reimbursement of such costs by **PDD** as provided hereunder. In the event that either **PDD** or the **City** anticipates that there will be insufficient revenues to pay for such Supplemental Services, said party will notify the other party of the anticipated shortfall, and the parties agree to meet promptly and confer to modify the level of Supplemental Services which the **City** is able to provide. It shall be the responsibility of **PDD** to notify **City** as soon as reasonably possible if such Supplemental Services need to be modified or adjusted for anticipated revenue shortfalls or modifications. In the event of a revenue shortfall, the **City** will have no obligation to provide Services in excess of **PDD** funds available to reimburse **City**; however, **City** will have the right, but not the obligation, to continue to provide Supplemental Services to the extent provided in the **City** budget even in the event of a revenue shortfall. The parties agree to memorialize in writing any changes in the monthly payments due under Section 3 above.

4.1. Either party may terminate or modify this Agreement in the event of a budget shortfall upon no less than Sixty (60) days prior written notice to the other party.

4.2. In the event Supplemental Services are terminated for any reason by either party, it shall be in **City**'s discretion as to whether it will continue or resume providing such Supplemental Services.

4.3. **PDD** agrees to give the City Manager or the Manager's designee advance written notice of any formal meeting of its Directors or Officers at which modification of the current year Supplemental Services budget is to be discussed or considered, and to permit the attendance of **City** representative at such meeting. **City** and **PDD** agree to provide copies of draft budgets for the upcoming fiscal year reasonably in advance of any final decision by **PDD** or the **City** as to said budget, and the parties agree to meet and confer in regard to such budgets.

5. **City**'s representative in regard to provision of Supplemental Services hereunder is the City Manager or the Manager's designee.

(Rest of page left intentionally blank.)

IN WITNESS WHEREOF, the **City** and **PDD** have signed this Agreement through their authorized representatives as of the day and date above written.

Witness: | **City of Portland**

____________________________ By: ____________________________

Mark H. Rees
Its City Manager

Witness: | **Downtown Improvement District d/b/a Portland's Downtown District**

____________________________ By: ____________________________

Michael Mastronardi
Its Board Chair

EXHIBIT A

to Supplemental Services Agreement

(Supplemental Services Work Plan and Event Support for FY2015)

MEMORANDUM RELATED TO THE SUPPLEMENTAL SERVICES AGREEMENT (SSA) BETWEEN THE DOWNTOWN IMPROVEMENT DISTRICT dba PORTLAND'S DOWNTOWN DISTRICT (PDD) AND THE CITY OF PORTLAND (City)

(July 1, 2014 - June 30, 2015)

This memorandum is a good faith attempt to define certain services, programs and events, and to achieve an improved level of satisfaction for both the **City** and **PDD**. It is generally understood that the city's Baseline Services, as articulated in Exhibit B of the Master Agreement, do not overlap or replace the services and programs incorporated in the SSA.

Also, listed are the specific special events produced by **PDD** for the benefit of the **City** and its property owners, residents, businesses and visitors, during the contract period.

The ongoing relationship between **PDD** and the **City** has evolved, along with the needs and expectations of both parties. The goal of this document is to improve coordination, establish priorities, clarify services and responsibilities, and list events covered under the terms and conditions of the SSA. The result will be to produce a more proactive, performance-based approach to the maintenance, cleanliness and overall attractiveness of downtown Portland.

1. <u>FY 2015 City Personnel Work Plan</u>

The City personnel assigned to perform services under the Supplemental Services Agreement are expressed in the FY2015 Portland Public Services Budget detail. For the current period of July 1, 2014 through June 30 2015 these personnel are:

1. (1) Public Services Supervisor
2. (1) PDD Steward
3. (3) Maintenance Worker III
4. (1) Seasonal Part-Time Maintenance Worker

Staffing levels may change on an occasion to account for employee leave coverage, emergencies or other unforeseen circumstances. However the City of Portland, Department of Public Services commits to continue to provide the general list of services provided by these personnel under the SSA.

1.1 The general list of services provided by these personnel is identified within the SSA under item 1.3. These shall not overlap services provided within Baseline Services (Exhibit B to Master Agreement).

1.2 The Public Services Supervisor shall inspect the entirety of **PDD** once every two weeks. During this inspection particular attention shall be focused on, but not limited to, the overall cleanliness and maintenance of the sidewalks, streets, trash containers, graffiti removal, open spaces, furniture and fixtures, lights, signage, the visitor kiosk and public restrooms. The status of projects or work orders in process should be continually updated. The results of each inspection shall be logged and documented; a monthly report will be presented every month.

1.3 The Public Services Supervisor shall direct the maintenance personnel on their daily responsibilities by producing a weekly schedule highlighting project activities and goals. The Supervisor will participate and assist the team in achieving project activities, as needed.

1.4 Horticultural and landscaping duties shall be in support of city personnel and departments assigned to these tasks. PDD dedicated personnel should assist (for instance with weed control and seeding) on an as needed basis, as time and normally assigned duties allow.

1.5 Sidewalk plowing and snow removal at intersections should be accomplished as soon as is reasonably possible during and following a snow event. If a yellow ban is called, sidewalk snow removal, as indicated in sections 1.3.1 and 1.3.2 of the SSA, should be completed within the same timeframe as city personnel and contracted partners remove snow from the District's streets and parking areas. The Department of Public Services will organize an annual winter briefing with downtown contract partners that remove snow on sidewalks and plazas to review best practices regarding coordinating work activity. This meeting will typically occur in late fall/early winter.

1.6 "Quick response" repairs, such as missing bricks, landscaping damage or graffiti removal shall be performed by **PDD** personnel, as soon as possible. **PDD** and **City** will jointly approve each quick response, as needed.

1.7 **PDD** and **City** will prioritize larger projects within the District generally included in baseline services or CIP, and managed by other **City** teams or departments. These include, but are not limited to, major sidewalk repairs, tree well rehabilitation, landscape installations and other reconstruction projects. These District projects will be prioritized with input from **PDD**, and may include **PDD** personnel in their execution. Progress and status shall be monitored by the **PDD** supervisor, and updated as part of the monthly reporting.

1.8 **PDD** will have access to the new 'workflow management software' as soon as it becomes available to allow for more efficient logging and documentation of service requests.

1.9 **PDD** dedicated personnel will wear approved uniforms and work clothes at all times when on duty. **City** and **PDD** agree to work jointly on uniform decisions, including recommendations on an alternative uniform for PDD personnel.

2. <u>FY2015 PDD Event Support Plan</u>

PDD and the **City** recognize the value that well executed events bring to the vitality and economic development of the downtown. To that end, **PDD** agrees to follow the **City's** established permitting process and with the exception of the events as outlined in Exhibit B, Baseline Services, agrees to reimburse the City for actual expenses, as agreed to by both parties, required to support these events.

In FY2015, **PDD** is planning major events that require a level of support by **City** personnel.

PDD plans to incorporate recycling at all produced events, with support of the **City** staff, volunteers and supplied receptacles.

2.1 The Old Port Festival (OPF) - It is expected that the OPF will continue its expansion to 3 days. **City** support will be required for Friday's events, which will include a closure of Congress Street to vehicular traffic for a special Frist Friday Artwalk from 6-8pm, and the re-routing of transit schedules. Sunday's events require closure of streets generally in the Old Port area.

2.2 Alive at Five Concerts- This series runs for 5 consecutive Thursday evenings in July and August from 500pm to approximately 730pm in Monument Square. Minor street closures are required around the square.

2.3 Light Up Your Holiday Celebration (LUYH) - This annual roster of events around the Christmas holidays include a LUYH First Friday Artwalk with Congress Street closure from approximately 6-8pm. The Christmas tree lighting ceremony on the Friday after Thanksgiving, which requires set up and some street closures, along with minor transit re-routing around Monument Square. Horse-drawn carriage rides in the downtown and the merchant event called Merry Madness generally requires no specific city personnel support.

2.4 Portland Winterfest - This event will be new for 2015. It will be held from January 21-25 in various locations throughout the downtown, with specific details TBA at a later date. It is not expected that additional **City** services will be required.

2.5 Downtown Workers Appreciation Days - Generally held twice a year in early May and mid-October to recognize the employees of businesses and government offices located within the downtown. **City** and **PDD** provide set up and management of 3 stations located at the Portland Museum of Art, Monument Square and Tommy's Park.

2.6 Seasonal lights by Pandora - Lights are installed around the time that Day Light Savings Time ends in the late fall, and de-installed around the time that Day Light Savings Time begins again in the early spring. **PDD** personnel provide some installation support.

Order 260-13/14
Tab 21 6-2-14

CITY OF PORTLAND
IN THE CITY COUNCIL

AMENDMENT TO PORTLAND CITY CODE
CHAPTER 12 GARBAGE, WASTES AND JUNK
ARTICLE IX. Waste Reduction
Sections 12-230 through 12-237
Re: Bag Fee

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

1. *That Chapter 12, Article IX, Sections 12-230 thru 12-237 of the Portland City Code is hereby enacted as follows:*

12-230. **Findings; purposes.**

The city council hereby finds as follows:

(1) The City Council has a duty to protect the natural environment and the health of its citizens and visitors; and

(2) The use of single-use carryout bags has severe environmental impacts on a local and global scale, including greenhouse gas emissions, litter, harm to wildlife, atmospheric acidification, water consumption and solid waste generation; and

(3) Despite recycling and voluntary solutions to control pollution from single-use carryout bags, very few single-use carryout bags are recycled; and

(4) Numerous studies have documented the prevalence of single-use carryout bags littering the environment, blocking storm drains, and endangering wildlife; and

(5) The City of Portland's taxpayers must bear costs associated with the effects of single-use carryout bags on the solid waste stream, drainage, litter, and wildlife; and

(6) The City, through its policies, programs, and laws, supports efforts to reduce the amount of waste that must be disposed of by supporting the waste management hierarchy

(reduce, reuse, recycle, compost, waste-to-energy landfill)and supports efforts to achieve State recycle goals; and

(7) From an environmental and economic perspective, the best alternative to single-use carryout bags is to shift to reusable bags for shopping; and

(8) Whereas the City Council of the City of Portland aims to conserve resources, reduce greenhouse gas emissions, waste, and litter and to protect the public health and welfare, including wildlife, all of which increase the quality of life for the City's residents and visitors; and

(9) Evidence indicates that the vast majority of single-use carryout bags are used for the bagging and carryout of products purchased from Stores, as those business are defined in this Ordinance; and

(10) Studies document and participating municipalities report that prohibiting the free distribution of single-use carryout bags will dramatically reduce the use of those types of bags; and

(11) The City Council of the City of Portland believes that residents and visitors should use reusable bags and that prohibiting the free distribution of single-use carryout bags by stores is appropriate and will incentivize the use of reusable bags; and

(12) It is in the best interests of the health, safety and welfare of citizens and visitors of Portland to reduce the cost to the City of solid waste disposal, and to protect our environment and our natural resources by reducing the distribution of single-use carryout bags and incentivizing the use of reusable bags at Stores, as defined in this Ordinance.

12-231. **Definitions.**

As used in this Ordinance the following terms have the following meanings:

Single-use carryout Bag. Single-use Carryout Bag means a bag other than a Reusable bag provided at the check stand, cash register, point of sale or other point of departure for the purpose of transporting food or merchandise out of the establishment. The term Single-Use Carryout Bag includes compostable and biodegradable bags but does not include reusable bags, produce bags, product bags or bags provided by pharmacists to contain prescription drugs.

Produce bag or Product bag. The terms *produce bag* or *product bag* mean any bag without handles used exclusively to carry produce, meats, other food items or merchandise to the point of sale inside a store or to prevent such items from coming into direct contact with other purchased items.

Reusable Bag means a bag that is:

(a) Designed and manufactured to withstand repeated uses over a period of time;

(b) Is machine washable or, made from a material that can be cleaned and disinfected regularly;

(c) That is at least 2.25 mil thick if made from plastic;

(d) Has a minimum lifetime of 75 uses; and

(e) Has the capability of carrying a minimum of 18 pounds.

Store. The term *Store* means any of the following retail establishments located within the City of Portland:

(a) a full-line, self-service market located in a permanent building, operating year-round, and which sells at retail a line of staple foodstuffs, meats, produce, household supplies, dairy products or other perishable items.

(b) a drug store, pharmacy, supermarket, grocery store, convenience food store, food mart, or other entity engaged in the retail sale of a limited line of goods that includes milk, bread, soda, and snack foods.

"*Store*" does not mean:

Businesses at which foodstuffs are an incidental part of the business. Food sales will be considered to be "incidental" if such sales comprise no more than 2 percent of the business's gross sales in the City as measured by the dollar value of food sales as a percentage of the dollar value of total sales at any single location.

12-232. **Single-Use Carryout Bag**

(a) No Store shall provide a Single-Use Carryout Bag to a Customer at the check stand, cash register, point of sale or other point of departure for the purpose of transporting food or merchandise out of the establishment except as provided in this Section.

(b) A Store may make available for sale to a Customer a Single-Use Carryout Bag for a minimum charge of five cents ($0.05).

(c) All monies collected by a Store for Single-Use Carryout Bags under this Chapter may be used by the Store for any lawful purpose.

(d) All Stores must post signage clearly indicating the per bag charge for Single-Use Carryout Bags.

(e) Notwithstanding this Section, no Store may make available for sale a Single-Use Carryout Bag unless the amount of the sale of the Single-Use Carryout is separately itemized on the sale receipt.

(f) No Store shall rebate or otherwise reimburse a customer any portion of the minimum charge required in Subsection (b).

12-233. Exemptions.

A Store shall be exempt from the provisions of this Article, in a situation deemed by the City Manager to be an emergency for the immediate preservation of the public health or safety.

12-234. Record Keeping and Inspection.

Every Store shall keep complete and accurate records or documents of the purchase and sale of any Single-Use Carryout Bag, for a minimum period of three (3) years from the date of purchase and sale, which record shall be available for inspection at no cost to the City during regular business hours by any City employee authorized to enforce this Article. Unless an alternative location or method of review is mutually agreed upon, the records or documents shall be available at the Store's address. The provision of false information including incomplete records or documents to the City shall be a violation of this Article.

12-235. Violations and enforcement.

The City Manager or his/her designee(s) shall have the primary responsibility for enforcement of this Article. If the City Manager or his/her designee(s) determines that a violation of this Article has occurred, he/she shall issue a written warning notice to the Store that a violation has occurred. Subsequent violations of the Article shall be subject to the penalties set forth below.

Violations of this Article shall be punishable by fines as follows:

(a) A fine not exceeding $250 for the first violation in a one-year period;

(b) A fine not exceeding $500 for the second and each subsequent violation in a one-year period.

12-236. **Effective Date**

The provisions of this ordinance shall become effective on April 1, 2015.

12-237. **Severability.**

If any part or provision of this Article or the application thereof to any person or circumstances is held invalid, the remainder of the Article, including the application of such part or provision to other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Article are severable.

MEMORANDUM
City Council Agenda Item

TO: City Council

FROM: Michael Bobinsky, Director of Public Services
Troy Moon, Environmental Programs Manager

DATE: May 19, 2014

DISTRIBUTION: (City Manager, Mayor, Corporation Counsel, Sonia Bean, Nancy English)

SUBJECT: Order creating an ordinance of the City of Portland to establish a fee on disposable bags in order to reduce use of disposable bags and encourage the use of reusable bags.

SPONSOR: Councilor David A. Marshall, Chair, Transportation, Sustainability and Energy Committee

COUNCIL MEETING DATE ACTION IS REQUESTED:
1st reading: June 2, 2014 Final Action: June 16, 2014

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

I. SUMMARY OF ISSUE (Agenda Description)

The proposed ordinance establishes a mandatory $0.05 fee on carry out bags provided by retailers at point of sale. The ordinance would apply at stores that sell food items including grocery stores, convenience stores, pharmacies, and vendors at Farmer's Markets.

II. REASON FOR SUBMISSION (Summary of Issue/Background)

In June, 2012 the Transportation, Sustainability and Energy Committee established the Green Packaging Working Group to recommend methods to reduce the use of polystyrene foam packaging and disposable bags. After recommending an ordinance to ban foam packaging the working group held four meetings devoted to bags. They examined a variety of options ranging from increasing education about the need to reduce bag use, banning bags, or placing a fee on bags. The majority of the committee believed that a fee on bags would be an effective way to reduce use of disposable bags and increase the use of reusable bags. The TS&E Committee discussed the recommended ordinance over the course of two meetings, making amendments to the language proposed by the GPWG. These include:

- Allowing retailers to keep the entire fee
- Reducing the fee from $0.10 to $0.05
- Removing restaurants and dry cleaners from the ordinance.

- Bag litter creates maintenance issues in our stormwater system. They can clog pipes and become caught in outfalls, causing problems with flow. Removing the bags can be labor intensive.
- Bag litter in the natural environment is unattractive. It also leads to environmental degradation on the land and in marine environment.

VII. RECOMMENDATION

The proposed ordinance is in line with stated policy goals of reducing waste, reducing litter and protecting water quality. The Department of Public Services recommends passage.

VIII. LIST ATTACHMENTS

a) Draft ordinance
b) GPWG Majority Report on Bags
c) GPWG Minority Report on Bags
e) Written Testimony to TS&E

Prepared by:

Troy Moon on 5/19/2014

AMENDMENT TO PORTLAND CITY CODE
CHAPTER 12 GARBAGE, WASTES AND JUNK
ARTICLE IX. WASTE REDUCTION
SECTIONS 12-230 THROUGH 12-237

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

That Chapter 12, Article IX, Sections 12-230 thru 12-237 of the Portland City Code is hereby enacted as follows:

12-230. **Findings; purposes.**

The city council hereby finds as follows:

(1) The City Council has a duty to protect the natural environment and the health of its citizens and visitors; and

(2) The use of single-use carryout bags has severe environmental impacts on a local and global scale, including greenhouse gas emissions, litter, harm to wildlife, atmospheric acidification, water consumption and solid waste generation; and

(3) Despite recycling and voluntary solutions to control pollution from single-use carryout bags, very few single-use carryout bags are recycled; and

(4) Numerous studies have documented the prevalence of single-use carryout bags littering the environment, blocking storm drains, and endangering wildlife; and

(5) The City of Portland's taxpayers must bear costs associated with the effects of single-use carryout bags on the solid waste stream, drainage, litter, and wildlife; and

(6) The City, through its policies, programs, and laws, supports efforts to reduce the amount of waste that must be disposed of by supporting the waste management hierarchy (reduce, reuse, recycle, compost, waste-to-energy landfill)and supports efforts to achieve State recycle goals; and

(7) From an environmental and economic perspective, the best alternative to single-use carryout bags is to shift to reusable bags for shopping; and

point of sale inside a store or to prevent such items from coming into direct contact with other purchased items.

Reusable Bag means a bag that is:

(a) Designed and manufactured to withstand repeated uses over a period of time;

(b) Is machine washable or, made from a material that can be cleaned and disinfected regularly;

(c) That is at least 2.25 mil thick if made from plastic;

(d) Has a minimum lifetime of 75 uses; and

(e) Has the capability of carrying a minimum of 18 pounds.

Store. The term *Store* means any of the following retail establishments located within the City of Portland:

(a) a full-line, self-service market located in a permanent building, operating year-round, and which sells at retail a line of staple foodstuffs, meats, produce, household supplies, dairy products or other perishable items.

(b) a drug store, pharmacy, supermarket, grocery store, convenience food store, food mart, or other entity engaged in the retail sale of a limited line of goods that includes milk, bread, soda, and snack foods.

"*Store*" does not mean:

Businesses at which foodstuffs are an incidental part of the business. Food sales will be considered to be "incidental" if such sales comprise no more than 2 percent of the business's gross sales in the City as measured by the dollar value of food sales as a percentage of the dollar value of total sales at any single location.

12-232. **Single-Use Carryout Bag**

(a) No Store shall provide a Single-Use Carryout Bag to a Customer at the check stand, cash register, point of sale or other point of departure for the purpose of transporting food or of this Article has occurred, he/she shall issue a written warning notice to the Store that a violation has occurred. Subsequent violations of the Article shall be subject to the penalties set forth below.

Violations of this Article shall be punishable by fines as follows:

(a) A fine not exceeding $250 for the first violation in a one-year period;

(b) A fine not exceeding $500 for the second and each subsequent violation in a one-year period.

12-236. **Effective Date**

The provisions of this ordinance shall become effective on April 1, 2015.

12-237. **Severability.**

If any part or provision of this Article or the application thereof to any person or circumstances is held invalid, the remainder of the Article, including the application of such part or provision to other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Article are severable.

City of Portland

Green Packaging Working Group

Majority Report on Disposable Bags

Councilor Edward Suslovic, Chair

March 13, 2014

During its discussions, the GPWG was not able to determine the extent to which these efforts have been able to reduce the use of disposable bags. Anecdotal reports suggest increasing numbers of shoppers are bringing their own bags to stores. However, we have no data indicating what percentage of shoppers are doing so, or to what extent this practice has reduced the number of plastic bags given out by merchants. While members support these voluntary efforts, the majority of the group felt that the use of disposable bags remains prevalent and that additional measures are needed in order to substantially reduce their use. Staff research confirms that voluntary efforts in other communities have not been effective on their own and that bag use did not substantially decline until government adopted formal policies to ban them or incentivize the use of reusable alternatives.

Given these findings, the majority of the Green Packaging Working Group recommends that the City Council adopt an ordinance to establish a $0.10 fee on each disposable bag (paper and plastic) used to package goods sold at stores and restaurants in the City of Portland. This recommendation focuses on bags used at the point of sale as these bags can most easily be replaced by re-usable options. Shoppers generally plan ahead before embarking on a shopping trip and anticipate carrying a quantity of items. Bringing a reusable bag to the store is not a difficult burden. Additionally, a majority of the working group felt that the proposed fee should apply to bags used by restaurants to contain take-out orders or packaged leftovers.

The GPWG identified a number of situations and types of bags that are difficult for consumers to replace because they serve specific functions to protect the quality of goods or to maintain health and safety including:

- Bags without handles used to carry bulk items such as candy, small hardware items, produce, meats, or other bulk food items
- Bags used by consumers inside stores to contain unwrapped prepared foods or items where dampness may be a problem
- Bags provided by pharmacists to contain prescription drugs;
- Newspaper bags, door-hanger bags, or bags sold in packages containing multiple bags intended for use as garbage, pet waste, or yard waste bags.

Such bags are exempt from the fee in the proposed ordinance.

Under the proposed ordinance, the definition of store centers on businesses that sell grocery items and snack foods. This includes supermarkets, convenience stores, pharmacies and similar businesses. It also includes farmers markets and would require vendors at such markets to charge the $0.10 fee when they use a disposable bag to package a purchase (The fee would not apply to bags used by the market customer to contain bulk purchases). Finally, as proposed, the ordinance would apply to laundry/dry cleaning businesses.These business would be required to charge customers the $0.10 fee for bags used to cover items leaving their stores. The ordinance would not otherwise apply to businesses where food sales are incidental (less than 2%) to the business. As indicated above, the fee would also apply to restaurants including food trucks and cart.

consumption of disposable bags the City would be actively minimizing waste production. Waste reduction is the highest rung of the waste management hierarchy – **reduce**, reuse, recycle, compost, recover energy, landfill.

2. **Positive experience with incentive based waste reduction programs:**

Since 1999 the City of Portland has maintained a Pay as You Throw program that charges residents for each bag of trash they dispose of. Recycling is free. The bag fee serves as a financial incentive for residents to reduce the amount of waste they dispose of by avoiding waste production in the first place and recycling as much as they can. This program has proven to be very effective and has resulting in a recycling rate that went from below 7% before the program began to around 37% today. Charging a $0.10 fee on each disposable bag will discourage people from using them and provide a financial incentive for store patrons to bring their own bags.

3. **Negative impacts on infrastructure from disposable bags:**

Many disposable bags, particularly plastic ones, end up in the environment because thoughtless individuals drop them as litter or because they blow out of a waste container or recycling bin due to their light weight. When the wind catches plastic bags they easily become airborne and can travel a long distance. They often get tangled in trees and shrubs where they are unsightly. More problematically, they get caught in storm drains and catch basins where they can cause back-ups if they are not removed. Even recycling facilities have challenges handling plastic bags. Wind can carry them out of, and away from the waste handling facility, contributing to litter problems at the facility. Even when processed, disposable plastic bags often become wrapped around machinery and must be removed by hand. At ecomaine this is a costly and time consuming exercise that must be repeated after every work shift.

4. **Negative impacts on the environment from disposable bags:**

The production of single use products, such as disposable bags, creates a long chain of unnecessary environmental impacts. Manufacturing these items consumes natural resources that must be extracted from the earth. Producing and distributing the products also creates pollution that impacts both air and water resources. Working group members also expressed concern about the consequences of plastic bags entering the marine environment, which is becoming heavily contaminated by waste plastics. Our close proximity to Casco Bay leads untold numbers of fly away plastic bags to be blown into the water. Once there, they disintegrate and pollute this valuable water resource. Additionally, marine life frequently mistake plastic bags for food, often with fatal consequences.

The <u>Master Environmental Assessment On Single-Use and Reusable Bags</u> conducted for Green Cities California in 2010 lays the environmental choices out clearly:

> *Single Use Plastic Bags: Nearly 20 billion single-use high density polyethylene (HDPE) plastic grocery bags are used annually in California, and most end up in landfills or as litter. In fact, of the ... types of bags considered, plastic bags had the greatest impact on litter.*

February 7, 2014

The members of the Green Packaging Working Group Task Force who represent Maine businesses propose that the City of Portland adopt a public awareness and educational campaign with ecomaine, city residents and the business community.

The City of Portland has the opportunity to take a leadership role by becoming the first community in the State to adopt a comprehensive and meaningful education campaign to:

- increase appropriate recycling of existing bags
- identify ways to reuse and properly dispose of bags
- reduce the number of bags distributed by retailers and at city and private events
- increase the use of reusable bags

The City of Portland and ecomaine should make it clear that plastic film is not acceptable for recycling at their facility. ecomaine should feel free to inform their customers that retailers providing plastic check out bags are required to accept plastic bags for recycling.

Portland should adopt the Got Your Bags? Maine campaign. The promotional and educational materials are available for immediate implementation. Maine was one of the first states to launch this statewide, voluntary program designed for both retailers and consumers to help educate them on the benefits of reducing bag numbers, recycling bags, increasing the use of reusable bags and providing information helpful to municipalities. The Got Your Bags? Maine campaign is always looking for meaningful opportunities to expand the program and we are ready and willing to offer our assistance to City officials, businesses and interested organizations.

Many of our Portland member companies already manage complex internal recycling programs and back haul plastics out of state to be recycled. They educate their customers about where to recycle bags (plastic and paper) and encourage their customers to use reusable bags by placing signage/placards in their parking lots and entry ways.

The infrastructure is in place. Don't bypass this opportunity to do the right thing. Let's work together to create a meaningful public awareness and educational program to Reduce, Reuse, Recycle and promote the use of Reusable bags!

Portland, Maine Yes. Life's good here.

Michael J. Bobinsky
Director of Public Services

GREEN PACKAGING WORKING GROUP

UPDATE ON SINGLE-USE BAGS: BANS OR FEES NATIONWIDE

Plastic Bag Ordinances: 145 bans, 4 Fees (by 2015)

120	**Current Bans Nationwide**
16	Bans passed and starting in 2014 or 2015
9	Bans pending final vote to start in 2014, 2015, or 2016
4	Fees in Cities and Counties • Fees are $0.05 (2) or $0.10 (2) per bag

Pending all passed and proposed ordinances go into effect there will be:

129	Bans in Cities (1 voluntary)
16	Bans in Counties
4	Fees in Cities and Counties

Paper Bag Ordinances: 107 fees (12 optional), 2 bans (by 2014)

92	**Current Fees Nationwide** (at least)
13	Fees passed and starting in 2014
2	Fees pending final vote to start in 2014
2	Bans in Cities

Pending all passed and proposed ordinances go into effect there will be:

107	Fees in Cities (95) and Counties (12) (at least this many) • 45 Fees are $0.05 (24) or $0.10 (58) per bag
12	Cities and Counties with no fees on paper bags (at least)
2	Bans in Cities

17 Cities & Counties Faced Ordinance Litigation

See Tables for more detailed information

SOURCES: Californians Against Waste (CAW), Calls to Municipalities, Daly City, Fight the Plastic Bag Ban, Florida Department of Environmental Protection, Hilex Poly, Local Press, Plastic Bag Laws, Plastic Ban Report, San Mateo County, Santa Monica Nexus Study 2010, Surfrider, Washington Plastic Bag Report.

TABLES – Green Packaging Working Group

Single-Use Bag Ban & Fee Ordinances: Nationwide Update 2014

Table 1: Number of cities & counties with current bag ordinances in effect (124), passed and planned to be in effect (16), and proposed pending a vote (9). The number of cities or counties that faced litigation over their ordinances (17).

STATE (17)	CITIES (133)	COUNTIES (16)	LITIGATION (17)
AK	3		1
AZ	1		
CA	82	9	13
CO	6		2
CT	1		
DC	1		
HI	0	4	
IA	0	1	
MA	4		
MD	1	1	
NC	0	3	
NM	1		
NY	5		
OR	4		
RI	1		
TX	8		1
WA	11	1	

KEY	CITIES	COUNTIES

17 States have cities and/or counties with single-bag ban or fee ordinances. California just proposed a statewide plastic bag ban to begin in 2015 – pending a vote.

Table 2: The history of active (124), passed and planned (16), and proposed (9) bag ordinance by effective date, total (149).

YEARS	ORDINANCES (149)	ORDINANCES PASSED PER YEAR
1990	1	1
2008	4	
2008/2012	1	5
2009	2	2
2010	6	6
2011	11	
2011/2012	2	13
2012	24	
2012/2012	1	
2012/2013	5	
2012/2014	1	
2012/2015	1	32
2013	50	
2013/2013	2	
2013/2014	6	
2013/2015	1	59
2014	6	
*2014 planned	13	19
*2014 proposed	8	
*2014/2016 planned	1	9
*2015 proposed	1	
*2015 planned	2	3

Date/Date = Ordinances that have a two-phase implementation

*passed with planned effective date, or planned ordinance pending final vote

STATE	CITY / TOWN	YEAR EFFECTIVE	PLASTIC BAG	PAPER BAG	SOURCE
AK	Bethel	2010	BAN		Surfrider
AK	Homer	2012	BAN		CAW
AK	Hooper Bay	2010	BAN		Hilex Poly
AZ	Brisbee	*2014 planned	BAN	$0.05	Hilex Poly, CAW
CA	Alameda	2013	BAN	$0.10	CAW
CA	Alameda County	2013	BAN	$0.10	Hilex Poly, FL DEP
CA	Albany	2013	BAN	$0.10	CAW
CA	Arcata	*2014 planned	BAN	$0.10	Hilex Poly, CAW
CA	Belmont	2013	BAN	fee optional	Hilex Poly, San Mateo County, CAW
CA	Berkeley	2013/2014	BAN	$0.10/$0.25	Hilex Poly, CAW
CA	Brisbane	2013	BAN	fee optional	San Mateo County, CAW
CA	Burlingame	2013	BAN	fee optional	San Mateo County, CAW
CA	Calabasas	2011	BAN	$0.10 minimum	Hilex Poly, FL DEP, CAW
CA	California STATE	*2015 proposed	BAN		Local Press
CA	Campbell	*2014 planned	BAN	fee optional	Hilex Poly, San Mateo County, CAW
CA	Capitola	2012	BAN	$0.25	Hilex Poly, CAW
CA	Carmel	2013	BAN	no fee	Hilex Poly, FL DEP, CAW
CA	Carpinteria	2012/2013	BAN	BAN	Hilex Poly, FL DEP, CAW
CA	Colma	2013	BAN	$0.10	Local Press, San Mateo County, CAW
CA	Culver City	2013	BAN	$0.10	Hilex Poly, CAW
CA	Cupertino	2013	BAN	fee optional	Hilex Poly, San Mateo County, CAW
CA	Daly City	2013	BAN	$0.10 minimum	Daly City, San Mateo County, CAW
CA	Dana Point	2013	BAN	$0.10	Hilex Poly, FL DEP, CAW
CA	Davis City	*2014 planned	BAN	fee optional	Hilex Poly, CAW
CA	Dublin	2013	BAN	$0.10	CAW

STATE	CITY / TOWN	YEAR EFFECTIVE	PLASTIC BAG	PAPER BAG	SOURCE
CA	East Palo Alto	2013	BAN	fee optional	CAW
CA	El Cerrito	2014	BAN	$0.05	Hilex Poly, CAW
CA	Emeryville	2013	BAN	$0.10	CAW
CA	Encinitas	*2014 proposed	BAN		Local Press
CA	Fairfax	2008	BAN	$0.10	Santa Monica Nexus Study 2010, FL DEP, CAW
CA	Fort Bragg	2012	BAN	$0.10	Hilex Poly, FL DEP, CAW
CA	Foster	2013	BAN	fee optional	San Mateo County, CAW
CA	Fremont	2013	BAN	$0.10	CAW
CA	Glendale	2013/2014	BAN	$0.10	Hilex Poly, CAW
CA	Half Moon Bay	2013	BAN	fee optional	Hilex Poly, San Mateo County, CAW
CA	Hayward	2013	BAN	$0.10	CAW
CA	Huntington Beach	2013	BAN	$0.10	Hilex Poly, CAW
CA	Laguna Beach	2013	BAN	$0.10 minimum	Hilex Poly, FL DEP, CAW
CA	Livermore	2013	BAN	$0.10	CAW
CA	Long Beach	2011/2012	BAN	$0.10 minimum	Hilex Poly, FL DEP, CAW
CA	Los Altos	2013	BAN	fee optional	San Mateo County, CAW
CA	Los Angeles	2013/2014	BAN	$0.10	FL DEP, CAW
CA	Los Angeles County	2011/2012	BAN	$0.10	FL DEP, CAW
CA	Los Gatos	2013/2014	BAN	$0.10/$0.25	Hilex Poly, San Mateo County, CAW
CA	Malibu	2008	BAN	content standard	Washington Plastic Bag Report, Hilex Poly, FL DEP, CAW
CA	Manhattan Beach	2008	BAN	no fee	Santa Monica Nexus Study 2010, Hilex Poly, CAW
CA	Marin County	2011	BAN	$0.05	Hilex Poly, FL DEP, CAW
CA	Mendocino County	2013/2014	BAN	$0.10	Hilex Poly, FL DEP, CAW
CA	Menlo Park	2013	BAN	fee optional	San Mateo County, CAW
CA	Mill Valley	2013	BAN	$0.05	Hilex Poly, CAW

STATE	CITY / TOWN	YEAR EFFECTIVE	PLASTIC BAG	PAPER BAG	SOURCE
CA	Millbrae	2012	BAN	$0.10	Hilex Poly, FL DEP, San Mateo County, CAW
CA	Monterey	2012/2012	BAN	$0.10/$0.25	Hilex Poly, FL DEP, CAW
CA	Moorpark	*2014 proposed	BAN		Local Press
CA	Morgan Hill	*2014 planned	BAN	$0.10	Hilex Poly, CAW
CA	Mountain View	2013	BAN	fee unknown	Hilex Poly, San Mateo County, CAW
CA	Napa	*2014 proposed	BAN		Local Press
CA	Newark	2013	BAN	$0.10	CAW
CA	Oakland	2013	BAN	$0.10	CAW
CA	Ojai	2012	BAN	$0.10	Hilex Poly, FL DEP, CAW
CA	Pacifica	2013	BAN	fee unknown	San Mateo County, CAW
CA	Palo Alto	2009	BAN	$0.10	Hilex Poly, FL DEP, CAW
CA	Pasadena	2012	BAN	$0.10	Hilex Poly, FL DEP, CAW
CA	Piedmont	2013	BAN	$0.10	CAW
CA	Pleasanton	2013	BAN	$0.10	CAW
CA	Portola Valley	2013	BAN	fee unknown	San Mateo County, CAW
CA	Redwood	2013	BAN	fee unknown	Hilex Poly, San Mateo County, CAW
CA	Richmond	2013	BAN	fee optional	Hilex Poly, CAW
CA	San Bruno	2013	BAN	fee unknown	San Mateo County, CAW
CA	San Carlos	2013	BAN	fee unknown	Hilex Poly, San Mateo County, CAW
CA	San Diego	*2014 proposed	BAN		Local Press
CA	San Francisco	2008/2012	BAN	$0.10	Washington Plastic Bag Report, Hilex Poly, FL DEP, CAW
CA	San Jose	2012	BAN	$0.10	Called Direct
CA	San Leandro	2013	BAN	$0.10	CAW
CA	San Luis Obispo County	2012	BAN	$0.10	Hilex Poly, FL DEP, CAW
CA	San Mateo County	2012/2015	BAN	$0.10/$0.25	Hilex Poly, CAW

STATE	CITY / TOWN	YEAR EFFECTIVE	PLASTIC BAG	PAPER BAG	SOURCE
CA	San Pablo	*2014/2016 planned	BAN	$0.05/$0.10	Hilex Poly, CAW
CA	Santa Barbara	*2014 planned	BAN	$0.10	Hilex Poly, CAW
CA	Santa Clara County	2012	BAN	0.15 minimum	Hilex Poly, FL DEP, CAW
CA	Santa Cruz	2013	BAN	$0.10	Hilex Poly, FL DEP, CAW
CA	Santa Cruz County	2012/2013	BAN	$0.10/$0.25	FL DEP, CAW
CA	Santa Monica	2011	BAN	$0.10 minimum	Hilex Poly, FL DEP, CAW
CA	Scotts Valley	*2014 proposed	BAN	fee unknown	Local Press
CA	Solana Beach	2012	BAN	$0.10	Hilex Poly, FL DEP, CAW
CA	Sonoma County	*2014 planned	BAN	$0.10	Hilex Poly, Local Press
CA	South Lake Tahoe	*2014 planned	BAN	no fee	Hilex Poly, CAW
CA	South San Francisco	2013	BAN	fee unknown	San Mateo County, CAW
CA	St Helena	2014	BAN	$0.05	Local Press
CA	Sunnyvale	2012/2014	BAN	$0.10/$0.25	Hilex Poly, FL DEP, CAW
CA	Truckee	*2014 planned	BAN	$0.10	Hilex Poly, CAW
CA	Ukiah	2012/2013	BAN	$0.10	FL DEP, CAW
CA	Union City	2013	BAN	$0.10	CAW
CA	Ventura	*2014 proposed	BAN		Local Press
CA	Watsonville	2012/2013	BAN	$0.10/$0.25	Hilex Poly, FL DEP, CAW
CA	West Hollywood	2013/2013	BAN	$0.10	Hilex Poly, FL DEP, CAW
CA	Woodside	2013/2015	BAN	$0.10/$0.25	Hilex Poly, San Mateo County
CO	Aspen	2012	BAN	$0.20	Called Direct
CO	Boulder	2013	$0.10	$0.10	Called Direct
CO	Breckenridge	2013	$0.10	$0.10	Hilex Poly
CO	Carbondale	2012	BAN	$0.20	Plastic Bag Laws, Hilex Poly, CAW
CO	Mountain Village	2012	BAN - Voluntary		Hilex Poly

STATE	CITY / TOWN	YEAR EFFECTIVE	PLASTIC BAG	PAPER BAG	SOURCE
CO	Telluride	2011	BAN	$0.10	Hilex Poly
CT	Westport	2012	BAN	no fee	Washington Plastic Bag Report
DC	District of Columbia	2010	$0.05	$0.05	Local Press
HI	Honolulu County	2012	BAN	$0.05	Hilex Poly, Plastic Bag Laws, FL DEP
HI	Kauai	2011	BAN	no fee	Santa Monica Nexus Study 2010, Hilex Poly
HI	Maui	2011	BAN	no fee	Washington Plastic Bag Report, Hilex Poly
HI	Oahu	*2015 planned	BAN		Local Press
HI	Paia	2008	BAN	no fee	Santa Monica Nexus Study 2010
IA	Marshall County	2009	BAN	no fee	Santa Monica Nexus Study 2010
MA	Brookline	2013	BAN	content standard	Hilex Poly
MA	Great Barrington	*2014 proposed	BAN		Hilex Poly
MA	Manchester/Gloucester	2014	BAN		Hilex Poly
MA	Nantucket	1990	BAN		Surfrider
MD	Chestertown	2011	BAN	content standard	Hilex Poly
MD	Montgomery County	2012	$0.05	$0.05	Hilex Poly, Plastic Bag Laws, FL DEP
NC	Currituck County	2010	BAN	no fee	Hilex Poly, FL DEP
NC	Dare County	2010	BAN	no fee	Santa Monica Nexus Study 2010, Hilex Poly, FL DEP
NC	Hyde County	2010	BAN	no fee	Hilex Poly, FL DEP
NM	Santé Fe	2014	BAN	$0.10	Hilex Poly
NY	East Hampton Village	2011	BAN	content standard	
NY	Larchmont	2013	BAN	content standard	Hilex Poly
NY	Mamaroneck	2011	BAN		Hilex Poly
NY	Rye	2012	BAN		Hilex Poly
NY	Southampton Village	2012	BAN		Hilex Poly
OR	Ashland	*2014 proposed	BAN	fee unknown	Ashland Local Press

STATE	CITY / TOWN	YEAR EFFECTIVE	PLASTIC BAG	PAPER BAG	SOURCE
OR	Corvallis	2013	BAN	$0.05	Hilex Poly, FL DEP
OR	Eugene	2013	BAN	$0.05	Hilex Poly, FL DEP
OR	Portland	2012/2013	BAN	$0.05	Hilex Poly, Plastic Bag Laws, FL DEP
RI	Barrington	2014	BAN	no fee	Hilex Poly, Local Press
TX	Austin	2013	BAN	BAN	Hilex Poly, FL DEP
TX	Brownsville	2011	BAN		Hilex Poly, Plastic Bag Laws
TX	Fort Stockton	2011	BAN		Hilex Poly
TX	Kermit	2013/2013	BAN	$0.10	Kermit, CAW
TX	Laguna Vista	2012	BAN		Plastic Ban Report
TX	Laredo	*2015 planned	BAN		Hilex Poly
TX	South Padre Island	2012	BAN		Hilex Poly
TX	Sunset Valley	2013	BAN		Hilex Poly
WA	Bainbridge Island	2012	BAN	$0.05	Hilex Poly, FL DEP, CAW
WA	Bellingham	2012	BAN	$0.05	Hilex Poly, FL DEP, CAW
WA	Edmonds	2013/2014	BAN	$0.05	Hilex Poly, FL DEP, CAW
WA	Issaquah	2013	BAN	$0.05	Washington Plastic Bag Report, Hilex Poly, FL DEP, CAW
WA	Mercer	*2014 planned	BAN	$0.05	Hilex Poly, CAW
WA	Mukilteo	2013	BAN	$0.05	Hilex Poly, FL DEP, CAW
WA	Olympia	*2014 planned	BAN	$0.05	Hilex Poly, CAW
WA	Port Townsend	2012	BAN	$0.05	Hilex Poly, FL DEP, CAW
WA	Seattle	2012	BAN	$0.05	Hilex Poly, FL DEP, CAW
WA	Shoreline	2014	BAN	$0.05	Hilex Poly, CAW
WA	Thurston County	*2014 planned	BAN	$0.05	Hilex Poly, CAW
WA	Turnwater	*2014 planned	BAN	$0.05	Hilex Poly, CAW

SOURCES:

Californians Against Waste (CAW), Calls to Municipalities, Daly City, Fight the Plastic Bag Ban, Florida Department of Environmental Protection, Hilex Poly, Local Press, Plastic Bag Laws, Plastic Ban Report, San Mateo County, Santa Monica Nexus Study 2010, Surfrider, Washington Plastic Bag Report

Natural Resources Council of Maine | clf | Sierra Club | Friends of Casco Bay Casco BAYKEEPER | Surfrider Foundation Maine

May 20, 2014

Dear Members of the Transportation and Sustainability Committee,

We are writing to express our strong support for your committee to recommend to the City Council adoption of the disposable bag fee ordinance that discourages the use of both plastic and paper bags. We are encouraged by the committee's efforts and careful consideration of the issues and goals of various approaches.

We have spent considerable time evaluating the options available to Portland, and we have looked carefully at the experiences of communities nationwide that have taken action to encourage the use of reusable bags through municipal ordinances.

As you approach final deliberations on this issue, we would urge you to set up the program to be as strong and successful as possible by including *both* plastic and paper carryout bags in the ordinance. **We do not support a fee or ban on plastic bags alone for the following reasons:**

- **No increase in reusable bags.** Placing a fee on plastic alone would simply encourage customers to shift to paper bag use, which is not a desirable alternative.
- **Added costs for merchants.** Paper bags are more expensive for merchants to purchase than plastic, so an increase in paper bag use would increase costs for affected businesses.
- **No reduction in environmental impacts.** Studies show that the life cycle environmental impacts of paper bag production and disposal are just as high as plastic bags.
- **Consumer choice.** Retaining an option to pay for a paper or plastic bag is preferable, so that customers have a choice of purchasing a bag which can be valued for some uses.
- **Experience of other cities.** Cities around the nation have adopted disposable bag ordinances that include *both* plastic and paper bags, and these ordinances are succeeding in drastically reducing the use of disposable bags.

Hundreds of communities around the world have seen significant reductions in the use of disposable carryout bags by placing a price on the bags. Even at five cents, people quickly change behavior and start remembering their reusable bags. This is the outcome we are looking for to help make Portland a more sustainable city. Thank you for your consideration of this input.

Sincerely,

Sarah Lakeman
Natural Resources Council of Maine

Ben Tettlebaum
Conservation Law Foundation

Glen Brand
Sierra Club, Maine Chapter

Cathy Ramsdell
Friends of Casco Bay

Ryan Elizabeth Cope
Surfrider Foundation, Maine Chapter

April 22, 2014

Sarah Lakeman
Natural Resources Council of Maine
3 Wade St.
Augusta, Maine 04330

Dear Sarah:

Thank you for your question about plastic and paper bags. Hannaford generally does not take positions on different policy ideas related to the impact of plastic or paper bags. However, as you noted in our conversation, we definitely have a lot of experience with both types of bags so we may be able to help with information.

We do believe that any regulation to ban or limit single use bags would be wise focus on both types, plastic and paper. The reason is that paper also has an environment impact that is quite significant. It is energy and resource intensive to manufacture paper. In addition, paper takes up substantially more volume in the transportation chain. In general, single-use paper requires about six times the volume to transport than single-use plastic and that's a big part of what drives both the carbon impact and cost to consumers. It effectively removes the unintended consequence of driving up the energy/carbon impacts when any approach to regulate includes both classes of single use bags. I hope this is helpful.

Sincerely,

Kasey Harris
Hannaford Supermarkets

Melissa Graffam - Re: FW: Portland Bags Ordinance - request for Hannaford

From: Dave Marshall <marshalldistrict2@gmail.com>
To: Sarah Lakeman <slakeman@nrcm.org>
Date: 4/24/2014 5:50 PM
Subject: Re: FW: Portland Bags Ordinance - request for Hannaford
CC: Edward Suslovic <edsuslovic@portlandmaine.gov>, Jon Hinck <jhinck@lewiss...

Thanks Sarah, I've copied city staff so this can be added to the public record. Have a great day.

--
Best Wishes,
Dave Marshall

David A. Marshall
Portland City Councilor Fine Artist
207.409.6617 DAMFineArt.com
Constellation Gallery 511 Congress St, Portland, ME

On Apr 24, 2014 2:11 PM, "Sarah Lakeman" <slakeman@nrcm.org> wrote:

> Hello Gentlemen,
>
> You may be interested to know that I had asked Hannaford for an opinion on an ordinance that didn't cover paper bags, only plastic, and their response is below. I also shared this information with Kevin Donoghue in a separate email since it was a continuation of our ongoing conversation.
>
> Hope you are having a good week,
>
> Sarah
>
> **Sarah Lakeman**
>
> *Sustainable Maine Policy Advocate and Outreach Coordinator*
>
> **Natural Resources Council of Maine**
>
> 3 Wade St. Augusta, Maine 04330
>
> 207.430.0170 (direct)
>
> 207.751.9539 (cell)
>
> slakeman@nrcm.org
>
> ---
>
> **From:** Harris, Kasey [mailto:Kasey.Harris@delhaize.com]

Sent: Thursday, April 24, 2014 1:31 PM
To: Sarah Lakeman
Cc: Norton, Michael; Blom, Eric; Parmenter, George; Knapp, Judy
Subject: Portland Bags Ordinance - request for Hannaford

April 22, 2014

Sarah Lakeman

Natural Resources Council of Maine

3 Wade St.

Augusta, Maine 04330

Dear Sarah:

Thank you for your question about plastic and paper bags. Hannaford generally does not take positions on different policy ideas related to the impact of plastic or paper bags. However, as you noted in our conversation, we definitely have a lot of experience with both types of bags so we may be able to help with information.

We do believe that any regulation to ban or limit single use bags would be wise to focus on both types, plastic and paper. The reason is that paper also has an environment impact that is quite significant. It is energy and resource intensive to manufacture paper. In addition, paper takes up substantially more volume in the transportation chain. In general, single-use paper requires about six times the volume to transport than single-use plastic and that's a big part of what drives both the carbon impact and cost to consumers. It effectively removes the unintended consequence of driving up the energy/carbon impacts when any approach to regulate includes both classes of single use bags. I hope this is helpful.

Sincerely,

Kasey Harris

Hannaford Supermarkets

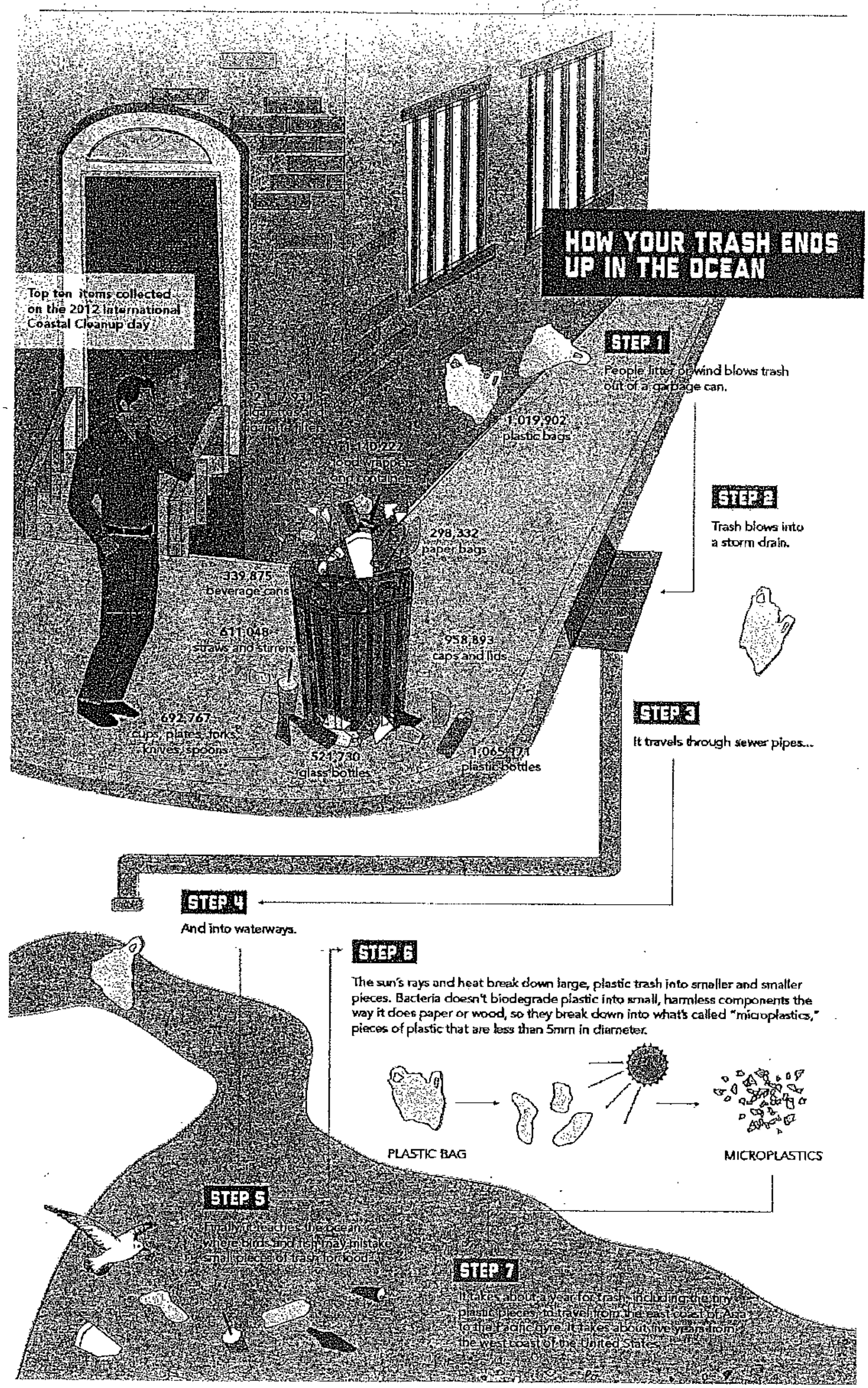
Alissa Scheller (/alissa-scheller) Become a fan (/users/becomeFan.php?of=hp_blogger_Alissa Scheller)
alissa.scheller@huffingtonpost.com (mailto:alissa.scheller@huffingtonpost.com)

This Is How Your Plastic Bag Ends Up In Massive Ocean Garbage Patches

Posted: 04/22/2014 12:47 pm EDT | Updated: 04/22/2014 12:59 pm EDT

Ever heard of the Pacific garbage patch (http://education.nationalgeographic.com/education/encyclopedia/great-pacific-garbage-patch/?ar_a=1)? It's one of several swirling trash zones in our oceans, and it's where a lot of our ... piles of floating trash in the water, ... they are and how they got there is just as gross -- and just as harmful to marine life.

Trash of all kinds exists in the ocean – clean-up crews have found cigarette butts, glass bottles and even mattresses. But the most common type of trash found in the ocean's gyres (circular currents formed by wind patterns and the earth's rotation) is tiny peices of broken down plastics, known as microplastics. Microplastics, as well as plastic products before they're broken down into smaller bits, have a devastating impact on life in the ocean. Loggerhead sea turtles often mistake plastic bags for jellyfish, their favorite food, and microplastics and other trash can block sunlight from reaching plankton and algae, which are an integral part of the marine food web.



Source: Ocean Conservancy, Environmental Protection Agency, Mother Nature Network, World Bank, NOAA, Smithsonian, National Geographic

THE HUFFINGTON POST

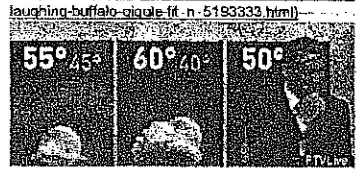
Infographic by Alissa Scheller for The Huffington Post.

Suggest a correction

MOST POPULAR

BREAKING **WATCH: Weatherman Has Unstoppable Giggle Fit**

(http://www.huffingtonpost.com/2014/04/22/weatherm laughing-buffalo-giggle-fit-n-5193333.html)



(http://www.huffingtonpost.com/2014/04/22/weatherm laughing-buffalo-giggle-fit_n_5193333.html)

Melissa Graffam - Re: Letter

From: Dave Marshall <marshalldistrict2@gmail.com>
To: Sally Trice <strice@maine.rr.com>, Melissa Graffam <MAG@portlandmaine.go...
Date: 4/17/2014 10:55 AM
Subject: Re: Letter

Thanks Sally,

We will ensure that your letter is included in the public record. It was nice to see you again yesterday.

On Tue, Apr 15, 2014 at 8:14 PM, Sally Trice <strice@maine.rr.com> wrote:

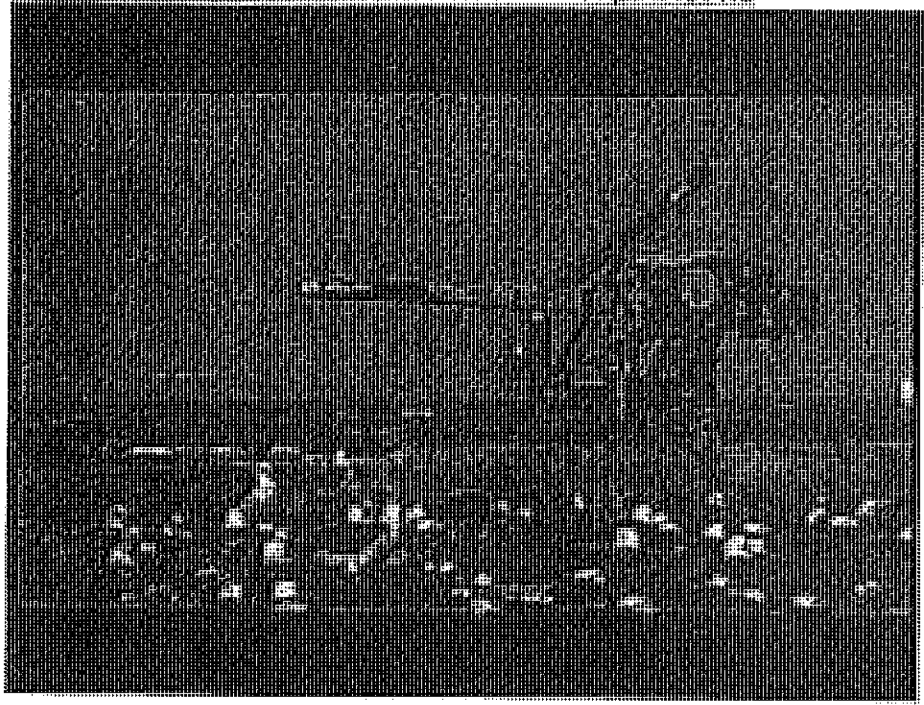
> Hi Dave,
> Can this letter be added to the other letters for tomorrow's meeting (could you also
> forward it to the members tonight since I do not have their email addresses?)
> Thank you, Sally Trice
> Dear members of the Transportation, Sustainability and Energy Committee:
> I am strongly in favor of banning polystyrene and also of instituting a fee on plastic bags.
> It is short-sighted to view this only as a current economic issue; it is far more than that.
> Many responsible businesses have already discontinued the use of these products - and they
> have not gone out of business. To the contrary, they are thriving because there are those who
> choose to shop at these stores because of their sense of environmental responsibility. These
> stores are refunding me money each time I bring my own bag: Whole Foods credits me .05 for
> each bag, and Rosemont Market credits me .10 for each bag!
> Above all, for me it's all about what kind of world we are going to leave for our children and
> our children's children - and their children as well. They are depending on us to care for our earth.
> The Great Law of the Iroquois holds it important to think seven generations ahead (about
> 140 years into the future) and decide whether the decisions they make today would benefit their
> children seven generations into the future: "In every deliberation, we must consider the impact

on the seventh generation..."

The world biggest garbage dump is a floating one of plastic in the Pacific Ocean that is estimated

to be twice the size of the USA. I hope you'll take this time to watch this 7-minute video on it.

https://www.youtube.com/watch?v=XxNgzAHSXvs



--

Best Wishes,
Dave Marshall

David A. Marshall
Portland City Councilor 207-409-6617
Chair
Transportation, Sustainability, and Energy Committee

Melissa Graffam - Fwd: Green Packaging Proposal

From: Dave Marshall <marshalldistrict2@gmail.com>
To: Melissa Graffam <MAG@portlandmaine.gov>
Date: 5/20/2014 7:37 PM
Subject: Fwd: Green Packaging Proposal

Please add this to the back up material for the bag fee ordinance. Thanks.

--
Best Wishes,
Dave Marshall

David A. Marshall
Portland City Councilor Fine Artist
207.409.6617 DAMFineArt.com
Constellation Gallery 511 Congress St, Portland, ME

---------- Forwarded message ----------
From: "Delene Perley" <deleneperley@gmail.com>
Date: May 20, 2014 3:47 PM
Subject: Green Packaging Proposal
To: <marshalldistrict2@gmail.com>, "Cheryl Leeman" <CL@portlandmaine.gov>, "Jon Hinck" <jhinck@portlandmaine.gov>, "Kevin Donoghue" <kjdonoghue@portlandmaine.gov>
Cc:

To: Transportation, Sustainability and Energy Committee

From: Delene Perley

15 Middle Street, Unit 302

Portland, ME 04101

(cell) 207 310 8721

Re: Green Packaging Task Force and Plastic Bags

Date: May 20, 2014

Thank you for your work on City Council and the Transportation, Sustainability and Energy Committee. As of January of this year I am a Portland citizen, having lived in Windham prior to our move to the "big city"

During recent years I have worked with the Social Action Committee at my church, Allen Avenue UU here in Portland on a number of issues. One of those is that of reducing plastic and paper bag usage. We sat outside a Shaws, Hannafords, Walmart, Rite Aid and Whole Foods, each for an hour counting how many people made use of reusable bags versus those who did not. After our survey, we discussed the results with the store managers and encouraged them in their effort to urge more usage of reusable bags. The percentages ranged from 0 to 40%, by the way.

More recently I visited Ireland. Suddenly I realized there were NO plastic bags on the street, in people's hands, in any stores. "What was going on?" we inquired. Oh, they put a tax on the bags a few years ago and people stopped using them. They charged 33 cents a bag and there was a 94% drop in plastic bag usage within the year. At the same time it became "socially unacceptable" to use them. In other words, people's awareness of the environment and the need to protect it went up dramatically. In 2008, prior to this tax, 37 BILLION bags a year were used in their country.

Wales reduced their usage of plastic bags by 96% over a three-year period, using a fee close to the 10 cents you are considering. D. C. in our own country has initiated a fee as well – but with limited success. Maybe that is related to the low fee of five cents.

On reading about these initiatives, my conclusion would be that a fee is a very good idea, the higher the better (a quarter might improve our success rate). As well, a campaign needs to take place, informing people why the fee was put in place. Allowing the stores to keep the fees would simplify things for them but I should think that since they will not only reap the financial benefits from the fees but also have lower costs for purchasing such bags, you could ask them to provide the publicity needed for informing the public of the advantage of this approach to helping clean up our environment.

By setting an example in the state, we will be leading the way to eliminating these environmental menaces from an even larger area. I look forward to a day when I do not see plastic bags clinging to trees, filling ditches and blowing on our beaches. Thank you in advance for your work on this initiative. I hope you support it with your positive vote.

Melissa Graffam - Fwd: Fw: Another Major City Bans Plastic Shopping Bags

From: Dave Marshall <marshalldistrict2@gmail.com>
To: Melissa Graffam <MAG@portlandmaine.gov>, Michael Bobinsky <mbobinsky@por...
Date: 5/1/2014 5:46 PM
Subject: Fwd: Fw: Another Major City Bans Plastic Shopping Bags

Please add the email from Sally to the public record. Thanks.

---------- Forwarded message ----------
From: **Sally Trice** <strice@maine.rr.com>
Date: Wed, Apr 30, 2014 at 8:06 PM
Subject: Fw: Another Major City Bans Plastic Shopping Bags
To: marshalldistrict2@gmail.com, Ed Suslovic <edsuslovic@portlandmaine.gov>

. . . and that city is - *Chicago!*
Sally
From: HuffPost Green
Sent: Wednesday, April 30, 2014 5:51 PM
To: strice@maine.rr.com
Subject: Another Major City Bans Plastic Shopping Bags

GREEN

Another Major City Bans Plastic Shopping Bags

Oil Train Derails In Lynchburg, Virginia, Sparking Fire

Oil Train Derails In Lynchburg, Virginia, Sparking Fire

Storms Carve Deadly Path Through South, Midwest

Chicago Approves Ban On Plastic Shopping Bags

The Huffington Post | by Joseph Erbentraut (/joseph-erbentraut) (/users/becomeFan.php?author=joseph-erbentraut) Follow 570

Posted: 04/30/2014 3:38 pm EDT | Updated: 04/30/2014 4:59 pm EDT

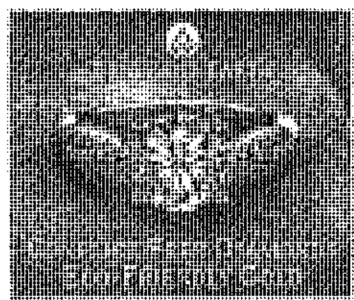
MORE: Plastic Bag Ban, Chicago Plastic Bag Ban, Plastic Bags, Chicago Bans Plastic Bags, Plastic Bag Bans, Cities Banning Plastic Bags, Chicago Plastic Bags

Chicago has become the latest U.S. city to approve a ban on plastic shopping bags.

The City Council voted overwhelmingly in favor of a partial plastic bag ban in Chicago on Wednesday (http://www.chicagotribune.com/news/politics/clout/chi-chicago-aldermen-vote-to-ban-plastic-bags-20140430,0,2716323.story), the Chicago Tribune reports. The proposal was backed by Mayor Rahm Emanuel and passed with a vote of 36-10.

The new ordinance will first go into effect in August 2015, when retailers occupying stores that are more than 10,000 square foot will no longer be allowed to offer plastic bags. The ban will be extended to smaller chain stures and franchises in August 2016, while small independent or non-franchise stores and restaurants will not be affected by the legislation.

Fines run between $300 and $500 each time the ordinance is violated.



Ald. Proco "Joe" Moreno (1st), the ordinance's lead sponsor, said a yes vote for the bill was in the best interests of both the environment and the economy (http://www.dnainfo.com/chicago/20140430/downtown/chicago-bans-plastic-bags-big-stores-have-until-2015-make-change), DNAinfo Chicago reports.

Other aldermen didn't see it that way.

Ald. Leslie Hairston (5th) opposed and voted against the ordinance because she was concerned about how the additional costs associated with providing paper bags -- which cost three times the amount of plastic -- may impact her efforts to attract a new grocery store tenant for an empty space in her South Side district (http://politics.suntimes.com/article/chicago/city-approves-partial-ban-plastic-bags/wed-04302014-1224pm), according to the Chicago Sun-Times.

"Grocers are already reluctant to come to my community, and we're gonna give them more reason by banning plastic bags," Hairston said Wednesday, the Sun-Times reports. "I'm tired of focusing on things that hurt people instead of helping people."

Some retail groups also fear the ban will impact the economy negatively.

"The city council has approved an ordinance that will raise the cost of doing business in Chicago and nothing for the environment (http://abclocal.go.com/wls/story?section=news/local/chicago_news&id=9522186)," Tanya Triche, vice president and general counsel of the Illinois Retail Merchants Association, said in a statement reported by ABC Chicago. "Driving up expenses for retailers and forcing customers to pay more at the store while not helping the environment flies in the face of the city's goal to make Chicago one of the nation's greenest cities and support companies that have invested significantly in Chicago's neighborhoods."

Supporters of the ordinance estimate that 3.7 million plastic bags are used citywide daily and that between 3 and 5 percent of them become litter, getting stuck in drains and causing flooding, clogging landfills and jamming recycling machinery.

Suggest a correction

(http://www.huffingtonpost.com/2014/05/04/audrey-hepburn-older-photos_n_5255122.html?utm_hp_ref=mostpopular)

Jennifer Lopez 'Sizzles' And 'Looks Attractive' On The Cover Of A.K.A'

(http://www.huffingtonpost.com/2014/05/05/jennifer-lopez-aka_n_5267860.html?utm_hp_ref=mostpopular)

(http://www.huffingtonpost.com/2014/05/05/jennifer-lopez-aka_n_5267860.html?utm_hp_ref=mostpopular)

'Floyd Did Not Fight Like The Man I Expected'

(http://www.huffingtonpost.com/2014/05/04/marcos-maidana-floyd-fight-man_n_5263449.html?utm_hp_ref=mostpopular)

(http://www.huffingtonpost.com/2014/05/04/marcos-maidana-floyd-fight-man_n_5263449.html?utm_hp_ref=mostpopular)

Storm Surge Could Flood NYC 1 In Every 4 Years

(http://www.climatecentral.org/news/storm-surge-could-flood-nyc-1-in-every-4-years-17344?utm_hp_ref=mostpopular)

(http://www.climatecentral.org/news/storm-surge-could-flood-nyc-1-in-every-4-years-17344?utm_hp_ref=mostpopular)

Is It Time To Change Our Views Of Adultery And Marriage?

(http://www.huffingtonpost.com/lisa-haisha/is-it-time-to-change-our-adultery_b_5242171.html?utm_hp_ref=mostpopular)

(http://www.huffingtonpost.com/lisa-haisha/is-it-time-to-change-our-adultery_b_5242171.html?utm_hp_ref=mostpopular)

Supreme Court Upholds Prayer At Government Meetings

(http://www.huffingtonpost.com/2014/05/05/supreme-court-prayer_n_5266930.html?utm_hp_ref=mostpopular)

Haven's
Maine's Finest Chocolates
87 County Road
Westbrook, Maine 04092
(207) 772-1557 HavensCandies.com

March 19, 2014

To the City of Portland Transportation, Sustainability and Energy Committee
Input on Bag Tax from Andy Charles, Owner of Haven's Candies

Dear Councilors Marshall, Hinck, Donoghue and Leeman,

Please accept these comments as you consider the proposed plastic & paper bag tax for Portland. I offer this input as a business owner with a retail candy store located on Forest Avenue. My company (Haven's Candies) was founded 99 years ago in the City of Portland, and we have maintained a retail location in the city ever since. During the past several years business conditions have been very challenging, especially at my Portland location. To be honest, I am assessing whether or not it makes sense to continue operating a store in the city. Anything that harms or impairs business results there will certainly factor into that decision.

For the record, I am strongly opposed to implementation of a bag tax or bag fee. While I understand and appreciate the motives behind the proposed tax, it is the wrong idea at the wrong time. Here are some of the reasons for my position:

- The bag tax amounts to a cost increase for my customers during tough times, and will inevitably have a negative impact on sales. Some customers will choose to shop in another locale, or will forego a candy purchase entirely in favor of some other gift that does not come with a bag tax. My competition is not just other candy stores outside of Portland, it is all other gift alternatives.

- The bag tax would require me to reprogram my cash registers and create new procedures unique to my Portland location. I just spent over $2000 implementing the increased 5.5% state sales tax; now I will need to again reprogram just at the Portland store if the bag tax goes through. Whatever the cost is, it will take several years to recover even with the $0.04/bag retained by the retailer.

- In addition to the costs of reprogramming and training, the bag tax will force me to create a separate tracking system just for one of my 3 retail locations. We don't currently keep track of how many bags are sent to and used at each store; the inventory is replenished as needed. If the bag tax is enacted, I'll need to set up a system to count how many bags are given out and a tracking system for collecting and remitting 60% of bag tax revenues to the city. I'll also need to account for how the 40% retained bag tax revenues are used in order to prove they are spent appropriately. Otherwise I will be subject to the fines and penalties in the proposed ordinance. This adds up to a lot of cost and work for very minimal benefit.

- With a bag tax my retail salespersons will be forced to accurately guess how many bags are needed as they ring up customer purchases so they can add the number of bags to the sale. This will be a logistical nightmare, especially during the peak candy seasons when every second counts and the lines get long. Customers will be furious.

- Encouraging customers to bring their own reusable bags may sound nice, but raises some real issues for a small premium candy retailer like Haven's. There will undoubtedly be an increase in shrink (the euphemism for theft) when customers shop and place items in their own bag. I have no way of knowing how sanitary the reusable bags are, but they are bound to be less clean/food safe than the new bags I provide now. Chocolate easily absorbs aromas; how do I respond when a customer who brought a stinky reusable bag into my store complains about the taste of my product after it sat in their bag? The liability will surely be mine.

- Customers who do not bring their own bags will inevitably demand that my staff cram as much product as possible into each bag, to minimize the number of 10 cent fees that go along with their purchase. This goes totally against our practice of carefully bagging items so they are not broken or damaged; many of my chocolates are fragile. And who do you think will bear the cost when a customer returns with chocolate Easter bunnies with broken ears caused by overstuffing the bag?

- The bag tax constitutes heavy-handed government intrusion into private commerce. The way to influence consumer behavior is through incentives, not penalties. And the punitive tone of the enforcement and penalty language in the proposed ordinance makes it clear the city does not trust businesses to be honest. I reject this suggestion and it makes me angry to see that kind of tone in an ordinance.

Like all of you, I care about the environment and want to do the right thing to make it better. But a bag tax isn't the right approach. According to the UN, the 2 largest contributors to greenhouse gases are raising livestock for human food consumption and transportation. So if you want to make a real impact on climate change, stop eating meat. I did. But I still prefer to transport my vegetables and whole grains home in a clean unused plastic bag, and I am responsible enough (even without government coercion) to recycle my bags responsibly.

Respectfully submitted,

Andy Charles
Owner – Haven's Candies

Maine Grocers & Food Producers Association

March 19, 2014

Councilor David A. Marshall, Chair
Transportation, Sustainability and Energy Committee
City of Portland
55 Portland Street
Portland, Maine 04101

Dear Councilor Marshall and Committee Members,

I am testifying in opposition to the proposed ordinance mandating Portland grocers and supermarket operators (and others) to collect bag fees from their customers and remit a portion of those fees back to the City of Portland. This proposal would be the most expansive and aggressive bag tax in the country.

By way of introduction, I am Shelley Doak, Executive Director, Maine Grocers & Food Producers Association and served on the Green Packaging Working Group Task Force. The Maine Grocers & Food Producers Association is a statewide business trade association representing main street businesses; independently owned and operated grocery stores, supermarkets, wholesalers and distributors, food and beverage producers and processors and associated service companies.

Portland businesses are pro-environment and anti-litter. They want a cleaner city too. Many Portland retailers place plastic bag collection bins at the front of their stores to encourage recycling – it's the law. Most large grocers and retailers already manage complex internal recycling programs; and they educate their customers about recycling placing signage/placards in their parking lots and entry ways. They accept a variety of plastic film that is being shipped out of state to be recycled. Our members are environmental leaders as demonstrated by their investments in their facilities and partnerships within the communities they serve.

The proposed ordinance to "reduce waste" by creating a "waste reduction fee" of $.10 on certain paper and plastic bags imposed on Portland residents and visitors would lead you to assume that the City has exhausted all other opportunities to influence its residents to do the right thing with plastic and paper bags. It would also lead you to believe that the highest percentage of the City's waste is attributed to these bags. I ask you, what percentage of Portland's waste stream actually comes from these bags? And why just limit this waste reduction fee to these multi-purpose bags? What about the one use newspaper bag? It might surprise you to calculate the number of newspaper bags in circulation.

This policy would also impose additional costs to consumers. A $.10 per bag tax may not sound like much now, but over the course of years of shopping it would add up significantly. This is a regressive tax impacting consumers already struggling to keep up with rising food, utilities and home heating prices; (The US Department of Agriculture estimates that grocery prices will be up 3.4% in 2014 and increase of 0.9% in 2013) taking money out of the pockets of Portland's consumers by increasing their grocery bills is bad policy. This would add to Portland's already (well publicized) skyrocketing Portland tax rates.

Of particular note, Portland citizens receiving SNAP and WIC assistance who are prohibited from using their benefits to purchase non-food items would be unfairly impacted. How would they be expected to come up with the cash to pay the tax on these bags let alone purchase a reusable bag?

77 Sewall Street, P. O. Box 5234
Augusta, Maine 04332
207.622.4461
mainegrocers.org

We oppose the ordinance because it will increase costs to businesses. As proposed, 60% of the tax would be retained by the City to establish another regulatory layer to "police" the bag tax. Our members already comply with multiple licensing requirements including collecting and remitting state sales tax, ensuring that only age eligible adults purchase liquor and tobacco products; the list goes on and on; there is no need for the heavy handed mandates contained in this proposed ordinance.

Let's look at the facts. Plastic bags are not the environmental hazard some would suggest. According to the U.S. Environmental Protection Agency, plastic bags comprise less than one percent of the total U.S. waste stream. Proponents are adamant that plastic bags, given out by retailers, are the target of their litter and waste stream concerns. But I ask you to consider the plight of these bags. They are filled with grocery items, taken inside the home, unpacked and then tucked away to be used 101 different ways or taken back to the store recycling collection bin. How can you be certain that they are the primary source of the litter and waste stream problems? What percentage of plastic mucking up ecomaine's system really comes from these bags?

The City and its partner ecomaine admit that collecting certain bags (#2 and #4) for recycling is creating a headache, and they have said that it's been hard to find suitable markets to sell these plastics. But retailers have found the opposite to be true. They are collecting increasing volumes of bags and other plastic film thereby reducing Portland's waste stream. I can assure you that retailers wouldn't be expending the resources to collect, bundle and transport these plastics if there wasn't a viable market and a good return on their investment. So why can't the City of Portland adopt this same approach?

Before imposing another tax, we urge the City to exam current litter laws and enforcement records. How often are citations made for littering and for what? What is the fine structure? Is it high enough to deter littering?

Before imposing another tax, we think the time has come for the City of Portland to invest in closed recycling bins. How much litter is attributed to recyclable materials taking flight on a windy day?

Before imposing another tax, the City of Portland and ecomaine should intensify their consumer education to build awareness about plastics to ensure that ALL plastic bags are clean and separated, for example. Further, they should feel free to inform their customers that retailers are happy to take back their plastic bags and other plastic packaging.

Before imposing another tax, the City of Portland has the opportunity to take a leadership role by becoming the first community in the State to adopt a comprehensive and meaningful education campaign to:

- increase appropriate recycling of existing bags
- identify ways to reuse and properly dispose of bags
- reduce the number of bags distributed by all retail outlets and at city and private events
- increase the use of reusable bags

Portland should adopt the Got Your Bags? Maine campaign. The promotional and educational materials are available for immediate implementation. Maine was one of the first states to launch this statewide, voluntary program designed for both retailers and consumers to help educate them on the benefits of reducing bag numbers, recycling bags, increasing the use of reusable bags and providing information helpful to municipalities. The Got Your Bags? Maine campaign is always looking for meaningful opportunities to expand the program. Don't bypass this opportunity to do the right thing.

77 Sewall Street, P. O. Box 5234
Augusta, Maine 04332
207.622.4461
mainegrocers.org

Don't impose another tax on City residents and visitors and don't increase the regulatory burden on the retail community; they are already doing the right thing. Beware too that potential retailers looking to develop in Portland will not look at this ordinance favorably. Do the right thing by figuring out a better recyclable collection system with a viable market. It can be done.

Sincerely,

Shelley

Shelley F. Doak, Executive Director

77 Sewall Street, P. O. Box 5234
Augusta, Maine 04332
207.622.4461
mainegrocers.org

MAINE
Restaurant Association

Bag Fee

Enhancing Prosperity for Maine's Restaurants

Chairman Marshall and distinguished City Council and committee members, my name is Greg Dugal and I am here representing the Maine Restaurant and Maine Innkeepers Association in opposition to the ordinance that would create a 10 cent waste reduction fee on disposable bags in the City of Portland. Though our Associations and our Portland members do not support the fee in principal, we truly feel that this ordinance definitely is more unfair to the restaurant industry than others. There is a reason why almost all communities that were used as examples in the Green Working Task Force as bag fee cities chose not to include restaurants. Actually none included restaurants initially and only one that we looked at added restaurants to the mix after the fact, San Francisco. I made these concerns known at the Task Force level and feel that many members of that group understood the reasons for our concern.

I took the liberty of contacting as many of the subject cities as I could and they all cited that restaurants and their representatives made a strong case for issues relating to food quality, food safety and public safety. Though we have been somewhat conditioned to bring our reusable bags to the grocery store, this has not been the case for restaurants providing take out or drive throughs at quick service restaurants. I am not sure how one would get the bag to the employee behind the speaker. Concerns voiced from other cities were that if consumers chose not to pay for the bag that food quality would suffer due to the quick cool down the prepared food would experience. It also could be a matter of food safety as prepared foods could reach unsafe temperatures for consumption at a much faster rate. Public safety could also be jeopardized as employees and consumers may put themselves at risk by having to handle food that has just been brought up to proper cooking temperatures sometimes in excess of 400 degrees. Going through the drive through could become quite an interesting experience particularly if you are purchasing food for several people.

Having said all of that, both associations support the remainder of the retail community in opposition to this ordinance in general and suggest, as they have, that education is the key to success in reduction, reuse and recycling of bags provided in a retail setting. The Got Your Bags campaign has been a successful educational tool nationwide and the Got Your Bags Maine effort has proven to be an incredible resource for people to think outside of the box when it comes to the proper use of bags and interesting ideas that promote the reduction of waste.

45 Melville Street · Augusta Maine · 04330 · 207.623.2178 · 866.711.5408 (fax) · www.mainerestaurant.com

The actual charge for the bag, which in our minds flies in the face of good customer service, pales in comparison to the potential quagmire that the reporting element of this ordinance may provide. How will retailers capture this tax on their point of sale systems or worse what if they don't have one? What is the reporting schedule, weekly, monthly, quarterly or yearly? How will the city in lean economic times enforce and staff this effort? In this ordinance you have exempted the retailers' portion of the fee as not subject to sales tax. I do not believe that the city has the jurisdiction to do this. In the restaurant and lodging world, any fee that a consumer has to pay at the point of sale like resort fees or housekeeping fees, IS subject to sales tax based on interpretations by the Maine Bureau of Revenue Services. Will the retailer be subject to sales and income taxes on the whole ten cents or just their portion of the fee? I deal with Revenue Services on a daily basis and their approach to this will be to audit and charge people for taxes not collected with no concern for what the city is trying to achieve or what the merchant was required to collect.

We respectfully ask that you abandon this proposed disposable bag ordinance in favor of a straight forward educational effort that can be championed by the City of Portland. Thank you for your time and your consideration.

45 Melville Street · Augusta Maine · 04330 · 207.623.2178 · 866.711.5408 (fax) · www.mainerestaurant.com

clf
conservation law foundation

For a thriving New England

CLF Maine 47 Portland Street, Suite 4
Portland, ME 04101
P: 207.210.6439
F: 207.221.1240
www.clf.org

TESTIMONY ON AMENDMENT TO PORTLAND CITY CODE
CHAPTER 12 GARBAGE, WASTES AND JUNK
ARTICLE IX. WASTE REDUCTION
SECTIONS 12-230 THROUGH 12-238

Ben Tettlebaum, Attorney
Conservation Law Foundation
Portland, ME 04101
btettlebaum@clf.org

March 19, 2014

Chair Marshall and members of the Transportation, Sustainability and Energy Committee, my name is Ben Tettlebaum, and I am an attorney with the Conservation Law Foundation (CLF). Thank you for receiving this testimony in support of the amendment to Chapter 12, Sections 12-230 through 12-238 ("Bag Fee Ordinance").

We support the Bag Fee Ordinance for the reasons summarized in the Task Force Majority Report. In particular, CLF is concerned about the long-term, negative environmental impact of continued plastic bag use. Harmful environmental effects include, but are not limited to, the following:

- Plastic bags can take up to 1,000 years to degrade.
- As plastic bags break down, they form smaller pieces that contaminate our soil and waterways, ultimately entering the food system when animals accidentally ingest them.
- Plastic bags cause over 100,000 sea turtle and other marine animal deaths every year when animals mistake them for food.
- Plastic bags are among the 12 items of debris most often found in coastal cleanups.
- Nearly 90 percent of debris in our oceans is plastic.

We support including paper bags in the Ordinance. Our concerns with paper bags include the following:

- Manufacturing paper bags creates 70 percent more air pollution than manufacturing plastic bags.
- Manufacturing paper also creates up to 50 times more water pollutants than manufacturing plastic.
- Manufacturing paper bags consumes four times more energy than making plastic bags.
- Producing a paper bag requires three times more water than producing a plastic bag.
- The Environmental Protection Agency found that paper degrades at about the same rate as plastic in a landfill.

We appreciate the burden that grocers, restaurants, other food businesses, and ultimately all of us as consumers will bear. However, educational campaigns alone have not shown to have a comparable impact on reducing bag waste as bag fees or bag bans. The 40 percent retained portion of the bag fee will help offset the costs of implementing the Ordinance. Additionally, the April 1, 2015, compliance date should allow ample time for businesses to prepare for compliance. In sum, the benefits of this Ordinance will likely outweigh its costs.

Though we support the Bag Fee Ordinance, we have four concerns that we suggest this Committee consider. First, under section 12-231, page 3 of the draft Ordinance, the definition of "Store" includes markets that sell "household supplies" in a disjunctive list. As written, therefore, a market that sells household supplies, but not food, would qualify as a Store and be subject to the Ordinance. This is likely beyond the intended scope of the Ordinance at this time, as evidenced by the same subsection that states "[b]usinesses at which foodstuffs are an incidental part of the business" are exempt. We recommend addressing this potential internal inconsistency, perhaps by omitting "household supplies" from the disjunctive list. We leave this to the sound discretion of the Committee or as a directive to the Task Force to amend the Ordinance.

Second, under section 12-232, page 4, the "Waste Reduction Fee Requirements," subsection (d) states, "No Store or Restaurant shall exempt any part of the Waste Reduction Fee for any reason." However, section 12-235 clearly states an exemption for an emergency. Therefore, we recommend appending something like, "except for the reason under 12-235," to the end of subsection 12-232(d).

Third, though we support an ultimate goal of reducing the use of plastic bags in the city of Portland to the greatest extent possible and feasible, we find the inclusion of laundry and dry-cleaning businesses out of place in this Ordinance at this stage. The other businesses included in the Ordinance have food as more than an incidental portion of their sales. Regulating laundry and dry-cleaning facilities, while consistent with the broader goal of the Ordinance, is inconsistent with the other regulated entities. Thus, we encourage the Committee to consider whether these businesses should be omitted from regulation under this Ordinance.

Finally, we encourage the Committee to consider including a severability provision in the Ordinance.

Otherwise, we support the Bag Fee Ordinance and encourage coordination with the food business community to make the Ordinance as successful as possible.

Sincerely,

Ben W. Tettlebaum
Attorney/Rhodes Fellow, Farm and Food
Conservation Law Foundation

RETAIL ASSOCIATION OF MAINE
Voice of Maine Retail
45 Melville Street, Suite 1
Augusta, ME 04330
Phone: 207.623.1149
www.retailmaine.org

March 19, 2014

David Marshall, Chair
Members of the Transportation, Sustainability and Energy Committee
City of Portland
City Hall
Portland, ME

RE: Testimony in OPPOSITION to the proposed Paper and Plastic Bag Tax Ordinance in Portland

Dear Chairman Marshall and members of the Transportation, Sustainability and Energy Committee:

My name is Curtis Picard and I am the Executive Director of the Retail Association of Maine. I am a resident of Topsham. We were incorporated in 1933. We have 400 members statewide representing retailers of all sizes and our members employ nearly 90,000 Mainers.

I am here to offer testimony in opposition to the proposed bag tax.

First, it is important to note that Maine has a law on the books that mandates that any retailer that distributes plastic check out bags, must provide a receptacle to recycle the bags. If you go to any large retailer, you will see a receptacle usually very close to the door where customers can bring back their unwanted plastic bags. These retailers combine the plastic with other plastic shrink wrap and other recyclables and back-channel them through their distribution system to be recycled, generally out of state. These retailers recycle tons and tons of plastic each year. What they don't do, however, is count individual bags that are returned. These retailers deal in tonnage and do an excellent job recycling.

We are strongly opposed to the proposed bag tax. The City is trying to address litter and we feel that the greatest cause of the bag litter is the open top recycling bins provided by the city. If the City were to simply replace the open bins with bins with lids, we feel that the bags that get blown around by a strong wind currently would be much less likely to get blown. The question we should be asking is why are Portland residents putting the bags in the recycle bins to begin with? The reason is they are trying to do the right thing and recycle them. However, when you look at the Ecomaine website, nowhere on the site does it encourage residents to return the bags to major retailers. It simply says on their Do's and Do Not's page that plastic bags labeled #2 and #4 are recyclable and it says that other plastic bags like frozen vegetable, bread bags, newspaper bags, potato or snack, sandwich or trash bags are not recyclable. Ecomaine could do a better job educating residents on reusing and recycling existing bags and the avenues that exist to do so.

We feel that the proposal is one of the most onerous in the country and applies a $.10 tax to both paper and plastic bags, regardless of the recycled content of the bag. This ordinance is wide-ranging and would apply to grocery stores, restaurants, pharmacies, dry cleaners, farmer's markets, food trucks, any retailer selling at least 2% of their gross sales in food and special events. One item of note is at the last task force meeting, the majority of the committee voted to include special events, events like Harvest on the Harbor, in the ordinance, but I did not see it listed in the draft. Perhaps this was an oversight, but my recollection was it was included by the majority.

We believe this ordinance is simply a way for the City of Portland to collect additional revenue. 60% of the tax will be remitted to the City. We continue to question whether the city has the legal authority to impose what is essentially a local option tax, but also question whether or not the additional tax is considered taxable by Maine Revenue Services. While the ordinance specifically states that the amount remitted to the city is not considered taxable, it says nothing about the amount retained to comply with the law. It needs to be clarified whether the tax is taxable or if the revenue would be considered income by the State.

A number of other cities that have passed bag taxes allow the businesses to keep 100% of the tax. San Francisco, San Jose, CA, Bellingham, WA and Los Angeles County are all cities that have an ordinance but allow the businesses to keep 100% the tax. Why does Portland need to keep the revenue? To produce and distribute reusable bags? The majority report notes how retailers and other organizations already distribute tens of thousands of bags. Why would Portland take this new revenue and spend it on that?

I won't speak for the restaurants that are impacted, but I question the rationale for including them. As with polystyrene, the issues are product integrity and food safety. By limiting the products that restaurants can use to properly service their customers, you are negatively impacting food safety and product integrity. Restaurants should not be included in the ordinance.

Dry cleaners have similar concerns with product integrity. All you have to do is pick up your clothes on a rainy or snowy day. As a customer, I expect my suits to be wrapped in plastic to keep them clean. However, many dry cleaners utilize a central cleaning location. Where you drop your suit is not necessarily where it gets cleaned. Often they are shipped to other locations. Hence the plastic covering is added at the central location so that they can be shipped back to the retail location. You can easily imagine an angry customer whose item got dirtied in the transit back after cleaning. It makes no sense to include this in the ordinance.

Proponents of bag taxes often point out Washington, DC as a city that recently passed a bag fee. However, a recent article in the Washington Post concludes that the bag tax has only served to generate revenue for Washington and has not changed consumer behavior. In fact, the revenue the city has generated from the tax has actually increased year over year meaning more residents are using more bags, not less. It is simply a new source of revenue for the city.

From the Washington Post article: *Yet tax collections don't support the idea that bag use has dropped dramatically. In between the District's 2012 and 2013 fiscal years, bag tax revenue grew by about $12,000 — a half-percentage point rise that represents well over 200,000 additional bags.*
Yesim Yilmaz, chief of revenue estimation for the District's Office of the Chief Financial Officer, said the revenue trend was a surprise.

"When we forecasted the bag fee collections back in [2009], at the time the city adopted the fee, we had expected that these collections would decline over time," she said. "But they did not."

Additionally, it is important to recognize how existing paper and plastic bags are often reused before being recycled or disposed of. First, plastic bags are ideal waste basket liners. They are excellent to use for soiled diapers, particularly when traveling. They are used quite frequently in my house for pet waste, for wet or muddy shoes and for segregating sweaty athletic gear from the various sports my son does. The bags in our household are reused at least once and recycled at the end of their life.

Simply, we feel that this ordinance is overly aggressive and does not address the real problem. The real problems are open air recycle bins and a small minority of inconsiderate people who do not properly recycle or dispose of bags. A bag tax will not address either of those problems. The open bins will continue to blow bags and inconsiderate people will continue to litter.

The minority report clearly outlines many of our other concerns regarding the proposed ban. We would urge the committee to vote in opposition to the proposal.

I am happy to answer any questions you may have and I thank you for the opportunity to share our concerns.

Sincerely,

Curtis F. Picard

Curtis Picard, CAE
Executive Director

Natural Resources Council of Maine

3 Wade Street • Augusta, Maine 04330 • (207) 622-3101 • Fax: (207) 622-4343 • www.nrcm.org

Comments in Support of Instituting a Fee on Single-Use Disposable Bags

by Sarah Lakeman, NRCM Sustainable Maine Policy Advocate
March 19, 2014

My name is Sarah Lakeman, I am the Sustainable Maine Policy Advocate and Outreach Coordinator for the Natural Resources Council of Maine. I am speaking as a Portland resident and on behalf of NRCM's more than 16,000 members and supporters, of which more than 1,100 are residents of Portland. I appreciate the opportunity to present comments in support of a fee placed on single-use disposable bags in the City of Portland.

NRCM is confident that the City will reap significant financial and environmental benefits by adopting an ordinance that discourages the proliferation of single-use disposable bags in favor of reusable ones. The fee-based approach will work to change behavior in a way that drastically reduces the use of these unnecessary bags that end up clogging storm drains, jamming recycling equipment, getting entangled in trees, and floating around in Casco Bay.

There are more than 20 countries around the world and more than 150 communities across the country that have successfully eliminated tens of millions of disposable bags by adopting ordinances like the one before you today. Based on the same principle behind Portland's successful Pay-as-You-Throw program for solid waste, a fee on disposable bags discourages their use and changes consumer behavior, which is why these programs are succeeding in ways that voluntary educational campaigns simply do not.

In 2009, under legislative directive, NRCM collaborated with the Maine Merchants Association, Maine Grocers Association, and the Maine State Planning Office to form a 14-member working group to explore creating a voluntary program, as opposed to a statewide ban or fee on disposable bags, which resulted in the *Got Your Bags, Maine?* campaign.

This campaign is pointed to in the Minority Report as an alternative to the proposed ordinance. However, we believe that City Council members should understand that the *Got Your Bags* campaign has fallen far short of its goals, and we can't help but conclude that it has done little to reduce the use of disposable bags.

Although a number of stores in Maine are doing a good job promoting reusable bags, and some actually display the campaign logo, such as Hannaford and Shaws, there is no evidence that the campaign's goal of reducing plastic bag use by 33% by 2013 has been achieved or that the target number of 1,000 retailers are participating.

The overall level of effort by the Maine Grocers Association and Maine Retailers Association has largely dissipated as evidenced by the collapse of public education and outreach efforts. For example, the *Got Your Bags* website is no longer active, the Facebook page has only six new posts in the past year, and the campaign's Twitter account shows zero tweets in the past two years.

With the passage of time, and learning from the successes of other cities, we can now see that this educational campaign-based alternative is unlikely to be anywhere near as successful as fee-based programs. Bans and fees on disposable bags are reducing the use of these bags by 60 to 90 percent. Doing that here in Portland would be a big deal, and we should do it.

Ten years from now, we believe most children will be surprised to learn that there was a time when disposable bags were handed out routinely at stores only to be thrown away minutes later when the bags were unloaded at home.

We applaud the work of the Green Packaging Task Force and believe that Portland should join the growing list of cities across the nation taking action to sharply reduce the use of single-use disposable bags. However, NRCM suggests that the committee evaluate the possibility of a 5 cent fee instead of 10 cents, as well as ways to reduce the administrative burden that could be created through the 60/40 split. In some communities, the store retains the full fee, although must report it as taxable income. We also urge the committee to exempt dry-cleaner garment bags since there is no readily available and affordable alternative. Such bags typically are not subject to the fee in other cities.

The Natural Resources Council of Maine strongly believes that this ordinance is a common sense step toward a more sustainable community. We urge Portland to be on the leading edge of this change, and not simply sit on the sidelines and watch it happen elsewhere. Thank you for the opportunity to comment, and I would be glad to answer any questions you may have.

Paul's Food Center
585 Congress Street
Portland, ME 04101

March 19, 2014

Councilor David A. Marshall, Chair
Transportation, Sustainability and Energy Committee
City of Portland
55 Portland Street
Portland, ME 04101

Dear Councilor Marshall and Committee Members,

I am writing to express my concerns for the proposal to put a tax on paper and plastic check out bags and to ban the use and sale of polystyrene products. I like protecting the environment and I like doing business in Portland, but I'm not in favor of these proposals because they will drive up the cost of doing business in Portland and make it more expensive for my customers.

My store on Congress Street is a neighborhood store. My customers make frequent visits picking up grocery items. Most of them walk so they don't like to carry too many bags at one time. So I'm concerned about the additional cost of taxing my customers.

Also the alternative products available to replace polystyrene packaged goods not only are much more expensive and less sanitary, they do not protect the product as well as polystyrene.

Finally the ordinance will certainly discourage the larger supermarkets from locating or expanding in Portland. It is well known that Demoulas having great success in Biddeford is looking at the greater Portland market. Given similar locations in South Portland, Westbrook or Falmouth, this ordinance would certainly cause them to not choose Portland.

On balance the limited benefit gained from this ordinance is greatly outweighed by the business that the large supermarkets will lose to nearby markets and we will still end up with their polystyrene waste.

I know that there was a task force working on these issues and that they raised these concerns. Is there any chance that this group can continue to work together to find better options rather than banning products and imposing more taxes? It just doesn't seem right to me.

Sincerely,

Paul

Paul Trusiani

Hannigan's Island Market
76 Island Avenue
Peaks Island, ME 04108

March 19, 2014

Councilor David A. Marshall, Chair
City of Portland
Transportation, Sustainability and Energy Committee
55 Portland Street
Portland, Maine 04101

Dear Councilor Marshall and Committee Members,

My wife and I own a full service grocery store on Peaks Island. We're fortunate to have a loyal clientele who frequent our store all year long and we're always happy to welcome summer tourists who come in droves to bike around the island, picnicking along the way, and enjoy sightseeing in general.

I have to say that doing business in Portland isn't easy as the high tax rates cut into my already slim margins. The proposed ordinance to ban polystyrene products is concerning to me since our customers do purchase picnic ware and many of our products arrive in the store already prepackaged. It's not clear to me if these prepackaged products will be banned? If so, I'll have to buy more expensive alternatives which will add to the cost of doing business in Portland. From what I gather the ordinance is really about addressing litter. It seems short sighted to me that this proposal only addresses certain types of polystyrene, which is used by restaurants and grocers. From my understanding there are any number of other businesses that use polystyrene made products; I wonder why they are being left out? Surely they are part of the waste stream.

I'm also troubled that the City would impose a bag fee on bags we use to pack up our customers groceries. This will increase the cost for my customers, require me to change my registers, and complicate the check out process for my customers and my employees. I wonder how the tourists that come to my store will feel when I tell them we now have to charge for a bag. Since they are coming for day, I doubt they'll bring their own shopping bags!

I'm also frankly insulted by the tone of the ordinance that would direct City employees to act as "bag police" to make sure we're charging the bag fee and then require me to submit \$.06 back to the City. I'm been the unpaid tax collector for the State of Maine for as long as I can remember and as a responsible business person, I comply with the law without a lot of extra administrative demands.

We want a clean island and a clean city, but I wonder why with so much opposition from the businesses doing business with Portland residents and the hundreds of tourists, would you even consider these types of ordinances without looking at alternative solutions. It just doesn't make sense to me.

I'm opposed to these ordinances; we can do better than this.

Sincerely,

Bob Hannigan

Bob Hannigan

To Whom It May Concern:

I am writing in regard to the proposed 10-cent fee for disposable bags in Portland. I would like to register my strong opposition the inclusion of plastic dry cleaning bags in the proposed ordinance.

As owner and operator of Pratt-Abbott, Maine's largest dry cleaning company, I am always trying to minimize the environmental impact of my business. We have invested in high-tech equipment to minimize chemical waste and ensure proper water treatment. We have made every effort to reduce the amount of packaging we use and to incorporate recycled materials into our packaging. We established a free delivery program to cut down on commuter emissions to and from our stores. We have promoted "wet cleaning" as a greener alternative to traditional dry cleaning. We also make donations to CarbonFund.org to offset our environmental footprint. Our policy is to adhere to the highest standards for environmental preservation, above and beyond our legal obligations. We do this because we want to—because Pratt-Abbott is a family business that cares about the health of our community and our 150 Maine employees.

If we could stop using plastic packaging altogether, we would. But there's no way to eliminate the use of plastic entirely. I also serve as president of The Drycleaning and Laundry Institute (DLI), an international trade organization for dry cleaners, so I'm familiar with industry practices around the world. Currently, there is no real alternative for plastic dry cleaning bags (properly called "sheaths.") The bags are necessary to maintain a quality product while in storage or transit to the customer, and due to the volume of production, among other issues, reusable dry cleaning bags are not a viable option.

The implementation, tracking and recording of this ordinance would be cumbersome, labor intensive and wasteful of other resources. Because of these logistical challenges, as well as the fact that dry cleaning bags account for a very small percentage of plastic bag waste (less than 1% according to the Portland Water District), other cities with plastic bag fees have exempted dry cleaning bags from the legislation. Portland should do the same.

Sincerely,

David Machesney
Owner
Pratt-Abbott Cleaners

necsa

New England Convenience Store Association

March 19, 2013

Portland City Council Transportation, Sustainability & Energy Committee
City of Portland
55 Portland Street
Portland, Maine 04101

RE: Proposed Ordinance to Tax Paper & Plastic Bags & Proposed Ordinance to Ban Polystyrene

Dear Chairman Marshall and Committee members,

The New England Convenience Store Association's (NECSA) Maine Chapter membership consists of independent, family owned convenience stores, independently owned franchise stores as well as chain-operated convenience stores. According to the National Association of Convenience Stores [NACS] latest industry report, as of December 2011, there are approximately 1,000 convenience stores operating in Maine and the convenience/fuel retailing industry employs over 12,000 people here in the state. There are many convenience stores in Portland that would be negatively impacted by the proposed ban on polystyrene products and the bag fee program and on their behalf we respectfully ask that you not move forward with these initiatives.

The polystyrene ban and bag tax are bad for small businesses and consumers. Our members are in the business of providing the food and beverage products our customers want in the size and packaging configurations they prefer. Polystyrene is an excellent insulator and has both the rigidity and consistency that make it a safe choice for hot beverages for our customers-especially those who are driving. In addition, many of our shoppers walk or take public transit. Paper bags simply don't work in the rain or on a bus. To require that this preferred type of cup may no longer be offered or to charge our customers a new tax for bags puts additional costs onto small businesses and consumers without any guarantee of environmental benefit.

Polystyrene *is* recyclable. The argument that we have heard put forward in the past by some that polystyrene is not recyclable is inconsistent with the facts. Polystyrene can, in fact, be completely recycled, both the foam and non-foam polystyrene products, if collected as part of an integrated solid waste management strategy. We know that many in the manufacturing and retail industry have worked with cities and towns throughout the U.S. and Canada to successfully create these types of programs.

Costs to Businesses & Consumers – We all want to keep our cities clean, but can't support efforts that add to the cost of doing business. Portland's convenience stores operate with very low profit margins and will be unfairly burdened with more costly and onerous regulations. Further, these proposals will increase costs to our customers that would add up over time. It won't take much for them to find less expensive retail options outside the City of Portland. Does this really make sense?

If the problem is litter, we would respectfully suggest that better recycling, not a polystyrene ban or bag tax be the solution. There would seem to be no logical reason to believe that those who would carelessly toss their trash and create a mess on our streets would somehow cease this practice based upon the material used in packaging. We would respectfully suggest that enhancement of anti-littering laws along with a collaborative effort to create better recycling options for citizens and businesses alike is a much better approach.

Sincerely,
Steve
Stephen Ryan, Executive Director

1044 Central Street Suite 203 ~ Stoughton, MA 02072 ~ Phone: 781-297-9600 ~ Fax: 781-297-9601

Order 261-13/14
Tab 22 6-2-14

MICHAEL F. BRENNAN, (MAYOR)
KEVIN J. DONOGHUE (1)
DAVID A. MARSHALL (2)
EDWARD J. SUSLOVIC (3)
CHERYL A. LEEMAN (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

JOHN R. COYNE (5)
JILL C. DUSON (A/L)
JON HINCK (A/L)
NICHOLAS M. MAVODONES, JR (A/L).

AMENDMENT TO PORTLAND CITY CODE
CHAPTER 12 GARBAGE, WASTES AND JUNK
ARTICLE VII and ARTICLE VIII. POLYSTYRENE
RE: POLYSTYRENE FOAM

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

1. That Article VII, Rendering Wastes, of the Portland City Code is hereby amended and a new Article VIII is hereby enacted to read as follows:

Sec. 12-206. Reserved.
Sec. 12-207. Reserved.
Sec. 12-207. Reserved.
Sec. 12-208. Reserved.
Sec. 12-209. Reserved.

ARTICLE VIII. POLYSTYRENE

Sec. 12-210. Findings; purposes.

The city council hereby finds as follows:

(1) Polystyrene foam is a petroleum-based, lightweight plastic material sometimes used as food service ware by retail food vendors operating in the City of Portland.

(2) The City of Portland desires to protect the natural environment.

(3) There is no economically feasible means of recycling polystyrene foam locally.

(4) Disposable food containers made from polystyrene foam constitute a portion of the litter in Portland's streets, parks and public places that increases city maintenance costs.

(5) Polystyrene foam is a common pollutant that fragments into smaller, non-biodegradable pieces that are ingested by marine life and other wildlife thus harming or killing them.

(6) The State of Maine has banned the service of food and beverages in polystyrene foam containers at facilities or functions of the State or its political subdivisions (38 M.R.S. §§ 1651-1654).

(7) The City's goal is to replace polystyrene foam food containers with reusable, recyclable or compostable alternatives.

(8) Such alternatives are readily available.

Sec. 12-211. Definitions.

As used in this Article the following terms have the following meanings:

"*Food Packager*" means any person located within the City of Portland who places meat, eggs, bakery products, or other food in packaging materials for the purpose of retail sale of those products;

"Prepared food" means food or beverages which are served at the food vendor's location having been previously prepared elsewhere or are prepared at the vendor's location by cooking, chopping, slicing, mixing, brewing, freezing or squeezing. "Prepared food" does not mean raw uncooked meat or eggs. Prepared food may be eaten either on or off premises.

"Polystyrene foam" means and includes blown polystyrene and expanded and extruded foams (sometimes incorrectly called Styrofoam®, a Dow Chemical Company trademarked form of polystyrene foam insulation) which are thermoplastic petrochemical materials utilizing a styrene monomer and processed by any number of techniques including, but not limited to, fusion of polymer spheres (expandable bead polystyrene), injection molding, foam molding, and extrusion-blow molding (extruded foam polystyrene). Polystyrene foam is generally used to make cups, bowls, plates, trays, clamshell containers, meat trays and egg cartons. For the purposes of this chapter, the term "polystyrene" shall not include clear polystyrene known as "oriented polystyrene."

"Retail Vendor" means any person, restaurant, store, shop, sales outlet or other establishment, including without limitation, a grocery store, convenience store or a delicatessen located within the City of Portland which offers prepared food for retail sale.

Sec. 12-212. Prohibitions.

(a) No retail vendor in the City of Portland shall serve or sell prepared food and no food packager shall package meat, eggs, bakery products or other food in polystyrene foam containers.

(b) No retail vendor in the City of Portland who sells tangible personal property at retail shall sell polystyrene foam food or beverage containers.

(c) The City shall not use polystyrene foam food or beverage containers at any City facility or City-sponsored event.

(d) No City department or facility shall purchase or acquire polystyrene foam food or beverage containers.

(e) All parties who contract with the City shall be prohibited from using polystyrene foam food and beverage containers in City facilities or on City-funded projects within the City.

Sec. 12-213. Exemptions.

(a) The sale and packaging of raw seafood is exempt from the provisions of this Article.

(b) Retail vendors and food packagers that are currently existing or are established in the city by the effective date of the ordinance will be exempted from the provision of this Article prohibiting the use of polystyrene foam for a period of time to be determined by the City Manager or his/her designee in writing on a case-by-case basis for undue hardship. Undue hardship includes, but is not limited to, situations unique to the food vendor not generally applicable to other persons in similar circumstances.

(c) Retail vendors, food packagers, city departments, city facilities and contractors shall be exempt from the provisions of this Article, in a situation deemed by the City Manager to be an emergency for the immediate preservation of the public peace, health or safety.

Sec. 12-214. Violations and enforcement.

The City Manager or his/her designee(s) shall have the primary responsibility for enforcement of this Article. If the City Manager or his/her designee(s) determine(s) that a violation of this Article has occurred, he/she shall issue a written warning notice to the food vendor that a violation has occurred. Subsequent violations of the Article shall be subject to the penalties set forth below.

Violations of this Article shall be punishable by fines as follows:

(a) A fine not exceeding $250 for the first violation in a one-year period;

(b) A fine not exceeding $500 for the second and each subsequent violation in a one-year period.

Sec. 12-215. Effective Date

(a) This Article shall become effective on July 1, 2015.

(b) This Article shall be null and void if and as long as there is developed and maintained an effective city-wide recycling program approved by the City's Director of Public Services for polystyrene foam food and beverage containers.

(c) The provisions of this Article shall be null and void on the day that statewide legislation or federal legislation goes into effect, incorporating either the same or substantially similar provisions as are contained in this chapter, or in the event that a pertinent Maine or federal administrative agency issues and promulgates regulations, preempting such action.

Sec. 12-216. Severability.

If any part or provision of this Article or the application thereof to any person or circumstances is held invalid, the remainder of the Article, including the application of such part or provision to other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Article are severable.

MEMORANDUM
City Council Agenda Item

TO: City Council

FROM: Michael Bobinsky, Director of Public Services
Troy Moon, Environmental Programs Manager

DATE: May 19, 2014

DISTRIBUTION: (City Manager, Mayor, Corporation Counsel, Sonia Bean, Nancy English)

SUBJECT: Order creating an ordinance of the City of Portland to prohibit the use of expanded polystyrene foam food service ware by all food vendors, City departments, and City contractors, and at City sponsored events.

SPONSOR: Councilor David A. Marshall, Chair, Transportation, Sustainability and Energy Committee

COUNCIL MEETING DATE ACTION IS REQUESTED:
1st reading: June 2, 2014 Final Action: June 16, 2014

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

I. SUMMARY OF ISSUE (Agenda Description)

The proposed ordinance prohibits food service establishments from serving food in packaging or containers made from polystyrene foam. It also prohibits the retail sale of polystyrene food service products. If adopted, the ordinance would not go into effect until July, 2015 in order to allow merchants to deplete their existing inventory of polystyrene foam service ware.

II. REASON FOR SUBMISSION (Summary of Issue/Background)

In June, 2012 the City Council ordered the Transportation, Sustainability and Energy Committee to consider an ordinance or recommendation to ban the use of polystyrene foam containers and to take whatever further action committee members deemed appropriate. To this end, the TS&E Committee created the Green Packaging Working Group which consisted of industry representatives, local businesses, environmental advocates and citizens. This group held three meetings to discuss the issue and review draft ordinance language. During the third meeting a majority recommended adoption of an ordinance. The Working Group chair, Councilor Suslovic, invited the minority to submit a minority report to explain their position. The Transportation, Sustainability and Energy Committee took public comment regarding the proposed ordinance during their meeting on June 19, 2013 and recommended adoption by the full Council on July 17,

2013. (2-1, Anton absent) The full Council reviewed the proposed ordinance during their meeting on September 15, 2013 and referred it back to the Transportation, Sustainability and Energy Committee. After further public comment and deliberation the committee, voted on April 16 to recommend a revised ordinance to the full Council. (3 – 1) The revised language addresses concerns raised by the Council by clarifying that the ordinance does not apply to wholesale seafood operations. It also more clearly defines the retailers affected by the ordinance.

III. INTENDED RESULT

Eliminating the use of polystyrene foam packaging will reduce waste by leading food service establishments to use alternatives that can be recycled in the City of Portland/ecomaine's recycling program. Polystyrene foam is not recyclable in the City of Portland's curbside recycling program while alternatives such as paper, fiberboard, foil and rigid plastic containers are. Eliminating the use of polystyrene foam is in line with Portland's efforts to protect local waterways including Casco Bay by reducing the amount of polystyrene litter, which is particularly harmful to marine wildlife.

IV. COUNCIL GOAL ADDRESSED

The proposed ordinance advances the Council's objective to reduce waste and increase recycling.

V. FINANCIAL IMPACT

Polystyrene foam packaging is somewhat less expensive than other forms of packaging but alternatives are widely available and are used extensively by food service establishments in Portland.

VI. STAFF ANALYSIS

More than 100 cities and counties across the United States have prohibited the use of polystyrene foam packing in an effort to reduce the amount and toxicity of litter, protect water quality and marine life and promote recycling. These include Freeport, ME, which adopted its ban in 1990, as well as San Francisco, CA, San Jose, CA, Portland, OR, and Brookline, MA. Most of these cities are recognized as national leaders on environmental issues. They have found that prohibiting polystyrene foam packaging helps them achieve their environmental goals.

In Portland, we are not currently able to recycle polystyrene foam. Staff from ecomaine testified that poor markets, cost of transportation and difficulty in handling this material make it impractical to recycle. All of the commonly used alternatives to polystyrene foam packaging are recyclable in our program including paper, fiberboard, foil and non-expanded plastic. Prohibiting foam packaging would lead to more widespread use of recyclable packaging in our local food service establishments.

Plastic marine debris is an increasing problem in the aquatic environment, including Casco Bay. Polystyrene foam is an especially problematic form of plastic pollution because it breaks into smaller and smaller pieces as it degrades. As a common form of litter, these tiny pieces of foam enter our waterways where aquatic wildlife often mistake it for food. This leads to increased animal mortality. Plastic marine debris also degrades water quality.

VII. RECOMMENDATION

The proposed ordinance is in line with stated policy goals of reducing waste, increasing recycling and protecting water quality. The Department of Public Services recommends passage.

VIII. LIST ATTACHMENTS

a) Draft ordinance
b) Additional written testimony from March, 2013 TS&E meeting
c) Information from September 16, 2014 Council Package

Prepared by:

Troy Moon on 5/19/2014

Sec. 12-206. Reserved.
Sec. 12-207. Reserved.
Sec. 12-207. Reserved.
Sec. 12-208. Reserved.
Sec. 12-209. Reserved.

ARTICLE VIII. POLYSTYRENE

Sec. 12-210. Findings; purposes.

The city council hereby finds as follows:

(1) Polystyrene foam is a petroleum-based, lightweight plastic material sometimes used as food service ware by retail food vendors operating in the City of Portland.

(2) The City of Portland desires to protect the natural environment.

(3) There is no economically feasible means of recycling polystyrene foam locally.

(4) Disposable food containers made from polystyrene foam constitute a portion of the litter in Portland's streets, parks and public places that increases city maintenance costs.

(5) Polystyrene foam is a common pollutant that fragments into smaller, non-biodegradable pieces that are ingested by marine life and other wildlife thus harming or killing them.

(6) The State of Maine has banned the service of food and beverages in polystyrene foam containers at facilities or functions of the State or its political subdivisions (38 M.R.S. §§ 1651-1654).

(7) The City's goal is to replace polystyrene foam food containers with reusable, recyclable or compostable alternatives.

(8) Such alternatives are readily available.

Sec. 12-211. Definitions.

As used in this Article the following terms have the following meanings:

"*Food Packager*" means any person located within the City of Portland who places meat, eggs, bakery products, or other food in packaging materials for the purpose of retail sale of those products;

"Prepared food" means food or beverages which are served at the food vendor's location having been previously prepared elsewhere or are prepared at the vendor's location by cooking, chopping, slicing, mixing, brewing, freezing or squeezing. "Prepared food" does not mean raw uncooked meat or eggs. Prepared food may be eaten either on or off premises.

"Polystyrene foam" means and includes blown polystyrene and expanded and extruded foams (sometimes incorrectly called Styrofoam®, a Dow Chemical Company trademarked form of polystyrene foam insulation) which are thermoplastic petrochemical materials utilizing a styrene monomer and processed by any number of techniques including, but not limited to, fusion of polymer spheres (expandable bead polystyrene), injection molding, foam molding, and extrusion-blow molding (extruded foam polystyrene). Polystyrene foam is generally used to make cups, bowls, plates, trays, clamshell containers, meat trays and egg cartons. For the purposes of this chapter, the term "polystyrene" shall not include clear polystyrene known as "oriented polystyrene."

"Retail Vendor" means any person, restaurant, store, shop, sales outlet or other establishment, including without limitation, a grocery store, convenience store or a delicatessen located within the City of Portland which offers prepared food for retail sale.

Sec. 12-212. Prohibitions.

(a) No retail vendor in the City of Portland shall serve or sell prepared food and no food packager shall package meat, eggs, bakery products or other food in polystyrene foam containers.

(b) No retail vendor in the City of Portland who sells tangible personal property at retail shall sell polystyrene foam food or beverage containers.

(c) The City shall not use polystyrene foam food or beverage containers at any City facility or City-sponsored event.

(d) No City department or facility shall purchase or acquire polystyrene foam food or beverage containers.

(e) All parties who contract with the City shall be prohibited from using polystyrene foam food and beverage containers in City facilities or on City-funded projects within the City.

Sec. 12-213. Exemptions.

(a) The sale and packaging of raw seafood is exempt from the provisions of this Article.

(b) Retail vendors and food packagers that are currently existing or are established in the city by the effective date of the ordinance will be exempted from the provision of this Article prohibiting the use of polystyrene foam for a period of time to be determined by the City Manager or his/her designee in writing on a case-by-case basis for undue hardship. Undue hardship includes, but is not limited to, situations unique to the food vendor not generally applicable to other persons in similar circumstances.

(c) Retail vendors, food packagers, city departments, city facilities and contractors shall be exempt from the provisions of this Article, in a situation deemed by the City Manager to be an emergency for the immediate preservation of the public peace, health or safety.

Sec. 12-214. Violations and enforcement.

The City Manager or his/her designee(s) shall have the primary responsibility for enforcement of this Article. If the City Manager or his/her designee(s) determine(s) that a violation of this Article has occurred, he/she shall issue a written warning notice to the food vendor that a violation has occurred. Subsequent violations of the Article shall be subject to the penalties set forth below.

Violations of this Article shall be punishable by fines as follows:

(a) A fine not exceeding $250 for the first violation in a one-year period;

(b) A fine not exceeding $500 for the second and each subsequent violation in a one-year period.

Sec. 12-215. Effective Date

(a) This Article shall become effective on July 1, 2015.

(b) This Article shall be null and void if and as long as there is developed and maintained an effective city-wide recycling program approved by the City's Director of Public Services for polystyrene foam food and beverage containers.

(c) The provisions of this Article shall be null and void on the day that statewide legislation or federal legislation goes into effect, incorporating either the same or substantially similar provisions as are contained in this chapter, or in the event that a pertinent Maine or federal administrative agency issues and promulgates regulations, preempting such action.

Sec. 12-216. Severability.

If any part or provision of this Article or the application thereof to any person or circumstances is held invalid, the remainder of the Article, including the application of such part or provision to other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Article are severable.

Written Testimony From TS&E Meeting, March 2014

Cumberland
FARMS

March 19, 2014

VIA ELECTRONIC MAIL:
City Council of Portland, Maine
Transportation, Sustainability, and Energy Committee
c/o Hon. David A. Marshall, Chairman (damarshall@portlandmaine.gov)

Re: TSE Committee re-draft of proposed City Code §§ 12-210 *et seq.*, banning polystyrene foam containers in Portland

Chairman Marshall and through you to the Committee,

On behalf of Cumberland Farms Inc., thank you for the opportunity to submit this public comment on the Committee's re-draft of proposed City Code amendments banning polystyrene plastic containers in Portland.

Previous written testimony of Cumberland Farms to the City Council (dated 09/12/2013) is enclosed for your reference. You may also recall oral testimony from local resident and store manager Lionel Levesque (delivered 09/16/2013), where he was quoted by the Portland Press Herald as calling for discussion of a ban only as "a last resort," and imploring the City Council instead to "focus on increasing recycling" here in the city.

I write only briefly to explain that, because the re-drafted amendments do not adequately address the concerns raised in those testimonies, Cumberland Farms maintains its strong opposition to the proposed ban. Respectfully, we believe the Committee should revisit its work to ensure: (1) that all legislative findings are grounded in unbiased science, facts, and data; (2) that the entirety of the cost-benefit equation is accounted for; (3) that alternative waste control methods are fairly considered; and (4) that the full life-cycle impact of various container options is adequately assessed.

CUMBERLAND FARMS INC.

801 WASHINGTON STREET, PORTLAND, ME 04103
512 WOODFORD STREET, PORTLAND, ME 04103
1136 FOREST AVENUE, PORTLAND, ME 04103
49 PINE STREET, PORTLAND, ME 04102

WWW.CUMBERLANDFARMS.COM

As always, we maintain our commitment to good corporate citizenship. Here, despite the arguably laudable intentions of this proposal, we remain hopeful the Committee will recognize its serious flaws and reject it in favor of more effective and efficient means.

Sincerely,

Matthew T. Durand, Esq.
Government Affairs Associate
Office of the General Counsel

Cumberland Farms Inc.
100 Crossing Boulevard
Framingham, MA 01702

mdurand@cumberlandfarms.com
508-270-7267 phone
781-459-2574 fax

Encl. (1)

Cumberland
FARMS

September 12, 2013

VIA ELECTRONIC MAIL TO:

The Mayor and City Council of Portland
c/o Mr. Troy Moon, thm@portlandmaine.gov

Re: Proposed Ban on Polystyrene Food Service Ware – In Opposition

Dear Mr. Mayor and Members of the City Council,

I write on behalf of Cumberland Farms Inc. to express serious concern with the proposed ban on polystyrene foam in Portland. As discussed in more detail below, we believe that such an outright ban is an extreme measure that would create negative environmental, economic, and customer service impacts. These undesirable outcomes are avoidable, which is why we urge you to reject the ban and to instead work in a collaborative manner with local stakeholders in addressing the proposal's underlying goals.

Cumberland Farms was founded by Vasilios and Aphrodite Haseotes in 1939, with little more than a cow and a dream. Today, we have convenience store locations across New England, including four stores in Portland with several dozen local employees. Although we have grown since our humble beginnings, we are still family owned, still family operated, and still dedicated to making every day easier for members of the communities we serve.

Part of that commitment means giving our customers the choices they want for the products they buy. For example, we offer two container options for our hot beverages: reusable mugs or single-use cups. To reduce waste, we encourage our customers to enjoy their drinks in reusable mugs when they can. However, to ensure convenience, we also provide single-use cups as a quick and free alternative in an on-the-go world. The single-use cups are made of polystyrene foam.

We sell more than 40 million cups of hot coffee annually – enough to fill eight Olympic swimming pools. In our Portland locations alone, more than 1,000 hot beverages are sold each day. With that volume, it should come as no surprise that Cumberland Farms has put considerable thought and research into how our customers enjoy each beverage. The decision to offer polystyrene foam was reached after careful examination of the facts, which often run counter to popular misconceptions.

CUMBERLAND FARMS INC.

801 Washington Street, Portland, ME 04103
512 Woodford Street, Portland, ME 04103
1136 Forest Avenue, Portland, ME 04103
49 Pine Street, Portland, ME 04102

www.cumberlandfarms.com

Compared with the alternative of disposable paper cups, foam provides a superior customer experience with a low environmental impact. Paper cups require more raw materials to manufacture, so they deplete more natural resources. They are heavier, so it takes more energy to deliver them to stores. They are more expensive, so they drive up costs for businesses and customers alike. They are worse at insulating, so they leave customers with hot hands and a lukewarm drink – unless a double cup or cardboard sleeve is used, further multiplying the amount of wasted material. In our view, all of these factors make foam the clear winner versus paper.

Contrary to common belief, foam may also beat paper when it comes to recycling. Too often, paper cups are not recycled because of the waxy plastic coating that helps them hold liquid. In contrast, it is entirely possible to recycle polystyrene foam, as other cities are doing across the country. We believe this is the correct approach, and we remain ready and willing to work with our supplier and with the city in that regard. Unfortunately, proponents of the ordinance have thus far not afforded appropriate consideration to anything less than the draconian solution of an outright ban.

Furthermore, when crafting that ban, several important provisions were written in a materially vague and ambiguous fashion. For example, it is unclear when and how often fines may be imposed: Does a "violation" take place on a daily basis? Weekly? Per sale? It is equally unclear when a recycling program would be considered sufficiently "city-wide," how such a program would be judged to be appropriately "effective," or what additional standards the city might impose before the program is acceptable to be "approved." These and other ambiguities create serious difficulties both for those ordered to comply with the ordinance, and for those charged with its enforcement.

Fortunately, a collaborative and inclusive solution to increase recycling, reduce litter, and maintain a business-friendly climate in Portland is well within reach. This proposed ban has brought together a diverse group of stakeholders intent on working together to find practical solutions. Yet actually adopting this ordinance would hinder any such effort without truly addressing the underlying issues – and would create new problems for local businesses and their customers. In light of the above, we remain hopeful that you will reject the ban on polystyrene and instead consider the other, better options that are available.

Respectfully submitted,

CUMBERLAND FARMS INC.

By: ______________________

Matthew T. Durand
Government Affairs Associate
The Cumberland Gulf Group of Companies
100 Crossing Boulevard
Framingham, MA 01702
mdurand@cumberlandgulf.com
1 (508) 270-7267

FTC Actions on Degradable/Compostable Food Packaging Claims

The Federal Trade Commission (FTC) has repeatedly made clear that ***claims that consumer products or packaging degrade or compost in landfills are almost universally impossible to substantiate and deceptive.***

FTC has recently brought a number of enforcement actions that continue to make this point. For example, in a recent high-profile case against Farberware, FTC alleged:

> "Approximately 92 percent of total municipal solid waste in the United States is disposed of either in landfills, incinerators, or recycling facilities. These disposal methods ***DO NOT*** present conditions that would allow respondent's FARBERWARE® EcoFresh Containers to completely break down and decompose into elements found in nature within a reasonably short period of time."
>
> [***emphasis added***] In the Matter of Clear Choice Housewares, Inc., a Corporation, also d/b/a, Docket No. C-4420 FARBERWARE® EcoFresh, available at http://www.ftc.gov/sites/default/files/documents/cases/140106clearchoicecmpt.pdf.

The rules apply equally to both paper products and plastic products.

FTC also recently brought an enforcement action against AJM Packaging Corporation, which makes paper products, including paper plates, cups, bowls, napkins, and bags. AJM began making new claims in violation of a consent order that a number of its paper products were "biodegradable," "compostable" or both. FTC charged AJM with ***failing to substantiate*** that: its products will biodegrade within one year when disposed in a landfill; and its products will compost in a safe and timely manner in a ***home composting pile***. [http://www.ftc.gov/news-events/press-releases/2013/10/ftc-cracks-down-misleading-unsubstantiated-environmental].

Waste Management, a top U.S. waste management company, explains how modern landfills work: "these same control features ***retard the natural decomposition processes in the landfill by making it a dry tomb***. Under these conditions waste decomposes over a period of decades, slowly producing gas and settling until the waste is biologically stable." [https://www.wm.com/sustainability/pdfs/bioreactorbrochure.pdf]. Waste Management is working on landfill design that will accelerate decomposition, but notes that this is "looking to the future." [*Ibid*].

FTC specifically found in October 2012 that there is a "paucity of large-scale compost facilities" in the U.S.

The Green Guides, Statement of Basis and Purpose, p. 115, available at http://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-issues-revised-green-guides/greenguidesstatement.pdf.

FTC noted in its revisions to the Green Guides that "***Large-scale composting facilities that accept feedstocks other than yard trimmings remain uncommon*** in the United States."

[See Food Composting Infrastructure, BioCycle, Dec. 2008, at 30 (noting that in 2008, only 92 commercial composters and 39 municipal composters provided food waste composting); EPA, Municipal Solid Waste in the United States: 2007 Facts and Figures at 148, available at http://www.epa.gov/wastes/nonhaz/municipal/pubs/msw07-rpt.pdf ("In 2007, there were 16 mixed waste composting facilities, two more than in 2006."). *Ibid.* at 113, fn 370].

As part of its Green Guides review, FTC considered both ASTM D6400 and D6868 and "found that those protocols likely ***do not typify compost facility operations*** nationwide. Rather, they reflect "***optimum [operating] conditions***" and ignore "wide variation" in actual facility operations." [*Ibid.* at 114-115].

http://plasticfoodservicefacts.com/

Natural Resources Council of Maine

3 Wade Street • Augusta, Maine 04330 • (207) 622-3101 • Fax: (207) 622-4343 • www.nrcm.org

Comments in Support of a Ban on Single-Use Disposable Expanded Polystyrene Foam Containers used in Food and Restaurant Service

Sarah Lakeman, NRCM Sustainable Maine Policy Advocate
March 19th, 2014

My name is Sarah Lakeman. I am the Sustainable Maine Policy Advocate and Outreach Coordinator for the Natural Resources Council of Maine and a Portland resident. I appreciate the opportunity to present comments in support of a citywide ban on the use of Expanded Polystyrene (EPS) in single-use disposable products used in food service and restaurants.

As noted by the Majority Report, ordinances such as the one before you have been adopted in more than 100 cities across the country—including cities like San Francisco, Oakland, Seattle, and Portland, Oregon. If an ordinance like this can work a city with close to a million people, like San Jose, California, then it can work here in Portland, with a population closer to 70,000.

These other places with polystyrene bans have demonstrated that affordable, environmentally-preferable, and locally recyclable alternatives are readily available. But one need look no further than Freeport to reach this same conclusion, because Freeport was ahead of the pack in adopting an expanded polystyrene ban nearly 25 years ago.

We are encouraged that many restaurants, including here in Portland, have begun to voluntarily move away from polystyrene foam packaging. McDonalds Corporation, for example, recently announced that it would phase out foam cups at its 14,000 U.S. restaurants in favor of paper cups. McDonalds quit using expanded polystyrene clamshell containers back in 1990. Paper cups are available in many places such as Dunkin Donuts if customers request them.

We support the delayed implementation of the ordinance until July 2015 to allow food service establishments to use up their remaining EPS stock and purchase alternatives. We also would support the approach used in South San Francisco, where affected businesses are allowed to charge a small take-out fee to cover any additional costs for alternative containers.

If an expanded polystyrene foam container ban makes sense for more than 100 cities across the country, then we think it makes sense for Portland. We encourage you to recommend that the full Portland City Council consider this proposed ordinance for adoption.

I appreciate the opportunity to comment and would be happy to answer any questions that you may have.

American Chemistry Council | Plastics Food Service Packaging Group

March 19, 2013

Honorable City Council Member David Marshall
Chair, Transportation, Sustainability & Energy Committee
Portland City Council
389 Congress Street
Portland, Maine 04101

RE: Proposed Ordinance to Prohibit the Sale of Polystyrene Foam Food packaging (Sec 12.210 Findings/Purpose, Article VIII. Polystyrene) – Endorse/Forward to City Council – ACC Comments – OPPOSE

Dear Honorable City Council Member David Marshall, member of the Transportation, Sustainability & Energy Committee:

We are writing to again express our concerns about a proposed bill (**Amendment to Portland City Code Chapter 12 Garbage, Waste and Junk – Article V. Polystyrene**) to ban and prohibit the use of expanded polystyrene (foam) food service products in the City of Portland. . The members of our group, the Plastics Foodservice Packaging Group (PFPG) of the American Chemistry Council (ACC), represent the leading suppliers and manufacturers of plastics foodservice packaging products, including polystyrene food and beverage containers.

ACC supports litter education, prevention, waste minimization, and recycling as proven solutions to addressing litter, and supports programs that address these issues. The food safety benefits of polystyrene food service are undisputed. In the U.S. the Food & Drug Administration (FDA) has approved the use of polystyrene for foodservice – and health agencies at the state and federal level have confirmed the 50 year history of safe use of polystyrene foodservice.

What we support: We support the concept litter education and prevention, waste minimization and recycling, and supporting programs that address all litter and waste to help keep the City of Portland clean. Our industry has been a big supporter of these programs nationwide, and polystyrene foam foodservice is both an economical and overall sustainable choice for food establishments and consumers.

Why we oppose this ban:

Flawed premise that "biodegradable" [(Section 12.210 Findings/Purpose – (5)] or "compostable" alternatives [(Section 12.210 Findings/Purpose – (7)] are viable or "environmentally preferable substitutes" for polystyrene foam foodservice, given the ***Federal Trade Commission (FTC) has stepped up Enforcement Action - Claims that consumer products or packaging degrade or compost in landfills are almost universally impossible to substantiate and deceptive***

FTC has recently brought a number of enforcement actions that continue to make this point. This also has implications for the Portland, ME, where the Portland City Council Transportation, Sustainability & Energy Committee has re-introduced legislation that would ban the use of foam food service products by restaurants, food trucks and small vendors, grocery stores, coffee shops, schools, hospitals, nursing homes, institutional cafeterias or any other establishments that utilize foam food service products – on the misconception that "biodegradable" and "compostable" foodservice alternatives are available and more "sustainable" than PS foam foodservice. Portland, ME does not have an industrial composting facility or any infrastructure to collect any compostable foodservice substitutes or justify a claim that "compostable" foodservice products are in fact composted – and therefore would have any end of life benefit over PS foam foodservice products.

FTC has recently brought a number of enforcement actions that continue to make this point. For example, in a recent high-profile case against Farberware, FTC alleged:
"Approximately 92 percent of total municipal solid waste in the United States is disposed of either in landfills, incinerators, or recycling facilities. These disposal methods do not present conditions that would allow respondent's FARBERWARE® EcoFresh Containers to completely break down and decompose into elements found in nature within a reasonably short period of time." (emphasis added) In the Matter of Clear Choice Housewares, Inc., a Corporation, also d/b/a) Docket No. C-4420 FARBERWARE® EcoFresh, available at http://www.ftc.gov/sites/default/files/documents/cases/140106clearchoicecmpt.pdf.

The rules apply to paper products equally as to plastic products. FTC also recently brought an enforcement action against AJM Packaging Corporation, which makes paper products, including paper plates, cups, bowls, napkins, and bags. AJM began making new claims in violation of a consent order that a number of its paper products were "biodegradable," "compostable" or both. FTC charged AJM with failing to substantiate that: its products will biodegrade within one year when disposed in a landfill; and its products will compost in a safe and timely manner in a home composting pile.
http://www.ftc.gov/news-events/press-releases/2013/10/ftc-cracks-down-misleading-unsubstantiated-environmental.

How Modern Landfills Work, Waste Management, a top U.S. waste management company, explains how modern landfills work: "these same control features retard the natural decomposition processes in the landfill by making it a dry tomb. Under these conditions waste decomposes over a period of decades, slowly producing gas and settling until the waste is biologically stable."
https://www.wm.com/sustainability/pdfs/bioreactorbrochure.pdf. Waste Management is working on landfill design that will accelerate decomposition, but notes that this is "looking to the future." *Id.*

FTC specifically found in October 2012 that there is a "paucity of large-scale compost facilities" in the U.S. *The Green Guides, Statement of Basis and Purpose*, p. 115, available at
http://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-issues-revised-green-guides/greenguidesstatement.pdf. FTC noted in its revisions to the Green Guides that "Large-scale composting facilities that accept feedstock's other than yard trimmings remain uncommon in the United States. See Food Composting Infrastructure, BioCycle, Dec. 2008, at 30 (noting that in 2008, only 92 commercial composters and 39 municipal composters provided food waste composting); EPA, Municipal Solid Waste in the United States: 2007 Facts and Figures at 148, available at
http://www.epa.gov/wastes/nonhaz/municipal/pubs/msw07-rpt.pdf ("In 2007, there were 16 mixed waste composting facilities, two more than in 2006."). *Id.* at 113, fn 370.

As part of its Green Guides review, FTC considered both ASTM D6400 and D6868 and "found that those protocols likely do not typify compost facility operations nationwide. Rather, they reflect "optimum [operating] conditions" and ignore "wide variation" in actual facility operations." *Id.* at 114-115.

Input from the Minority Report in Opposition to Polystyrene (Foam Foodservice) Product Ban proposed by the Green Packaging Working Group Task Force – The members of the Green Packaging Working Group Task Force who represent local Maine businesses and have been working in good faith with the City on the process of examining ways to reduce litter, increase recycling, and minimize waste – are strongly opposed to the proposed ordinance to ban polystyrene foam products developed by the Green Packaging Working Group Task Force. The minority report outlines a series of legitimate concerns – ranging from financial impacts of the proposed ban, misperceptions that the ban will reduce litter, misinformation and lack of understanding of the actual environmental/energy benefits of polystyrene foam foodservice versus its substitute products, misinformation about the public health and sanitation benefits of polystyrene foam foodservice from agencies and key bodies, and concerns about the process used to weigh evidence regarding a proposed ban.

Selected Product Bans do not Reduce Litter - A ban on a specific product like polystyrene foam foodservice, which makes up a very small amount of the litter stream (according to a 2012 study, commonly used polystyrene foam foodservice products make up 1.5 percent of litter) will not reduce litter – since the substitute foodservice products would be littered as well. And trading one type of littered item for another simply changes the makeup of litter without reducing it. For example, when San Francisco placed restrictions on the use of certain plastic foodservice products, the city found that alternatives became more littered. Substituting one type of litter for another is not a smart strategy. What work are neighborhoods taking responsibility for trash and litter – like programs we've supported through KAB (Keep America Beautiful) affiliates and city competitions for neighborhood programs to keep litter and trash in its proper place.

Recovery and Recycling of PS: Polystyrene foodservice products are recovered and recycled in various ways in many communities, depending on the solid waste program.

- Portland residents should be able to have the opportunity to work with recyclers and groups like Eco Maine to explore recycling of polystyrene foam and other foodservice packaging before a ban on such a product is considered. There are markets for recycled polystyrene foam products – the recycled material can be made into a variety of new products, including picture frames, crown molding and nursery plant containers.

- PS Foodservice recycling more prevalent than paper foodservice recycling or composting, should Portland want to further explore curbside recycling - http://plasticfoodservicefacts.com/Pages/Access-to-Recycling-Expanded-Polystyrene-Food-Service-Items.pdf

Many Americans believe that paper cups and plates are widely recycled and that similar plastic foam products cannot be recycled. A new study finds both beliefs to be mistaken. The study looked at access to recycling of foodservice products to compare recycling opportunities for paper versus polystyrene foam. The study of the fifty largest US and California cities found that far more communities provide access to recycling of polystyrene foam foodservice products than paper foodservice products. For example, half the population of California's fifty largest cities has direct or indirect access to foam foodservice recycling. In contrast, only two percent of this population has direct or indirect access to paper foodservice recycling, meaning paper foodservice recycling in California is almost nonexistent. Of the population of the fifty largest US cities, sixteen percent has direct or indirect access to foam foodservice, while six percent can recycle paper foodservice. In addition, the study shows that access to composting of paper foodservice products also is low: only seven percent of the population of the fifty largest US cities. The study demonstrates that commonly held beliefs about the recyclability of foodservice products are not based on actual recycling activities.

ACCESS TO RECYCLING/COMPOSTING OF FOAM AND PAPER FOODSERVICE PRODUCTS

CA 50 Largest Cities	Percent of Population
Foam Collected for Recycling	50%
Paper Collected for Recycling	2%
Paper Collected for Composting	13%
US 50 Largest Cities	Percent of Population
Foam Collected for Recycling	16%
Paper Collected for Recycling	6%
Paper Collected for Composting	7%

Note: these population figures are solely for the fifty largest US cities and CA cities and cannot be extrapolated for the entire US or CA population.

Landfills, Biodegradation – All plastic foodservice products contribute approximately 1% of landfills' content by weight (paper contributes more than 30%). While popular culture has led many to believe that burying our nation's garbage in landfills is sort of like creating big compost heaps, modern landfills are specifically designed to minimize decomposition. The small amount of degradation that does occur in a landfill often generates methane, a much more potent greenhouse gas than CO_2.

Why PS Foam is used and Cost Implications of a Ban: Portland city residents and foodservice establishments use polystyrene foam foodservice products for a variety of reasons, including health, safety, packaging convenience, low cost, and demonstrated performance. Polystyrene foam foodservice products generally are more economical – wholesale costs can be two, three, and four; up to five times less than their paper-based or reusable counterparts (reusables require extra equipment, labor, water, electricity, detergent ...). There are costs to the City as well by going to more expensive alternatives, as well as implementing and enforcing a ban. An economic fiscal impact study is needed to determine the overall cost impact to businesses and the city of such a proposed ban.

Low Environmental Footprint compared to alternative foodservice products: Polystyrene foodservice packaging uses less energy and resources to manufacture than comparable paper-based products, leaving a lighter footprint. For example, a polystyrene foam cup requires about 50% less energy to produce – and creates significantly fewer greenhouse gas emissions – than a similar coated paper-based cup with its corrugated sleeve. A full life cycle assessment (LCA) peer reviewed study comparing polystyrene foam foodservice impacts with paper-based and corn-based alternatives can be found at: http://plasticfoodservicefacts.com/Life-Cycle-Inventory-Foodservice-Products

Polystyrene Foodservice Safety: For more than 50 years, the U.S. Food and Drug Administration have approved the use of polystyrene for foodservice products. Polystyrene foodservice products offer a sanitary way to serve fresh food and to help prevent the spread of disease at school, restaurants, hospitals ... even at home.

While some have raised questions about occupational exposures to styrene, the U.S. National Institutes of Environmental Health Sciences made clear that these don't apply to polystyrene, noting in June 2011: "Styrene should not be confused with polystyrene (Styrofoam). Although styrene, a liquid, is used to make polystyrene, which is a solid plastic, we do not believe that people are at risk from using polystyrene products."

The toxicologist who heads the National Toxicology Program was widely quoted in June 2011 news reports: "Let me put your mind at ease right away about Styrofoam" and noted that levels of styrene from polystyrene containers "are hundreds if not thousands of times lower than have occurred in the occupational setting ... In finished products, certainly styrene is not an issue." John Bucher, associate director of the National Toxicology Program, was quoted in Associated Press reports in August 2011: "The risks, in my estimation, from polystyrene are not very great," he said. "It's not worth being concerned about."

Sanitation – Studies at foodservice operations demonstrate that polystyrene foodservice packaging can be more sanitary than reusable china or glassware that are dependent on proper washing. A 2012 sanitation study in Sacramento, CA, found that reusables had higher microbial levels than single use items. A 2007 study in Wisconsin found that unprotected tables and trays had 7 to 23 times higher bacterial counts than those with single-use placemats and tray covers. And a 2002 study in Las Vegas found that 18 percent of reusable items tested had higher than acceptable bacterial counts. Reusable cups, dishes, plates, utensils, place mats, table coverings and other products require copious amounts of water and energy to clean, time and time again. Polystyrene foodservice packaging conserves these important resources and allows our schools and hospitals to save the water, energy, detergents – and money and labor – required to sanitize reusables. And when dishwashers are down or malfunctioning, foodservice operators actually are required to use sanitary, single-use foodservice under code requirements in order to protect health and safety.

Recommendation:

For these reasons, particularly the fact that PS foam foodservice is recycled (and should be consider as such), and the premise that "biodegradable" or "compostable" more expensive alternatives have any environmental benefit (given FTC's enforcement action on companies/or entities who make "green washing" claims on biodegradable or compostable substitutes for polystyrene foam foodservice when there is no infrastructure to provide for industrial composting of foodservice, we recommend the City of Portland conduct a fiscal impact study on the cost of this proposed ban to both local businesses and the City (as outlined in the Minority Report in Opposition to Polystyrene Product Ban Proposed by the Green Packaging Working Group Task Force) **before endorsing or forwarding this proposed ordinance to City Council** – and also have the Finance Committee review the results of this fiscal impact study. In addition, because of the sanitation and hygiene benefits polystyrene foam foodservice offers compared to alternatives, this proposal should be revised by other committees – such as Public Safety, Health & Human Resources, to determine the trade-offs from a public health and sanitation perspective.

We hope to be able to continue our work with Portland on constructive programs described above that can help tackle litter and waste disposal issues. Thank you for your consideration in this matter.

Sincerely,

Steve Rosario, Government Relations
American Chemistry Council
(tel: 770-421-2991; e-mail: steve_rosario@americanchemistry.com

and

Mike Levy

Mike Levy, Director

Plastics Foodservice Packaging Group (PFPG)
(tel: 703-741-5647; e-mail: mike_levy@americanchemistry.com)

CC: <u>Transportation, Sustainability & Energy Committee members</u>
Honorable Kevin Donoghue, Vice Chair
Honorable John Anton
Honorable Cheryl Leeman
Honorable Mayor Michael F. Brennan

For a thriving New England

CLF Maine 47 Portland Street, Suite 4
Portland, ME 04101
P: 207.210.6439
F: 207.221.1240
www.clf.org

conservation law foundation

TESTIMONY ON ARTICLE VIII. POLYSTYRENE

Ben Tettlebaum, Attorney
Conservation Law Foundation
Portland, ME 04101
btettlebaum@clf.org

March 19, 2014

Chair Marshall and members of the Transportation, Sustainability and Energy Committee, my name is Ben Tettlebaum, and I am an attorney with the Conservation Law Foundation (CLF). Thank you for receiving this testimony in support of Article VIII ("Foam Ban").

We support the Foam Ban for the reasons summarized in the Task Force Majority Report. In particular, CLF is concerned about the long-term, negative environmental impact of continued polystyrene manufacturing, use, and waste. Problems with polystyrene include, but are not limited to, the following:

- The Environmental Protection Agency classifies styrene as a possible human carcinogen. Workers who manufacture or work with styrene may experience myriad adverse health effects, including irritation of the skin, eyes, and upper respiratory tract, and various gastrointestinal problems. Chronic exposure affects the central nervous system.
- Manufacturing polystyrene pollutes the air we breathe and creates substantial amounts of liquid and solid waste.
- Toxic chemicals leach out of polystyrene products into food contained within such packaging (especially when heated in a microwave).
- Polystyrene foam is often littered. It breaks down into pieces that choke animals and clog their digestive systems.

Though we support the Foam Ban, we have two suggestions for the Committee consider. First, under section 12-213, page 3, we recommend moving subsections (d) and (e)—the null-and-void subsections—to their own section separate from the "Exemptions" section. The null-and-void provisions are not exemptions. Moving them to their own section will avoid confusion.

Second, we appreciate the potential difficulties of implementing both the Bag Fee Ordinance and the Foam Ban within a few months of each other. Therefore, we encourage the Committee to work with the food business community to determine if the implementation date for the Foam Ban is indeed workable.

Thank you for hearing our testimony.

Sincerely,

Ben W. Tettlebaum
Attorney/Rhodes Fellow, Farm and Food
Conservation Law Foundation

MAINE
Restaurant Association

Polystyrene Containers

Enhancing Prosperity for Maine's Restaurants

Chairman Marshall and distinguished City Council and committee members, my name is Greg Dugal and I am here representing the Maine Restaurant and Maine Innkeepers Association in opposition to the ordinance that would create a ban on polystyrene containers in the City of Portland. Our Associations and our Portland members do not support this ban as we see polystyrene containers to be no more of a risk to the environment than other types of hot and cold drink and food containers. We also believe that polystyrene keeps hot food and drinks hot for longer periods of time keeping our prepared product that much better for the consuming public. Polystyrene is much more effective at preventing food spoilage than other materials and it does not impart odors and that is a proven fact, as polystyrene is an FDA preferred food packaging material.

There is also a substantial cost associated with changing from polystyrene to other forms of containers. Small businesses especially restaurants operate with very tiny margins so any increase in the cost of doing business could be potentially fatal to these small businesses. I think you have heard from business owners here this evening that any negative cost is difficult to absorb in an unsteady economy.

Also studies around the country have shown that litter is not reduced by banning polystyrene containers, though that seems to be a cornerstone of this ordinance. People who contribute to litter at this point in time will continue to do so, regardless of what the container is made of. I would argue that polystyrene containers are much more reusable than their paper counterparts. As you have been made aware in the last go round on these issues, studies in cities that have undertaken these bans show that litter remains at the same levels.
Also polystyrene is less than one percent of the solid waste stream in most landfills and became less of that stream after the ordinance changes, while paper products became more at a greater proportion. At my home, we wash and reuse polystyrene coffee cups from Dunkin Donuts and other businesses because they can withstand multiple uses and paper cups cannot. My wife uses these containers to bring her coffee to work.

I never attended the Green Packaging Working Task Force meetings on Polystyrene, though I was aware of the proceedings, but if the Task Force's approach on polystyrene was the same as disposable bags, the outcome seemed to be predetermined. There did not seem to be a true interest to discuss the good and bad of the product, just a determination to pass an ordinance regardless of the benefit or the risk to the City of Portland's small businesses.

Greg Dugal
President and CEO

45 Melville Street · Augusta Maine · 04330 · 207.623.2178 · 866.711.5408 (fax) · www.mainerestaurant.com

Maine Grocers & Food Producers Association

March 19, 2014

Councilor David A. Marshall, Chair
Transportation, Sustainability and Energy Committee
City of Portland
55 Portland Street
Portland, Maine 04101

Dear Councilor Marshall and Committee Members,

I am providing testimony in opposition to the proposed ordinance to ban the use and sale of foodservice polystyrene products at select retail outlets in the City of Portland.

By way of introduction, I am the Executive Director, Maine Grocers & Food Producers Association and served on the Green Packaging Working Group Task Force. The Maine Grocers & Food Producers Association is a statewide business trade association representing main street businesses; independently owned and operated grocery stores, supermarkets, wholesalers and distributors, food and beverage producers and processors and associated service companies. Our members have an excellent and proven track record when it comes to environmental stewardship and we support a cleaner City, just not a more expensive one.

The MGFPA and their members often participate on working groups to tackle a wide range of issues and they were pleased to be selected to serve on the City's Green Packaging Working Group Task Force. I would be remiss if I did not remind you that the imbalanced composition of the Task Force was troubling and didn't serve the process well. Frankly, the majority of the members seemed predisposed to prepare an ordinance to ban the sale and use of foodservice polystyrene products in the City of Portland. Since that meeting and subsequent September 19 City Council meeting at which the original proposal was remanded back to this Committee, we are not aware that there has been any attempt by City officials or others to address the multiple questions raised by City Council members or by those testifying. I know we would all benefit from hearing how this "final" proposal was crafted.

Nowhere in the record is there evidence to support an outright ban. No examination of the concerns associated with these products, no economic assessment of the financial impacts on the businesses and the customers they serve, and no rationale for a piece meal ordinance. Why are food retailers hit so hard? Why are certain other food companies exempt? Why are packaging and mailing companies exempt? What are florists exempt? Why are builders and their service companies exempt?

Our members use polystyrene because it works. For more than 50 years, the U.S. Food and Drug Administration has approved the use of polystyrene for foodservice products. Polystyrene foodservice products offer a sanitary way to serve fresh food and to help prevent the spread of disease. In the grocery business, we use these containers to package meats, cheeses, vegetables, eggs and other products, and our members offer a full line of polystyrene foodservice items for sale for home use. Food safety concerns were raised at the Task Force meeting, but given little consideration.

Are there affordable alternatives? Polystyrene foodservice products generally are more economical –

wholesale costs can be two, three, and four, up to five times less than their paper-based or reusable counterparts and therefore help our members keep costs down to their customers. More than ever, in these tight economic times, keeping costs low should be on everybody's minds. Further, customers who wish to purchase polystyrene foodservice products for their own use would be forced to shop at stores in neighboring communities which would negatively impact overall retail sales at our Portland stores.

Why not consider recycling opportunities employed by other communities across the nation. Many efforts over the past two decades have shown exactly what works and what doesn't when it comes to polystyrene foodservice recycling, and today there are a number of innovation recycling programs across the country. As proposed the ordinance states that "there is no economically feasible means of recycling expanded polystyrene locally." I'm not sure if any actual "recycling is being done" in Maine, but rather companies like ecomaine collect, sort and transport materials that are sold to recycling facilities outside of Maine. From what we understand, there may be a viable market for collected polystyrene items in the region.

If the City of Portland wants to achieve anything meaningful in terms of polystyrene, shouldn't you at least give serious consideration to explore recycling options, rather than banning foodservice containers?

What evidence would you use to justify an outright products ban? How would you address the legitimate concerns of the businesses and how would you quantify the increased costs associated with shifting more expensive alternatives? After all, a product ban is really akin to a tax.

Enacting a product ban is not an end in itself. What would the likely effects of the ban cause? What would the ban do with respect to the undesired behavior? What products would take their place? Would banning polystyrene foodservice containers end roadside litter? Or would you see the alternative products being littered? The answers to these questions remain unanswered and could very well help shape the desired outcome.

I urge you to engage all businesses impacted by this proposal and all of the other businesses that use polystyrene products in a constructive discussion to address their interests and concerns for a cleaner City. Surely we can find a suitable solution that doesn't unfairly penalize Portland's customer service businesses.

Thank you for your consideration of my testimony.

Sincerely,

Shelley

Shelley F. Doak, Executive Director

Material from September 16, 2013 Council Package

Order 39-13/14
~~Tab 37 8-5-13~~
~~Tab 11 9-9-13~~

CITY OF PORTLAND

IN THE CITY COUNCIL

Tab 9 9-16-13

AMENDMENT TO PORTLAND CITY CODE
CHAPTER 12 GARBAGE, WASTES AND JUNK
ARTICLE VIII. POLYSTYRENE
SECTIONS 12-210 THROUGH 12-215

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

1. *That Chapter 12, Article VIII, Polystyrene of the Portland City Code is hereby adopted to read as follows:*

ARTICLE VIII. POLYSTYRENE

Sec. 12-210. Findings; purposes.

The city council hereby finds as follows:

(1) Expanded polystyrene is a petroleum-based, lightweight plastic material sometimes used as food service ware by retail food vendors operating in the City of Portland.

(2) The City of Portland desires to protect the natural environment.

(3) There is no economically feasible means of recycling expanded polystyrene locally.

(4) Disposable food service ware made from polystyrene foam constitutes a portion of the litter in Portland's streets, parks and public places that increases city maintenance costs.

(5) Expanded polystyrene is a common pollutant that fragments into smaller, non-biodegradable pieces that are ingested by marine life and other wildlife thus harming or killing them.

(6) The city's goal is to replace expanded polystyrene food service ware with reusable, recyclable or compostable alternatives.

(7) Such alternatives are readily available.

Sec. 12-211. Definitions.

As used in this Ordinance the following terms have the following meanings:

(a) *Disposable food service ware* means single-use disposable products used in the restaurant and food service industry for serving or transporting prepared, ready-to-consume food or beverages. This includes but is not limited to plates, cups, bowls, trays and hinged or lidded containers, also known as clamshells. This does not include straws, utensils or cup lids nor does it include disposable packaging for prepackaged foods.

(b) *Expanded polystyrene* means and includes blown polystyrene and expanded and extruded foams (sometimes incorrectly called Styrofoam®, a Dow Chemical Company trademarked form of polystyrene foam insulation) which are thermoplastic petrochemical materials utilizing a styrene monomer and processed by any number of techniques including, but not limited to, fusion of polymer spheres (expandable bead polystyrene), injection molding, foam molding, and extrusion-blow molding (extruded foam polystyrene). Expanded polystyrene is generally used to make cups, bowls, plates, trays, clamshell containers, meat trays and egg cartons. For the purposes of this chapter, the term "polystyrene" shall not include clear polystyrene known as "oriented polystyrene."

(c) *Food packager* means any person or entity located within the City of Portland who places meat, eggs, bakery products, or other food in packaging materials for the purpose of retail sale of those products.

(d) *Prepackaged food* means any properly labeled processed food, prepackaged to prevent any direct human contact with the food product upon distribution from the manufacturer, and prepared at an approved source outside the City of Portland.

(e) *Prepared food* means food or beverages, which are served, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed or otherwise prepared for consumption on the food vendor's premises or within the city. Prepared food may be eaten either on or off the premises, also known as "takeout food." Prepared food does not include eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the Food and Drug Administration.

(f) *Recycling Program* means a process whereby used materials are separated from the solid waste stream and utilized as a raw material in the manufacture of a new product or for new economic use.

(g) *Restaurant* means any establishment located within the City of Portland selling prepared food to be eaten by customers. Restaurant includes a sidewalk or other outdoor food vendor.

(h) *Retail food vendor,* means any establishment located in the City of Portland, or any establishment which provides prepared foods or beverages within the city for public consumption on or off its premises and includes, but is not limited to, any store, shop, sales outlet, restaurant, bar, pub, coffee shop, cafeteria, caterer, convenience store, liquor store, grocery store, supermarket, delicatessen, mobile food preparation truck or vehicle, roadside stand, or any other person who provides prepared food; and any individual, group, or organization that regularly provides food as part of its services.

Sec. 12-212. Prohibitions.

(1) On or after July 1, 2015, no retail food vendor shall serve or sell prepared food in expanded polystyrene disposable food service ware.

(2) On or after July 1, 2015, no food packager who offers for retail sale meat, eggs, bakery products or other food shall package that meat, eggs, bakery products or other food in packaging material made of expanded polystyrene.

(3) On or after July 1, 2015, no vendor in the City of Portland who sells tangible personal property at retail shall sell disposable food service ware made from expanded polystyrene.

(4) All city facilities, city-sponsored events, and city permitted events are prohibited from using disposable food service ware made from expanded polystyrene. All city departments and agencies shall not purchase or acquire disposable food service ware made from expanded polystyrene for use at city facilities.

(5) City franchises, contractors and vendors doing business with the city shall be prohibited from using food service ware made from expanded polystyrene in city facilities or on city projects within the city.

(6) Organizations using city offices or property shall comply with this chapter (e.g., street closure permits, events at city facilities, etc.) and while on city premises, shall not willfully possess, give, receive, lend, offer or expose for sale, use, deliver, furnish, transfer or dispose of any disposable food service ware made from expanded polystyrene.

Sec. 12-213. Exemptions.

(1) Prepackaged food is exempt from the provisions of this chapter.

(2) Food vendors that are currently existing or are established in the city by the effective date of the ordinance will be exempted from the provision of this Article prohibiting the use of polystyrene foam food service ware for a period of time to be determined by the Public Services Manager or his/her designee on a case-by-case basis for undue hardship. Undue hardship includes, but is not limited to, situations unique to the food vendor not generally applicable to other persons in similar circumstances.

(3) Food vendors, city departments, city facilities and contractors shall be exempt from the provisions of this Article, in a situation deemed by the City Manager to be an emergency for the immediate preservation of the public peace, health or safety.

(4) This ordinance shall be null and void if and as long as there is developed and maintained an effective city-wide recycling program approved by the city's Director of Public Services for polystyrene foam food and beverage containers.

(5) The provisions of this ordinance shall be null and void on the day that statewide legislation or federal

legislation goes into effect, incorporation either the same or substantially similar provisions as are contained in this chapter, or in the event that a pertinent Maine or federal administrative agency issues and promulgates regulations, preempting such action.

Sec. 12-214. Violations and enforcement.

The Director of Public Services and the Director of Health and Human Services or designees shall have the primary responsibility for enforcement of this ordinance. If the Public Services Director of the Director of Health and Human Services or designees determines that a violation of this Article has occurred, he/she shall issue a written warning notice to the food vendor that a violation has occurred. Subsequent violations of the ordinance shall be subject to the penalties set forth below.

Violations of this ordinance shall be punishable by fines as follows:

(a) A fine not exceeding $250 for the first violation in a one-year period;

(b) A fine not exceeding $500 for the second and each subsequent violation in a one-year period.

Sec. 12-215. Severability.

If any part or provision of this ordinance or the application thereof to any person or circumstances is held invalid, the remainder of the ordinance, including the application of such part or provision to other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this ordinance are severable.

MEMORANDUM
City Council Agenda Item

TO: City Council

FROM: Michael Bobinsky, Director of Public Services
Troy Moon, Environmental Programs Manager

DATE: July 24, 2013

DISTRIBUTION: (City Manager, Mayor, Corporation Counsel, Sonia Bean, Terry Tucker)

SUBJECT: Order creating an ordinance of the City of Portland to prohibit the use of expanded polystyrene foam food service ware by all food vendors, City departments, and City contractors, and at City sponsored events.

SPONSOR: Councilor David A. Marshall, Chair, Transportation, Sustainability and Energy Committee

COUNCIL MEETING DATE ACTION IS REQUESTED:
1st reading: August 5, 2013 Final Action: September 9, 2013

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

I. SUMMARY OF ISSUE (Agenda Description)

The proposed ordinance prohibits food service establishments from serving food in packaging or containers made from polystyrene foam. It also prohibits the retail sale of polystyrene food service products. If adopted, the ordinance would not go into effect until July, 2015 in order to allow merchants to deplete their existing inventory of polystyrene foam service ware.

II. REASON FOR SUBMISSION (Summary of Issue/Background)

In June, 2012 the City Council ordered the Transportation, Sustainability and Energy Committee to consider an ordinance or recommendation to ban the use of polystyrene foam containers and to take whatever further action committee members deemed appropriate. To this end, the TS&E Committee created the Green Packaging Working Group which consisted of industry representatives, local businesses, environmental advocates and citizens. This group held three meetings to discuss the issue and review draft ordinance language. During the third meeting a majority recommended adoption of an ordinance. The Working Group chair, Councilor Suslovic, invited the minority to submit a minority report to explain their position. The Transportation, Sustainability and Energy Committee took public comment regarding the proposed ordinance during their meeting on June 19, 2013 and recommended adoption by the full Council on July 17, 2013. (2-1, Anton absent)

III. INTENDED RESULT

Eliminating the use of polystyrene foam packaging will reduce waste by leading food service establishments to use alternatives that can be recycled in the City of Portland/ecomaine's recycling program. Polystyrene foam is not recyclable in the current program while alternatives such as paper, fiberboard, foil and rigid plastic containers are. Eliminating the use of polystyrene foam is in line with Portland's efforts to protect local waterways including Casco Bay by reducing the amount of polystyrene litter, which is particularly harmful to marine wildlife.

IV. COUNCIL GOAL ADDRESSED

The proposed ordinance advances the Council's objective to reduce waste and increase recycling.

V. FINANCIAL IMPACT

Polystyrene foam packaging is somewhat less expensive than other forms of packaging but alternatives are widely available and are used extensively by food service establishments in Portland.

VI. STAFF ANALYSIS

More than 100 cities and counties across the United States have prohibited the use of polystyrene foam packing in an effort to reduce the amount and toxicity of litter, protect water quality and marine life and promote recycling. These include Freeport, ME, which adopted its ban in 1990, as well as San Francisco, CA, San Jose, CA, Portland, OR, and Brookline, MA. Most of these cities are recognized as national leaders on environmental issues. They have found that prohibiting polystyrene foam packaging helps them achieve their environmental goals.

In Portland, we are not currently able to recycle polystyrene foam. Staff from ecomaine testified that poor markets, cost of transportation and difficulty in handling this material make it impractical to recycle. All of the commonly used alternatives to polystyrene foam packaging are recyclable in our program including paper, fiberboard, foil and non-expanded plastic. Prohibiting foam packaging would lead to more widespread nse of recyclable packaging in our local food service establishments.

Plastic marine debris is an increasing problem in the aquatic environment, including Casco Bay. Polystyrene foam is an especially problematic form of plastic pollution because it breaks into smaller and smaller pieces as it degrades. As a common form of litter, these tiny pieces of foam enter our waterways where aquatic wildlife often mistake it for food. This leads to increased animal mortality. Plastic marine debris also degrades water quality.

VII. RECOMMENDATION

The proposed ordinance is in line with stated policy goals of reducing waste, increasing recycling and protecting water quality. The Department of Public Services recommends passage.

VIII. LIST ATTACHMENTS

a)Draft ordinance
b)Majority report
c)Minority report
d)Testimony of Shelly Doak, Maine Grocers Association, to TS&E
e)Testimony of Dick Grotton, Maine Restaurant Association, to TS&E
f)Testimony of Curtis Picard, Retail Association of Maine, to TS&E
g)Dart Manufacturing testimony to TS&E

Prepared by:

Troy Moon on 7/24/2013

Report of the Majority of the Green Packaging Working Group Recommending a Ban on the Sale of Polystyrene Foam Food Packaging in Portland

June 10, 2013

Green Packaging Task Force Membership

Ron Adams – Portland Public Schools

Danny Bouzianis – Dunkin' Donuts

Michele Brooks – Portland Resident

Avery Day / Steven Rosario – American Chemistry Council

Shelley Doak – Maine Grocers Association

Matthew Faulkner – Surfrider Maine

Alexandra Fields – Environment Maine

Martin Fisher – Dart Manufacturing

Richard Grotton – Maine Restaurant Association

Tyler Kidder – University of Southern Maine

Ted Koffman – Maine Audubon Society

John Morin – ecomaine

Richard Petrone (invited) – Hutamaki

Curtis Picard – Retail Association of Maine

Cathy Ramsdell – Friends of Casco Bay

Phil Rozenski (invited) – Hylex Poly

Sally Trice – Portland Citizen

Councilor Ed Suslovic, Chair

DRAFT

AMENDMENT TO PORTLAND CITY CODE
CHAPTER 12 GARBAGE, WASTES AND JUNK
ARTICLE V. POLYSTYRENE
SECTIONS 12-210 THROUGH 12-215

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

That Chapter 12, Sections 12-210 thru 12-215 of the Portland City Code is hereby enacted as follows:

12-210. Findings; purposes.

The city council hereby finds as follows:

(1) Expanded Polystyrene is a petroleum-based, lightweight plastic material sometimes used as food service ware by retail food vendors operating in the City of Portland.

(2) The City of Portland desires to protect the natural environment.

(3) There is no economically feasible means of recycling expanded polystyrene locally.

(4) Disposable food service ware made from polystyrene foam constitutes a portion of the litter in Portland's streets, parks and public places that increases City maintenance costs.

(5) Expanded polystyrene is a common pollutant that fragments into smaller, non-biodegradable pieces that are ingested by marine life and other wildlife thus harming or killing them.

(6) The City's goal is to replace expanded polystyrene food service ware with reusable, recyclable or compostable alternatives.

(7) Such alternatives are readily available.

12-211. Definitions.

As used in this Ordinance the following terms have the following meanings:

(a) "Disposable food service ware" means single-use disposable products used in the restaurant and food service industry for serving or transporting prepared, ready-to-consume food or beverages. This includes but is not limited to plates, cups, bowls, trays and hinged or lidded containers, also known as clamshells. This does not include straws, utensils or cup lids nor does it include disposable packaging for prepackaged foods.

(b) "Expanded polystyrene" means and includes blown polystyrene and expanded and extruded foams (sometimes incorrectly called Styrofoam®, a Dow Chemical Company trademarked form of polystyrene foam insulation) which are thermoplastic petrochemical materials utilizing a styrene monomer and processed by any number of techniques including, but not limited to, fusion of polymer spheres (expandable bead polystyrene), injection molding, foam molding, and extrusion-blow molding (extruded foam polystyrene). Expanded polystyrene is generally used to make cups, bowls, plates, trays, clamshell containers, meat trays and egg cartons. For the purposes of this chapter, the term "polystyrene" shall not include clear polystyrene known as "oriented polystyrene."

(c) "Food packager" means any person or entity located within the City of Portland who places meat, eggs, bakery products, or other food in packaging materials for the purpose of retail sale of those products.

(d) "Prepackaged food" means any properly labeled processed food, prepackaged to prevent any direct human contact with the food product upon distribution from the manufacturer, and prepared at an approved source outside the City of Portland.

(e) "Prepared food" means food or beverages, which are served, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed or otherwise prepared for consumption on the food vendor's premises or within the city. Prepared food may be eaten either on or off the premises, also known as "takeout food." Prepared food does not include eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the Food and Drug Administration.

(f) "Recycling Program" means a process whereby used materials are separated from the solid waste stream and utilized as a raw material in the manufacture of a new product or for new economic use.

(g) "Restaurant" means any establishment located within the City of Portland selling prepared food to be eaten by customers. Restaurant includes a sidewalk or other outdoor food vendor.

(h) "Retail Food Vendor, Vendor" means any establishment located in the City of Portland, or any establishment which provides prepared foods or beverages within the City for public consumption on or off its premises and includes, but is not limited to, any store, shop, sales outlet, restaurant, bar, pub, coffee shop, cafeteria, caterer, convenience store, liquor store, grocery store, supermarket, delicatessen, mobile food preparation truck or vehicle, roadside stand, or any other person who provides prepared food; and any individual, group, or organization that regularly provides food as part of its services.

12-212. Prohibitions.

1. On and after July 1, 2015, no retail food vendor shall serve or sell prepared food in expanded polystyrene disposable food service ware.

2. On and after July 1, 2015, no food packager who offers for retail sale meat, eggs, bakery products or other food shall package that meat, eggs, bakery products or other food in packaging material made of expanded Polystyrene.

3. On and after July 1, 2015, no vendor in the City of Portland who sells tangible personal property at retail shall sell disposable food service ware made from expanded polystyrene.

4. All city facilities, city-sponsored events, and city permitted events are prohibited from using disposable food service ware made from expanded polystyrene. All city departments and agencies shall not purchase or acquire disposable food service ware made from expanded polystyrene for use at city facilities.

5. City franchises, contractors and vendors doing business with the city shall be prohibited from using food service ware made from expanded polystyrene in city facilities or on city projects within the city.

6. Organizations using city offices or property shall comply with this chapter (e.g., street closure permits, events at city facilities, etc.) and while on city premises, shall not willfully possess, give, receive, lend, offer or expose for sale, use, deliver, furnish, transfer or dispose of any disposable food service ware made from expanded polystyrene.

12-213. Exemptions.

A. Prepackaged food is exempt from the provisions of this chapter.

B. Food vendors that are currently existing or are established in the City by the effective date of the ordinance will be exempted from the provisions of this Article prohibiting the use of polystyrene foam food service ware for a period of time to be determined by the Public Services Manager or his/her designee on a case-by-case basis for undue hardship. Undue hardship includes, but is not limited to, situations unique to the food vendor not generally applicable to other persons in similar circumstances.

C. Food vendors, City departments, City facilities and contractors shall be exempt from the provisions of this Article, in a situation deemed by the City Manager to be an emergency for the immediate preservation of the public peace, health or safety.

D. This Ordinance shall be null and void if and as long as there is developed and maintained an effective city-wide Recycling Program approved by the City's Director of Public Services for polystyrene foam food and beverage containers.

E. The provisions of this ordinance shall be null and void on the day that statewide legislation or federal legislation goes into effect, incorporating either the same or substantially similar provisions as are contained in this chapter, or in the event that a pertiuent Maine or federal administrative agency issues and promulgates regulations, preempting such action.

12-214. Violations and Enforcement.

The Director of Public Services and the Director of Health and Human Services or designees shall have the primary responsibility for enforcement of this ordinance. If the Public Services Director, or the Director of Health and Human Services or designees determine that a violation of this Article has occurred, he/she shall issue a written warning notice to the food vendor that a violation has occurred.

DRAFT

Subsequent violations of the Ordinance shall be subject to the penalties set forth below.

Violations of this Ordinance shall be punishable by fines as follows:

i. A fine not exceeding $250 for the first violation in a one-year period;

ii. A fine not exceeding $500 for the second and each subsequent violation in a one-year period.

12-215. Severability.

If any part or provision of this Ordinance or the application thereof to any person or circumstances is held invalid, the remainder of the Ordinance, including the application of such part or provision to other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Ordinance are severable..

Summary

In June, 2012 the City Council ordered the Transportation, Sustainability and Energy (TS&E) Committee to consider an order to ban the sale of polystyrene foam containers and take whatever further action the committee deemed appropriate. Based on that order, TS&E asked Councilor Suslovic to chair a committee including representatives of industry, businesses, local environmental organizations and Portland citizens to discuss proposed ordinance language. Following the Council order, the committee would first take up a proposed polystyrene ordinance. After completing that work the committee would begin studying ways to reduce the amount of plastic bags used in Portland's retail environment.

This committee, known as the Green Packaging Working Group, held three meetings to discuss ordinance language banning the use of polystyrene foam food packaging. The Town of Freeport's ordinance, which went into effect in 1990, served as the foundation for the group's discussion. Members heard testimony from a Freeport official regarding the efficacy of the ordinance during the last 20 years. Staff also provided examples of ordinances from other communities that have adopted polystyrene bans in order to provide further examples to the group.

The Green Packaging Working Group heard testimony from members that alternatives to polystyrene foam packaging are readily available. A representative from the Portland Schools described how the schools were able to switch from polystyrene foam trays to trays made of paper that could be composted or recycling as part of the local waste management program. A local franchisee shared that Dunkin' Donuts provides customers with paper cups instead of foam cups if they request one, despite company preference for foam. The group also learned from a survey of local establishments conducted by City staff that more than half of the businesses surveyed have already moved away from foam packaging in favor of alternatives.

The Working Group explored the recyclability of various types of packaging. A representative from ecomaine explained that most forms of packaging regularly used in Portland may be recycled in their program. (Portland is a member/owner of ecomaine and participates in the ecomaine recycling program.) This includes paper products including coffee cups, cardboard, pressed paper, metal and foil and most plastic containers. Polystyrene foam is the major exception as it cannot be recycled in Portland. Representatives from the plastics industry explained that there is technology available to recycle polystyrene foam. At this time, however, ecomaine reports that including this material in its offerings is not economically or operationally practical.

Members of the group discussed costs involved with moving away from polystyrene foam containers. The representatives from the Portland Schools and from local business agreed that foam packaging is generally less expensive than packaging made from other materials. Other members noted that many establishments in Portland have already discontinued use of foam packaging based for environmental reasons as well as economic reasons. Portland Schools reported that the use of foam trays was a significant source of complaints from parents and students. Moving to paper trays satisfied these customers and removed the trays from the waste stream, which reduced costs. The group further noted that discussions of unit costs for packaging disregard larger, external costs related to cleaning up litter, damage to the water quality of Casco Bay and our urban streams and impact to wildlife that inadvertently ingest foam litter.

At the conclusion of the Green Packaging Working Group's third meeting, members endorsed ordinance language to prohibit sale of polystyrene foam food packaging in Portland. The group also endorsed amendments that would suspend the ordinance if the State of Maine enacts a ban on this product or if the City adopts a comprehensive and effective recycling program for polystyrene foam packaging. The vote was not unanimous and Chair Suslovic invited those opposed to submit a minority report to further explain their position.

Report

In June, 2012, Superintendent James Morse announced that Portland Public Schools would no longer use polystyrene foam trays when serving meals. He argued that using single use trays that could not be recycled went against City and School Department goals to reduce waste and adopt more environmentally sustainable practices. Following this announcement, food service staff began issuing lunches on paper trays that are manufactured in Maine and can be recycled or composted at facilities located in Portland. This change has pleased students, teachers and community members who had long championed a move away from foam trays. Student activists concerned about waste reduction and environmental issues had regularly focused their attention on the trays. In 2008, a group of Lyman Moore Middle School students addressed the Energy and Environmental Sustainability Committee (predecessor to the Transportation, Sustainability and Energy Committee) requesting support in their efforts to eliminate the use of foam in the school department. More recently, the Waste Reduction Group – a coalition of City staff, school staff and community members focused on reducing lunch room waste – worked to find alternatives to foam trays as part of a larger sustainability effort that culminated in Superintendent Morse's announcement and the adoption of a formal sustainability policy by the Portland Board of Education.

Discussions in Portland about the merits of polystyrene foam have always included reference to the Town of Freeport's decision to ban foam food packaging in 1990. Freeport residents led by student activists expressed concern about the widespread use of this foam packaging. They argued that it was not recyclable in their recycling program and constituted a large portion of roadside litter. Ban advocates also indicated that they were concerned about the impact of polystyrene foam litter on the water quality of Casco Bay and about its impacts on wildlife. Opponents of the ban, including franchisees of fast food restaurants and polystyrene foam manufacturers, argued that the ban would not be effective at ending litter and that the town could develop a program to recycle polystyrene foam. After deliberation, the Freeport Town Council voted in July, 1989 to become the first town in Maine to ban the use of polystyrene foam packaging with the ban going into effect on January 1, 1990.

The Freeport ordinance states:

> *no retail food vendor shall serve or sell prepared food and no food packager shall package meat, eggs, bakery products or other food in polystyrene foam (PSF) containers.*

When it took effect, the ordinance required restaurants, coffee shops, take out services and supermarkets to find alternatives to foam when packaging food products. Store managers in Freeport have found suitable alternatives and the businesses who opposed the ban continue to operate successfully. The ban has also not prevented business expansion, as demonstrated by Shaw's Supermarkets decision to build a store in Freeport in 2003. While staff have had to make adjustments, the Freeport supermarket has been able safely package the food items packaged in the store without the use of polystyrene foam.

During their meeting on March 11, the Green Packaging Working Group heard from Freeport Town Engineer Albert Presgraves about Freeport's experience with the polystyrene foam ban. Mr. Presgraves confirmed that local retailers and restaurants have found alternative packaging materials that have successfully met their needs. He did not believe that the town had been forced to take any enforcement action to gain compliance with the ordinance. He felt that most Freeport residents continue to support the prohibition on foam packaging. This local support provides business owners with incentive to use non-foam packaging. It also promotes compliance with the ordinance as residents quickly inform any new business owners about the ordinance if they inadvertently serve food in foam containers.

The majority of the Green Packaging Working Group members feel that Freeport's experience provides a useful model for Portland. As a retail center, food service establishments including coffee shops, fast food restaurants, formal dining and supermarkets play an important role in that town's economy. Local residents as well as tourists attracted to the variety of shopping opportunities dine out regularly. The ban on polystyrene foam food package has not diminished the rich variety of dining choices available in Freeport. Food service establishments have adapted to the ban and are able to operate successfully with alternatives. Restaurants in Portland will be able to do the same.

While Freeport was the first municipality in Maine – and one the earliest in the country – to prohibit polystyrene foam packaging, communities across the country have followed suit. In California alone, more than thirty five cities and counties have done so. This includes San Francisco, Oakland and San Jose. Seattle has banned foam packaging as has Portland, OR. On the east coast, Suffolk County, NY has adopted a ban. Brookline, MA residents passed a ban in 2012 during their annual town meeting and officials in Somerville, MA endorsed a ban in May, 2013. Mayor Bloomberg has proposed a ban in New York City. More than 100 cities across the country have adopted bans and proposals are currently in front of elected officials around the country.

As part of its work, the Green Packaging Working Group studied some of the ordinances passed in other communities in order to build on the foundation provided by the Freeport model. This exercise led to the inclusion of a number of amendments in the final draft. One of the most significant was explicitly prohibiting the use of polystyrene foam packaging by the City of Portland. The group recognizes that the City and Schools have each developed administrative policies regarding the use of foam, but feels that it is important for the City to lead by example on this issue. Another key addition gleaned from other examples was providing time for merchants to exhaust supplies of packaging they have already purchased. The Working Group regarded this to be an issue of fairness and wished to respond to members of the public who raised concerns about this issue.

The primary reason Freeport and dozens of other communities around the country have chosen to prohibit the use of polystyrene foam packaging is the impact on the environment from the use, disposal and management this material. The Green Packaging Working Group has identified several factors that cause it to recommend prohibiting the use of foam packaging:

- Litter – Take out containers constitute a significant portion of the litter found along Portland's streets and in our public spaces. Much of it is polystyrene foam containers, which won't biodegrade. Over time, foam litter breaks into smaller and smaller pieces and ultimately is washed into catch basins and ultimately into Casco Bay. Banning polystyrene foam food containers will prevent this harmful material from entering the environment.

The Green Packaging Working Group recognizes that banning foam will not, by itself, eliminate litter in Portland. Doing so, however, augments measures recommended by the Solid Waste Task Force in 2011 and that are now being implemented by the City. These include widespread deployment of Big Belly trash compactors in public spaces. These containers have a large capacity and contain waste material so it cannot be strewn by scavengers. The deployment of recycling carts to replace the small, open top bins currently used by the City's recycling program will also reduce litter on our streets. This effort is slated to begin in FY14.

- **Impact on Casco Bay and other waterways** – Plastic marine debris is an enormous problem that reduces water quality and harms wildlife around the world. Polystyrene foam breaks down into smaller and smaller pieces as it degrades. Once it enters our waterways wildlife often mistake these pieces for food and consume them. As polystyrene foam cannot be digested, the animals that eat it eventually die from starvation. The City of Portland is spending millions of dollars to improve the water quality of Casco Bay and its urban streams. Reducing the amount of polystyrene entering the environment is consistent with this effort. Preventing pollution by eliminating a source is a prudent and cost effective approach. Opponents of a ban on polystyrene foam often argue that alternative products cost somewhat more than foam products. While that is true, this argument does not factor in damage to habitat, decreased water quality and costs for environmental clean-ups that stem, in part, from the use of foam packaging.

- **Lack of Recycling Options** – The recycling program offered by the City of Portland and ecomaine is very comprehensive and accepts a wide range of packaging materials made of paper and plastic. This includes paper cups, paper plates, plastic cups, plastic clamshells, cardboard boxes, foil and other metal containers. Polystyrene foam is one of the few commonly used packaging materials that are not recyclable in the local program. The Green Packaging Working Group recognizes that polystyrene foam packaging is technically recyclable but emphasizes that it is not practical or convenient to do so in our region and that few communities around the country offer such a program. Barriers to recycling foam include a lack of reliable markets for postconsumer foam, difficulty in handling foam at the recycling plant and challenging economics for transporting foam due to its low density. (A letter from Kevin Roche, Executive Director of ecomaine regarding these challenges is appended to this report.)

- **Availability and Use of Alternatives To Polystyrene Foam Packaging** – As demonstrated by the experience in Freeport and the adoption of paper serving trays by Portland Schools, alternatives to polystyrene foam packaging are readily available. A recent survey of eateries in Portland conducted by Portland Public Services staff members bears this out. Of the businesses surveyed, 54% used cardboard and paper packaging to serve their food, 41% used polystyrene foam, 37% used compostable products, 29% used non-polystyrene plastic products and 25% use metal or foil packaging. (Many businesses used more than one type of packaging.) This indicates that many businesses have already begun moving away from foam packaging.

The widespread use (and overuse) of packaging in Portland and around the country is a significant waste of natural resources. Most packaging materials are used only once. A store clerk places a product in the packaging – often multiple layers of it – and gives it to a customer. Once the customer arrives at his or her destination, the packaging almost always ends up in the trash. Some of it might get recycled and a small portion of it might even get re-used in some way. A significant portion of it ends up as litter along the street or in a public space. All of the packaging eventually becomes part of the waste stream and must be managed. Even if the packaging eventually gets recycled or combusted for energy instead of being sent to a landfill or littering the outdoors, it constitutes a poor use of materials and energy used to produce it and transport it to the consumer. The Green Packaging Working group encourages people to take pro-active measures to minimize packaging waste. This includes using a reusable travel mug when getting coffee and requesting that restaurants and take out establishments use as little packaging as possible when preparing food to go.

Banning the sale of polystyrene packaging in Portland would eliminate a pernicious and environmentally damaging form of packaging from our local waste stream. Other forms of packaging pose waste management challenges of their own. The Green Packaging Working Group looks forward to continuing our work by examining ways to address the environmental and waste management challenges presented by the huge quantity of plastic bags distributed to consumers at grocery and retail establishments. We look forward to reporting our findings and recommendations to the City Council.

Order 223-11/12
Passage: 9-0 6/18/12

MICHAEL F. BRENNAN (MAYOR)
KEVIN J. DONOGHUE (1)
DAVID A. MARSHALL (2)
EDWARD J. SUSLOVIC (3)
CHERYL A. LEEMAN (4)

CITY OF PORTLAND

IN THE CITY COUNCIL

JOHN R. COYNE (5)
JOHN M. ANTON (A/L)
JILL C. DUSON (A/L)
NICHOLAS M. MAVODONES (A/L)

ORDER INSTRUCTING THE TRANSPORTATION, ENERGY AND SUSTAINABILITY COMMITTEE TO CONSIDER AN ORDINANCE OR RECOMMENDATION BANNING THE SALE OF NON-RECYCLABLE POLYSTYRENE FOAM (PSF) CONTAINERS

ORDERED, that the Transportation, Energy and Sustainability Committee shall consider an ordinance or recommendation to ban the sale of non-recyclable polystyrene foam (PSF) containers within the City of Portland and take subsequent action as the Committee deems appropriate.

ecomaine

June 4, 2013

Mr. Troy Moon
Solid Waste Manager
City of Portland
55 Portland Street
Portland, ME 04101

Dear Troy:

You inquired about what challenges we might be faced with by adding polystyrene foam to our single sort recycling program. I offer the following feedback regarding the challenges associated with recycling polystyrene foam:

- Shipping baled polystyrene foam material is very inefficient due to the weight and density. Baling and/or densification of the polystyrene foam could be a challenge and an added cost. You wouldn't want to ship this material very far to market.
- The marketability of recycling polystyrene foam materials is very limited. Markets would need to be identified and anticipated scrap revenues would need to be determined. Market specifications would also need to be researched to ensure that markets would be willing to accept some residue on the foam containers. There has been very little interest from potential buyers of polystyrene foam and this is a significant concern for the industry.
- We take plastic, metal and glass containers. There would need to be an extensive educational component with polystyrene foam to differentiate foam cups, foam peanuts, foam packaging, clamshells, etc.
- Unlike most of the other plastic, foam easily breaks apart and becomes difficult to manage when in tiny pieces. In comparison, most plastic containers stay intact even when squashed by a loader wheel.
- Sorting of small pieces of foam would be challenging in the MRF. In particular, foam peanuts and broken pieces of foam would go everywhere.
- Collection of polystyrene foam from the source is inefficient without significant compaction or densification.
- Additional equipment would be needed to process polystyrene foam.

This outlines our primary concerns with recycling polystyrene foam. Please feel free to contact me if you have any questions.

Sincerely,

Kevin H. Roche
General Manager

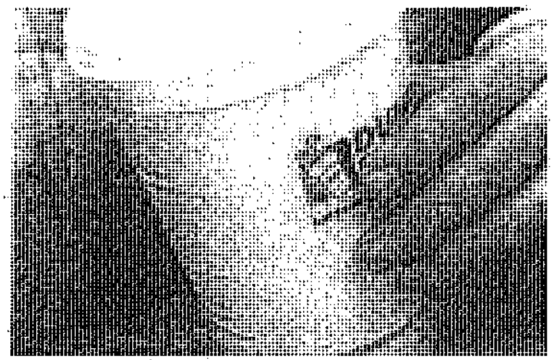
cc: John Morin

Portland Press Herald Print Article

Our View: Portland right to cut foam food containers

A proposed city ordinance would address a serious public health and environmental threat.

Posted: March 12, 2013 12:01AM



The Associated Press Portland might prohibit the city's eateries from using polystyrene cups and containers.

They used to put lead in gasoline. People liked the way it made their cars run, but the damage all that lead in the environment did to people's health was not worth it.

Most of us grew up with mercury fever thermometers in the bathroom medicine cabinet.

But the cumulative effect of so many thermometers breaking and releasing mercury into the waste stream and water table created too big a threat to health and safety to be tolerated.

We are at a similar point in the history of single-use polystyrene packaging. The popular foam cups and burger boxes are made from petroleum. They contain styrene, which the National Institutes of Health lists as one of the substances that are "reasonably considered to be human carcinogens."

The containers are rarely recycled and end up in landfills, where they will remain virtually forever, or burned in incinerators, releasing toxins into the atmosphere.

There is an alternative. The city of Portland is considering an ordinance that would greatly reduce the use of polystyrene by banning foam cups and containers in the city's eateries. That is a reasonable response to a hazardous pollutant that seems safe only because it is so common.

A number of cities out west have recently banned these containers, but Portland doesn't have to look that far for a model.

The town of Freeport banned foam cups and fast-food containers in 1990. Some of the biggest chain restaurants in the nation, along with small, local businesses, have managed to adapt. Businesses in Portland would be able to do the same, and so would consumers.

If more cities follow suit, there will be fewer foam products in the waste stream, reducing a health risk. And as the products disappear, the price for alternatives will decrease and consumers will forget they ever relied on the containers to keep their food and drinks warm.

We've been through this kind of thing before. People liked leaded gas and mercury thermometers, but the convenience wasn't worth the damage those products caused.

We would be better off with less foam, and Portland officials are right to start cutting its use here.

Minority Report in Opposition to Polystyrene Product Ban Proposed by the Green Packaging Working Group Task Force

The members of the Green Packaging Working Group Task Force who represent Maine businesses are strongly opposed to the proposed ordinance to ban polystyrene foam products developed by the Green Packaging Working Group Task Force. The following minority report outlines the basis for this opposition.

I. Executive Summary

The members of the Green Packaging Working Group Task Force who represent Maine businesses are strongly opposed to the proposed ordinance to ban polystyrene foam products developed by the Green Packaging Working Group Task Force for the following reasons:

- The Task Force did not properly account for the financial impact to businesses and consumers that would result from this proposed product ban;
- This proposed product ban will not address what appeared to be the primary concern of the majority of the Task Force – reducing litter;
- The process employed by the Task Force to develop this proposed product ban was flawed, resulting in an indefensible proposal to ban polystyrene products; and
- The Task Force and this draft ordinance misapprehend the nature of polystyrene foam and its impacts.

II. The Task Force Did Not Properly Account for the Financial Impacts of This Proposed Product Ban

Despite repeated requests by members of the Task Force who represent Maine businesses that the Task Force undertake an adequate analysis of the financial impacts of this proposed product ban, these requests were never heeded. The "economic analysis" employed by the Task Force involved telephone conversations with 24 managers at Portland restaurants and stores. There was also heavy reliance on the fact that the Town of Freeport passed a polystyrene product ban and "no business went out of business as a result of that ban." This is hardly the level of analysis that is needed for a proposed product ban that will have and economic impact on a large number of Portland businesses.

Because the Task Force refused to conduct the proper economic analysis, there is no concrete sense of the number of Portland businesses that would be affected by this proposed product ban. Moreover, there is no understanding of how these businesses would be affected and how these impacts would ultimately be felt by Portland consumers. Further, because the Task Force made very little effort to work with Portland's business community, business leaders did not have a sufficient avenue for their input into the Task Force process.

In the absence of adequate information, the City of Portland simply cannot act to ban polystyrene foam products and the business minority of the Task Force cannot support this proposed product ban.

III. The Proposed Product Ban Would Not Reduce Litter

Litter is a people problem, not a materials problem.

People litter. Those who would heedlessly toss a polystyrene cup on the ground would be just as likely to do the same with a plastic cup or a paper cup. Changing the form or composition of the container is not likely to change how people dispose of it.

As a result, eliminating polystyrene foodservice products (or any other product or material) would do little more than change the composition of waste that is generated and the litter that is found on our streets and waterways. Banning polystyrene food containers would not reduce the quantity of litter caused by the careless disposal of food containers generally.

In short, there is no environmentally acceptable form of litter. And focusing on one specific packaging type falls short of a comprehensive policy that is needed to address litter.

Unfortunately, too many initiatives to ban or severely limit the use of polystyrene foodservice products represent misguided attempts to deal with solid waste and litter issues, attempts that are usually destined to fail. Bans on specific products simply do not reduce solid waste or litter, for the key to reducing litter is changing human behavior, not changing the color or chemical composition of, say, a coffee cup.

Consider the history of this issue in California:

- In San Francisco, a litter study (subsequented audited) concluded that eliminating all food-related polystyrene would not reduce litter but would simply change the type of litter found. It showed, for example, that paper-cup litter of all kinds (hot, cold and other) increased from 1.82 percent of total litter in 2007 to 2.41 percent in 2008, while polystyrene cups decreased from 1.13 percent to 0.78 percent during the same period.

- The Santa Barbara City Council directed city staff to evaluate the merits of banning polystyrene foodservice products. Staff found that a ban on polystyrene would only be effective and have a net benefit to the environment if the foodservice ware was made from compostable material, and that any benefits could only be realized with a citywide organics collection and composting program – which the city does not have.

- In Carmel, a June 3, 2008 staff report found that since tbe inception of a 1989 ordinance banning polystyrene foodservice products, "the problem of food packaging waste litter has not improved."

One noted environmentalist, Jean-Michel Cousteau, the founder of the California-based Oceans Future Society and the son of famed ocean explorer, Jacques Cousteau, wrote in 2005 that:

California's beaches are a natural treasure and we need the public's help to protect them. But history teaches an important lesson: ***bans don't work*** *[emphasis added.] If a community bans Styrofoam and plastic carry-out containers, coffee cups, picnic ware and similar items, we know what will happen: individuals and businesses will switch to other disposable products, such as glass, aluminum, and wax-covered cardboard. The amount of litter will not change, only its composition. That's why bans are overly simplistic and don't get to the real cause of the problem . . . .*

Public education and stricter enforcement of existing litter laws, with appropriate penalties, would help remind both our fellow Californians and the thousands of visitors who come here each year that it is their personal responsibility and civic duty to keep California clean. Unfortunately, there will always be litterbugs among us. Bans have no effect at all on such people. Irresponsible human behavior cannot be addressed by eliminating products in society.

IV. The Process Employed by the Task Force Was Flawed

In July 2012, when the City Council was presented with a proposal to ban the use of polystyrene in food packaging applications, the Council's Transportation, Sustainability & Energy Committee created the Green Packaging Working Group Task Force and charged it with considering the merits of this proposal. At that committee meeting, there was extensive discussion regarding the composition of the Task Force as well as the Task Force's charge.

For months thereafter, the Task Force took no action on this issue; in fact, it did not meet for the first time until March 11, 2013. As soon as the Task Force commenced its work, the result – a polystyrene product ban – was inevitable and the Task Force raced to this result.

The process followed by this Task Force was flawed on numerous counts:

1. **The charge to the Task Force was flawed.** The purpose for creating a Task Force was to weigh evidence and determine whether municipal action was appropriate on this issue. At its first meeting, however, this body was instead charged with drafting an ordinance banning the use of polystyrene foam products, on the flawed assumption that circumstances warranted only this course of action.

2. **No process was created for weighing evidence regarding a proposed polystyrene ban.** The Task Force was so intent on crafting an ordinance to ban polystyrene products that it established no coherent process for discussing and weighing the merits of the proposal itself.

3. **The Task Force never defined its objectives.** In its haste, the Task Force drafted a proposed ordinance without first considering or stating what problem or problems it was attempting to solve. It is prudent to insist that this body first articulate what issue it is trying to address before imposing a solution.

4. **The Task Force did not consider the economic impacts of a product ban on the people and businesses of Portland.** As outlined above, in its rush to push through a polystyrene product ban, the Task Force did not conduct an analysis of the impact that such a ban would have on Portland businesses that use, ship or handle polystyrene products to determine the impacts of any limitations on the use of these products. It also did not hear testimony regarding the costs of such a policy to the many people of Portland who patronize these businesses.

5. **The Task Force Placed Unjustified Reliance on the Town of Freeport's Polystyrene Ban.** Throughout the Task Force's meetings, members repeatedly referenced the Town of Freeport's polystyrene product ban. The Task Force, however, refused to acknowledge that this ban was instituted years ago due to concerns regarding chlorofluorocarbons in polystyrene, an issue that is no longer of concern and irrelevant to the proceedings of the Task Force.

In short, the Green Packaging Working Group Task Force was a vehicle designed to get to one predetermined destination. This was not a deliberative body that examined and weighed all the relevant evidence associated with this issue. Rather, this was a hollow proceeding designed to arrive at an intended result.

V. The Task Force and This Draft Ordinance Misapprehend the Nature of Polystyrene and its Impacts

A. Polystyrene helps reduce food waste

A common misconception is that polystyrene products pose a major problem in municipal landfills. Rather, polystyrene helps solve a major problem in municipal landfills. According to the U.S. EPA and other credible sources, all polystyrene foodservice (foam and non-foam) cups and containers account for less than **1 percent** by weight and volume of the municipal solid waste stream. By contrast, the largest single contributor to total municipal waste is "organics" – i.e., food scraps and yard trimmings – which constitute **20 percent** of the solid waste stream.

Polystyrene food service products have been used safely for more than a half of a century in food contact applications. The reason they have proven so popular for so long **is because they work.** Polystyrene is more effective at preventing food spoilage and contamination than other materials that have been used for this purpose. Another reason to prefer polystyrene over other materials for transporting food and drinks is that, unlike other substances, it does not impart foreign odors or tastes to the food it holds.

In short, polystyrene does not break, does not spill, and does not make food taste funny. In all these ways, it helps limit the amount of food that Americans waste or throw away, thus helping reduce the amount of organic wastes that are currently clogging our landfills.

While some may argue that organic waste breaks down in the environment faster than polystyrene, it is important to note that modern municipal landfills are not composting facilities. In fact, the trend in landfills today, enforced by strict state and federal regulations, is to foster anaerobic environments where nothing breaks down readily, so as to reduce odors, runoff and excessive methane emissions.

B. Polystyrene itself is "greener" than most people realize

Besides helping to reduce food waste, polystyrene has another important advantage over other food-packaging alternatives: it scores well in terms of its environmental footprint as measured over the total life span of the product.

To evaluate sustainability of a foodservice product, the total environmental impact of this product over its entire life span must be analyzed, through a process called Life Cycle Inventory (LCI). LCI measures all the various environmental impacts a product creates, both directly and indirectly, across all phases of the product's life cycle.. In this way LCI provides a cradle-to-grave picture of a product's environmental attributes, from raw material extraction and manufacturing to post-use recovery or disposal.

In a peer-reviewed February 2011 study, Franklin Associates, one of the most highly regarded LCI practitioners in North America, found that commonly used cups, plates and sandwich containers made of polystyrene foam use significantly less energy and water than comparable paper-based or corn-based (polylactic: PLA) alternatives, primarily due to polystyrene foam's much lower weight.

That 2011 study compared average-weight polystyrene foam, paperboard and PLA cups used for hot (16 ounce) and cold (32 ounce) drinks, 9-inch dinner plates and "clamshell" sandwich containers. Researchers modeled energy consumption, water use, solid waste (by weight and volume) and greenhouse gas emissions for each product resulting from production, transportation and disposal. Some key findings include:

- Energy use: the manufacturing of polystyrene foam products consumes significantly less energy than the alternatives—half as much as wax-coated paperboard cups and one-third as much as PLA clamshells.
- Water use: the manufacturing of polystyrene foam products likewise uses significantly less water than the alternatives—up to four times less than PLA clamshells.
- Solid waste: Polystyrene foam products create significantly less solid waste by weight than the alternatives—up to five times less than paperboard and PLA products. Comparisons by volume vary widely:
    - Polystyrene foam cups for hot drinks create less waste by volume than the alternatives – significantly less than paperboard cups with corrugated sleeves used for insulation.

- Polystyrene foam cups for cold drinks create similar waste by volume as plastic coated paperboard cups and significantly less than wax coated paperboard and PLA cups.

- Heavy duty polystyrene foam plates produce more solid waste by volume than the alternatives, while lighter duty polystyrene foam plates create similar waste by volume as the paperboard counterparts.

- Polystyrene foam clamshells create slightly more waste by volume than paperboard clamshells and half the waste by volume of PLA clamshells.

• Greenhouse gases: Comparisons of greenhouse gas emissions vary widely depending on assumptions made about the degradation of paperboard products. Specifically, if paperboard products are prevented from degrading after disposal, they store carbon and generate *fewer* greenhouse gas emissions than polystyrene foam products; however, if paperboard products are allowed to degrade to the maximum extent, they instead would generate *more* greenhouse gas emissions than polystyrene foam products.

In general, the study's authors found that lower-weight products with similar functionality—such as polystyrene foam products composed of more than 90% air—generally produce smaller environmental burdens than heavier-weight alternatives. Because paperboard foodservice packaging products are generally heavier than foam products, in most cases they have environmental burdens that are higher than or comparable to corresponding polystyrene foam products.

For example, an average weight 16 oz. hot-beverage cup made of plastic-coated paper weighs almost three times as much as a comparable 16 oz. polystyrene foam cup. (Air comprises approximately 90 -95% of a foam cup or container, while paper comprises 89-95% of a typical plastic-lined paper cup.) Because of this high air content, polystyrene foam also affords exceptional insulation. This, combined with the fact that polystyrene foam cups are stronger than paper cups, discourages other wasteful practices such as "double-cupping" paper cups or requiring insulating cup sleeves.

Finally, it is sometimes argued that polystyrene is not recyclable – **that is not true.** As a thermoplastic, polystyrene can be completely recycled, and both foam and non-foam polystyrene products are technically very easy to recycle, if collected as apart of an integrated solid waste management strategy. Polystyrene manufacturers have cooperated with hundreds of communities in the U.S. and Canada to collect and recycle polystyrene, through curbside as well as drop-off recycling programs.

What limits polystyrene recycling today are the same factors that curtails food packaging recycling generally: contamination and transportation costs. To be effectively recycled, food containers should first be thoroughly cleaned, a responsibility that many municipalities are not yet ready to adopt. Also, the light weight of polystyrene products, especially foam, can make it uneconomical to ship polystyrene long distances for recycling.

As recycling techology advances, and as polystyrene recycling becomes more widespread, these issues will tend to become less daunting. In the meantime, the fact that most alternatives to polystyrene are made from multiple materials – paper cups, for example, are typically coated with polyethylene plastic or wax – often makes them harder to recycle than polystyrene alternatives.

C. Polystyrene is not toxic

A wave of confusion about the safety of polystyrene foam foodservice products has swept over the U.S., following the recent release of the "12th Report on Carcinogens" by the National Toxicology Program's (NTP), a division of the U.S. Department of Health and Human Services (HHS).

In that report, dated June 10, 2011, styrene was listed for the first time as "reasonably anticipated to be a human carcinogen." (Note the use here of the word "anticipated," rather than "proven.") No other government agency outside the United States has endorsed this supposition. In fact, agencies from the European Union, Canada, Japan and Hong Kong have all conducted similar studies on styrene and completely disagree with the NTP's conclusion. Even the NTP itself cautions that the fact that substances are listed in its own report "does not establish that such substances present a risk to persons in their daily lives."

But more importantly, polystyrene is <u>not</u> styrene (or vice versa).

Styrene is a clear, colorless **liquid** that occurs naturally in foods such as cinnamon, beer, steak, coffee beans, peanuts, strawberries, and wheat. Polystyrene is a **solid plastic** created through a chemical process in which styrene is polymerized. As the NTP itself explains, "Although styrene, a liquid, is used to make polystyrene, ... we do not believe that people are at risk from using polystyrene products."

Since the release of the NTP study, news reports have made much of the fact that trace amounts of liquid styrene can in some circumstances leach into food contained in rigid polystyrene food containers or foam polystyrene cups. (*All* containers, by the way, have ingredients that leach into food.) One study showed that a foam cup, for example, could release 5 to 10 *parts per billion* of styrene into the food contained therein. But compare this amount with the styrene to be found in various foods themselves:

Food (with no packaging contact)	Range of styrene exposure (ppb)
Beef	5.3 – 6.4
Beer	10 - 200
Cinnamon	170 – 39,000
Coffee beans	1.6 – 6.4
Peanuts	1.2 - 2
Strawberry (one)	.37 – 3.1
Wheat	.4 - 2

In other words, if you ate 15 strawberries out of a polystyrene cup, you could ingest 5 to 10 times as much styrene from the strawberries themselves as from the cup. If you drink beer from the same cup, you could consume **up to 40 times** as much styrene from the beer itself as from the polystyrene cup holding it.

Even so, most of the styrene we ingest on a daily basis comes not from our food, but from the air we breathe. Studies indicate that between 90 and 99 percent of the styrene we take into our bodies comes from breathing polluted air, while only 1 to 10 percent comes from the food we eat.

Finally, to put these trace amounts of styrene into perspective, keep in mind that the U.S. Occupational Safety & Health Administration (OSHA) sets standards for the amount of chemical exposure it deems to be safe in the workplace. In the case of styrene (not polystyrene), OSHA recommends limiting styrene exposure to 50,000 parts per billion in an eight-hour period – the equivalent of eating approximately 30,000 strawberries or drinking 500 beers.

D. There is no emergency that justifies this hastily proposed product ban

The U.S. chemical industry is one of the nation's most pervasively regulated industries. If chemicals are not managed safely, they can have health and environmental consequences. But polystyrene and other plastics have been used safely for more than 50 years in food contact applications with no validated scientific evidence that they pose any human health concerns.

Polystyrene foodservice disposables meet stringent U.S. FDA standards for use in food-contact packaging. The U.S. FDA, which regulates plastics used in food contact applications, and the National Academy of Sciences and other federal authorities rely not on opinions but on the weight of validated scientific evidence when evaluating safety and efficacy. That evidence overwhelmingly supports the safe use of polystyrene in food contact applications.

Polystyrene is safe. Polystyrene is "green." If there were any scientific evidence to suggest that polystyrene was causing harm to Portland residents, we would support efforts to find a replacement. But there is no need, and no reason, for the City and its residents to suffer the costs and consequences of banning a substance that has no harmful effects.

And there is certainly no need, or cause, to rush this matter through the City Council.

VI. Conclusion

For the foregoing reasons, the members of the Green Packaging Working Group Task Force representing Maine business interests cannot support this ill-conceived polystyrene foam product ban.

DART

DART CONTAINER CORPORATION

MASON, MICHIGAN 48854 • TELEPHONE (517) 676-3803

June 19, 2013

Mayor Michael F. Brennan
389 Congress St.
Portland, ME 04101

Mr. Kevin Donoghue
Vice Chair, Transportation,
Sustainability and Environment
Committee
389 Congress St.
Portland, ME 04101

Mr. John Anton
Transportation Sustainability and
Environment Committee
389 Congress St.
Portland, ME 04101

Mr. David A. Marshall
Chair, Transportation, Sustainability
and Environment Committee
389 Congress St.
Portland, ME 04101

Ms. Cheryl Leeman
Transportation Sustainability and
Environment Committee
389 Congress St.
Portland, ME 04101

Mr. Troy Moon (Staff Coordinator)
Transportation Sustainability and
Environment Committee
389 Congress St.
Portland, ME 04101

RE: Portland's Proposed Polystyrene Ban

Dear Sir/Madam:

Dart Container Corporation (Dart) respectfully submits to the official record its comments in regard to the proposed polystyrene ban also known as the Amendment to Portland City Code Chapter 12 Garbage, Wastes and Junk, Article V. Polystyrene sections 12-210 through 12-215 (Amendment).

Dart is a leading manufacturer of single-use foodservice containers which includes products made from polystyrene in both foamed and rigid form. We have been and continue to be actively engaged in educating the public on the environmental attributes of foam. Therefore, one can imagine how disappointed we were to learn that a community such as Portland would consider a ban on foam foodservice products.

The Amendment contains several "finding; purposes". One specifically states that "[d]isposable food service ware made from polystyrene foam constitutes a portion of the litter in Portland's streets, parks and public places that increases the City maintenance cost." This statement brings forth two items to address - litter and the waste stream.

Litter by definition is the improper disposal of products regardless of the material of the product. In other words, litter is the result of irresponsible human behavior. Second item is foam in the waste stream. The Amendment does not state the amount of foam in Portland's waste stream, but merely states "...foam constitutes a portion". Studies show that polystyrene plastic foodservice products comprise a very small portion of the waste stream. In fact, all polystyrene plastic products represent approximately one percent of all products generated, by weight, in municipal solid waste. Of this total, polystyrene foodservice packaging accounts for approximately 0.4 percent, by weight, of all polystyrene products generated. This category includes items such as cups, plates, bowls, trays, clamshells, meat trays, egg cartons, yogurt and cottage cheese containers, and cutlery. Also, polystyrene foodservice products comprise less than one percent (0.7%) of municipal solid waste disposed.[1]

Despite the small amount of foam being found in the waste stream, many cities incorrectly believe that if they ban foam their litter / waste issue will be resolved. Reality has provided this theory wrong. After a litter re-audit for the City of San Francisco, California, it was confirmed that eliminating all foam foodservice ware simply changed the type of litter found. In addition, in Carmel, California, the City staff confirmed in a June 3, 2008 staff report that since the inception of its 1989 ordinance to ban foam foodservice ware, "...the problem of food packaging waste litter has not improved".

Recycling is a better option than a ban. Foam is fully recyclable and Dart has been recycling foam for over 20 years. Dart has publically accessible foam collection centers at all of its U.S. facilities as well as at select international locations. We also have two off-site foam collection systems. First is CARE (Cups Are REcyclable) and the other is Recycla-Pak[2]. Apart from Dart, various US cities offer public foam drop-off locations and some even have curb side collection. The foam that is collected and recycled is turned into durable plastic goods such as picture frames and crown molding.

Misperceptions also exist regarding the safety of styrene. Styrene is naturally occurring. It's found in beef, beer, strawberries and cinnamon to name a few. The U.S. Food and Drug Administration (FDA) also allows for styrene to be used as a synthetic flavoring in food for human consumption[3]. But, most importantly, one must consider that styrene is a by-product of the combustion engine. Therefore, just by living in today's society the average human is inhaling styrene daily.

---

[1] United States Environmental Protection Agency, *Municipal Solid Waste in the United States 2010 Facts and Figures*, November 2011, Table 3.

[2] Additional details for CARE: http://www.dart.biz/web/environ.nsf/pages/care.html and Recycl-Pak: http://www.dart.biz/web/environ.nsf/pages/recyc-pak.html.

[3] 21 CFR 172.515 - Food Additives Permitted for Direct Addition to Food for Human Consumption.

Continuing with the safety of styrene, the FDA regulates any material that is used in food contact applications. If foam were a health hazard, the FDA would have banned the use of this material for food contact. The reality is foam has been approved for use in food contact applications for more than 50 years.

The last two items, but definitely not the least important, are the Minority Report (Report) and the economic impact. The Report is a thoughtful document that explains why those representing Maine's businesses are opposed to the proposed ban. One area the Report discusses is the economic impact. At the manufacturing level, people earn their living manufacturing foam products. At a broader level, many small and large businesses, hospitals, schools, etc., choose foam products since they are not only sanitary, but also cost effective.

Thank you for your careful and thoughtful consideration of this important matter. Additional information on Dart, foam recycling, foam foodservice products and the environment can be found on our website http://www.dart.biz

Sincerely,

AnnMarie Treglia
Global Manager, Government Affairs
and the Environment
Dart Container Corporation

Maine Grocers Association

Serving the retail grocers of Maine
P.O. Box 5234, 77 Sewall Street, Suite 3000 • Augusta, Maine 04332
Telephone (207) 622-4461 • Facsimile (207) 622-9732
mainegrocers@mainegrocers.org • www.mainegrocers.org

June 18, 2013

Councilor David A. Marshall, Chair
Transportation, Sustainability and Energy Committee
City of Portland
55 Portland Street
Portland, Maine 04101

Dear Councilor Marshall and Committee Members,

I am providing testimony in opposition to the polystyrene product ban being proposed by the Green Packaging Working Group Task Force.

By way of introduction, I serve as the Executive Director, Maine Grocers Association and was invited to participate on the Task Force in July 2012. The Maine Grocers Association is a 78-year old business trade association representing main street businesses; independently owned and operated grocery stores, supermarkets, wholesalers and distributors, grocery product manufacturers and service companies. Our members have an excellent and proven track record when it comes to environmental stewardship and many of our retail stores are enrolled in our Environmental Leader Certification Program.

The MGA and their members often participate on working groups to tackle a wide range of issues and they were pleased to be selected to serve on the City's Green Packaging Working Group Task Force. However, I was discouraged from the outset as there seemed to be confusion as to our objective, and I felt troubled by the imbalanced composition of the Task Force. Frankly, the majority of the members seemed predisposed to prepare an ordinance to <u>ban</u> the sale and use of polystyrene products in the City of Portland. <u>Wasn't it your intention to bring together a group of interested parties to evaluate the best methods of decreasing the use of these products?</u> If I were an elected official, I wouldn't want to answer to the press when they reveal this process issue.

Nowhere in the record is there evidence to support an outright ban. If the Task Force had taken the time to fully examine the concerns associated with these products, their recommendation to you would surely have included an economic assessment of the financial impacts on the businesses and the customers they serve.

In addition, an area that certainly deserved greater attention is food safety which is our members' top priority and for more than 50 years, the U.S. Food and Drug Administration has approved the use of polystyrene for foodservice products. Polystyrene foodservice products offer a sanitary way to serve fresh food and to help prevent the spread of disease. In the grocery business, we use these products to package meats, cheeses, vegetables, eggs and other products, and our members offer a full line of polystyrene products for sale for home use. Food safety concerns were raised at the Task Force meeting, but there was almost no consideration of potential public health concerns.

Are there affordable alternatives? Polystyrene foodservice products generally are more economical – wholesale costs can be two, three, and four, up to five times less than their paper-based or reusable counterparts and therefore help our members keep costs down to their customers. More than ever, in these tight economic times, keeping costs low should be on everybody's minds. Further, customers who wish to purchase polystyrene products for their own use will be forced to shop at stores in neighboring communities which will negatively impact overall retail sales at our Portland stores.

Finally, the Task Force gave little consideration to potential recycling opportunities employed by other communities across the nation. What evidence will you use to justify an outright product ban? How will you address the legitimate concerns of the businesses and how will you quantify the increased costs associated with seeking alternative products? After all, a product ban is really akin to a tax.

Enacting a product ban is not an end in itself. What will the likely effects of the ban cause? What will the ban do with respect to the undesired behavior? What products will take their place? Will banning polystyrene made products end roadside litter? Or will you see the alternative products being littered? The answers to these questions could very well help shape the desired outcome so you really need to get these answers, either from staff here or after researching them.

I recently read an article about our society's desire to ban things as a means to change or influence a change in behavior. The author wrote, "The call for something to be "banned" should be the start of a mature and constructive political debate, and not the end of one."

So I ask you to consider your initial intentions and sit down as policy makers and do this work. If not, I suggest you kill the proposal now for lack of justification.

Thank you for your consideration of my testimony.

Sincerely,

Shelley

Shelley F. Doak, Executive Director

RETAIL ASSOCIATION OF MAINE
Voice of Maine Retail
45 Melville Street, Suite 1
Augusta, ME 04330
Phone: 207.623.1149
www.retailmaine.org

June 19, 2013

David Marshall, Chair
Members of the Transportation, Sustainability and Energy Committee
City of Portland
City Hall
Portland, ME

RE: Testimony is OPPOSITION to the proposed Ban on the Sale of Polystyrene Foam Food Packaging in Portland

Dear Chairman Marshall and members of the Transportation, Sustainability and Energy Committee:

My name is Curtis Picard and I am the Executive Director of the Retail Association of Maine. I am a resident of Topsham. We were incorporated in 1933. We have over 400 members statewide representing retailers of all sizes and our members employ nearly 90,000 Mainers.

I am here to offer testimony in opposition to the proposed ban of Polystyrene Foam Food Packaging. We were part of the Green Packaging Working Group and endorse the minority report that has been presented to the Committee.

One of our biggest concerns is that the task force did not properly account for the economic impact to businesses and consumers as part of the proposed ban. A small telephone survey of 24 businesses was conducted by a city staffer who spoke with 24 managers regarding the containers they use for take out and "doggie bags". The survey was not comprehensive nor did the surveyor talk to some of the businesses that would be most impacted by the ban. However, it is important to note that 50% of the businesses said there would be an economic impact and only 10% said there would be no impact.

The City did not talk to some of the larger retail establishments that both sell products that contain polystyrene foam as well as package their own products on-site. The products that are sold include both goods that are pre-packaged in out of state facilities as well as goods that are packaged within Portland city limits. The chair of the Green Packaging Task Force stated that this large retailer doesn't do any on-site packaging and hence the ban would not have an impact. When we challenged him on that assertion, he stated that it was his personal observation of the retailer and never asked the retailer whether or not they do any on-site packaging. In fact, this retailer does do on-site packaging and this proposed ban would pose an economic impact on their operation not only on the cost of replacing the packaging, but also having to change their operational systems. Simply, the task force did not adequately evaluate the economic impact of this proposal.

Additionally, the primary motivation for the work group and subsequent proposal was littering. We do not see how this ban will address a citywide littering issue. We think the deployment of larger trash receptacles as well as the replacement of the open top recycling bins that are currently used will provide a much great impact on litter than a ban on polystyrene foam.

The minority report clearly outlines many of our other concerns regarding the proposed ban. We would urge the committee to vote in opposition to the proposal.

I am happy to answer any questions you may have and I thank you for the opportunity to share our concerns.

Sincerely,

Curtis F. Picard

Curtis Picard, CAE
Executive Director

American Chemistry Council | Plastics Food Service Packaging Group

September 16, 2013

Mayor Michael F. Brennan
Portland City Council Members
389 Congress Street
Portland, Maine 04101

RE: **Green Packaging Work Group --Proposed Ordinance to Prohibit the Sale of Polystyrene Foam Food packaging – Endorse/Forward to City Council – ACC Comments – OPPOSE**

Dear Mayor Brennan and Council Members:

We are writing to express our concerns about a proposed bill (**Amendment to Portland City Code Chapter 12 Garbage, Waste and Junk – Article V. Polystyrene**) to ban and prohibit the use of expanded polystyrene (foam) food service products in the City of Portland. The members of our group, the Plastics Foodservice Packaging Group (PFPG) of the American Chemistry Council (ACC), represent the leading suppliers and manufacturers of plastics foodservice packaging products, including polystyrene food and beverage containers.

ACC supports litter education, prevention, waste minimization, and recycling as proven solutions to addressing litter, and supports programs that address these issues. The food safety benefits of polystyrene food service are undisputed. In the U.S. the Food & Drug Administration (FDA) has approved the use of polystyrene for foodservice – and health agencies at the state and federal level have confirmed the 50 year history of safe use of polystyrene foodservice.

What we support: We support the concept litter education and prevention, waste minimization and recycling, and supporting programs that address all litter and waste to help keep the City of Portland clean. Our industry has been a big supporter of these programs nationwide, and polystyrene foam foodservice is both an economical and overall sustainable choice for food establishments and consumers.

Why we oppose this ban:
<u>Input from the Minority Report in Opposition to Polystyrene (Foam Foodservice) Product Ban proposed by the Green Packaging Working Group Task Force –</u> The members of the Green Packaging Working Group Task Force who represent local Maine businesses and have been working in good faith with the City on the process of examining ways to reduce litter, increase recycling, and minimize waste – are strongly opposed to the proposed ordinance to ban polystyrene foam products developed by the Green Packaging Working Group Task Force. The minority report outlines a series of legitimate concerns – ranging from financial impacts of the proposed ban, misperceptions that the ban will reduce litter, misinformation and lack of understanding of the actual environmental/energy benefits of polystyrene foam foodservice versus its substitute products, misinformation about the public health and sanitation

benefits of polystyrene foam foodservice from agencies and key bodies, and concerns about the process used to weigh evidence regarding a proposed ban.

Selected Product Bans do not Reduce Litter - A ban on a specific product like polystyrene foam foodservice, which makes up a very small amount of the litter stream (according to a 2012 study, commonly used polystyrene foam foodservice products make up 1.5 percent of litter) will not reduce litter – since the substitute foodservice products would be littered as well. And trading one type of littered item for another simply changes the makeup of litter without reducing it. For example, when San Francisco placed restrictions on the use of certain plastic foodservice products, the city found that alternatives became more littered. Substituting one type of litter for another is not a smart strategy. What work are neighborhoods taking responsibility for trash and litter – like programs we've supported through KAB (Keep America Beautiful) affiliates and city competitions for neighborhood programs to keep litter and trash in its proper place.

Recovery and Recycling of PS: Polystyrene foodservice products are recovered and recycled in various ways in many communities, depending on the solid waste program.

- Portland residents should be able to have the opportunity to work with recyclers and groups like Eco Maine to explore recycling of polystyrene foam and other foodservice packaging before a ban on such a product is considered. There are markets for recycled polystyrene foam products – the recycled material can be made into a variety of new products, including picture frames, crown molding and nursery plant containers.

- PS Foodservice recycling more prevalent than paper foodservice recycling or composting, should Portland want to further explore curbside recycling - http://plasticfoodservicefacts.com/Pages/Access-to-Recycling-Expanded-Polystyrene-Food-Service-Items.pdf

Many Americans believe that paper cups and plates are widely recycled and that similar plastic foam products cannot be recycled. A new study finds both beliefs to be mistaken. The study looked at access to recycling of foodservice products to compare recycling opportunities for paper versus polystyrene foam. The study of the fifty largest US and California cities found that far more communities provide access to recycling of polystyrene foam foodservice products than paper foodservice products. For example, half the population of California's fifty largest cities has direct or indirect access to foam foodservice recycling. In contrast, only two percent of this population has direct or indirect access to paper foodservice recycling, meaning paper foodservice recycling in California is almost nonexistent. Of the population of the fifty largest US cities, sixteen percent has direct or indirect access to foam foodservice, while six percent can recycle paper foodservice. In addition, the study shows that access to composting of paper foodservice products also is low: only seven percent of the population of the fifty largest US cities. The study demonstrates that commonly held beliefs about the recyclability of foodservice products are not based on actual recycling activities.

ACCESS TO RECYCLING/COMPOSTING OF FOAM AND PAPER FOODSERVICE PRODUCTS

CA 50 Largest Cities	Percent of Population
Foam Collected for Recycling	50%
Paper Collected for Recycling	2%
Paper Collected for Composting	13%
US 50 Largest Cities	Percent of Population
Foam Collected for Recycling	16%

Paper Collected for Recycling 6%
Paper Collected for Composting 7%
Note: these population figures are solely for the fifty largest US cities and CA cities and cannot be extrapolated for the entire US or CA population.

Landfills, Biodegradation – All plastic foodservice products contribute approximately 1% of landfills' content by weight (paper contributes more than 30%). While popular culture has led many to believe that burying our nation's garbage in landfills is sort of like creating big compost heaps, modern landfills are specifically designed to minimize decomposition. The small amount of degradation that does occur in a landfill often generates methane, a much more potent greenhouse gas than CO_2.

Why PS Foam is used and Cost Implications of a Ban: Portland city residents and foodservice establishments use polystyrene foam foodservice products for a variety of reasons, including health, safety, packaging convenience, low cost, and demonstrated performance. Polystyrene foam foodservice products generally are more economical – wholesale costs can be two, three, and four; up to five times less than their paper-based or reusable counterparts (reusables require extra equipment, labor, water, electricity, detergent ...). There are costs to the City as well by going to more expensive alternatives, as well as implementing and enforcing a ban. An economic fiscal impact study is needed to determine the overall cost impact to businesses and the city of such a proposed ban.

Low Environmental Footprint compared to alternative foodservice products: Polystyrene foodservice packaging uses less energy and resources to manufacture than comparable paper-based products, leaving a lighter footprint. For example, a polystyrene foam cup requires about 50% less energy to produce – and creates significantly fewer greenhouse gas emissions – than a similar coated paper-based cup with its corrugated sleeve. A full life cycle assessment (LCA) peer reviewed study comparing polystyrene foam foodservice impacts with paper-based and corn-based alternatives can be found at: http://plasticfoodservicefacts.com/Life-Cycle-Inventory-Foodservice-Products

Polystyrene Foodservice Safety: For more than 50 years, the U.S. Food and Drug Administration have approved the use of polystyrene for foodservice products. Polystyrene foodservice products offer a sanitary way to serve fresh food and to help prevent the spread of disease at school, restaurants, hospitals ... even at home.

While some have raised questions about occupational exposures to styrene, the U.S. National Institutes of Environmental Health Sciences made clear that these don't apply to polystyrene, noting in June 2011: "Styrene should not be confused with polystyrene (Styrofoam). Although styrene, a liquid, is used to make polystyrene, which is a solid plastic, we do not believe that people are at risk from using polystyrene products."

The toxicologist who heads the National Toxicology Program was widely quoted in June 2011 news reports: "Let me put your mind at ease right away about Styrofoam" and noted that levels of styrene from polystyrene containers "are hundreds if not thousands of times lower than have occurred in the occupational setting ... In finished products, certainly styrene is not an issue." John Bucher, associate director of the National Toxicology Program, was quoted in Associated Press reports in August 2011: "The risks, in my estimation, from polystyrene are not very great," he said. "It's not worth being concerned about."

Sanitation – Studies at foodservice operations demonstrate that polystyrene foodservice packaging can be more sanitary than reusable china or glassware that are dependent on proper washing. A 2012 sanitation study in Sacramento, CA, found that reusables had higher microbial levels than single use items. A 2007 study in Wisconsin found that unprotected tables and trays had 7 to 23 times higher bacterial counts than those with single-use placemats and tray covers. And a 2002 study in Las Vegas found that 18 percent of reusable items tested had higher than acceptable bacterial counts. Reusable cups, dishes, plates, utensils, place mats, table coverings and other products require copious amounts of water and energy to clean, time and time again. Polystyrene foodservice packaging conserves these important resources and allows our schools and hospitals to save the water, energy, detergents – and money and labor – required to sanitize reusables. And when dishwashers are down or malfunctioning, foodservice operators actually are required to use sanitary, single-use foodservice under code requirements in order to protect health and safety.

Recommendation:
To summarize, instead of banning a valuable product such as polystyrene foam foodservice ware, we urge the City of Portland to move in favor of common sense approaches such as recycling and anti-litter partnerships that already are proving successful. We also want to assure the public and Portland public health officials that these products are safe, and have been tested by US FDA and health agencies around the world.

We hope to be able to continue our work with Portland on constructive programs described above that can help tackle litter and waste disposal issues. Thank you for your consideration in this matter.

Sincerely,

Steve Rosario, Government Relations
American Chemistry Council
100 State Street
Albany, NY 12207
(tel: 518-432-7835; e-mail: steve_rosario@americanchemistry.com

and

Mike Levy, Senior Director
Plastics Foodservice Packaging Group (PFPG)
Life Cycle Issues, Plastics Division, ACC
Tel: 202-249-6614; Fax: 202-379-9741; Cell: 703-887-0723
e-mail: mike_levy@americanchemistry.com
Address: ACC, 700 2nd Street, NE, Washington, D.C. 20002

EPS Industry Alliance

1298 Cronson Boulevard
Suite 201
Crofton, MD 21114
phone 800.607.3772
fax 410.451.8343
info@epsindustry.org
www.epsindustry.org

Innovative solutions for a sustainable future

September 10, 2013

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

Dear Council Members:

We are writing in regards to a recent amendment proposal to the Portland City Code, Chapter 12, Garbage, Wastes and Junk, Article V. Polystyrene. This amendment calls for a ban on expanded polystyrene (EPS) food service ware. The distinction between single-use and other EPS applications requires an in-depth understanding of its various uses and unique performance benefits. We are particularly concerned about the unclear language in section '2-212 Prohibitions' in regards to fresh (raw) fish and lobster packaging. We are asking the amendment be clarified to exempt EPS foam packaging coolers used for fresh seafood.

International regulatory measures require the food industry and food safety professionals to comply with strict temperature requirements. Fish, especially shellfish such as lobster, are packaged in EPS coolers to reduce biological degradation as required by the FDA. At every stage of the cold chain, there are continuous temperature stability risks to microbiologically sensitive foods like fresh fish and lobster. Any variation in temperature can destroy the safety and integrity of the product and lead to critical food safety and public health issues.

Expanded polystyrene foam is a highly valued material in the cold chain distribution of fresh seafood due to its exceptional insulating and hygienic properties. EPS coolers allow the seafood industry to bring their delicate products to market with optimum safety, freshness and quality. It is extremely important to note that product damage can result in millions of dollars in lost merchandise and can result in a far greater impact on the environment than any given packaging material.

Independent global studies and life cycle analysis confirm EPS foam packaging exhibits higher insulating properties than alternative substitutes, including commercial fiberboard products, and is comparable or favorable from an environmental standpoint. Its light weight reduces shipping costs while its insulating properties protect perishable seafood during transit, ensuring careful handling and fresh delivery for both open ocean and aquaculture seafood.

It is a common misperception that all paper-based packaging containers are recyclable. Laminated or foil faced corrugated packaging is not recyclable or compostable. In 2012 over 96 million tons of expanded polystyrene packaging was recycled in the U.S. The majority of EPS transport packaging contains recycled content material or is manufactured with recycled content raw material.

Over the past twenty years, the EPS industry has worked with numerous state legislators and local communities to create realistic and effective solutions to their waste management problems. Unfortunately, in most cases, the motivation to ban polystyrene foam packaging is based on a misguided and unwarranted reputation as an environmental bad actor. Upon closer review, we believe the City of Portland may agree that it is no more environmentally threatening than a majority - if not all - alternative materials, provides unparallel performance in critical applications and merits closer examination.

Sincerely,

EPS INDUSTRY ALLIANCE

Betsy Steiner
Executive Director

IFA INTERNATIONAL FRANCHISE ASSOCIATION **Franchising**

September 12, 2013

Dear Members of the Portland City Council,

On behalf of the International Franchise Association (IFA), and the almost 4,000 franchise establishments, which generate more than 74,000 jobs in Maine, I am writing to urge you not to take the draconian step of banning the use of polystyrene in Portland.

The IFA prides itself in "building local businesses, one opportunity at a time." However, the polystyrene ban being contemplated by the Council puts at risk many of the Portland-based businesses, which are our members. While, franchising covers many different business sectors, restaurants and hotels would be particularly harmed by this ban.

Respectfully, the IFA does not believe that supporters of the polystyrene ban have taken into full ccount the damaging economic impact such an action would have on businesses operating in Portland as well as the effects on consumers. We would recommend the Council consider recycling and collection programs, which have been very successful in other communities, rather than an outright ban.

At the very least, the IFA asks that more time and study be taken before an action as severe as a total ban is implemented.

Sincerely,

Dean A. Heyl

Dean Heyl
Senior Director, State Government Relations, Public Policy & Tax Counsel
International Franchise Association
1501 K Street, NW, Suite 350
Washington, DC 20005
Phone: 202.662.0792
dheyl@franchise.org

Maine Grocers Association

Serving the retail grocers of Maine
P.O. Box 5234, 77 Sewall Street, Suite 3000 • Augusta, Maine 04332
Telephone (207) 622-4461 • Facsimile (207) 622-9732
mainegrocers@mainegrocers.org • www.mainegrocers.org

September 12, 2013

Mayor Michael F. Brennan
Portland City Council Members
City of Portland
55 Portland Street
Portland, Maine 04101

Dear Mayor Brennan and Council Members,

I am providing testimony in opposition to the polystyrene product ban being proposed by the Green Packaging Working Group Task Force.

I am the Executive Director, Maine Grocers Association and serve on the Green Packaging Work Group Task Force. The Maine Grocers Association is a 78-year old business trade association representing main street businesses; independently owned and operated grocery stores, supermarkets, wholesalers and distributors, grocery product manufacturers and service companies.

I have been discouraged from the outset as there seemed to be confusion as to our objective, and I remain troubled by the imbalanced composition of the Task Force. Frankly, the majority of the members seemed predisposed to prepare an ordinance to <u>ban</u> the sale and use of polystyrene products in the City of Portland. <u>Wasn't it your intention to bring together a group of interested parties to evaluate the best methods of decreasing the use of these products?</u>

The proposed ordinance would be costly to Portland grocery stores. Grocery stores must adhere to stringent food safety regulations thereby use a variety of U.S. Food and Drug Administration approved polystyrene foodservice products to serve fresh food that help prevent spoilage and the spread of disease. Portland grocery stores use these products to package meats, deli and vegetable products, line produce displays to keep fruits and vegetables from bruising, and they provide a variety of items at their take-out food stations. <u>Are there affordable alternatives?</u> Polystyrene foodservice products are more economical – wholesale costs are estimated to be <u>25% less than</u> their paper-based or reusable counterparts and therefore help our members keep costs down to their customers. <u>Would alternative packaging products require grocery stores to purchase new packaging equipment?</u> Grocery stores offer for sale a full line of polystyrene picnic ware. It is perfectly reasonable to assume that consumers would purchase these items at stores outside of Portland. <u>What would sales reductions cost Portland grocery stores?</u>

Portland grocery stores would not likely absorb these additional expenses thereby they would pass them along to their customers. It is regrettable that these considerations were not given adequate attention through the Task Force process. More than ever, in these tight economic times, keeping costs low should be on everyone's minds.

If this proposed ordinance were to pass, Portland grocers and their customers would switch to other disposable products. What products would take their place? Would banning polystyrene made products end roadside litter? Or would you see the alternative products being littered? Would the amount of litter change?

What evidence would you use to justify an outright product ban? How would you address the legitimate concerns of the businesses and how would you quantify the increased costs associated with seeking alternative products? After all, a product ban is really akin to a tax.

Enacting a product ban is not an end in itself. What would the likely effects of the ban cause? What would the ban do with respect to the undesired behavior?

I recently read an article about our society's desire to ban things as a means to change or influence a change in behavior. The author wrote, "The call for something to be "banned" should be the start of a mature and constructive political debate, and not the end of one."

Nowhere in the record is there evidence to support an outright ban. Nor is enacting a product ban an end in itself. There remain too many unanswered questions and the answers to these questions could very well help shape the desired outcome.

So I urge you to vote against passage of this proposed ordinance and repurpose the Task Force to engage in a thoughtful, balanced discussion.

Thank you for your consideration of my testimony.

Sincerely,

Shelley

Shelley F. Doak, Executive Director

Cumberland
FARMS

September 12, 2013

VIA ELECTRONIC MAIL TO:

The Mayor and City Council of Portland
c/o Mr. Troy Moon, thm@portlandmaine.gov

Re: Proposed Ban on Polystyrene Food Service Ware – In Opposition

Dear Mr. Mayor and Members of the City Council,

I write on behalf of Cumberland Farms Inc. to express serious concern with the proposed ban on polystyrene foam in Portland. As discussed in more detail below, we believe that such an outright ban is an extreme measure that would create negative environmental, economic, and customer service impacts. These undesirable outcomes are avoidable, which is why we urge you to reject the ban and to instead work in a collaborative manner with local stakeholders in addressing the proposal's underlying goals.

Cumberland Farms was founded by Vasilios and Aphrodite Haseotes in 1939, with little more than a cow and a dream. Today, we have convenience store locations across New England, including four stores in Portland with several dozen local employees. Although we have grown since our humble beginnings, we are still family owned, still family operated, and still dedicated to making every day easier for members of the communities we serve.

Part of that commitment means giving our customers the choices they want for the products they buy. For example, we offer two container options for our hot beverages: reusable mugs or single-use cups. To reduce waste, we encourage our customers to enjoy their drinks in reusable mugs when they can. However, to ensure convenience, we also provide single-use cups as a quick and free alternative in an on-the-go world. The single-use cups are made of polystyrene foam.

We sell more than 40 million cups of hot coffee annually – enough to fill eight Olympic swimming pools. In our Portland locations alone, more than 1,000 hot beverages are sold each day. With that volume, it should come as no surprise that Cumberland Farms has put considerable thought and research into how our customers enjoy each beverage. The decision to offer polystyrene foam was reached after careful examination of the facts, which often run counter to popular misconceptions.

CUMBERLAND FARMS INC.

801 Washington Street, Portland, ME 04103
512 Woodford Street, Portland, ME 04103
1136 Forest Avenue, Portland, ME 04103
49 Pine Street, Portland, ME 04102

www.cumberlandfarms.com

Compared with the alternative of disposable paper cups, foam provides a superior customer experience with a low environmental impact. Paper cups require more raw materials to manufacture, so they deplete more natural resources. They are heavier, so it takes more energy to deliver them to stores. They are more expensive, so they drive up costs for businesses and customers alike. They are worse at insulating, so they leave customers with hot hands and a lukewarm drink – unless a double cup or cardboard sleeve is used, further multiplying the amount of wasted material. In our view, all of these factors make foam the clear winner versus paper.

Contrary to common belief, foam may also beat paper when it comes to recycling. Too often, paper cups are not recycled because of the waxy plastic coating that helps them hold liquid. In contrast, it is entirely possible to recycle polystyrene foam, as other cities are doing across the country. We believe this is the correct approach, and we remain ready and willing to work with our supplier and with the city in that regard. Unfortunately, proponents of the ordinance have thus far not afforded appropriate consideration to anything less than the draconian solution of an outright ban.

Furthermore, when crafting that ban, several important provisions were written in a materially vague and ambiguous fashion. For example, it is unclear when and how often fines may be imposed: Does a "violation" take place on a daily basis? Weekly? Per sale? It is equally unclear when a recycling program would be considered sufficiently "city-wide," how such a program would be judged to be appropriately "effective," or what additional standards the city might impose before the program is acceptable to be "approved." These and other ambiguities create serious difficulties both for those ordered to comply with the ordinance, and for those charged with its enforcement.

Fortunately, a collaborative and inclusive solution to increase recycling, reduce litter, and maintain a business-friendly climate in Portland is well within reach. This proposed ban has brought together a diverse group of stakeholders intent on working together to find practical solutions. Yet actually adopting this ordinance would hinder any such effort without truly addressing the underlying issues – and would create new problems for local businesses and their customers. In light of the above, we remain hopeful that you will reject the ban on polystyrene and instead consider the other, better options that are available.

Respectfully submitted,

CUMBERLAND FARMS INC.

By: ______________________

Matthew T. Durand
Government Affairs Associate
The Cumberland Gulf Group of Companies
100 Crossing Boulevard
Framingham, MA 01702
mdurand@cumberlandgulf.com
1 (508).270-7267

Order 262-13/14
Tab 23 6-2-14

MICHAEL F. BRENNAN. (MAYOR)
KEVIN J. DONOGHUE (1)
DAVID A. MARSHALL (2)
EDWARD J. SUSLOVIC (3)
CHERYL A. LEEMAN (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

JOHN R. COYNE (5)
JILL C. DUSON (A/L)
JON HINCK (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

AMENDMENT TO PORTLAND CITY CODE
CHAPTER 14. LAND USE
ARTICLE III. Zoning,
DIVISION 17.5. Eastern Waterfront Port Zone,
Sections 14-301 and 14-301.1
Re: Food Trucks

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

1. That Chapter 14, Article III, Division 17.5, Sections 14-301 and 14-301.1 of the Portland City Code are hereby amended to read as follows:

Sec.14-301. Permitted uses.

Subject to a determination that the proposed use meets the standards of section 14-300.1. (no adverse impact on marine uses), the following uses are permitted in the Eastern Waterfront Port Zone:

...

(c) *Commercial:*

1. Professional, business, government, and general office located in upper floors of structures existing as of September 18, 2006.

2. Temporary events, except festivals as otherwise governed under section 14-301I3 below.

   Buildings, piers and lands within the EWPZ may be used for temporary public and private events including but not limited to exhibitions, conferences, meetings, and trade shows under the following conditions:

   a. Temporary events occupying more than 10,000 square feet of building or outdoor space shall not exceed a combined total of sixty (60) days between May 1st to October 31st;

b. No temporary event may continue for more than 14 days of continuous operation;

c. Any temporary event that anticipates more than 5,000 people in attendance on any single day must provide and be subject to a parking management plan. The parking management plan must be submitted for the review and approval of the public works authority at least 60 days prior to the first day of the event.

3. Festivals subject to City license.

4. Street vendors licensed pursuant to Chapter 19 as a result of a competitive bid process conducted pursuant to Chapter 2 of the City Code.

...

Sec. 14-301.1. Conditional uses.

(a) The following uses shall be permitted as conditional uses in the Eastern Waterfront Port Zone, provided that, notwithstanding section 14-471(c), section 14-474(a), or any other provision of this code, the planning board shall be substituted for the board of appeals as the reviewing authority, and provided further that in addition to the provision of section 14-474(c)(2) such uses will not impede or preclude existing or potential water-dependent development within the zone, will allow for adequate right-of-way access to the water, are compatible with marine uses, and meet all additional standards set forth below:

...

b. *Commercial:*

a. Structured parking available to the general public;

b. Professional, business, government and general offices uses in upper floors of structures constructed after September 18, 2006;

c. Passenger support services supporting a marine passenger use listed under 14-301(a)(marine passenger). The total ground floor area occupied by any combination of the following uses (regardless of ownership) shall not exceed 35% of the gross floor are of the principle associated marine passenger use and no more than 35,000 square feet cumulative within the EWPZ:

i. Retail;

ii. Restaurants/food service other than street vendors;

iii. Retail service;

iv. Passenger information services.

...

City of Portland, Maine
City Council Agenda Request Form

TO: Sonia Bean, Senior Administrative Assistant
Danielle West-Chuhta, Corporation Counsel

FROM: Jennifer L. Thompson, Associate Corporation Counsel

DATE: **May 19, 2014**

1) Council meeting at which action is requested:

1st reading: June 2, 2014
Final action: June 16, 2014

2) Can action be taken at a later date: x YES ______ NO
If not, why not:.

3) This item is sponsored by: the Planning Board

(If the item is sponsored by a Council Committee include the date the committee met and the outcome of the vote.)

If a memorandum addresses the following issues you may attach and reference the memorandum but please highlight it so staff can easily answer I-V.

I. SUMMARY OF ISSUE

The proposed amendment would list "street vendors" (which include food trucks and pushcarts) as "permitted uses" in the Eastern Waterfront Port Zone. Under this change, street vendors would be licensed by the City Clerk's office, participate in the City's RFP process, and be awarded the ability to operate in Compass Park.

This change will make the zoning in the Eastern Waterfront Port Zone consistent with the zoning in the City's ROS zones.

II. REASON FOR SUBMISSION (What issue/problem will this address?)

Food truck operators have requested expanded areas of operation in the City of Portland, and revisions to the Food Truck Rules have been made to this end. An ordinance change is required to allow food trucks and pushcarts to operate at Compass Park on the Maine State Pier. The change has been reviewed by the Public Safety, Health and Human Services (PSHHS) Committee and the Transportation, Sustainability & Energy (TS&E) Committee and public hearings have been held. Those Committees supported the change and requested that the Planning Board review the proposed amendment. The Planning Board has done that review, has considered whether the food truck and pushcart operations are consistent with marine and water-dependent uses as well as with the comprehensive plan and on May 13, 2014 voted to recommend the change.

III. INTENDED RESULT (How does it resolve the issue/problem?)

This ordinance amendment permits food truck and pushcarts to operate in the Eastern Waterfront Port Zone, after selection in an RFP and required licenses are in place. Again, this change is intended to bring the zoning in Compass Park in line with zoning in other City parks in order to allow food trucks and push carts to operate there. The ability of food trucks and push carts to operate in City parks was a recommendation made by the food truck task force back in 2012.

IV. FINANCIAL IMPACT

Food trucks and pushcarts pay business licensing fees to the City, bringing in more of those fees.

V. STAFF ANALYSIS & RECOMMENDATION

The Corporation Counsel's office has reviewed the ordinance amendments and recommends that they be accepted.

Attachments:

14-301 Adding Food Vendors to Waterfront 6.2.14
Food Truck Amendment_PB Report 5-8-14
Vending Areas_food trucks1_1 (Image of Compass Park with proposed Food Truck Parking)

PLANNING BOARD REPORT
PORTLAND, MAINE

Text Amendment to the Eastern Waterfront Port Zone
to add Street Vendors as Permitted Uses
Zoning Text Amendment
City of Portland, Applicant

Submitted to: Portland Planning Board Public Hearing Date: May 13, 2014	Prepared by: Jennifer Thompson, Associate Corporation Counsel Date: May 9, 2014

I. INTRODUCTION

Recently, a number of proposals and requests to further expand the ability of food trucks to operate in the City have been submitted by food truck operators in and around Portland. In response to those proposals and requests, both the Public Safety, Health and Human Services (PSHHS) Committee and the Transportation, Sustainability & Energy (TS&E) Committee have considered a number of possible solutions and have held 3 public hearings on the proposals.

Included in the proposals considered by the PSHHS and TS&E Committees was a request that Food Trucks be permitted in more of the City's Parks - something that the Food Truck Task Force also recommended when it did its work back in 2012. More specifically, food trucks have a desire to operate in Compass Park.

Presently, Compass Park (which is in the City's Eastern Waterfront Port Zone) is zoned in such a way that food trucks are not permitted. In other parks in the City (specifically, those zoned R-OS), food trucks are a "permitted" use so long as they participate in the City's RFP process and are awarded a contract to operate in a particular park.

The PSHHS and TS&E Committees agreed that allowing food trucks in Compass Park as a permitted use may make sense and is consistent with the recommendations of the Food Truck Task Force. However, they wanted to vet that proposal with this Board to see whether such a change is prudent or not.

As you will see, the proposed amendment would list "street vendors" (which include food trucks and pushcarts) as "permitted uses" in the Eastern Waterfront Port Zone. Under this change, street vendors would still need to be licensed by the City Clerk's office, participate in the City's RFP process, and be awarded the ability to operate in Compass Park.

II. CURRENT RELEVANT ZONING

Under Section 14-300, the purpose of the Eastern Waterfront Port Zone is as follows:

Sec. 14-300. Purpose.

The Eastern Waterfront Port Zone is created to nurture deepwater dependent activity within the context of the established waterfront. The transport of goods and passengers by water is an important component of both the local and regional economies and this transport and other forms of marine industry are dependent upon land and piers with direct access to Portland Harbor. Given the existing pier infrastructure, proximity to deep water, and urban context, Portland's Eastern Waterfront is uniquely situated to support a wide range of water-dependent industry and commerce through a variety of marine activities.

The support and expansion of Portland's marine industry requires piers, uplands, and circulation consistent with the transportation purpose and use of marine facilities. The growth of Portland's marine passenger industry also requires supporting services and activities to provide a safe, convenient, and enjoyable travel experience for users of marine passenger facilities. <u>Non-marine uses that complement the marine passenger industry, are compatible with existing and future water-dependent uses, and provide opportunities for residents and visitors alike to enjoy the Eastern Waterfront throughout the year, are encouraged</u>.

The primary use of the deep-water resources must be for the berthing and support of large vessels. <u>Non-marine uses that complement and support the deepwater infrastructure and do not conflict or compete for limited space with existing or anticipated deepwater-dependent uses are encouraged</u>. Existing and future pier infrastructure and upland support areas should be designed and maintained to support a variety of marine uses and be responsive to future technologies and trends in the marine industry.

Given the need to nurture and support deepwater-dependent uses and the need for non-deepwater dependent uses to complement the marine passenger industry and to support the maintenance and repair of pier infrastructure, the Eastern Waterfront Port Zone recognizes the following hierarchy of uses:

(a) The first priority of this zone is to protect and nurture existing and potential deepwater dependent uses (those uses requiring a minimum of 15 feet of water depth);

(b) The second priority is to allow shallow water-dependent and other permitted marine uses, so long as they do not interfere with deepwater dependent uses, either directly by displacement or indirectly by placing incompatible demands on the zone's infrastructure; and

(c) Other uses specified herein are allowed only if they do not interfere with and are not incompatible with higher priority uses.

(emphasis added)

Currently, the Eastern Waterfront Port Zone provides as follows with respect to approved uses:

Sec. 14-300.1. No adverse impact on marine uses.

No use shall be permitted, approved or established in this zone if it will have an impermissible adverse impact on future marine development opportunities. A proposed non-water dependent component of a development will have an impermissible adverse impact if it will result in any one (1) or more of the following:

(a) The proposed use will displace an existing water-dependent use;

(b) The proposed use will reduce existing commercial vessel berthing space;

(c) The proposed use, structure or activities, including but not limited to access, circulation, parking, dumpsters, exterior storage or loading facilities, and other structures, will unreasonably interfere with the activities and operation of existing water-dependent uses or significantly impede access to vessel berthing or other access to the water by water-dependent uses; or

(d) The siting of a proposed use will substantially reduce or inhibit existing public access to marine or tidal waters.

Sec.14-301. Permitted uses

Subject to a determination that the proposed use meets the standards of section 14-300.1. (no adverse impact on marine uses), the following uses are permitted in the Eastern Waterfront Port Zone:

(a) Marine passenger:

1. Intermodal marine passenger facilities;

2. Cruise ship home port and port of call berthing and support;

3. International and domestic ferries.

b) Marine commercial:

1. Transient and long-term commercial berthing;

2. Marine-related warehousing;

3. Marine related construction, manufacturing, fabrication, salvage and repair;

4. Storage and repair of fishing equipment;

5. Ship and other marine vessel construction, building, servicing, and repair;

6. Boat and marine equipment storage;

7. Marine fuel storage and dispensing provided that on-site fuel storage structures shall be used solely for the purpose of fueling vessels and shall be limited, cumulatively, to 20,000 gallons of storage capacity within the zone;

8. Public, non-profit, or commercial marine transportation and excursion services, including captained charter services, sport fishing and water taxis;

9. Ship and off-shore support services, including but not limited to tug boats, pilot boats, and chandleries;

10. Facilities for marine pollution control, oil spill cleanup, and servicing of marine sanitation devices.

(c) Commercial:

1. Professional, business, government, and general office located in upper floors of structures existing as of September 18, 2006.

Other City park areas, namely those zoned R-OS, expressly include "street vendors" (which include both food trucks and push carts) as permitted uses. See Chapter 14, Section 14-154(p). The language permitting street vendors in R-OS reads:

> (p) Street vendors licensed pursuant to Chapter 19 as a result of a competitive bid process conducted pursuant to Chapter 2 of the City Code

III. PROPOSAL AND STAFF ANALYSIS

City staff in the Planning Department and Parks & Recreation have collaborated and identified an area of Compass Park that would accommodate food trucks. That area is identified on the map attached hereto.

In order to facilitate food trucks' ability to operate in Compass Park pursuant to the existing RFP process and City business licensing process, without requiring an additional level of approval, the attached amendment to the 14-301(c) is being proposed. This amendment would make the zoning in the Eastern Waterfront Port Zone as it relates to food trucks and push carts consistent with other City Park included in the City's RFP process. The recommendation that food trucks be permitted to operate in Compass Park in the same manner as in other City parks is consistent with the original recommendation by the Food Truck Task Force.

In looking at the purposes of the Eastern Waterfront Port Zone, food trucks obviously are not a marine use. However, to the extent that food trucks operating pursuant to a successful proposal under the RFP system will be serving passengers or crew of deep water vessels as well as the public, an argument can be made that they will "complement or support deep water infrastructure" and "provide opportunities for residents and visitors alike to enjoy the Eastern Waterfront throughout the year."

(a) Proposed Zoning Amendments

Section 14-301(c), which lists permitted commercial uses in the zone is proposed to be amended as follows:

(c) *Commercial:*

1. Professional, business, government, and general office located in upper floors of structures existing as of September 18, 2006.

<u>2. Street vendors licensed pursuant to Chapter 19 as a result of a competitive bid process conducted pursuant to Chapter 2 of the City Code.</u>

Section 14-301.1(b), which lists conditional, commercial uses is proposed to be amended as follows in order to clarify that street vendors operating lawfully are not conditional

uses governed by the constraints associated with subsection (c):

b. *Commercial:*

a. Structured parking available to the general public;

b. Professional, business, government and general offices uses in upper floors of structures constructed after September 18, 2006;

c. Passenger support services supporting a marine passenger use listed under 14- 301(a)(marine passenger). The total ground floor area occupied by any combination of the following uses (regardless of ownership) shall not exceed 35% of the gross floor are of the principle associated marine passenger use and no more than 35,000 square feet cumulative within the EWPZ:

i. Retail;
ii. Restaurants/food service <u>other than street vendors</u>;
iii. Retail service;
iv. Passenger information services.

IV. <u>COMPREHENSIVE PLAN</u>

The permission of food trucks, as small independent entrepreneurs, within certain zones of the city appears consistent with the City of Portland's Comprehensive Plan. The Vision element of the Comprehensive Plan states that the City should:

- Strive for innovation and bold initiatives that increase the livability and quality of life in Portland.
- Support a dynamic downtown that embraces an intertwining of uses, including residential, business, retail, institutional, service, and arts and cultural uses.
- Capitalize on Portland's economic assets and develop a strong economy based upon traditional industries, a strong retail and office center, and emergent opportunities in industry, business, and coastal commerce.

Further, the economic development goals of the Comprehensive Plan emphasize creativity and responsiveness to emerging industries. The goals from the 1994 Industry and Commerce Plan include making Portland attractive to new businesses and creating "thoughtful flexibility for emerging industries" (38).

The portions of the Comprehensive Plan that relate specifically to the Maine State Pier ("Eastern Waterfront Master Plan") provide, in part, as follows:

<u>Open Space and Public Access to the Water</u>

Maine State Pier is home to two public parks, Compass Park and Buoy Park, and two public boat landings serving recreational, commercial, and water taxi vessels. For many visitors and citizens alike, Maine State Pier is their only point of vantage and access to experience the heart of the working harbor. The accessibility, size, and functionality of these public assets shall be protected to ensure the public's visual and physical connection to the harbor and the bay. Any re-use or re-development of Maine State Pier must improve the public's access to the water and reinforce the City of Portland as a city of mariners.

. . .

The policy goals outlined in the Easter Waterfront Master Plan include the following:

Create Economic and Structural Stability for the Pier through Appropriate Mixed Use Development

The extraordinarily high cost of marine infrastructure maintenance requires that the City promote the development of uses on the pier that generate revenues to support the facility. As an historic facility that will be needed for generations to come, the City must work to realize stability and longevity for this critical infrastructure. The City should explore finding an appropriate mix of mutually compatible uses to foster sufficient economic activity on the pier to pay for ongoing maintenance and redevelopment costs.

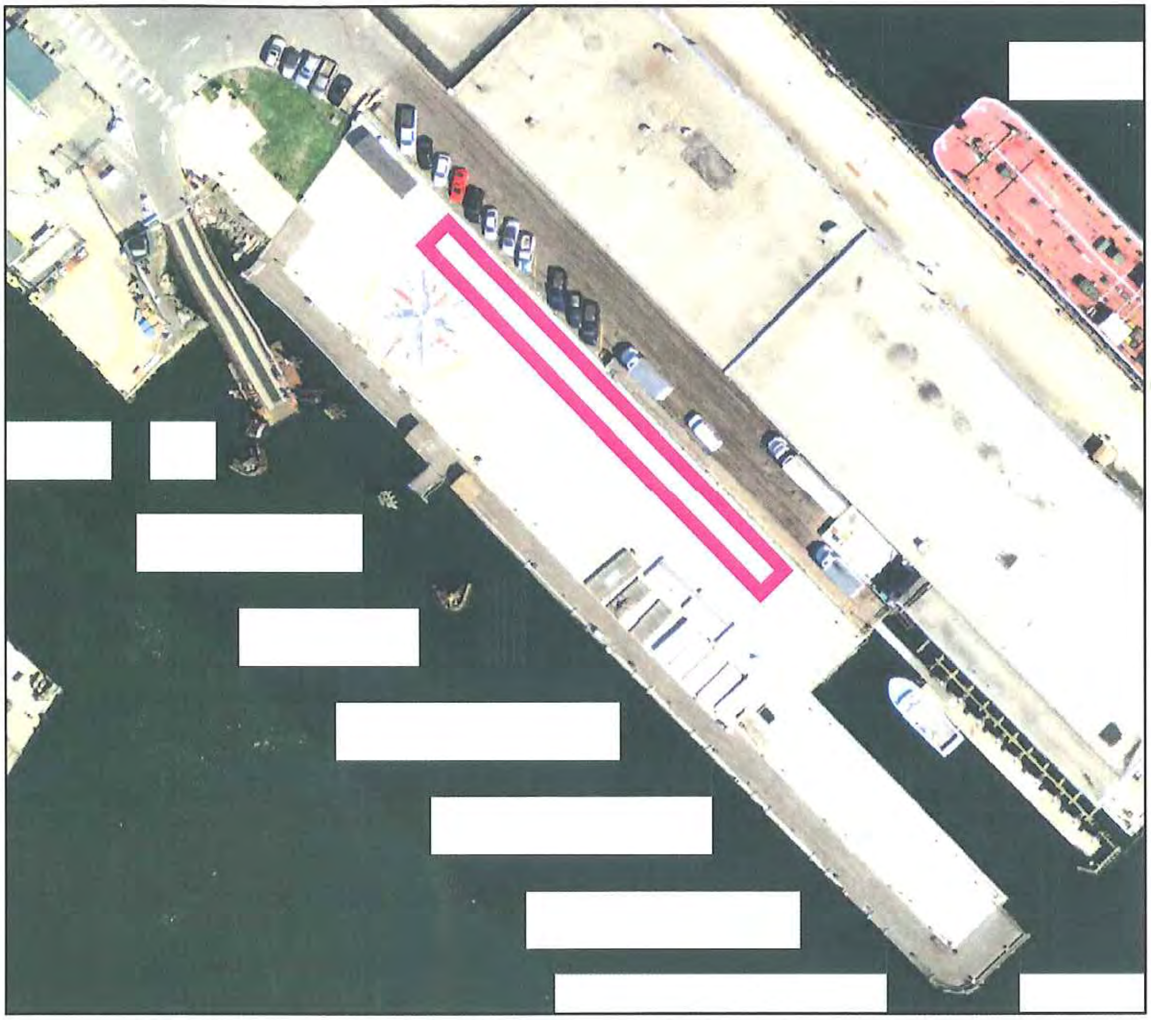
V. PROPOSED MOTION

Based on the material provided in the memorandum provided by Jennifer Thompson, Associate Corporation Counsel, public testimony, a review of applicable policies, and other information the Planning Board finds that the proposed text amendment to the Eastern Waterfront Port Zone to **allow street vendors as a permitted use [is or is not]** consistent with the purposes of that zone and Comprehensive Plan and recommends adoption of the proposed amendments to the City Council.

Attachments:

1. Image of Compass Park with proposed Food Truck Parking
2. Proposed Amendment to Sections 14-301 & 301.1

Mobile Food Service Vendor Areas in Parks - Food Trucks (10' x 24')



Compass Park (1-2 spaces)

0 45 90 180 Feet

Order 263-13/14
Tab 24 6-2-14

MICHAEL F. BRENNAN. (MAYOR)
KEVIN J. DONOGHUE (1)
DAVID A. MARSHALL (2)
EDWARD J. SUSLOVIC (3)
CHERYL A. LEEMAN (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

JOHN R. COYNE (5)
JILL C. DUSON (A/L)
JON HINCK (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

AMENDMENT TO PORTLAND CITY CODE
CHAPTER 14. LAND USE
ARTICLE III. Zoning,
DIVISION 10. B-1 and B-2b Community Business Zone,
Sections 14-182, 14-185, 14-186 and 14-188
Re: Multi-family density standards

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

That Chapter 14, Article III, Division 10, Sections 14-182, 14-185, 14-186 and 14-188 of the Portland City Code are hereby amended to read as follows:

DIVISION 10. B-1 and B-2b Community Business Zone

...

Sec. 14-182. Permitted uses.

The following uses are permitted in the B-2, B-2b and B-2c zones except that any use involving a drive-through is prohibited in these zones unless otherwise provided in section 14-183:

(a) *Residential*:

1. Attached single-family and two-family dwellings;

2. Multi-family dwellings~~ are permitted when the nearest residential zone is R-4, R-5, R-6 or R-7. Multi-family dwellings are permitted in any structure with commercial uses in the first floor regardless of the nearest residential zone~~;

3. Handicapped family units;

4. Combined living/working spaces including, but not limited to, artist residences with studio space;

and

(b) *Business*:

...

Sec. 14-185. Dimensional requirements.

In addition to the provisions of division 25 (space and bulk regulations and exceptions) of this article, ~~residential uses as permitted under sections 14-182(a) and (b) and newly constructed buildings with residential and non-residential uses~~ lots in the B-2, B-2b, and B-2c zones shall meet the following dimensional requirements:

Minimum Lot Size	None
Minimum Street Frontage	25 feet
Front Yard Setback Minimum	None
Rear Yard Setback Minimum	10 feet, except as provided for below: a. 5 feet for accessory structures
Side Yard Setback Minimum	None required, except as provided for below: a. 5 feet for accessory structures
Side Yard on Side Street Setback Minimum	None Required
Front Yard Maximum[1]	No more than 10 feet, except that the Planning Board or Planning Authority may approve a different amount for irregularly shaped lots or lots with frontage less than 40 feet provided this standard is met to the maximum extent practicable.[2]
Height maximum	45 feet except as provided for below: a. 50 feet if first floor is partially or wholly occupied by a commercial use. b. 65 feet in B-2 and B-2c zones on lots >5 acres provided that all setbacks, except for front yard setbacks and side yard on side street setbacks, increase by 1 foot for each foot of height over 45 feet. c. 65 feet within 65 feet of Franklin St.
Maximum Impervious Surface Ratio	a. For residential uses: None b. For all other permitted uses: 80% in B-2 and B-2c c. For all other permitted uses: 90% in B-2b
Minimum Lot Area per Dwelling Unit	a. Off-peninsula locations, as defined in section 14-47: 1,500 square feet, except as provided for in (b) below. b. On-peninsula locations (as per 14-47) and projects with active street frontages, as

[1] Building additions do not have to meet this section.
[2] If lot has less than 40 feet of frontage and is more than 100 feet deep then no maximum setback is required. If existing structures are within 20 feet of the street or meet the front yard maximum, and remainder of lot has less than 40 feet of frontage, then no maximum setback is required. Where setbacks exceed 10 feet, a continuous, attractive, and pedestrian-scaled edge treatment shall be constructed along the street, consisting of street trees spaced at no more than 15 feet on center, approved by City arborist, and a combinations of landscaping no less than 4 feet deep, ornamental brick or stone walls or ornamental fencing.

	defined in section 14-188, below: 435 square feet.

~~(a) *Residential uses:*~~

~~1. *Minimum lot size:* None.~~

~~2. *Minimum street frontage*: None.~~

~~3. *Minimum yard dimensions:*~~

~~a. *Front yard:* None.~~

~~b. *Rear yard:* Ten (10) feet, except where the lot abuts a residential zone, where twenty (20) feet is required.~~

~~i. Accessory structures: Five (5) feet.~~

~~ii. In cases where the height of a new building exceeds forty-five (45) feet adjacent to a residential zone, the portion of the building exceeding forty-five (45) feet shall have a minimum stepback of fifteen (15) feet or an additional minimum setback of fifteen (15) feet.~~

~~c. *Side yard:* Five (5) feet, except where the lot abuts a residential zone, where ten (10)feet is required.~~

~~i. Accessory structures: Five (5) feet.~~

~~ii. In cases where the height of a new building exceeds forty-five (45) feet adjacent to a residential zone, the portion of the building exceeding forty-five (45) feet shall have a minimum stepback of fifteen (15) feet~~

~~or an additional setback of fifteen (15) feet; provided however that this provision does not apply to buildings located within sixty-five (65) feet of Franklin Street.~~

~~d. *Side yard or rear yard on a street:* None.~~

~~e. *Maximum front yard:* In the B-2, B-2b and B-2c zones; as provided for in section 14-185(b)(3)(a), except that the maximum front yard setback need not apply in the case of a development meeting one (1) or more of the following standards:~~

~~i. The lot has less than forty (40) feet of continuous frontage and the lot has a depth of more than one hundred (100) feet from the nearest street; or~~

~~ii. The structures on the lot meet the maximum front yard or are within twenty (20) feet of the street and the remainder of the lot has less than forty (40) feet of continuous street frontage.~~

~~f. *Pavement setback:* For lots adjacent to a residential zone, pavement shall be set back a minimum of ten (10) feet from the side and rear property lines adjacent to the residential zone.~~

~~4. *Maximum impervious surface ratio:* 90%.~~

~~5. *Maximum residential density:*~~

~~a. *On-peninsula locations, as defined in section 14-47:* Four hundred and thirty-five (435) square feet of land area per dwelling unit.~~

~~b. *Off-peninsula locations, as defined in section 14-47:*~~

~~i. Residential density requirements of the~~

~~nearest adjacent residential zone shall apply except for multi-family dwellings above the first floor of commercial uses as provided in (ii) below.~~

~~ii. *Multi-family dwellings above first floor commercial uses:* One thousand (1,000) square feet of land area per dwelling unit is required.~~

~~6. *Maximum structure height:*~~

~~a. *B-2 and B-2c zones:* Forty-five (45) feet.~~

~~b. *B-2b zone:* Forty-five (45) feet, except in the case of a building with a commercial first floor and residential upper floors, where fifty (50) feet is allowed, and except for the portion of a building located within sixty-five (65) feet of Franklin Street, where sixty-five (65) feet is allowed.~~

~~(b) *Business and other non-residential uses:*~~

~~1. *Minimum lot size:*~~

~~a. *Intermediate, long-term and extended care facilities:* Ten thousand (10,000) square feet.~~

~~b. *Other non-residential uses where permitted:*~~

~~i. *B-2 zone:* Ten thousand (10,000) square feet.~~

~~ii. *B-2b zone:* None.~~

~~iii. *B-2c zone:* Ten thousand (10,000) square feet.~~

~~c. Where multiple uses are on one (1) lot, the highest applicable minimum lot size must be met.~~

~~2. *Minimum street frontage:* Fifty (50) feet.~~

~~3. *Yard dimensions:* (Yard dimensions include~~

~~setbacks of structures from property lines and setbacks of structures from one another. No structure shall occupy the minimum or maximum yard of another structure.)~~

~~Except as provided in subsection (5) below, the following setbacks are required:~~

~~a. *Front yard:*~~

~~i. *Minimum front yard in B-2, B-2b and B-2c zones:* None.~~

~~ii. *Maximum front yard in the B-2 and B-2c zones:* The maximum front yard setback shall not exceed the average depth of the front yard of the closet developed lots on either side of the lot in question unless the planning board or planning authority approves a modified setback pursuant to section 14-526(a)(27)(j). For purposes of this section a developed lot means a lot on which a principal structure has been erected.~~

~~iii. *Maximum front yard in B-2b zone (on-peninsula):* The maximum front yard setback shall either be: (1) ten feet; or (2) in cases where the average depth of the front yard of the nearest developed lots on either side of the lot in question is less than ten (10) feet, the front yard setback of the lot in question shall not exceed such average depth. A "developed lot" means a lot on which a principal structure has been erected.~~

~~In the B-2b zone the front yard shall be the yard adjoining the major street as determined by the highest traffic volume.~~

~~iv. *Maximum front yard in B-2b zone (off-peninsula):* None, except that the front yard setback shall not exceed the~~

~~average depth of the front yards of the closes t developed lots on either side of the lot. A developed lot means a lot on which a principal structure has been erected. In the B-2b zone the front yard shall be the yard adjoining the major street as determined by the highest traffic volume.~~

~~Where the front yard setback exceeds ten (10) feet, however, a continuous, attractive, and pedestrian scaled edge treatment shall be constructed along the street(s) consisting of street trees spaced at not more than fifteen (15) feet on center, (which otherwise meet the requirements of city arborist) and a combination of the following:~~

~~i. Landscaping of no less than four (4) feet in depth; and~~

~~ii. Ornamental brick or stone walls; and/or~~

~~iii. Ornamental fencing.~~

~~The site shall otherwise meet the requirements of article V (Site Plan).~~

~~b. *Rear yard*:~~

~~i. *Principal structures*: Ten (10) feet. Where a rear yard abuts a residence zone or first floor residential use, twenty (20) feet is required.~~

~~ii. *Accessory structures*: Five (5) feet.~~

~~c. *Side yard*:~~

~~i. Principal and accessory structures: None, except that where a side yard abuts a residential zone or a first floor residential use, ten (10) feet is equired.~~

~~ii. *Accessory structures*: Five (5) feet.~~

~~iii. *Side yards on side streets (corner lot)*: In the B-2 and B-2c zone, a minimum of ten (10) feet. In the B-2b zone, a maximum of ten (10) feet except that for any newly constructed building on a lot abutting two (2) or more streets, the maximum side yard shall apply to one street or to the side street that forms a corner with a major street as provided for in the maximum front yard provisions of this section.~~

~~(4) *Minimum lot width*: None.~~

~~(5) *Maximum structure height*:~~

~~a. *B-2 and B-2c zones*: Forty-five (45) feet, except that on lots in excess of five (5) acres, sixty-five (65) feet is permitted; provided each of the minimum setbacks required under subsection (3) above are increased by one (1) foot in distance for each foot of height above forty-five (45) feet.~~

~~b. *B-2b zone*: Fifty (50) feet.~~

~~(6) *Maximum impervious surface ratio*: Eighty (80) percent in the B-2 and B-2c; Ninety (90%) percent in the B-2b.~~

~~(c) *Building additions*: Building additions for residential and non-residential uses are not required to meet the maximum front yard setback for the maximum side yard on side street setback contained in this section.~~

Sec. 14-186. Other requirements.

All nonresidential uses in the B-2 and B-2b zone shall meet the requirements of division 25 (space and bulk regulations and exceptions) of this article in addition to the following requirements:

(a) *Landscaping and screening:* The site shall be suitably landscaped for parking, surrounding uses and accessory site elements, including storage and solid waste receptacles where required by article IV (subdivisions) and article V (site plan).

(b) *Curbs and sidewalks*: Curbs and sidewalks as specified in article VI of chapter 25.

(c) *Off-street parking and loading:* Off-street parking and loading are required by division 20 and division 21 of this article;

(d) *Front yard parking*:

~~1. B-2 and B-2c zone:~~ There shall be no off-street parking in the front yard between the street line and the required minimum setback line in the B-2, B-2b and B-2c. Where existing buildings exceed the minimum front yard setback, a maximum of ten (10) percent of the total parking provided on the site may be located between the principal structure and the street.

~~2. B-2b zone (On-peninsula): There shall be no parking in the front yard between the street line and the required maximum setback line in the B-2b. Where existing buildings exceed the maximum front yard setback, a maximum of ten (10) percent of the total parking provided on the site may be located between the principal structure and the street.~~

~~3. B-2b zone (Off-peninsula): Parking in the front yard between the street line and the required maximum setback line in the B-2b is discouraged. However, where parking in the front yard is permitted pursuant to §14-185I(1)I, a maximum of fifty percent (50%) of the total parking on the site may be located between the principal structure and the street.~~

(e) *Signs*: Signs shall be subject to the provisions of division 22 of this article.

(f) *Exterior storage*: There shall be no exterior storage with the exception of fully enclosed containers or receptacles for solid waste disposal. Such containers or receptacles shall be shown on the approved site plan. Vehicles or truck trailers with or without wheels shall not be used for on-site storage (1) except where such storage is located in a designated loading zone identified on an approved site plan; or (2) such storage is not visible from the street or adjacent residences during winter months and such storage area is identified on an approved site plan. Truck load sales shall not be considered outside storage provided that such activity does not extend beyond three (3) consecutive days nor occurs more frequently than three (3) times a calendar year.

(g) *Storage of vehicles*: Storage of vehicles is subject to the provisions of section 14-335.

(h) *Shoreland and flood plain management regulations*: If the lot is located in a shoreland zone or in a flood hazard zone, then the requirements of division 26 and/or division 26.5 apply.

. . .

Sec. 14-188. Active street frontages

A building will be determined to have an active street frontage upon meeting the following guidelines to the greatest extent practicable as determined by the Planning Board or Planning Authority: the primary building façade shall be within ten feet of the front street line; there shall be no parking on the lot within 35 feet of the front street line; no more than 25% of the first floor primary façade shall consist of access to garages, unutilized space, service entrances, storage or mechanicals, and the remaining minimum 75% shall have an average depth of a minimum of 20 feet for residential or commercial uses; all primary ground floor entries to multi-family buildings must orient to street, not to interior blocks or parking lots.

Sec. 14-189~~8~~ - Sec. 14-195. Reserved.

City of Portland, Maine
City Council Agenda Request Form

TO: City Council

FROM: Alexander Jaegerman, Planning Division Director

DATE: May 12, 2014

DISTRIBUTION: Mark Rees, City Manager; Mayor Brennan; Danielle West-Chuhta, Corporation Counsel, Sonia Bean, Senior Administrative Assistant; Nancy English

SUBJECT: Order - Ordinance Amendment

SPONSOR: Stuart O'Brien, Chair, Portland Planning Board

COUNCIL MEETING DATE ACTION IS REQUESTED:
1st reading: June 2, 2014 Final action: June 16, 2014

Can action be taken at a later date: ___X_ YES NO If not, why not:___________.

PRESENTATION: Alexander Jaegerman, 3 minutes.

I. SUMMARY OF ISSUE

The Planning Board is unanimously recommending zoning text amendments to the City Council for adoption. The amendments include listing the required dimensional standards in a table, streamlining dimensional standards, permitting a higher residential density for off-peninsula locations with active street fronts, allowing multi-family dwellings as a permitted use regardless of the adjoining residential zone, and stronger prohibitions on parking in front yard setbacks,.

II. REASON FOR SUBMISSION

The proposed text amendments aim to foster a viable multi-family density standard in the B-2 zone, by removing the requirement that the ground floor use of a building be commercial in order to qualify for this higher density (a change the current 1,000 square feet per unit requirement to 435 square feet per unit), while adding some additional criteria to insure a lively, engaging presence of the building at street level. In addition, stronger language was proposed to prohibit parking within the front yard. There are changes proposed to the setback requirements to streamline and simplify setbacks by zone, and the dimensional standards are now in a table format.

III. INTENDED RESULT

The intended result of these amendments is to incentivize increased development of multi-family housing in the B-2 zone that simultaneously contributes to an active streetscape. The formatting changes and streamlining the differing dimensional standards that are included with these amendments are intended as steps toward creating a clearer and more accessible ordinance overall. Please see the attached full report to the City Council for further discussion of the changes.

IV. COUNCIL GOAL ADDRESSED

The changes are designed to meet the Council's goal to Promote Housing Availability. One of the stated housing objectives in the 2014 Council Common Goals and Objectives is for the Planning & Urban Development Department to rewrite portions of the zoning ordinance, including the B-2 portion, to allow for greater housing opportunities.

V. FINANCIAL IMPACT
There are no known municipal financial impacts associated with this amendment.

VI. PLANNING BOARD RECOMMENDATION
On April 22, 2014, the Planning Board voted (5-0, Hall and Soley absent), that the proposed text amendments to the Land Use Code, Div. 10. B-2 and B-2b Community Business Zone, § 14- 181—14-195 are in conformance with the City of Portland Comprehensive Plan and recommends their adoption to the City Council.

The Planning Board recommends adoption of these text amendments, as the proposed amendments further the 2014 Council Common Goals, and are consistent with Comprehensive Plan goals, specifically items in Portland's Comprehensive Plan, Volume 1; Housing: Sustaining Portland's Future ; and Transforming Forest Avenue, and the Purpose Statements for the B-2 zone.

VII. Attachments:

City Council Report

PLANNING BOARD REPORT TO CITY COUNCIL PORTLAND, MAINE

REVISIONS TO B-2, B-2B, AND B-2C ZONING TEXT CITY OF PORTLAND, APPLICANT

Submitted to: Portland City Council Submitted by: Portland Planning Board	Prepared by: Christine Grimando, Senior Planner Date: May 23, 2014

I. INTRODUCTION

Enclosed are proposed text amendments to the B-2, B-2b and B-2c zones. Previous iterations of the changes were reviewed by the Council's Housing and Community Development Committee, as well as at the April 8, 2014 Planning Board workshop, and April 22, 2014 Planning Board public hearing. Two members of the public spoke in unqualified support for the amendments at the Planning Board public hearing. The Board voted (5-0, Hall and Soley absent), to recommend the adoption of the proposed text amendments, the full text of which are attached for your review.

The changes are designed to meet the Council's goal to Promote Housing Availability. One of the stated housing objectives in the 2014 Council Common Goals and Objectives is for the Planning & Urban Development Department to rewrite portions of the zoning ordinance, including the B-2 portion, to allow for greater housing opportunities.

The B-2b zone and amendments to the B-2 zones over the past few years were intended to support greater density and incentives for housing along commercial corridors; however, the revisions did not result in more housing. The proposed text amendments aim to foster a viable multi-family density standard in the B-2 zones. These include a proposal to lower the current 1,000 square feet of land use per unit requirement to 435 square feet per unit, removing the requirement that the ground floor use of a building in the zone be commercial in order to qualify for this higher density, while adding some additional criteria to insure a lively, engaging street level presence, whether the ground floor is occupied by a residential or non-residential use. In addition, stronger language is proposed to prohibit parking within the front yard. There are changes proposed to the setback requirements to streamline and simplify setbacks by zone, and the dimensional standards are now in a table format.

A public hearing was advertised on April 14th and 15th, notices were sent to the interested citizens list and posted on the city's web page in advance of the Planning Board public hearing. Notices will be sent for the City Council public hearing.

II. B-2, B-2b, B-2c COMMUNITY BUSINESS ZONE: TEXT AMENDMENTS

The proposed amendments to Division 10 B-2 and B-2b Community Business Zone are summarized below. The complete text with proposed changes is included as Attachment 1.

A. Permitted Uses. Multi-family is currently a permitted residential use when located near particular residential zones or when in a mixed-use building. As proposed multi-family is allowed in each of the B-2 zones without qualification:

Sec. 14 182. Permitted uses.

...

(a) Residential:

2. Multi-family dwellings ~~are permitted when the nearest residential zone is R-4, R-5, R-6 or R-7. Multi-family dwellings are permitted in any structure with commercial uses in the first floor regardless of the nearest residential zone~~;

B. Dimensional Standards. The dimensional standards have been both substantively amended and reformatted into a table. Below is a comparison table of existing and proposed dimensional standards:

	EXISTING		PROPOSED
	B-2 Entirely Residential	*B-2 Not Entirely Residential*	*B-2*
Minimum Lot Size	None	None in B-2b	None
		10,000 sf. in B-2 and B-2c	
		10,000 sf. for intermediate, long term, or extended care facilities	
Min. Frontage	None	50 feet	25 feet
Front Yard Setback Min.	None	None	None
Rear Yard Setback Min.	10 feet, except as provided for below:	10 feet, except as provided for below:	10 feet, except as provided for below:
	20 feet when abutting residential zone	20 feet when abutting residential zone or residential use	
	5 feet for accessory structures	5 feet for accessory structures	5 feet for accessory structures
	15 feet for portions of buildings over 45 feet in height		
Side Yard Setback Min.	5 feet, except as provided for below:	None, except as provided for below:	None required, except as provided for below:
	10 feet when abutting residential zone	10 feet when abutting a residential zone or first floor residential use	
	5 feet for accessory structures	5 feet for accessory structures	5 feet for accessory structures
	15 feet for portions of buildings over 45 feet in height		
Side Yard on Side Street	None	10 feet minimum on side yards along side streets	None required.
		10 feet maximum in B-2b zone except for newly constructed building on lot abutting 2 or more streets, for which one street front shall conform to the maximum front yard	
Front Yard Maximum[1]	Average depth of abutting developed lots on each side or as set by Planning Board[2]	Average depth of abutting developed lots on each side or as set by Planning Board[2]	No more than 10 feet, except that the Planning Board or Planning Authority may approve a modified front yard setback for irregularly shaped lots or lots with frontage less than 40 feet provided this standard is met to the maximum extent practicable.[2]
	No more than 10 feet in B-2b on peninsula	No more than 10 feet in B-2b on peninsula	
Height Maximum	45 feet in B-2 and B-2c	45 feet in B-2 and B-2c zones	45 feet except as provided for below:
		50 feet in B-2b	50 feet if first floor is partially or wholly occupied by a commercial use.
		65 feet in B-2 and B-2c zones on lots >5 acres, provided that all setbacks increase by 1 foot for each foot of height over 45	65 feet in B-2 and B-2c zones on lots >5 acres provided that all setbacks, except for front yard setbacks and side yard on side street setbacks, increase by 1 foot for each foot of height over 45 feet.
	65 feet within 65 feet of Franklin St.	65 feet within 65 feet of Franklin St.	65 feet within 65 feet of Franklin St.
Maximum Impervious Surface Ratio	None		For residential uses: None
		80% in B-2 and B-2c	For all other permitted uses: 80% in B-2 and B-2c
		90% in B-2b	For all other permitted uses: 90% in B-2b
Min. Lot Area per Dwelling Unit	Residential density requirements of the nearest adjacent residential zone.	*Multi-family dwellings above first floor commercial uses:* One thousand (1,000) square feet of land area per dwelling unit is required.	Off-peninsula locations, as defined in section 14-47: 1,500 square feet, except as provided for in (b) below.
	On-peninsula locations, as defined in section 14-47: 435 square feet	On-peninsula locations, as defined in section 14-47: 435 square feet	On-peninsula locations (as per 14-47) and projects with active street frontages, as defined in section 14-188, below: 435 square feet.
Pavement Setback	10 feet from side or year yard lines abutting residential zones	None	*Removed altogether*

[1] Building additions do not have to meet this section.

[2] If lot has less than 40 feet of frontage and is more than 100 feet deep then no maximum setback is required. If existing structures are within 20 feet of the street or meet the front yard maximum, and remainder of lot has less than 40 feet of frontage, then no maximum setback is required. Where setbacks exceed 10 feet, a continuous, attractive, and pedestrian-scaled edge treatment shall be constructed along the street, consisting of street trees spaced at no more than 15 feet on center, approved by City arborist, and a combinations of landscaping no less than 4 feet deep, ornamental brick or stone walls or ornamental fencing.

C. Parking. Sec. 14-186, (d) has been amended to prohibit parking in the front yard between the street line and the required minimum setback line in B-2, B-2b, and B-2c, except where there are existing buildings that exceed the front yard setback in which case a maximum of 10% of the total on-site parking can be in the front yard setback.

D. Active Street Frontages. Lastly, a new section, 14-188. Active street frontages, has been added. Both the stronger prohibition than existing on parking in the front yard setback, and the addition of active street frontage standards are aimed at creating conditions that will foster a safe and lively street presence, guided by the idea that these are greater predictors of vibrant street life than mandating ground floor commercial uses. The Active street frontage standard offers criteria for the primary building façade for qualifying as an active street frontage, and by extension, the greater density allowance: *A building will be determined to have an active street frontage upon meeting the following guidelines to the greatest extent practicable as determined by the Planning Board or Planning Authority: the primary building façade shall be within ten feet of the front street line; there shall be no parking on the lot within 35 feet of the front street line; no more than 25% of the first floor primary façade shall consist of access to garages, unutilized space, service entrances, storage or mechanicals, and the remaining minimum 75% shall have an average depth of a minimum of 20 feet for residential or commercial uses; all primary ground floor entries to multi-family buildings must orient to street, not to interior blocks or parking lots.*

III. Purpose Statement for B-2

The purpose statement for B-2, B-2b, and B-2c is provided below. The full text of the existing purpose statement is included in Attachment 1. Excerpts of some areas of B-2 zones from the Portland Zoning Map are included below the Purpose Statement summary for illustration. The entire Zoning map is included for reference as Attachment 2.

B-2 Land Use Policy. The purpose of the B-2 community business zone is intended to provide a broad range of goods and services, a mixture of large and small businesses as well as appropriate locations for the development of community centers offering a mix of commercial uses and services serving the adjoining neighborhoods and the larger community. Development in the B-2 zone should relate to the surrounding neighborhoods by design, orientation, and circulation patterns, and be accessible by automobile, pedestrian, and bicycle. B-2 and B-2b are to provide locations for high to moderate density housing in urban neighborhoods along arterials.

The B-2 zone is found along arterials, where it is often a linear strip that abuts adjoining residential neighborhoods and zones. The B-2 zone is also the zone that encompasses areas developed as shopping centers.

Examples of B-2 zones include districts along Washington Avenue (former Andover College; Northport/Northgate area); Forest Avenue (Woodfords Corner to Morrills Corner); Brighton Avenue (Pine Tree Shopping Center area); St. John Street/Libbytown area and Congress Street (Westgate area).

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

The B-2b zone was developed in the late 1990s to support a more compact urban form for business districts on the peninsula as well as certain off-peninsula commercial corridors.

Examples of B-2b districts include Forest Avenue (I-295 to Woodfords Corner); Forest Avenue area (on-peninsula): Washington Avenue (on-peninsula); Congress Street (Longfellow Square to Bramhall area); Portland Street/Forest Avenue area and India Street area.

B-2c Land Use Policy. The B-2c zone is distinguished from the B-2 zone by an emphasis on protecting adjoining residential neighborhoods from the impacts of businesses that serve liquor and other uses incompatible from adjoining residential areas due to noise.

B-2c district includes the western side of Forest Ave. from Saunders St. (just north of Woodford's Corner) to the southern edge of Baxter Woods.

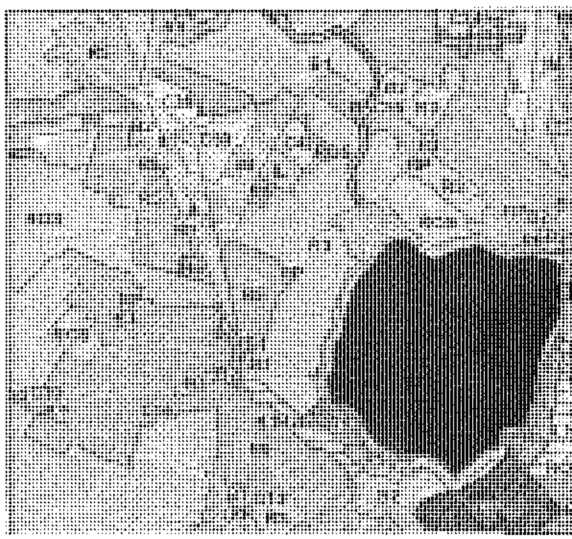


Figure 1, Existing Zoning on Forest Avenue

Figure 2, St. John Street/Libbytown area and Congress Street

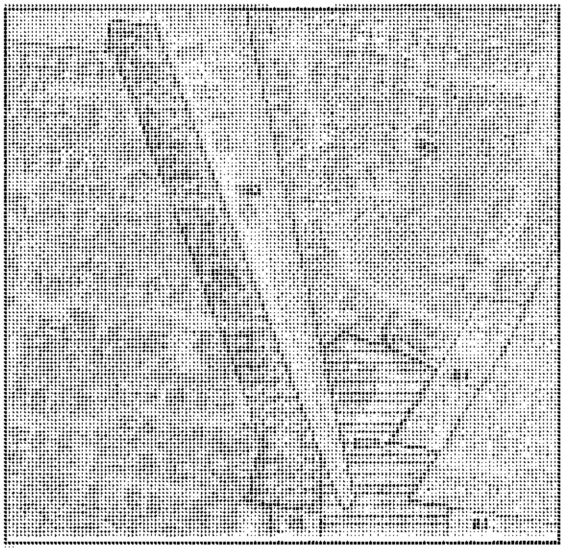


Figure 3, B-2c detail

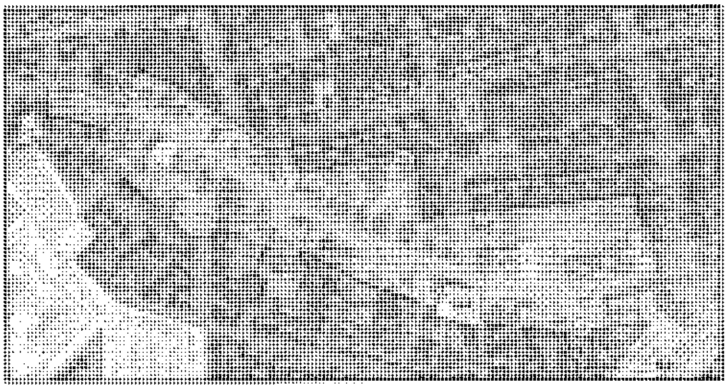


Figure 4, Congress Street (Longfellow Square to Bramhall area)

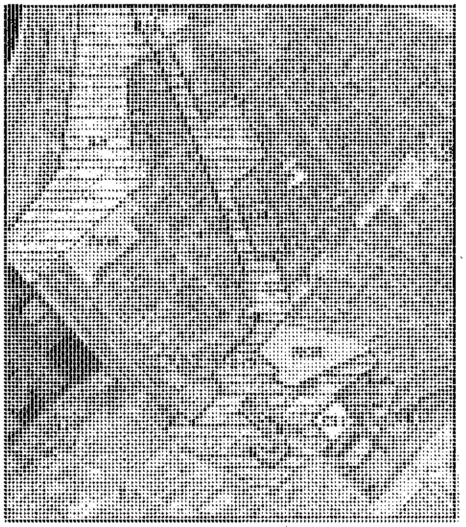


Figure 5, B-2b Washington Ave.

IV. COMPREHENSIVE PLAN POLICIES

Comprehensive Plan documents related to the proposed amendments are summarized below.

Portland's Comprehensive Plan, Volume 1, adopted in November 2002, updated in 2005, provides a policy framework for managing growth in the city. State Goal D, Encourage Decent Housing references and reinforces Housing: Sustaining Portland's Future through recommending a diversity of housing types and sizes, including *higher density housing such as row houses, small lots, reuse of non-residential buildings, and mixed-use buildings* (p. 44), and *Encourage higher density housing for both rental and home ownership opportunities, particularly located near services, such as schools, businesses, institutions, employers, and public transportation* (p. 44).

Housing: Sustaining Portland's Future. The housing component of the Comprehensive Plan, adopted in November 2002, contains numerous policies supporting a diverse housing supply. Particularly pertinent sections are excerpted below:

- *Policy #1, Ensure that an adequate supply of housing is available to meet the needs, preferences, and financial capabilities of all Portland households, now and in the future.* Recommendations for implementation of this policy include Housing in Business zones: Combine housing and economic development strategies to create high-density housing and mixed-use developments in business zones.

- *Policy #3, Maintain and enhance the livability of Portland's neighborhoods as they city grows and evolves through careful land use regulation, design and public participation that respects neighborhood integrity.* Recommendations for implantation of this policy include Housing Along Arterials: Maintain residential zoning along arterials and encourage increased residential densities and mixed uses within business zones.

Transforming Forest Avenue. This transportation and land use plan for the Forest Avenue Corridor was adopted by the City Council in June 2014 as an element of the City's Comprehensive Plan. Forest Avenue is comprised of the B-2, B-2b, and B-2c zones. Transforming Forest Avenue includes land use, streetscape, and transportation related recommendations to encourage transit-supportive development and the evolution of Forest Avenue into a complete street. Section 3.2.1, Vibrant and Diverse Land Uses, recommends supporting a mixture of uses in close proximity to foster both economic vitality and safety. It also recommends sensitivity to commercial and residential use transitions through possible landscaping, screening, and other site design considerations. Section 3.2.2, Compact Uses, recommends concentrating development and activities along transit routes, with particular attention to creating an environment welcoming to pedestrians. These sections are excerpted below.

3.2.1 Vibrant and Diverse Land Uses:

- The existence of vibrant and diverse land uses should stimulate a variety of activity at all times of day in order to increase the economic vitality and perceived safety along the corridor.

- Mixed use is typically achieved by having a variety of uses located in close proximity, either within the same building or in adjacent structures. A typical example is to have commercial on the bottom floor of a building and residential above.

- Successfully mixing uses requires attention to the transition between the varied uses… Improvements can be made to accomplish a residential character without restricting mixed-uses. For example, residences can be buffered from busier parts of the corridor with landscaping. Building equipment can be attractively screened from view of residences.

3.2.2 Compact Uses:

- Increasing convenience by concentrating development and activities along transit routes increases the likelihood of transit use.

- Compact uses can be encouraged in a variety of ways, though the general approaches focus on either new development or infill of existing structures. Particularly in the commercial areas, incentives can be used to encourage new development to more fully realize the desired density within the current zoning code. Incentives for infill of existing development can also be used to increase density, and to enhance the pedestrian environment.

V. PLANNING BOARD RECOMMENDATION

On April 22, 2014, the Planning Board voted (5-0, Hall and Soley absent), that the proposed text amendments to the Land Use Code, Div. 10. B-2 and B-2b Community Business Zone, § 14- 181—14-195 are in conformance with the City of Portland Comprehensive Plan and recommends their adoption to the City Council.

Attachments:

1. Proposed Text Amendments to Portland Land Use Code, Div. 10. B-2 and B-2b Community Business Zone.
2. City of Portland, Maine Zoning map.
3. Comparison Table of Dimensional Changes – 11x17

Date of Draft: May 23, 2014

Sec. 14-181. Purpose.

(a) B-2 Community Business Zone

The purpose of the B-2 community business zone is:

1. To provide appropriate locations for the development and operation of community centers offering a mixture of commercial uses, housing and services serving the adjoining neighborhoods and the larger community.

2. The variety, sites and intensity of the permitted commercial uses in the B-2 zone are intended to be greater than those permitted in the B-1 neighborhood business zone.

3. The B-2 zone will provide a broad range of goods and services and general businesses with a mixture of large and small buildings such as grocery stores, shops and services located in major shopping centers and along arterial streets. Such establishments should be readily accessible by automobile, by pedestrians and by bicycle. Development in the B-2 zone should relate to the surrounding neighborhoods by design, orientation, and circulation patterns.

4. The B-2 and B-2b will provide locations for moderate to high density housing in urban neighborhoods along arterials.

(b) B-2b Community Business Zone

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

(c) B-2c Community Business Zone

To protect and enhance the quiet enjoyment of adjoining residential neighborhoods from the impacts of businesses that serve liquor and from other uses that are incompatible with adjoining neighborhoods due to noise.
(Ord. No. 293-88, 4-4-88; Ord. No. 25, 7-07-99: emergency enactment of 120-day moratorium, effective 7/07/99 thru 11/04/99; Ord. No. 94A, 11-01-99: emergency enactment of 44-day extension of moratorium enacted on 7-07-99, effective date 11/01/99 thru 12/15/99; Ord. No. 94-99, 11-15-99; Substitute Ord. No. 189-00, §2, 4-24-00; Ord. No. 151-03/04, 02/23/04; Ord. No. 244-09/10, 6-21-10)

***Editor's Note:** Order No. 25, adopted 7-07-99, enacted an emergency 120-day moratorium on drive-through facilities on lots in B-2 Zone adjacent to lots with residential uses effective 7-07-99 through 11-1-99; Ord. No. 94A, adopted 11-01-99 extended the moratorium on said drive-through facilities through December 15, 1999.

Sec. 14-182. Permitted uses.

The following uses are permitted in the B-2, B-2b and B-2c zones except that any use involving a drive-through is prohibited in these zones unless otherwise provided in section 14-183:

(a) *Residential*:

1. Attached single-family and two-family dwellings;

2. Multi-family dwellings~~ are permitted when the nearest residential zone is R-4, R-5, R-6 or R-7. Multi-family dwellings are permitted in any structure with commercial uses in the first floor regardless of the nearest residential zone~~;

3. Handicapped family units;

4. Combined living/working spaces including, but not limited to, artist residences with studio space; and

(b) *Business*:

1. General, business and professional offices, as defined in section 14-47;

2. Personal services, as defined in section 14-47;

3. Offices of building tradesmen;

4. Retail establishments;

5. Restaurants, except that restaurants shall close for all purposes including the service of alcohol no later than 11:00 p.m.;

6. Drinking establishments, except that drinking establishment as defined in section 14-47, and bars as defined in section 14-217.5 (a)(1), shall not be permitted in the B-2c zone;

7. Billiard parlors;

8. Mortuaries or funeral homes;

9. Miscellaneous repair services, excluding motor vehicle repair services;

10. Communication studios or broadcast and receiving facilities;

11. Health clubs and gymnasiums;

12. Veterinary hospitals, but excluding outdoor kennels;

13. Theaters and performance halls;

14. Hotels or motels of less than one hundred fifty (150) rooms;

15. Dairies in existence as of November 15, 1999;

16. Bakeries in existence as of November 15, 1999;

17. Bakeries established after November 15, 1999, provided the bakeries include retail sales within the principal structures. Bakeries in the B-2b

zone shall be no greater than seven thousand (7,000) square feet in size;

18. Drive-throughs associated with a permitted use in the B-2 zone provided that such do not include drive-throughs on any lot adjacent to any residential use or zone. For purposes of this section, only, "adjacent to" shall include uses across a street if within 100 feet of the subject lot boundary;

19. Drive-throughs associated with a permitted use in the B-2b zone, when accessory to a principal use located on the same lot, provided that such do not include drive-throughs on any lot adjacent to any residential use or zone. For purposes of this section, only, "adjacent to" shall include uses across a street if within 100 feet of the subject lot boundary.

20. Registered medical marijuana dispensaries.

(c) *Institutional*:

1. Long term, extended and intermediate care facility;

2. Clinics, as defined in section 14-47;

3. Places of assembly;

4. Kindergarten, elementary, middle and secondary schools;

5. College, university, trade schools; and

6. Municipal buildings and uses.

(d) *Other*:

1. Lodging houses;

2. Day care facilities or babysitting services;

3. Utility substations, as defined in section 14-47,

subject to the requirements of article V (site plan), sections 14-522 and 14-523 notwithstanding;

4. Accessory uses, as provided in section 14-404;

5. Bed and breakfast, subject to the standards of article V (site plan), sections 14-522 and 14-523 notwithstanding. A bed and breakfast may include a meeting facility if the facility meets the following standards:

   a. The meeting facility shall be limited to the following types of uses:

      i. Private parties.
      ii. Business meetings.
      iii. Weddings.
      iv. Receptions.
      v. Seminars.
      vi. Business and educational conferences.

   b. The building in which the bed and breakfast and the meeting facility will be located was in existence on March 3, 1997, and was greater than four thousand (4,000) square feet in floor area on that date.

6. Studios for artists and craftspeople, provided that the area of such studios does not exceed four thousand (4000) square feet for each studio space.

7. Hostels, provided the applicant submits a site plan and operations plan demonstrating compliance with the following conditions:

   a. All applicable provisions of Article V of this chapter shall be met.

   b. Parking shall be provided in compliance with Division 20 of this Article.

   c. No unaccompanied minors under the age of eighteen (18) shall be permitted in the facility.

d. The length of stay for transient guests shall not exceed fifteen (15) days out of any sixty-day period.

e. The building shall meet the applicable occupant load requirements as defined by the International Building Code and the NFPA Life Safety Code, as such codes are amended or adopted by the city.

8. Wind energy systems, as defined and allowed in Article X, Alternative Energy.

(Ord. No. 293-88, 4-4-88; Ord. No. 39-96, § 2, 10-7-96; Ord. No. 125-97, § 6, 3-3-97; Ord. No. 164-97, § 2, 12-1-97; Ord. No. 25, 7-07-99: emergency enactment of 120-day moratorium, effective 7/07/99 thru 11/04/99; Ord. No. 94A, 11-01-99: emergency enactment of 44-day extension of moratorium enacted on 7-07-99, effective date 11/01/99 thru 12/15/99; Ord. No. 94-99, 11-15-99; Ord. No. 118-00, 11-20-00; Ord. No. 151-03/04, 02/23/04; Ord. No. 127-09/10, 1-4-10 emergency passage; Ord. No. 244-09/10, 6-21-10; Ord. No. 283-09/10, 7-19-10 emergency passage; Ord. 10 10/11, 8-2-10; Ord. No. 279-09/10, 6-6-11; Ord. No. 33-11/12, 1-18-12; Ord. No. 113-11/12, 2-22-12; Ord. No. 41-12/13, 9-5-12)

Sec. 14-183. Conditional uses.

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

(a) *Business.* Any of the following conditional uses, provided that, notwithstanding section 14-474(a)of this article or any other provision of this code, the Planning Board shall be substituted for the board of appeals as the reviewing authority over conditional business uses:

1. Major and minor auto service stations in the B-2 zone, only;

2. Major or minor auto service stations in the B-2b zone in existence as of November 15, 1999;

3. Car washes;

4. Drive-throughs in the B-2 or B-2b zones which are adjacent to any residential use or zone, provided that, in the B-2b drive-throughs must be accessory to a principal use located on the same site;

5. Automobile dealerships.

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

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

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

6. Drive-throughs, where permitted, shall also specifically comply with the following conditions:

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

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

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

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

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

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

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

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

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

(b) *Other*:

1. Printing and publishing establishments except as provided in subsection b. below;

2. Printing and publishing establishments in continuous operation at their current location since April 4, 1988, or earlier and which exceeded ten thousand (10,000) square feet of aggregate gross floor area at that time;

3. Wholesale distribution establishments; and

4. Research and development and related production establishments.

Uses listed in this paragraph (b) (other) 1, 3 and 4 shall be limited to ten thousand (10,000) square feet of aggregate gross floor area, and uses listed in this paragraph (b) (other) 1, 2, 3 and 4 shall be subject to the following conditions and standards in addition to the provision of section 14-474:

a. Traffic circulation: The site shall have an adequate traffic circulation pattern designed to avoid hazards to vehicular circulation on adjoining streets. All stacking of motor vehicles shall be on site, and loading facilities shall be located to the rear of the building and shall not be visible from the street.

b. Building and site design: The exterior design of the structures, including architectural style, facade materials, roof pitch, building form, established setbacks and height, shall be of a commercial rather than industrial character. The site shall contain screening and landscaping which shall meet the requirements of section 14-526 for screening between land uses and the City of Portland Technical Manual.

5. Temporary wind anemometer towers, as defined in Sec 14-47, are permitted provided the following standards are met in addition to Sec 14-430:

a. Towers may be installed for the purpose of wind data collection for no more than two (2) years after the issuance of a Certificate of Occupancy for the tower. At the conclusion of the aforementioned two (2) years, the tower must be dismantled and removed from the site within sixty (60) days; and

b. Towers shall be constructed according to plans and specifications stamped by a licensed professional engineer, which shall be provided to the Board of Appeals with the application; and

c. Towers shall be set back from habitable buildings by a distance equal to 1.1 times –the tower height; and

d. The applicant shall provide a safety report prepared and stamped by a licensed professional engineer to the Board of Appeals with their application for conditional use, which demonstrates how the proposed temporary wind anemometer tower is safe in terms of strength, stability, security, grounding, icing impacts and maintenance; and

e. The applicant shall provide evidence of commercial general liability insurance, such insurance to be satisfactory to Corporation Counsel and cover damage or injury resulting from construction, operation or dismantling of any part of the temporary wind anemometer tower; and

f. Towers and associated guy wires shall be sited to minimize their prominence from and impacts on public ways (including pedestrian ways); and

g. Towers shall be used for installing anemometers and similar devices at a range of heights from the ground to measure wind characteristics (speed, direction, frequency) and related meteorological data, but shall not be used for any other purpose; and

h. A performance guarantee shall be required for the cost of removal of the tower, guy wires and anchors. This requirement may be satisfied by surety bond, letter of credit, escrow account or by evidence, acceptable to the City, or the financial and technical ability and commitment of the applicant or its agents to remove the facility at the end of the use period.

6. Wind energy systems, as defined and allowed in Article X, Alternative Energy.

(Ord. No. 293-88, 4-4-88; Ord. No. 16-92, 6-15-92; Ord. No. 39-96, § 3, 10-7-96; Ord. No. 25, 7-07-99: emergency enactment of 120-day moratorium, effective 7/07/99 thru 11/04/99; Ord. No. 94A, 11-01-99: emergency enactment of 44-day extension of moratorium enacted on 7-07-99, effective date 11/01/99 thru 12/15/99; Ord. No. 94-99, 11-15-99; Ord. No. 151-03/04, 02-23-04; Ord. No. 29-09/10, 8-3-09, emergency passage; Ord. No. 276 -09/10, 7-19-10; Ord. No. 278-09/10, 7-19-10; Ord. No. 10 10/11, 8-2-10; Ord. No. 33-11/12, 1-18-12)

Sec. 14-184. Prohibited uses.

Uses not enumerated in sections 14-182 and 14-183 as either permitted uses or conditional uses are prohibited.
(Ord. No. 293-88, 4-4-88)

Sec. 14-185. Dimensional requirements.

In addition to the provisions of division 25 (space and bulk regulations and exceptions) of this article, ~~residential uses as permitted under sections 14-182(a) and (b) and newly constructed buildings with residential and non-residential uses~~ lots in the B-2, B-2b, and B-2c zones shall meet the following dimensional requirements:

Minimum Lot Size	None
Minimum Street Frontage	25 feet
Front Yard Setback Minimum	None
Rear Yard Setback Minimum	10 feet, except as provided for below: a. 5 feet for accessory structures
Side Yard Setback Minimum	None required, except as provided for below: a. 5 feet for accessory structures
Side Yard on Side Street Setback Minimum	None Required
Front Yard Maximum[1]	No more than 10 feet, except that the Planning Board or Planning Authority may approve a different amount for irregularly shaped lots or lots with frontage less than 40 feet provided this standard is met to the maximum extent practicable.[2]
Height maximum	45 feet except as provided for below: a. 50 feet if first floor is partially or wholly occupied by a commercial use. b. 65 feet in B-2 and B-2c zones on lots >5 acres provided that all setbacks, except for front yard setbacks and side yard on side street setbacks, increase by 1 foot for each foot of height over 45 feet. c. 65 feet within 65 feet of Franklin St.
Maximum Impervious Surface Ratio	a. For residential uses: None b. For all other permitted uses: 80% in B-2 and B-2c c. For all other permitted uses: 90% in B-2b
Minimum Lot Area per Dwelling	a. Off-peninsula locations, as defined in section 14-47: 1,500 square feet, except

[1] Building additions do not have to meet this section.
[2] If lot has less than 40 feet of frontage and is more than 100 feet deep then no maximum setback is required. If existing structures are within 20 feet of the street or meet the front yard maximum, and remainder of lot has less than 40 feet of frontage, then no maximum setback is required. Where setbacks exceed 10 feet, a continuous, attractive, and pedestrian-scaled edge treatment shall be constructed along the street, consisting of street trees spaced at no more than 15 feet on center, approved by City arborist, and a combinations of landscaping no less than 4 feet deep, ornamental brick or stone walls or ornamental fencing.

Unit	as provided for in (b) below. b. On-peninsula locations (as per 14-47) and projects with active street frontages, as defined in section 14-188, below: 435 square feet.

~~(a) *Residential uses:*~~

~~1. *Minimum lot size:* None.~~

~~2. *Minimum street frontage:* None.~~

~~3. *Minimum yard dimensions:*~~

~~a. *Front yard:* None.~~

~~b. *Rear yard:* Ten (10) feet, except where the lot abuts a residential zone, where twenty (20) feet is required.~~

~~i. Accessory structures: Five (5) feet.~~

~~ii. In cases where the height of a new building exceeds forty-five (45) feet adjacent to a residential zone, the portion of the building exceeding forty-five (45) feet shall have a minimum stepback of fifteen (15) feet or an additional minimum setback of fifteen (15) feet.~~

~~c. *Side yard:* Five (5) feet, except where the lot abuts a residential zone, where ten (10) feet is required.~~

~~i. Accessory structures: Five (5) feet.~~

~~ii. In cases where the height of a new building exceeds forty-five (45) feet adjacent to a residential zone, the portion of the building exceeding~~

~~forty-five (45) feet shall have a minimum stepback of fifteen (15) feet or an additional setback of fifteen (15) feet; provided however that this provision does not apply to buildings located within sixty-five (65) feet of Franklin Street.~~

~~d. *Side yard or rear yard on a street:* None.~~

~~e. *Maximum front yard:* In the B-2, B-2b and B-2c zones; as provided for in section 14-185(b)(3)(a), except that the maximum front yard setback need not apply in the case of a development meeting one (1) or more of the following standards:~~

~~i. The lot has less than forty (40) feet of continuous frontage and the lot has a depth of more than one hundred (100) feet from the nearest street; or~~

~~ii. The structures on the lot meet the maximum front yard or are within twenty (20) feet of the street and the remainder of the lot has less than forty (40) feet of continuous street frontage.~~

~~f. *Pavement setback:* For lots adjacent to a residential zone, pavement shall be set back a minimum of ten (10) feet from the side and rear property lines adjacent to the residential zone.~~

~~4. *Maximum impervious surface ratio:* 90%.~~

~~5. *Maximum residential density:*~~

~~a. *On-peninsula locations, as defined in section 14-47:* Four hundred and thirty-five (435) square feet of land area per dwelling unit.~~

~~b. *Off-peninsula locations, as defined in section 14-47:*~~

~~i. Residential density requirements of the nearest adjacent residential zone shall apply except for multi-family dwellings above the first floor of commercial uses as provided in (ii) below.~~

~~ii. *Multi-family dwellings above first floor commercial uses:* One thousand (1,000) square feet of land area per dwelling unit is required.~~

~~6. *Maximum structure height:*~~

~~a. *B-2 and B-2c zones:* Forty-five (45) feet.~~

~~b. *B-2b zone:* Forty-five (45) feet, except in the case of a building with a commercial first floor and residential upper floors, where fifty (50) feet is allowed, and except for the portion of a building located within sixty-five (65) feet of Franklin Street, where sixty-five (65) feet is allowed.~~

~~(b) *Business and other non-residential uses:*~~

~~1. *Minimum lot size:*~~

~~a. *Intermediate, long-term and extended care facilities:* Ten thousand (10,000) square feet.~~

~~b. *Other non residential uses where permitted:*~~

~~i. *B-2 zone:* Ten thousand (10,000) square feet.~~

~~ii. *B-2b zone:* None.~~

~~iii. *B-2c zone:* Ten thousand (10,000) square feet.~~

~~c. Where multiple uses are on one (1) lot, the~~

~~highest applicable minimum lot size must be met.~~

~~2. *Minimum street frontage:* Fifty (50) feet.~~

~~3. *Yard dimensions:* (Yard dimensions include setbacks of structures from property lines and setbacks of structures from one another. No structure shall occupy the minimum or maximum yard of another structure.)~~

~~Except as provided in subsection (5) below, the following setbacks are required:~~

~~a. *Front yard:*~~

~~i. *Minimum front yard in B-2, B-2b and B-2c zones:* None.~~

~~ii. *Maximum front yard in the B-2 and B-2c zones:* The maximum front yard setback shall not exceed the average depth of the front yard of the closet developed lots on either side of the lot in question unless the planning board or planning authority approves a modified setback pursuant to section 14-526(a)(27)(j). For purposes of this section a developed lot means a lot on which a principal structure has been erected.~~

~~iii. *Maximum front yard in B-2b zone (on peninsula):* The maximum front yard setback shall either be: (1) ten feet; or (2) in cases where the average depth of the front yard of the nearest developed lots on either side of the lot in question is less than ten (10) feet, the front yard setback of the lot in question shall not exceed such average depth. A "developed lot" means a lot on which a principal structure has been erected.~~

~~In the B-2b zone the front yard shall be the yard adjoining the major street as determined by the highest traffic volume.~~

~~iv. *Maximum front yard in B-2b zone (off-peninsula)*: None, except that the front yard setback shall not exceed the average depth of the front yards of the closes t developed lots on either side of the lot. A developed lot means a lot on which a principal structure has been erected. In the B-2b zone the front yard shall be the yard adjoining the major street as determined by the highest traffic volume.~~

~~Where the front yard setback exceeds ten (10) feet, however, a continuous, attractive, and pedestrian scaled edge treatment shall be constructed along the street(s) consisting of street trees spaced at not more than fifteen (15) feet on center, (which otherwise meet the requirements of city arborist) and a combination of the following:~~

~~i. Landscaping of no less than four (4) feet in depth; and~~

~~ii. Ornamental brick or stone walls; and/or~~

~~iii. Ornamental fencing.~~

~~The site shall otherwise meet the requirements of article V (Site Plan).~~

~~b. *Rear yard*:~~

~~i. *Principal structures*: Ten (10) feet. Where a rear yard abuts a residence zone or first floor residential use, twenty (20) feet is required.~~

~~ii. *Accessory structures*: Five (5) feet.~~

~~c. *Side yard*:~~

~~i. Principal and accessory structures: None, except that where a side yard abuts a residential zone or a first floor residential use, ten (10) feet is equired.~~

~~ii. *Accessory structures*: Five (5) feet.~~

~~iii. *Side yards on side streets (corner lot)*: In the B-2 and B-2c zone, a minimum of ten (10) feet. In the B-2b zone, a maximum of ten (10) feet except that for any newly constructed building on a lot abutting two (2) or more streets, the maximum side yard shall apply to one street or to the side street that forms a corner with a major street as provided for in the maximum front yard provisions of this section.~~

~~(4) *Minimum lot width*: None.~~

~~(5) *Maximum structure height*:~~

~~a. *B-2 and B-2c zones*: Forty-five (45) feet, except that on lots in excess of five (5) acres, sixty-five (65) feet is permitted; provided each of the minimum setbacks required under subsection (3) above are increased by one (1)foot in distance for each foot of height above forty-five (45) feet.~~

~~b. *B-2b zone*: Fifty (50) feet.~~

~~(6) *Maximum impervious surface ratio*: Eighty (80) percent in the B-2 and B-2c; Ninety (90%) percent in the B-2b.~~

~~(c) *Building additions*: Building additions for residential and non-residential uses are not required to meet the maximum front yard setback for the maximum side yard~~

~~on side street setback contained in this section.~~
(Ord. No. 293-88, 4-4-88; Ord. No. 52-96, § 2, 7-15-96; Ord. No. 94-99, 11-15-99; Ord. No. (Substitute)189-00, §3, 4-24-00; Ord. No. 151-03/04, 02/23/04; Ord. No. 244-09/10, 6-21-10; Ord. No. 41-12/13, 9-5-12)

Sec. 14-186. Other requirements.

All nonresidential uses in the B-2 and B-2b zone shall meet the requirements of division 25 (space and bulk regulations and exceptions) of this article in addition to the following requirements:

(a) *Landscaping and screening:* The site shall be suitably landscaped for parking, surrounding uses and accessory site elements, including storage and solid waste receptacles where required by article IV (subdivisions) and article V (site plan).

(b) *Curbs and sidewalks*: Curbs and sidewalks as specified in article VI of chapter 25.

(c) *Off-street parking and loading:* Off-street parking and loading are required by division 20 and division 21 of this article;

(d) *Front yard parking*:

~~1. B-2 and B-2c zone:~~ There shall be no off-street parking in the front yard between the street line and the required minimum setback line in the B-2, B-2b and B-2c. Where existing buildings exceed the minimum front yard setback, a maximum of ten (10) percent of the total parking provided on the site may be located between the principal structure and the street.

~~2. B-2b zone (On-peninsula): There shall be no parking in the front yard between the street line and the required maximum setback line in the B-2b. Where existing buildings exceed the maximum front yard setback, a maximum of ten (10) percent of the total parking provided on the site may be located between the principal structure and the street.~~

~~3. B-2b zone (Off-peninsula): Parking in the front yard between the street line and the required maximum setback line in the B-2b is discouraged. However, where parking in the front yard is permitted pursuant to §14-185I(1)I, a maximum of fifty percent (50%) of the total parking on the site may be located between the principal~~

~~structure and the street.~~

(e) *Signs*: Signs shall be subject to the provisions of division 22 of this article.

(f) *Exterior storage*: There shall be no exterior storage with the exception of fully enclosed containers or receptacles for solid waste disposal. Such containers or receptacles shall be shown on the approved site plan. Vehicles or truck trailers with or without wheels shall not be used for on-site storage (1) except where such storage is located in a designated loading zone identified on an approved site plan; or (2) such storage is not visible from the street or adjacent residences during winter months and such storage area is identified on an approved site plan. Truck load sales shall not be considered outside storage provided that such activity does not extend beyond three (3) consecutive days nor occurs more frequently than three (3) times a calendar year.

(g) *Storage of vehicles*: Storage of vehicles is subject to the provisions of section 14-335.

(h) *Shoreland and flood plain management regulations*: If the lot is located in a shoreland zone or in a flood hazard zone, then the requirements of division 26 and/or division 26.5 apply.

(Ord. No. 293-88, 4-4-88; Ord. No. 51-96, 7-15-96; Ord. No. 94-99, 11-15-99; Substitute Ord. No. 189-00, §4, 4-24-00; Ord. No. 151-03/04, 02/23/04)

Sec. 14-187. External effects.

Every use in a B-2, B-2b and B-2c zone shall be subject to the following requirements:

(a) *Enclosed structure*: The use shall be operated within a completely enclosed structure except for those specific open air activities licensed by the City, including but not limited to outdoor seating, sidewalk sales, etc.

(b) Noise: Except as provided in 14-183(1)(iii)(2) (relating to Drive-throughs), the volume of sound, measured by a sound level meter with frequency weighting network (manufactured according to standards prescribed by the American Standards Association), generated shall not exceed sixty (60) decibels on the

A scale between 7:00 a.m. and 9:00 p.m. and fifty-five (55) decibels on the A scale between 9:00 p.m. and 7:00 a.m., on impulse (less than one (1) second), at lot boundaries, excepting air raid sirens and similar warning devices.

(c) Vibration and heat: Vibration inherently and recurrently generated and heat shall be imperceptible without instruments at lot boundaries.

(d) Glare, radiation or fumes: Glare, radiation or fumes shall not be emitted to an obnoxious or dangerous degree beyond lot boundaries.

(e) Smoke: Smoke shall not be emitted at a density in excess of twenty (20) percent opacity level as classified in Method 9 (Visible Emissions) of the Opacity Evaluation System of the U.S. Environmental Protection Agency.

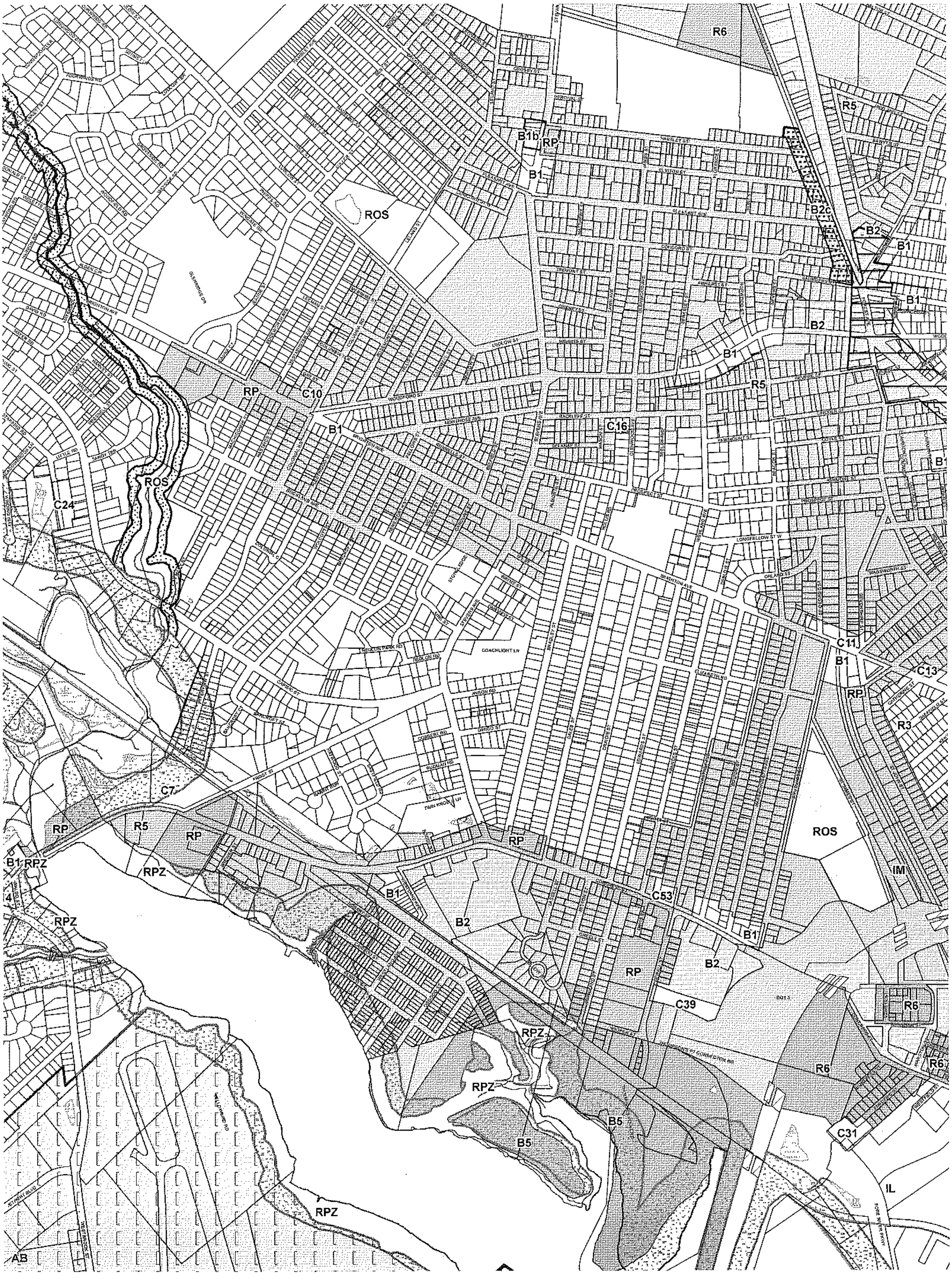
(f) Materials or wastes: No materials or wastes shall be deposited on any lot in such form or manner that they may be transferred beyond the lot boundaries by natural causes or forces. All material which might cause fumes or dust, or constitute a fire hazard if stored out-of-doors, shall be only in closed containers. Areas attracting large numbers of birds, rodents or insects are prohibited.

(Ord. No. 293-88, 4-4-88; Ord. No. 94-99, 11-15-99; Ord. No. 03/04, 02/23/04)

Sec. 14-188. Active street frontages

A building will be determined to have an active street frontage upon meeting the following guidelines to the greatest extent practicable as determined by the Planning Board or Planning Authority: the primary building façade shall be within ten feet of the front street line; there shall be no parking on the lot within 35 feet of the front street line; no more than 25% of the first floor primary façade shall consist of access to garages, unutilized space, service entrances, storage or mechanicals, and the remaining minimum 75% shall have an average depth of a minimum of 20 feet for residential or commercial uses; all primary ground floor entries to multi-family buildings must orient to street, not to interior blocks or parking lots.

Sec. 14-189~~8~~ - Sec. 14-195. Reserved.


R6
R5
B1b
RP
B1
ROS
B2c
B2
B1
B1
B2
B1
R5
RP
C10
B1
C16
B1
ROS
C24
C11
B1
C13
RP
R3
C7
RP
R5
RP
RP
ROS
B1
RPZ
RPZ
IM
B1
C53
RPZ
B2
B1
B2
RP
C39
R6
RPZ
R6
R6
RPZ
B5
B5
C31
IL
RPZ
AB

	20 feet when abutting residential zone	20 feet when abutting residential zone or residential use	
	5 feet for accessory structures	5 feet for accessory structures	5 feet for accessory struct
	15 feet for portions of buildings over 45 feet in height		
lin.	5 feet, except as provided for below:	None, except as provided for below:	None required, except as below:
	10 feet when abutting residential zone	10 feet when abutting a residential zone or first floor residential use	
	5 feet for accessory structures	5 feet for accessory structures	5 feet for accessory struct
	15 feet for portions of buildings over 45 feet in height		
reet	None	10 feet minimum on side yards along side streets	None required.
		10 feet maximum in B-2b zone except for newly constructed building on lot abutting 2 or more streets, for which one street front shall conform to the maximum front yard	
n[1]	Average depth of abutting developed lots on each side or as set by Planning Board[2]	Average depth of abutting developed lots on each side or as set by Planning Board[2]	No more than 10 feet, exc Planning Board or Plannin approve a modified front irregularly shaped lots or frontage less than 40 feet standard is met to the ma practicable.[2]
	No more than 10 feet in B-2b on-peninsula	No more than 10 feet in B-2b on-peninsula	
	45 feet in B-2 and B-2c	45 feet in B-2 and B-2c zones	45 feet except as providec
		50 feet in B-2b	50 feet if first floor is parti occupied by a commercial
		65 feet in B-2 and B-2c zones on lots >5 acres, provided that all setbacks increase by 1 foot for each foot of height over 45	65 feet in B-2 and B-2c zo acres provided that all set front yard setbacks and si street setbacks, increase b foot of height over 45 fee
	65 feet within 65 feet of Franklin St.	65 feet within 65 feet of Franklin St.	65 feet within 65 feet of F
us	None		For residential uses: None
		80% in B-2 and B-2c	For all other permitted us and B-2c
		90% in B-2b	For all other permitted us
	Residential density requirements of the nearest adjacent residential zone.	*Multi-family dwellings above first floor commercial uses:* One thousand (1,000) square feet of land area per dwelling unit is required.	Off-peninsula locations, a: section 14-47: 1,500 squa as provided for in (b) belo
	On-peninsula locations, as defined in section 14-47: 435 square feet	On-peninsula locations, as defined in section 14-47: 435 square feet	On-peninsula locations (a: projects with active street defined in section 14-188, square feet