

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
JULY 7, 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) June 16, 2014

PROCLAMATIONS:

Proc 1-14/15 Proclamation Honoring Officer Joe Jaynes as Police Officer of the
(Tab 2) the Month for May 2014 – Sponsored by Mayor Michael F. Brennan.

APPOINTMENTS:

Order 1-14/15 Order Appointing Constable for 2014 Re: Portland Housing Authority
(Tab 3) - Sponsored by Mark H. Rees, City Manager.

This order appoints Shannon Rafferty-Roy, Property Manager, for Portland Housing Authority as a Constable.

Pursuant to state law constables are prohibited from carrying a weapon, making arrests, or issuing parking citations.

Five affirmative votes are required for passage after public comment.

CONSENT ITEMS:

**Order 2-14/15
(Tab 4)**

Order Declaring “Samuel Adams Brew & View” as a Festival and Approving Contract and Permits Therefor - Sponsored by Mark H. Rees, City Manager.

This order declares Saturday, August 16, 2014, as the Samuel Adams Brew & View Festival in Payson Park. Load in will be at 7:00 a.m. with gates opening at 6:00 p.m. Show time is 7:00 p.m. with a live local band playing for one hour. Following the band and edited version of the movie “Wedding Crashers” will start at sundown. The film is two hours in length and is projected to end at 10:30 p.m. Load out will be immediately following the film.

Festival areas are bordered by: Baxter Blvd to the south, and park access roads to the east and west. The northern border of the festival area will end at the intersection of the eastern and western access roads. The western park access road will be closed to traffic from its entrance on Baxter Blvd., to its intersection with the eastern park access road. This roadway will be utilized for production vehicle and vendor parking. The Dyers Flat area will be utilized for patron parking. The festival area will be segregated from the general public by barricade. The event is 21+, and a beer service will be present. There is no charge for admission.

Camp Sunshine is the main beneficiary for the “Samuel Adams Brew & View”, and will be signing operating agreements along with Human Movement Management for usage of Payson Park with the City of Portland’s Public Assembly Facilities Division. Rental fee and all expenses for City services will be reimbursed by the organizers.

Human Movement Management® (HMM) is an active entertainment company based in Louisville, Colorado that for the last decade has been producing the world’s largest running races, beer festivals, triathlons, obstacle races and outdoor events in North America.

Live music will be performed by a local band (to be determined) from 7:00pm – 8:00pm. Any and all public announcement (PA) and other speakers or amplifiers used to amplify music or other sound shall be maintained at a reasonable level and be configured by HMM’s contractor and the City to focus volume in the park and its immediate environment, limiting any sound impacts in residential areas. While the Festival Area would be open only to attendees that day, access to the majority of the park would be open to the public.

The festival will be limited to guests over the age of (21), and beer would be available to all attendees. Bread and Butter Catering will hold the Liquor License and provide the beer service.

HMM and Camp Sunshine shall be responsible for ensuring that all vendors at the Festival have complied with appropriate license requirements, including food service, sale of alcohol and concert licenses. All Security for the event (including the Beer Service area) will be provided by Public Assembly Facilities Management staff.

**Order 3-14/15
(Tab 5)**

**Order Approving Transfer of Funds Under 15 M.R.S.A. Secs
5824(3) and 5826(6) – Sponsored by Mark H. Rees, City Manager.**

This order authorizes the City Council to approve the transfer of \$2,272.00 in forfeited assets from the State of Maine to the City of Portland from the case of the State of Maine v. Okang Bonitto. This money was seized during a drug investigation conducted by the M.D.E.A. in conjunction with the Portland Police Department. The money will be deposited into the Portland Police Department's drug investigation account. Money in that account is used primarily for drug investigations, training, and equipment.

**Order 4-14/15
(Tab 6)**

**Order Approving Transfer of Funds Under 15 M.R.S.A. Secs
5824(3) and 5826(6) – Sponsored by Mark H. Rees, City Manager.**

This order authorizes the City Council to approve the transfer of \$1,874.00, \$856.00, and \$3,767.00 in forfeited assets from the State of Maine to the City of Portland from the case of the State of Maine v. Gabriel Williams. This money was seized during a drug investigation conducted by the M.D.E.A. in conjunction with the Portland Police Department. The money will be deposited into the Portland Police Department's drug investigation account. Money in that account is used primarily for drug investigations, training, and equipment.

**Order 5-14/15
(Tab 7)**

**Order Approving Transfer of Funds Under 15 M.R.S.A. Secs
5824(3) and 5826(6) – Sponsored by Mark H. Rees, City Manager.**

This order authorizes the City Council to approve the transfer of \$1,207.00 in forfeited assets from the State of Maine to the City of Portland from the case of the State of Maine v. John Napolitano. This money was seized during a drug investigation conducted by the M.D.E.A. in conjunction with the Portland Police Department. The money will be deposited into the Portland Police Department's drug investigation account. Money in that account is used primarily for drug investigations, training, and equipment.

Five affirmative votes are required for passage after public comment.

LICENSES:

**Order 6-14/15
(Tab 8)**

Order Granting Municipal Officers' Approval of Better Burger Old Port, LLC d/b/a Elevation Burger at 205 Commercial St. Application for a Class IV (Beer) license with Outside Dining on Private Property – Sponsored by Katherine L. Jones, City Clerk.

Application filed 6/9/14. New City and State applications. Applicant holds a current Food Service Establishment with Preparation license with Outside Dining on Private Property.

Five affirmative votes are required for passage after public comment.

**Order 7-14/15
(Tab 9)**

Order Granting Municipal Officers' Approval of One Longfellow Square Inc. d/b/a One Longfellow Square at 1 Longfellow Sq. Application to Add Outdoor Dining on Public Property – Sponsored by Katherine L. Jones, City Clerk.

Application filed 6/3/14. New City application. Applicant holds a current Auditorium license with Entertainment with Dance.

Five affirmative votes are required for passage after public comment.

**Order 8-14/15
(Tab 10)**

Order Granting Municipal Officers' Approval of Olympia Equity Investors V, LLC d/b/a Hilton Garden Inn Portland Downtown at 65 Commercial St. Application to add Entertainment without Dance – Sponsored by Katherine L. Jones, City Clerk.

Application filed 6/24/14. New City application. Applicant holds a current Class IA FSE 40+ Rooms license.

Five affirmative votes are required for passage after public comment.

**Order 9-14/15
(Tab 11)**

Order Granting Municipal Officers' Approval of Yemane Tsegai and Akbert Bahta d/b/a Red Sea at 30 Washington Ave. Application for a Class III & IV (Wine & Beer) License – Sponsored by Katherine L. Jones, City Clerk.

Application filed 6/5/14. New City and State application. Applicant holds a current Food Service Establishment with Preparation License.

Five affirmative votes are required after public comment.

BUDGET ITEMS:

RESOLUTIONS:

UNFINISHED BUSINESS:

AMENDMENTS:

**Order 10-14/15
(Tab 12)**

Amendment to Portland City Code Chapter 17 Offenses Article VII – Access to Reproductive Health Care Facilities – Sponsored by Mayor Michael F. Brennan.

On June 26th, the U.S. Supreme Court issued its decision in *McCullen v. Cookley* regarding the Massachusetts buffer zone law upon which Portland's ordinance was based. The Supreme Court unanimously found that the 35-foot buffer zone did not pass constitutional muster as applied to plaintiffs who wish to "peacefully converse" with abortion clinic patients.

The City Council will consider whether or not to repeal Portland's 39-foot buffer zone ordinance as soon as possible, given the *McCullen* decision.

The City Council's consideration of the impact of the *McCullen* decision is a necessary step in its legislative duties.

This item must be read on two separate days. Staff recommends that the City Council waive the second reading and enact this item as an emergency.

ORDERS:

**Order 11-14/15
(Tab 13)**

Order Approving Two-Party Agreement Between the City of Portland and the Maine Department of Transportation Re: New Signal Equipment for Cumberland Avenue at Preble Street and Elm Street Intersections – Sponsored by Mark H. Rees, City Manager.

MaineDOT is in the process of completing design for the replacement of the signal equipment at the intersection of Cumberland Avenue and Preble Street, with bidding expected in late July, followed by construction later this year. After initial discussions with the Department, they agreed to include replacement of the equipment at this location's sister intersection, Cumberland Avenue at Elm Street as a bid option. Both have outdated equipment, and Cumberland at Elm does not have provisions that meet current Americans with Disabilities Act requirements. The City anticipates funding the additional work via the incoming FY15 Capital Improvement Plan money for signal improvements, as called out in the CIP description.

The cost of the additional signal equipment as well as the improvements to pedestrian access/ADA updates is anticipated to be approximately \$220,000. However, the age of the equipment is such that a disproportionate amount of staff time is spent at this location dealing with maintenance and malfunctions. MaineDOT is investing \$215,000 into the intersection of Cumberland Ave at Preble Street.

The FY15 CIP proposal includes the necessary funding to achieve this outcome. City Council action to appropriate these funds is required to enter into this agreement. Pending this action, the Department of Public Services recommends authorization of this agreement to update the signal equipment, reduce maintenance, and improve operations for vehicles, bicyclists, and pedestrians.

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

**Order 12-14/15
(Tab 14)**

Order Authorizing General Obligation Bonds to Finance a Portion of the City's Proposed 2015 Capital Improvement Program in an Amount not to Exceed \$15,911,000 - Sponsored by the Finance Committee, Councilor Nicholas M. Mavodones, Jr., Chair.

This order authorizes the incurring of indebtedness by the City of Portland through the issuance of General Obligation Bonds in the aggregate amount of \$15,911,000 pursuant to the City Charter.

The specific items for which the bond proceeds will be expended are set forth in detail in the accompanying Appropriation Order.

This order also authorizes the Director of Finance to prepare, issue, and sell the bonds and also authorizes the Director of Finance, Mayor and Clerk, and other proper officials of the City to perform whatever other acts may be necessary or desirable to effect the issuance, sale, and delivery of the bonds.

Finally, the order requires that sufficient funds for the annual payments of principal and interest on the bonds and any notes issued be included in the tax levy each year until the debt represented by the bonds and any notes are extinguished.

Draft minutes of the Finance Committee meeting held on June 26th are included in the agenda backup. The Committee voted 4-0 to forward this item to the City Council with a recommendation for passage.

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

**Order 13-14/15
(Tab 15)**

Order Appropriating \$15,911,000 of Bond Proceeds for the City's 2015 Capital Improvement Program – Sponsored by the Finance Committee, Councilor Nicholas M. Mavodones, Jr., Chair.

This order appropriates the new general obligation bond proceeds for the following described capital projects and all other related expenses summarized by category as follows:

Transportation Projects	\$6,625,000
Facilities Projects	\$2,355,000

Parks, Fields, & Trails Projects	\$1,298,000
Equipment & Vehicles Projects	\$2,230,000
Sewer/Stormwater Projects	\$3,277,000
Public Art Projects	\$ 63,000
Land Bank Projects	\$ 63,000

Draft minutes of the Finance Committee meeting held on June 26th are included in the agenda backup. The Committee voted 4-0 to forward this item to the City Council with a recommendation for passage.

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

**Order 14-14/15
(Tab 16)**

Order Reappropriating Surplus Project Funds from Unallotted Sewer Capital Improvement Program Account - Sponsored by the Finance Committee, Councilor Nicholas M. Mavodones, Jr., Chair.

This order appropriates \$2,150,000 from unallotted Sewer CIP accounts for specific projects associated with the 2014 Capital Improvement Program. A list of those projects is as follows:

Sewer/Storm Drain for Moody/Wilson Street	\$ 760,000
High/York Street Sewer Separation	410,000
Pump Station Rehab	680,000
Somerset Street Sewer (Elm to Hanover)	160,000
Baxter Woods Detention Pond	80,000
Penrith Road Erosion Repair	60,000
Total	\$2,150,000

A number of sewer/stormwater projects are included as part of the Capital Improvement Program for 2015. Last fall the Council approved the reallocation of finished projects, which at the time left surplus funds available for future projects. This funding is a balance of previously bonded projects and is currently being retired through debt service payments. Using these funds for new projects reduces the amount of new financing needed for 2015 Sewer CIP projects.

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

**Order 15-14/15
(Tab 17)**

Order Endorsing Projects for Federal and State Funds Through Portland Area Transportation System – Sponsored by the Transportation, Sustainability, and Energy Committee, Councilor David A. Marshall Chair.

The Department of Public Services (DPS) requests formal endorsement to advance four (4) finalist transportation projects through the city's regional Transportation Management Area funding agency known as PACTS. A deadline of July 29, 2014 exists to formally endorse these projects and show community intent to fund construction should they ultimately be awarded.

City Council official action on July 21, 2014, is necessary to meet this deadline.

City Council endorsement will result in PACTS advancing four (4) projects thru the steps required to possibly be funded in the 2016-2018 TIP. Regional funding decisions are expected to be complete in August 2014.

The four finalist projects are:

Project Descriptions	110% Cost Estimates
Intersections of Brighton/Deering/Falmouth/Bedford and Deering/Bedford	\$1,958,000
Congress St. signal improvements: Stevens to Fore River	\$302,940
Martin's Point Multi-Use Path/ East Coast Greenway, Phase 1	\$880,000
York St. Sidewalk and pedestrian signals	\$121,273

No "Road Rebuild" projects have advanced for Portland at this time. Collector Paving candidates are not yet known and will require a future endorsement action.

These four finalist projects are for PACTS Transportation Improvement Program (TIP) funding in the 2016-2018 cycle; awards will be announced in late August 2014 and three-party agreements for 2016 projects will be advanced in June 2015. Portland will be responsible for a 25% Local Share of each project's cost, and 100% responsible for 'ineligible' cost items. Examples of ineligibles include:

City utility system adjustments and repairs, upgrades to traffic signal systems and pavement markings, pedestrian system adjustments to curblines, and use of upgraded materials such as brick.

The 25% Local Match requirement for these projects is currently estimated to total \$815,553; that obligation (plus rough estimates for ineligibles) is reflected in the proposed FY16 CIP and will be adjusted as new estimates and information become available.

Our Local Match and other costs must be appropriated by June 2015 in order to enter into three-party agreements at that time. The currently projected 110% value of these four projects totals \$3,262,213. (The 10% extra is per PACTS policy and is intended to help cover the cost estimate fluctuation between project application and construction bid year timing; generally 2-4 years apart.)

The Department of Public Services has advanced these public infrastructure projects through the PACTS process as the most affordable means of implementation. This endorsement step will further that initiative and likely result in highly leveraged awards of regional transportation projects. Failure to endorse will delete these projects from PACTS funding consideration.

The Transportation, Sustainability, and Energy Committee met on June 18, 2014, and voted unanimously (4-0) to forward this item to the City Council with a recommendation for passage.

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

LICENSE RENEWALS:

Tab 1 7/7/14

IN COUNCIL REGULAR MEETING JUNE 16, 2014 VOL. 129 PAGE 118

ROLL CALL: Mayor Brennan called the meeting to order at 7:00 P.M. All Councilors present.

ANNOUNCEMENTS:

RECOGNITIONS:

APPROVAL OF MINUTES OF PREVIOUS MEETING:

Motion was made by Councilor Suslovic and seconded by Councilor Duson for approval of the June 2, 2014 minutes. Passage 9-0.

PROCLAMATIONS:

Proc 42-I3/14 Proclamation Honoring Wayne Kane, Department of Health and Human Services, Barron Center, as Employee of the Month for June, 2014 -- Sponsored by Mayor Michael F. Brennan.

APPOINTMENTS:

Order 264-13/14 Order Appointing Members to Various Boards and Commissions - Sponsored by the Nominating Committee, Councilor Cheryl A. Leeman, Chair.

Name	Committee	Term Expires
Matthew Purington	CDBG	09/30/2017
Matthew Birchby	CDBG	09/30/2017
Julia Sheridan	Board of Assessment Review	09/30/2017
Julia Sheridan	Historic Preservation	11/30/2017
Colin Apse	Land Bank Commission	06/30/2017
Bryan Wentzell	Land Bank Commission	06/30/2017
Rene Perry	Land Bank Commission	06/30/2017
William Mann	Land Bank Commission	06/30/2017
Steven Morgenstein	Parks Commission	06/30/2017
Travis Wagner	Parks Commission	06/30/2017
Michael Mertaugh	Parks Commission	06/30/2017
Diane Davison	Parks Commission	06/30/2017
Christian MilNeil	Portland Housing Authority	06/30/2019
Faith MacLean	Portland Housing Authority	06/30/2019
Siyad Ahmed	Portland Housing Authority	06/30/2019
Alan Freedman	Civil Service Commission	06/30/2017
Lin Lisberger	Portland Public Arts	06/30/2017

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

IN COUNCIL REGULAR MEETING JUNE 16, 2014 VOL. 129 PAGE 119

CONSENT ITEMS:

- Order 265-13/14 Order Re: Residential Parking Permit Extension – Sponsored by Mark H. Rees, City Manager.**
- Order 266-13/14 Order Declaring Saturday and Sunday, August 16 and 17, 2014, as “89th Annual St. Peter’s Bazaar and Italian Street Festival” and Approving Friday, August 15, 2014, as the “St. Peter’s 4-Mile Road Race” – Sponsored by Mark H. Rees, City Manager.**
- Order 267-13/14 Order Declaring Saturday, August 23, 2014, as “49th Annual WCSH6 Sidewalk Art Festival” – Sponsored by Mark H. Rees, City Manager.**
- Order 268-13/14 Order Declaring Saturday, August 23, 2014, as "Picnic Music & Arts Festival," a Festival of Music, Crafts, and Local Food – Sponsored by Mark H. Rees, City Manager.**
- Order 269-13/14 Order Approving Transfer of Funds Under 15 M.R.S.A. §§5824(3) and 5826(6) – Sponsored by Mark H. Rees, City Manager.**
- Order 270-13/14 Order to Accept Gifts of Sculpture Offered to the City, and to Incorporate the New Pieces into the City’s Public Art Collection at the Jetport – Sponsored by The Portland Public Art Committee, Lin Lisberger, Chair.**
- Order 271-13/14 Order Re: Traffic Schedule Amendment for Fore Street – Sponsored by the Transportation, Sustainability and Energy Committee, Councilor David A. Marshall, Chair.**

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

LICENSES:

- Order 272-13/14 Order Granting Municipal Officers’ Approval of Tempo Dulu, LLC d/b/a Danforth Inn at 163 Danforth Street. Application for a Class V License with Entertainment with Dance and Outdoor Dining on Private Property – Sponsored by Katherine L. Jones, City Clerk.**

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

IN COUNCIL REGULAR MEETING JUNE 16, 2014 VOL. 129 PAGE 120

Order 273-13/14 Order Granting Municipal Officers' Approval of Mack Bar Inc. d/b/a Blackstone's at 6 Pine Street Application for a Class A Lounge License – Sponsored by Katherine L. Jones, City Clerk.

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

Order 274-13/14 Order Granting Municipal Officers' Approval of Taco Barr, LLC d/b/a Taco Escobarr at 548 Congress Street Application to Expand Outdoor Dining on Public Property – Sponsored by Katherine L. Jones, City Clerk.

Motion was made by Councilor Suslovic and seconded by Councilor Coyne for passage. Passage 8-1(Donoghue).

Order 275-13/14 Order Granting Municipal Officers' Approval of Nosh LLC d/b/a Nosh Kitchen Bar at 551 Congress Street Application to Expand Existing Alcohol Service Area for One-Day Event on June 29, 2014 – Sponsored by Katherine L. Jones, City Clerk.

Motion was made by Councilor Duson and seconded by Councilor Coyne for passage. Passage 8-0 (Donoghue out).

Order 276-13/14 Order Granting Municipal Officers' Approval of Liquid M2 Inc. d/b/a Liquid MS Inc. at 465 Fore Street Application to Add Entertainment without Dance – Sponsored by Katherine L. Jones, City Clerk.

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

BUDGET ITEMS:

COMMUNICATIONS:

IN COUNCIL REGULAR MEETING JUNE 16, 2014 VOL. 129 PAGE 121

RESOLUTIONS:

Resolve 6-13/14 Resolution of the City Council of Portland Affirming and Committing to a Ten Year Compassionate Cities Campaign and Endorsing the Charter for Compassion – Sponsored by Mayor Michael F. Brennan and the Public Safety, Health and Human Services Committee, Councilor Edward J. Suslovic, Chair.

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

UNFINISHED BUSINESS:

Order 253-13/14 Order Granting Municipal Officers' 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. Postponed on 6/2/2014

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

Order 255-13/14 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. This item was given first reading on 6/2/2014.

Motion was made by Councilor Donoghue and seconded by Councilor Marshall for passage. Passage 8-1, (Leeman).

Order 256-13/14 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 item was given first reading on June 2, 2014.

Motion was made by Councilor Donoghue and seconded by Councilor Marshall for passage. Passage 8-1, (Leeman).

IN COUNCIL REGULAR MEETING JUNE 16, 2014 VOL. 129 PAGE 122

Order 257-13/14 Order Adopting Development Program for the Portland Downtown District for Fiscal Year 2014-2015 – Sponsored by Mark H. Rees, City Manager. This item was given first reading on June 2, 2014.

Motion was made by Councilor Leeman and seconded by Councilor Suslovic for passage. Passage 8-0, (Donoghue out) .

Order 258-13/14 Order Assessing Maintenance and Implementation Assessments in the Portland Downtown District for Fiscal Year 2014-2015 – Sponsored by Mark H. Rees, City Manager. This item was given first reading on June 2, 2014.

Motion was made by Councilor Suslovic and seconded by Councilor Marshall for passage. Passage 8-0, (Donoghue out).

Order 259 -13/14 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 item was given first reading on June 2, 2014.

Motion was made by Councilor Marshall and seconded by Councilor Suslovic for passage. Passage 8-0, (Donoghue out).

Motion was made by Councilor Mavodones and seconded by Councilor Coyne to take Orders 260 and 261 out of order and to take them up after Order 280. Passage 8-0, (Donoghue out).

Order 262-13/14 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. This item was given first reading on June 2, 2014.

Motion was made by Councilor Suslovic and seconded by Councilor Marshall for passage. Passage 8-0, (Hinck out).

Order 263-13/14 Amendment to Portland City Code Chapter 14. Land Use Article III. Zoning, Division 10. B-2 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. This item was given first reading on June 2, 2014.

IN COUNCIL REGULAR MEETING JUNE 16, 2014 VOL. 129 PAGE 123

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

ORDERS:

Order 277-13/14 Order Approving Lease with Portland Tugboat, LLC Re: Berthing, Storage Space, and Parking at the Portland Ocean Terminal – Sponsored by the Housing and Community Development Committee, Councilor Kevin Donoghue, Chair.

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

Order 278-13/14 Order Approving Revisions in the Scope of Services for the Healthcare for the Homeless Program – Sponsored by the Public Safety, Health and Human Services Committee, Councilor Edward J. Suslovic, Chair.

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

Order 279-13/14 Order Approving Billing, Credit and Collection Policy and Procedures for the Healthcare for the Homeless Program – Sponsored by the Public Safety, Health and Human Services Committee, Councilor Edward J. Suslovic, Chair.

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

Order 280-13/14 Order Making Clinical Staff Appointments for the Healthcare for the Homeless Program - Sponsored by the Public Safety, Health and Human Services Committee, Councilor Edward J. Suslovic, Chair.

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

IN COUNCIL REGULAR MEETING JUNE 16, 2014 VOL. 129 PAGE 124

**Order 260-13/14 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. This item was given first reading on June 2, 2014.**

Motion was made by Councilor Mavodones and seconded by Councilor Suslovic for passage. Passage 6-3, (Mavodones ,Coyne ,Leeman).

Order 261-13/14 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. This item was given first reading on June 2, 2014.

Motion was made by Councilor Suslovic and seconded by Councilor Hinck to strike the July 2015 date and add April 15, 2015 start date. Passage 5-4 (Duson, Mavodones, Coyne, Leeman).

Motion was made by Councilor Marshall and seconded by Councilor Suslovic for passage. Passage as amended 6-3, (Mavodones, Coyne, Leeman).

Motion was made by Councilor Mavodones and seconded by Councilor Suslovic to adjourn. Passage 9-0, 11:30 P.M.

AMENDMENTS:

LICENSE RENEWALS:

A TRUE COPY.

Katherine L. Jones, City Clerk

Procl-14/15
Tab 2 7-7-14

PROCLAMATION

HONORING

OFFICER JOE JAYNES

WHEREAS, Officer Joe Jaynes became a member of the Portland Police Department in October 2012. Prior to that, he was a member of the United States Marine Corps Military Police and served as Sergeant, Presidential Helicopter Squadron One Security. As squad leader he supervised nearly 20 Marines while monitoring the daily security force operations aboard Marine Corps Air Facility Quantico, Virginia, and abroad as Trip Security Officer providing security for Presidential Helicopters.

WHEREAS, Officer Jaynes is currently assigned to the evening shift in the patrol division in an area that includes the Old Port.

WHEREAS, Officer Jaynes is recognized this month for his diligent and proactive approach to patrolling the City and increasing a policing presence in an area that saw an increase in criminal activity over a period of several months.

WHEREAS, Officer Jaynes has been commended by his supervisors for his initiative, dedication and loyalty to the department, fellow officers and to the citizens of Portland. He has worked diligently over the course of his patrols to identify suspicious activity, gained the trust of informational sources, coordinated a series of intelligence gathering operations along with surveillance of key locations, identifying targets and working with CID members resulting in an arrest of a particular suspect on an unrelated charge.

NOW, THEREFORE, BE IT RESOLVED, THAT I, Michael F. Brennan, Mayor of the City of Portland, Maine, and the members of the Portland City Council do hereby proclaim honor and recognition to **Joe Jaynes as Officer of the Month, May 2014.**

Signed and sealed this 7th day of July, 2014

**Michael F. Brennan, Mayor
City of Portland, Maine**

*Order 1-14/15
Tab 3 7-7-14*

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 (A/L)

**ORDER APPOINTING CONSTABLE FOR 2014
RE: PORTLAND HOUSING AUTHORITY**

ORDERED, that Shannon Rafferty-Roy is hereby appointed pursuant to Sections 20-19, Portland City Code as Constable for Portland Housing Authority; and

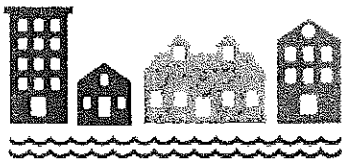
BE IT FURTHER ORDERED, that this appointment shall be effective from 12:01 a.m. July 17, 2014, until 12:00 midnight, December 31, 2014; and

BE IT FURTHER ORDERED, that this Constable is not allowed to carry a firearm, concealed or unconcealed, in the performance of her duties, or to make arrests or to issue parking tickets.

Sonia Bean - PHA Constable Appointment

From: Mark Adelson <madelson@porthouse.org>
To: Katherine Jones <KLJ@portlandmaine.gov>, Sonia Bean <STB@portlandmaine.gov>
Date: 6/24/2014 10:15 AM
Subject: PHA Constable Appointment
CC: TREVOR NUGENT <tnugent@porthouse.org>
Attachments: PHA Constable Appointment Request 6-14.pdf

Sonia and Kathy, attached is our request for our new Property Manager, Shannon Rafferty-Roy, to be appointed as a Constable. Please let us know when it goes to the Council for approval. Feel free to contact Trevor or myself if you have any questions. Thank you.



PORTLAND HOUSING AUTHORITY

Mark B. Adelson
Executive Director
14 Baxter Blvd.
Portland, Maine 04101
Phone: 207-773-4753
Fax: 207-761-5886

Confidentiality Notice: This e-mail message, including any attachments, is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure, or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy/delete all copies of the original message.

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**

*Order 2-14/15
Tab 4 7-7-14*

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

**ORDER DECLARING "SAMUEL ADAMS BREW & VIEW"
AS A FESTIVAL AND APPROVING CONTRACT AND PERMITS THEREFOR**

ORDERED, that Saturday, August 16, 2014, is hereby declared Samuel Adams Brew & View and the City Manager is authorized to grant permits to the organizers of Samuel Adams Brew & View, Human Movement Management, pursuant to Sec. 25-27 of the Portland City Code for the following activities:

Use of a designated area of Payson Park from 7:00 a.m. on Saturday, August 16, through 11:59 p.m. Saturday August 16, for a beer tasting with vendors, food and music to be held from 7:00 p.m. Saturday August 16, 2014 until 10:30 p.m. Saturday August 16, 2014, with gates opening at 6 p.m., live music performed at 7:00 p.m. to 8 p.m. and a movie viewing from 8:30 to 10:30 p.m., and any and all public announcement (PA) and other speakers or amplifiers used to amplify music or other sound shall be maintained at a reasonable level and be configured by Human Movement Management and the City to focus volume on the festival area and its immediate environment; and

BE IT FURTHER ORDERED, that under no circumstances may alcoholic beverages be sold on the streets or public property, except the sale and consumption of alcoholic beverages will be permitted in the Festival area, segregated from the rest of Payson Park with a barricade and entrance to which is limited to persons 21 years of age and older, from 6:00 p.m. Saturday to 10:30 p.m. Saturday; and

BE IT FURTHER ORDERED, that Human Movement Management shall reimburse the City for all expenses incurred by City Departments in connection with the Festival; and

BE IT FURTHER ORDERED, that Human Movement Management shall defend, indemnify and hold harmless the City of Portland, its officers and employees, from and against all claims arising out of or resulting from the Festival, its activities and/or use of City streets and property for said Festival, and shall procure and maintain commercial general liability, including contractual liability, insurance in the minimum amount of One Million Dollars (\$1,000,000) combined single limit for personal or bodily injury, death or property damage and covering the obligation of indemnification hereunder, and naming the City of Portland as an additional insured thereon; Bread and Butter Catering will hold the liquor

license required and shall further provide liquor liability insurance covering the sale and consumption of alcoholic beverages; and

BE IT FURTHER ORDERED, that the City Manager is authorized to enter into the Agreement for the use of a designated part of Payson Park on August 16, and the provisions of said Agreement shall control the use of said area; and

BE IT FURTHER ORDERED, that Festival areas will be closed to street vendors pursuant to Section 19-17 of the Portland City Code and the City Manager is authorized to issue such other temporary licenses for the Festival, including licenses for food service establishments, as may be required by the Portland City Code, provided that all applicable requirements of the Code have been met.

**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): July 7th, 2014
2. Can action be taken at a later date? Yes X No

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 "Samuel Adams Brew & View" as a Festival. Festival is scheduled to take place in Payson Park with load in at 7:00 a.m. Saturday, August 16, 2014, with gates opening at 6:00pm, show time is 7:00pm with a live local band playing for 1 hour. Following the band, an edited version of the movie "Wedding Crashers" will start at sundown. The film is 2hrs in length and is projected to end at 10:30 pm. Load Out will be immediately following the film.

Festival areas are bordered by: Baxter Blvd to the south, and Park Access roads to the east and west. The northern border of the festival area will end at the intersection of the eastern and western access roads. The western Park Access road will be closed to traffic from its entrance on Baxter Blvd., to its intersection with the eastern park access road. This roadway will be utilized for production vehicle and vendor parking. The Dyers Flat area will be utilized for Patron parking. The festival area will be segregated from the general public by barricade. The event is 21+ and a beer service will be present. There is no charge for admission.

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

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

See above.

IV. FINANCIAL IMPACT

Rental Fees and all costs incurred by City Departments for the event will be reimbursed by The Human Movement, the organizer of the event.

V. STAFF ANALYSIS & RECOMMENDATION

Human Movement Management® (HMM) is an active entertainment company based in Louisville, Colorado that for the last decade has been producing the world's largest running races, beer festivals, triathlons, obstacle races and outdoor events in North America.

Camp Sunshine will be the Non Profit beneficiary for the event. Camp Sunshine provides respite, support, joy and hope to children with life-threatening illnesses and their immediate families through various stages of a child's illness. The Bread and Butter Catering Company has been procured as the licensed caterer for the alcohol service. Katie Schier the owner of Bread and Butter catering has catered multiple events on city property without issue.

City Staff does not have any concerns with the event moving forward.



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: June 23, 2014
RE: "Samuel Adams Brew & View"

I am requesting that the following order be placed on the next City Council agenda: order authorizing the "Samuel Adams Brew & View" as a Festival, scheduled to take place at Payson Park on Saturday, August 16, 2014. The festival will feature a live performance by a local band, a beer service, and a showing of the edited version of the movie "Wedding Crashers".

Camp Sunshine is the main beneficiary for the "Samuel Adams Brew & View", and will be signing operating agreements along with Human Movement Management for usage of Payson Park with the City of Portland's Public Assembly Facilities Division. Rental Fee and all expenses for City services will be reimbursed by the organizers.

Camp Sunshine provides respite, support, joy and hope to children with life-threatening illnesses and their immediate families through various stages of a child's illness.

Human Movement Management® (HMM) is an active entertainment company based in Louisville, Colorado that for the last decade has been producing the world's largest running races, beer festivals, triathlons, obstacle races and outdoor events in North America.

Live music will be performed by a local band (to be determined) from 7:00pm – 8:00pm. Any and all public announcement (PA) and other speakers or amplifiers used to amplify music or other sound shall be maintained at a reasonable level and be configured by HMM's contractor and the City to focus volume in the park and its immediate environment, limiting any sound impacts in residential areas. While the Festival Area would be open only to attendees that day, access to the majority of the park would be open to the public.

The festival will be limited to guests over the age of (21), and beer would be available to all attendees. Bread and Butter Catering will hold the Liquor License and provide the beer service.

HMM and Camp Sunshine shall be responsible for ensuring that all vendors at the Festival have complied with appropriate license requirements, including food service, sale of alcohol and concert licenses. All Security for the event (including the Beer Service area) will be provided by Public Assembly Facilities Management Staff.

City Staff has managed similar events in the past, and are comfortable moving forward.

Samuel Adams Brew and View: Portland ME.
Payson Park August 16, 2014



10x10 tents



10x20 riser



Inflatable screen



Guarded exit



Main entrance, guarded with ID checkers.



Games



Draft trailer



Food Trucks



Projector on 3ft square stand

*Order 3-14/15
Tab 5 7-7-14*

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 TRANSFER OF FUNDS UNDER
15 M.R.S.A. §§ 5824(3) and 5826(6)**

ORDERED, that the City Council hereby accepts the amount of \$2,272.00 in forfeited assets in the case of State of Maine vs. Okang Bonitto from the State of Maine to the City of Portland, pursuant to 15 M.R.S.A. § 5824(3) and § 5826(6) and as provided in the attached "Approval of Transfer."

MEMORANDUM
City Council Agenda Item

TO: City Council

FROM: Department Heads/City Manager

DATE: June 27, 2014

DISTRIBUTION: Mark Rees, Mayor Brennan, Danielle West-Chuhta, Sonia Bean, Nancy English

SUBJECT: Approval of Transfer

SPONSOR: Police Department

COUNCIL MEETING DATE ACTION IS REQUESTED:

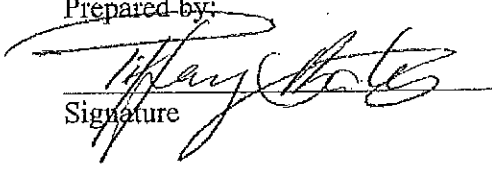
1st reading _____ next available _____ Final Action _____

Can action be taken at a later date: X Yes No (If no, why not?)

PRESENTATION:

- I. **SUMMARY OF ISSUE** The State requires Council approval of the transfer of forfeited cash to the Portland Police Department. (See attached approval form)
- II. **REASON FOR SUBMISSION** The State Forfeiture Statute, 15 M.R.S.A. § 5824 (3) and § 5826(6), requires that before any forfeitable item may be transferred to a State agency, County or municipality, the legislative body of that entity must publicly vote to accept the item.
- III. **INTENDED RESULT** Funds may be transferred to the Portland Police Department for deposit in the drug investigations account.
- IV. **COUNCIL GOAL ADDRESSED**
- V. **FINANCIAL IMPACT** The money is used to offset the costs of drug investigations, such as drug analysis, drug purchases, covert surveillance, surveillance equipment, drug training and protective gear, such as body armor.
- VI. **STAFF ANALYSIS**
- VII. **RECOMMENDATION**
- VIII. **LIST ATTACHMENTS**

Prepared by:


Signature

6-27-14
Date

STATE OF MAINE
Cumberland, SS

UNIFIED CRIMINAL DOCKET
Criminal Action
Docket No. CR-13-6566

State of Maine

v.

Okang Bonitto,
Defendant

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}
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}
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}
}
}
}
}

City of Portland
Approval of Transfer
15 M.R.S.A. §5824(3)
and §5826(6)

AND
\$2,272.00 US CURRENCY

DEFENDANT IN REM

NOW COMES the City/Town of Portland, Maine, by and through its legislative body, the City/Town Council, and does hereby grant approval pursuant to Section 5824(3) and Section 5826(6) of Title 15 of the Maine Revised Statutes Annotated, to the transfer of the above captioned Defendant(s) *In Rem*, namely \$2,272.00 US Currency, or any portion thereof, on grounds that the City/Town of Portland Police Department did make a substantial contribution to the investigation of this or a related criminal case.

WHEREFORE, the Portland City/Town Council does hereby approve of the transfer of the Defendant(s) *In Rem*, to the City/Town of Portland, Maine pursuant to 15 M.R.S.A. §5824(3) and §5826(6).

Dated: _____

Mayor

(Impress Legislative Body Seal Here)

*Order 4-14/15
Tab 6 7-7-14*

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 TRANSFER OF FUNDS UNDER
15 M.R.S.A. §§ 5824(3) and 5826(6)**

ORDERED, that the City Council hereby accepts the amounts of \$1,874.00, \$856.00, and \$3,767.00 in forfeited assets in the case of State of Maine vs. Gabriel Williams from the State of Maine to the City of Portland, pursuant to 15 M.R.S.A. § 5824(3) and § 5826(6) and as provided in the attached "Approval of Transfer."

MEMORANDUM
City Council Agenda Item

TO: City Council

FROM: Department Heads/City Manager

DATE: June 27, 2014

DISTRIBUTION: Mark Rees, Mayor Brennan, Danielle West-Chuhta, Sonia Bean, Nancy English

SUBJECT: Approval of Transfer

SPONSOR: Police Department

COUNCIL MEETING DATE ACTION IS REQUESTED:

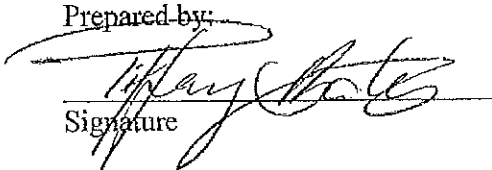
1st reading next available Final Action

Can action be taken at a later date: X Yes No (If no, why not?)

PRESENTATION:

- I. **SUMMARY OF ISSUE** The State requires Council approval of the transfer of forfeited cash to the Portland Police Department. (See attached approval form)
- II. **REASON FOR SUBMISSION** The State Forfeiture Statute, 15 M.R.S.A. § 5824 (3) and § 5826(6), requires that before any forfeitable item may be transferred to a State agency, County or municipality, the legislative body of that entity must publicly vote to accept the item.
- III. **INTENDED RESULT** Funds may be transferred to the Portland Police Department for deposit in the drug investigations account.
- IV. **COUNCIL GOAL ADDRESSED**
- V. **FINANCIAL IMPACT** The money is used to offset the costs of drug investigations, such as drug analysis, drug purchases, covert surveillance, surveillance equipment, drug training and protective gear, such as body armor.
- VI. **STAFF ANALYSIS**
- VII. **RECOMMENDATION**
- VIII. **LIST ATTACHMENTS**

Prepared by:


Signature

6-27-14
Date

STATE OF MAINE
Cumberland, SS

State of Maine

v.

Gabriel Williams,
Defendant

UNIFIED CRIMINAL DOCKET
Criminal Action
Docket No. CR-13-5930

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}
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}
}
}
}
}

City/Town Of Portland
Approval Of Transfer
15 M.R.S.A. §5824(3)
and §5826(6)

AND
\$1,874.00 US CURRENCY
\$856.00 US CURRENCY
\$3,767.00 US CURRENCY
DEFENDANTS IN REM

NOW COMES the City/Town of Portland, Maine, by and through its legislative body, the City/Town Council, and does hereby grant approval pursuant to Section 5824(3) and Section 5826(6) of Title 15 of the Maine Revised Statutes Annotated, to the transfer of the above captioned Defendant(s) *In Rem*, namely \$1,874.00 US Currency, \$856.00 US Currency and \$3,767.00 US Currency, on grounds that the City/Town of Portland Police Department did make a substantial contribution to the investigation of this or a related criminal case.

WHEREFORE, the City/Town of Portland Town/City Council does hereby approve of the transfer of the Defendant(s) *In Rem* to the City/Town of Portland, Maine pursuant to 15 M.R.S.A. §5824(3) and §5826(6).

Dated: _____

Chairperson/Mayor/Selectman/Clerk

(Impress Legislative Body Seal Here)

*Order 5-14/15
Tab 7 7-7-14*

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 TRANSFER OF FUNDS UNDER
15 M.R.S.A. §§ 5824(3) and 5826(6)**

ORDERED, that the City Council hereby accepts the amount of \$1,207.00 in forfeited assets in the case of State of Maine vs. John Napolitano from the State of Maine to the City of Portland, pursuant to 15 M.R.S.A. § 5824(3) and § 5826(6) and as provided in the attached "Approval of Transfer."

STATE OF MAINE
Cumberland, SS

State of Maine

v.

John Napolitano,
Defendant

AND
\$1,207.00 US CURRENCY
DEFENDANT IN REM #1

UNIFIED CRIMINAL DOCKET
Criminal Action
Docket No. CR-13-8321

}
}
}
} City/Town Of Portland
} Approval Of Transfer
} 15 M.R.S.A. §5824(3)
} and §5826(6)
}
}

NOW COMES the City/Town of Portland, Maine, by and through its legislative body, the City/Town Council, and does hereby grant approval pursuant to Section 5824(3) and Section 5826(6) of Title 15 of the Maine Revised Statutes Annotated, to the transfer of the above captioned Defendant(s) *In Rem #1*, namely \$1,207.00 US Currency, on grounds that the City/Town of Portland Police Department did make a substantial contribution to the investigation of this or a related criminal case.

WHEREFORE, the City/Town of Portland Town/City Council does hereby approve of the transfer of the Defendant(s) *In Rem* to the City/Town of Portland, Maine pursuant to 15 M.R.S.A. §5824(3) and §5826(6).

Dated: _____

Chairperson/Mayor/Selectman/Clerk

(Impress Legislative Body Seal Here)

MEMORANDUM
City Council Agenda Item

TO: City Council

FROM: Department Heads/City Manager

DATE: June 27, 2014

DISTRIBUTION: Mark Rees, Mayor Brennan, Danielle West-Chuhta, Sonia Bean, Nancy English

SUBJECT: Approval of Transfer

SPONSOR: Police Department

COUNCIL MEETING DATE ACTION IS REQUESTED:

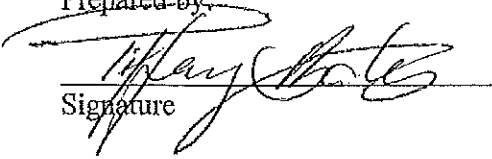
1st reading _____ next available _____ Final Action _____

Can action be taken at a later date: X Yes No (If no, why not?)

PRESENTATION:

- I. SUMMARY OF ISSUE** The State requires Council approval of the transfer of forfeited cash to the Portland Police Department. (See attached approval form)
- II. REASON FOR SUBMISSION** The State Forfeiture Statute, 15 M.R.S.A. § 5824 (3) and § 5826(6), requires that before any forfeitable item may be transferred to a State agency, County or municipality, the legislative body of that entity must publicly vote to accept the item.
- III. INTENDED RESULT** Funds may be transferred to the Portland Police Department for deposit in the drug investigations account.
- IV. COUNCIL GOAL ADDRESSED**
- V. FINANCIAL IMPACT** The money is used to offset the costs of drug investigations, such as drug analysis, drug purchases, covert surveillance, surveillance equipment, drug training and protective gear, such as body armor.
- VI. STAFF ANALYSIS**
- VII. RECOMMENDATION**
- VIII. LIST ATTACHMENTS**

Prepared by:


Signature

6-27-14
Date

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

*Order 6-14/15
Tab 8 7-7-14*

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

ORDER
GRANTING MUNICIPAL OFFICERS'
APPROVAL OF:

**Better Burger Old Port, LLC d/b/a Elevation Burger at 205 Commercial St. Application
for a Class IV (Beer) license with Outside Dining on Private Property.**

**Better Burger Old Port LLC
d/b/a Elevation Burger
One Long Wharf
Portland, ME 04101**

City Clerks Office
City of Portland
389 Congress St
Portland, ME 04101

June 9, 2014

To the Mayor and Members of the City Council:

Please accept this as our Letter of Intent to secure a Liquor License for Elevation Burger, located at 205 Commercial Street.

We are a quick service organic beef burger restaurant, with a simple menu of burgers, fries and beverages. We opened for business on May 23, and given our location in the Old Port and our outdoor seating, we have had many requests for a beer with dinner.

We would like to satisfy the demand by offering a few choices of bottled beer. In keeping with our organic theme, we intend on offering Portland's own Peak Organic Beer.

Our application is attached. Please let us know if you require any further information.

Best regards,

Christopher DiMillo & Mark Caron
Owners, Elevation Burger Old Port

Rcvd 6/9/14

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

Application for Food Service Establishment With Alcoholic Beverages

Type of Liquor License Applying for: Class IV - Beer Only

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

Business Name (d/b/a): Better Burger Old Port, LLC dba/ Elevation Burger Phone: 775-6800

Location Address: 205 Commercial Street, Portland, ME 04103 ZIP 04103

If new, what was formerly in this location: The Farmer's Table

Mailing Address: 1 Long Wharf, Portland, ME 04103 ZIP 04103

Contact Person: Mark Caron Phone: 207-671-6420

Manager of Establishment: Drew Litman Home Phone # 207-838-6556

Owner of Premises (landlord): Brewster Harding

Address of Premises Owner: 207 Commercial Street, Portland, ME ZIP 04103

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):
We currently hold a business license for Elevation Burger at 205 Commercial Street for just food.

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: Better Burger Old Port, LLC

Corporation Mailing Address: 1 Long Wharf, Portland, ME ZIP 04103

Contact Person: Mark Caron Phone Number: 207-671-6420

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

Name <u>Mark Caron</u>	Title <u>member</u>	DOB <u>5/1/70</u>	Residence Address <u>28 Brookside Dr., Falmouth, ME 04105</u>
Name _____	Title _____	DOB _____	Residence Address _____
Name <u>Christopher DiMillo</u>	Title <u>member</u>	DOB <u>4/4/70</u>	Residence Address <u>30 Fern Lane, Cumberland Falls, ME, 04110</u>
Name _____	Title _____	DOB _____	Residence Address _____
Name _____	Title _____	DOB _____	Residence Address _____
Name _____	Title _____	DOB _____	Residence Address _____

(Please see reverse side)

Type of Food Served: Burgers, Fries, Soda, Shakes

Please check all that will be served: Beer ☒ Wine ☐ Liquor ☐

Percentage of sales - Generated from Food: 95 Generated from Alcohol: 5

Hours and Days of operation: 11-10 Sun-Thurs, 11:00am-2:00am Friday & Saturday

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 We are a fast-casual hamburger restaurant serving burgers, fries, & drinks in paper containers

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?: already open

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 member Date 6/5/14

Department of Public Safety
Division



Liquor Licensing & Inspection

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.

BUREAU USE ONLY

License No. Assigned:

Class:

Deposit Date:

Amt. Deposited:

PRESENT LICENSE EXPIRES _____

INDICATE TYPE OF PRIVILEGE: ☒ MALT ☐ SPIRITUOUS ☐ VINOUS

INDICATE TYPE OF LICENSE:

☒ RESTAURANT (Class I,II,III,IV)

☐ HOTEL-OPTIONAL FOOD (Class I-A)

☐ CLASS A LOUNGE (Class X)

☐ CLUB (Class V)

☐ TAVERN (Class IV)

☐ RESTAURANT/LOUNGE (Class XI)

☐ HOTEL (Class I,II,III,IV)

☐ CLUB-ON PREMISE CATERING (Class I)

☐ GOLF CLUB (Class I,II,III,IV)

☐ 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.) <u>Better Burger and Port, LLC</u> DOB: _____				2. Business Name (D/B/A) <u>Elevation Burger</u>			
DOB: _____							
DOB: _____				Location (Street Address) <u>205 Commercial Street</u>			
Address <u>1 Long Wharf</u>				City/Town <u>Portland</u>		State <u>ME</u>	
				Zip Code <u>04101</u>			
City/Town <u>Portland, ME</u>				State <u>ME</u>		Zip Code <u>04101</u>	
Telephone Number <u>207-775-6800</u>				Fax Number <u>207-775-6801</u>		Business Telephone Number <u>207-775-6800</u>	
Federal I.D. # <u>46-3542600</u>				Seller Certificate # <u>1167636</u>		Fax Number <u>207-775-6801</u>	

3. If premises are a hotel, indicate number of rooms available for transient guests: N/A

N/A 4. State amount of gross income from period of last license: ROOMS \$ _____ FOOD \$ _____ LIQUOR \$ _____

5. Is applicant a corporation (limited liability company) or limited partnership? YES ☒ NO ☐

complete Supplementary Questionnaire, If YES

6. Do you permit dancing or entertainment on the licensed premises? YES ☐ NO ☒

7. If manager is to be employed, give name: Drew Litman

8. If business is NEW or under new ownership, indicate starting date: new - opened 5/23/14

Requested inspection date: _____ Business hours: 11:00 am - 10 pm Sun-Th, 11:00 am - 2 am Fr-Sat

9. Business records are located at: 1 Long Wharf, Portland, ME 04101

10. Is/are applicants(s) citizens of the United States? YES ☒ NO ☐

11. Is/are applicant(s) residents of the State of Maine?

YES ☒ NO ☐

12. List name, date of birth, and place of birth for all applicants, managers, and bar managers. Give maiden name, if married:
Use a separate sheet of paper if necessary.

Name in Full (Print Clearly)	DOB	Place of Birth
Mark R. Carron	5/1/70	Portland, ME
Christopher D. Milla	6/4/70	Portland, ME
Andrew Litman	11/23/82	Portland, ME

Residence address on all of the above for previous 5 years (Limit answer to city & state)

Mark Carron - ~~Portland~~ Palmer, ME, Chris D. Milla - Cumberland Foreside, ME,
Drew Litman - Portland, ME

13. Has/have applicant(s) or manager ever been convicted of any violation of the law, other than minor traffic violations, of any State of the United States? YES ☐ NO ☒

Name: _____ Date of Conviction: _____

Offense: _____ Location: _____

Disposition: _____

14. Will any law enforcement official benefit financially either directly or indirectly in your license, if issued?

Yes ☐ No ☒ If Yes, give name: _____

15. Has/have applicant(s) formerly held a Maine liquor license? YES ☒ NO ☐

-Applicant Chris D. Milla holds liquor license for D. Milla's Marina.

16. Does/do applicant(s) own the premises? Yes ☐ No ☒ If No give name and address of owner: _____

Brewster Harding, 207 Commercial Street, Portland, ME 04101

17. Describe in detail the premises to be licensed: (Supplemental Diagram Required) The business is a fast-casual restaurant concept serving burgers, fries, and drinks. We are asking to serve "beer" only - no wine or liquor.

18. Does/do applicant(s) have all the necessary permits required by the State Department of Human Services?

YES ☒ NO ☐ Applied for: _____

19. What is the distance from the premises to the NEAREST school, school dormitory, church, chapel or parish house, measured from the main entrance of the premises to the main entrance of the school, school dormitory, church, chapel or parish house by the ordinary course of travel? 3300 ft. Which of the above is nearest? St. Peter's Church

20. Have you received any assistance financially or otherwise (including any mortgages) from any source other than yourself in the establishment of your business? YES ☒ NO ☐

IF YES, give details: Loan - Camden Bank

The Division of Liquor Licensing & Inspection is hereby authorized to obtain and examine all books, records and tax returns pertaining to the business, for which this liquor license is requested, and also such books, records and returns during the year in which any liquor license is in effect.

NOTE: "I understand that false statements made on this form are punishable by law. Knowingly supplying false information on this form is a Class D offense under the Criminal Code, punishable by confinement of up to one year or by monetary fine of up to \$2,000 or both."

Dated at: Portland, ME
Town/City, State

on 6/6/14, 20 14
Date

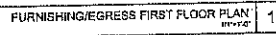
Please sign in blue ink

Signature of Applicant or Corporate Officer(s)

Mark Carron

Signature of Applicant or Corporate Officer(s)

Christopher D. Milla



ARCHITECT THOMAS A. EDSON, RA 101 ORCHARD DRIVE SUITE 100 QUINCY, IL 60070 PHONE 618-450-1188	
DRAWING TITLE ELEVATION FRAMPOISE VENTURES 400 WEST WISCONSIN, 1ST FLOOR MILWAUKEE, WI 53233 PROJECT NO. 0000-000000-000000	
DATE 1/17/2013	
PROJECT LOCATION 205 Commercial St. Portland, ME 04101	
CLIENT BETTER BURGER OLD PORT, LLC PORTLAND, ME 04101	
DRAWING SCALE AS SHOWN	
DRAWING NO. EV01	
SHEET NO. 1	
PROJECT NO. 0000-000000-000000	
DRAWING TITLE ELEVATION FRAMPOISE VENTURES	
PROJECT LOCATION 205 Commercial St. Portland, ME 04101	
CLIENT BETTER BURGER OLD PORT, LLC PORTLAND, ME 04101	
DRAWING SCALE AS SHOWN	
DRAWING NO. EV01	
SHEET NO. 1	
PROJECT NO. 0000-000000-000000	
DRAWING TITLE ELEVATION FRAMPOISE VENTURES	
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DRAWING NO. EV01	
SHEET NO. 1	
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DRAWING SCALE AS SHOWN	
DRAWING NO. EV01	
SHEET NO. 1	
PROJECT NO. 0000-000000-000000	
DRAWING TITLE ELEVATION FRAMPOISE VENTURES	
PROJECT LOCATION 205 Commercial St. Portland, ME 04101	
CLIENT BETTER BURGER OLD PORT, LLC PORTLAND, ME 04101	
DRAWING SCALE AS SHOWN	



State of Maine
Bureau of Alcoholic Beverages
Division of Liquor Licensing and Enforcement

**Supplemental Information Required for
Business Entities Who Are Licensees**

For Office Use Only:

License #: _____

Date Filed: _____

For information required for Questions 1 to 4, this information is on file with the Maine Secretary of State's office and must match their record information. If you have questions regarding this information, please call the Secretary of State's office at (207) 624-7752. Please clearly complete this form in its entirety.

1. Exact legal name:

Better Burger Old Port, LLC

2. Other business name for your entity (DBA), if any:

Elevation Burger

3. Date of filing with the Secretary of State: ~~checked~~ 12/4/13

4. State in which you are formed: Maine

5. If not a Maine business entity, date on which you were authorized to transact business in the State of Maine: _____

6. List the name and addresses for previous 5 years, birth dates, titles of officers, directors and list the percentage ownership: (attached additional sheets as needed)

Name	Address for Previous 5 years	Date of Birth	Ownership %
Mark E. Carron	28 Brookside Driv, Falmouth, ME 04105	5/1/70	50
Christopher D. Mello	30 Fern Lane, Cumberland Fld, ME 04100	6/4/70	50

7. Is any principal person involved with the entity a law enforcement official?

Yes

☐

No

☒

8. If Yes to Question 7, please provide the name and law enforcement agency:

Name: _____ Agency: _____

9. Has any principal person involved in the entity ever been convicted of any violation of the law, other than minor traffic violations, in the United States?

Yes

☐

No

☒

10. If Yes to Question 8, please complete the following: (attached additional sheets as needed)

Name: _____

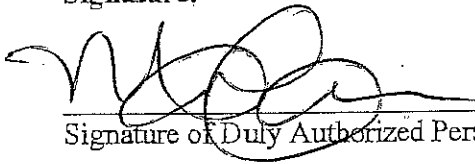
Date of Conviction: _____

Offense: _____

Location of Conviction: _____

Disposition: _____

Signature:



Signature of Duly Authorized Person

10/16/14

Date

Mark R. Caron

Print Name of Duly Authorized Person

Submit Completed Forms To: Bureau of Alcoholic Beverages

Division of Liquor Licensing and Enforcement

164 State House Station

Augusta, Me 04333-0101

Telephone Inquiries: (207) 624-7220

BURGERS

100% ORGANIC, GRASS-FED, FREE-RANGE BEEF

THE ELEVATION BURGER - 5.99

2 ORGANIC BEEF PATTIES - 510 CAL

KID'S BURGER - 4.19

1 ORGANIC BEEF PATTY - 330 CAL

VERTIGO BURGER - PRICE VARIES

STACK 'EM UP; BUILD YOUR OWN 3 TO 10
ORGANIC PATTY BURGER - 690 - 1770 CAL

VEGGIE BURGER #1 - 4.49

A SAVORY BLEND OF VEGGIES
& CHEESE - 300 CAL

VEGGIE BURGER #2 - 4.79

MADE WITH ORGANIC INGREDIENTS (VEGAN) 320 CAL

HALF THE GUILT BURGER - 5.99

1 ORGANIC BEEF PATTY + 1 VEGGIE PATTY
OF YOUR CHOICE - 480 - 500 CAL

THE ELEVATION SALAD - 6.99

230 CAL

GRILLED CHEESE SANDWICH - 2.99

6 MONTH AGED, NON-PROCESSED
CHEDDAR CHEESE - 330 CAL

DRINKS & SIDES

FRESH FRIES COOKED IN HEART-HEALTHY OLIVE OIL

FRESH FRIES - 2.99

COOKED IN 100% HEART-HEALTHY OLIVE OIL
520 CAL

SIDE SALAD - 2.79

COMES WITH ONE DRESSING - 20 CAL

CUP OF MANDARIN ORANGES - 1.79

70 CAL

FOUNDER'S COOKIE - 1.69

FRESH BAKED CHOCOLATE CHIP OATMEAL
PECAN COOKIES MADE WITH ORGANIC
EGGS AND BUTTER - 270 CAL

FOUNTAIN DRINK - 1.99 / 2.29

YOUR CHOICE FROM THE SODA
FOUNTAIN (FREE REFILLS) - 0 - 390 CAL

BOTTLED WATER - PRICE VARIES

0 CAL

ASSORTED BOTTLED JUICES,
TEAS, & SODAS - PRICE VARIES

TOPPINGS

CHOOSE YOUR TOPPINGS FROM THE FOLLOWING:

6 MONTH AGED CHEDDAR CHEESE

(.60/Slice) 90 CAL

ORGANIC BACON (1.49 EXTRA) 45 CAL

MUSHROOMS (.60 EXTRA) 40 CAL

KETCHUP 5 CAL

LETTUCE 0 CAL

TOMATOES 5 CAL

PICKLES 0 CAL

RAW ONIONS 5 CAL

MUSTARD 0 CAL

MAYO 20 CAL

CARAMELIZED ONIONS 15 CAL

ELEVATION SAUCE 5 CAL

BALSAMIC MUSTARD 5 CAL

JALAPENOS 0 CAL

HOT PEPPER RELISH 0 CAL

BLUE CHEESE DRESSING

(.50 EXTRA) 130 CAL

TRY OUR "ORIGINAL" TOPPINGS: ELEVATION SAUCE, TOMATOES, PICKLES AND LETTUCE.

AVOIDING BREAD? WRAP YOUR BURGER IN LETTUCE.

thick SHAKES & MALTS

MADE WITH FRESH-SCOOPED ICE CREAM

CHOOSE CHOCOLATE, VANILLA, OR COFFEE ICE CREAM 710 CAL - 4.29

THEN ADD 1 OR 2 OF THE FOLLOWING:

OREO COOKIES 80 CAL

CHOCOLATE SYRUP 260 CAL

REAL BANANAS 35 CAL

REAL STRAWBERRIES 35 CAL

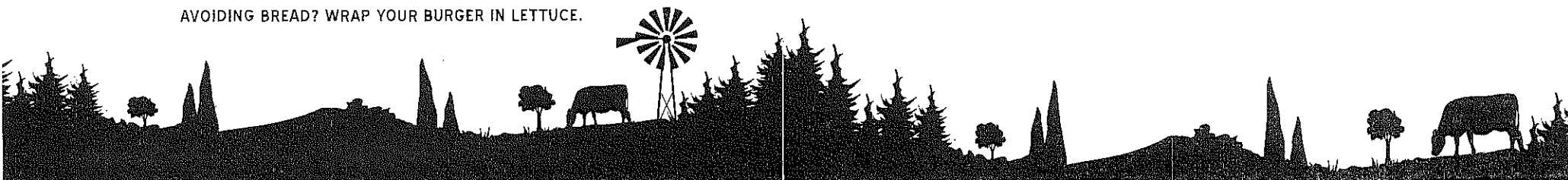
REAL BLUEBERRIES 25 CAL

REAL MANGOES 25 CAL

BLACK CHERRY 70 CAL

KEY LIME 60 CAL

ORGANIC CHEESECAKE 45 CAL



Business Licensing - ELEVATION BURGER Business License Approval

From: Gary Hutcheson
To: Business Licensing
Date: 6/15/2014 2:19 PM
Subject: ELEVATION BURGER Business License Approval

ELEVATION BURGER is Approved for their Business License Inspection by the Police Dept.

Date: 3/24/2014

Zone:

Comments: The police department does not oppose the request.

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



MAINE STATE BUREAU OF IDENTIFICATION
45 Commerce Drive, Suite 1 / STATE HOUSE STATION # 42
AUGUSTA, ME 04333
(207) 624-7240 (VOICE) (207) 624-4478 (TDD)

Transaction Response #: MIQ99C183099

Criminal History Record

Introduction

This rap sheet was produced in response to the following request (Produced on 2014-06-23) :

Inquiries Name(s) ANDREW LITMAN (1982-11-23)

NO MATCH WAS FOUND FOR YOUR REQUEST.



MAINE STATE BUREAU OF IDENTIFICATION
45 Commerce Drive, Suite 1 / STATE HOUSE STATION # 42
AUGUSTA, ME 04333
(207) 624-7240 (VOICE) (207) 624-4478 (TDD)

Transaction Response #: MIQ99C183102

Criminal History Record

Introduction

This rap sheet was produced in response to the following request (Produced on 2014-06-23) :

Inquiries Name(s) : CHRISTOPHER DIMILLO (1970-06-04)

The information in this rap sheet is provided subject to the following caveats:

Important! When a criminal history record and juvenile crime information record check is processed by the State Bureau of Identification using personal identifiers such as name and date of birth, it is possible that the record supplied belongs to another person with the same or essentially similar name and date of birth. Assurance that the person sought are one and the same requires verification through fingerprint comparison. If the information contained in this response will be used to disqualify an applicant for employment, housing or credit, the person making the eligibility determination should provide the applicant with an opportunity to complete or contest the accuracy of the criminal history information in the response. An individual may request amendment or correction of criminal history record information by a criminal justice agency pursuant to 16 M.R.S.A. subsection 620. (CRSA; 2013-10-17)

****THIS RESPONSE IS BEING PRODUCED FOR YOUR REQUEST SENT: 2014-06-23 (CRSA)**

1. This record, effective September 1, 2000, contains information relating solely to persons either arrested as a fugitive from justice [15 M.R.S.A. 201.4 or arrested or charged with a State of Maine criminal offense. It does not include Class D or E crimes in Title 12 or Title 29-A, formerly Title 29, unless the crime is alcohol-related or drug-related [25 M.R.S.A. 1541.4-A.A], and certain former crimes no longer classified as criminal. 2. For information

regarding excluded Marine Resources crimes in Title 12, contact the Department of Marine Resources. 3. For information regarding excluded Inland Fisheries and Wildlife crimes in Title 12, contact the Department of Inland Fisheries and Wildlife. 4. For information relating to excluded crimes in Title 29-A, formerly Title 29, contact the Secretary of State, Motor Vehicle Division. 5. A list of former crimes is available from this Bureau. (CRSA; 2013-10-23)

THE FOLLOWING ATN(S) ARE UNSUPPORTED BY FINGERPRINTS IN STATE BUREAU OF IDENTIFICATION FILES: (673246A). (CRSA)

Identification

Subject Name(s)

DIMILLO, CHRISTOPHER

Subject Description

FBI Number

State Id Number

DOC Number

ME0188127 (ME)

Unknown/NA

Social Security Number

Driver's License Number

Unknown/NA

Unknown/NA

Miscellaneous Numbers

Number

Type

4058171

Unknown (ME)

Sex

Race

Skin Tone

MALE

White

Unknown/NA

Height

Weight

Date of Birth

5'10"

200 Pounds

1970-06-04

Hair Color

Eye Color

Fingerprint Pattern

Blond

Blue

Unknown/NA

Scars, Marks, and Tattoos

Unknown/NA

Blood Type

Medical Condition

Unknown/NA

Unknown/NA

Place of Birth

Citizenship

Ethnicity

Unknown/NA

Unknown/NA

Unknown/NA

Marital Status

Unknown/NA

Religion

Unknown/NA

Employment

Unknown/NA

Residence

Residence as of

2010-02-06

Location Type

PHYSICAL

Mailing Address

30 FERNE LANE
CUMBERLAND FORESIDE, ME 04110

Telephone

Fingerprint Images

Unknown/NA

Palmpoint Images

Unknown/NA

Photo Images

Unknown/NA

DNA Data

Unknown/NA

Caution Information

Firearms Disqualified

C - Cleared

Criminal History**Cycle 001**

Tracking Number

673246A

Earliest Event Date

2008-08-10

Arrest

(Cycle 001)

Arrest Date

2008-08-10

Arresting Agency

ME0070200

Subject Name(s)

DIMILLO, CHRISTOPHER

Arrest Type Adult

Charge

Charge Number 673246A 001
 Charge Tracking Number 673246A
 Charge Case Number 08-008544
 Agency ME0070200
 Offense Date 2008-08-10
 Charge Description OPERATING UNDER THE INFLUENCE (Charge Class D)
 Statute 29-A MRSA SUBSECTION 2411(1-A)(A)
 State Offense Code 9878 (ME)
 Severity Misdemeanor

Prosecutor Disposition (Cycle 001)
Prosecutor Case Number D6_8-5523
Prosecutor Agency ME007013A
Charge

Charge Number 673246A 001
 Charge Tracking Number 673246A
 Charge Case Number D6_8-5523
 Agency ME007013A
 Offense Date 2008-08-10
 Charge Description OPERATING UNDER THE INFLUENCE (Charge Class D)
 Statute 29-A MRSA SUBSECTION 2411(1-A)(A)
 State Offense Code 9878 (ME)
 Severity Misdemeanor
 Disposition ADDED (Other)

Court Disposition (Cycle 001)
Court Agency ME007025J
Charge

Charge Number 673246A 001
 Charge Tracking Number 673246A
 Charge Case Number ROCDCCR200800861
 Agency ME007025J
 Offense Date 2008-08-10
 Charge Description OPERATING UNDER THE INFLUENCE (Charge Class D)
 Statute 29-A MRSA SUBSECTION 2411(1-A)(A)
 State Offense Code 9878 (ME)
 Severity Misdemeanor
 Disposition GUILTY (2009-12-03; ME)

Sentencing (Cycle 001)
Sentencing Agency ME007025J
 Court Case Number ROCDCCR200800861

Charge Number 673246A 001
Charge Tracking Number 673246A

Sentence 2009-12-03: FINED \$500.00 (2009-12-03)
2009-12-03: LICENSE SUSPENSION 90 days (2009-12-03)

Corrections No data supplied

Index of Agencies

Agency DISTRICT ATTORNEY'S OFFICE ROCKLAND;
ME007013A

Contact

Agency Telephone 207-5940424

Agency Facsimile

Agency Email Address

Mailing Address 62 UNION STREET
ROCKLAND, ME 04841

Agency ROCKLAND PD; ME0070200

Contact

Agency Telephone 207-5940316

Agency Facsimile

Agency Email Address

Mailing Address 1 POLICE PLAZA
ROCKLAND, ME 04841

Agency 6TH DISTRICT COURT ROCKLAND; ME007025J

Contact

Agency Telephone 207-5962240

Agency Facsimile

Agency Email Address

Mailing Address 62 UNION STREET
ROCKLAND, ME 04841



MAINE STATE BUREAU OF IDENTIFICATION
45 Commerce Drive, Suite 1 / STATE HOUSE STATION # 42
AUGUSTA, ME 04333
(207) 624-7240 (VOICE) (207) 624-4478 (TDD)

Transaction Response #: MIQ99C183098

Criminal History Record

Introduction

This rap sheet was produced in response to the following request (Produced on 2014-06-23) :

Inquiries Name(s) MARK R CARON (1970-05-01)

The information in this rap sheet is provided subject to the following caveats:

Important! When a criminal history record and juvenile crime information record check is processed by the State Bureau of Identification using personal identifiers such as name and date of birth, it is possible that the record supplied belongs to another person with the same or essentially similar name and date of birth. Assurance that the person sought are one and the same requires verification through fingerprint comparison. If the information contained in this response will be used to disqualify an applicant for employment, housing or credit, the person making the eligibility determination should provide the applicant with an opportunity to complete or contest the accuracy of the criminal history information in the response. An individual may request amendment or correction of criminal history record information by a criminal justice agency pursuant to 16 M.R.S.A. subsection 620. (CRSA; 2013-10-17)

****THIS RESPONSE IS BEING PRODUCED FOR YOUR REQUEST SENT: 2014-06-23 (CRSA)**

1. This record, effective September 1, 2000, contains information relating solely to persons either arrested as a fugitive from justice [15 M.R.S.A. 201.4 or arrested or charged with a State of Maine criminal offense. It does not include Class D or E crimes in Title 12 or Title 29-A, formerly Title 29, unless the crime is alcohol-related or drug-related [25 M.R.S.A. 1541.4-A.A], and certain former crimes no longer classified as criminal. 2. For information

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THE FOLLOWING ATN(S) ARE UNSUPPORTED BY FINGERPRINTS IN STATE BUREAU OF IDENTIFICATION FILES: (425375A). (CRSA)

Identification

Subject Name(s)

CARON, MARK

Subject Description

FBI Number

State Id Number
ME0097759 (ME)

DOC Number
Unknown/NA

Social Security Number
Unknown/NA

Driver's License Number
Unknown/NA

Miscellaneous Numbers
Unknown/NA

Sex
Unknown/NA

Race
Unknown/NA

Skin Tone
Unknown/NA

Height
Unknown/NA

Weight
Unknown/NA

Date of Birth
1970-05-08

Hair Color
Unknown/NA

Eye Color
Unknown/NA

Fingerprint Pattern
Unknown/NA

Scars, Marks, and Tattoos
Unknown/NA

Blood Type
Unknown/NA

Medical Condition
Unknown/NA

Place of Birth
Unknown/NA

Citizenship
Unknown/NA

Ethnicity
Unknown/NA

Marital Status

Unknown/NA

Religion

Unknown/NA

Employment

Unknown/NA

Residence

Residence as of

2005-11-28

Location Type

PHYSICAL

Mailing Address

471 COURT ST APT R
AUBURN, ME

Telephone

Fingerprint Images

Unknown/NA

Palmprint Images

Unknown/NA

Photo Images

Unknown/NA

DNA Data

Unknown/NA

Caution Information

Firearms Disqualified

C - Cleared

Criminal History**Cycle 001****Tracking Number**

425375A

Earliest Event Date

2000-11-25

Arrest

(Cycle 001)

Arrest Date

2000-11-25

Arresting Agency

ME0010100

Subject Name(s)

CARON, MARK

Arrest Type Adult

Charge

Charge Number 425375A 001

Charge Tracking Number 425375A

Charge Case Number ME00-28020

Agency ME0010100

Offense Date 2000-11-25

Charge Description OPERATING UNDER THE INFLUENCE (Charge Class D)

Statute 29-A MRSA SUBSECTION 2411(1)

State Offense Code 1197 (ME)

Severity Misdemeanor

Prosecutor Disposition No data supplied

Court Disposition (Cycle 001)

Court Agency ME001025J

Charge

Charge Number 425375A 001

Charge Tracking Number 425375A

Charge Case Number CR 2000-05257

Agency ME001025J

Offense Date 2000-11-25

Charge Description OPERATING UNDER THE INFLUENCE (Charge Class D)

Statute 29-A MRSA SUBSECTION 2411(1)

State Offense Code 1197 (ME)

Severity Misdemeanor

Disposition GUILTY (2001-04-10; ME)

Sentencing (Cycle 001)

Sentencing Agency ME001025J

Court Case Number CR 2000-05257

Charge Number 425375A 001

Charge Tracking Number 425375A

Sentence 2001-04-10: FINED \$600.00 (2001-04-10)

2001-04-10: INCARCERATED 60 days ALL SUSPENDED

BUT : 12 DAYS - ANDROSCOGGIN COUNTY JAIL -

EXECUTION STAYED UNTIL: 7/20/2001 (2001-04-10)

2001-04-10: PROBATION 1 years STARTING DATE:

4/10/2001 (2001-04-10)

Corrections No data supplied

Index of Agencies

Agency AUBURN PD; ME0010100

Contact

Agency Telephone 207-3336650

Agency Facsimile

Agency Email Address

Mailing Address

60 COURT ST
AUBURN, ME 04210

Agency

8TH DISTRICT COURT LEWISTON; ME001025J

Contact

Agency Telephone

207-7954800

Agency Facsimile

Agency Email Address

Mailing Address

PO BOX 1345
LEWISTON, ME 04243

Elevation Burger

205 Commercial St.





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

June 25, 2014

Better Burger Old Port, LLC
Attn: Mr. Caron & Mr. DiMillo
1 Long Wharf
Portland, ME 04103

**Re: Better Burger Old Port, LLC d/b/a Elevation Burger at 205 Commercial St.
Application for a Class IV (Beer) license with Outside Dining on Private Property.**

Dear Mr. Caron & Mr. DiMillo,

This letter shall serve as a reminder of the Public Hearing before the Portland City Council on **Monday, July 7th at 7:00 p.m.** for the review of the application for Better Burger Old Port, LLC d/b/a Elevation Burger at 205 Commercial St. - Application for a Class IV (Beer) license with Outside 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,

A handwritten signature in cursive script, appearing to read "Janice Gardner".

Janice Gardner
Business License Administrator

Ad ID 5091110

Date 06/24/2014

Time 4:06 PM

PUBLIC NOTICE

**Notice of
Public Hearing
City of Portland**

A Public Hearing will be held on July 7th at 7:00 P.M., in City Council Chambers, 389 Congress St., on the application of Better Burger Old Port, LLC d/b/a Elevation Burger at 205 Commercial St. Application for a Class IV (Beer) license with Outside Dining on Private Property. Sponsored by Katherine L. Jones, City Clerk.

#5091110

Ad shown is not actual print size

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 (A/L)

ORDER
GRANTING MUNICIPAL OFFICERS'
APPROVAL OF:

**One Longfellow Square Inc. d/b/a One Longfellow Square at 1 Longfellow Sq. Application
to add Outdoor Dining on Public Property.**

*Order 7-14/15
Tab 9 7-7-14*

Rec'd 6/3/14



May 28, 2014

Portland City Council
City of Portland
389 Congress St.
Portland, ME 04101

Dear City Councilors:

One Longfellow Square has submitted an application for an outdoor dining permit. Outdoor seating at several neighborhood restaurants has already helped to create a positive and vibrant atmosphere at this important gateway to downtown Portland. With outdoor seating at our location on the corner of Congress and State streets, we will dramatically enhance the transformation of the neighborhood.

Summer is a traditionally slow time for our music venue because we are competing with many other evening and weekend options. Adding a few tables and chairs outside the venue during the nice weather will improve the One Longfellow Square experience for our guests and we believe will encourage more people to come to our shows.

One Longfellow Square has been part of the Portland community since 2006 and became a non-profit organization in 2010. The Portland Phoenix recently announced One Longfellow Square the Best Folk Venue in Portland, as voted by readers. Given the limited size of our venue and our commitment to affordable ticket prices, we rely on our food and beverage sales to help us meet our ongoing operating expenses. Outdoor seating will enhance our ability to draw the public to our venue.

We look forward to your approval of our outdoor dining permit.

Thank you,

A handwritten signature in cursive script, which appears to read "Anne Beland". The signature is written in black ink and is positioned below the "Thank you," text.

Board Member

Office of the City Clerk

389 Congress Street

Portland, ME 04101

(207) 874-8557

CITY CLERK

Application for Food Service Establishment With Alcoholic Beverages

Type of Liquor License Applying for: _____

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

Business Name (d/b/a): ONE LONGFELLOW SQUARE INC Phone: 207 761-1757

Location Address: 1 LONGFELLOW SQUARE, PORTLAND, ME ZIP 04101

If new, what was formerly in this location: _____

Mailing Address: 181 STATE STREET, PORTLAND, ME ZIP 04101

Contact Person: FLORA O'GRADY Phone: 207 761-1757

Manager of Establishment: MARGARET LOGAN Home Phone # 207 621-4589

Owner of Premises (landlord): PORT PROPERTY MANAGEMENT

Address of Premises Owner: 104 GRANT STREET, PORTLAND, ME ZIP 04101

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):

SAME AS ABOVE

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? ☐ 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: ONE LONGFELLOW SQUARE INC

Corporation Mailing Address: 181 STATE STREET, PORTLAND, ME ZIP 04101

Contact Person: FLORA O'GRADY Phone Number: 207 761-1757

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

Name	Title	DOB	Residence Address
<u>MATTHEW STEIN</u>	<u>PRESIDENT</u>	<u>5/10/75</u>	<u>3 CLAFROAD, YARMOUTH</u>
<u>AL LEIGHTON</u>	<u>VICE PRESIDENT</u>	<u>3/24/54</u>	<u>115 PORSET ST, PORTLAND</u>
<u>JAYCE SUMMITT</u>	<u>SECRETARY</u>	<u>8/12/65</u>	<u>188 BRIDGE AVE SOUTH PORTLAND</u>
Name _____	Title _____	DOB _____	Residence Address _____
Name _____	Title _____	DOB _____	Residence Address _____
Name _____	Title _____	DOB _____	Residence Address _____

Type of Food Served: _____

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

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

Hours and Days of operation: Mon-Fri, 8pm-11pm Sat-Sun 10am-2pm + 7pm-11pm

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 DURING THE EVENING WE WILL HAVE MUSIC EVENTS

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 400 FEET.

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?: IN OPERATION, APPLYING FOR OUTDOOR DINING

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 Aime Belodlean Title Board Member Date 6/5/14

- ☒ 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 litter and debris.
- ☒ No food 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 caused 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 therefrom, 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: Anne Bilo Deau Date: 5/28/14
Printed name Anne Bilo Deau
Establishment One Longfellow Square
Location 181 State St, Ste 201, Portland, ME 04101



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: <u>7/7/14</u>		
Location Name & Address: One Longfellow Square, 181 State St., Ste 201, Portland, ME 04101	Chart 045	Block A035
	Lot 001	
Owner & Phone #: Margaret Logan, Dir Operations, (207) 671-4589	Total Square Footage of Proposed Seating Area: ¹	
Applicant *must* be owner or lessee Name: One Longfellow Square Address: 181 State St, Ste 201 City, State & Zip: Portland, ME 04101 E-Mail: margaret.onelongfellowssquare@gmail.com	Annual Fee: \$80 Total Sq. Ft.: <u>260</u> Sq. Ft. Fee: (sq ft x \$2) \$ <u>520</u> (Due when issued) Total Fees: \$ _____ (Permit not issued until all fees are paid)	
Current use: <u>Music & performing arts venue</u>		
Business name: <u>One Longfellow Square</u>		
Seating area dimensions: <u>20ft X 6ft; 25ft X 5.6ft</u>		
How many chairs? <u>28</u> How many tables? <u>7</u>		
☒ Yes Alcohol is served. ☐ No Alcohol being served.		
Who should we contact for the pre-inspection: <u>Margaret Logan</u>		
Mailing address: <u>181 State St, Ste 201, Portland, ME 04101</u> Phone: <u>(207) 671-4589</u>		

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.

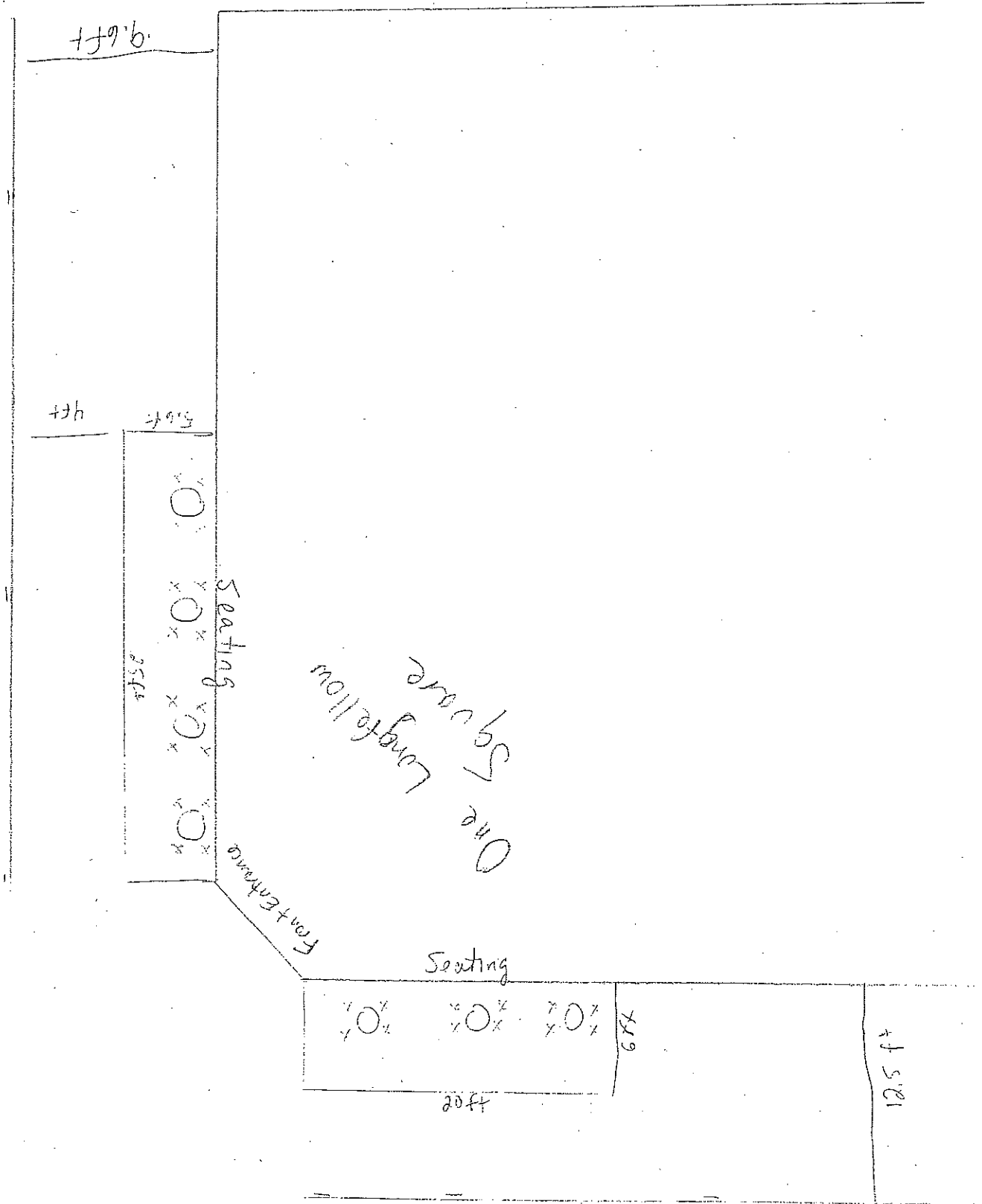
Signature of Applicant: <u>Aimee Butolean</u>	Date: <u>5/28/14</u>
---	----------------------

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.

Congress St
33 ft

Longfellow Square
45 ft



State Street
51 ft

Business Licensing - Re: One Longfellow Square - Outdoor Dining

From: Gary Hutcheson
To: Business Licensing
Date: 6/15/2014 2:22 PM
Subject: Re: One Longfellow Square - Outdoor Dining

This request is approved but they need to be added to Urban in site.

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

>>> Business Licensing 6/12/2014 4:28 PM >>>

Hello,

For your approval:

One Longfellow Square Inc. d/b/a One Longfellow Square has submitted an application to add Outdoor Dining on public property to their existing Auditorium and Entertainment with Dance application. They will go before Council on July 7th.

Owner:

One Longfellow Square Inc., 181 State St.
President: Matthew Stein, d.o.b. 5/10/75, of North Yarmouth
Vice President: Al Leighton, d.o.b. 3/29/54, of 115 Dorset St., Portland
Secretary: Joyce Schmitt, d.o.b. 8/12/65, of South Portland

Landlord: Port Property Management, 104 Grant St.

Contact: Fiona O'Grady - 761-1757

Slip is attached. Please put feedback into UI.

Thanks,
Janice



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

June 25, 2014

One Longfellow Square Inc.
Attn: Fiona O'Grady
181 State St.
Portland, ME 04101

**Re: One Longfellow Square Inc. d/b/a One Longfellow Square at 1 Longfellow Sq.
Application to add Outdoor Dining on Public Property.**

Dear Ms. O'Grady,

This letter shall serve as a reminder of the Public Hearing before the Portland City Council on **Monday, July 7th at 7:00 p.m.** for the review of the application for One Longfellow Square Inc. d/b/a One Longfellow Square at 1 Longfellow Square - Application to add Outdoor Dining on Public 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 5091125

Date 06/24/2014

Time 4:13 PM

PUBLIC NOTICE

**Notice of
Public Hearing
City of Portland**

A Public Hearing will be held on July 7th at 7:00 P.M., in City Council Chambers, 389 Congress St., on the application of One Longfellow Square Inc. d/b/a One Longfellow Square at 1 Longfellow Sq. Application to add Outdoor Dining on Public Property. Sponsored by Katherine L. Jones, City Clerk.

#5091125

Ad shown is not actual print size

City of Portland, Maine - Building or Use Permit

389 Congress Street, 04101 Tel: (207) 874-8703, Fax: (207) 874-8716

Permit No: 2014-01286		Date Applied For: 06/12/2014	CBL: 045 A035001
Location of Construction: 100 CONGRESS ST (One Longfellow)	Owner Name: LONGFELLOW SQUARE PARTN	Owner Address: 104 GRANT ST	Phone: (207) 874-8656
Business Name: Center for Cultural Exchange	Contractor Name:	Contractor Address:	Phone:
Lessee/Buyer's Name: Anne Bilodeau	Phone: 2078748656	Permit Type: Outdoor Seating	
Proposed Use: Same: 1st floor and 2nd floor front = theater/assembly uses - 2nd floor rear and 3rd floor = offices		Proposed Project Description: Outside Dining 7 Tables and 28 Chairs for theater/assembly use **See Add'l Comments	
Dept: Zoning Status: Approved Reviewer: Marge Schmuckal Approval Date: 06/24/2014 Note: Ok to Issue: ☒ Conditions:			
Dept: Building Status: In Review Reviewer: Tammy Munson Approval Date: Note: Ok to Issue: ☐ Conditions:			

*Order 8-14/15
Tab 18 7-7-14*

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 (A/L)

ORDER
GRANTING MUNICIPAL OFFICERS'
APPROVAL OF:

**Olympia Equity Investors V, LLC d/b/a Hilton Garden Inn Portland Downtown at 65
Commercial St. Application to add Entertainment without Dance.**

June 20th, 2014

Dear Honorable Mayor and Members of the City Council,

Thank you for taking the time to review our entertainment application and this letter of intent.

The Hilton Garden Inn Portland Downtown Waterfront would like to enhance our guest experience in our **Pavilion Lounge** with 2 ½ hours of live, ambient background music once a week, on a week night from the hours of 6 to 8:30 PM. The music that suits our open floor plan is a two piece ensemble consisting of acoustic standup bass and lightly amplified guitar with no vocals; as the volume needs to be low enough not to interfere with our guest check-in experience, the front desk answering telephones or guests conversing in the lobby.

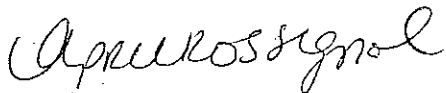
Additionally, we would like the opportunity to provide this same musical duo to our clients as background music for evening dinners or receptions hosted by our banquet department throughout the year.

The Hilton Garden Inn Portland Downtown Waterfront does not have the function space, nor the square footage or floor plan suitable for a dance floor, DJ, a band or louder entertainment than what we outlined in this letter.

While the hotel is open to the public, this entertainment is really meant to provide an additional amenity of soft jazz ambience to our guest experience. Our guests pay a premium price for hotel lodging on the waterfront and we would like provide additional value for their stay.

Thank you for your consideration and review of our request. I am happy to answer any questions you may have.

Best regards,



April Rossignol

General Manager

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

CITY CLERK

Application for Food Service Establishment With Alcoholic Beverages

2014 JUN 24 AM 10:09

Type of Liquor License Applying for: Class 1A FSE

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

Business Name (d/b/a): Hilton Garden Inn Portland Downtown Phone: 207-780-0780

Location Address: 65 Commercial Street, Portland, ME ZIP 04101

If new, what was formerly in this location: _____

Mailing Address: 65 Commercial St. Portland, ME ZIP 04101

Contact Person: April Rossignol Phone: 207-780-0780

Manager of Establishment: April Rossignol Home Phone # _____

Owner of Premises (landlord): The Olympia Companies

Address of Premises Owner: 7 Custom House St, 5th Fl ZIP 04101

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: The Olympia Companies

Corporation Mailing Address: 7 Custom House St. 5th Floor ZIP 04101

Contact Person: Kevin Mahaney Phone Number: _____

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

Name <u>Kevin Mahaney</u>	Title <u>Owner</u>	DOB <u>3/31/65</u>	Residence Address <u>Portland, ME</u>
Name <u>April Rossignol</u>	Title <u>GM</u>	DOB <u>3/10/80</u>	Residence Address <u>Sp. Portland</u>
Name _____	Title _____	DOB _____	Residence Address _____
Name _____	Title _____	DOB _____	Residence Address _____
Name _____	Title _____	DOB _____	Residence Address _____
Name _____	Title _____	DOB _____	Residence Address _____

(Please see reverse side)

Type of Food Served: Breakfast buffet, Dinner + Room Service American Cuisine

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

Percentage of sales - Generated from Food: 20% Generated from Alcohol: 80%

Hours and Days of operation: 6-10:30 AM, 5-9:30 PM (dinner/room service) 5-11:00 pm bar

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

If no, please explain Full dinner service is from 5-9:30 pm, bar remains open until 11 pm.

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

Will you have entertainment on the premises? Yes X No (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 No X. If yes, please indicate location on diagram.

Also, will the outside dining be on PUBLIC or PRIVATE property? N/A

Have you applied for an Outdoor Dining Permit? Yes No X N/A

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? : We are already open

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 A. J. Rossignol Title General Manager Date 6/24/14

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): Hilton Garden Inn Portland Downtown Waterfront

Location Address: 65 Commercial St. ZIP 04101 Phone 207-780-0780

Will music be electric or acoustical or both? Both

Will amplification used? Yes X No _____

If yes, where and at what level? small amp / lounge or dining room 75-85 dec.

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

Will you permit dancing or entertainment after 1:00AM? Yes _____ No X

Will recorded music be played: Inside _____ Outside _____ Both No

What is the distance to the nearest residential dwelling unit both inside and outside the building from where the entertainment will take place? N/A No residential dwellings in sq. block or our local business area.

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

Please see attached letter of intent.

If new applicant, what is your targeted opening date? : N/A Opened 2003

We already have liquor license.

Does the issuance of this license directly or indirectly benefit any City employee? Yes _____ No X

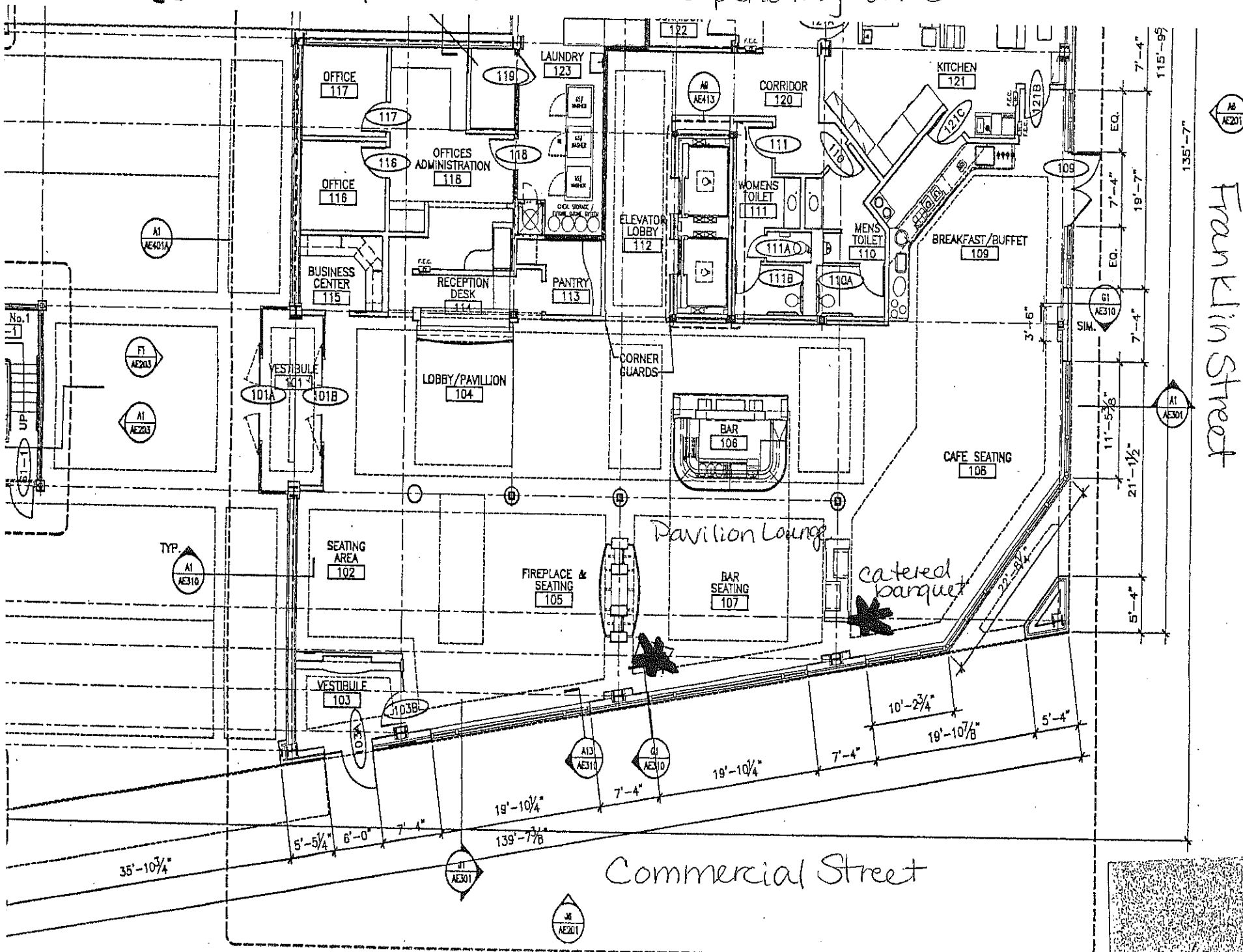
If yes, list names of employee(s) and department(s). _____

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 Kim Strondak Title Director Sales Date 6/20/14



Business Licensing - HILTON GARDEN INN - COMMERCIAL Business License Approval

From: Gary Hutcheson
To: Business Licensing
Date: 6/25/2014 12:38 AM
Subject: HILTON GARDEN INN - COMMERCIAL Business License Approval

HILTON GARDEN INN - COMMERCIAL is Approved for their Business License Inspection by the Police Dept.

Date: 4/6/2014

Zone:
Comments: Liquor License. Entertainment approved.

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



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

June 25, 2014

Olympia Equity Investors V, LLC
65 Commercial St.
Portland, ME 04101

Re: Olympia Equity Investors V, LLC d/b/a Hilton Garden Inn Portland Downtown at 65 Commercial St. Application to add Entertainment without Dance.

Dear Ms. Rossignol,

This letter shall serve as a reminder of the Public Hearing before the Portland City Council on **Monday, July 7th at 7:00 p.m.** for the review of the application for Olympia Equity Investors V, LLC d/b/a Hilton Garden Inn Portland Downtown at 65 Commercial St. Application to add Entertainment without Dance. 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 5091120

Date 06/24/2014

Time 4:09 PM

PUBLIC NOTICE

**Notice of
Public Hearing
City of Portland**

A Public Hearing will be held on July 7th at 7:00 P.M., in City Council Chambers, 389 Congress St., on the application of Olympia Equity Investors V, LLC d/b/a Hilton Garden Inn Portland Downtown, 65 Commercial St. Application to add Entertainment without Dance. Sponsored by Katherine L. Jones, City Clerk.
#5091120

Ad shown is not actual print size

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 (A/L)

ORDER
GRANTING MUNICIPAL OFFICERS'
APPROVAL OF:

**Yemane Tsegai and Akbert Bahta d/b/a Red Sea at 30 Washington Ave. Application for a
Class III & IV (Wine & Beer) license.**

*Order 9-14/15
Tab 11 7-7-14*

6/5/2014

CITY CLERK

To Dear Mayor Brennan & Members of City Council,

My Name is Yemane Tesgai. I Am resident of Portland Maine. since 1991.
about two month ago I open small restrauant at 30 Washington ave portland.

2014 JUN -5 AM 11: 22

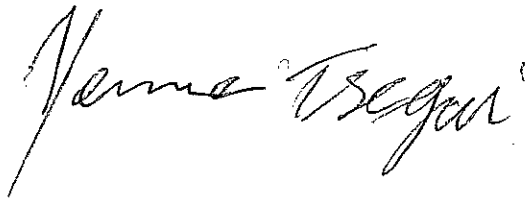
I would like to serve wine and beer specially with launch and dinner.

I,m writing this letter to you.

To review my application.

Sincerely

Yemane Tsegai.

A handwritten signature in cursive script that reads "Yemane Tsegai". The signature is written in dark ink and is positioned below the typed name.

Office of the City Clerk

389 Congress Street

Portland, ME 04101

(207) 874-8557

CITY CLERK

Application for Food Service Establishment With Alcoholic Beverages

Type of Liquor License Applying for: III, D

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

Business Name (d/b/a): RED SEA Phone: 207-805-1488

Location Address: 30 Washington Ave ZIP 04101

If new, what was formerly in this location: Safari Restaurant

Mailing Address: 30 Washington Ave ZIP 04101

Contact Person: Yemane Tsegai Phone: 207-805-1488

Manager of Establishment: Yemane Tsegai Home Phone # 207-939-7886

Owner of Premises (landlord): Big-been LLC

Address of Premises Owner: 182 Maesueit Ave ZIP 04102

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):	<u>Yemane Tsegai</u>	DOB	<u>01/01/65</u>	Residence Address	<u>14 Eleanor St</u>
Name of Owner(s):	<u>Abbert Bahda</u>	DOB	<u>6-5-74</u>	Residence Address	<u>14 Eleanor St</u>
Name of Owner(s):		DOB		Residence Address	<u>Portland, ME</u>
					<u>04103</u>

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

Corporation Name: _____

Corporation Mailing Address: _____ ZIP _____

Contact Person: _____ Phone Number: _____

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

Name _____	Title _____	DOB _____	Residence Address _____
Name _____	Title _____	DOB _____	Residence Address _____
Name _____	Title _____	DOB _____	Residence Address _____
Name _____	Title _____	DOB _____	Residence Address _____
Name _____	Title _____	DOB _____	Residence Address _____
Name _____	Title _____	DOB _____	Residence Address _____

(Please see reverse side)

Type of Food Served: ERITREAN food

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

Percentage of sales – Generated from Food: ☒ Generated from Alcohol: ☐

Hours and Days of operation: Tue 11:30 AM To SUN 9:30 PM

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 _____

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? : Any time Soon

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 owner Date 6-2-14

Department of Public Safety
Division



Liquor Licensing & Inspection

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.

BUREAU USE ONLY

License No. Assigned:

Class:

Deposit Date:

Amt. Deposited:

PRESENT LICENSE EXPIRES

INDICATE TYPE OF PRIVILEGE: ☒ MALT ☐ SPIRITUOUS ☒ VINOUS

INDICATE TYPE OF LICENSE:

☒ RESTAURANT (Class I,II,III,IV)

☐ HOTEL-OPTIONAL FOOD (Class I-A)

☐ CLASS A LOUNGE (Class X)

☐ CLUB (Class V)

☐ TAVERN (Class IV)

☐ RESTAURANT/LOUNGE (Class XI)

☐ HOTEL (Class I,II,III,IV)

☐ CLUB-ON-PREMISE CATERING (Class I)

☐ GOLF CLUB (Class I,II,III,IV)

☐ 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.)		2. Business Name (D/B/A)	
Tsegai Yemane DOB: 01/01/65		RED SEA Restaurant	
AKberet Baheta DOB: 6/5/74			
Address		Location (Street Address)	
14 Eleanor St		30 Washington Ave	
City/Town		City/Town	
Portland		Portland	
State		State	
me		me	
Zip Code		Zip Code	
04103		04101	
Mailing Address		Mailing Address	
Same		Same	
City/Town		City/Town	
State		State	
me		me	
Zip Code		Zip Code	
04103		04101	
Telephone Number		Business Telephone Number	
207-939-7886			
Fax Number		Fax Number	
Federal I.D. #		Seller Certificate #	

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 \$ _____ LIQUOR \$ _____

5. Is applicant a corporation, limited liability company or limited partnership? YES ☐ NO ☒

complete Supplementary Questionnaire, If YES

6. Do you permit dancing or entertainment on the licensed premises? YES ☐ NO ☒

7. If manager is to be employed, give name: Yemane Tsegai

8. If business is NEW or under new ownership, indicate starting date: 3/27/2014

Requested inspection date: JULY - AUG Business hours: TUE - SUN - 11:30 - 9:30

9. Business records are located at: 30 Washington Ave, Portland, ME 04101

10. Is/are applicants(s) citizens of the United States? YES ☐ NO ☐

11. Is/are applicant(s) residents of the State of Maine?

☒ YES ☐ NO

12. List name, date of birth, and place of birth for all applicants, managers, and bar managers. Give maiden name, if married:
Use a separate sheet of paper if necessary.

Name in Full (Print Clearly)	DOB	Place of Birth
TSEGAÏ YEMANE	01-01-65	ERITREA
AKberet - Baheta	6-5-74	ERITREA

Residence address on all of the above for previous 5 years (Limit answer to city & state)

14 Eleanor St
Portland ME 04103

13. Has/have applicant(s) or manager ever been convicted of any violation of the law, other than minor traffic violations, of any State of the United States? YES ☐ NO ☒

Name: _____ Date of Conviction: _____

Offense: _____ Location: _____

Disposition: _____

14. Will any law enforcement official benefit financially either directly or indirectly in your license, if issued?
Yes ☐ No ☒ If Yes, give name: _____

15. Has/have applicant(s) formerly held a Maine liquor license? YES ☐ NO ☒

16. Does/do applicant(s) own the premises? Yes ☐ No ☒ If No give name and address of owner: _____

17. Describe in detail the premises to be licensed: (Supplemental Diagram Required) Resturant for 20 people

18. Does/do applicant(s) have all the necessary permits required by the State Department of Human Services?
☒ YES ☐ NO Applied for: _____

19. What is the distance from the premises to the NEAREST school, school dormitory, church, chapel or parish house, measured from the main entrance of the premises to the main entrance of the school, school dormitory, church, chapel or parish house by the ordinary course of travel? 1/4 mile Which of the above is nearest? _____

20. Have you received any assistance financially or otherwise (including any mortgages) from any source other than yourself in the establishment of your business? YES ☐ NO ☒

If YES, give details: _____

The Division of Liquor Licensing & Inspection is hereby authorized to obtain and examine all books, records and tax returns pertaining to the business, for which this liquor license is requested, and also such books, records and returns during the year in which any liquor license is in effect.

NOTE: "I understand that false statements made on this form are punishable by law. Knowingly supplying false information on this form is a Class D offense under the Criminal Code, punishable by confinement of up to one year or by monetary fine of up to \$2,000 or both."

Dated at: Portland on 6-2, 20 14
Town/City, State Date

Please sign in blue ink

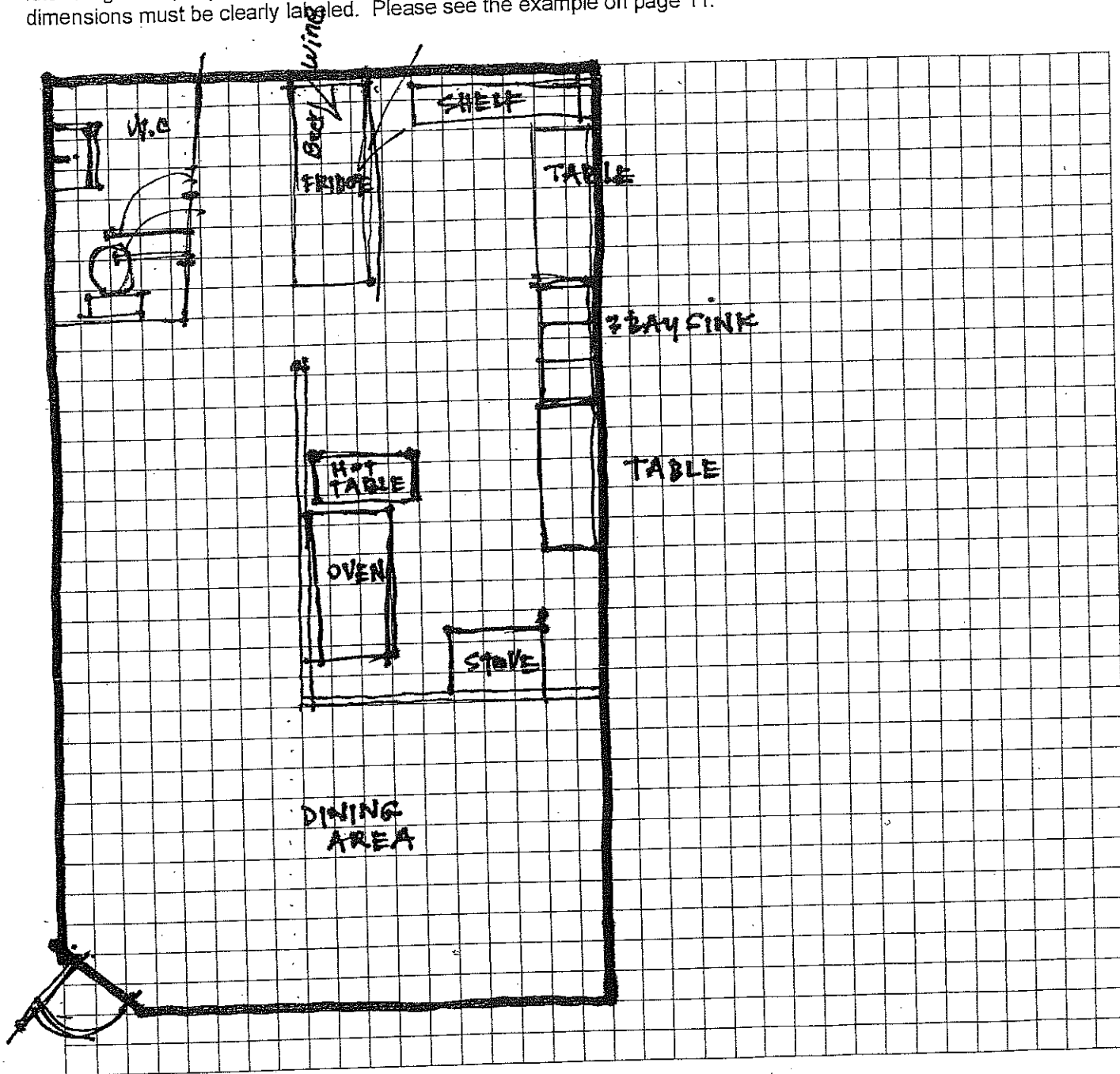
Signature of Applicant or Corporate Officer(s)

Signature of Applicant or Corporate Officer(s)

Yemane Tsegai

9. Kitchen or Food Preparation Area Plan:

Use this grid or a separate sheet of graph paper to draw a floor plan, or provide a floor plan prepared by a knowledgeable party, for eating place food preparation area(s)/kitchen(s). If the plan is not drawn to scale, the dimensions must be clearly labeled. Please see the example on page 11.



The floor plan should include the following items.

Sinks:	Toilet Facilities:	Refrigeration:	Facilities:
1. Hand Washing	1. Water Closets	1. Walk-in Coolers	1. Food Preparation Areas
2. Ware Washing	2. Lavatories	2. Walk-in Freezers	2. Food Storage Areas
3. Utility	3. Urinals	3. Freestanding Coolers	3. Trash/Refuse/Redemption Areas
4. Food Prep	4. Other	4. Freestanding Freezers	4. Dining Areas
5. Dipper Wells		5. Ice Maker	5. Equipment/Counters/Seats/Tables
6. Other		6. Other	6. Dry Storage/All Other Storage

10. Eating Place Business Review:

RED SEA MENU

Appetizers

Eritrean Soup of the Day	\$4.00
Sambusa (Fried Triangle Pastries)	
Beef	\$4.00
Chicken	\$4.00
Vegetable	\$3.00
Falafel (Spiced Chick Pea Fritters)	\$4.00

Meat Entrees

Tibsi (Sauteed)	
Beef (Mild or Spicy)	\$13.00
Lamb (Mild or Spicy)	\$15.00
Zigni (Spicy Stew)	
Beef	\$13.00
Lamb	\$15.00
Zebhi Dorho (Stewed Chicken)	\$13.00

Vegetable Entrees

Alicha (Simmered Potato, Carrot and Cabbage)	\$9.00
Hamli (Simmered Greens)	\$9.00
Shiro (Ground Chick Peas)	\$11.00
Tumtumo (Yellow Split Peas)	\$9.00
Tsbehi Birsan (Red Lentils)	\$9.00

All Entrees come with Injera, Salad and Choice of Side.

Rice and Pasta

Ruz (Chicken Rice)	\$9.00
Ruz (Meat Rice)	\$9.00
Pasta with Tomato Sauce	\$7.00
Pasta with Meat Sauce	\$9.00

Drinks

Coke, Ginger Ale or Sprite	\$1.50
Bottled Water	\$1.00
Black Tea	\$1.50
Coffee	\$1.75
Traditional Coffee	\$3.00

We apologize if we have run out of certain entrees as we cook fresh daily.

Red Sea

30 Washington Ave.



Business Licensing - RED SEA, THE Business License Approval

From: Gary Hutcheson
To: Business Licensing
Date: 6/15/2014 2:21 PM
Subject: RED SEA, THE Business License Approval

RED SEA, THE is Approved for their Business License Inspection by the Police Dept.

Date: 6/15/2014

Zone:
Comments: Liquor license request approved.

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



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

June 25, 2014

Yeman Tsegai & Akbert Bahta
30 Washington Ave.
Portland, ME 04101

Re: Yemane Tsegai and Akbert Bahta d/b/a Red Sea at 30 Washington Ave. Application for a Class III & IV (Wine & Beer) license.

Dear Yeman & Akbert,

This letter shall serve as a reminder of the Public Hearing before the Portland City Council on **Monday, July 7th at 7:00 p.m.** for the review of the application for Yemane Tsegai and Akbert Bahta d/b/a Red Sea at 30 Washington Ave. Application for a Class III & IV (Wine & Beer) 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,

A handwritten signature in cursive script, appearing to read "Janice Gardner".

Janice Gardner
Business License Administrator

Ad ID 5091132

Date 06/24/2014

Time 4:17 PM

PUBLIC NOTICE

**Notice of
Public Hearing
City of Portland**

A Public Hearing will be held on July 7th at 7:00 P.M., in City Council Chambers, 389 Congress St., on the application of Yemane Tsegai and Akbert Bahtad/b/a Red Sea, 30 Washington Ave. Application for a Class III & IV (Wine & Beer) license. Sponsored by Katherine L. Jones, City Clerk.

#5091132

Ad shown is not actual print size

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 17 OFFENSES
ARTICLE VII - ACCESS TO REPRODUCTIVE HEALTH CARE FACILITIES**

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

*That Chapter 17, Article VII, Access to Reproductive
Health Care Facilities, of the Portland City Code is
hereby repealed in its entirety; and*

BE IT FURTHER ORDERED, that this amendment is enacted as an
Emergency pursuant to Article II, Section 11 of the
Portland City Charter, in order to make this repeal
effective immediately.

*Order 10-14/15
Tab 12 7-7-14*

CITY OF PORTLAND, MAINE
CITY COUNCIL AGENDA REQUEST FORM

1. Council meeting at which action is requested:

1st reading N/A

Final action: July 7, 2014

2. Can action be taken at a later date: _____ Yes X No.

If no, why not? Earliest action is essential due to ongoing litigation and constitutional issues

3. This item is sponsored by: Mayor Brennan

(If this 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:

On June 26th, the U. S. Supreme Court issued its decision in *McCullen v. Coakley*, regarding the Massachusetts buffer zone law upon which Portland's ordinance was based. The Supreme Court unanimously found that the 35-foot buffer zone did not pass constitutional muster as applied to plaintiffs who wish to "peacefully converse" with abortion clinic patients.

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

The City Council should consider whether or not to repeal Portland's 39-foot buffer zone ordinance as soon as possible, given the *McCullen* decision.

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

The City Council's consideration of the impact of the *McCullen* decision is a necessary step in its legislative duties.

IV. FINANCIAL IMPACT:

None.

V. STAFF ANALYSIS & RECOMMENDATION:

Prepared by:

/s/ Trish McAllister
Signature

July 1, 2014
Date

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

MCCULLEN ET AL. v. COAKLEY, ATTORNEY GENERAL
OF MASSACHUSETTS, ET AL.CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE FIRST CIRCUIT

No. 12–1168. Argued January 15, 2014—Decided June 26, 2014

In 2007, Massachusetts amended its Reproductive Health Care Facilities Act, which had been enacted in 2000 to address clashes between abortion opponents and advocates of abortion rights outside clinics where abortions were performed. The amended version of the Act makes it a crime to knowingly stand on a “public way or sidewalk” within 35 feet of an entrance or driveway to any “reproductive health care facility,” defined as “a place, other than within or upon the grounds of a hospital, where abortions are offered or performed.” Mass. Gen. Laws, ch. 266, §§120E½(a), (b). The Act exempts from this prohibition four classes of individuals, including “employees or agents of such facility acting within the scope of their employment.” §120E½(b)(2). Another provision of the Act proscribes the knowing obstruction of access to an abortion clinic. §120E½(e).

McCullen and the other petitioners are individuals who attempt to engage women approaching Massachusetts abortion clinics in “sidewalk counseling,” which involves offering information about alternatives to abortion and help pursuing those options. They claim that the 35-foot buffer zones have displaced them from their previous positions outside the clinics, considerably hampering their counseling efforts. Their attempts to communicate with patients are further thwarted, they claim, by clinic “escorts,” who accompany arriving patients through the buffer zones to the clinic entrances.

Petitioners sued Attorney General Coakley and other Commonwealth officials, seeking to enjoin the Act’s enforcement on the ground that it violates the First and Fourteenth Amendments, both on its face and as applied to them. The District Court denied both challenges, and the First Circuit affirmed. With regard to petition-

Syllabus

ers' facial challenge, the First Circuit held that the Act was a reasonable "time, place, and manner" regulation under the test set forth in *Ward v. Rock Against Racism*, 491 U. S. 781.

Held: The Massachusetts Act violates the First Amendment. Pp. 8–30.

(a) By its very terms, the Act restricts access to "public way[s]" and "sidewalk[s]," places that have traditionally been open for speech activities and that the Court has accordingly labeled "traditional public fora," *Pleasant Grove City v. Summum*, 555 U. S. 460, 469. The government's ability to regulate speech in such locations is "very limited." *United States v. Grace*, 461 U. S. 171, 177. "[E]ven in a public forum," however, "the government may impose reasonable restrictions on the time, place, or manner of protected speech, provided the restrictions 'are justified without reference to the content of the regulated speech, that they are narrowly tailored to serve a significant governmental interest, and that they leave open ample alternative channels for communication of the information,'" *Ward, supra*, at 791. Pp. 8–10.

(b) Because the Act is neither content nor viewpoint based, it need not be analyzed under strict scrutiny. Pp. 10–18.

(1) The Act is not content based simply because it establishes buffer zones only at abortion clinics, as opposed to other kinds of facilities. First, the Act does not draw content-based distinctions on its face. Whether petitioners violate the Act "depends" not "on what they say," *Holder v. Humanitarian Law Project*, 561 U. S. 1, 27, but on where they say it. Second, even if a facially neutral law disproportionately affects speech on certain topics, it remains content neutral so long as it is "justified without reference to the content of the regulated speech." *Renton v. Playtime Theatres, Inc.*, 475 U. S. 41, 48. The Act's purposes include protecting public safety, patient access to healthcare, and unobstructed use of public sidewalks and streets. The Court has previously deemed all these concerns to be content neutral. See *Boos v. Barry*, 485 U. S. 312, 321. An intent to single out for regulation speech about abortion cannot be inferred from the Act's limited scope. "States adopt laws to address the problems that confront them." *Burson v. Freeman*, 504 U. S. 191, 207. There was a record of crowding, obstruction, and even violence outside Massachusetts abortion clinics but not at other kinds of facilities in the Commonwealth. Pp. 11–15.

(2) The Act's exemption for clinic employees and agents acting within the scope of their employment does not appear to be an attempt to favor one viewpoint about abortion over the other. *City of Ladue v. Gilleo*, 512 U. S. 43, 51, distinguished. Given that some kind of exemption was necessary to allow individuals who work at the clinics to enter or remain within the buffer zones, the "scope of

Syllabus

employment” qualification simply ensures that the exemption is limited to its purpose of allowing the employees to do their jobs. Even assuming that some clinic escorts have expressed their views on abortion inside the zones, the record does not suggest that such speech was within the scope of the escorts’ employment. If it turned out that a particular clinic authorized its employees to speak about abortion in the buffer zones, that would support an as-applied challenge to the zones at that clinic. Pp. 15–18.

(c) Although the Act is content neutral, it is not “narrowly tailored” because it “burden[s] substantially more speech than is necessary to further the government’s legitimate interests.” *Ward*, 491 U. S., at 799. Pp. 18–29.

(1) The buffer zones serve the Commonwealth’s legitimate interests in maintaining public safety on streets and sidewalks and in preserving access to adjacent reproductive healthcare facilities. See *Schenck v. Pro-Choice Network of Western N. Y.*, 519 U. S. 357, 376. At the same time, however, they impose serious burdens on petitioners’ speech, depriving them of their two primary methods of communicating with arriving patients: close, personal conversations and distribution of literature. Those forms of expression have historically been closely associated with the transmission of ideas. While the Act may allow petitioners to “protest” outside the buffer zones, petitioners are not protestors; they seek not merely to express their opposition to abortion, but to engage in personal, caring, consensual conversations with women about various alternatives. It is thus no answer to say that petitioners can still be seen and heard by women within the buffer zones. If all that the women can see and hear are vociferous opponents of abortion, then the buffer zones have effectively stifled petitioners’ message. Pp. 19–23.

(2) The buffer zones burden substantially more speech than necessary to achieve the Commonwealth’s asserted interests. Subsection (e) of the Act already prohibits deliberate obstruction of clinic entrances. Massachusetts could also enact legislation similar to the federal Freedom of Access to Clinic Entrances Act of 1994, 18 U. S. C. §248(a)(1), which imposes criminal and civil sanctions for obstructing, intimidating, or interfering with persons obtaining or providing reproductive health services. Obstruction of clinic driveways can readily be addressed through existing local traffic ordinances. While the Commonwealth contends that individuals can inadvertently obstruct access to clinics simply by gathering in large numbers, that problem could be addressed through a law requiring crowds blocking a clinic entrance to disperse for a limited period when ordered to do so by the police. In any event, crowding appears to be a problem only at the Boston clinic, and even there, only on Saturday mornings.

Syllabus

The Commonwealth has not shown that it seriously undertook to address these various problems with the less intrusive tools readily available to it. It identifies not a single prosecution or injunction against individuals outside abortion clinics since the 1990s. The Commonwealth responds that the problems are too widespread for individual prosecutions and injunctions to be effective. But again, the record indicates that the problems are limited principally to the Boston clinic on Saturday mornings, and the police there appear perfectly capable of singling out lawbreakers. The Commonwealth also claims that it would be difficult to prove intentional or deliberate obstruction or intimidation and that the buffer zones accordingly make the police's job easier. To meet the narrow tailoring requirement, however, the government must demonstrate that alternative measures that burden substantially less speech would fail to achieve the government's interests, not simply that the chosen route is easier. In any event, to determine whether someone intends to block access to a clinic, a police officer need only order him to move; if he refuses, then there is no question that his continued conduct is knowing or intentional. For similar reasons, the Commonwealth's reliance on *Burson v. Freeman*, 504 U. S. 191, is misplaced. There, the Court upheld a law establishing buffer zones outside polling places on the ground that less restrictive measures were inadequate. But whereas "[v]oter intimidation and election fraud" are "difficult to detect," *id.*, at 208, obstruction and harassment at abortion clinics are anything but subtle. And while the police "generally are barred from the vicinity of the polls to avoid any appearance of coercion in the electoral process," *id.*, at 207, they maintain a significant presence outside Massachusetts abortion clinics. In short, given the vital First Amendment interests at stake, it is not enough for Massachusetts simply to say that other approaches have not worked. Pp. 23–29.

708 F. 3d 1, reversed and remanded.

ROBERTS, C. J., delivered the opinion of the Court, in which GINSBURG, BREYER, SOTOMAYOR, and KAGAN, JJ., joined. SCALIA, J., filed an opinion concurring in the judgment, in which KENNEDY and THOMAS, JJ., joined. ALITO, J., filed an opinion concurring in the judgment.

Opinion of the Court

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

No. 12–1168

ELEANOR McCULLEN, ET AL., PETITIONERS *v.*
MARTHA COAKLEY, ATTORNEY GEN-
ERAL OF MASSACHUSETTS, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE FIRST CIRCUIT

[June 26, 2014]

CHIEF JUSTICE ROBERTS delivered the opinion of the Court.

A Massachusetts statute makes it a crime to knowingly stand on a “public way or sidewalk” within 35 feet of an entrance or driveway to any place, other than a hospital, where abortions are performed. Mass. Gen. Laws, ch. 266, §§120E½(a), (b) (West 2012). Petitioners are individuals who approach and talk to women outside such facilities, attempting to dissuade them from having abortions. The statute prevents petitioners from doing so near the facilities’ entrances. The question presented is whether the statute violates the First Amendment.

I
A

In 2000, the Massachusetts Legislature enacted the Massachusetts Reproductive Health Care Facilities Act, Mass. Gen. Laws, ch. 266, §120E½ (West 2000). The law was designed to address clashes between abortion opponents and advocates of abortion rights that were occurring outside clinics where abortions were performed. The Act

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established a defined area with an 18-foot radius around the entrances and driveways of such facilities. §120E½(b). Anyone could enter that area, but once within it, no one (other than certain exempt individuals) could knowingly approach within six feet of another person—unless that person consented—“for the purpose of passing a leaflet or handbill to, displaying a sign to, or engaging in oral protest, education, or counseling with such other person.” *Ibid.* A separate provision subjected to criminal punishment anyone who “knowingly obstructs, detains, hinders, impedes or blocks another person’s entry to or exit from a reproductive health care facility.” §120E½(e).

The statute was modeled on a similar Colorado law that this Court had upheld in *Hill v. Colorado*, 530 U. S. 703 (2000). Relying on *Hill*, the United States Court of Appeals for the First Circuit sustained the Massachusetts statute against a First Amendment challenge. *McGuire v. Reilly*, 386 F. 3d 45 (2004) (*McGuire II*), cert. denied, 544 U. S. 974 (2005); *McGuire v. Reilly*, 260 F. 3d 36 (2001) (*McGuire I*).

By 2007, some Massachusetts legislators and law enforcement officials had come to regard the 2000 statute as inadequate. At legislative hearings, multiple witnesses recounted apparent violations of the law. Massachusetts Attorney General Martha Coakley, for example, testified that protestors violated the statute “on a routine basis.” App. 78. To illustrate this claim, she played a video depicting protestors approaching patients and clinic staff within the buffer zones, ostensibly without the latter individuals’ consent. Clinic employees and volunteers also testified that protestors congregated near the doors and in the driveways of the clinics, with the result that prospective patients occasionally retreated from the clinics rather than try to make their way to the clinic entrances or parking lots.

Captain William B. Evans of the Boston Police Depart-

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ment, however, testified that his officers had made “no more than five or so arrests” at the Planned Parenthood clinic in Boston and that what few prosecutions had been brought were unsuccessful. *Id.*, at 68–69. Witnesses attributed the dearth of enforcement to the difficulty of policing the six-foot no-approach zones. Captain Evans testified that the 18-foot zones were so crowded with protestors that they resembled “a goalie’s crease,” making it hard to determine whether a protestor had deliberately approached a patient or, if so, whether the patient had consented. *Id.*, at 69–71. For similar reasons, Attorney General Coakley concluded that the six-foot no-approach zones were “unenforceable.” *Id.*, at 79. What the police needed, she said, was a fixed buffer zone around clinics that protestors could not enter. *Id.*, at 74, 76. Captain Evans agreed, explaining that such a zone would “make our job so much easier.” *Id.*, at 68.

To address these concerns, the Massachusetts Legislature amended the statute in 2007, replacing the six-foot no-approach zones (within the 18-foot area) with a 35-foot fixed buffer zone from which individuals are categorically excluded. The statute now provides:

“No person shall knowingly enter or remain on a public way or sidewalk adjacent to a reproductive health care facility within a radius of 35 feet of any portion of an entrance, exit or driveway of a reproductive health care facility or within the area within a rectangle created by extending the outside boundaries of any entrance, exit or driveway of a reproductive health care facility in straight lines to the point where such lines intersect the sideline of the street in front of such entrance, exit or driveway.” Mass. Gen. Laws, ch. 266, §120E½(b) (West 2012).

A “reproductive health care facility,” in turn, is defined as “a place, other than within or upon the grounds of a hospi-

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tal, where abortions are offered or performed.” §120E½(a).

The 35-foot buffer zone applies only “during a facility’s business hours,” and the area must be “clearly marked and posted.” §120E½(c). In practice, facilities typically mark the zones with painted arcs and posted signs on adjacent sidewalks and streets. A first violation of the statute is punishable by a fine of up to \$500, up to three months in prison, or both, while a subsequent offense is punishable by a fine of between \$500 and \$5,000, up to two and a half years in prison, or both. §120E½(d).

The Act exempts four classes of individuals: (1) “persons entering or leaving such facility”; (2) “employees or agents of such facility acting within the scope of their employment”; (3) “law enforcement, ambulance, firefighting, construction, utilities, public works and other municipal agents acting within the scope of their employment”; and (4) “persons using the public sidewalk or street right-of-way adjacent to such facility solely for the purpose of reaching a destination other than such facility.” §120E½(b)(1)–(4). The legislature also retained the separate provision from the 2000 version that proscribes the knowing obstruction of access to a facility. §120E½(e).

B

Some of the individuals who stand outside Massachusetts abortion clinics are fairly described as protestors, who express their moral or religious opposition to abortion through signs and chants or, in some cases, more aggressive methods such as face-to-face confrontation. Petitioners take a different tack. They attempt to engage women approaching the clinics in what they call “sidewalk counseling,” which involves offering information about alternatives to abortion and help pursuing those options. Petitioner Eleanor McCullen, for instance, will typically initiate a conversation this way: “Good morning, may I give you my literature? Is there anything I can do for you?”

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I'm available if you have any questions." App. 138. If the woman seems receptive, McCullen will provide additional information. McCullen and the other petitioners consider it essential to maintain a caring demeanor, a calm tone of voice, and direct eye contact during these exchanges. Such interactions, petitioners believe, are a much more effective means of dissuading women from having abortions than confrontational methods such as shouting or brandishing signs, which in petitioners' view tend only to antagonize their intended audience. In unrefuted testimony, petitioners say they have collectively persuaded hundreds of women to forgo abortions.

The buffer zones have displaced petitioners from their previous positions outside the clinics. McCullen offers counseling outside a Planned Parenthood clinic in Boston, as do petitioners Jean Zarrella and Eric Cadin. Petitioner Gregory Smith prays the rosary there. The clinic occupies its own building on a street corner. Its main door is recessed into an open foyer, approximately 12 feet back from the public sidewalk. Before the Act was amended to create the buffer zones, petitioners stood near the entryway to the foyer. Now a buffer zone—marked by a painted arc and a sign—surrounds the entrance. This zone extends 23 feet down the sidewalk in one direction, 26 feet in the other, and outward just one foot short of the curb. The clinic's entrance adds another seven feet to the width of the zone. *Id.*, at 293–295. The upshot is that petitioners are effectively excluded from a 56-foot-wide expanse of the public sidewalk in front of the clinic.¹

Petitioners Mark Bashour and Nancy Clark offer counseling and information outside a Planned Parenthood clinic in Worcester. Unlike the Boston clinic, the Worces-

¹The zone could have extended an additional 21 feet in width under the Act. Only the smaller area was marked off, however, so only that area has legal effect. See Mass. Gen. Laws, ch. 266, §120E½(c).

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ter clinic sits well back from the public street and sidewalks. Patients enter the clinic in one of two ways. Those arriving on foot turn off the public sidewalk and walk down a nearly 54-foot-long private walkway to the main entrance. More than 85% of patients, however, arrive by car, turning onto the clinic's driveway from the street, parking in a private lot, and walking to the main entrance on a private walkway.

Bashour and Clark would like to stand where the private walkway or driveway intersects the sidewalk and offer leaflets to patients as they walk or drive by. But a painted arc extends from the private walkway 35 feet down the sidewalk in either direction and outward nearly to the curb on the opposite side of the street. Another arc surrounds the driveway's entrance, covering more than 93 feet of the sidewalk (including the width of the driveway) and extending across the street and nearly six feet onto the sidewalk on the opposite side. *Id.*, at 295-297. Bashour and Clark must now stand either some distance down the sidewalk from the private walkway and driveway or across the street.

Petitioner Cyril Shea stands outside a Planned Parenthood clinic in Springfield, which, like the Worcester clinic, is set back from the public streets. Approximately 90% of patients arrive by car and park in the private lots surrounding the clinic. Shea used to position himself at an entrance to one of the five driveways leading to the parking lots. Painted arcs now surround the entrances, each spanning approximately 100 feet of the sidewalk parallel to the street (again, including the width of the driveways) and extending outward well into the street. *Id.*, at 297-299. Like petitioners at the Worcester clinic, Shea now stands far down the sidewalk from the driveway entrances.

Petitioners at all three clinics claim that the buffer zones have considerably hampered their counseling ef-

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forts. Although they have managed to conduct some counseling and to distribute some literature outside the buffer zones—particularly at the Boston clinic—they say they have had many fewer conversations and distributed many fewer leaflets since the zones went into effect. *Id.*, at 136–137, 180, 200.

The second statutory exemption allows clinic employees and agents acting within the scope of their employment to enter the buffer zones. Relying on this exemption, the Boston clinic uses “escorts” to greet women as they approach the clinic, accompanying them through the zones to the clinic entrance. Petitioners claim that the escorts sometimes thwart petitioners’ attempts to communicate with patients by blocking petitioners from handing literature to patients, telling patients not to “pay any attention” or “listen to” petitioners, and disparaging petitioners as “crazy.” *Id.*, at 165, 178.

C

In January 2008, petitioners sued Attorney General Coakley and other Commonwealth officials. They sought to enjoin enforcement of the Act, alleging that it violates the First and Fourteenth Amendments, both on its face and as applied to them. The District Court denied petitioners’ facial challenge after a bench trial based on a stipulated record. 573 F. Supp. 2d 382 (Mass. 2008).

The Court of Appeals for the First Circuit affirmed. 571 F. 3d 167 (2009). Relying extensively on its previous decisions upholding the 2000 version of the Act, see *McGuire II*, 386 F. 3d 45; *McGuire I*, 260 F. 3d 36, the court upheld the 2007 version as a reasonable “time, place, and manner” regulation under the test set forth in *Ward v. Rock Against Racism*, 491 U. S. 781 (1989). 571 F. 3d, at 174–181. It also rejected petitioners’ arguments that the Act was substantially overbroad, void for vagueness, and an impermissible prior restraint. *Id.*, at 181–184.

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The case then returned to the District Court, which held that the First Circuit's decision foreclosed all but one of petitioners' as-applied challenges. 759 F. Supp. 2d 133 (2010). After another bench trial, it denied the remaining as-applied challenge, finding that the Act left petitioners ample alternative channels of communication. 844 F. Supp. 2d 206 (2012). The Court of Appeals once again affirmed. 708 F. 3d 1 (2013).

We granted certiorari. 570 U. S. ____ (2013).

II

By its very terms, the Massachusetts Act regulates access to "public way[s]" and "sidewalk[s]." Mass. Gen. Laws, ch. 266, §120E½(b) (Supp. 2007). Such areas occupy a "special position in terms of First Amendment protection" because of their historic role as sites for discussion and debate. *United States v. Grace*, 461 U. S. 171, 180 (1983). These places—which we have labeled "traditional public fora"—"have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions." *Pleasant Grove City v. Summum*, 555 U. S. 460, 469 (2009) (quoting *Perry Ed. Assn. v. Perry Local Educators' Assn.*, 460 U. S. 37, 45 (1983)).

It is no accident that public streets and sidewalks have developed as venues for the exchange of ideas. Even today, they remain one of the few places where a speaker can be confident that he is not simply preaching to the choir. With respect to other means of communication, an individual confronted with an uncomfortable message can always turn the page, change the channel, or leave the Web site. Not so on public streets and sidewalks. There, a listener often encounters speech he might otherwise tune out. In light of the First Amendment's purpose "to preserve an uninhibited marketplace of ideas in which truth

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will ultimately prevail,” *FCC v. League of Women Voters of Cal.*, 468 U. S. 364, 377 (1984) (internal quotation marks omitted), this aspect of traditional public fora is a virtue, not a vice.

In short, traditional public fora are areas that have historically been open to the public for speech activities. Thus, even though the Act says nothing about speech on its face, there is no doubt—and respondents do not dispute—that it restricts access to traditional public fora and is therefore subject to First Amendment scrutiny. See Brief for Respondents 26 (although “[b]y its terms, the Act regulates only conduct,” it “incidentally regulates the place and time of protected speech”).

Consistent with the traditionally open character of public streets and sidewalks, we have held that the government’s ability to restrict speech in such locations is “very limited.” *Grace, supra*, at 177. In particular, the guiding First Amendment principle that the “government has no power to restrict expression because of its message, its ideas, its subject matter, or its content” applies with full force in a traditional public forum. *Police Dept. of Chicago v. Mosley*, 408 U. S. 92, 95 (1972). As a general rule, in such a forum the government may not “selectively . . . shield the public from some kinds of speech on the ground that they are more offensive than others.” *Erznoznik v. Jacksonville*, 422 U. S. 205, 209 (1975).

We have, however, afforded the government somewhat wider leeway to regulate features of speech unrelated to its content. “[E]ven in a public forum the government may impose reasonable restrictions on the time, place, or manner of protected speech, provided the restrictions ‘are justified without reference to the content of the regulated speech, that they are narrowly tailored to serve a significant governmental interest, and that they leave open ample alternative channels for communication of the information.’” *Ward*, 491 U. S., at 791 (quoting *Clark v.*

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Community for Creative Non-Violence, 468 U. S. 288, 293 (1984)).²

While the parties agree that this test supplies the proper framework for assessing the constitutionality of the Massachusetts Act, they disagree about whether the Act satisfies the test's three requirements.

III

Petitioners contend that the Act is not content neutral for two independent reasons: First, they argue that it discriminates against abortion-related speech because it establishes buffer zones only at clinics that perform abortions. Second, petitioners contend that the Act, by exempting clinic employees and agents, favors one viewpoint about abortion over the other. If either of these arguments is correct, then the Act must satisfy strict scrutiny—that is, it must be the least restrictive means of achieving a compelling state interest. See *United States v. Playboy Entertainment Group, Inc.*, 529 U. S. 803, 813 (2000). Respondents do not argue that the Act can survive this exacting standard.

JUSTICE SCALIA objects to our decision to consider whether the statute is content based and thus subject to strict scrutiny, given that we ultimately conclude that it is not narrowly tailored. *Post*, at 2 (opinion concurring in judgment). But we think it unexceptional to perform the first part of a multipart constitutional analysis first. The content-neutrality prong of the *Ward* test is logically antecedent to the narrow-tailoring prong, because it determines the appropriate level of scrutiny. It is not unusual for the Court to proceed sequentially in applying a

²A different analysis would of course be required if the government property at issue were not a traditional public forum but instead “a forum that is limited to use by certain groups or dedicated solely to the discussion of certain subjects.” *Pleasant Grove City v. Summum*, 555 U. S. 460, 470 (2009).

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constitutional test, even when the preliminary steps turn out not to be dispositive. See, e.g., *Bartnicki v. Vopper*, 532 U. S. 514, 526–527 (2001); *Holder v. Humanitarian Law Project*, 561 U. S. 1, 25–28 (2010) (concluding that a law was content based even though it ultimately survived strict scrutiny).

The Court does sometimes assume, without deciding, that a law is subject to a less stringent level of scrutiny, as we did earlier this Term in *McCutcheon v. Federal Election Commission*, 572 U. S. ___, ___ (2014) (plurality opinion) (slip op., at 10). But the distinction between that case and this one seems clear: Applying any standard of review other than intermediate scrutiny in *McCutcheon*—the standard that was assumed to apply—would have required overruling a precedent. There is no similar reason to forgo the ordinary order of operations in this case.

At the same time, there is good reason to address content neutrality. In discussing whether the Act is narrowly tailored, see Part IV, *infra*, we identify a number of less-restrictive alternative measures that the Massachusetts Legislature might have adopted. Some apply only at abortion clinics, which raises the question whether those provisions are content neutral. See *infra*, at 12–15. While we need not (and do not) endorse any of those measures, it would be odd to consider them as possible alternatives if they were presumptively unconstitutional because they were content based and thus subject to strict scrutiny.

A

The Act applies only at a “reproductive health care facility,” defined as “a place, other than within or upon the grounds of a hospital, where abortions are offered or performed.” Mass. Gen. Laws, ch. 266, §120E½(a). Given this definition, petitioners argue, “virtually all speech affected by the Act is speech concerning abortion,” thus rendering the Act content based. Brief for Petitioners 23.

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We disagree. To begin, the Act does not draw content-based distinctions on its face. Contrast *Boos v. Barry*, 485 U. S. 312, 315 (1988) (ordinance prohibiting the display within 500 feet of a foreign embassy of any sign that tends to bring the foreign government into “public odium” or “public disrepute”); *Carey v. Brown*, 447 U. S. 455, 465 (1980) (statute prohibiting all residential picketing except “peaceful labor picketing”). The Act would be content based if it required “enforcement authorities” to “examine the content of the message that is conveyed to determine whether” a violation has occurred. *League of Women Voters of Cal.*, *supra*, at 383. But it does not. Whether petitioners violate the Act “depends” not “on what they say,” *Humanitarian Law Project*, *supra*, at 27, but simply on where they say it. Indeed, petitioners can violate the Act merely by standing in a buffer zone, without displaying a sign or uttering a word.

It is true, of course, that by limiting the buffer zones to abortion clinics, the Act has the “inevitable effect” of restricting abortion-related speech more than speech on other subjects. Brief for Petitioners 24 (quoting *United States v. O’Brien*, 391 U. S. 367, 384 (1968)). But a facially neutral law does not become content based simply because it may disproportionately affect speech on certain topics. On the contrary, “[a] regulation that serves purposes unrelated to the content of expression is deemed neutral, even if it has an incidental effect on some speakers or messages but not others.” *Ward*, *supra*, at 791. The question in such a case is whether the law is “justified without reference to the content of the regulated speech.” *Renton v. Playtime Theatres, Inc.*, 475 U. S. 41, 48 (1986) (quoting *Virginia Pharmacy Board v. Virginia Citizens Consumer Council, Inc.*, 425 U. S. 748, 771 (1976); emphasis deleted).

The Massachusetts Act is. Its stated purpose is to “increase forthwith public safety at reproductive health care

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facilities.” 2007 Mass. Acts p. 660. Respondents have articulated similar purposes before this Court—namely, “public safety, patient access to healthcare, and the unobstructed use of public sidewalks and roadways.” Brief for Respondents 27; see, e.g., App. 51 (testimony of Attorney General Coakley); *id.*, at 67–70 (testimony of Captain William B. Evans of the Boston Police); *id.*, at 79–80 (testimony of Mary Beth Heffernan, Undersecretary for Criminal Justice); *id.*, at 122–124 (affidavit of Captain Evans). It is not the case that “[e]very objective indication shows that the provision’s primary purpose is to restrict speech that opposes abortion.” *Post*, at 7.

We have previously deemed the foregoing concerns to be content neutral. See *Boos*, 485 U. S., at 321 (identifying “congestion,” “interference with ingress or egress,” and “the need to protect . . . security” as content-neutral concerns). Obstructed access and congested sidewalks are problems no matter what caused them. A group of individuals can obstruct clinic access and clog sidewalks just as much when they loiter as when they protest abortion or counsel patients.

To be clear, the Act would not be content neutral if it were concerned with undesirable effects that arise from “the direct impact of speech on its audience” or “[l]isteners’ reactions to speech.” *Ibid.* If, for example, the speech outside Massachusetts abortion clinics caused offense or made listeners uncomfortable, such offense or discomfort would not give the Commonwealth a content-neutral justification to restrict the speech. All of the problems identified by the Commonwealth here, however, arise irrespective of any listener’s reactions. Whether or not a single person reacts to abortion protestors’ chants or petitioners’ counseling, large crowds outside abortion clinics can still compromise public safety, impede access, and obstruct sidewalks.

Petitioners do not really dispute that the Common-

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wealth's interests in ensuring safety and preventing obstruction are, as a general matter, content neutral. But petitioners note that these interests "apply outside every building in the State that hosts any activity that might occasion protest or comment," not just abortion clinics. Brief for Petitioners 24. By choosing to pursue these interests only at abortion clinics, petitioners argue, the Massachusetts Legislature evinced a purpose to "single[] out for regulation speech about one particular topic: abortion." Reply Brief 9.

We cannot infer such a purpose from the Act's limited scope. The broad reach of a statute can help confirm that it was not enacted to burden a narrower category of disfavored speech. See Kagan, *Private Speech, Public Purpose: The Role of Governmental Motive in First Amendment Doctrine*, 63 U. Chi. L. Rev. 413, 451–452 (1996). At the same time, however, "States adopt laws to address the problems that confront them. The First Amendment does not require States to regulate for problems that do not exist." *Burson v. Freeman*, 504 U.S. 191, 207 (1992) (plurality opinion). The Massachusetts Legislature amended the Act in 2007 in response to a problem that was, in its experience, limited to abortion clinics. There was a record of crowding, obstruction, and even violence outside such clinics. There were apparently no similar recurring problems associated with other kinds of healthcare facilities, let alone with "every building in the State that hosts any activity that might occasion protest or comment." Brief for Petitioners 24. In light of the limited nature of the problem, it was reasonable for the Massachusetts Legislature to enact a limited solution. When selecting among various options for combating a particular problem, legislatures should be encouraged to choose the one that restricts less speech, not more.

JUSTICE SCALIA objects that the statute does restrict more speech than necessary, because "only one [Massa-

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chusetts abortion clinic] is known to have been beset by the problems that the statute supposedly addresses.” *Post*, at 7. But there are no grounds for inferring content-based discrimination here simply because the legislature acted with respect to abortion facilities generally rather than proceeding on a facility-by-facility basis. On these facts, the poor fit noted by JUSTICE SCALIA goes to the question of narrow tailoring, which we consider below. See *infra*, at 26–28.

B

Petitioners also argue that the Act is content based because it exempts four classes of individuals, Mass. Gen. Laws, ch. 266, §§120E½(b)(1)–(4), one of which comprises “employees or agents of [a reproductive healthcare] facility acting within the scope of their employment.” §120E½(b)(2). This exemption, petitioners say, favors one side in the abortion debate and thus constitutes viewpoint discrimination—an “egregious form of content discrimination,” *Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U. S. 819, 829 (1995). In particular, petitioners argue that the exemption allows clinic employees and agents—including the volunteers who “escort” patients arriving at the Boston clinic—to speak inside the buffer zones.

It is of course true that “an exemption from an otherwise permissible regulation of speech may represent a governmental ‘attempt to give one side of a debatable public question an advantage in expressing its views to the people.’” *City of Ladue v. Gilleo*, 512 U. S. 43, 51 (1994) (quoting *First Nat. Bank of Boston v. Bellotti*, 435 U. S. 765, 785–786 (1978)). At least on the record before us, however, the statutory exemption for clinic employees and agents acting within the scope of their employment does not appear to be such an attempt.

There is nothing inherently suspect about providing some kind of exemption to allow individuals who work at

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the clinics to enter or remain within the buffer zones. In particular, the exemption cannot be regarded as simply a carve-out for the clinic escorts; it also covers employees such as the maintenance worker shoveling a snowy sidewalk or the security guard patrolling a clinic entrance, see App. 95 (affidavit of Michael T. Baniukiewicz).

Given the need for an exemption for clinic employees, the “scope of their employment” qualification simply ensures that the exemption is limited to its purpose of allowing the employees to do their jobs. It performs the same function as the identical “scope of their employment” restriction on the exemption for “law enforcement, ambulance, fire-fighting, construction, utilities, public works and other municipal agents.” §120E½(b)(3). Contrary to the suggestion of JUSTICE SCALIA, *post*, at 11–12, there is little reason to suppose that the Massachusetts Legislature intended to incorporate a common law doctrine developed for determining vicarious liability in tort when it used the phrase “scope of their employment” for the wholly different purpose of defining the scope of an exemption to a criminal statute. The limitation instead makes clear—with respect to both clinic employees and municipal agents—that exempted individuals are allowed inside the zones only to perform those acts authorized by their employers. There is no suggestion in the record that any of the clinics authorize their employees to speak about abortion in the buffer zones. The “scope of their employment” limitation thus seems designed to protect against exactly the sort of conduct that petitioners and JUSTICE SCALIA fear.

Petitioners did testify in this litigation about instances in which escorts at the Boston clinic had expressed views about abortion to the women they were accompanying, thwarted petitioners’ attempts to speak and hand literature to the women, and disparaged petitioners in various ways. See App. 165, 168–169, 177–178, 189–190. It is

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unclear from petitioners' testimony whether these alleged incidents occurred within the buffer zones. There is no viewpoint discrimination problem if the incidents occurred outside the zones because petitioners are equally free to say whatever they would like in that area.

Even assuming the incidents occurred inside the zones, the record does not suggest that they involved speech within the scope of the escorts' employment. If the speech was beyond the scope of their employment, then each of the alleged incidents would violate the Act's express terms. Petitioners' complaint would then be that the police were failing to *enforce* the Act equally against clinic escorts. Cf. *Hoye v. City of Oakland*, 653 F.3d 835, 849–852 (CA9 2011) (finding selective enforcement of a similar ordinance in Oakland, California). While such allegations might state a claim of official viewpoint discrimination, that would not go to the validity of the Act. In any event, petitioners nowhere allege selective enforcement.

It would be a very different question if it turned out that a clinic authorized escorts to speak about abortion inside the buffer zones. See *post*, at 1–2 (ALITO, J., concurring in judgment). In that case, the escorts would not seem to be violating the Act because the speech would be within the scope of their employment.³ The Act's exemption for clinic

³Less than two weeks after the instant litigation was initiated, the Massachusetts Attorney General's Office issued a guidance letter clarifying the application of the four exemptions. The letter interpreted the exemptions as not permitting clinic employees or agents, municipal employees or agents, or individuals passing by clinics "to express their views about abortion or to engage in any other partisan speech within the buffer zone." App. 93, 93–94. While this interpretation supports our conclusion that the employee exemption does not render the Act viewpoint based, we do not consider it in our analysis because it appears to *broaden* the scope of the Act—a criminal statute—rather than to adopt a "limiting construction." *Ward v. Rock Against Racism*, 491 U. S. 781, 796 (1989) (quoting *Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U. S. 489, 494, n. 5 (1982)).

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employees would then facilitate speech on only one side of the abortion debate—a clear form of viewpoint discrimination that would support an as-applied challenge to the buffer zone at that clinic. But the record before us contains insufficient evidence to show that the exemption operates in this way at any of the clinics, perhaps because the clinics do not want to doom the Act by allowing their employees to speak about abortion within the buffer zones.⁴

We thus conclude that the Act is neither content nor viewpoint based and therefore need not be analyzed under strict scrutiny.

IV

Even though the Act is content neutral, it still must be “narrowly tailored to serve a significant governmental interest.” *Ward*, 491 U.S., at 796 (internal quotation marks omitted). The tailoring requirement does not simply guard against an impermissible desire to censor. The government may attempt to suppress speech not only because it disagrees with the message being expressed, but also for mere convenience. Where certain speech is associated with particular problems, silencing the speech is sometimes the path of least resistance. But by demand-

⁴Of course we do not hold that “[s]peech restrictions favoring one viewpoint over another are not content based unless it can be shown that the favored viewpoint has actually been expressed.” *Post*, at 13. We instead apply an uncontroversial principle of constitutional adjudication: that a plaintiff generally cannot prevail on an *as-applied* challenge without showing that the law has in fact been (or is sufficiently likely to be) unconstitutionally *applied* to him. Specifically, when someone challenges a law as viewpoint discriminatory but it is not clear from the face of the law which speakers will be allowed to speak, he must show that he was prevented from speaking while someone espousing another viewpoint was permitted to do so. JUSTICE SCALIA can decry this analysis as “astonishing” only by quoting a sentence that is explicitly limited to as-applied challenges and treating it as relevant to facial challenges. *Ibid*.

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ing a close fit between ends and means, the tailoring requirement prevents the government from too readily “sacrific[ing] speech for efficiency.” *Riley v. National Federation of Blind of N. C., Inc.*, 487 U.S. 781, 795 (1988).

For a content-neutral time, place, or manner regulation to be narrowly tailored, it must not “burden substantially more speech than is necessary to further the government’s legitimate interests.” *Ward*, 491 U.S., at 799. Such a regulation, unlike a content-based restriction of speech, “need not be the least restrictive or least intrusive means of” serving the government’s interests. *Id.*, at 798. But the government still “may not regulate expression in such a manner that a substantial portion of the burden on speech does not serve to advance its goals.” *Id.*, at 799.

A

As noted, respondents claim that the Act promotes “public safety, patient access to healthcare, and the unobstructed use of public sidewalks and roadways.” Brief for Respondents 27. Petitioners do not dispute the significance of these interests. We have, moreover, previously recognized the legitimacy of the government’s interests in “ensuring public safety and order, promoting the free flow of traffic on streets and sidewalks, protecting property rights, and protecting a woman’s freedom to seek pregnancy-related services.” *Schenck v. Pro-Choice Network of Western N. Y.*, 519 U.S. 357, 376 (1997). See also *Madsen v. Women’s Health Center, Inc.*, 512 U.S. 753, 767–768 (1994). The buffer zones clearly serve these interests.

At the same time, the buffer zones impose serious burdens on petitioners’ speech. At each of the three Planned Parenthood clinics where petitioners attempt to counsel patients, the zones carve out a significant portion of the adjacent public sidewalks, pushing petitioners well back from the clinics’ entrances and driveways. The zones

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thereby compromise petitioners' ability to initiate the close, personal conversations that they view as essential to "sidewalk counseling."

For example, in uncontradicted testimony, McCullen explained that she often cannot distinguish patients from passersby outside the Boston clinic in time to initiate a conversation before they enter the buffer zone. App. 135. And even when she does manage to begin a discussion outside the zone, she must stop abruptly at its painted border, which she believes causes her to appear "untrustworthy" or "suspicious." *Id.*, at 135, 152. Given these limitations, McCullen is often reduced to raising her voice at patients from outside the zone—a mode of communication sharply at odds with the compassionate message she wishes to convey. *Id.*, at 133, 152–153. Clark gave similar testimony about her experience at the Worcester clinic. *Id.*, at 243–244.

These burdens on petitioners' speech have clearly taken their toll. Although McCullen claims that she has persuaded about 80 women not to terminate their pregnancies since the 2007 amendment, App. to Pet. for Cert. 42a, she also says that she reaches "far fewer people" than she did before the amendment, App. 137. Zarrella reports an even more precipitous decline in her success rate: She estimated having about 100 successful interactions over the years before the 2007 amendment, but not a single one since. *Id.*, at 180. And as for the Worcester clinic, Clark testified that "only one woman out of 100 will make the effort to walk across [the street] to speak with [her]." *Id.*, at 217.

The buffer zones have also made it substantially more difficult for petitioners to distribute literature to arriving patients. As explained, because petitioners in Boston cannot readily identify patients before they enter the zone, they often cannot approach them in time to place literature near their hands—the most effective means of getting

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the patients to accept it. *Id.*, at 179. In Worcester and Springfield, the zones have pushed petitioners so far back from the clinics' driveways that they can no longer even attempt to offer literature as drivers turn into the parking lots. *Id.*, at 213, 218, 252–253. In short, the Act operates to deprive petitioners of their two primary methods of communicating with patients.

The Court of Appeals and respondents are wrong to downplay these burdens on petitioners' speech. As the Court of Appeals saw it, the Constitution does not accord "special protection" to close conversations or "handbilling." 571 F. 3d, at 180. But while the First Amendment does not guarantee a speaker the right to any particular form of expression, some forms—such as normal conversation and leafletting on a public sidewalk—have historically been more closely associated with the transmission of ideas than others.

In the context of petition campaigns, we have observed that "one-on-one communication" is "the most effective, fundamental, and perhaps economical avenue of political discourse." *Meyer v. Grant*, 486 U. S. 414, 424 (1988). See also *Schenck, supra*, at 377 (invalidating a "floating" buffer zone around people entering an abortion clinic partly on the ground that it prevented protestors "from communicating a message from a normal conversational distance or handing leaflets to people entering or leaving the clinics who are walking on the public sidewalks"). And "handing out leaflets in the advocacy of a politically controversial viewpoint . . . is the essence of First Amendment expression"; "[n]o form of speech is entitled to greater constitutional protection." *McIntyre v. Ohio Elections Comm'n*, 514 U. S. 334, 347 (1995). See also *Schenck, supra*, at 377 ("Leafletting and commenting on matters of public concern are classic forms of speech that lie at the heart of the First Amendment"). When the government makes it more difficult to engage in these modes of com-

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munication, it imposes an especially significant First Amendment burden.⁵

Respondents also emphasize that the Act does not prevent petitioners from engaging in various forms of "protest"—such as chanting slogans and displaying signs—outside the buffer zones. Brief for Respondents 50–54. That misses the point. Petitioners are not protestors. They seek not merely to express their opposition to abortion, but to inform women of various alternatives and to provide help in pursuing them. Petitioners believe that they can accomplish this objective only through personal, caring, consensual conversations. And for good reason: It is easier to ignore a strained voice or a waving hand than a direct greeting or an outstretched arm. While the record indicates that petitioners have been able to have a number of quiet conversations outside the buffer zones, respondents have not refuted petitioners' testimony that the conversations have been far less frequent and far less successful since the buffer zones were instituted. It is thus no answer to say that petitioners can still be "seen and heard" by women within the buffer zones. *Id.*, at 51–53. If all that the women can see and hear are vociferous opponents of abortion, then the buffer zones have effectively stifled petitioners' message.

Finally, respondents suggest that, at the Worcester and Springfield clinics, petitioners are prevented from communicating with patients not by the buffer zones but by the fact that most patients arrive by car and park in the

⁵As a leading historian has noted:

"It was in this form—as pamphlets—that much of the most important and characteristic writing of the American Revolution appeared. For the Revolutionary generation, as for its predecessors back to the early sixteenth century, the pamphlet had peculiar virtues as a medium of communication. Then, as now, it was seen that the pamphlet allowed one to do things that were not possible in any other form." B. Bailyn, *The Ideological Origins of the American Revolution* 2 (1967).

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clinics' private lots. *Id.*, at 52. It is true that the layout of the two clinics would prevent petitioners from approaching the clinics' *doorways*, even without the buffer zones. But petitioners do not claim a right to trespass on the clinics' property. They instead claim a right to stand on the public sidewalks by the driveway as cars turn into the parking lot. Before the buffer zones, they could do so. Now they must stand a substantial distance away. The Act alone is responsible for that restriction on their ability to convey their message.

B

1

The buffer zones burden substantially more speech than necessary to achieve the Commonwealth's asserted interests. At the outset, we note that the Act is truly exceptional: Respondents and their *amici* identify no other State with a law that creates fixed buffer zones around abortion clinics.⁶ That of course does not mean that the law is invalid. It does, however, raise concern that the Commonwealth has too readily forgone options that could serve its interests just as well, without substantially burdening the kind of speech in which petitioners wish to engage.

That is the case here. The Commonwealth's interests include ensuring public safety outside abortion clinics, preventing harassment and intimidation of patients and clinic staff, and combating deliberate obstruction of clinic entrances. The Act itself contains a separate provision, subsection (e)—unchallenged by petitioners—that prohibits much of this conduct. That provision subjects to criminal punishment "[a]ny person who knowingly obstructs, detains, hinders, impedes or blocks another person's entry

⁶*Amici* do identify five localities with laws similar to the Act here. Brief for State of New York et al. as *Amici Curiae* 14, n. 7.

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to or exit from a reproductive health care facility.” Mass. Gen. Laws, ch. 266, §120E½(e).⁷ If Massachusetts determines that broader prohibitions along the same lines are necessary, it could enact legislation similar to the federal Freedom of Access to Clinic Entrances Act of 1994 (FACE Act), 18 U. S. C. §248(a)(1), which subjects to both criminal and civil penalties anyone who “by force or threat of force or by physical obstruction, intentionally injures, intimidates or interferes with or attempts to injure, intimidate or interfere with any person because that person is or has been, or in order to intimidate such person or any other person or any class of persons from, obtaining or providing reproductive health services.” Some dozen other States have done so. See Brief for State of New York et al. as *Amici Curiae* 13, and n. 6. If the Commonwealth is particularly concerned about harassment, it could also consider an ordinance such as the one adopted in New York City that not only prohibits obstructing access to a clinic, but also makes it a crime “to follow and harass another person within 15 feet of the premises of a reproductive health care facility.” N. Y. C. Admin. Code §8-803(a)(3) (2014).⁸

The Commonwealth points to a substantial public safety risk created when protestors obstruct driveways leading to the clinics. See App. 18, 41, 51, 88–89, 99, 118–119. That is, however, an example of its failure to look to less intru-

⁷Massachusetts also has a separate law prohibiting similar kinds of conduct at any “medical facility,” though that law, unlike the Act, requires explicit notice before any penalty may be imposed. Mass. Gen. Laws, ch. 266, §120E.

⁸We do not “give [our] approval” to this or any of the other alternatives we discuss. *Post*, at 4. We merely suggest that a law like the New York City ordinance could in principle constitute a permissible alternative. Whether such a law would pass constitutional muster would depend on a number of other factors, such as whether the term “harassment” had been authoritatively construed to avoid vagueness and overbreadth problems of the sort noted by JUSTICE SCALIA.

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sive means of addressing its concerns. Any such obstruction can readily be addressed through existing local ordinances. See, *e.g.*, Worcester, Mass., Revised Ordinances of 2008, ch. 12, §25(b) (“No person shall stand, or place any obstruction of any kind, upon any street, sidewalk or crosswalk in such a manner as to obstruct a free passage for travelers thereon”); Boston, Mass., Municipal Code, ch. 16–41.2(d) (2013) (“No person shall solicit while walking on, standing on or going into any street or highway used for motor vehicle travel, or any area appurtenant thereto (including medians, shoulder areas, bicycle lanes, ramps and exit ramps)”).

All of the foregoing measures are, of course, in addition to available generic criminal statutes forbidding assault, breach of the peace, trespass, vandalism, and the like.

In addition, subsection (e) of the Act, the FACE Act, and the New York City anti-harassment ordinance are all enforceable not only through criminal prosecutions but also through public and private civil actions for injunctions and other equitable relief. See Mass. Gen. Laws §120E½(f); 18 U. S. C. §248(c)(1); N. Y. C. Admin. Code §§8–804, 8–805. We have previously noted the First Amendment virtues of targeted injunctions as alternatives to broad, prophylactic measures. Such an injunction “regulates the activities, and perhaps the speech, of a group,” but only “because of the group’s past *actions* in the context of a specific dispute between real parties.” *Madsen*, 512 U. S., at 762 (emphasis added). Moreover, given the equitable nature of injunctive relief, courts can tailor a remedy to ensure that it restricts no more speech than necessary. See, *e.g.*, *id.*, at 770; *Schenck*, 519 U. S., at 380–381. In short, injunctive relief focuses on the precise individuals and the precise conduct causing a particular problem. The Act, by contrast, categorically excludes non-exempt individuals from the buffer zones, unnecessarily sweeping in innocent individuals and their speech.

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The Commonwealth also asserts an interest in preventing congestion in front of abortion clinics. According to respondents, even when individuals do not deliberately obstruct access to clinics, they can inadvertently do so simply by gathering in large numbers. But the Commonwealth could address that problem through more targeted means. Some localities, for example, have ordinances that require crowds blocking a clinic entrance to disperse when ordered to do so by the police, and that forbid the individuals to reassemble within a certain distance of the clinic for a certain period. See Brief for State of New York et al. as *Amici Curiae* 14–15, and n. 10. We upheld a similar law forbidding three or more people “to congregate within 500 feet of [a foreign embassy], and refuse to disperse after having been ordered so to do by the police,” *Boos*, 485 U. S., at 316 (quoting D. C. Code §22–1115 (1938))—an order the police could give only when they “‘reasonably believe[d] that a threat to the security or peace of the embassy [was] present,’” 485 U. S., at 330 (quoting *Finzer v. Barry*, 798 F. 2d 1450, 1471 (CA DC 1986)).

And to the extent the Commonwealth argues that even these types of laws are ineffective, it has another problem. The portions of the record that respondents cite to support the anticongestion interest pertain mainly to one place at one time: the Boston Planned Parenthood clinic on Saturday mornings. App. 69–71, 88–89, 96, 123. Respondents point us to no evidence that individuals regularly gather at other clinics, or at other times in Boston, in sufficiently large groups to obstruct access. For a problem shown to arise only once a week in one city at one clinic, creating 35-foot buffer zones at every clinic across the Commonwealth is hardly a narrowly tailored solution.

The point is not that Massachusetts must enact all or even any of the proposed measures discussed above. The point is instead that the Commonwealth has available to it a variety of approaches that appear capable of serving its

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interests, without excluding individuals from areas historically open for speech and debate.

2

Respondents have but one reply: “We have tried other approaches, but they do not work.” Respondents emphasize the history in Massachusetts of obstruction at abortion clinics, and the Commonwealth’s allegedly failed attempts to combat such obstruction with injunctions and individual prosecutions. They also point to the Commonwealth’s experience under the 2000 version of the Act, during which the police found it difficult to enforce the six-foot no-approach zones given the “frenetic” activity in front of clinic entrances. Brief for Respondents 43. According to respondents, this history shows that Massachusetts has tried less restrictive alternatives to the buffer zones, to no avail.

We cannot accept that contention. Although respondents claim that Massachusetts “tried other laws already on the books,” *id.*, at 41, they identify not a single prosecution brought under those laws within at least the last 17 years. And while they also claim that the Commonwealth “tried injunctions,” *ibid.*, the last injunctions they cite date to the 1990s, see *id.*, at 42 (citing *Planned Parenthood League of Mass., Inc. v. Bell*, 424 Mass. 573, 677 N. E. 2d 204 (1997); *Planned Parenthood League of Mass., Inc. v. Operation Rescue*, 406 Mass. 701, 550 N. E. 2d 1361 (1990)). In short, the Commonwealth has not shown that it seriously undertook to address the problem with less intrusive tools readily available to it. Nor has it shown that it considered different methods that other jurisdictions have found effective.

Respondents contend that the alternatives we have discussed suffer from two defects: First, given the “widespread” nature of the problem, it is simply not “practicable” to rely on individual prosecutions and injunctions.

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Brief for Respondents 45. But far from being “widespread,” the problem appears from the record to be limited principally to the Boston clinic on Saturday mornings. Moreover, by their own account, the police appear perfectly capable of singling out lawbreakers. The legislative testimony preceding the 2007 Act revealed substantial police and video monitoring at the clinics, especially when large gatherings were anticipated. Captain Evans testified that his officers are so familiar with the scene outside the Boston clinic that they “know all the players down there.” App. 69. And Attorney General Coakley relied on video surveillance to show legislators conduct she thought was “clearly against the law.” *Id.*, at 78. If Commonwealth officials can compile an extensive record of obstruction and harassment to support their preferred legislation, we do not see why they cannot do the same to support injunctions and prosecutions against those who might deliberately flout the law.

The second supposed defect in the alternatives we have identified is that laws like subsection (e) of the Act and the federal FACE Act require a showing of intentional or deliberate obstruction, intimidation, or harassment, which is often difficult to prove. Brief for Respondents 45–47. As Captain Evans predicted in his legislative testimony, fixed buffer zones would “make our job so much easier.” App. 68.

Of course they would. But that is not enough to satisfy the First Amendment. To meet the requirement of narrow tailoring, the government must demonstrate that alternative measures that burden substantially less speech would fail to achieve the government’s interests, not simply that the chosen route is easier. A painted line on the sidewalk is easy to enforce, but the prime objective of the First Amendment is not efficiency. In any case, we do not think that showing intentional obstruction is nearly so difficult in this context as respondents suggest. To determine

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whether a protestor intends to block access to a clinic, a police officer need only order him to move. If he refuses, then there is no question that his continued conduct is knowing or intentional.

For similar reasons, respondents' reliance on our decision in *Burson v. Freeman* is misplaced. There, we upheld a state statute that established 100-foot buffer zones outside polling places on election day within which no one could display or distribute campaign materials or solicit votes. 504 U. S., at 193–194. We approved the buffer zones as a valid prophylactic measure, noting that existing “[i]ntimidation and interference laws fall short of serving a State’s compelling interests because they ‘deal with only the most blatant and specific attempts’ to impede elections.” *Id.*, at 206–207 (quoting *Buckley v. Valeo*, 424 U. S. 1, 28 (1976) (*per curiam*)). Such laws were insufficient because “[v]oter intimidation and election fraud are . . . difficult to detect.” *Burson*, 504 U. S., at 208. Obstruction of abortion clinics and harassment of patients, by contrast, are anything but subtle.

We also noted in *Burson* that under state law, “law enforcement officers generally are barred from the vicinity of the polls to avoid any appearance of coercion in the electoral process,” with the result that “many acts of interference would go undetected.” *Id.*, at 207. Not so here. Again, the police maintain a significant presence outside Massachusetts abortion clinics. The buffer zones in *Burson* were justified because less restrictive measures were inadequate. Respondents have not shown that to be the case here.

Given the vital First Amendment interests at stake, it is not enough for Massachusetts simply to say that other approaches have not worked.⁹

⁹Because we find that the Act is not narrowly tailored, we need not consider whether the Act leaves open ample alternative channels of

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* * *

Petitioners wish to converse with their fellow citizens about an important subject on the public streets and sidewalks—sites that have hosted discussions about the issues of the day throughout history. Respondents assert undeniably significant interests in maintaining public safety on those same streets and sidewalks, as well as in preserving access to adjacent healthcare facilities. But here the Commonwealth has pursued those interests by the extreme step of closing a substantial portion of a traditional public forum to all speakers. It has done so without seriously addressing the problem through alternatives that leave the forum open for its time-honored purposes. The Commonwealth may not do that consistent with the First Amendment.

The judgment of the Court of Appeals for the First Circuit is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

communication. Nor need we consider petitioners' overbreadth challenge.

SCALIA, J., concurring in judgment

SUPREME COURT OF THE UNITED STATES

No. 12–1168

ELEANOR McCULLEN, ET AL., PETITIONERS v.
MARTHA COAKLEY, ATTORNEY GEN-
ERAL OF MASSACHUSETTS, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE FIRST CIRCUIT

[June 26, 2014]

JUSTICE SCALIA, with whom JUSTICE KENNEDY and
JUSTICE THOMAS join, concurring in the judgment.

Today’s opinion carries forward this Court’s practice of giving abortion-rights advocates a pass when it comes to suppressing the free-speech rights of their opponents. There is an entirely separate, abridged edition of the First Amendment applicable to speech against abortion. See, e.g., *Hill v. Colorado*, 530 U. S. 703 (2000); *Madsen v. Women’s Health Center, Inc.*, 512 U. S. 753 (1994).

The second half of the Court’s analysis today, invalidating the law at issue because of inadequate “tailoring,” is certainly attractive to those of us who oppose an abortion-speech edition of the First Amendment. But think again. This is an opinion that has Something for Everyone, and the more significant portion continues the onward march of abortion-speech-only jurisprudence. That is the first half of the Court’s analysis, which concludes that a statute of this sort is not content based and hence not subject to so-called strict scrutiny. The Court reaches out to decide that question unnecessarily—or at least unnecessarily insofar as legal analysis is concerned.

I disagree with the Court’s dicta (Part III) and hence see no reason to opine on its holding (Part IV).

SCALIA, J., concurring in judgment

I. The Court's Content-Neutrality Discussion Is Unnecessary

The gratuitous portion of today's opinion is Part III, which concludes—in seven pages of the purest dicta—that subsection (b) of the Massachusetts Reproductive Health Care Facilities Act is not specifically directed at speech opposing (or even concerning) abortion and hence need not meet the strict-scrutiny standard applicable to content-based speech regulations.¹ Inasmuch as Part IV holds that the Act is unconstitutional because it does not survive the lesser level of scrutiny associated with content-neutral “time, place, and manner” regulations, there is no principled reason for the majority to decide whether the statute is subject to strict scrutiny.

Just a few months past, the Court found it unnecessary to “parse the differences between . . . two [available] standards” where a statute challenged on First Amendment grounds “fail[s] even under the [less demanding] test.” *McCutcheon v. Federal Election Comm’n*, 572 U. S. ___, ___ (2014) (plurality opinion) (slip op., at 10). What has changed since then? Quite simple: This is an abortion case, and *McCutcheon* was not.² By engaging in constitutional dictum here (and reaching the wrong result), the

¹To reiterate, the challenged provision states that “[n]o person shall knowingly enter or remain on a public way or sidewalk adjacent to a reproductive health care facility within a radius of 35 feet of any portion of an entrance, exit or driveway” of such a facility or within an alternative rectangular area. Mass. Gen. Laws, ch. 266, §120E½(b) (West 2012). And the statute defines a “reproductive health care facility” as “a place, other than within or upon the grounds of a hospital, where abortions are offered or performed.” §120E½(a).

²The Court claims that *McCutcheon* declined to consider the more rigorous standard of review because applying it “would have required overruling a precedent.” *Ante*, at 11. That hardly distinguishes the present case, since, as discussed later in text, the conclusion that this legislation escapes strict scrutiny does violence to a great swath of our First Amendment jurisprudence.

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majority can preserve the ability of jurisdictions across the country to restrict antiabortion speech without fear of rigorous constitutional review. With a dart here and a pleat there, such regulations are sure to satisfy the tailoring standards applied in Part IV of the majority's opinion.

The Court cites two cases for the proposition that "[i]t is not unusual for the Court to proceed sequentially in applying a constitutional test, even when the preliminary steps turn out not to be dispositive." *Ante*, at 10–11 (citing *Bartnicki v. Vopper*, 532 U. S. 514, 526–527 (2001); *Holder v. Humanitarian Law Project*, 561 U. S. 1, 25–28 (2010)). Those cases provide little cover. In both, there was no disagreement among the Members of the Court about whether the statutes in question discriminated on the basis of content.³ There was thus little harm in answering the constitutional question that was "logically antecedent." *Ante*, at 10. In the present case, however, content neutrality is far from clear (the Court is divided 5-to-4), and the parties vigorously dispute the point, see *ibid*. One would have thought that the Court would avoid the issue by simply assuming without deciding the logically antecedent point. We have done that often before. See, e.g., *Herrera v. Collins*, 506 U. S. 390, 417 (1993); *Regents of Univ. of Mich. v. Ewing*, 474 U. S. 214, 222–223 (1985); *Board of Curators of Univ. of Mo. v. Horowitz*, 435 U. S. 78, 91–92 (1978).

The Court points out that its opinion goes on to suggest

³See *Bartnicki*, 532 U. S., at 526 ("We agree with petitioners that §2511(1)(c), as well as its Pennsylvania analog, is in fact a content-neutral law of general applicability"); *id.*, at 544 (Rehnquist, C. J., dissenting) ("The Court correctly observes that these are 'content-neutral law[s] of general applicability'" (brackets in original)); *Humanitarian Law Project*, 561 U. S., at 27 ("[Section] 2339B regulates speech on the basis of its content"); *id.*, at 45 (BREYER, J., dissenting) ("[W]here, as here, a statute applies criminal penalties and at least arguably does so on the basis of content-based distinctions, I should think we would scrutinize the statute and justifications 'strictly'").

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(in Part IV) possible alternatives that apply only at abortion clinics, which therefore “raises the question whether those provisions are content neutral.” *Ante*, at 11. Of course, the Court has no obligation to provide advice on alternative speech restrictions, and appending otherwise unnecessary constitutional pronouncements to such advice produces nothing but an impermissible advisory opinion.

By the way, there is dictum favorable to advocates of abortion rights even in Part IV. The Court invites Massachusetts, as a means of satisfying the tailoring requirement, to “consider an ordinance such as the one adopted in New York City that . . . makes it a crime ‘to follow and harass another person within 15 feet of the premises of a reproductive health care facility.’” *Ante*, at 24 (quoting N. Y. C. Admin. Code §8-803(a)(3) (2014)). Is it harassment, one wonders, for Eleanor McCullen to ask a woman, quietly and politely, two times, whether she will take literature or whether she has any questions? Three times? Four times? It seems to me far from certain that First Amendment rights can be imperiled by threatening jail time (only at “reproductive health care facilit[ies],” of course) for so vague an offense as “follow[ing] and harass[ing].” It is wrong for the Court to give its approval to such legislation without benefit of briefing and argument.

II. The Statute Is Content Based and Fails Strict Scrutiny

Having eagerly volunteered to take on the level-of-scrutiny question, the Court provides the wrong answer. Petitioners argue for two reasons that subsection (b) articulates a content-based speech restriction—and that we must therefore evaluate it through the lens of strict scrutiny.

A. Application to Abortion Clinics Only

First, petitioners maintain that the Act targets abortion-related—for practical purposes, abortion-opposing—speech

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because it applies outside abortion clinics only (rather than outside other buildings as well).

Public streets and sidewalks are traditional forums for speech on matters of public concern. Therefore, as the Court acknowledges, they hold a “special position in terms of First Amendment protection.” *Ante*, at 8 (quoting *United States v. Grace*, 461 U. S. 171, 180 (1983)). Moreover, “the public spaces outside of [abortion-providing] facilities . . . ha[ve] become, by necessity and by virtue of this Court’s decisions, a forum of last resort for those who oppose abortion.” *Hill*, 530 U. S., at 763 (SCALIA, J., dissenting). It blinks reality to say, as the majority does, that a blanket prohibition on the use of streets and sidewalks where speech on only one politically controversial topic is likely to occur—and where that speech can most effectively be communicated—is not content based. Would the Court exempt from strict scrutiny a law banning access to the streets and sidewalks surrounding the site of the Republican National Convention? Or those used annually to commemorate the 1965 Selma-to-Montgomery civil rights marches? Or those outside the Internal Revenue Service? Surely not.

The majority says, correctly enough, that a facially neutral speech restriction escapes strict scrutiny, even when it “may disproportionately affect speech on certain topics,” so long as it is “justified without reference to the content of the regulated speech.” *Ante*, at 12 (internal quotation marks omitted). But the cases in which the Court has previously found that standard satisfied—in particular, *Renton v. Playtime Theatres, Inc.*, 475 U. S. 41 (1986), and *Ward v. Rock Against Racism*, 491 U. S. 781 (1989), both of which the majority cites—are a far cry from what confronts us here.

Renton upheld a zoning ordinance prohibiting adult motion-picture theaters within 1,000 feet of residential neighborhoods, churches, parks, and schools. The ordi-

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nance was content neutral, the Court held, because its purpose was not to suppress pornographic speech *qua* speech but, rather, to mitigate the “secondary effects” of adult theaters—including by “prevent[ing] crime, protect[ing] the city’s retail trade, [and] maintain[ing] property values.” 475 U. S., at 47, 48. The Court reasoned that if the city “had been concerned with restricting the message purveyed by adult theaters, it would have tried to close them or restrict their number rather than circumscribe their choice as to location.” *Id.*, at 48 (quoting *Young v. American Mini Theatres, Inc.*, 427 U. S. 50, 82, n. 4 (1976) (Powell, J., concurring in part)). *Ward*, in turn, involved a New York City regulation requiring the use of the city’s own sound equipment and technician for events at a bandshell in Central Park. The Court held the regulation content neutral because its “principal justification [was] the city’s desire to control noise levels,” a justification that “ha[d] nothing to do with [the] content” of respondent’s rock concerts or of music more generally. 491 U. S., at 792. The regulation “ha[d] no material impact on any performer’s ability to exercise complete artistic control over sound quality.” *Id.*, at 802; see also *id.*, at 792–793.

Compare these cases’ reasons for concluding that the regulations in question were “justified without reference to the content of the regulated speech” with the feeble reasons for the majority’s adoption of that conclusion in the present case. The majority points only to the statute’s stated purpose of increasing “‘public safety’” at abortion clinics, *ante*, at 12–13 (quoting 2007 Mass. Acts p. 660), and to the additional aims articulated by respondents before this Court—namely, protecting “‘patient access to healthcare . . . and the unobstructed use of public sidewalks and roadways,” *ante*, at 13 (quoting Brief for Respondents 27). Really? Does a statute become “justified without reference to the content of the regulated speech” simply because the statute itself and those defending it in

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court say that it is? Every objective indication shows that the provision's primary purpose is to restrict speech that opposes abortion.

I begin, as suggested above, with the fact that the Act burdens only the public spaces outside abortion clinics. One might have expected the majority to defend the statute's peculiar targeting by arguing that those locations regularly face the safety and access problems that it says the Act was designed to solve. But the majority does not make that argument because it would be untrue. As the Court belatedly discovers in Part IV of its opinion, although the statute applies to all abortion clinics in Massachusetts, only one is known to have been beset by the problems that the statute supposedly addresses. See *ante*, at 26, 28. The Court uses this striking fact (a smoking gun, so to speak) as a basis for concluding that the law is insufficiently "tailored" to safety and access concerns (Part IV) rather than as a basis for concluding that it is not *directed* to those concerns at all, but to the suppression of antiabortion speech. That is rather like invoking the eight missed human targets of a shooter who has killed one victim to prove, not that he is guilty of attempted mass murder, but that *he has bad aim*.

Whether the statute "restrict[s] more speech than necessary" in light of the problems that it allegedly addresses, *ante*, at 14–15, is, to be sure, relevant to the tailoring component of the First Amendment analysis (the shooter doubtless did have bad aim), but it is also relevant—powerfully relevant—to whether the law is really directed to safety and access concerns or rather to the suppression of a particular type of speech. Showing that a law that suppresses speech on a specific subject is so far-reaching that it applies even when the asserted non-speech-related problems are not present is persuasive evidence that the law is content based. In its zeal to treat abortion-related speech as a special category, the majority

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distorts not only the First Amendment but also the ordinary logic of probative inferences.

The structure of the Act also indicates that it rests on content-based concerns. The goals of “public safety, patient access to healthcare, and the unobstructed use of public sidewalks and roadways,” Brief for Respondents 27, are already achieved by an earlier-enacted subsection of the statute, which provides criminal penalties for “[a]ny person who knowingly obstructs, detains, hinders, impedes or blocks another person’s entry to or exit from a reproductive health care facility.” §120E½(e). As the majority recognizes, that provision is easy to enforce. See *ante*, at 28–29. Thus, the speech-free zones carved out by subsection (b) add nothing to safety and access; what they achieve, and what they were obviously designed to achieve, is the suppression of speech opposing abortion.

Further contradicting the Court’s fanciful defense of the Act is the fact that subsection (b) was enacted as a more easily enforceable substitute for a prior provision. That provision did not exclude people entirely from the restricted areas around abortion clinics; rather, it forbade people in those areas to approach within six feet of another person *without that person’s consent* “for the purpose of passing a leaflet or handbill to, displaying a sign to, or engaging in oral protest, education or counseling with such other person.” §120E½(b) (West 2000). As the majority acknowledges, that provision was “modeled on a . . . Colorado law that this Court had upheld in *Hill*.” *Ante*, at 2. And in that case, the Court recognized that the statute in question was directed at the suppression of unwelcome speech, vindicating what *Hill* called “[t]he unwilling listener’s interest in avoiding unwanted communication.” 530 U. S., at 716. The Court held that interest to be content neutral. *Id.*, at 719–725.

The provision at issue here was indisputably meant to serve the same interest in protecting citizens’ supposed

SCALIA, J., concurring in judgment

right to avoid speech that they would rather not hear. For that reason, we granted a second question for review in this case (though one would not know that from the Court's opinion, which fails to mention it): whether *Hill* should be cut back or cast aside. See Pet. for Cert. i. (stating second question presented as "If *Hill* . . . permits enforcement of this law, whether *Hill* should be limited or overruled"); 570 U. S. ____ (2013) (granting certiorari without reservation). The majority avoids that question by declaring the Act content neutral on other (entirely unpersuasive) grounds. In concluding that the statute is content based and therefore subject to strict scrutiny, I necessarily conclude that *Hill* should be overruled. Reasons for doing so are set forth in the dissents in that case, see 530 U. S., at 741–765 (SCALIA, J.); *id.*, at 765–790 (KENNEDY, J.), and in the abundance of scathing academic commentary describing how *Hill* stands in contradiction to our First Amendment jurisprudence.⁴ Protecting people from speech they do not want to hear is not a function that the First Amendment allows the government to undertake in the public streets and sidewalks.

One final thought regarding *Hill*: It can be argued, and it should be argued in the next case, that by stating that "the Act would not be content neutral if it were concerned with undesirable effects that arise from . . . '[l]isteners' reactions to speech," *ante*, at 13 (quoting *Boos v. Barry*, 485 U. S. 312, 321 (1988) (brackets in original)), and then holding the Act unconstitutional for being insufficiently tailored to safety and access concerns, the Court itself has

⁴"*Hill* . . . is inexplicable on standard free-speech grounds[,] and . . . it is shameful the Supreme Court would have upheld this piece of legislation on the reasoning that it gave." Constitutional Law Symposium, Professor Michael W. McConnell's Response, 28 Pepperdine L. Rev. 747 (2001). "I don't think [*Hill*] was a difficult case. I think it was slam-dunk simple and slam-dunk wrong." *Id.*, at 750 (remarks of Laurence Tribe). The list could go on.

SCALIA, J., concurring in judgment

sub silentio (and perhaps inadvertently) overruled *Hill*. The unavoidable implication of that holding is that protection against unwelcome speech cannot justify restrictions on the use of public streets and sidewalks.

B. Exemption for Abortion-Clinic Employees or Agents

Petitioners contend that the Act targets speech opposing abortion (and thus constitutes a presumptively invalid viewpoint-discriminatory restriction) for another reason as well: It exempts “employees or agents” of an abortion clinic “acting within the scope of their employment,” §120E½(b)(2).

It goes without saying that “[g]ranting waivers to favored speakers (or . . . denying them to disfavored speakers) would of course be unconstitutional.” *Thomas v. Chicago Park Dist.*, 534 U. S. 316, 325 (2002). The majority opinion sets forth a two-part inquiry for assessing whether a regulation is content based, but when it comes to assessing the exemption for abortion-clinic employees or agents, the Court forgets its own teaching. Its opinion jumps right over the prong that asks whether the provision “draw[s] . . . distinctions on its face,” *ante*, at 12, and instead proceeds directly to the purpose-related prong, see *ibid.*, asking whether the exemption “represent[s] a governmental attempt to give one side of a debatable public question an advantage in expressing its views to the people,” *ante*, at 15 (internal quotation marks omitted). I disagree with the majority’s negative answer to that question, but that is beside the point if the text of the statute—whatever its purposes might have been—“license[s] one side of a debate to fight freestyle, while requiring the other to follow Marquis of Queensberry rules.” *R. A. V. v. St. Paul*, 505 U. S. 377, 392 (1992).

Is there any serious doubt that *abortion-clinic employees or agents* “acting within the scope of their employment” near clinic entrances may—indeed, often will—speak in

SCALIA, J., concurring in judgment

favor of abortion (“You are doing the right thing”)? Or speak in opposition to the message of abortion opponents—saying, for example, that “this is a safe facility” to rebut the statement that it is not? See Tr. of Oral Arg. 37–38. The Court’s contrary assumption is simply incredible. And the majority makes no attempt to establish the further necessary proposition that abortion-clinic employees and agents do not engage in nonspeech activities directed to the suppression of antiabortion speech by hampering the efforts of counselors to speak to prospective clients. Are we to believe that a clinic employee sent out to “escort” prospective clients into the building would not seek to prevent a counselor like Eleanor McCullen from communicating with them? He could pull a woman away from an approaching counselor, cover her ears, or make loud noises to drown out the counselor’s pleas.

The Court points out that the exemption may allow into the speech-free zones clinic employees other than escorts, such as “the maintenance worker shoveling a snowy sidewalk or the security guard patrolling a clinic entrance.” *Ante*, at 16. I doubt that Massachusetts legislators had those people in mind, but whether they did is in any event irrelevant. Whatever other activity is permitted, so long as the statute permits speech favorable to abortion rights while excluding antiabortion speech, it discriminates on the basis of viewpoint.

The Court takes the peculiar view that, so long as the clinics have not specifically authorized their employees to speak in favor of abortion (or, presumably, to impede antiabortion speech), there is no viewpoint discrimination. See *ibid.* But it is axiomatic that “where words are employed in a statute which had at the time a well-known meaning at common law or in the law of this country[,] they are presumed to have been used in that sense unless the context compels to the contrary.” *Standard Oil Co. of N. J. v. United States*, 221 U. S. 1, 59 (1911). The phrase

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“scope of employment” is a well-known common-law concept that includes “[t]he range of reasonable and foreseeable activities that an employee engages in while carrying out the employer’s business.” Black’s Law Dictionary 1465 (9th ed. 2009). The employer need not specifically direct or sanction each aspect of an employee’s conduct for it to qualify. See Restatement (Second) of Agency §229 (1957); see also Restatement (Third) of Agency §7.07(2), and Comment *b* (2005). Indeed, employee conduct can qualify even if the employer specifically forbids it. See Restatement (Second) §230. In any case, it is implausible that clinics would bar escorts from engaging in the sort of activity mentioned above. Moreover, a statute that forbids one side but not the other to convey its message does not become viewpoint neutral simply because the favored side chooses voluntarily to abstain from activity that the statute permits.

There is not a shadow of a doubt that the assigned or foreseeable conduct of a clinic employee or agent can include both speaking in favor of abortion rights and countering the speech of people like petitioners. See *post*, at 1–2 (ALITO, J., concurring in judgment). Indeed, as the majority acknowledges, the trial record includes testimony that escorts at the Boston clinic “expressed views about abortion to the women they were accompanying, thwarted petitioners’ attempts to speak and hand literature to the women, and disparaged petitioners in various ways,” including by calling them “crazy.” *Ante*, at 7, 16 (citing App. 165, 168–169, 177–178, 189–190). What a surprise! The Web site for the Planned Parenthood League of Massachusetts (which operates the three abortion facilities where petitioners attempt to counsel women), urges readers to “Become a Clinic Escort Volunteer” in order to “provide a safe space for patients by escorting them through protestors to the health center.” Volunteer and Internship Opportunities, online at <https://>

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plannedparenthoodvolunteer.hire.com/viewjob.html?optlink-view=view-28592&ERFormID=newjoblist&ERFormCode=any (as visited June 24, 2014, and available in Clerk of Court's case file). The dangers that the Web site attributes to "protestors" are related entirely to speech, not to safety or access. "Protestors," it reports, "hold signs, try to speak to patients entering the building, and distribute literature that can be misleading." *Ibid.* The "safe space" provided by escorts is protection from that speech.

Going from bad to worse, the majority's opinion contends that "the record before us contains insufficient evidence to show" that abortion-facility escorts have actually spoken in favor of abortion (or, presumably, hindered antiabortion speech) while acting within the scope of their employment. *Ante*, at 18. Here is a brave new First Amendment test: Speech restrictions favoring one viewpoint over another are not content based unless it can be shown that the favored viewpoint has actually been expressed. A city ordinance closing a park adjoining the Republican National Convention to all speakers except those whose remarks have been approved by the Republican National Committee is thus not subject to strict scrutiny unless it can be shown that someone has given committee-endorsed remarks. For this Court to suggest such a test is astonishing.⁵

⁵The Court states that I can make this assertion "only by quoting a sentence that is explicitly limited to as-applied challenges and treating it as relevant to facial challenges." *Ante*, at 18, n. 4. That is not so. The sentence in question appears in a paragraph immediately following rejection of the facial challenge, which begins: "It would be a very different question if it turned out that a clinic authorized escorts to speak about abortion inside the buffer zones." *Ante*, at 17. And the prior discussion regarding the facial challenge points to the fact that "[t]here is no suggestion in the record that any of the clinics authorize their employees to speak about abortion in the buffer zones." *Ante*, at 16. To be sure, the paragraph in question then goes on to concede only that the statute's constitutionality *as applied* would depend upon

SCALIA, J., concurring in judgment

C. Conclusion

In sum, the Act should be reviewed under the strict-scrutiny standard applicable to content-based legislation. That standard requires that a regulation represent “the least restrictive means” of furthering “a compelling Government interest.” *United States v. Playboy Entertainment Group, Inc.*, 529 U. S. 803, 813 (2000) (internal quotation marks omitted). Respondents do not even attempt to argue that subsection (b) survives this test. See *ante*, at 10. “Suffice it to say that if protecting people from unwelcome communications”—the actual purpose of the provision—“is a compelling state interest, the First Amendment is a dead letter.” *Hill*, 530 U. S., at 748–749 (SCALIA, J., dissenting).

III. Narrow Tailoring

Having determined that the Act is content based and does not withstand strict scrutiny, I need not pursue the inquiry conducted in Part IV of the Court’s opinion—whether the statute is “‘narrowly tailored to serve a significant governmental interest,’” *ante*, at 18 (quoting *Ward*, 491 U. S., at 796 (internal quotation marks omitted)). I suppose I *could* do so, taking as a given the Court’s erroneous content-neutrality conclusion in Part III; and if I did, I suspect I would agree with the majority that the legislation is not narrowly tailored to advance the interests asserted by respondents. But I prefer not to take part in the assembling of an apparent but specious unanimity. I leave both the plainly unnecessary and erroneous half

explicit clinic authorization. Even that seems to me wrong. Saying that voluntary action by a third party can cause an otherwise valid statute to violate the First Amendment as applied seems to me little better than saying it can cause such a statute to violate the First Amendment facially. A statute that punishes me for speaking unless *x* chooses to speak is unconstitutional facially and as applied, without reference to *x*’s action.

SCALIA, J., concurring in judgment

and the arguably correct half of the Court’s analysis to the majority.

* * *

The obvious purpose of the challenged portion of the Massachusetts Reproductive Health Care Facilities Act is to “protect” prospective clients of abortion clinics from having to hear abortion-opposing speech on public streets and sidewalks. The provision is thus unconstitutional root and branch and cannot be saved, as the majority suggests, by limiting its application to the single facility that has experienced the safety and access problems to which it is quite obviously not addressed. I concur only in the judgment that the statute is unconstitutional under the First Amendment.

ALITO, J., concurring in judgment

SUPREME COURT OF THE UNITED STATES

No. 12–1168

ELEANOR McCULLEN, ET AL., PETITIONERS *v.*
MARTHA COAKLEY, ATTORNEY GEN-
ERAL OF MASSACHUSETTS, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE FIRST CIRCUIT

[June 26, 2014]

JUSTICE ALITO, concurring in the judgment.

I agree that the Massachusetts statute at issue in this case, Mass. Gen. Laws, ch. 266, §120E½(b) (West 2012), violates the First Amendment. As the Court recognizes, if the Massachusetts law discriminates on the basis of viewpoint, it is unconstitutional, see *ante*, at 10, and I believe the law clearly discriminates on this ground.

The Massachusetts statute generally prohibits any person from entering a buffer zone around an abortion clinic during the clinic’s business hours, §120E½(c), but the law contains an exemption for “employees or agents of such facility acting within the scope of their employment.” §120E½(b)(2). Thus, during business hours, individuals who wish to counsel against abortion or to criticize the particular clinic may not do so within the buffer zone. If they engage in such conduct, they commit a crime. See §120E½(d). By contrast, employees and agents of the clinic may enter the zone and engage in any conduct that falls within the scope of their employment. A clinic may direct or authorize an employee or agent, while within the zone, to express favorable views about abortion or the clinic, and if the employee exercises that authority, the employee’s conduct is perfectly lawful. In short, petitioners and other critics of a clinic are silenced, while the

ALITO, J., concurring in judgment

clinic may authorize its employees to express speech in support of the clinic and its work.

Consider this entirely realistic situation. A woman enters a buffer zone and heads haltingly toward the entrance. A sidewalk counselor, such as petitioners, enters the buffer zone, approaches the woman and says, "If you have doubts about an abortion, let me try to answer any questions you may have. The clinic will not give you good information." At the same time, a clinic employee, as instructed by the management, approaches the same woman and says, "Come inside and we will give you honest answers to all your questions." The sidewalk counselor and the clinic employee expressed opposing viewpoints, but only the first violated the statute.

Or suppose that the issue is not abortion but the safety of a particular facility. Suppose that there was a recent report of a botched abortion at the clinic. A nonemployee may not enter the buffer zone to warn about the clinic's health record, but an employee may enter and tell prospective clients that the clinic is safe.

It is clear on the face of the Massachusetts law that it discriminates based on viewpoint. Speech in favor of the clinic and its work by employees and agents is permitted; speech criticizing the clinic and its work is a crime. This is blatant viewpoint discrimination.

The Court holds not only that the Massachusetts law is viewpoint neutral but also that it does not discriminate based on content. See *ante*, at 11–15. The Court treats the Massachusetts law like one that bans all speech within the buffer zone. While such a law would be content neutral on its face, there are circumstances in which a law forbidding all speech at a particular location would not be content neutral in fact. Suppose, for example, that a facially content-neutral law is enacted for the purpose of suppressing speech on a particular topic. Such a law would not be content neutral. See, e.g., *Turner Broadcast-*

ALITO, J., concurring in judgment

ing System, Inc. v. FCC, 512 U. S. 622, 645–646 (1994).

In this case, I do not think that it is possible to reach a judgment about the intent of the Massachusetts Legislature without taking into account the fact that the law that the legislature enacted blatantly discriminates based on viewpoint. In light of this feature, as well as the overbreadth that the Court identifies, see *ante*, at 23–27, it cannot be said, based on the present record, that the law would be content neutral even if the exemption for clinic employees and agents were excised. However, if the law were truly content neutral, I would agree with the Court that the law would still be unconstitutional on the ground that it burdens more speech than is necessary to serve the Commonwealth's asserted interests.

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 11 14/15
Tab 13 7-7-14*

**ORDER APPROVING TWO-PARTY AGREEMENT
BETWEEN THE CITY OF PORTLAND AND
THE MAINE DEPARTMENT OF
TRANSPORTATION
RE: NEW SIGNAL EQUIPMENT FOR CUMBERLAND AVENUE AT PREBLE
STREET AND ELM STREET INTERSECTIONS**

ORDERED, that the City Manager is authorized to enter into a two-party agreement between the City of Portland and the Maine Department of Transportation, in substantially in the form attached hereto, for the replacement of signal equipment for Cumberland Avenue intersections at Elm Street and Preble Street; and

BE IT FURTHER ORDERED, that the City Manager is hereby authorized to execute the two-party agreement and any other documents necessary to effect the purpose of the agreement.

MEMORANDUM
City Council Agenda Item

TO: Portland City Council

FROM: Michael Bobinsky, Director of Public Services

DATE: June 26, 2014

DISTRIBUTION: Mark Rees, City Manager
Michael Brennan, Mayor
Danielle West-Chuhta, Corporation Counsel
Sonia Bean, Executive Assistant
Nancy English, Administrative Assistant
Matt Rancourt, PFO, Public Services
Ellen Sanborn, Finance Director
Katherine Earley, PE, Engineering Services Manager
Jeremiah Bartlett, PE, PTOE, Transportation Systems Engineer

SUBJECT: Order to authorize two-party Agreement with MaineDOT – Commitment to Expenditure for Traffic Signal Project

SPONSOR: Department of Public Services

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st reading July 7, 2014 **Final Action** July 21, 2014

Can action be taken at a later date: ____ **Yes** **X** **No**
Bidding deadline from MaineDOT

PRESENTATION: None

I. SUMMARY OF ISSUE

MaineDOT is in the process of completing design for the replacement of the signal equipment at the intersection of Cumberland Avenue and Preble Street, with bidding expected in late July, followed by construction later this year. After initial discussions with the Department, they agreed to include replacement of the equipment at this location's sister intersection, Cumberland Avenue at Elm Street as a bid option. Both have outdated equipment, and Cumberland at Elm does not have provisions that meet current Americans with Disabilities Act requirements. The City anticipates funding the additional work via the incoming FY15 Capital Improvement Plan money for signal improvements, as called out in the CIP description.

II. REASON FOR SUBMISSION

Council approval is required to approve the two-party funding agreement between the Department and the City. In order to meet the deadlines for MaineDOT's bidding and construction schedule, the approval from the Council must be provided as of the July 21, 2014 meeting.

III. INTENDED RESULT

The partnership with MaineDOT will result in a single project accomplishing two intersection improvements which will bring very outdated equipment up to the City's current specifications, including improved pedestrian phasing, bicycle detection, and communications to the City's central signal server. In addition, the designs for the equipment account for the possibility of two-way flow on Preble and Elm Streets, so that no structures would need to be relocated if planning efforts slated over the next year or so through the PACTS UPWP process determine that such change is recommended.

IV. COUNCIL GOAL ADDRESSED

This proposed change addresses both the Council goals of economic development and improving City services. In addition, this also addresses the Council goal to develop a transportation system that advances healthy living, minimizes environmental impacts and promotes the local economy by improving the environment for multiple modes of travel.

V. FINANCIAL IMPACT

The cost of the additional signal equipment as well as the improvements to pedestrian access/ADA updates is anticipated to be approximately \$200,000. However, the age of the equipment is such that a disproportionate amount of staff time is spent at this location dealing with maintenance and malfunctions. MaineDOT is investing \$195,000 into the intersection of Cumberland Ave at Preble Street.

VI. STAFF ANALYSIS & RECOMMENDATION

The FY15 CIP proposal includes the necessary funding to achieve this outcome. City Council action to appropriate these funds is required to enter into this agreement. Pending this action, the Department of Public Services recommends authorization of this agreement to update the signal equipment, reduce maintenance, and improve operations for vehicles, bicyclists, and pedestrians.

VII. LIST ATTACHMENTS

- Exhibit A: Council Order
- Exhibit B: Two-party agreement

Prepared by:

Signature

Date



MaineDOT

**MAINE DEPARTMENT OF TRANSPORTATION
MUNICIPAL/STATE AGREEMENT**

**PROPOSED IMPROVEMENTS TO CUMBERLAND AVE. AT PREBLE ST. &
CUMBERLAND AVE. AT ELM ST.**

MaineDOT use only

TEDOCS #: _____
CT #: _____
CSN #: _____
PROGRAM: _____

(MaineDOT Use Only)

Project Location: Portland
State WIN #: 020200.00
Federal Aid Project #: STP-2020(000)

Estimated Municipal Share: \$200,000.00
Vendor Customer #: 17A12984
Agreement Begin Date: _____
Agreement End Date: (3 years from the date last signed below)

This Agreement is entered into between the Maine Department Of Transportation (hereafter the "Department") and the PORTLAND, a municipal corporation located in the County of CUMBERLAND (hereafter the "Municipality") (hereinafter the "Parties") regarding the planning, development, design, right of way, construction, cost sharing and reimbursement for a project to make improvements to CUMBERLAND AVE. AT PREBLE ST. AND CUMBERLAND AVE. AT ELM ST., in PORTLAND, Maine, (hereafter Project) as follows:

The following checked appendices are hereby incorporated into this Agreement by reference:

- ☒ Appendix A – Project scope, cost sharing, and payment schedule
- ☐ Appendix B – Perpetual Bicycle/Pedestrian Facility Maintenance
- ☐ Appendix B – Perpetual Landscape Maintenance
- ☐ Appendix B – Perpetual Lighting/Flashing Beacon Operation and Maintenance
- ☒ Appendix B – Perpetual Traffic Signal Operation and Maintenance
- ☐ Appendix B – Perpetual Bridge Lighting/Approach Lighting Maintenance & Snow Plowing
- ☐ Appendix C – Additional work requested by Municipality

- A. The Department agrees to procure and administer a contract to construct the Project in accordance with the plans and specifications developed by the Department and, subject to Department approval. This would include any additional plans, specifications and estimates furnished by the Municipality. Please refer to Appendix A of this Agreement for the outline of the scope, limits of work and cost sharing.
- B. The Department shall be the sole administrator of this contract. The Department will pay all project costs, subject to cost sharing by the Municipality, when applicable, as specified in this agreement. Neither the Department nor its contractors will be required to pay for inspections and permits from the Municipality.
- C. The Department reserves the right to terminate the Project for any reason prior to the award of a contract to construct the Project. The Department also reserves the right to terminate all provisions

pertaining to work requested by the Municipality at any time prior to the award of a contract to construct the Project because of any failure by the Municipality to meet any of the conditions and stipulations set forth in this Agreement.

- D. Upon acceptance of plans, specifications and estimates, the Department shall solicit competitive bids for the Project. Upon acceptance of the lowest acceptable responsive, responsible bid to construct the Project and fulfillment of all terms set forth herein, the Department will submit the information to the Municipality, who will have up to five (5) business days to review the information and notify the Department of any questions or concerns. If the Department is not presented with any questions or concerns during the time allotted all decisions pertaining to the acceptance of the bids, the award and administration of the contract and all payments thereunder shall be the sole discretion of the Department.
- E. The Municipality, at its election, may request that changes be made or work added to the Project during the period of construction, provided the Municipality agrees in writing to pay any additional cost plus an amount not to exceed ten (10%) percent of such construction cost to cover all necessary engineering, inspection and administrative costs associated therewith, unless specified otherwise. All such requests shall be subject to approval by the Department. In the event that such changes or work are approved for federal participation in the cost thereof, such additional cost may be reduced to the non-federal share.
- F. The Municipality agrees to allow the Department's contractor to control all traffic through the work areas in accordance with the Traffic Control Plan approved by the Department. The development of the Traffic Control Plan will follow the process outlined below:
 - 1. The PM will submit the project for Traffic Analysis and Movement Evaluation (TAME), when possible, approximately one year prior to advertisement. Once the results are received, the PM/Regional Traffic Engineer will discuss the proposed project with the Municipality (scope, limits, day or night work, work window, etc).
 - 2. The Municipality will comment on their concerns/issues (two week timeframe allowed).
 - 3. The PM & Designer will incorporate these comments where practical based on engineering judgment.
 - 4. If the Municipality desires, a meeting will be held prior to PS&E to review the project design, Special Provision 105 – Limitations of Operations, Special Provision 107 - Time, etc.
 - 5. The Municipality will have the opportunity to review and comment.
- G. The Municipality agrees to alter, move, relocate or remove, or cause to be, at no cost to the Project, any municipal property, including all fixtures, facilities or monuments, located on, under or above the ground, as necessary to permit construction of the Project, which has not otherwise been provided for during the development of the Project. Any work necessary to do so during the period of construction shall be coordinated with the contractor for the Project.
- H. The Municipality will, at no cost to the Department, assure proper adjustment, relocation, or repair of any portion of a service, whether above or below ground, that is located within the limits of the highway right-of-way and connected to any municipal utility, which might become necessary to

permit construction of the Project. The Municipality agrees to hold the Department harmless from any claims for damages occurring as a result thereof.

- I. The Municipality agrees that during and after construction it will apply the requirements of the most recent version of the Department's "Utility Accommodation Policy" as the minimum guidelines not withstanding any municipal rules that are more lenient.
- J. To the extent that it is statutorily responsible therefore, the Municipality agrees to provide utilities, and to maintain all improvements and fixtures constructed, installed or furnished as a part of the Project in such a manner as necessary to preserve the use and function thereof for the expected period of their normal useful life as determined by accepted engineering and/or industry standards. To the extent any warranty exists for said improvements or fixtures, said warranty shall be first relied on by MaineDOT to address maintenance and/or repairs described in this paragraph.
- K. The Municipality agrees that except for an emergency, or as allowed in § 3351-A, it will prohibit the excavation of the highway within the limits of the Project for a period of at least five (5) years after completion of the Project, and agrees to make all necessary notifications to abutters and occupants of the highway as otherwise required of any city government under the provisions of 23 M.R.S.A. § 3351. Thereafter, all future excavations within the right-of-way of the Project shall be regulated and controlled in the manner specified by the Department in its most recent *"Rules, Regulations and Policies for Highway Openings"*, which is incorporated herein and made a part hereof by reference.
- L. The Municipality will be responsible to keep new or replaced/rehabilitated pedestrian facilities in usable condition.
- M. The Municipality agrees to keep the right-of-way of the Project inviolate from all encroachments and agrees to remove, or cause to be removed, anything that may encroach thereon.
- N. When applicable the Municipality agrees to regulate all entrances to the highway within the limits of the Project in accordance with the provisions of 23 M.R.S.A. § 704.
- O. The Municipality with city council approval agrees to limit all on-street parking to the parking spaces as designed and constructed under the Project.
- P. The Department shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to the Department's option to withhold for the purposes of set-off any monies owed to the Municipality with regard to this Agreement and any other agreement with the Department, including any agreement for a term commencing prior to the term of this Agreement, plus any amounts owed to the Municipality for any other contract with any State of Maine department or agency.
- Q. To the extent permitted by law, the Municipality shall indemnify, defend and hold harmless the Department, its officers, agents and employees from all claims, suits or liabilities arising from any negligent or wrongful act, error or omission by the Municipality, its officials, employees, agents, consultants or contractors. Nothing herein shall waive any defense, immunity or limitation of liability that may be available to either party under the Maine Tort Claims Act (14 M.R.S. Section 8101 et seq.) or any other privileges or immunities provided by law. *Any other provision of this agreement to the contrary notwithstanding, this provision shall survive any termination or expiration of this Agreement.*

R. The Department may postpone, suspend, abandon or otherwise terminate this Agreement upon thirty (30) days written notice to the Municipality and in no event shall any such action be deemed a breach of contract. Postponement, suspension, abandonment or termination may be taken for any reason by the Department or specifically as the result of any failure by the Municipality to perform any of the services required under this Agreement to the satisfaction of the Department.

In the event of Project termination, all provisions of this Agreement shall become null and void except for those set forth under *Appendices A and C, if attached to this Agreement, as well as those provisions that by their very nature are intended to survive.*

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

T. The Parties agree to: comply with and abide by all applicable State and Federal laws, statutes, rules, regulations, standards and guidelines, including the MUTCD and OSHA standards, and Agreement provisions; avoid hindering each other's performance; fulfill all obligations diligently; and cooperate in achievement of the intent of this Agreement.

U. All provisions of this Agreement, *except those provided above in Paragraphs J-Q and those that by their very nature are intended to survive*, shall expire at Project final voucher, or upon final payment by the Municipality of any Project costs as hereinbefore provided, whichever occurs later.

V. Anything herein to the contrary notwithstanding, the Municipality acknowledges and agrees that although the execution of this agreement by the Department manifests its intent to honor its terms and to seek funding to fulfill any obligations arising hereunder, by law any such obligations are subject to available budgetary appropriations by the Maine Legislature and, therefore, this agreement does not create any obligation on behalf of MaineDOT in excess of such appropriations.

W. No assignment of this agreement is contemplated, and in no event shall any assignment be made without the express written permission of the Department.

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

CITY OF PORTLAND

MAINE DEPARTMENT OF TRANSPORTATION

By: _____
MARK H. REES, CITY MANAGER

By: _____
DALE DOUGHTY, MAINT. &
OPERATIONS DIRECTOR

(Date Signed)

(Date Signed)

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

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

PROPOSED IMPROVEMENTS TO CUMBERLAND AVE. AT PREBLE ST. & CUMBERLAND AVE. AT ELM ST.

FEDERAL AID PROJECT NO. STP-2020(000)
STATE PROJECT IDENTIFICATION NUMBER (WIN) 20200.00

Project Scope: Signal improvements to include new controller, control cabinet, mast arms, foundations, signal heads, and video detection, install ground mount signal heads and upgrade all pedestrian facilities to meet current ADA standards.

Funding Outline: The Total Project Estimated Cost is \$471,000.00, and the Parties agree to share costs through all stages of the Project under the terms outlined below.

Work Element	Municipal Share		Project Share				Total Cost
			Federal Entity Portion		MaineDOT (State) Portion		
	%	\$	%	\$	%	\$	\$
Preliminary Engineering			90	14,400	10	1,600	16,000
Right of Way			90	0	10	0	0
Construction			90	193,500	10	21,500	215,000
Construction Engineering			90	18,000	10	2,000	20,000
PROJECT SHARES		\$0		\$225,900		\$25,100	\$251,000
Total Cost of Additional Work Requested by Municipality (Below)	100%	220,000					
TOTAL ESTIMATED MUNICIPAL SHARE (Receivable Amount)		\$220,000					

(Check if applicable)

☒ Additional Work as outlined in Appendix C to this Agreement.

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

Additional Work	Cost: 100% Municipal Share
UPGRADE SIGNAL & ADA IMPROVEMENTS AT CUMBERLAND/ELM	\$220,000
TYPE OF WORK	COST
TYPE OF WORK	COST
TOTAL COST OF ADDITIONAL WORK REQUESTED BY MUNICIPALITY	\$220,000

Payment:

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

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

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

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

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

Entity Name	Receivable Amount	Estimated Invoice Date
CITY OF PORTLAND	\$220,000	AUGUST 31, 2014
CITY OF PORTLAND	\$TBD	JANUARY 31, 2015
	\$	
	\$	

APPENDIX B
PERPETUAL TRAFFIC SIGNAL OPERATION AND MAINTENANCE

MAINE DEPARTMENT OF TRANSPORTATION
MUNICIPAL/STATE AGREEMENT
Transportation Improvement Project

MUNICIPALITY OF PORTLAND

PROPOSED IMPROVEMENTS TO CUMBERLAND AVE. AT PREBLE ST. &
CUMBERLAND AVE. AT ELM ST.

FEDERAL AID PROJECT NO. STP-2020(000)X
STATE PROJECT IDENTIFICATION NUMBER (WIN) 20200.00

- A. The Municipality agrees to operate and maintain the traffic signal to function as designed and installed by the Department, unless approved otherwise as hereinafter provided or as necessary as follows:
1. All malfunctions and deficiencies in the traffic signal or any equipment appurtenant that is not covered by warrantee shall be repaired or corrected expeditiously in accordance with the Institute of Transportation Engineer's (ITE) "Traffic Signal Installation and Maintenance Manual". Any failure to repair or correct the traffic signal to function as designed could, upon written notification from the Department, result in the Department making all necessary repairs at the Municipality's expense.
 2. The visibility of the traffic signal shall be preserved and maintained at all times by removing any visual impairment thereto.
 3. Except in the case of an emergency, no change in operation or modification to the traffic signal or any equipment appurtenant thereto shall be made without the express written approval of the Department.
 4. The Department shall be notified in writing prior to any removal or replacement of the traffic signal or any equipment and appurtenant thereto. Upon removal, such traffic signal or equipment shall be returned to the Department, at no cost to the Department, unless otherwise agreed upon in writing.
- B. The Municipality agrees to be responsible for the electrical service for the traffic signal and agrees to execute any necessary documentation required to establish such service and provide any local permits necessary for the installation of such service.
- C. The Municipality agrees to maintain all pavement markings (including stop bars, lane use arrows and all striping necessary to delineate the turning lane) and all traffic control signs as furnished under the project.

*Order 12-14/15
Feb 14 7-7-14*

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 AUTHORIZING GENERAL OBLIGATION BONDS
TO FINANCE A PORTION OF THE CITY'S PROPOSED 2015 CAPITAL
IMPROVEMENT PROGRAM IN AN AMOUNT NOT TO EXCEED \$15,911,000**

FOLLOWING a public hearing of the City Council of the City of Portland, Maine, held upon due notice pursuant to Article VII, Section 9 of the City Charter, IT IS HEREBY

ORDERED THAT:

There be and hereby is authorized and approved the incurring of indebtedness by the City of Portland and the issue and sale of general obligation bonds and notes in anticipation thereof in the aggregate principal amount not to exceed Sixteen Million Four Hundred Eleven Thousand Dollars (\$15,911,000) to finance the items identified in the City of Portland 2015 Capital Improvement Program attached hereto as Exhibit A and all other costs (as defined herein) related and ancillary thereto (the "Projects").

BE IT FURTHER ORDERED

1. That the Director of Finance be and hereby is authorized to prepare, issue, and sell such bonds in the name of and on behalf of the City, in the aggregate amount of \$15,911,000 (the "Bonds") at one time, or from time to time, as one or more separate bond issues, and to determine the date, form, minimum denomination, interest rates (as term bonds or serial bonds or some combination thereof), maturities (with the last maturity not to exceed the maximum term permitted by law) and all other details, terms and provisions, not inconsistent herewith, including the form and manner of their sale and award as he may approve, such approval to be conclusively evidenced by the execution thereof;

2. That the Director of Finance be and hereby is authorized to borrow money in anticipation of said Bonds by the issuance and sale of notes or renewal notes in anticipation of said Bonds ("BANs"), and to determine the date, form, minimum denominations, interest rate, maturities (with the last maturity not to exceed 3 years from its date of issuance) and all other details of each issue of BANs, including the form and manner of their sale and award, subject to the provisions of the law, the City Charter and this Order;

3. That the Director of Finance be and hereby is authorized to provide that any of the Bonds and BANs hereinbefore authorized be made subject to call for redemption, with or without premium, prior to their stated dates of maturity, as provided in 30-A M.R.S.A. §5772(6), as amended;

4. That each bond or note issued hereunder shall be signed by the Director of Finance and by the Mayor, either or both of whose signatures may be by facsimile to the extent permitted by law, attested to by the City Clerk, under the seal of the City, and shall be in such form and contain such terms and provisions not inconsistent herewith as they may approve, their approval to be conclusively evidenced by their execution thereof;

5. That the Director of Finance is authorized to negotiate, execute, and deliver, in the name of and on behalf of the City such contracts, agreements, and other documents, including leases, instruments and certificates as may be necessary or appropriate as determined and approved by the Director of Finance in connection with the financing of the Projects, which documents shall be in such form and contain such terms and conditions, not inconsistent herewith, as may be approved by the Director of Finance such approval to be conclusively evidenced by his execution thereof;

6. That the Director of Finance be and hereby is authorized to select the underwriter for the Bonds or BANs heretofore authorized and the Director of Finance be and hereby is authorized and empowered to execute and deliver such contracts or agreements as may be necessary or appropriate in connection therewith;

7. That the Director of Finance be and hereby is authorized to prepare, or cause to be prepared, a Preliminary Official Statement and an Official Statement for use in the offering and sale of the Bonds or BANs heretofore authorized, such Preliminary Official Statement and Official Statement to be in such form and contain such information as may be approved by the Director of Finance, with the advice of the bond counsel for the City, and that the use and distribution of the Preliminary Official Statement and the Official Statement in the name of and on behalf of the City in connection with offering the Bonds or BANs for sale be and hereby is approved;

8. That the Director of Finance be and hereby is authorized to select the registrar, paying agent and transfer agent (the "Transfer Agent") for the Bonds or BANs heretofore authorized and to execute and deliver such contracts and agreements as may be necessary or appropriate to secure their services;

9. That the Bonds or BANs heretofore authorized shall be transferable only on the registration books of the City kept by the Transfer Agent, and said principal amount of the bonds of the same maturity (but not of other maturity) in minimum denominations of \$5,000 and any integral multiple in excess thereof upon surrender thereof at the principal office of the transfer agent, with a written instrument of transfer satisfactory to the transfer agent duly executed by the registered owner or his attorney duly authorized in writing. Upon each exchange or transfer of a bond the City and the Transfer Agent shall make a charge sufficient to cover any tax, fee or any other governmental charge required to be payable with respect to such exchange or transfer, and with respect to such exchange or transfer, and subsequent to the first exchange or transfer, the cost of preparing new bonds upon exchanges or transfer thereof to be paid by the person requesting the same;

10. That the Director of Finance be and hereby is authorized to undertake all acts necessary to provide for the issuance and transfer of such Bonds or BANs heretofore authorized in book-

entry form pursuant to the Depository Trust Company Book-Entry Only System, as an alternative to the provisions of the foregoing paragraph above regarding physical transfer of Bonds or BANs, and the Director of Finance be and hereby is authorized and empowered to enter into a Letter of Representation or any other contract, agreement or understanding necessary or, in his opinion, appropriate in order to qualify the Bonds or BANs for and participate in the Depository Trust Company Book-Entry Only System;

11. That the Director of Finance and Mayor from time to time shall execute such Bonds or BANs as may be required to provide for exchanges or transfers of Bonds or BANs as heretofore authorized, all such Bonds or BANs to bear the original signature of the Director of Finance and Mayor, and in case any officer of the City whose signature appears on any Bond or BAN shall cease to be such officer before the delivery of said Bond or BAN, such signature shall nevertheless be valid and sufficient for all purposes, the same as if such officer had remained in office until delivery thereof;

12. That if the Bonds or BANs, or any part of them, are issued on a tax-exempt basis, the Director of Finance be and hereby is authorized and directed to covenant and certify on behalf of the City that no part of the proceeds of the issue and sale of the Bonds or BANs authorized to be issued hereunder shall be used directly or indirectly to acquire any securities or obligations, the acquisition of which would cause such Bonds or BANs to be "arbitrage bonds" or "private activity bonds" within the meaning of Sections 148 and 141 of the Internal Revenue Code of 1986, as amended;

13. That if the Bonds or BANs, or any part of them, are issued on a tax-exempt basis, the officers or officials executing the Bonds or BANs be and hereby are individually authorized to covenant and agree, on behalf of the City, for the benefit of the holders of such Bonds or BANs, that the City will file any required reports and take any other action that may be necessary to insure that interest on the notes will remain exempt from federal income taxation, and that the City will refrain from any action that would cause interest on the Bonds or BANs to be subject to federal income taxation;

14. That the officers executing the Bonds or BANs be and hereby are individually authorized to covenant, certify and agree, on behalf of the City, for the benefit of the holders of such Bonds or BANs, that the City will file any required reports, make any annual financial or material event disclosure, and take any other action that may be necessary to insure that the disclosure requirements imposed by Rule 15c2-12 of the Securities and Exchange Commission, if applicable, are met;

15. That any or all of the Bonds or BANs issued hereunder may be consolidated with and become a part of any other issue of temporary notes or general obligation bonds authorized to be issued by any previous or subsequent order of the City Council of the City of Portland;

16. That the term "cost" or "costs" as used herein and applied to the Projects, or any portion thereof, includes, but is not limited to (1) the purchase price or acquisition cost of all or any portion of the Projects; (2) the cost of construction, building, alteration, enlargement, reconstruction, renovation, improvement, and equipping of the Projects; (3) the cost of all appurtenances and other facilities either on, above, or under the ground which are used or usable

in connection with the Projects; (4) the cost of landscaping, site preparation and remodeling of any improvements or facilities; (5) the cost of all labor, materials, building systems, machinery and equipment; (6) the cost of land, structures, real property interests, rights, easements, and franchises acquired in connection with the Projects; (7) the cost of all utility extensions and site improvements and development; (8) the cost of planning, developing, preparation of specifications, surveys, engineering, feasibility studies, legal and other professional services associated with the Projects; (9) the cost of environmental studies and assessments; (10) the cost of financing charges and issuance costs, including premiums for insurance, interest for a period not to exceed three years from the issue date of the Bonds, and for any additional period permitted under Section 148 of the Internal Revenue Code of 1986, as amended, underwriters' fees and costs, legal and accounting fees and costs, application fees, and other fees and expenses relating to the financing transaction; and (11) the cost of all other financing authorized hereunder, whether related or unrelated to the foregoing;

17. That if the actual cost of any Project differs from the estimated cost on the attached Exhibit A, the Director of Finance is authorized, in her discretion to reallocate proceeds of the Bonds to any other listed Project.

18. That the Director of Finance, Mayor and Clerk and other proper officials of the City be, and hereby are authorized and empowered in its name and on its behalf to do or cause to be done all such acts and things, not inconsistent herewith, as may be necessary or desirable in order to effect the issuance, sale and delivery of the Bonds or BANs hereinabove authorized;

19. That if any of the officers or officials of the City who have signed or sealed the Bonds shall cease to be such officers or officials before the Bonds or BANs so signed and sealed shall have been actually authenticated or delivered by the City, such Bonds or BANs nevertheless may be authenticated, issued, and delivered with the same force and effect as though the person or persons who signed or sealed such Bonds or BANs had not ceased to be such officer or official; and also any such bonds or notes may be signed and sealed on behalf of the City by those persons who, at the actual date of the execution of such Bonds or BANs, shall be the proper officers and officials of the City, although at the nominal date of such Bonds or BANs any such person shall not have been such officer or official;

20. That if the Director of Finance, Mayor or Clerk are for any reason unavailable to approve and execute the Bonds or BANs or any other documents necessary or convenient to the issuance, execution and delivery of the Bonds or BANs, the person or persons then acting in any such capacity, whether as an assistant, a deputy, or otherwise, is authorized to act for such official with the same force and effect as if such official had performed such act.

21. That the Bonds or BANs authorized by this Order are in addition to any bonds or notes previously authorized for the same or similar purposes;

22. That to the extent not payable from other funds, an amount sufficient for the payment of the annual payments of principal and interest on the Bonds or any BANs issued hereunder shall be included in the tax levy of each year until the debt represented by said Bonds or BANs is extinguished.

23. That during the term any of the Bonds (or bonds issued to refund such Bonds) are outstanding, the Director of Finance be and hereby is authorized to issue and deliver refunding bonds to refund some or all of the Bonds then outstanding, and to determine the date, form, interest rate, maturities and all other details of such refunding bonds, including the form and manner of their sale and award. The Director of Finance be and hereby is further authorized to provide that any of such refunding bonds hereinbefore authorized be made callable, with or without premium, prior to their stated date(s) of maturity, and each refunding bond issued hereunder shall be signed by the Director of Finance and by the Mayor, either or both of whose signatures may be by facsimile to the extent permitted by law, attested to by the City Clerk, under the seal of the City, and shall be in such form and contain such terms and provisions not inconsistent herewith as they may approve, their approval to be conclusively evidenced by their execution thereof.

Exhibit A

2015 Capital Improvement Program

**Estimated
Costs**

TRANSPORTATION

PACTS Match--Traffic Signals, Regional Transportation Mgmt System	\$ 165,000
PACTS ineligible costs--Franklin St Paving (Middle to Fox)	125,000
PACTS ineligible costs--Collector Paving (multiple locations	485,000
PACTS ineligible costs--Commercial Street Paving (High to Franklin)	
Franklin St (Commercial to Middle)	900,000
PACTS ineligible costs--Spring St intersection Temple/Union/Middle	200,000
Paving Rehab	1,750,000
Sidewalk Rehab	700,000
Alley Vault repair	170,000
Portland St Reconstruction & Streetscape	200,000
Forest/State/Marginal/High Intersection Improvements	400,000
Congress/Bramhall pedestrian improvements	100,000
Preble/Elm St Traffic Signal Improvements	230,000
Railroad Quiet Zone Improvements (Woodfords)	400,000
CSO Projects Street/Sidewalk improvements	800,000
Total Transportation	\$ 6,625,000

FACILITIES

Bramhall Fire Station Roof Reinforcement	\$ 50,000
Ice Arena Roof	150,000
Portland Ocean Terminal Roof	210,000
West School Demo	200,000
Burbank Branch Library Elevator	125,000
Great Diamond Island Barge Landing	20,000
Ocean Gateway Queuing Lanes Seawall Repair	450,000
Cliff Island Wharf	270,000
POT Whaling Wall Gabions	225,000
DHS Walkway Repairs	100,000
Casco Bay HS Expansion Ph II	305,000
Lincoln Middle Masonry	250,000
Total Facilities	\$ 2,355,000

PARKS, FIELDS & TRAILS

Capisic Pond Improvements	\$ 563,000
Evergreen Cemetery Wall, PH II	70,000
Payson Park Softball Field upgrades	200,000
Golf Course North Clubhouse improvements	225,000
Hadlock Field Seating replacement	190,000

Payson Park Playground & Splashpad		<u>50,000</u>
Total Parks, Fields & Trails	\$	1,298,000

EQUIPMENT & VEHICLES

Cardiac Monitors	\$	130,000
Computer Server Upgrade/Virtualization		65,000
Parking Meter Replacements		175,000
School Technology Equipment		775,000
PD Cruiser replacement (7)		265,000
FD Ambulance replacement		265,000
DPS Cemetery Backhoe replacement		95,000
DPS Packer replacement		230,000
DPS Sidewalk Tractor replacement		135,000
School Bus		<u>95,000</u>
Total Equipment & Vehicles	\$	2,230,000

SEWER/STORMWATER

CMOM Sewer System Renewal	\$	1,100,000
Capisic Brook Stormwater Treatment System		1,000,000
Capisic Pond Dredging		562,000
Sewer--Catch Basin Cleaner		290,000
Sewer--Dump Truck		50,000
Sewer--2 one-ton Trucks		100,000
Sweeper		<u>175,000</u>
Total Sewer/Stormwater	\$	3,277,000

SubTotal CIP \$ 15,785,000

Art		63,000
Land Bank		<u>63,000</u>

Total CIP \$ 15,911,000

*Order 13-14/15
Feb 15 7-4-14*

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 APPROPRIATING \$15,911,000 OF BOND PROCEEDS FOR THE
CITY'S 2015 CAPITAL IMPROVEMENT PROGRAM**

IT IS HEREBY ORDERED THAT:

1. Subject to paragraphs 2 and 3 below, the sum of \$15,911,000 is hereby appropriated for the projects more particularly described in the project list for the City's 2015 Capital Improvement Program attached hereto as Exhibit A (the "2015 CIP Project List"):
 - a. The sum of \$6,625,000 is hereby appropriated for the projects more particularly described as the **Transportation Projects** on the 2015 CIP Project List.
 - b. The sum of \$2,355,000 is hereby appropriated for the projects more particularly described as the **Facilities Projects** on the 2015 CIP Project List.
 - c. The sum of \$1,298,000 is hereby appropriated for projects more particularly described as the **Parks, Fields and Trails Projects** on the 2015 CIP Project List.
 - d. The sum of \$2,230,000 is hereby appropriated for the projects more particularly described as the **Equipment and Vehicles Projects** on the 2015 CIP Project List.
 - e. The sum of \$3,277,000 is hereby appropriated for the projects more particularly described as the **Sewer / Stormwater Projects** on the 2015 CIP Project List.
 - f. The sum of \$63,000 is hereby appropriated for the projects more particularly described as the **Public Art Projects** on the 2015 CIP Project List.
 - g. The sum of \$63,000 is hereby appropriated for the projects more particularly described as the **Land Bank Projects** on the 2015 CIP Project List.
2. The appropriations set forth in paragraph 1 above are and shall be contingent upon the approval by the City Council of general obligation bonds for such purposes (the amount appropriated to be adjusted to reflect the principal amount of bonds or notes so authorized) and the issuance and delivery of such bonds or notes in anticipation thereof for such purposes. The foregoing appropriations shall also be applied to issuance costs for such bonds (or notes in anticipation thereof).
3. That if the actual cost of any project differs from the estimated cost on the attached Exhibit A, the Director of Finance is authorized, in her discretion to reallocate proceeds of the bonds issued therefore to any other project listed on the 2015 CIP Project List.

Exhibit A

2015 Capital Improvement Program

**Estimated
Costs**

TRANSPORTATION

PACTS Match--Traffic Signals, Regional Transportation Mgmt System	\$ 165,000
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Franklin St (Commercial to Middle)	900,000
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Paving Rehab	1,750,000
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Railroad Quiet Zone Improvements (Woodfords)	400,000
CSO Projects Street/Sidewalk improvements	800,000
Total Transportation	\$ 6,625,000

FACILITIES

Bramhall Fire Station Roof Reinforcement	\$ 50,000
Ice Arena Roof	150,000
Portland Ocean Terminal Roof	210,000
West School Demo	200,000
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Great Diamond Island Barge Landing	20,000
Ocean Gateway Queuing Lanes Seawall Repair	450,000
Cliff Island Wharf	270,000
POT Whaling Wall Gabions	225,000
DHS Walkway Repairs	100,000
Casco Bay HS Expansion Ph II	305,000
Lincoln Middle Masonry	250,000
Total Facilities	\$ 2,355,000

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Evergreen Cemetery Wall, PH II	70,000
Payson Park Softball Field upgrades	200,000
Golf Course North Clubhouse improvements	225,000
Hadlock Field Seating replacement	190,000

Payson Park Playground & Splashpad		<u>50,000</u>
Total Parks, Fields & Trails	\$	1,298,000

EQUIPMENT & VEHICLES

Cardiac Monitors	\$	130,000
Computer Server Upgrade/Virtualization		65,000
Parking Meter Replacements		175,000
School Technology Equipment		775,000
PD Cruiser replacement (7)		265,000
FD Ambulance replacement		265,000
DPS Cemetery Backhoe replacement		95,000
DPS Packer replacement		230,000
DPS Sidewalk Tractor replacement		135,000
School Bus		<u>95,000</u>
Total Equipment & Vehicles	\$	2,230,000

SEWER/STORMWATER

CMOM Sewer System Renewal	\$	1,100,000
Capisic Brook Stormwater Treatment System		1,000,000
Capisic Pond Dredging		562,000
Sewer--Catch Basin Cleaner		290,000
Sewer--Dump Truck		50,000
Sewer--2 one-ton Trucks		100,000
Sweeper		<u>175,000</u>
Total Sewer/Stormwater	\$	3,277,000

SubTotal CIP	\$	<u>15,785,000</u>
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Art		63,000
Land Bank		<u>63,000</u>

Total CIP	\$	<u>15,911,000</u>
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*Order 14-14/15
Tab 16 7-7-14*

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 REAPPROPRIATING SURPLUS PROJECT FUNDS FROM UNALLOTTED
SEWER CAPITAL IMPROVEMENT PROGRAM ACCOUNT**

WHEREAS, the City of Portland previously issued its General Obligation Bonds to finance various Capital Improvement Projects; and

WHEREAS, certain of the Capital Improvement Projects have been completed with project costs less than estimated; and

WHEREAS, such projects were closed and the remaining balances transferred to unallotted Capital Improvement Program accounts; and

WHEREAS, the City Council now desires to reappropriate a portion of the unallotted balances to other Capital Improvement Projects that need additional funds;

NOW, THEREFORE, by the City Council of the City of Portland, be it hereby **ORDERED**, **THAT** \$2,150,000 of unallotted Sewer bond proceeds be and hereby are reallocated and re-appropriated to fund the following Capital Improvement Projects:

Sewer/Storm Drain for Moody/Wilson Street	\$ 760,000
High/York Street Sewer Separation	410,000
Pump Station Rehab	680,000
Somerset Street Sewer (Elm to Hanover)	160,000
Baxter Woods Detention Pond	80,000
<u>Penrith Road Erosion Repair</u>	<u>60,000</u>
Total	\$2,150,000

**CITY OF PORTLAND, MAINE
MEMORANDUM**

TO: Mayor Michael Brennan, Members of the City Council

FROM: Ellen Sanborn, Finance Director

DATE: June 20, 2014

RE: Reallocation of Unallotted Sewer CIP Funds

A number of Sewer/Stormwater projects are included as part of the Capital Improvement Program for 2015. Last fall the Council approved the reallocation of finished projects, which I noted at the time left surplus funds available for future projects. This funding is a balance of previously bonded projects and is currently being retired through debt service payments. Using these funds for new projects reduces the amount of new financing needed for 2015 Sewer CIP projects.

The Finance Committee recommended reallocation of unallotted CIP funds for the attached list of projects at its June 26 meeting, totaling \$2.15 million.

Attached are draft minutes from the June 26 Finance Committee meeting.

*Order 15-14/15
Tab 17 7-7-14*

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 ENDORSING PROJECTS FOR
FEDERAL AND STATE FUNDS THROUGH PORTLAND AREA TRANSPORTATION
SYSTEM**

ORDERED, that the City of Portland proposals for application for Federal and State funds through the Portland Area Comprehensive Transportation System (PACTS), attached hereto, are hereby endorsed.

PACTS Enhanced Project Scoping List -- June 13, 2014

Intersection Proposals				
		Prelim. Rank	Score	110% Cost Estimates
Portland	Intersections of Brighton/Deering/Falmouth/Bedford and Deering/Bedford	2	72.8	\$1,958,000
Portland	Congress St. signal improvements: Stevens to Fore River	3	68.2	\$302,940
Bike-Ped Proposals				
		Prelim. Rank	Score	110% Cost Estimates
Portland	Martin's Point Multi-Use Path/ East Coast Greenway, Phase 1	4	51.7	\$880,000
Portland	York St. Sidewalk and pedestrian signals	5	49.2	\$121,273

MEMORANDUM
City Council Agenda Item

TO: Members of City Council

FROM: Michael Bobinsky, Director of Public Services

DATE: July 1, 2014

DISTRIBUTION: Michael Brennan, Mayor
Mark Rees, City Manager
Danielle West-Chuta, Corporation Counsel
Sonia Bean, Executive Assistant
Nancy English, Admin. Asst. to Corporation Counsel

SUBJECT: Order to Endorse 4 specific PACTS 16-18 TIP projects

SPONSOR: Transportation, Sustainability, and Energy Committee
Endorsed 4-0 on June 18, 2014

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st reading July 7, 2014 Final Action July 21, 2014

Can action be taken at a later date: Yes ☐ No ☒ (If no why not?)

This Order cannot be delayed; endorsement is due to PACTS by July 29, 2014 or the projects do not proceed to funding decision-making in the Fall of 2014.

PRESENTATION: N/A

I. SUMMARY OF ISSUE (Agenda Description)

The Department of Public Services (DPS) requests formal endorsement to advance four (4) finalist Transportation Projects through our regional Transportation Management Area funding agency known as PACTS. A **deadline of July 29, 2014** exists to formally endorse these projects and show community intent to fund construction should they ultimately be awarded; your official action on July 21, 2014 is necessary to meet this deadline.

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

III. INTENDED RESULT

City Council endorsement will result in PACTS advancing four (4) projects thru the steps required to possibly be funded in the 2016-2018 TIP. Regional funding decisions are expected to be complete in August 2014.

The four finalist projects are:

Project Descriptions	110% Cost Estimates
Intersections of Brighton/Deering/Falmouth/Bedford and	\$1,958,000

Deering/Bedford	
Congress St. signal improvements: Stevens to Fore River	\$302,940
Martin's Point Multi-Use Path/ East Coast Greenway, Phase 1	\$880,000
York St. Sidewalk and pedestrian signals	\$121,273

No "Road Rebuild" projects have advanced for Portland at this time. Collector Paving candidates are not yet known and will require a future endorsement action.

IV. COUNCIL GOAL ADDRESSED

(Insert Transportation System goal here)

V. FINANCIAL IMPACT

These four finalist projects are for PACTS Transportation Improvement Program (TIP) funding in the 2016-2018 cycle; awards will be announced in late August 2014 and three-party agreements for 2016 projects will be advanced in June 2015. Portland will be responsible for a 25% Local Share of each project's cost, and 100% responsible for 'ineligible' cost items.

Examples of ineligibles include: City utility system adjustments and repairs, upgrades to traffic signal systems and pavement markings, pedestrian system adjustments to curblin, and use of upgraded materials such as brick.

The 25% Local Match requirement for these projects is currently estimated to total \$815,553; that obligation (plus rough estimates for ineligibles) is reflected in the proposed FY16 CIP and will be adjusted as new estimates and information become available. Our Local Match and other costs must be appropriated by June 2015 in order to enter into three-party agreements at that time. The currently projected 110% value of these four projects totals \$3,262,213. The 10% extra is per PACTS policy and is intended to help cover the cost estimate fluctuation between project application and construction bid year timing; generally 2-4 years apart.

VI. STAFF ANALYSIS

The Department of Public Services has advanced these public infrastructure projects through the PACTS process as the most affordable means of implementation. This endorsement step will further that initiative and likely result in highly leveraged awards of regional Transportation projects. Failure to endorse will delete these projects from PACTS funding consideration.

VII. RECOMMENDATION

The Department of Public Services highly recommends endorsement of these four projects so they may be advanced thru the PACTS funding award process.

VIII. LIST ATTACHMENTS

- "PACTS Enhanced Project Scoping List – June 13, 2014"

Prepared by:

Signature

Date

PACTS Enhanced Project Scoping List -- June 13, 2014

Intersection Proposals				
		Prelim. Rank	Score	110% Cost Estimates
Portland	Intersections of Brighton/Deering/Falmouth/Bedford and Deering/Bedford	2	72.8	\$1,958,000
Portland	Congress St. signal improvements: Stevens to Fore River	3	68.2	\$302,940

Bike-Ped Proposals				
		Prelim. Rank	Score	110% Cost Estimates
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