

1. Special City Council Meeting Agenda And Packet

Documents: [APRIL 22, 2013 - SPECIAL.PDF](#)

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

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

AGENDA
SPECIAL CITY COUNCIL MEETING
EVENING SESSION
APRIL 22, 2013

The Portland City Council will hold a special 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:

APPROVAL OF MINUTES OF PREVIOUS MEETING:

(Tab 1) Regular City Council Meeting April 1, 2013
Special City Council Meeting April 8, 2013

ANNOUNCEMENTS:

RECOGNITIONS:

PROCLAMATIONS:

Proc 32-12/13 Proclamation Honoring Daniel Townsend, Police Department, as
(Tab 2) Employee of the Month for March, 2013 – Sponsored by Mayor Michael F. Brennan.

Proc 33-12/13 Proclamation Recognizing Waynflete School Varsity Girls Basketball
(Tab 3) Team – Sponsored by Mayor Michael F. Brennan.

Proc 34-12/13 Proclamation Honoring Catherine McAuley High School Basketball
(Tab 4) Team – Sponsored by Mayor Michael F. Brennan.

APPOINTMENTS:

**Order 177-12/13
(Tab 5)**

**Order Appointing Constables Re: Department of Public Services
- Sponsored by Mark H. Rees, City Manager.**

This order appoints Park Rangers Rebecca Maiorano and Travis Wade as Constables for the Department of Public Services and shall be effective until midnight on October 31, 2013. Pursuant to state law this order prohibits these constables from carrying a weapon or making arrests.

Five affirmative votes are required for passage after public comment.

**Order 178-12/13
(Tab 6)**

Order Appointing Special Council Committees for 2013 – Sponsored by Mayor Michael F. Brennan.

This order appoints special council committees for 2013 as listed on attachment A included in the agenda backup.

Five affirmative votes are required for passage after public comment.

**Order 179-12/13
(Tab 7)**

Order Appointing Ward Clerk for Precinct 2-1– Sponsored by Katherine L. Jones, City Clerk.

This order appoints Richard Mercier as Ward Clerk for Precinct 2-1. The previous Ward Clerk can no longer serve in this position.

Five affirmative votes are required for passage after public comment.

CONSENT ITEMS:

**Order 180-12/13
(Tab 8)**

Order Granting Easement to 119 Development, LLC – Sponsored by Danielle West-Chuhta, Corporation Counsel.

This order approves granting 119 Development, LLC easements for the sidewalk area located at 119 Exchange Street; portions of the old Portland Press Herald building and fire escape that extend beyond the parcel boundaries of the land towards Federal Street; and to use and occupy spaces below the sidewalk on Market, Exchange and Federal Streets for a radiant snow melt system and grease trap.

**Order 181-12/13
(Tab 9)**

Order Declaring “Craft Beer Comes to Portland 2013” as a Festival and Approving Contract and Permits Therefor- Sponsored by Mark H. Rees, City Manager.

This order declares “Craft Beer Comes to Portland 2013” as a festival to be held on Saturday, July 13, 2013, on the Maine State Pier and authorizes the use of the pier on that day from 8:00 a.m. to 11:59 p.m. Gates will open at 12:00 noon, and there will be Craft Beer tasting with vendors, food and music from 12:00 noon until 4:00 p.m. 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 Maine Brewers’s Guild contractor and the city to focus volume on the pier and its immediate environment.

**Order 182-12/13
(Tab 10)**

Order Declaring “27th Annual Southern Maine Pride Celebration Festival” – Sponsored by Mark H. Rees, City Manager.

This order declares Saturday, June 9 – Sunday June 16, 2013, as the 27th Annual Maine Pride Celebration Festival. The actual festival on city grounds takes place on Saturday, June 15, 2013.

The following activities have been requested:

The use of Monument Square, One City Center sidewalk, Preble Street from Cumberland Avenue to Congress Street, Federal Street Extension and Center Street (Free to Congress Street) on Saturday, June 15, from 10:00 a.m. to 12:00 noon, as a gathering point for parade participants. Parade assembly begins at 10:00 a.m.

The use of Congress Street (Elm to High Street), High Street (Congress Street to Park Avenue), Park Avenue (from high Street to State Street Extension), State Street Extension., crossing over State Street Extension to Deering Oaks Park (Bowling Green Pathway Entrance), for the parade on Saturday, June 15, beginning at 12:00 noon.

The use of Deering Oaks Park (Park Avenue side of the Park) for Pride Festival: entertainment , displays, food and noon-food vendors from noon to 8:00 p.m. on Saturday, June 15. The festival runs from 1:00 p.m. to 7:00 p.m.

**Order 183-12/13
(Tab 11)**

Order Approving Transfer of Funds Under 15 M.R.S.A. Secs 5824(3) and 5836(6) – Sponsored by Mark H. Rees, City Manager.

This order authorizes the City Council to approve the transfer of \$810.00 in forfeited assets from the State of Maine to the City of Portland from the case of the State of Maine v. Earl Guerra. 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 184-12/13
(Tab 12)**

**Order Approving Transfer of Funds Under 15 M.R.S.A. Secs
5824(3) and 5836(6) – Sponsored by Mark H. Rees, City Manager.**

This order authorizes the City Council to approve the transfer of \$1,517.00 in forfeited assets from the State of Maine to the City of Portland from the case of the State of Maine v. Cerrone Smalls. 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 of the Consent Calendar.

LICENSES:

**Order 185-12/13
(Tab 13)**

Order Granting Municipal Officers' Approval of AAA The North Point LLC d/b/a The North Point, 35 Silver St. Application to add Outdoor Dining on Public Property – Sponsored by Katherine L. Jones, City Clerk.

Application filed 3/28/13. Holds current City and State Class A Lounge License.

Five affirmative votes are required for passage after public comment.

**Order 186-12/13
(Tab 14)**

Order Granting Municipal Officers' Approval of Smartin Services LLC d/b/a Bar of Chocolate, 38 Wharf St. Application for Class A Lounge License – Sponsored by Katherine L. Jones, City Clerk.

Application filed 3/21/13. New City and State Licenses. Former location of Winebar/Café at Wharf Street.

Five affirmative votes are required for passage after public comment.

**Order 187-12/13
(Tab 15)**

Order Granting Municipal Officers' Approval of Local Food 1, LLC d/b/a B Good, 15 Exchange St. Application for Class III & IV Wine & Beer License – Sponsored by Katherine L. Jones, City Clerk.

Application filed 3/19/13. New City and State Licenses. Former location of 15 Exchange/Scarpa's.

Five affirmative votes are required for passage after public comment.

**Order 188-12/13
(Tab 16)**

Order Granting Municipal Officers' Approval of Fat Dragon, LLC d/b/a Empire at 575 Congress St. Application for Class XI Restaurant/Lounge License with Entertainment with Dance – Sponsored by Katherine L. Jones, City Clerk.

Application 4/1/13. New City and State Licenses. Change of ownership.

Five affirmative votes are required for passage after public comment.

**Order 189-12/13
(Tab 17)**

Order Granting Municipal Officers' Approval of Crobo LLC d/b/a Port City Music Hall at 504 Congress St. Application for Class XI Restaurant/Lounge License with Entertainment with Dance and After-Hours Entertainment. – Sponsored by Katherine L. Jones, City Clerk.

Application filed 3/29/13. New City and State Licenses. Change of ownership.

Five affirmative votes are required for passage after public comment.

**Order 190-12/13
(Tab 18)**

Order Granting Municipal Officers' Approval of Fish Shack, LLC d/b/a Boone's Fish House & Oyster Room at 6 Custom House Wharf. Application for Class I Liquor License with Entertainment with Dance and Outdoor Dining on Private Property – Sponsored by Katherine L. Jones, City Clerk.

Application filed 4/4/13. New City and State Licenses. Change of ownership. Formerly Harbor's Edge.

Five affirmative votes are required for passage after public comment.

**Order 191-12/13
(Tab 19)**

Order Granting Municipal Officers' Approval of John Welliver d/b/a LFK at 188 State St. Application For Class I Liquor License and Outdoor Dining on Public Property – Sponsored by Katherine L. Jones, City Clerk.

Application filed 4/4/13. New City and State Licenses. Change of ownership.

Five affirmative votes are required for passage after public comment.

**Order 192-12/13
(Tab 20)**

Order Granting Municipal Officers' Approval of SYPP Port LLC d/b/a SYPP at 345 Fore St. Application for Class XI Liquor License – Sponsored by Katherine L. Jones, City Clerk.

Application filed 4/5/13. New City and State Licenses. Change of ownership. Former location of Sebastian's.

Five affirmative votes are required for passage after public comment.

**Order 193-12/13
(Tab 21)**

Order Granting Municipal Officers' Approval of DCL, LLC d/b/a Diamond's Edge Restaurant at 279 Diamond Ave. Application for Class I Liquor License with Entertainment with Dance and Outdoor Dining on Private Property – Sponsored by Katherine L. Jones, City Clerk.

Application filed 4/5/13. New City and State Licenses. Change of ownership.

Five affirmative votes are required for passage after public comment.

**Order 194-12/13
(Tab 22)**

Order Granting Municipal Officers' Approval of Sol Food Group, LLC d/b/a El Rayo Taqueria at 101 York St. Application to Expand Existing Alcohol Service Area for One Day Event on May 5, 2013 – Sponsored by Katherine L. Jones, City Clerk.

Applicant currently holds current Class I FSE Liquor License with Entertainment without Dance and Outdoor Dining on Private Property. This is a Cinco de Mayo celebration.

Five affirmative votes are required for passage after public comment.

BUDGET ITEMS:

**Order 195-12/13
(Tab 23)**

Order Receiving and Referring to Finance Committee FY2014 Budget Estimates of the School Committee and Setting a Public Hearing Thereon – Sponsored by Mark H. Rees, City Manager.

Under this order the City Council receives the School Committee's proposed Fiscal Year 2014 budget and refers it to the Finance Committee for review and recommendations. The Finance Committee met on Thursday, April 11, 2013, at 5:30 p.m. to take public comment and discuss the recommendation of the School Department budget.

The Finance Committee will meet again on April 24, 2013, at 5:30 p.m. to vote on a recommendation to the Council.

The City Council will hold a workshop on the FY13 school budget on Monday, April 29, 2013, at 5:30 p.m. The City Council public hearing on the school budget will be held at a Special City Council meeting on Monday, April 29, 2013, at 7:00 p.m. Council action on the school budget will take place Monday, May 6, 2013, at 7:00 p.m. in City Council Chambers.

Five affirmative votes are required for passage after public comment.

COMMUNICATIONS:

**Com 10-12/13
(Tab 24)**

**Communication Re: Portland Disability Advisory Committee –
Sponsored by Mark H. Rees, City Manager.**

The Portland Disability Advisory Committee, a volunteer advisory body to the City Manager, is being established as a mechanism for on-going communication, engagement, and activity with stakeholders working to advance the full and equal participation of people with disabilities in all aspects of city life. The Advisory Committee's purpose will include public education and awareness; advising on legal compliance, accommodations and accessibility; and the on-going evaluation of city programs, opportunities and services for all ages in a manner which fosters dignity and self-determination. The membership will be citizen based (as opposed to organization based) consisting of up to fifteen people with cross-disability representation. The Advisory Committee will meet monthly and all meetings are open to the public.

Pursuant to Article II section 5(1) of the City Charter, the Mayor (with assistance of the City Manager in this case) has nominated the following persons to the Advisory Committee:

Voting Members

Laura Antranigian
Renee Berry-Huffman
John Dunleavy
Karen Evans
Paulina Klimet-Cornet
Irene Maihot

Non-voting Members

Rick Langley – Disability Rights Center
Meryl Troop – Maine Center on Deafness
Rachel Talbot Ross – City of Portland

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

RESOLUTIONS:

UNFINISHED BUSINESS:

**Order 159-12/13
(Tab 25) Amendment to Portland City Code Chapter 21 Farmers' Markets
Chapter 19 Peddlers and Solicitors Chapter 15 Licenses and Permits –
Sponsored by the Public Safety, Health and Human Services
Committee, Councilor Edward J. Suslovic, Chair.**

On February 12, 2013, the Public Safety, Health and Human Services Committee voted unanimously to recommend approval of the attached ordinance changes and draft license agreement to the full City Council.

After several meetings last year with Farmers Market members, as well as the City Clerk's office, changes were drafted to simplify the licensing process now in place for farmer's markets. These changes would mean a single license would be issued to the Farmer's Market Association (FMA). This license agreement would incorporate the current regulations pertaining to operation and products to be sold.

The Committee held two public hearings on this issue this year. After the first public hearing, staff held a meeting with two farmers who expressed concerns regarding the operation and formation of the FMA.

Staff also met with FMA representatives and asked them to address these concerns at the next public hearing. On February 12th the FMA was represented by its current president, secretary, and membership coordinator, who confirmed that the Association has been properly formed, its by-laws have been adopted by majority vote, the Association has obtained legal non-profit status through the Maine Secretary of State, and the FMA membership has voted in favor of these proposed changes to the City's licensing process.

Staff recommends that because individual licenses have already been issued to some individual farmers for the upcoming season, this change not be made effective until 2014.

This item must be read on two separate days. It was given a first reading on March 4th. At the March 18th Council meeting the farmers requested that this item be postponed to the April 22nd City Council meeting to allow time for them to finalize and review the license agreement with their attorney.

Five affirmative votes are required for passage after public comment.

**Order 175-12/13
(Tab 26)**

**Amendment to Portland City Code Chapter 14. Land Use
Article III. Zoning (Division 17. B-7 Mixed Development District Zone)
and Article V. Site Plan – Sponsored by the Planning Board, Carol
Morrisette, Chair.**

The Federated Companies has requested certain amendments to the zoning and site plan ordinances to facilitate a proposed development in Bayside on the former rail yard property in the vicinity of Somerset Street. This project includes housing and a parking facility designed to serve both this project and the parking needs of the district generally.

The amendments include revisions to the zoning and site plan ordinances related to building height. The building height amendments are intended to provide more flexibility to an existing provision in the B-7 zone that allows building heights up to 165 feet.

City staff has conducted a review of these provisions for the district generally and has advanced language that can accomplish both these goals and larger planning objectives for the B-7 zone.

Federated's development program includes four residential buildings (with 675 housing units) that exceed the base height (125 feet) of the A height district within the Bayside Height Overlay Zone.

In addition, the development plan includes a parking garage that will include public parking spaces designed to reduce the need for surface parking lots in the district, therefore permitting those surface lots to be redeveloped over time.

The A height districts in the B-7 zone allow a building height up to 165 feet as a conditional use. However, the requirements that currently exist for the additional height have the effect, in this case, of making the additional height infeasible. An alternative review is being proposed with new standards to address this issue.

As part of this rezoning request, staff also looked at all the A and B height districts in the B-7 zone to see what adjustments are warranted. As part of that analysis, the A height district would be expanded, while preserving the view corridors identified in the Bayside planning efforts as lower-height B districts.

After holding a public hearing on March 21, 2013, the Planning Board voted to recommend that certain height related amendments be adopted by the City Council.

The Planning Board voted 4 to 1 (Boepple opposed; Dundon, Soley absent) to recommend that the Bayside Height Overlay May be amended.

The Planning Board voted 5 to 0 (Dundon, Soley absent) to recommend that the B-7 conditional use height section be amended.

The Planning Board voted 5 to 0 (Dundon, Soley absent) to recommend that the site plan ordinance be amended to incorporate B-7 height standards.

The Planning Board had a thorough discussion of the amendments including holding four workshops and two public hearings.

This item must be read on two separate days. It was given a first reading on April 1st. Five affirmative votes are required for passage after public comment.

**Order 176-12/13
(Tab 27)**

Amendment to Portland City Code Article V, Site Plan Amendments for Master Development Plan – Sponsored by the Planning Board, Carol Morrisette, Chair.

The current site plan ordinance does not offer a mechanism to review a master development plan in order to achieve a unified development scheme. The proposed text amendments recognize the need for projects on large sites to undergo an optional Master Development planning process in order to promote a cohesive and integrated development approach.

The Master Development Plan process addresses the expectation that these developments (given the size and complexity) will be built in phases over an extended time frame.

The proposed amendments address the need of the current financial market for a level of certainty in the review process, which accommodates the extended time needed to undertake complex projects.

The Master Development Plan review process is, in part, designed to reduce the requests for contract or conditional zoning that often accompany large and complex projects

The proposed Master Development Plan process applies to development with over 1 acre of land in all non-residential zones. It is not applicable in residential zones, except for institutional uses such as schools, hospitals and universities.

An approval of a master development plan, including any approval of waivers, establishes the general parameters to be adhered to for the development. A Master Development Plan approval is not the final authorization of the development, but it will confer pending proceeding status upon the development with the effect of maintaining the applicability of regulations in effect at the time of approval for as long as the Master Development Plan approval remains valid. As proposed, an approved Master Development Plan would be valid for six (6) years with the Planning Authority able to grant two (2) two-year extensions under certain circumstances or to seek amended plans to address revised regulations. Each phase of development requires a Level III site plan review by the Planning Board for final approval.

At the March 12, 2013, public hearing the Planning Board voted unanimously (7-0) to recommend the proposed text amendment for the Master Development Plan with three revisions, which follow:

1. Require a separate neighborhood meeting for the Master Development Plan from any required Level III site plan requirements for a neighborhood meeting.
2. Make it a requirement that there is a Planning Board workshop for a Master Development Plan; and
3. Add a standard of review that addresses maintaining future phases in stable, safe and attractive site conditions.

This item must be read on two separate days. It was given a first reading on April 1st. Five affirmative votes are required for passage after public comment.

ORDER:

**Order 196-12/13
(Tab 28)**

**Order Approving City Property Ownership Sale – 60 Portland Pier –
Sponsored by the Housing and Community Development Committee,
Councilor Nicholas M. Mavodones, Jr., Chair.**

City ownership at the end of Portland Pier dates back to the time when island car ferry service left from Portland Pier. After the car ferry facility was relocated to the new Casco Bay Ferry Terminal on the Maine State Pier, the city entered into a lease with New Meadows Lobster Company which owns property on either side of city ownership. The city's lease included a portion of a certain property toward the water end of the pier along with certain water rights extending toward the federal channel from the existing pier.

The original lease began in 1988, with a 20-year term and two successful 5-year renewal options to extend the lease to 2018. Mr. McAleney is interested in purchasing the city property to unify his ownership at the end of Portland Pier.

City staff recommends that this property be sold to Mr. McAleney in order to allow him to combine and unify his ownership at the end of Portland Pier, while retaining underlying public right-of-way for access to the end of the pier from sunrise to sunset.

The Housing and Community Development Committee reviewed this item and unanimously recommended to forward it to the City Council with a recommendation for approval of the sale.

Five affirmative votes are required for passage after public comment.

**Order 197-12/13
(Tab 29)**

Order Approving City-State Agreement with Maine Department of Transportation Re: Auburn Street, New Freedom Project – Sponsored by Mark H. Rees, City Manager.

The City of Portland has agreed to complete a change order that is limited to design, scope and funding for its Auburn Street and Washington Avenue Sewer Separation Project. This agreement sets out requirements for the project and terms and conditions of Maine DOT's funding to the City.

The scope of work consists of improvements along Auburn Street to include a new sidewalk and three ADA accessible ramps.

Maine DOT has approved a maximum amount of \$82,282 for the project, consisting of 80% from the Federal Transit Administration and 20% from the Maine DOT. There is no City match.

Five affirmative votes are required for passage after public comment.

**Order 198-12/13
(Tab 30)**

Order Approving Notice of Intention to Lay Out a Public Easement Pursuant to 23 M.R.S.A. §3022 and 30-A M.R.S.A. §3402 Re: Winding Way, Peaks Island – Sponsored by Mark H. Rees City Manager.

The Portland Water District (“PWD”) maintains and operates the City’s sanitary and storm water collection system on Peaks Island pursuant to the terms of a written agreement. The City Council approved an amendment to that agreement in the spring of 2012, which allowed the design and construction of an expanded sewer collection system for island residents. The expansion seeks to address long-term water quality services affecting Peaks Island by allowing a greater number of residents to hook up to sanitary sewer and replace older and limited septic systems that are in various stages of effectiveness.

The PWD has collected about sixty (60) easements from land owners (much of the work will be on private, unaccepted roads), but two (2) owners have not voluntarily granted the necessary easements. This eminent domain process will involuntarily take those two (2) needed easements. The two (2) needed easements will then be turned over to PWD.

Five affirmative votes are required for passage after public comment.

**Order 199-12/13
(Tab 31)**

Order Approving Notice of Intention to Lay Out a Public Easement Pursuant to 23 M.R.S.A. §3022 and 30-A M.R.S.A. §3402 Re: Diamond Pass, Peaks Island – Sponsored by Mark H. Rees, City Manager.

See agenda description above for details regarding this matter.

Five affirmative votes are required for passage after public comment.

**Order 200-12/13
(Tab 32)**

Order Adopting Spring Street – Free Street Streetscape Area Plan as an Approved Master Plan - Sponsored by the Transportation, Sustainability and Energy Committee, Councilor Kevin J. Donoghue, Chair.

The City Council is requested to adopt the Spring Street – Free Street Streetscape Area Plan as an approved Master Plan. The plan charts a new future for Spring Street with specific recommendations to make the street a more “complete street” by providing safe and effective circulation for vehicles, pedestrians and bicycles. The plan recommends that the median barrier be removed, sidewalks widened and a reduction in the number of vehicle travel lanes from four to two.

A Public Advisory Committee appointed by Mayor Brennan met five (5) times including a public hearing to guide the drafting of the plan. The committee represented a diverse group of people including residents, property owners, businesses, non-profits and public interest groups. Committee meetings were well attended and input very informative.

The Transportation Sustainability and Energy Committee reviewed the report at their March 20, 2013 meeting. The Committee voted to 4 to 0 to recommend approval of the plan to the City Council with the following conditions:

1. That reference to a proposed park at the corner of High Street and Spring Street be removed from the plan.
2. That reference to back-in angled parking along Spring Street be removed from the plan.

The plan provides a comprehensive approach in addressing long-standing roadway and streetscape issues associated with Spring Street. The FY 2013 CIP allocated \$50,000 for design work related to Spring Street. A request for FY 2014 CIP would provide \$450,000 in funds for curb and utility work. Other significant funds include a FY 2015 CIP request of \$181,500 which would serve as a local match for a \$725,953 Maine Department of Transportation grant that would repave Spring Street.

Five affirmative votes are required for passage after public comment.

AMENDMENTS:

**Order 201-12/13
(Tab 33)**

**Amendment to Zoning Map Re: 91 State Street Rezoning from R-6 Residential Zone to R-7 Compact Urban Residential Zone -
Sponsored by the Planning Board, Carol Morrisette, Chair.**

Kevin Butterfield applied for a Zoning Map Amendment for property located at 91 State Street. The proposed change would be from R-6 Residential to R-7 Compact Urban Residential Overlay Zone.

The property was formerly owned and occupied by Mercy and served as the McAuley Residence convalescent center. The proposal seeks to convert the previous uses into ten (10) market-rate residential units. The proposed map amendment is requested in order to allow for a higher residential density for the site and reuse of the existing structure.

A Planning Board workshop is scheduled for April 23. The Planning board recommendation will be forwarded to the City Council prior to the second reading for this item or May 6, 2013.

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

**Order 202-12/13
(Tab 34)**

**Amendment Zoning Map Amendment Re: 159 Canco Road From I-L Low Impact Industrial Zone to ROS Recreational Open Space Zone –
Sponsored by the Planning Board, Carol Morrisette, Chair.**

Though it is currently zoned IL or Low-Impact Industrial, neighborhood residents have historically used the property at 159 Canco Road as a passive recreational open space. The site includes woodlands, wetlands, streams, a pond, and a number of hiking, biking, and cross-country skiing trails. As a result of a partnership with neighborhood residents, the Trust for Public Land and Portland Trails, the city now owns the 12.9 property. The City Council has placed it under a conservation easement to Portland Trails with the intent that it remains protected open space in perpetuity. Upon conveying the conservation easement, the Council referred the issue of rezoning the property to the Planning Board and recommended that the zoning be changed to Recreation and Open Space (ROS) in order to align more closely with existing and potential uses on site.

On March 19, 2013, the Planning Board voted unanimously (5-0, Soley and Dundon absent) to recommend a proposed zoning map amendment for the property at 159 Canco Road to change the zoning designation from Low-Impact (IL) to Recreation Open Space (ROS).

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

LICENSE RENEWALS:

REQUEST FOR EXECUTIVE SESSION:

Tab 1 4-22-13

IN COUNCIL REGULAR MEETING APRIL 1, 2013 VOL. 128 PAGE 74

ROLL CALL: Mayor Brennan called the meeting to order at 7:20 P.M.

APPROVAL OF MINUTES OF PREVIOUS MEETING:

Motion was made by Councilor Anton and seconded by Councilor Marshall to approve the minutes of March 18 Regular City Council and March 27, 2013 Special City Council meetings. Passage 9-0.

ANNOUNCEMENTS:

RECOGNITIONS:

PROCLAMATIONS:

- Proc 27-12/13** Proclamation Recognizing Deering High School Chess Club – Sponsored by Mayor Michael F. Brennan.
- Proc 28-12/13** Proclamation Honoring Officer Joshua McDonald as Police Officer of the Month for February, 2013 – Sponsored by Mayor Michael F. Brennan.
- Proc 29-12/13** Proclamation Proclaiming National Telecommunicators Week April 14-20, 2013 – Sponsored by Mayor Michael F. Brennan.
- Proc 30-12/13** Proclamation Honoring the Department of Public Services – Sponsored by Mayor Michael F. Brennan.
- Proc 31-12/13** Proclamation Proclaiming National Public Health Week April 1-7, 2013 – Sponsored by Mayor Michael F. Brennan.

APPOINTMENTS:

- Order 164-12/13** Order Appointing Warden and Ward Clerks – Sponsored by Katherine L. Jones, City Clerk.

This order appoints the following wardens and ward clerks for May 14 & November 5, 2013 elections.

<i>Warden</i>	<i>Ward Clerk</i>	<i>Precinct</i>
Denise Shames	Aurelia Scott	1-1
Carol Morrisette	Christopher Danse	1-2
James Carlson	Reta Morrill	1-3
MaryAnn O'Malley	Nancy Parker	2-1
Susan Lichtman	Priscilla Nelson	2-2
Elaine Spring	Katie Spring	3-1
Gail Hannon	Erlene Stuart	3-2

IN COUNCIL REGULAR MEETING APRIL 1, 2013 VOL. 128 PAGE 75

Elizabeth Cyr
Diane Sbrega
Sherwood Merrill
George Smythe

Rosemary Malachowski 4-1
Troy Moon 4-2
Wealthy Merrill 5-1
Charles Lane 5-2

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

CONSENT ITEMS:

- Order 165-12/13 Calling Special Election and Setting Time for Opening
of Polls for Election on May 14, 2013 – Sponsored by Katherine L.
Jones, City Clerk.**
- Order 166-12/13 Declaring Portland Sea Dogs Mother's Day 5K Race Day
Sponsored by Mark H. Rees, City Manager.**
- Order 167-12/13 Declaring Portland Sea Dogs Father's Day 5K Race Day –
Sponsored by Mark H. Rees, City Manager.**
- Order 168-12/13 Declaring 2013 "Old Port Festival Day" – Sponsored by Mark
H. Rees, City Manager.**
- Order 169-12/13 Declaring Memorial Day Parade and Festival – Sponsored by
Mark H. Rees, City Manager.**
- Order 170-12/13 Declaring "The Greek Heritage Festival" June 27, 2013 -
June 29, 2013 Sponsored by Mark H. Rees, City Manager.**

Motion was made by Councilor Anton and seconded by Councilor Suslovic for passage of the consent calendar. Passage 9-0.

LICENSES:

- Order 171-12/13 Granting Municipal Officers' Approval of Lafayette Portland
LLC d/b/a Holiday Inn by the Bay at 88 Spring St. Application for
Class IA Hotel 40+ Rooms with Entertainment with Dance – Sponsored
by Katherine L. Jones, City Clerk.**

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

IN COUNCIL REGULAR MEETING APRIL 1, 2013 VOL. 128 PAGE 76

Order 172-12/13 Granting Municipal Officers' Approval of Food Factory Miyake LLC d/b/a Food Factory Miyake, 129 Spring St. Application for Class III & IV Wine & Beer License – Sponsored by Katherine L. Jones, City Clerk.

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

Order 173-12/13 Granting Municipal Officers' Approval of Rosemont Market, Inc. d/b/a Rosemont Market Productions, 559 Brighton Ave. Application for Class I Qualified Catering License – Sponsored by Katherine L. Jones, City Clerk.

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

BUDGET ITEMS:

Order 174-12/13 Receiving and Referring City Manager's Fiscal Year 2014 Municipal Budget to the Finance Committee and Setting Date of Public Hearing on FY 2014 Municipal Budget and FY 2014 Appropriation Resolve – Sponsored by Mark H. Rees, City Manager.

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

COMMUNICATIONS:

RESOLUTIONS:

Resolve 9-12/13 Resolution Opposing Proposals to Shift Burden of Funding State Government to the Property Tax and Property Tax Payer – Sponsored by Councilor John M. Anton.

Motion was made by Councilor Suslovic and seconded by Councilor Marshall for passage. Passage 8-0. (Councilor Leeman gone).

IN COUNCIL REGULAR MEETING APRIL 1, 2013 VOL. 128 PAGE 77

UNFINISHED BUSINESS:

Order 161-12/13 Approving Contract with the Animal Refuge League of Westbrook – Sponsored by Mark H. Rees, City Manager. This item was given first reading on March 18, 2013.

Motion was made by Councilor Marshall and seconded by Councilor Suslovic for passage. Passage 8-0.

Order 162-12/13 Amendment to Zoning Map and Text Re: 155 Brackett Street from R6 Residential Zone to B-1 Neighborhood Business Zone – Sponsored by the Planning Board, Carol Morrisette, Chair. This item was given first reading on March 18, 2013.

Motion was made by Councilor Suslovic and seconded by Councilor Donoghue for passage. Passage 8-0.

ORDERS:

AMENDMENTS:

**Order 175-12/13 Amendment to Portland City Code Chapter 14. Land Use Article III. Zoning (Division 17. B-7 Mixed Development District Zone) and Article V. Site Plan – Sponsored by the Planning Board, Carol Morrisette, Chair.
This is its first reading.**

**Order 176-12/13 Amendment to Portland City Code Chapter 14. Land Use Article V, Site Plan Amendments for Master Development Plan – Sponsored by the Planning Board, Carol Morrisette, Chair.
This is its first reading.**

Motion was made by Councilor Coyne and seconded by Councilor Donoghue to adjourn. Passage 8-0, 8:55 P.M.

A TRUE COPY.

Katherine L. Jones, City Clerk

IN COUNCIL SPECIAL MEETING APRIL 8, 2013 VOL. 128 PAGE 78

ROLL CALL: Mayor Brennan called the meeting to order at 7:05 P.M. (Councilor Anton and Councilor Marshall absent). Councilor Suslovic arrived during Order 163.

ANNOUNCEMENTS:

CDBG Annual Allocation Committee Presentation

PUBLIC HEARINGS:

Order 163-12/13 Holding Public Hearing FY 2014 Appropriations for Community Development Block Grant Program, Home Program and Emergency Solutions Grant Program – Sponsored by Mark H. Rees, City Manager.

The first public hearing was held on March 27, 2013. This order passed on that date and set up the second public hearing at this Council meeting.

RESOLUTIONS:

Resolve 8-12/13 Resolution Adopting the FY 2014 Consolidated Housing and Community Development Annual Action Plan Including Appropriations for Community Development Block Grant Program, Home Program, and Emergency Solutions Grant Program and Certifications Pertaining Thereto – Sponsored by Mark H. Rees, City Manager. This item was given first reading on March 27, 2013.

Motion was made by Councilor Mavodones and seconded by Councilor Duson for passage. Passage 7-0.

Motion was made by Councilor Donoghue and seconded by Councilor Suslovic to adjourn. Passage 7-0, 7:55 P.M.

A TRUE COPY.

Katherine L. Jones, City Clerk

*Proc 32-12/13
Tab 2 4-22-13*

PROCLAMATION

**Daniel Townsend
Employee of the Month**

April 2013

* * * * *

WHEREAS: **Daniel Townsend**, Police Department, has been named the City of Portland Employee of the Month by a committee of his peers and selected for this distinct honor from a workforce of 1,300; and

WHEREAS: This award is presented in recognition of **Daniel's** duties as a Police Officer. **Daniel** is highly motivated and committed to his duties, addressing crimes that occur in the West End and Parkside areas of the City ranging from homicide and drug trafficking to City ordinance violations, educating community members on police procedures, laws, and the criminal justice system, and using the relationships he has developed within the community to eliminate problems; and

WHEREAS: **Daniel** is recognized for his recent efforts working with the City's Information Technologies staff to enhance the Department's report writing program; the role he took in leading Maine Medical Center security staff in active-shooter incident training; and his part in a recent incident involving two children who were given an overdose of medication by their drug-affected mother -- collaborating with DHHS staff, **Daniel** ensured their safe transport to the hospital, working tirelessly and without complaint beyond his shift to effect a successful resolution of this case; and

WHEREAS: **Daniel** provides "New Portlander" training to first-arrival refugees, attend neighborhood association meetings, visits area shelters to celebrate children's birthdays as part of the "Cops with Cakes" initiative, and works with Community Service Coordinators on child protective cases and community events. **Daniel's** ability to think outside the box and collaborate with individuals and entities is instrumental in addressing both criminal activities and quality of life issues. **Daniel** truly is an inspiration and an asset to the Police Department and to the City.

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 **Daniel Townsend** as **City Employee of the Month, April, 2013**.

Signed and Sealed this 22nd day of April, 2013

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

Proc 33 - 12/13
Tab 3 - 4-22-13

PROCLAMATION

RECOGNIZING

Waynflete School Varsity Girls Basketball Team

WHEREAS, Waynflete School has a long standing reputation for excellence in the classroom and in athletics and is an integral part of our community; and

WHEREAS, The Portland community is proud of Waynflete School and its dedicated players, coaches and administrators; and

WHEREAS, The Waynflete School Varsity Girls Basketball Team of 2013 includes many extraordinary young athletes:

Helen Gray-Bauer
Emily Wasserman
Martha Veroneau
Arianna Giguere
Leigh Fernandez
Dana Peirce

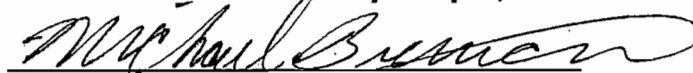
Rhiannan Jackson
Julianna Harwood
Louise Lyall
Catherine Veroneau
Anne Veroneau

WHEREAS, The Waynflete School Varsity Girls Basketball Team recently captured their **first** Class "C" State Championship under the direction and guidance of Head Coach Brandon Salway and assistants Zak Starr and Amy Johnson.

WHEREAS, The City of Portland wishes to acknowledge the outstanding accomplishments of the 2013 Waynflete School Varsity Girls Basketball Team.

NOW, THEREFORE, BE IT RESOLVED, THAT I Michael F. Brennan, Mayor of the City of Portland and members of the City Council do hereby congratulate The Waynflete School Varsity Girls Basketball Team for winning the Class C State Championship.

Signed and sealed this 22nd day of April, 2013



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

*Proc 34-12/13
Tab 4 4-22-13*

PROCLAMATION

HONORING

Catherine McAuley High School Basketball Team

- WHEREAS,** Catherine McAuley High School and its dedicated athletes, coaches and administrators has a long standing reputation for excellence and is an integral part of our community; and
- WHEREAS,** The Catherine McAuley Basketball Team of 2012-2013 known as the "Lions" displayed enthusiasm, sportsmanship, and enhanced community spirit; and
- WHEREAS,** The team, under the direction of their coach, Bill Goodman and assisted by Wade Millett, Bill Whitmore, Dawn Ross, and student managers Jill Ma, Taylor Whaley and Carolyn Liziewski finished the season with a perfect 22-0 record; and
- WHEREAS,** On March 2, 2013, at the Augusta Civic Center, the McAuley Lions successfully defeated The Bangor Rams and won the 2013 Class A Girls High School State Basketball Championship; and
- WHEREAS,** The City of Portland is proud to acknowledge the team members of Catherine McAuley:

Emily Chandler
Allie Clement
Sarah Clement
Lauren Coulombe
Olivia Dalphonse
Mary Furlong
Laura Holman

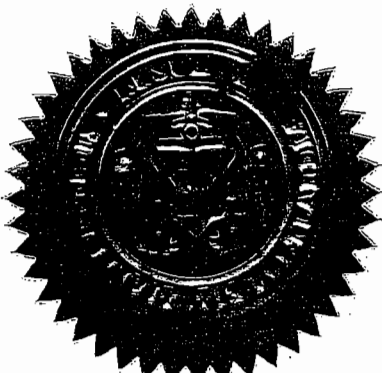
Victoria Lux
Molly Mack
Mikayla Moran
Pam Mukiza
Olivia Smith
Ayla Tarte
Jackie Welch

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 express sincere congratulations to the players and coaches for an outstanding season and for winning the **2013 High School Basketball State Championship.**

Signed and sealed this 22nd day of April, 2013



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



Order 177-12/13
Tab 5 4-22-13

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

CITY OF PORTLAND
IN THE CITY COUNCIL

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

ORDER APPOINTING CONSTABLES
RE: DEPARTMENT OF PUBLIC SERVICES

ORDERED, that the individuals listed below are hereby appointed as constables for the year 2013; and

BE IT FURTHER ORDERED, that these appointments shall be effective from May 21, 2013, until 12:00 midnight, October 31, 2013; and

BE IT FURTHER ORDERED, that these appointments are pursuant to Sections 20-19 and 20-19.5, Portland City Code, and none are allowed to carry a firearm, concealed or unconcealed, in the performance of their duties, or to make arrests, or issue parking tickets.

Rebecca Maiorano
Travis Wade

*Order 178-12/13
Tab 6 4-22-13*

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

CITY OF PORTLAND
IN THE CITY COUNCIL

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

ORDER APPOINTING SPECIAL COUNCIL COMMITTEES FOR 2013

ORDERED, that the individuals identified in Attachment A to this order are hereby appointed as members of the committees listed in the attachment for calendar year 2013.

**ANNUAL APPOINTMENTS AND NOMINATIONS TO
BOARDS AND COMMISSIONS
2013
ATTACHMENT A**

Casco Bay Island Transit District

Councilor Kevin Donoghue

Council of Governments General Assembly

Mayor Michael Brennan
Councilor Ed Suslovic (Exec. Comm)
Councilor John Anton
Councilor Cheryl Leeman
Councilor David Marshall

Alternates

City Manager Mark Rees (Exec Comm)

Cumberland County Budget Advisory Committee

Councilor Jill Duson
Councilor David Marshall

ECOMaine

Councilor John Anton
Councilor Edward Suslovic
City Manager Mark H. Rees
Michael Bobinsky, Dir. DPS
Troy Moon, Env. Dept. Dir.

Fish Exchange

Councilor Nicholas Mavodones, Jr.

Fish Pier Authority

Councilor Nicholas Mavodones, Jr.

Greater Portland Transit District

Councilor John Anton
Councilor David Marshall
Councilor Kevin Donoghue
Councilor Edward Suslovic
Paul Bradbury, Jetport Dir.

Island Advisory Committee

Councilor Kevin Donoghue
Mike Murray

Jetport Noise Advisory Committee

Councilor Edward Suslovic

Land Bank Commission

Councilor Cheryl Leeman

Larry Trustee

Councilor Edward Suslovic

Maine Municipal Association Legislative Policy Committee

Mayor Michael Brennan
Councilor Jill Duson
Councilor Ed Suslovic
City Manager, Mark Rees

Alternates

Danielle West-Chuhta, Corp.
Counsel
Councilor John Anton
Councilor John Coyne

Metro Regional Coalition

Mayor Michael Brennan
Councilor Edward Suslovic
City Manager, Mark Rees

Parks Commission

Councilor John Coyne

Portland Chamber Economic Development Committee

Greg Mitchell

Portland Community Chamber

City Manager, Mark Rees

Portland Development Corporation

Mark Rees, City Manager
Mayor Michael Brennan

Portland Downtown District

Councilor David Marshall

Portland Public Arts Committee

Councilor David Marshall

Waterfront Alliance

Councilor Nicholas
Mavodones, Jr.

Order 179-12/13
Tab 7 4-22-13

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

CITY OF PORTLAND
IN THE CITY COUNCIL

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

ORDER APPOINTING WARD CLERK FOR PRECINCT 2-1

ORDERED, that the following person is hereby appointed to fill out the unexpired term as Ward Clerk for Precinct 2-1, said term to run through and include the November 5, 2013 election.

Name	Title	Precinct
Richard Mercier	Ward Clerk	2-1



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

MEMORANDUM

TO: Mayor Michael Brennan and Members of the Portland City Council
FROM: Katherine L. Jones, City Clerk
DATE: April 4, 2013
RE: Ward Clerk

I am recommending Richard Mercier to be appointed as Ward Clerk for District 2-1. The previous Ward Clerk, Nancy Parker, can no longer fulfill this position.

*Order 180-12/13
Tab 8 4-22-13*

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

CITY OF PORTLAND
IN THE CITY COUNCIL

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

ORDER GRANTING EASEMENT TO 119 DEVELOPMENT, LLC

ORDERED, that an easement is hereby granted to 119 Development, LLC in substantially the form attached hereto as Attachment 1.

**City of Portland, Maine
City Council Agenda Request Form**

TO: Sonia Bean, Senior Administrative Assistant

FROM: Danielle West-Chuhta, Corporation Counsel

DATE: March 28, 2013

- 1) Council meeting at which action is requested:

1st reading: _____ April 22, 2013 _____

Final action: _____ April 22, 2013 _____

- 2) Can action be taken at a later date: ☒ YES ☐ NO

If not, why not: _____

- 3) This item is sponsored by: _____ Corporation Counsel _____

(If the item is sponsored by a Council Committee include the date the committee met and the outcome of the vote.)

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

I. SUMMARY OF ISSUE Approval for granting 119 Development, LLC easements for the sidewalk area located at 119 Exchange Street; portions of the old Portland Press Herald building and fire escape that extend beyond the parcel boundaries of the land towards Federal Street; and to use and occupy spaces below the sidewalk on Market, Exchange and Federal Street for a radiant snow melt system, and grease trap.

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

To install, use, repair and maintain a radiant snow melting system under the sidewalk and to install, use, repair and maintain a grease trap to be used in connection with the restaurant in the building.

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

This easement will approve/allow the installation and continued maintenance of the snow melt system, grease trap, fire escape and small portions of the building done by 119 Development, LLC.

IV. FINANCIAL IMPACT

None

V. STAFF ANALYSIS & RECOMMENDATION Corporation Counsel's Office, the Planning Department and the Department of Public Services have reviewed this request and all recommend that the easements be granted to 119 Development, LLC.

Attachments: Easement and map.

EASEMENT

KNOW ALL PERSONS BY THESE PRESENTS, that the CITY OF PORTLAND, a Maine body corporate and politic, with a mailing address of City Hall, 389 Congress Street, Portland, Maine 04101 ("Grantor"), FOR VALUABLE CONSIDERATION, does hereby GRANT to 119 Development LLC, a Maine limited liability company with a place of business in Portland, Maine and mailing address of P.O. Box 7486, Portland, Maine 04112-7486 (the "Grantee"), easements for the purposes set forth below, over portions of Grantor's land as described below (collectively, "Grantor's Land"). The land which is subject to the easements granted herein abuts land of Grantee, located at 119 Exchange Street (also identified as 390 Congress Street) in Portland, Maine which is described in a deed from Metro Media Properties, LLC to Grantor recorded in said Registry in Book _____, Page _____ ("Grantee's Land").

1. Grantor grants to Grantee a permanent and perpetual easement over and under the sidewalk area shown on the plans attached hereto as Exhibits A and B and made a part hereof (collectively the "Plan"), which is labeled "Easement 1 Area", for the purpose of installing, using, repairing and maintaining a radiant snow melting system (the "Snow Melt System") under the sidewalk.

2. Grantor grants to Grantee a permanent and perpetual easement over and under the sidewalk area shown on the Plan which is labeled "Easement 2 Area", for the purpose of installing, using, repairing and maintaining a grease trap (the "Grease Trap") to be used in connection with the restaurant in the building which is to be constructed by Grantee on Grantee's Land.

3. Grantor grants to Grantee a permanent and perpetual easement for portions of the building on Grantee's Land in existence on the date of this easement and a fire escape (as it may be reconstructed as approved by Grantor) that extend beyond the parcel boundaries of Grantee's land towards Federal Street.

4. Grantor grants to Grantee a permanent and perpetual easement to use and occupy spaces below the sidewalk on each of Market, Exchange and Federal Streets in the areas as shown on Exhibit C attached hereto and made a part hereof. Grantee shall be responsible for maintaining the structural integrity of, and repairing, as necessary, the spaces covered by this easement. In the event of damage to the spaces covered by this agreement including, but not limited to, the Snow Melt System, Grease Trap, fire escape or canopy areas, the Grantee shall promptly repair/restore said spaces, subject, however to the provisions of subsection (a) below with respect to the Snow Melt System and Grease Trap.

(a) Grantee shall have the right to install the Snow Melt System and the Grease Trap in the locations approved by the City. So long as Grantee actively uses either or both of the Snow Melt System and the Grease Trap, Grantee shall have the obligation and right to maintain and/or repair the Snow Melt System and the Grease Trap and shall have responsibility for engaging a private utility locating and excavating service concerning location of below-grade utilities and reporting when required on the existence of the Snow Melt System when there is

below-grade excavation occurring nearby of which Grantee becomes aware. If Grantee either ceases or does not begin use of either the Snow Melt System or Grease Trap, Grantee shall maintain and/or remove either or both to the extent required by the City so as to cause no damage to any public improvements. Grantee shall have the right to engage in all related construction and maintenance work, provided Grantee notifies the Grantor prior to undertaking said work, restores Grantor's Land to substantially its original condition after all such installation, construction, maintenance or repair activities and complies with traffic management plan required by Grantor. Grantee shall pay any and all installation, construction, maintenance and repair costs relating to the Snow Melt System, the Grease Trap and any encroachments of the building described herein and shall not look to Grantor for payment of any of such costs.

(b) Grantee assumes all responsibility, and shall defend, indemnify and hold the City harmless, for any and all claims and/or damage to persons or property arising out of or in any way to the Snow Melt System, the Grease Trap and any encroachments of the building described herein including, but not limited to, the fire escape and canopies.

TO HAVE AND TO HOLD the aforegranted and bargained easements, with all privileges and appurtenances thereof, to the Grantee, its successors and assigns, to its and their use and behoof, forever.

IN WITNESS WHEREOF, the City of Portland, the Grantor, has caused this instrument to be duly executed, this ____ day of _____, 2013.

WITNESS:

CITY OF PORTLAND

By: _____
Mark Rees, its City Manager

STATE OF MAINE
CUMBERLAND, ss

_____, 2013

PERSONALLY APPEARED the above-named Mark Rees, City Manager of the City of Portland as aforesaid, and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of said City of Portland.

Before me,

Notary Public/Attorney at Law

Print name: _____

My commission expires: _____

EXHIBIT A-EASEMENT-SITE PLAN

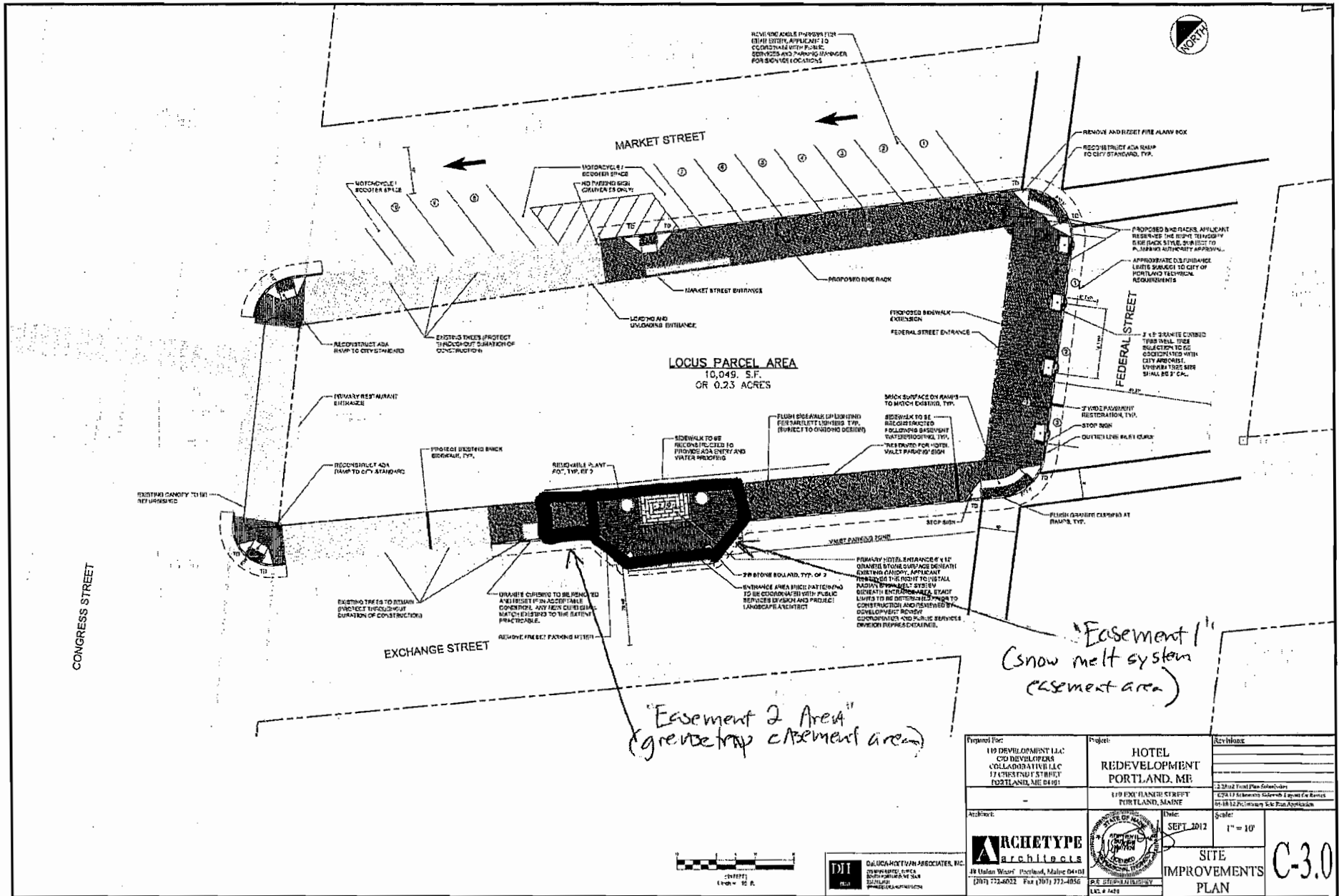
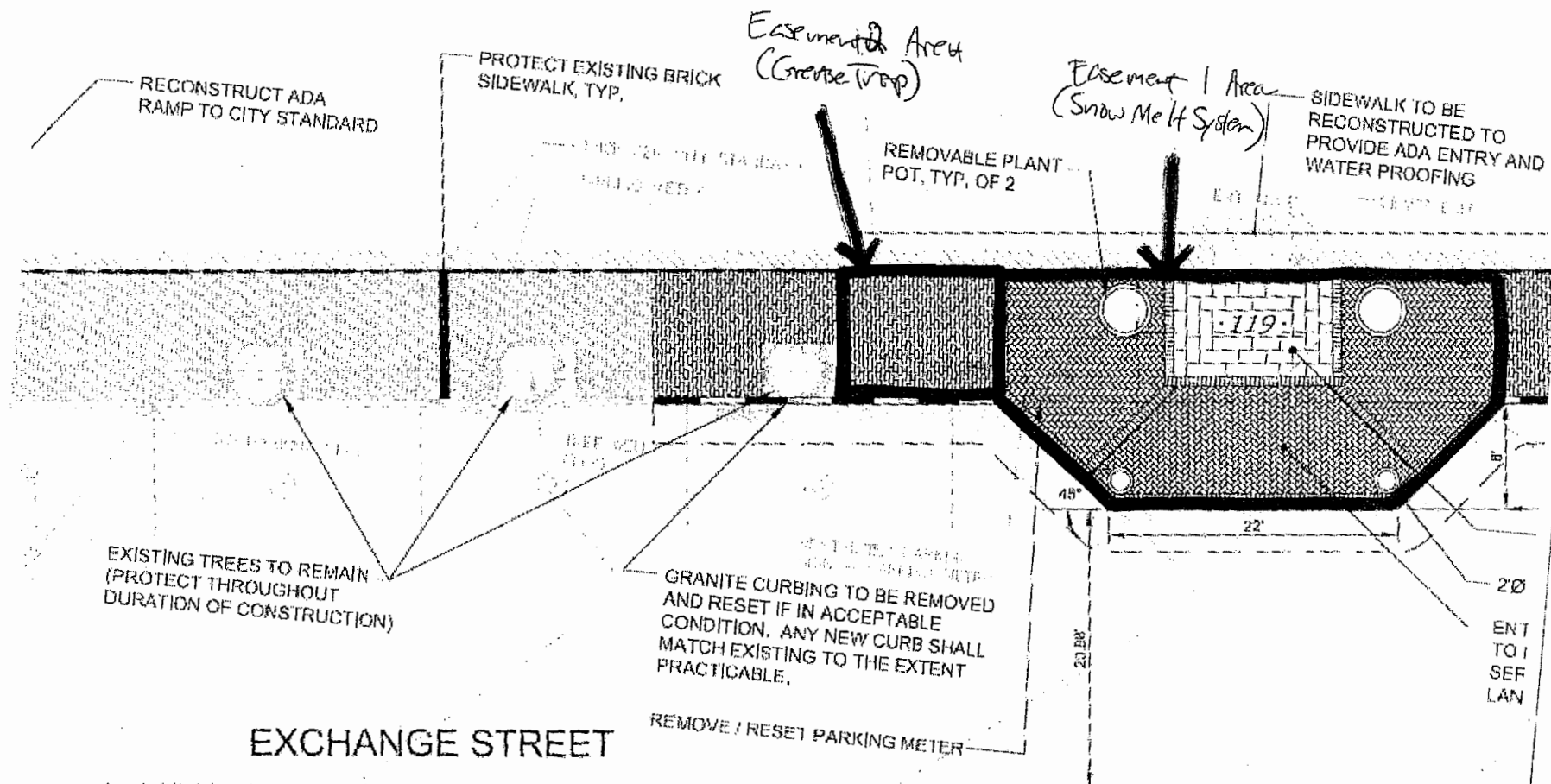


EXHIBIT B-EASEMENT- DETAIL



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

CITY OF PORTLAND
IN THE CITY COUNCIL

Order 181-12/13
Tab 9 4-22-13

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

**ORDER DECLARING "CRAFT BEER COMES TO PORTLAND 2013"
AS A FESTIVAL AND APPROVING CONTRACT AND PERMITS THEREFOR**

ORDERED, that Saturday, July 13, 2013, is hereby declared Craft Beer Comes to Portland 2013 and the City Manager is authorized to grant permits to the organizers of Craft Beer Comes to Portland 2013, **Maine Brewers' Guild**, pursuant to Sec. 25-27 of the Portland City Code for the following activities:

Use of the Maine State Pier from 8:00 a.m. on Saturday, July 13, through 11:59 p.m. Saturday July 13, for a Craft Beer tasting with vendors, food and music to be held from 12:00 p.m. Saturday July 13, 2013 until 4:00 p.m. Saturday July 13, 2013, with gates opening at 12:00 p.m.; 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 **Maine Brewers' Guild** contractor and the City to focus volume on the pier and its immediate environment.

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 solely in the Beverage Services area of the Maine State Pier from 12:00 p.m. Saturday to 4:00 p.m. Saturday;

BE IT FURTHER ORDERED, that **Maine Brewers' Guild** shall reimburse the City for all expenses incurred by City Departments in connection with the Festival;

BE IT FURTHER ORDERED, that **Maine Brewers' Guild** 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; **Maine Brewers' Guild** shall further provide liquor liability insurance covering the sale and consumption of alcoholic beverages;

BE IT FURTHER ORDERED, that the City Manager is authorized to enter into the Agreement attached hereto for the use of the Maine State Pier on July 13th, and the provisions of said Agreement shall control the use of said Pier;

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.



Recreation and Facilities Management
Public Assembly Facilities Division

The mission of the Maine Brewers' Guild (www.mainebrewersguild.org) is "promoting the craft brewed industry in Maine. Our mission is to keep Maine in the forefront of the microbrew revolution by offering high quality and creative diversity for the customer." This is one of two (2) fundraising events the club plans to host this year. They hosted the successful "Craft Beer Comes to Boothbay" event last year in Boothbay, Maine.

While "Craft Beer Comes to Portland" is a 21 and over event, access to the all other portions of the pier and to the schooners that operate from the Maine State Pier would be preserved all day as would access to and egress from the adjacent Casco Bay Lines Terminal and garage. 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 **Maine Brewers' Guild** contractor and the City to focus volume on the pier and its immediate environment, limiting any sound impacts in residential areas. Beer would be available in the restricted "Beer Garden/event" area of the pier, to which access would be limited to those twenty one (21) and over.

**CITY OF PORTLAND, MAINE
CITY COUNCIL AGENDA REQUEST FORM**

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

- (1) copy to Manager's Office
- (1) copy to Legal Office (Mary Costigan)

1. Council Meeting at which action is requested (date): April 15, 2013
2. Can action be taken at a later date? Yes X No

If no, why not?

Event organizers would like to start publicizing and organizing this event prior to the next City Council meeting.

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 "Craft Beer Comes to Portland" as a Festival. Festival is scheduled for Saturday, July 13, 2013, on the Maine State Pier.

Festival areas bordered by:

All of Maine State Pier, up to (the old) BIW's loading dock and parking / roadway area of Casco Bay Ferry Terminal.

Use of the Maine State Pier from 8:00 a.m. on Saturday, July 13, through 11:59 p.m. Saturday July 13, for a Craft Beer tasting with vendors, food and music to be held from 12:00 p.m. Saturday July 13, 2013 until 4:00 p.m. Saturday July 13, 2013, with gates opening at 12:00 p.m.; 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 **Maine Brewers' Guild** contractor and the City to focus volume on the pier and its immediate environment.

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

- Festival Declaration
- Allows for control of vendors
- Granting approval for alcohol sales (Maine State Pier)

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

See above.

IV. FINANCIAL IMPACT

All costs incurred by City Departments are reimbursed by **Maine Brewers' Guild** organizers of the event.

V. STAFF ANALYSIS & RECOMMENDATION

This is comparable to other small Maine State Pier events, such as Falmouth Rotary's Lobster Fest.

**OPERATING AGREEMENT FOR MAINE STATE PIER
CRAFT BEER COMES TO PORTLAND 2013**

THIS AGREEMENT made this 15th day of April, by and between the **CITY OF PORTLAND**, a body politic and corporate situated in the County of Cumberland, State of Maine (hereinafter "**CITY**") and **MAINE BREWERS' GUILD** a Maine non-profit corporation, having a place of business in Portland, Maine (hereinafter **MAINE BREWERS' GUILD**), for the use of the Maine State Pier and other venues, all as more particularly described in the "Order Declaring Craft Beer Comes to Portland 2013 Festival and Approving Contract and Permits Therefor," enacted by vote of the City Council of the City of Portland on April 15, 2013. A copy of the Order is attached hereto as Exhibit A.

In consideration of their mutual covenants, promises, and agreements, and other good and valuable consideration, receipt of which is hereby acknowledged, the aforesaid parties agree as follows:

DEFINITIONS

City means City Manager and includes his designated representative(s).

Event means the activities described in Exhibit A, and which are also referred to herein as "Festival."

Maine State Pier includes the area of the pier from the Fore River to the Portland Pier as well as the parking/roadway area serving the Casco Bay Ferry Terminal.

Premises means the Maine State Pier, as described herein.

USE OF PREMISES

1. **Term.** **MAINE BREWERS' GUILD** may use the Premises only on the days and during the periods set forth herein:

- a. **MAINE BREWERS' GUILD** will have use of the Maine State Pier from 8:00 a.m. on Saturday, July 13, through 11:59 p.m. Saturday July 13, for a Beer Tasting with vendors, food and music to be held from 12:00 p.m. Saturday July 13, 2013 until 4:00 p.m. Saturday July 13, 2013, with gates opening at 12:00 p.m.
- b. Temporary tables or stands for the Event may be erected. Booths and tables must be set up so that they will not interfere with access to the rest of the pier. Wheel chair access and sidewalk access shall be clear at all times. The adequacy of other walkways on the Premises shall be approved by the Police and Fire Departments.
- c. All tents, tables or stands located on the Premises will be anchored by use of weights (e.g. sand bags, jersey barriers). No drilling of holes is permitted for any purpose on the Premises.
- d. A Beverage Services area for sales of alcoholic beverages shall be permitted and shall be limited as depicted in Exhibit B. Alcoholic beverages may not be removed from the defined Beverage Services area and admission to the Beverage Services area shall be restricted to individuals 21 and over. **CITY** staff shall check i.d.'s and provide wrist bands to individuals for access to the Beverage Services area. **CITY** staff shall secure all sides of the Beverage Services area, to prohibit both unauthorized access to and the removal of beverages from this area.
- e. Any other alterations to the Maine State Pier must receive the prior written approval of the Director of Public Buildings.

2. **Parking.** No vendor or spectator vehicles shall be allowed to park on the Pier. Deliveries shall be limited to no more than two (2) trucks less than 20 feet in length at any time (hereinafter "small truck"). In no event shall any small truck be parked on the Pier for more than fifteen (15) minutes. All other parking shall be accomplished off the Pier. Vendors' vehicles shall not interfere at any time with access to the Ready Seafood loading area or to the car ferry loading area.

3. **Portable Toilets.** **MAINE BREWERS' GUILD** shall be responsible for providing a minimum of four (4) regular and one handicap accessible portable toilets. All portable toilets shall be located in a position designated by **CITY** staff.

4. **Restrictions on Use.** **MAINE BREWERS' GUILD** hereby agrees to observe the following restrictions on the use of the Pier:

- a. 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. PA Speakers for the festival shall be placed facing north and be configured by **MAINE BREWERS' GUILD's** contractor and the City to focus volume on the pier and its immediate environment.

- b. Arrangements for access to the pier and use of utility connections will be the responsibility of **MAINE BREWERS' GUILD**. **MAINE BREWERS' GUILD** will make arrangements for such activities through the office of Andrew Downs, Director of Public Assembly Facilities Division (207) 874 – 8200.
- c. Public admission to the Festival on the Pier shall be limited to the number of attendees approved by the Portland Fire Department.
- d. **CITY** shall supply all required security at the level deemed required by the **CITY**. The **CITY** reserves the right to increase amounts for security at any time, i.e. City of Portland Police, Fire (Firefighters and Firefighter/Paramedics) personnel, if he/she deems it necessary to protect public safety. **MAINE BREWERS' GUILD** agrees to pay for the cost of any required coverage on the Pier by PAF, Police or Fire staff at the **CITY**'s applicable rates.
- e. **MAINE BREWERS' GUILD** shall not stage or promote any act or performance in which pyrotechnics, explosives or display of open flames are involved or used.
- f. **MAINE BREWERS' GUILD** agrees to maintain all aisles and exits at all times and to order that any item be moved from an aisle or an exit per request of the **CITY**. **MAINE BREWERS' GUILD** shall not render, or allow any of its exhibitors, contractors, agents, invitees or other persons it permits on the premises to render, the Maine State Pier or any part thereof inaccessible to disabled persons. In the event that **MAINE BREWERS' GUILD** or any of its exhibitors, contractors, agents, invitees or other persons it permits on the premises render the Maine State Pier or any part thereof inaccessible to disabled persons, **MAINE BREWERS' GUILD** shall immediately remove the cause and return the Maine State Pier to compliance. In the event that the **CITY** is requested to provide interpretive services, it shall be the responsibility of the **MAINE BREWERS' GUILD** to provide and pay for such services. **MAINE BREWERS' GUILD** shall pay and hold the **CITY** harmless from any and all damages, loss, or liability of any kind whatsoever resulting from its actions, or those of its exhibitors, contractors, agents, invitees or other persons it permits on the premises, in rendering the Maine State Pier or any part thereof inaccessible to disabled persons. **CITY** staff reserves the right to enter all areas of the pier at any time for any reason.
- g. The **CITY** reserves the right to close any event to the public, including to ticket holders, at any time to protect public safety to address overcrowding in aisles, exits or entrances or turnstile/ticket counts in excess of the total number of tickets authorized prior to the event.

5. **Existing Conditions/Alterations.** Except as specifically provided below, **MAINE BREWERS' GUILD** agrees to accept the Pier and the other Premises in their existing condition at the time of commencement for use and occupancy. It further agrees that no representations, statements, or warranties, express or implied, have been made by or on behalf of **CITY** in respect thereto, except as contained in the provisions of this Agreement. The **CITY** shall in no event be liable for any latent defects of the Pier or the other Premises, unless the **CITY** has actual knowledge of the defect and has failed to disclose such information to **MAINE BREWERS' GUILD**.

6. The **CITY** shall have no responsibility whatsoever for site preparation, modification, set-up, removal or security of event equipment at any time. **MAINE BREWERS' GUILD** shall be responsible for removal of all equipment and for site cleanup at the end of the Event. Any equipment or material left after 12:00 noon on the day following the Event (Sunday July 14, 2013) will become the property of the **CITY**, and may be removed and disposed of at **CITY's** discretion. In such an event, all costs of removal and/or disposition incurred by the **CITY** shall be added to the **CITY's** clean up costs. Said costs shall be billed to **MAINE BREWERS' GUILD** following the Event.

6.1 No alcoholic beverages shall be sold or served on the streets or other public property. The sale and consumption of alcoholic beverages will be permitted only in the Beverage Service Area on the Pier as depicted on Exhibit B.

6.2 The sale and consumption of alcoholic beverages shall be limited to the hours 12:00 p.m. Saturday July 13, 2013 to 4:00 p.m. Saturday July 13, 2013.

6.3 Sales at the Festival shall be limited to clothing items, food and beverages, including alcoholic beverages. The parties may mutually agree to expand the types of items that may be sold at the Festival. The **CITY** will charge a twenty percent (20%) (Non-profit rate) merchandising fee on gross sales for all goods sold specific to the artist and/or event, including, but not limited to: recordings, posters, t-shirts, banners, programs, pictures, etc. No merchandising fee shall be due on the sale of food and beverages, including alcoholic beverages. If **MAINE BREWERS' GUILD** provides merchandising labor, the merchandising fee is reduced to ten percent (10%) (Non-profit rate) on gross sales, and the **CITY**, at any time, shall have the right to make such inspection of merchandise, accounts, records and reports of **MAINE BREWERS' GUILD** or its subcontractor responsible for merchandise sales, as **CITY** deems necessary. **MAINE BREWERS' GUILD** agrees to make all such information available. The permission to sell any such items must be granted by the **CITY**. The amounts assessed shall be due and payable prior to the end time of rental.

6.4 No person shall be denied admission to any of the Events on the basis of race, color, creed, national origin, sex, disability or sexual orientation.

6.5 **MAINE BREWERS' GUILD** agrees to comply with all applicable federal, state and local laws in its use of the Premises, including but not limited to, all applicable fire and life safety codes. **MAINE BREWERS' GUILD** agrees to consult with City's Fire Chief prior to any operations under this Agreement to determine fire safety requirements.

6.6 **MAINE BREWERS' GUILD** agrees to return all the Premises to the **CITY** in the same condition in which they were received; and, further, **MAINE BREWERS' GUILD** agrees it will remain responsible for all reasonable costs of clean up associated with the Event, including any costs which may be incurred by the **CITY**.

7. **Concessions/Licenses.** **MAINE BREWERS' GUILD** 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.

FEES, CHARGES AND OTHER FINANCIAL OBLIGATIONS

8. **Fees.** The rental fee for the use of the Maine State Pier as provided herein shall be Six Hundred Seventy Five Dollars (\$675.00). **MAINE BREWERS' GUILD** shall be invoiced and make payment for, in advance of the event, both the Rental Fee and all **CITY** services, including but not limited to Recreation and Facilities Management, Police, Fire, and Parking, based upon the **CITY's** initial estimate for such services (\$2,360.00 including the \$675.00 Rental Fee). Any deductions or additional charges will be adjusted within five (5) days of the event, with any additional payment required due within thirty (30) days of the event.

8.1 **MAINE BREWERS' GUILD** agrees to pay interest at the rate of one and one-half percent (1 ½%) per month on any payment which is not made within the time limits set forth in this Agreement.

8.2 **Noise control; deposit.** **MAINE BREWERS' GUILD** agrees to deposit with **CITY** by bank check the sum of One Thousand Dollars (\$1,000). In the event **CITY** receives 3 or more independent noise complaints from Portland residents based on loud music, and **MAINE BREWERS' GUILD** is so notified by the **CITY's** Police Department and fails to reduce the volume of music, as evidenced by **CITY** receiving additional noise complaints, **MAINE BREWERS' GUILD** shall forfeit the One Thousand Dollar (\$1,000) check to the **CITY**. **CITY** shall return the One Thousand Dollar (\$1,000) check if it receives less than three (3) independent noise complaints based on loud music or, **MAINE BREWERS' GUILD** responds adequately to the complaints by reducing the music volume. **MAINE BREWERS' GUILD** further agrees that nothing in this paragraph relieves it of its obligation under paragraph 6 to reduce the volume of music on request of the Police Department regardless of the number of noise complaints received by the **CITY** and that nothing in this paragraph prevents the **CITY** from seeking additional penalties for violations of its noise ordinances.

9. **Insurance.** **MAINE BREWERS' GUILD** shall procure and maintain commercial general liability insurance, contractual and products liability insurance, insuring both itself and the **CITY** during the time that it has rights under this Agreement against liability for claims arising out of the activities hereunder, including One Million Dollars (\$1,000,000) combined single limit commercial general liability including contractual liability and Two Million Dollars (\$2,000,000) aggregate.

Establishments providing liquor shall provide liquor liability insurance, naming **CITY** as additional insured. A copy of the certificate of insurance shall be provided to **CITY**.

9.1. The **CITY** shall be named as an additional insured in all such policies and all insurance provided by **MAINE BREWERS' GUILD** shall be primary to any insurance the **CITY** may have.

9.2. **MAINE BREWERS' GUILD** will provide evidence of workers' compensation insurance, to the extent required by Maine Law, in the event that it will have any employees working on any of the Premises.

9.3. **MAINE BREWERS' GUILD** will furnish certificates of insurance indicating that it has provided the coverage required herein a minimum of seven (7) days prior to the start time of rental. **CITY** shall immediately refuse continued rental of the Maine State Pier and cancel the event if **MAINE BREWERS' GUILD** does not purchase the required insurance or if the certificate of insurance is not received a minimum of seven (7) days prior to the start time of rental.

9.4. All certificates of insurance shall provide that they may not be canceled without thirty (30) days prior written notice to the **CITY**.

9.5. All insurance required by this Agreement shall be placed with insurers licensed to do business in the State of Maine and acceptable to the **CITY**, such acceptance not to be unreasonably withheld.

9.6. **MAINE BREWERS' GUILD** agrees to waive subrogation rights against **CITY**.

9.7. In the event **MAINE BREWERS' GUILD** provides the insurance required herein by means of a claims made, rather than an occurrence policy, the insurer shall provide the **CITY** with the retro date of the policy (which may not be later than the first day **MAINE BREWERS' GUILD** commences use of the Premises), as well as an "extended reporting period endorsement" which shall extend the time within which claims may be submitted to a period ending six years from the last date of use of the Premises by **MAINE BREWERS' GUILD**.

9.8 **MAINE BREWERS' GUILD** shall be responsible for all work performed by its subcontractors or anyone hired or employed by **MAINE BREWERS' GUILD** to perform services or provide supplies related to the event. All subcontractors of **MAINE BREWERS' GUILD** shall provide public liability insurance in an amount of not less than One Million Dollars (\$1,000,000) combined single limit for bodily injury and general liability and Four Hundred Thousand Dollars (\$400,000) property damage per incident, naming the City of Portland as an additional insured from such claims, and worker's compensation insurance. A copy of the certificate of insurance must be on file at the **ADMINISTRATIVE OFFICES OF THE PUBLIC ASSEMBLY FACILITIES DIVISION**. The certificate must provide thirty (30) days written notice to the **CITY** of termination of insurance from the insurance company or agent. The **CITY** shall prohibit the **MAINE BREWERS' GUILD** subcontractor access to the **FACILITY** if the certificate is not on file.

10. **Indemnification**. To the fullest extent permitted by law, **MAINE BREWERS' GUILD** shall, at its own expense, defend, indemnify, and hold harmless the **CITY**, its officers, and employees, from and against any and all claims, damages, penalties, losses, expenses or judgments, whether just or unjust, arising from injury or death to any person, property, or environmental damage, either arising out of or resulting from its activities under this Agreement or resulting from any act or omission of **MAINE BREWERS' GUILD**, its officers, agents, invitees, servants or employees, except to the extent that such injury, death, property or environmental damage results from the negligent act of the **CITY**, its officers, agents and employees. **MAINE BREWERS' GUILD** will, at its own costs and expense, defend any and all such suits, actions, or claims, whether just or unjust, which may be brought against the **CITY**,

its officers, agents, and employees, or in which it or they may be impleaded with others. Such obligation of indemnity and defense shall not be construed to negate nor abridge any other right of indemnification or contribution which may benefit either **MAINE BREWERS' GUILD**, or the **CITY**.

11. **Other Financial Obligations.**

11.1. **MAINE BREWERS' GUILD** shall be responsible for payment of any State or Federal taxes, or any other governmental assessment which may be made in connection with the Event.

11.2. **MAINE BREWERS' GUILD** acknowledges and agrees that it will be solely responsible for all royalties or charges which are due or may become due on material used for or during the event. **MAINE BREWERS' GUILD** warrants to the **CITY** that such royalties or charges have been paid or will be paid promptly in accordance with law. **MAINE BREWERS' GUILD** further agrees to hold the **CITY** harmless and indemnify it for all its costs or losses, just or unjust, including attorney's fees in defense of claims, relating to payment of any royalty, charge or fee for the use of material by **MAINE BREWERS' GUILD** during the event.

11.3. **MAINE BREWERS' GUILD** agrees to provide the **CITY** ten (10) complimentary tickets.

12. **Reimbursement of Damages.** If the **CITY**, in its sole discretion, determines that there is damage to any of the venues as a result of the Event, the **CITY** will notify **MAINE BREWERS' GUILD** prior to its repairing said damage, and **MAINE BREWERS' GUILD** shall be solely responsible for all costs related to said repairs and/or restoration. The **CITY** shall determine the nature and extent of any such damage, and shall have the sole discretion to determine the scope of the necessary repairs and/or restoration.

12.1. Prior to undertaking any repair work under paragraph 12, **CITY** will provide **MAINE BREWERS' GUILD** with an estimate of the cost of said work and will review the site and the work needed with **MAINE BREWERS' GUILD**. Only upon the **CITY's** prior agreement, as to the scope, schedule and contractor to do the work, may **MAINE BREWERS' GUILD** have the repair work done by non-**CITY** sources at **MAINE BREWERS' GUILD's** sole cost and expense. Said work shall be completed to **CITY's** satisfaction. Otherwise, the **CITY** will provide **MAINE BREWERS' GUILD** with a separate detailed invoice for repair costs upon their completion, which invoice shall be due and payable, in full, to the **CITY** within thirty (30) days of receipt thereof.

TERMINATION

13. **Termination by City Manager.** The City Manager may terminate this Agreement, without prior notice to **MAINE BREWERS' GUILD**, under the following conditions:

- (a) A good faith determination by the City Manager that **MAINE BREWERS' GUILD** has failed to comply with any of the terms or conditions of this Agreement;
- (b) Failure of **MAINE BREWERS' GUILD** to respond appropriately to excessive and substantiated noise complaints about the Event as defined in §8.2, which complaints reflect significant public inconvenience or other breaches of the peace, as determined by the City Manager;
- (c) Upon determination by the City Manager that **MAINE BREWERS' GUILD** has made material misrepresentations to the **CITY** in connection with its use or occupancy of any of the Premises; or
- (d) The **CITY** is prevented from furnishing use of any of the Premises, or any portion thereof to **MAINE BREWERS' GUILD** on the date(s) scheduled, by events, actions, or occurrences, not within the complete control of the **CITY**, including, but not limited to any official order or proceeding which limits or prohibits the use of the Premises. In the event of such termination, the **CITY's** obligations hereunder shall be limited to the refunding of amounts previously paid by **MAINE BREWERS' GUILD** to the **CITY** in connection with this Agreement.

14. **Termination by MAINE BREWERS' GUILD.** **MAINE BREWERS' GUILD** may terminate this Agreement by written notice no later than Tuesday May 29, 2012. In the event **MAINE BREWERS' GUILD** terminates this Agreement, the **CITY** shall retain or collect from the **LESSEE** twenty-five percent (25%) of the Rental Fee amount and any actual costs directly incurred by **CITY** in preparation for the Event or any damage caused to the Premises by **MAINE BREWERS' GUILD**.

ADDITIONAL TERMS

15. **Waiver.** The failure of the **CITY** to insist upon a strict performance of any of the terms and conditions hereof shall be deemed a waiver of the rights or remedies that it may have regarding that specific instance only, and shall not be deemed to be a waiver of any subsequent breach or default in any terms and conditions.

16. **Assignment.** **MAINE BREWERS' GUILD** may not assign any right granted by this Agreement without the prior written consent of the City Manager; provided, however, that **MAINE BREWERS' GUILD** may engage subcontractors or hire individuals to perform services or provide supplies related to the Event.

17. **Attorney's Fees.** **MAINE BREWERS' GUILD** shall pay all reasonable attorney's fees and costs on behalf of **CITY** if: (i) **CITY** should institute litigation against it for breach of any term or condition of this Agreement; (ii) **CITY** should institute litigation against **MAINE BREWERS' GUILD** for an unlawful detainer of the Premises; (iii) **CITY** is made a party to litigation against **MAINE BREWERS' GUILD**, instituted by a third party related to use of the Premises under this Agreement; or (iv) (if the **CITY** is required to defend itself against any action or defense prosecuted by **MAINE BREWERS' GUILD** arising out of its use or occupancy of the Premises which does not result in a final judgment in favor of **MAINE**

BREWERS' GUILD. Fees and costs of defense incurred by the **CITY** shall be reimbursed within thirty (30) days of invoice whether the litigation is prosecuted to judgment or not. Amounts advanced by **CITY**, not reimbursed within said thirty (30) days, shall bear interest at a rate of one and one half percent (1½%) per month.

18. **Complete Agreement.** This Agreement and its Exhibits constitute an entire and integrated agreement, and supersede all the terms and conditions of any prior agreement, negotiations, or representations, written or oral, between the parties. This Agreement may not be modified, except in writing, signed by the parties.

19. **Rights Acquired.** No rights will be acquired under this Agreement until the following have been provided to **CITY**, in forms acceptable to it:

19.1. An Original and Copy of this Agreement executed by **MAINE BREWERS' GUILD.**

19.2. Certificates of insurance and proof of security deposits.

19.3. Proof of payment of all fees which are required to be paid in advance.

IN WITNESS WHEREOF, the **CITY OF PORTLAND** has caused this Agreement to be signed by Mark Rees, City Manager, and **MAINE BREWERS' GUILD**, has caused this Agreement to be signed by _____, its _____ thereunto duly authorized the day and year first above written.

WITNESS:

CITY OF PORTLAND

By: _____
Mark Rees
City Manager

WITNESS:

By: _____
Its: _____

Approved:

_____ Legal Office

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

CITY OF PORTLAND
IN THE CITY COUNCIL

Order 182-12/13
Tab 10 4-22-13

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

**ORDER DECLARING 27th ANNUAL SOUTHERN MAINE
PRIDE CELEBRATION FESTIVAL**

ORDERED, that Sunday, June 9, 2013 through Sunday, June 16, 2013, is hereby declared "The 27th Annual Southern Maine Pride Celebration Festival" and the City Manager is authorized to grant permits to the Southern Maine Pride Committee pursuant to Sec. 25-27 of the Portland City Code for the following activities:

Saturday, June 15, 2013:

- a. Use of Monument Square and area sidewalks, Monument Way, One City Center Sidewalk, Center Street, Federal Street Extension and sidewalks, Congress Street sidewalk area and Preble Street (from Cumberland Ave to Congress Street) and Federal Street Extension from 10:00 a.m. to 12:00 p.m., as a gathering point for parade participants. Floats will park on Preble Street – both lanes (from Cumberland Ave to Congress Street);
- b. Use of Congress Street (both sides of the street) west bound, from Monument Square to High Street, High Street (from Congress Street to Park Avenue), Park Avenue (from High Street to State Street Extension), State Street Extension (from Park Avenue to Forest Avenue) and entering Deering Oaks at Bowling Green Pathway (Floats park on Park Avenue) for a parade to begin at 12:00 p.m.;
- c. Use of Deering Oaks Park (the Park Ave side of the park, i.e. grass areas on the south side of the pond and ravine) and surrounding sidewalk areas abutting the park (Park Ave, Deering Ave, State Street and High Street sidewalks) for Pride Festival: entertainment, displays, food and non-food vendors from 1:00 p.m. – 7:00 p.m.;
- d. If inclement weather, the Festival at Deering Oaks Park would be moved indoors or cancelled, but the parade would still take place, rain or shine; and

BE IT FURTHER ORDERED, that the following streets shall be closed to traffic on Saturday, June 15th:

1. Federal Street Extension and Preble Street from Cumberland Ave. to Congress Street (9:00 a.m. – noon). Preble Street and Federal St. Ext. posted "no parking";

2. Center Street, from Free Street to Congress Street, closed to traffic and used for formation purposes.
3. Streets along the Parade route: Congress Street (Elm to High Street), High Street (Congress Street to Park Ave), Park Ave (High Street to State St Extension) and State Street Extension entrance to Deering Oaks Park will be closed for short periods of time by police officers in patrol cars and volunteers, blocking the intersection via a rolling barricade (approximately 12:00 p.m. – 1:00 p.m.).

BE IT FURTHER ORDERED, that the parade route and Festival area will also be closed to street vendors pursuant to Section 19-17 of the Portland City Code and is reserved for the use of the Southern Maine Pride Committee for the purpose of conducting the Pride Festival events, subject to the direction and control of the Acting City Manager; and

BE IT FURTHER ORDERED, that the City Manager is authorized to issue a revocable permit under Section 25-27 of the Municipal Code to the Southern Maine Pride Committee for the use of the above-described area for said Festival, subject to the following conditions:

1. The Southern Maine Pride Committee shall reimburse the City for all expenses incurred by City Departments for said 2013 Festival;
2. Under no circumstances may alcoholic beverages be sold on the streets or public property of said area during said festival;
4. The Southern Maine Pride Committee shall have sole authority over participating vendors at the event and may charge a fee to vendors for the opportunity to vend at the Festival;
5. Conditions for use of grounds, specified in a permit issued from Public Services Event Office, shall be adhered to; and
6. The Southern Maine Pride Committee shall indemnify the City and hold it harmless from and against all claims arising out of activities during said Festival, and shall take out and maintain public liability insurance coverage in the amount of at least \$400,000 (for use of Deering Oaks) combined single limit for personal or bodily injury, death or property damage for said purpose. This insurance certificate will also list the City of Portland as an additional insured thereon; and

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

**CITY OF PORTLAND, MAINE
CITY COUNCIL AGENDA REQUEST FORM**

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

- (1) copy to Manager's Office
- (1) copy to Legal Office

1. Council Meeting at which action is requested (date): April 22, 2013
2. Can action be taken at a later date? x Yes No
If no, why not? Actual Festival at Deering Oaks is scheduled for June 15.

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

Please see attached memo from the Southern Maine Pride Committee.
Declare Sunday, June 9, 2013 – Sunday, June 16, 2013, as “The 27th Annual Southern Maine Pride Celebration Festival.” The actual festival on city grounds takes place on Saturday, June 15, 2013.

Festival areas bordered by:

Saturday, June 15, 2013 (Parade, Festival)

1. **Parade** (if raining, the event is still held). Formation areas for parade is at Monument Square, Center Street, Federal Street Ext., and Preble Street, and begins at 10am. **The parade kicks off at 12:00pm (Noon).** Parade Route: Congress Street (both sides of the street) west bound, from Monument Square to High Street, High Street (from Congress Street to Park Avenue), Park Avenue (from High Street to State Street Extension), State Street Extension (from Park Avenue to Forest Avenue) and entering Deering Oaks at Bowling Green Pathway (Floats park on Park Avenue).. Attendance: 3000 people/spectators.
2. **Parade Assembly Area** (If it rains, event is still held.)
Monument Square and area sidewalks, Monument Way, sidewalk area in front of One City Center, and adjoining sidewalks, Federal Street Ext. sidewalks, Congress Street sidewalk area (Preble Street to Elm Street), and Center Street.
Floats will park on Preble Street – both lanes (from Cumberland Ave. to Congress Street). Also, Center Street (from Free Street to Congress Street) closed to traffic and used for formation purposes.
Attendance: 75 Units, 1300+ marchers.
3. **Festival Area** (If it rains, the event is moved indoors or cancelled.)
Deering Oaks Park (the Park Avenue side of the park – i.e. grass areas south side of the pond and ravine), and surrounding sidewalk areas abutting the park (Park Ave., Deering Ave., State Street, and High Street sidewalks).
Farmer's Market will take place on bandstand roadway as usual. **Festival runs 1pm – 7pm**, (setup beginning at 7am day of, with a large stage being set up the day before). Attendance: 9,000+ people throughout the day.

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

- Festival Declaration
- Allows for control of vendors
- Closing of streets in festival & parade areas

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

See above.

IV. FINANCIAL IMPACT

All costs incurred by City Departments are reimbursed by the Southern Maine Pride Committee. The Pride Parade is considered a 1st Amendment use of City Property, where city provides in-kind services.

V. STAFF ANALYSIS & RECOMMENDATION

**CITY OF PORTLAND, MAINE
PUBLIC SERVICES
MEMORANDUM**

TO: Mark Rees, City Manager
FROM: Michael Bobinsky, Director Public Services
DATE: April 3, 2013
RE: Council Agenda Item – Southern Maine Pride Committee’s
“27th Annual Southern Maine Pride Celebration Festival”

I am requesting that the following order be placed on the (April 22) City Council agenda:

Order declaring June 19, 2013 – Sunday, June 16, 2013, as “The 27th Annual Southern Maine Pride Celebration Festival.” The actual festival on city grounds takes place on Saturday, June 15, 2013.

The Southern Maine Pride Committee has submitted a request for the “27th Annual Southern Maine Pride Celebration Festival.” They have requested the following activities (similar to previous years):

1. The use of Monument Square, One City Center sidewalk, Preble Street (from Cumberland Ave. to Congress Street), Federal Street Extension, and Center Street (Free to Congress) on **Saturday, June 15, from 10am to 12pm (Noon), as a gathering point for parade participants.**
Parade assembly begins at 10am. Attendance – 1300 (75 registered organizations).
2. The use of Congress Street (Elm to High Street), High Street (Congress Street to Park Avenue) Park Avenue (from High Street to State Street), and State Street Ext., crossing over State Street Extension to Deering Oaks Park (Bowling Green Pathway Entrance), for a **parade on Saturday, June 15, to begin at 12pm (Noon). Estimated onlookers – 3000: Estimated participants – 1300 with 75 Units + 25 floats.**
3. The use of Deering Oaks Park (Park Avenue side of the Park) for **Pride Festival:** entertainment, displays, food and non-food vendors from **Noon – 8pm on Saturday, June 15 (festival itself runs 1pm – 7pm).** Attendance – 9,000+ (**NOTE: as the festival now is held on the southside of the pond an ravine area, Farmer’s Market will still be held in Deering Oaks Park that day; and Farmers will exit the park at their usual time – which is around 1pm.)**

In order for some of these events to be held, a few city streets would need to be closed to vehicular traffic on **Saturday, June 15.** In particular, the streets included in the parade formation area and the parade route itself. (**Some of these streets would need to be posted “no parking.”**)

If inclement weather on Saturday, June 15, the Festival at Deering Oaks Park would be cancelled, but the Parade would still take place, rain or shine.

(continued)

For Parade formation: Federal Street Extension and Preble Street – from Cumberland Ave. to Congress Street; (9am – Noon). Preble St. and Federal St. Ext posted "no parking." Also, Center Street (from Free Street to Congress Street) closed to traffic and used for formation purposes.

Streets along the Parade route: Congress Street (Elm to High Street), High Street (Congress Street to Park Avenue) Park Avenue (from High Street to State Street Extension), and State Street Extension entrance to Deering Oaks Park will be closed for short periods of time by police officers in patrol cars and volunteers, blocking the intersections via a rolling barricade. (Approximately 12 – 1pm)

The parade route and Festival area will also be closed to street vendors pursuant to Section 19 -17 of the Portland City Code and is reserved for the use of the Southern Maine Pride Committee for the purpose of conducting the Pride Festival Events, subject to the direction and control of the City Manager.

The City Manager is authorized to issue a revocable permit under Section 25-27 of the Municipal Code to the Southern Maine Pride Committee for the use of the above-described area for said Festival, subject to the following conditions:

- The Southern Maine Pride Committee, **Coordinator, Mark Holt**, shall reimburse the City for all expenses incurred by City Departments for said **2013 Festival**;
- Under no circumstances may alcoholic beverages be sold or consumed on the streets or public property of said area during said festival;
- The Southern Maine Pride Committee shall have sole authority over participating vendors at the events and may charge a fee to vendors for the opportunity to vend at the Festival;
- Conditions for use of grounds, specified in a permit issued from Public Services Event Office, shall be adhered to; and
- The Southern Maine Pride Committee shall indemnify the City and hold it harmless from and against all claims arising out of activities during said Festival, and shall take out and maintain public liability insurance coverage in the amount of at least **\$400,000 (for use of Deering Oaks)** combined single limit for personal or bodily injury, death or property damage for said purpose. This insurance certificate will also list the City of Portland as an additional insured in regards to the **"Southern Maine Pride Celebration Festival"** activities.

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



SOUTHERN MAINE PRIDE
27th annual Parade & Festival
June 15th, 2013

March 18, 2013

Mr. Ted Musgrave
Public Services
55 Portland St.
Portland, ME 04101

Southern Maine Pride
C/O Paint Design Unlimited
500 Forest Ave
Portland, ME 04101

Dear Mr. Musgrave,

Please let this serve as formal request from Southern Maine Pride for use of and access to various city properties and facilities outlined below.

We have scheduled the "27th annual Southern Maine Pride Celebration Festival" as declared by the city of Portland in years past, to be June 9th – June 16th, 2013.

Sunday	June 9th, 2013	– No city property access needed or requested.
Monday	June 10th, 2013	– No city property access needed or requested.
Tuesday	June 11th, 2013	– No city property access needed or requested.
Wednesday	June 12th, 2013	– No city property access needed or requested.
Thursday	June 13th, 2013	– No city property access needed or requested.
Friday	June 14th, 2013	– No city property access needed or requested.
Saturday	June 15th, 2013	– Pride Day; Parade, Festival/Rally
Sunday	June 16th, 2013	– No city property access needed or requested.

Continued

1. Pride Parade –

Parade assembly: Use of Preble Street (Cumberland Avenue to Congress Street) and Center Street (Free Street to Congress) from 10:00 AM until start of Parade at 12:00 PM.

Preble Street and Center Street posted “No Parking” from 8:00 AM until 1:00 PM.

Preble Street (Cumberland Avenue to Congress Street) closed to vehicular traffic from 10:00 AM until Parade leaves the above mentioned areas.

Due to the size of the Parade in 2012, with over 80 groups registered comprised of 1300 marchers and a record number of vehicles we anticipate using Preble Street for the lineup for Sections B & C and Center Street for the line of of Section A.

Over the past four years this line up system has worked perfectly. The same space is needed this year and continued access to Center Street is a great help.

NOTE: As usual, we will notify businesses along Congress St to anticipate increased foot traffic and or business. We will also notify and work with Peoples Bank (formerly Maine Bank & Trust) per the restricted access to their Drive Up window on Preble St. We have had their cooperation for several years and do not anticipate any opposition.

Parade route: Use of Congress Street (Elm to High Street) traveling west using both east and west bound lanes, High Street (Congress Street to Park Avenue) using full width of High Street, Park Avenue (High Street to State Street) left turn to continue in the east and west bound lanes of Park Avenue, and State Street Extension closed with Parade continuing on Park Ave, disbanding at Mellon Street intersection, from 12:00 PM to approximately 1:00 PM.

“No Parking” along the parade route from 10:00 AM to 1:00 PM. The Parade will be executed with a “rolling barricade” from the Portland Police Department. And supplemented with intersection, cross street and road feed monitors. “No Parking” to be implemented by Southern Maine Pride at the suggestion and requirements of Public Service office, Portland Police or other city entity.

The Pride Parade and Parade Route are anticipated to attract 3,000 people.

2. Pride Festival/Rally –

The move from the bandstand and farmers market area has been a huge success. It allows for an easier set up and better execution of the festival.

We request the same lay out and use of areas for this year, 2103.

Festival Area in Deering Oaks Park to include areas between Park Ave and ravine , Deering Ave and State Street, including Bowling Green and all paved areas in the listed space above.

Displays, non-food and vendors positioned in the grassy tree covered areas, between Park Ave and Bowling Green Road. Food Vendors will be positioned on the grass area just off the Park Ave sidewalk. Sponsor vehicles if any positioned near Bowling Green with all appropriate concern and needs to protection and integrity of the grassy areas. Festival stage to be positioned same as last year, abutting paved walk way to pedestrian bridge, facing west.

We request advance set up of the entertainment stage on Friday, June 14 with allowed access of their vehicles as needed.

We request full use of power to be provided by the power station between the pedestrian bridge and bowling green area.

The Festival will begin at 1:00 PM and continue until no later than 7:00 PM. We request full access to Deering Oaks Park area beginning at 7:00 AM. We request no parking on Park Avenue, park side, from State Street extension to Deering Avenue beginning at 6:00 AM. Park Avenue serves as an area for loading and unloading and has worked very well the past two years.

No vehicles or other means of transportation will be allowed in Deering Oaks Park except under special permission from Parks & Recreation. We are asking for the same permission as last year to accommodate sponsors and entertainers.

We will provide portable toilets (6 standard and 1 handicap), and one covered dumpster as required and will add portable toilets (4 standard) this year.

All involved will be required to maintain the integrity of Deering Oaks Park and respect rules set forth by the city of Portland and The Friends of Deering Oaks. We anticipate an ongoing attendance of 9,000+ people, per last year's success and record attendance, both vendors and patrons.

If you have any questions or concerns regarding these requests please contact us as soon as possible so we may amend them or give further explanation to our intent.

Thank you.

With regards,

Mark Holt
Coordinator
Southern Maine Pride 2013

Order 183-12/13
Tab 11 4-22-13

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

CITY OF PORTLAND
IN THE CITY COUNCIL

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

**ORDER 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 \$810.00 in US Currency in the case of State of Maine vs. Earl Guerra 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."

**CITY OF PORTLAND, MAINE
CITY COUNCIL AGENDA REQUEST FORM**

Two (2) copies to be submitted (with supporting material) at least 12 days before Council

meeting: Copies to: Sonia Bean Terry Tucker
 Danielle West-Chuhta Mark Rees
 Katherine Jones Michael Brennan

Signature

Date

1. Council meeting at which action is requested:

1st reading _____ next available _____

Final action _____

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

If no, why not?

3. This item is sponsored by: _____

(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:** 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:** Approximately \$810.00 in forfeited cash, or some portion thereof, may be transferred to the Portland Police Department for deposit in the drug investigations account.

IV. **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.

V. **STAFF ANALYSIS & RECOMMENDATION:**

Prepared by:

Signature

Date

STATE OF MAINE
Cumberland, SS

UNIFIED CRIMINAL DOCKET
Criminal Action
Docket No. CR-10-4187

State of Maine

v.

Earl Guerra,
Defendant

AND
\$810.00 US CURRENCY

DEFENDANT IN REM #1

}
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}

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*, namely \$810.00 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: _____

Chairperson/Mayor/Selectman/Clerk

(Impress Legislative Body Seal Here)

PORTLAND POLICE DEPARTMENT
MEMORANDUM

TO: Mark Rees, City Manager
FROM: Michael J. Sauschuck, Chief of Police
RE: Asset Forfeiture Funds
DATE: April 3, 2013

Maine asset forfeiture allows local law enforcement agencies to benefit from the seizure of monies, property and other goods connected with illegal drug distribution. A state or local agency that directly participates in an investigation or prosecution that results in the seizure of money may be eligible to receive a portion of the net proceeds of the forfeiture. Asset sharing makes it possible for law enforcement agencies to receive the proceeds of property seized in connection with drug trafficking investigations and to use the money for drug investigations, drug training, body armor, protective gear, electronic surveillance equipment, or other items that will assist in drug investigations.

Maine law requires that the governing body of a municipality agree to accept the transfer of forfeited funds before the property is forfeited by the court. The approval document is then filed in court as part of the forfeiture case. It does not guarantee that the funds will be forfeited to the State of Maine and transferred to the City. If forfeiture is granted, the State receives approximately twenty percent of the money with the remaining eighty percent being split between the involved police departments. If other agencies were involved in the seizure, they would also receive a percentage of the cash. The forfeiture process can take 2-4 years.

Although the amount of money received through asset sharing has decreased over the last several years, it continues to be a considerable benefit to the department and the community.

Order 184-12/13
Tab 12 4-22-13

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

CITY OF PORTLAND
IN THE CITY COUNCIL

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

**ORDER 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 \$1,517.00 in cash in the case of State of Maine vs. Cerrone Smalls 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."

**CITY OF PORTLAND, MAINE
CITY COUNCIL AGENDA REQUEST FORM**

Two (2) copies to be submitted (with supporting material) at least 12 days before Council meeting: Copies to:

Sonia Bean

Terry Tucker

Danielle West-Chuhta

Mark Rees

Katherine Jones

Michael Brennan

Signature

Date

1. Council meeting at which action is requested:

1st reading _____ next available _____

Final action _____

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

If no, why not?

3. This item is sponsored by: _____

(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:** 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:** Approximately \$1,517.00 in forfeited cash, or some portion thereof, may be transferred to the Portland Police Department for deposit in the drug investigations account.

IV. **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.

V. **STAFF ANALYSIS & RECOMMENDATION:**

Prepared by:

Signature

Date

STATE OF MAINE
Cumberland, SS

UNIFIED CRIMINAL DOCKET
Criminal Action
Docket No. CR-13-857

State of Maine

v.

Cerrone Smalls,
Defendant

AND
\$1,517.00 US CURRENCY

DEFENDANT IN REM #1

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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)

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 \$1,517.00 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: _____

Chairperson/Mayor/Selectman/Clerk

(Impress Legislative Body Seal Here)

PORTLAND POLICE DEPARTMENT
MEMORANDUM

TO: Mark Rees, City Manager
FROM: Michael J. Sauschuck, Chief of Police
RE: Asset Forfeiture Funds
DATE: April 8, 2013

Maine asset forfeiture allows local law enforcement agencies to benefit from the seizure of monies, property and other goods connected with illegal drug distribution. A state or local agency that directly participates in an investigation or prosecution that results in the seizure of money may be eligible to receive a portion of the net proceeds of the forfeiture. Asset sharing makes it possible for law enforcement agencies to receive the proceeds of property seized in connection with drug trafficking investigations and to use the money for drug investigations, drug training, body armor, protective gear, electronic surveillance equipment, or other items that will assist in drug investigations.

Maine law requires that the governing body of a municipality agree to accept the transfer of forfeited funds before the property is forfeited by the court. The approval document is then filed in court as part of the forfeiture case. It does not guarantee that the funds will be forfeited to the State of Maine and transferred to the City. If forfeiture is granted, the State receives approximately twenty percent of the money with the remaining eighty percent being split between the involved police departments. If other agencies were involved in the seizure, they would also receive a percentage of the cash. The forfeiture process can take 2-4 years.

Although the amount of money received through asset sharing has decreased over the last several years, it continues to be a considerable benefit to the department and the community.

*Order 185-12/13
Tab 13 4-22-13*

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

CITY OF PORTLAND
IN THE CITY COUNCIL

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

**ORDER
GRANTING MUNICIPAL OFFICER'S
APPROVAL OF:**

AAA The North Point LLC d/b/a The North Point, 35 Silver St. Application to add Outdoor Dining on Public Property.

CITY CLERK

**THE
NORTH
POINT**

35 Silver St.
Portland Maine

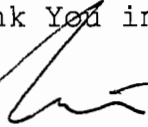
2017 MAR 28 PM 11:35

To: The Mayor of Portland and the Members of the city
Council,

We are applying for two outdoor tables and four chairs, as requested by a great many of our customers, on the sidewalk, directly in front of our restaurant in the old port.

We would be serving our regular food menu in addition to beer, wine and cocktail service outdoors, during both lunch and dinner operating hours, Sunday thru Saturday from 11am until 12am.

Thank You in advance for your consideration,



3-28-13

Noah Talmatch
Proprietor
The North Point
Restaurant & Bar
35 Silver Street
Portland ME. 04101
207-899-3778

PUBLIC NOTICE
Legal Advertisement
Notice of Public
Hearing
City of Portland
Public Hearing will be
held on April 22, 2013 at
10 P.M. in City Coun-
cil Room 389 Con-
gress Street, the appli-
cation for AAA The
North Point LLC d/b/a
The North Point at 35
Silver St. Application to
be heard on Outdoor Dining on
Public Property. Spon-
sored by Katherine L.
Les, City Clerk.
4808928

389 Congress Street
Portland, ME 04101
(207) 874-8557

Application for Food Service Establishment With Alcoholic Beverages

Class of Liquor License Applying for: LIQUOR LICENSE # 8140 STATE OF MAINE

Business Name (d/b/a): THE NORTH POINT Phone: 207-899-3778
Location Address: 35 SILVER ST. PORTLAND ZIP 04101

If new, what was formerly in this location? _____

Mailing Address: SAME ZIP _____

Contact Person: NOAH TALMATH Phone: 207-646-701-1011

Email: NOAZARCG2@GMAIL.COM

Manager of Establishment: NOAH TALMATH Home Phone: SAME

Landlord of Premises: TOM WITT

Address of Landlord: 378 LAKESIDE DR BOOTHBAY HARBOR ZIP 04538

Does the issuance of this license directly or indirectly benefit any City employee(s)? Yes _____ No X
If yes, list name(s) of employee(s) and department(s): _____

Have any of the applicants, including the corporation if applicable, ever held a business license with the City of Portland? Yes ✓ No _____. If yes, please list business name(s) and location(s): THE NORTH POINT 35 SILVER ST.

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

Has any 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: _____

2013 MAR 28 11:11:37
CITY CLERK

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

Corporation Name: AAA THE NORTH POINT LLC
Corporation Mailing Address: 35 SILVER ST. PORTLAND ZIP 04101
Contact Person: NOAH TALMATH Phone Number: 646-701-1011

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

Name NOAH TALMATH Title PRESIDENT DOB 7-26-62
Residence Address 35 SILVER ST. PORTLAND ME 04101

Payment Method for Business License and application fees:
Cash, Money Order or Bank Check, Visa or MasterCard

PRINCIPAL OFFICERS: (continued)

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

Type of Food Served: DELICIOUS SANDWICHES PATES SALADS

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

Percentage of Sales generated From Food: 70% From Alcohol: 30%

Hours and Days of operation: SUN — SAT 11AM — 1AM

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 have after hours entertainment from 1:00A.M. to 3:00A.M.? Yes ☐ No ☒

Will you have outdoor dining? Yes ☒ No ☐ If yes, please indicate location on diagram.

Also will the outdoor dining be on PUBLIC ☒ or PRIVATE ☐ property? SIDEWALK

Have you applied for an (Public) 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? WE ARE OPEN FEB 20, 2013

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

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

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

Signature [Signature] Title PRESIDENT Date 3-28-13

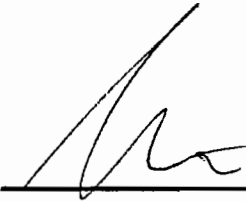
Rev. 8-31-10

Payment Method for Business License and application fees:
Cash, Money Order or Bank Check, Visa or MasterCard

- ☒ The permit holder is responsible for keeping the outdoor seating area clean. The sidewalk area where the tables and chairs are located must be kept neat and free from liter and debris.
- ☒ 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 cause by the negligence of the City of Portland, its agents, officers or employees) arising out of the establishment's occupancy of the sidewalk or park space. I/We hereby agree, to the fullest extent permitted by law, to defend, indemnify and hold harmless the City of Portland, its agents, officers and employees, from and against all claims, damages, losses and expenses, just or unjust, including, but not limited to costs of defense and attorney's fees, arising out of the establishment's occupancy of the sidewalk or park space, provided that any such claims, damage, loss or expense (1) is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property including the loss of use 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:  Date: 3-28-13

Printed name NOAH THUMATCH

Establishment THE NORTH PORT

Location OLD PORT



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: _____ Date: <u>4/22/13</u>		
Location Name & Address: <u>THE NORTH POINT 35 SILVER ST. PORTLAND</u>		Chart Block Lot
Owner & Phone #: <u>NOAH TALMATCH 207-899-3778</u>		Total Square Footage of Proposed Seating Area: ¹ <u>20 SF</u>
Applicant *must* be owner or lessee Name: <u>NOAH TALMATCH</u> Address: <u>35 SILVER ST.</u> City, State & Zip: <u>PORTLAND ME 04101</u> E-Mail: <u>NOAZARC62@GMAIL.COM</u>		Annual Fee: <u>\$80</u> Total Sq. Ft.: <u>10</u> Sq. Ft. Fee: (sq ft x \$2) \$ <u>20</u> (Due when issued) Total Fees: \$ <u>100</u> (Permit not issued until <u>all</u> fees are paid)
Current use: <u>RESTAURANT</u>		
Business name: <u>THE NORTH POINT</u>		
Seating area dimensions: <u>10' x 2'</u>		
How many chairs? <u>4</u> How many tables? <u>2</u> ☒ Yes Alcohol is served. ☐ No Alcohol being served.		
Who should we contact for the pre-inspection: <u>NOAH TALMATCH</u> Mailing address: <u>35 SILVER ST. PORTLAND ME</u> Phone: <u>646-701-1011</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: _____

Date: 3-28-13

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.

SILVER ST.

SIDEWALK

5'1"

5'1"

SIDEWALK
CLEARANCE
IS 5'1"
EGRESS
WITH
TABLES
OUT

FRONT
DOOR

TABLES ARE 2'X2' X 30"H
CHAIRS ARE 15"X15" X 20"H

THE NORTH POINT
35 SILVER ST.

SILVER ST.

SIDE WALK

← 25' →

7'1"

THE
NORTH
POINT
35
SILVER ST.

50'

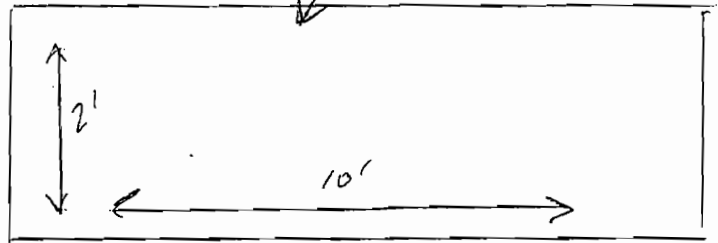
MILK ST.

BUILDING SET BACK FROM STREET 7'1" (SIDEWALK)

SILVER ST.

SIDE WALK

TOTAL OUTDOOR
SQUARE FOOTAGE
IS 20 SF.



FRONT DOOR

THE NORTH PORT
35 SILVER 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

April 10, 2013

AAA The North Point LLC
35 Silver St.
Portland, ME 04101

RE: AAA The North Point LLC d/b/a The North Point Application to Add Outdoor Dining

Dear Mr. Talmatch,

This letter shall serve as a reminder of the Public Hearing before the Portland City Council on Monday, April 22, 2013 at 7:00 P.M. for the review of your application to add outdoor dining to your Class A Lounge License. The meeting will take place in Council Chambers on the 2nd floor of City Hall, 389 Congress Street, Portland, ME 04101.

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

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

Sincerely,

Janice Gardner
Business License Administrator

Business Licensing - Re: North Point - 35 Silver St. - Adding Outdoor Dining

From: Gary Hutcheson
To: Business Licensing
Date: 3/31/2013 2:03 PM
Subject: Re: North Point - 35 Silver St. - Adding Outdoor Dining

All set.

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

>>> Business Licensing 3/28/2013 2:02 PM >>>
Hello,

AAA The North Point LLC d/b/a The North Point at 35 Silver St. has submitted an application to add outdoor dining on public property. They currently hold at Class A Lounge license. They will go before Council on April 22nd.

Corporate owner:
AAA The North Point LLC
35 Silver St.
President: Noah Talmatch, d.o.b. 7/26/62, 35 Silver St.

Owner of premises: Tom Witt, Boothbay Harbor

Slips going out today.

Thank you,
Janice

Business License Administrator
bl@portlandmaine.gov
207.874.8557

**ALPHA VOTER LIST - PORTLAND
WARD/PRECINCT 3-1**

Generated By: PORTLAND

Voter Record #	P	Name	Residence Address	S	DES	W/P	CG	SS	SR	CC
049622853	R	HOGLUND, HELEN L	80 PINECREST RD PORTLAND, ME 04102	A		3-1	1	8	116	5
100043992	D	HOLDER, ELIZABETH	56 LINCOLN ST APT. #1 PORTLAND, ME 04103	I		3-1	1	9	115	5
049622899	D	HOLLAND, ANNE HECKNER	32 KENWOOD ST PORTLAND, ME 04102	A		3-1	1	8	118	5
049622900	D	HOLLAND, DANIEL SAFFA	32 KENWOOD ST PORTLAND, ME 04102	A		3-1	1	8	118	5
049622931	U	HOLLIDAY, DANIEL ALAN	72 RACKLEFF ST PORTLAND, ME 04103	A		3-1	1	9	115	5
100143523	D	HOLLIEN, CHARLES W	497 SAINT JOHN ST PORTLAND, ME 04102	A		3-1	1	8	118	5
049622955	D	HOLMBERG, BARBARA JEAN	4 CLAIRMONT CT # A PORTLAND, ME 04103	A		3-1	1	9	115	5
100051632	D	HOLMES, AMANDA LOUISE	34 NOYES ST APT. #3 PORTLAND, ME 04103	A		3-1	1	9	115	5
049622968	U	HOLMES, EDWARD OLIVER	423 SAINT JOHN ST PORTLAND, ME 04102	A		3-1	1	8	118	5
049622982	U	HOLMES, MALCOLM S	423 SAINT JOHN ST PORTLAND, ME 04102	A		3-1	1	8	118	5
049623045	D	HOMER, THEODORE CLAY	1052 CONGRESS ST PORTLAND, ME 04102	A		3-1	1	8	118	5
049623048	D	HONAN, ELLEN M	15 BELMONT ST PORTLAND, ME 04101	A		3-1	1	9	115	5
049806629	U	HOOD, BRENT MICHAEL	20 COUNTY WAY PORTLAND, ME 04102	A		3-1	1	8	118	5
100099799	D	HOOD, MICHAEL P	463 SAINT JOHN ST PORTLAND, ME 04102	A		3-1	1	8	118	5
100013441	D	HOOP, KATRINA CLARK	54 ROBERTS ST PORTLAND, ME 04102	A		3-1	1	8	118	5
049623092	D	HOOSE, HANNAH SATTER	8 ARLINGTON ST PORTLAND, ME 04101	A		3-1	1	9	115	5
100138914	G	HOPKINS, ANTHONY J	14 DEVON ST #3 PORTLAND, ME 04102	A		3-1	1	8	116	5
049623107	R	HOPKINS, ELEANOR J	92 HOLM AVE PORTLAND, ME 04102	A		3-1	1	8	116	5
049623111	D	HOPKINS, JAMES C	71 DEANE ST PORTLAND, ME 04102	I		3-1	1	8	118	5



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 #: MIQ99B657888

Criminal History Record

Introduction

This rap sheet was produced in response to the following request (Produced on 2012-10-19) :

Inquiries Name(s) NOAH TALMATCH (1962-07-26)

NO MATCH WAS FOUND FOR YOUR REQUEST.

The North Point

35 Silver St.



Copyright 2011 Esri. All rights reserved. Tue Apr 16 2013 08:31:16 AM.

Order 186 - 12/13
Tab 14 4-22-13

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

CITY OF PORTLAND
IN THE CITY COUNCIL

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

**ORDER
GRANTING MUNICIPAL OFFICER'S
APPROVAL OF:**

Smartin Services LLC d/b/a Bar of Chocolate, 38 Wharf St. Application for Class A Lounge License.

CITY CLERK

Smartin Services
251 Valley Street
Portland, Maine 04101

2013 MAR 21 PM 11:24

March 18, 2013

Mayor Joseph Brennan
Members of City Council
Portland City Hall
389 Congress Street
Portland, ME 04101

Re: Liquor License Application

Dear Mayor Brennan and Council Members,

I write to request review of my application for a City of Portland liquor license.

Smartin Services LLC wishes to operate a Class A lounge offering small plate tapas items, house made desserts, coffee, beer, wine and spirits. The business will operate under the name The Bar of Chocolate Café.

The location is the present site of the Wine Bar Café at Wharf Street operated by 38 Corp LLC. That business will be closing on April 1st 2013.

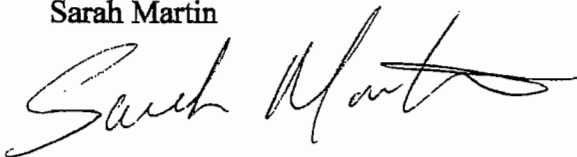
The upstairs section of the previous business will be converted to office space while the ground floor layout and kitchen areas will remain unchanged.

I have been employed in the bar and restaurant industry in Portland since 1991 working at Brian Boru, Gritty McDuff's as well as the Wine Bar Café at Wharf Street.

Thank you for your consideration.

Sincerely

Sarah Martin

A handwritten signature in cursive script, appearing to read "Sarah Martin", written in dark ink.

PUBLIC NOTICE

Legal Advertisement
Notice of Public
Hearing
City of Portland

A Public Hearing will be held on April 22, 2013 at 7:00 P.M. in City Council Chambers, 389 Congress St., on the application for a Smartin License d/b/a Bar of Chocolate Cafe, 38 Wharf Street, Portland, ME 04101. The application is for a Class A Liquor License. The license is sponsored by Katherine Jones, City Clerk. 4808936

389 Congress Street
Portland, ME 04101
(207) 874-8557

Application for Food Service Establishment With Alcoholic Beverages

Type of Liquor License Applying for: Class A LoungePlease check one: (Corporation/ LLC/ Non-profit org. ☒) (Sole Proprietor ☐) (Partnership ☐)Business Name (d/b/a): Bar of Chocolate Cafe Phone: 450.3290Location Address: 38 Wharf Street ZIP 04101If new, what was formerly in this location: Cafe at Wharf Street + Wine BarMailing Address: 38 Wharf Street ZIP 04101Contact Person: Sarah Martin Phone: 450.3290Manager of Establishment: Sarah Martin Home Phone # 450.3290Owner of Premises (landlord): 217 Commercial St Associates Inc.Address of Premises Owner: 225 Commercial Suite 502 ZIP 04101Does 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: Smartin Services LLCCorporation Mailing Address: 251 Valley St Portland ZIP 04101Contact Person: Sarah Martin Phone Number: 450.3290

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

Name	<u>Sarah Martin</u>	Title	<u>Sole Member</u>	DOB	<u>3/1/66</u>	Residence Address	<u>251 Valley</u>
Name		Title		DOB		Residence Address	<u>Portland</u>
Name		Title		DOB		Residence Address	<u>04101</u>
Name		Title		DOB		Residence Address	
Name		Title		DOB		Residence Address	
Name		Title		DOB		Residence Address	

Type of Food Served: Tapas, Desserts

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

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

Hours and Days of operation: 7 Days 4pm - 1am

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 No full course meals served.

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? : May 1, 2013

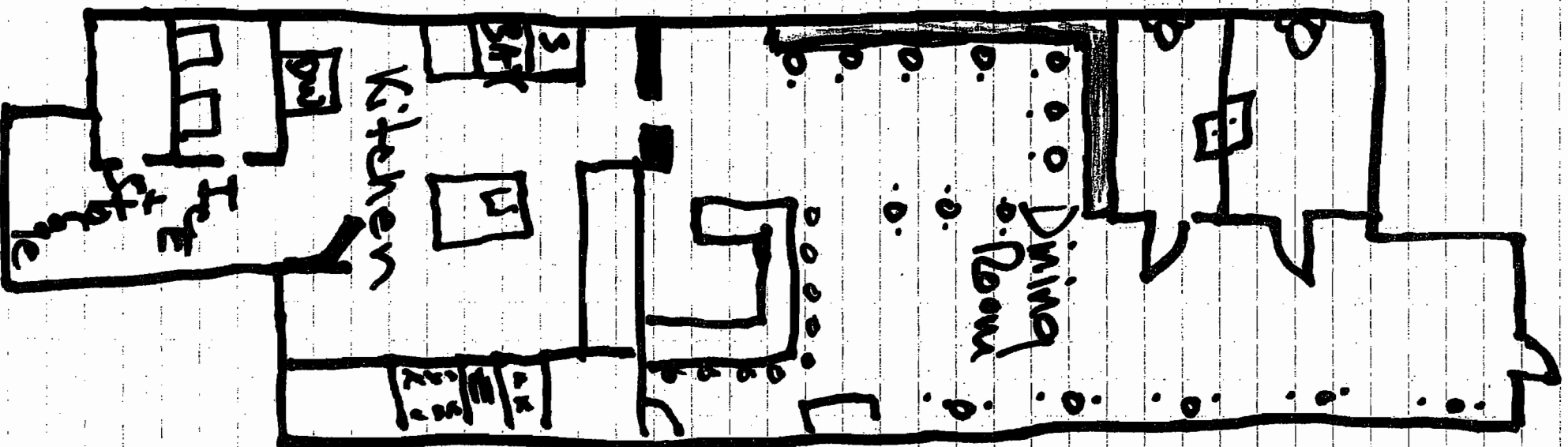
Applicant, by signature below, agrees to abide by all laws, orders, ordinances, rules and regulations governing the above licensee and further agrees that any misstatement of material fact may result in refusal of license or revocation if one has been granted. Applicant agrees that all taxes and accounts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

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

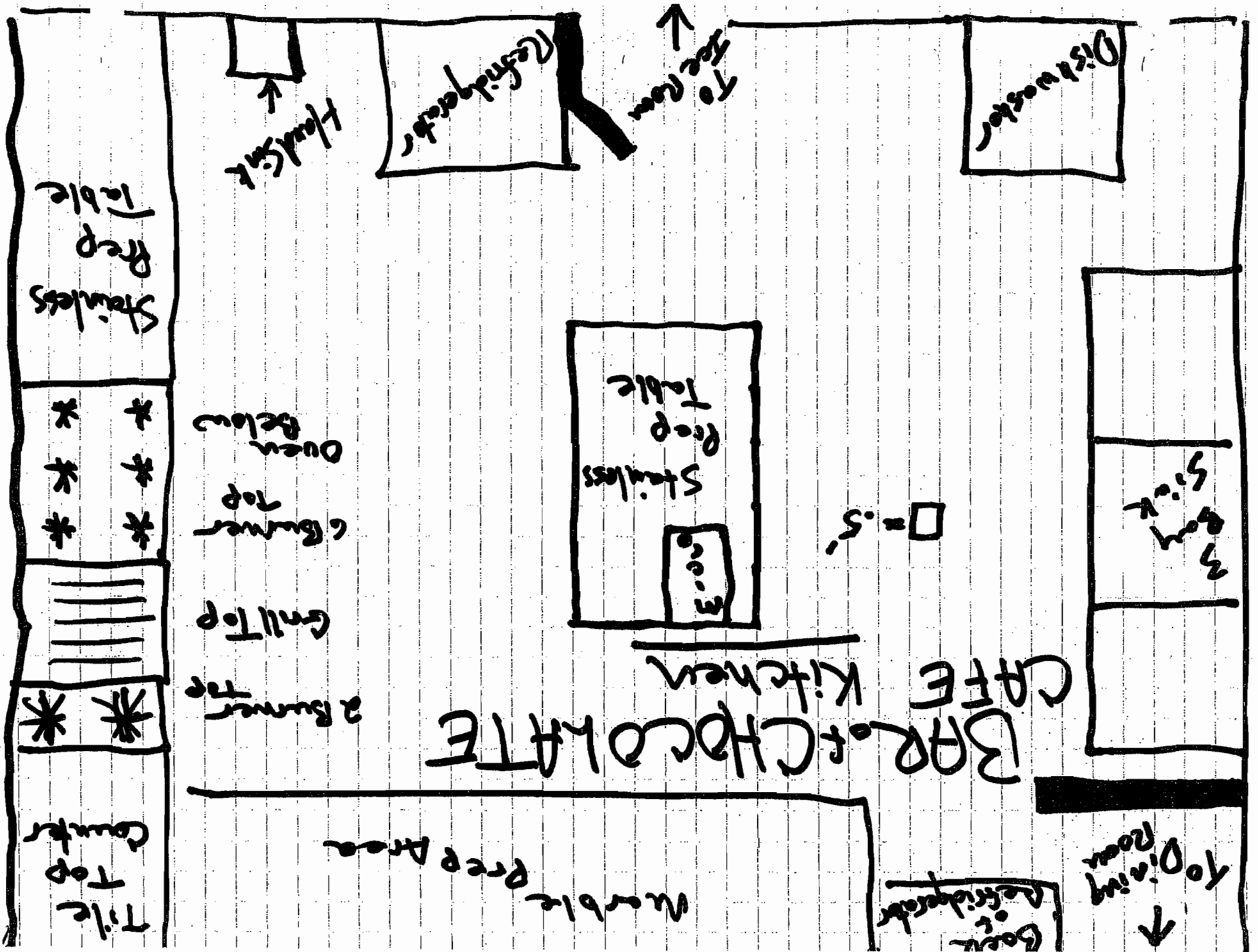
I/We, hereby authorize the release of any criminal history record information to the City Clerk's Office or licensing authority. I/We, hereby waive any rights to privacy with respect thereto.

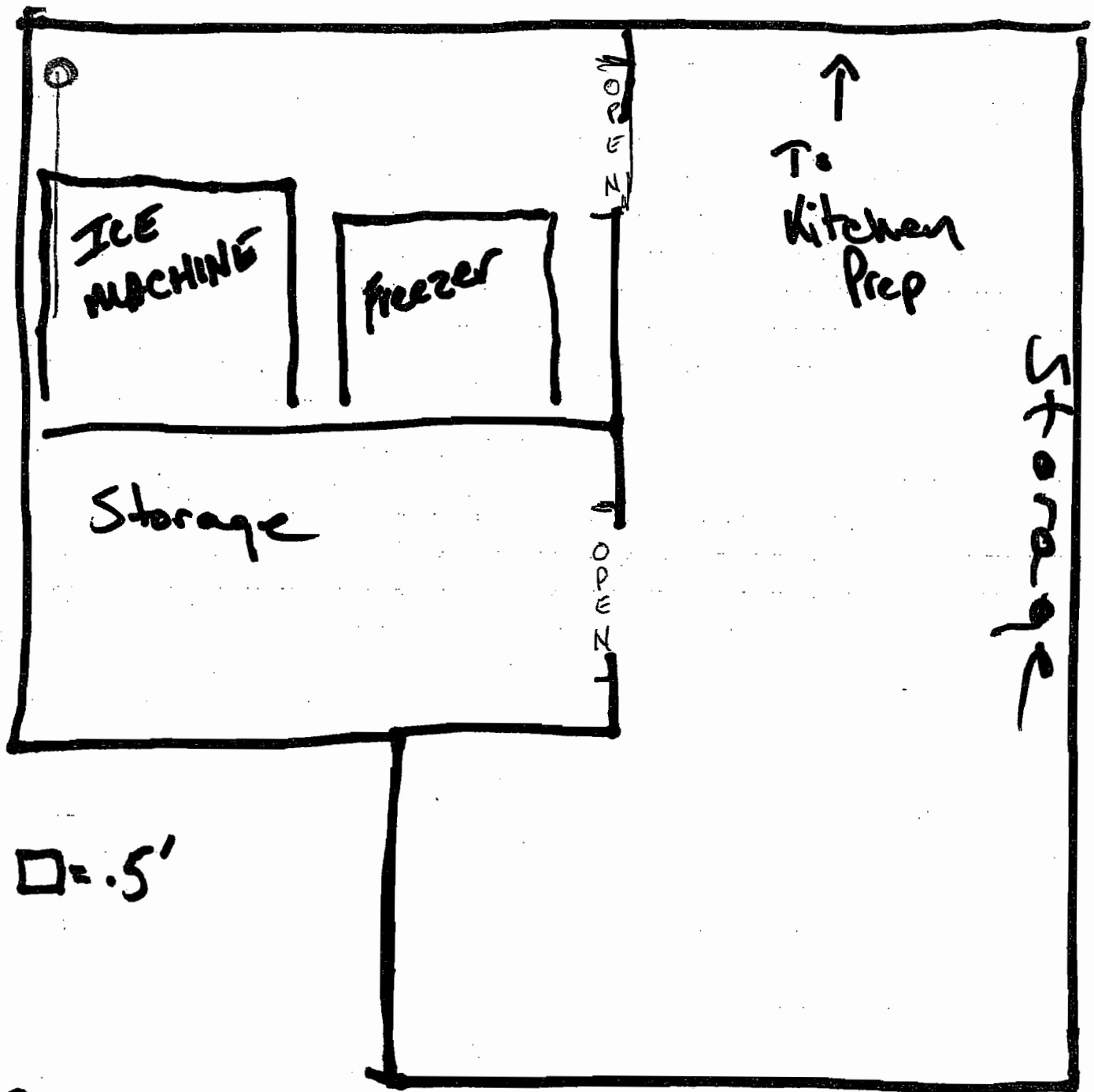
Signature [Signature] Title Owner Date 3/18/13

BAR
CIRCULATING
Cafe
Floor Plan



□ = 2'





BAR OF CHOCOLATE CAFE
Ice & Storage Rooms

**Department of Public Safety Liquor Licensing & Inspection
Division**

<u>BUREAU USE ONLY</u>
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)
Smartin Services LLC	The Bar of Chocolate Cafe
	Location (Street Address)38 Wharf Street
Address 251 Valley Street	Portland, Maine
	Mailing Address 38 Wharf Street
City/Town Portland State ME Zip Code	City/Town Portland State ME 04102
Telephone Number 207-450-3290	Business Telephone Number 207-450-3290
Federal I.D. #45-5458430	Seller Certificate # 1161213

☐ 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 \$ _____

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.

5. Is applicant a corporation, limited-liability

company or limited partnership? YES ☒ X

NO ☐

If YES, complete Supplementary

Questionnaire

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

If manager is to be employed, give name: **Sarah Martin**

8. If business is NEW or under new ownership, indicate starting date: **May 1, 2013**

Requested inspection date: **April 15, 2013** Business hours: **4pm to 1 am**

9. Business records are located at: **38 Wharf Street Portland Maine**

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

11. Is/are applicant(s) residents of the State of Maine? YES ☒ X 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
Sarah Anne Martin	3/1/66	Boston Ma
Residence address on all of the above for previous 5 years (Limit answer		
251 Valley Street Portland Maine		

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 ☒ X

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 ☒ X If Yes, give name: _____

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

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

217 Commercial Street Associates Inc 225 Commercial Street Suite 502 Portland Maine

17. Describe in detail the premises to be licensed: (Supplemental Diagram Required) **940 Square Ft Seating Area with 2 Bathrooms. 400 Square Foot Kitchen Area.**

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

YES ☐ NO ☐ Applied for: **March 20, 2013**

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? **1,000 + feet.** Which of the above is nearest? **Unitarian Universalist**
Arch Congress and Temple Street

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 X NO**

If YES, give details: **Personal loan from family member.**

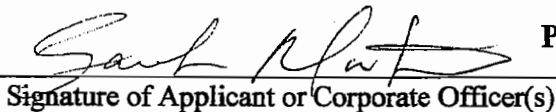
The Division of Liquor Licensing & Inspection is hereby authorized to obtain and examine all books, records and tax returns pertaining to the business, for which this liquor license is requested, and also such books, records and returns during the year in which any liquor license is in effect.

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 Maine on **March 20, 2013,**

Date

Please sign in blue ink


Signature of Applicant or Corporate Officer(s)

Saeed Martin
Print Name

Signature of Applicant or Corporate Officer(s)

Print Name

NOTICE – SPECIAL ATTENTION

All applications for NEW or RENEWAL liquor licenses must contact their Municipal Officials or the County Commissioners in unincorporated places for approval of their application for liquor licenses prior to submitting them to the bureau.

THIS APPROVAL EXPIRES IN 60 DAYS.

FEE SCHEDULE

Class I	Spirituos, Vinous and Malt	\$ 900.00
	CLASS I: Airlines; Civic Auditoriums; Class A Restaurants; Clubs with catering privileges; Dining Cars; Golf Clubs; Hotels; Indoor Ice Skating Clubs; Indoor Tennis Clubs; Vessels; Qualified Caterers; OTB.	
Class I-A	Spirituos, Vinous and Malt, Optional Food (Hotels Only)	\$1,100.00
	CLASS I-A: Hotels only that do not serve three meals a day.	
Class II	Spirituos Only	\$ 550.00
	CLASS II: Airlines; Civic Auditoriums; Class A Restaurants; Clubs with catering privileges; Dining Cars; Golf Clubs; Hotels; Indoor Ice Skating Clubs; Indoor Tennis Clubs; and Vessels.	
Class III	Vinous Only	\$ 220.00
	CLASS III: Airlines; Civic Auditoriums; Class A Restaurants; Clubs with catering privileges; Dining Cars; Golf Clubs; Hotels; Indoor Ice Skating Clubs; Indoor Tennis Clubs; Restaurants; Vessels; Pool Halls; and Bed and Breakfasts.	

Class IV Malt Liquor Only\$ 220.00
CLASS IV: Airlines; Civic Auditoriums; Class A Restaurants; Clubs with catering privileges; Dining Cars; Golf Clubs; Hotels; Indoor Ice Skating Clubs; Indoor Tennis Clubs; Restaurants; Taverns; Pool Halls; and Bed and Breakfasts.

Class V Spirituous, Vinous and Malt (Clubs without Catering, Bed & Breakfasts)\$ 495.00
CLASS V: Clubs without catering privileges.

Class X Spirituous, Vinous and Malt – Class A Lounge\$2,200.00
CLASS X: Class A Lounge

Class XI Spirituous, Vinous and Malt – Restaurant Lounge\$1,500.00
CLASS XI: Restaurant/Lounge; and OTB.

FILING FEE\$ 10.00

UNORGANIZED TERRITORIES \$10.00 filing fee shall be paid directly to County Treasurer. All applicants in unorganized territories shall submit along with their application evidence of payment to the County Treasurer.

All fees must accompany application, made payable to: **TREASURER, STATE OF MAINE. – DEPARTMENT OF PUBLIC SAFETY, LIQUOR LICENSING AND INSPECTION DIVISION, 164 STATE HOUSE STATION, AUGUSTA ME 04333-0164.** Payments by check subject to penalty provided by Sec. 3, Title 28A, MRS.

STATE OF MAINE

Dated at: _____, Maine _____ ss
City/Town (County)

On: _____
Date

The undersigned being: ☐ Municipal Officers ☐ County Commissioners of the
☐ City ☐ Town ☐ Plantation ☐ Unincorporated Place of: _____, Maine

Hereby certify that we have given public notice on this application and held public hearing thereon as required by Section 653 Title 28A, Maine Revised Statutes and hereby approve said application.

THIS APPROVAL EXPIRES IN 60 DAYS

NOTICE – SPECIAL ATTENTION

§ 653. Hearings; bureau review; appeal

1. **Hearing.** The municipal officers or, in the case of unincorporated places, the county commissioners of the county in which the unincorporated place is located, shall hold a public hearing for the consideration of applications for new on-premise licenses and applications for transfer of location of existing on-premise licenses. The municipal officers or county commissioners may hold a public hearing for the consideration of requests for renewal of licenses, except that when an applicant has held a license for the prior 5 years and a complaint has not been filed against the applicant within that time, the applicant may request a waiver of the hearing.

A. The bureau shall prepare and supply application forms. [1993, c.730, §27(amd).]

B. The municipal officers or the county commissioners, as the case may be, shall provide public notice of any hearing held under this section by causing a notice, at the applicant's prepaid expense, stating the name and place of hearing, to appear on at least 3

consecutive days before the date of hearing in a daily newspaper having general circulation in the municipality where the premises are located or one week before the date of the hearing in a weekly newspaper having general circulation in the municipality where the premises are located. [1995, c.140, §4 (amd).]

- C. If the municipal officers or the county commissioners, as the case may be, fail to take final action on an application for a new on-premise license, for transfer of the location of an existing on-premise license or for renewal of an on-premise license within 60 days of the filing of an application, the application is deemed approved and ready for action by the bureau. For purposes of this paragraph, the date of filing of the application is the date the application is received by the municipal officers or county commissioners. This paragraph applies to all applications pending before municipal officers or county commissioners as of the effective date of this paragraph as well as all applications filed on or after the effective date of this paragraph. This paragraph applies to an existing on-premise license that has been extended pending renewal. The municipal officers or the county commissioners shall take final action on an on-premise license that has been extended pending renewal with 120 days of the filing of the application. [1999, c589, §1 (amd).]

2. **Findings.** In granting or denying an application, the municipal officers or the county commissioners shall indicate the reasons for their decision and provide a copy to the applicant. A license may be denied on one or more of the following grounds:

- A. Conviction of the applicant of any Class A, Class B or Class c crime: [1987, c45, Pt.A§4 (new).]
- B. Noncompliance of the licensed premises or its use with any local zoning ordinance or other land use ordinance not directly related to liquor control; [1987, c.45, Pt.A§4(new).]
- C. Conditions of record such as waste disposal violations, health or safety violation or repeated parking or traffic violations on or in the vicinity of the licensed premises and caused by persons patronizing or employed by the licensed premises or other such conditions caused by persons patronizing or employed by the licensed premises that unreasonably disturb, interfere with or affect the ability of persons or businesses residing or located in the vicinity of the licensed premises to use their property in a reasonable manner; [1993, c.730, §27 (amd).]
- D. Repeated incidents of record of breaches of the peace, disorderly conduct, vandalism or other violations of law on or in the vicinity of the licensed premises and caused by persons patronizing or employed by the licensed premises; [1989, c.592, §3 (amd).]
- E. A violation of any provision of this Title; and [1989, c.592, §3 (amd).]
- F. A determination by the municipal officers or county commissioners that the purpose of the application is to circumvent the provisions of section 601. [1989, c.592, §4 (new).]

[1993, c730, §27 (amd).]

3. **Appeal to bureau.** Any applicant aggrieved by the decision of the municipal officers or county commissioners under this section may appeal to the bureau within 15 days of the receipt of the written decision of the municipal officers or county commissioners. The bureau shall hold a public hearing in the city, town or unincorporated place where the premises are situated. In acting on such an appeal, the bureau may consider all licensure requirements and findings referred to in subsection 2.

A. [1993, c.730, §27 (rp).]

4. **No license to person who moved to obtain a license. (REPEALED)**

5. **(TEXT EFFECTIVE 3/15/01) Appeal to District Court.** Any person or governmental entity aggrieved by a bureau decision under this section may appeal the decision to the District Court within 30 days of receipt. Upon resolution of the appeal, if an applicant's license renewal is denied, the bureau shall refund the applicant the prorated amount of the unused license fee.

STATE OF MAINE

Liquor Licensing & Inspection Unit

164 State House Station

Augusta, Maine 04333-0164

Tel: (207) 624-7220 Fax: (207) 287-3424

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

1. **Exact Corporate Name: Smartin Services LLC**

Business D/B/A Name: The Bar of Chocolate Cafe

2. **Date of Incorporation: June 12, 2012**

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

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

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

Name	Address Previous 5 Years	Birth Date	% of Stock	Title
Sarah Anne Martin	251 Valley Street, Portland Maine	3/1/1966	100	SOLE MBR

6. What is the amount of authorized stock? 1 Share Outstanding Stock? NONE

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

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

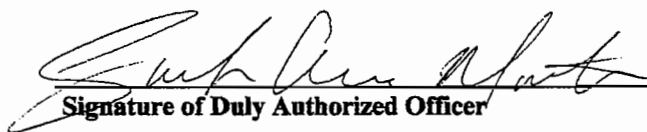
9. If yes, please complete the following: Name: _____

Date of

Conviction: _____ Offense: _____

Location: _____ Disposition: _____

Dated at: _____ City/Town On: _____ Date


Signature of Duly Authorized Officer

Date: 3/20/13

SARAH MARTIN
Print Name of Duly Authorized Officer

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

SUPPLEMENTARY QUESTIONNAIRE FOR CLUB APPLICANTS

1. Exact Club Name: _____

2. Title, name, birth date and telephone number of each principal officer of the club:

Title	Name	Birth Date	Telephone #

BAR OF CHOCOLATE CAFE

MENU

Desserts

*Homemade- Cakes , Pies ,
Cheesecakes , Cookies ,Tortes
Crème Brulee ,Tiramisu & More*

Tapas

*Olives, Almonds & Manchego Cheese 10./5.
Assorted Cheeses 12.
Pork orVeggie Pot Stickers 6
Hummus & Tapanade w/Syrian Bread 6.5
Antipasto Plate 12.*

Ports *Cordials*Single Malts

*An Array of Aged Tawny & Ruby Ports
Fine European Aperitifs & Digestivos.
10,12,14 & 15 Year Old Single Malts
Homemade Lemoncello and Sangria*

Beer * Wine * Signature Cocktails

*Treat Yourself to a Chocolate or Espresso Martini
Select from our extensive Wine, Beer and Cocktail List*

Business Licensing - Re: Bar of Chocolate

From: Gary Hutcheson
To: Ann Machado; Business Licensing; Chris Pirone; Doris Calloway; Gary ...
Date: 3/23/2013 3:38 PM
Subject: Re: Bar of Chocolate

Based on our checks I see no cause for denial.

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

>>> Business Licensing 3/21/2013 1:32 PM >>>
Hello,

For your approval:
Smartin Services LLC d/b/a Bar of Chocolate Cafe at 38 Wharf has submitted an application for Class A Lounge license. They are taking over the Winebar/Cafe at Wharf location, downstairs only. (Upstairs will be converted to offices.) They will be going before Council on April 22nd.

Corporate Info:
Smartin Services, LLC
251 Valley St., Portland

Sole member:
Sarah Martin, d.o.b. 3/1/66, 251 Valley St.
450-3290

Landlord:
217 Commercial St. Associates, Inc, 225 Commercial St., Suite 502

Slips going out today.

Thanks,
Janice

Business License Administrator
bl@portlandmaine.gov
207.874.8557



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 #: MIQ99B780101

Criminal History Record

Introduction

This rap sheet was produced in response to the following request (Produced on 2013-03-21) :

Inquiries Name(s) SARAH MARTIN (1966-03-01)

NO MATCH WAS FOUND FOR YOUR REQUEST.



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

April 10, 2013

Smartin Services LLC
Bar of Chocolate
38 Wharf St.
Portland, ME 04101

RE: Smartin Services LLC d/b/a Bar of Chocolate application for Class A Lounge

Dear Ms. Martin,

This letter shall serve as a reminder of the Public Hearing before the Portland City Council on Monday, April 22, 2013 at 7:00 P.M. for the review of your application for a Class A Lounge License. The meeting will take place in Council Chambers on the 2nd floor of City Hall, 389 Congress Street, Portland, ME 04101.

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

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

Sincerely,

Janice Gardner
Business License Administrator

Bar of Chocolate

38 Wharf St.



*Order 187-12/13
Tab 15 4-22-13*

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

CITY OF PORTLAND
IN THE CITY COUNCIL

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

**ORDER
GRANTING MUNICIPAL OFFICER'S
APPROVAL OF:**

**Local Food 1, LLC d/b/a B Good, 15 Exchange St. Application for Class III & IV Wine & Beer
and Entertainment with Dance License.**

Rcvd 3/19/13

3/6/13

Dear Mayor and Members of City Council,

I am hoping to open B Good Restaurant at 15 Exchange St. Portland, Maine. We source everything from local farms in the surrounding area. We also would like to acquire a Beer and Wine license to be consumed on premise; again we would only serve local beer and wines.

B Good wants to create a completely unique local environment where you are able to get a full meal as well as the drink of your desire all the while knowing everything you are eating was sourced locally.

I look forward to meeting everyone involved as well as serving this city.

Best,

Bill Zolper

COO, Local Food 1, LLC

 3/6/13

PUBLIC NOTICE
Legal Advertisement
Notice of Public
Hearing
City of Portland
A Public Hearing will be held on April 22, 2013 at 7:00 P.M. in City Council Chambers, 389 Congress St., on the application of Local Food 1, LLC for a B Good Food Service License Class III & IV. Wine & Beer License with Entertainment with Dance. Sponsored by Katherine L. Jones, City Clerk. 4808865
Please check out.

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

RCVD 3/19/13

Application for Food Service Establishment With Alcoholic Beverages

Type of Liquor License Applying for: Class III & IV

(Corporation/ LLC/ Non-profit org. ☒) (Sole Proprietor ☐) (Partnership ☐)

Business Name (d/b/a): B Good Phone: 207-949-0935

Location Address: 15 Exchange St, Portland, ME ZIP 04101

If new, what was formerly in this location: 15 Exchange St / Scarpa

Mailing Address: 244 Ray St. Portland, ME ZIP 04103

Contact Person: Bill Zolper Phone: 207-949-0935

Manager of Establishment: Bill Zolper Home Phone # " "

Owner of Premises (landlord): Joe Snelly

Address of Premises Owner: 41 Exchange St 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: ~~Local Food 1~~ Local Food 1, LLC

Corporation Mailing Address: 63 Woodland Dr. ZIP 04401

Contact Person: Ben Zolper Phone Number: 207-557-9687

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

Name	<u>Ben Zolper</u>	Title	<u>CEO</u>	DOB	<u>7/3/54</u>	Residence Address	<u>63 Woodland Dr. ME</u>
Name	<u>Bill Zolper</u>	Title	<u>COO</u>	DOB	<u>5/12/96</u>	Residence Address	<u>244 Ray St, Portland, ME</u>
Name		Title		DOB		Residence Address	<u>04103</u>
Name		Title		DOB		Residence Address	
Name		Title		DOB		Residence Address	
Name		Title		DOB		Residence Address	

Type of Food Served: Burgers, Veggie Burgers, Chicken sandwiches, salads, shakes
Please check all that will be served: Beer ☒ Wine ☒ Liquor ☐

Percentage of sales - Generated from Food: 85% Generated from Alcohol: 15%

Hours and Days of operation: 7 days a week 10 am to 10 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: _____

When is your targeted opening date? : June 1st, 2013

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

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

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

Signature Bill Joleen Title COO Date 3/6/13

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): B Good

Location Address: 15 Exchange St. ZIP 04101 Phone 949-0935

Will music be electric or acoustical or both? Acoustical

Will amplification used? Yes ☒ No ☐

If yes, where and at what level? Upstairs Level

Will you permit dancing on the premises? Yes ☐ No ☒

Will you permit dancing or entertainment after 1:00AM? Yes ☐ No ☒

Will recorded music be played: Inside ☒ Outside ☐ Both ☐

What is the distance to the nearest residential dwelling unit both inside and outside the building from where the entertainment will take place? Apartment above restaurant I believe

Please describe in detail the type and nature of the business and proposed entertainment: A small band playing live to a family environment while they enjoy a meal.

If new applicant, what is your targeted opening date? : June 1st, 2013

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

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

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

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

Signature Bill Gilman Title COO Date 3/6/13

The Architects Forum, Inc

77 Main Street
Portland, ME 04101
Tel: 617 853 3333
Fax: 617 853 3333

- GENERAL NOTES:**
1. CONTRACTOR SHALL VERIFY ALL DIMENSIONS PRIOR TO CONSTRUCTION.
 2. ALL INTERIOR DIMENSIONS ARE FROM FINISHED FACE OF WALLS.
 3. CONSTRUCTION IN STRICT COMPLIANCE OF MASSACHUSETTS BUILDING CODE, 8TH EDITION AND ALL OTHER APPLICABLE REGULATORY AGENCIES.
 4. CONTRACTOR TO VERIFY ALL ACCESSIBLE COMPONENTS WITH THE 2010 ARCHITECTURAL ACCESS BOARD HANDBOOK.
 5. ALL STRUCTURAL, MECHANICAL, ELECTRICAL, PLUMBING AND FIRE PROTECTION ENGINEERING BY OTHERS.
- FIRE ALARM SYSTEM NOTES:**
1. THE ELECTRICAL SUBCONTRACTOR IS RESPONSIBLE FOR A FULLY FIRE ALARMED BUILDING. THE FIRE ALARM SYSTEM SHOWN ON PLAN ARE EXISTING AND ADDITIONS ARE NOT INTENDED TO INDICATE ALL NECESSARY FOR AN APPROVED INSTALLATION.
 2. ALL WORK SHALL BE DONE IN ACCORDANCE WITH NFPA 72, THE COMMONWEALTH OF MASSACHUSETTS STATE BUILDING CODE AND ANY OTHER APPLICABLE REGULATIONS OR ORDINANCE GOVERNING THIS WORK.
 3. THE ELECTRICAL SUBCONTRACTOR IS RESPONSIBLE FOR A FULLY FIRE ALARMED BUILDING. THE SCOPE OF WORK INCLUDING MODIFICATIONS, ALTERATIONS, ADDITIONS OR DELETING.

DESCRIPTION	DATE	BY

**B GOOD
PORTLAND**

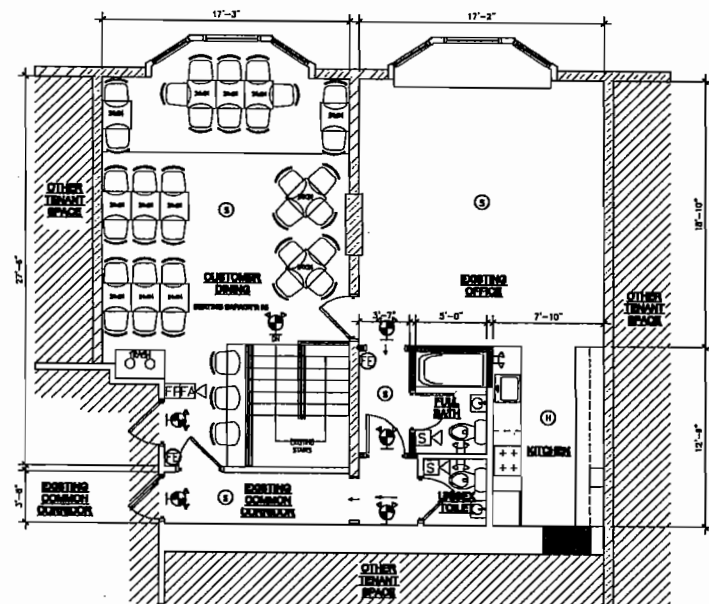
15 Exchange Street
Portland, ME

Drawing Title

**PROPOSED FLOOR
PLANS**

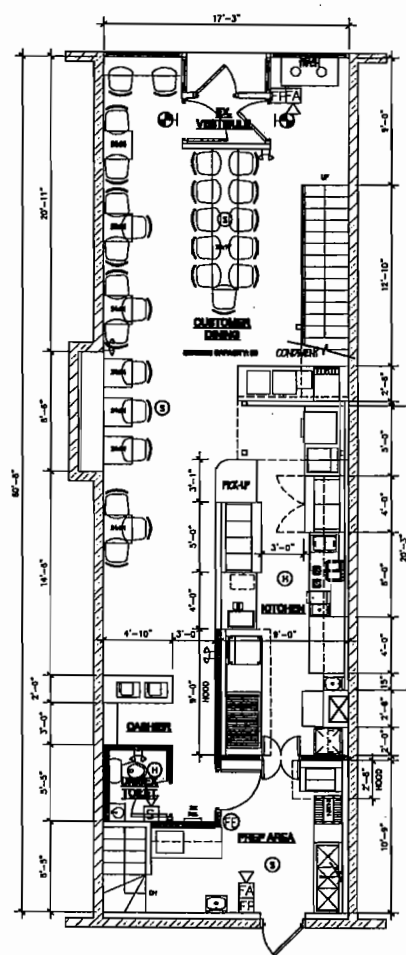
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Revised: AS NOTED
File Name: 005_A1.0
Revision: LM
Issue Date: February 25, 2013

A1.1

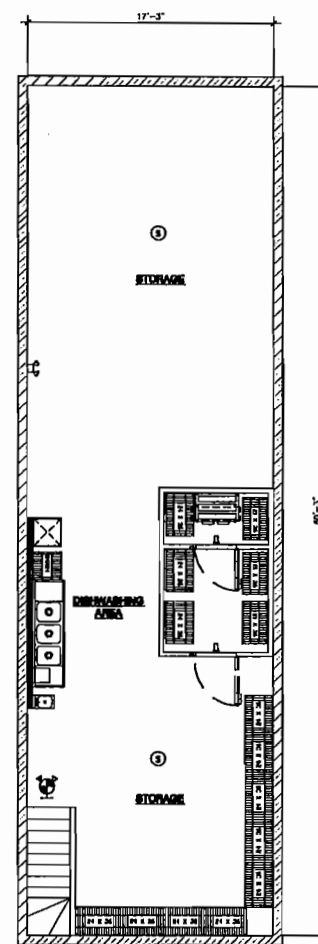


3 SECOND FLOOR PLAN
SCALE: 1/4" = 1'-0"

GENERAL LEGEND	
	EXISTING WALL
	EXISTING MASONRY WALL
	NEW 3/4\"
	EXISTING DOOR
	NEW DOOR
	FIRE EXTRUSION
	ILLUMINATED EXIT LIGHT
	ILLUMINATED EXIT LIGHT w/ EMERGENCY BACKUP LIGHT
	EMERGENCY BACKUP LIGHT
	SMOKE DETECTOR
	FIRE ALARM HORN/STROKE COMBINATION
	FIRE PULL STATION



2 FIRST FLOOR PLAN
SCALE: 1/4" = 1'-0"



1 BASEMENT PLAN
SCALE: 1/4" = 1'-0"

**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>Local Food 1, LLC</u> DOB: _____			2. Business Name (D/B/A) <u>B Good</u>		
DOB: _____					
DOB: _____			Location (Street Address) <u>15 Exchange</u>		
Address <u>603 Woodland Dr.</u>			City/Town <u>Portland</u>	State <u>ME</u>	Zip Code <u>04103</u>
			Mailing Address <u>603 Woodland Dr.</u>		
City/Town <u>Bangor</u>	State <u>ME</u>	Zip Code <u>04401</u>	City/Town <u>Bangor</u>	State <u>ME</u>	Zip Code <u>04401</u>
Telephone Number <u>207-557-9687</u>		Fax Number _____	Business Telephone Number <u>207-949-0935</u>		Fax Number _____
Federal I.D. # <u>46-1549041</u>			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: Bill Zalper
8. If business is NEW or under new ownership, indicate starting date: June 1st, 2013
Requested inspection date: May 22nd Business hours: 11am-10pm
9. Business records are located at: 603 Woodland Dr. Bangor, ME 04401
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
William Benjamin Zolper	7/3/54	Colerick, NJ
William Eric Zolper	5/12/90	Syracuse, NY

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

Bangor, ME, Portland, ME, Gorham, 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 ☒

16. Does/do applicant(s) own the premises? Yes ☐ No ☒ If No give name and address of owner: Joe Snelly,
11 Exchange St, Portland, ME 04101

17. Describe in detail the premises to be licensed: (Supplemental Diagram Required) 15 exchange st,
Portland, ME only the upstairs will serve Beer & wine.

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

YES ☒ NO ☐ Applied for: Certified Food Protection Manager

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 mile Which of the above is nearest? 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: _____

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 on 3/7, 20 13
Town/City, State Date

Bill Zolper
Signature of Applicant or Corporate Officer(s)

Please sign in blue ink

WBF
Signature of Applicant or Corporate Officer(s)

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

**SUPPLEMENTARY QUESTIONNAIRE FOR CORPORATE APPLICANTS, LIMITED LIABILITY COMPANIES AND
LIMITED PARTNERSHIPS**

1. Exact Corporate Name: Local Food 1, LLC
Business D/B/A Name: B Good
2. Date of Incorporation: ~~12/17/12~~ 12/4/12
3. State in which you are incorporated: Maine
4. If not a Maine Corporation, date corporation was authorized to transact business within the State of Maine:

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

Name	Address Previous 5 Years	Birth Date	% of Stock	Title
William Benjamin Zolper	Bangor, ME	7/3/54 7/3/54	80%	CEO
William Eric Zolper	Bangor, Portland, ME	5/12/96	20%	COO

6. What is the amount of authorized stock? 100,000 Outstanding Stock? all accounted for
7. Is any principal officer of the corporation a law enforcement official? () YES (X) NO
8. Has applicant(s) or manager ever been convicted of any violation of the law, other than a minor traffic violation(s), of the United States? () YES (X) NO.

9. If yes, please complete the following: Name: _____

Date of

Conviction: _____ Offense: _____

Location: _____ Disposition: _____

Dated at: _____ On: _____
City/Town Date

Signature of Duly Authorized Officer

Date: 3/7/13

Print Name of Duly Authorized Officer
Bill Zolper

B Good Menu

BURGER	TURKEY	VEGGIE	CHICKEN
local,	BURGER	BURGER	SANDWICH
all-natural	natural	homemade	hand cut
& house-ground	hand-packed	& all-natural	& grilled

MADE AS:

COUSIN OLIVER — lettuce, tomato, onions, Chef Tony's homemade pickles

WEST-SIDE — avocado, cilantro, tomato, homemade chipotle salsa

BUFFALO — buffalo sauce, blue cheese, lettuce, tomato

EL GUAPO — bacon, homemade jalapeno ranch, lettuce, tomato, onion

ADOPTED LUKE — mushrooms, caramelized onions, swiss, homemade bbq

SEASONAL SPECIAL JOANIE — homemade siracha slaw, avocado

* add local, all-natural cheese: sharp cheddar, smoked swiss, all-natural american

* add bacon, avocado double burger

* substitute a gluten-free bun

Salads:

HATCHBACK

baby spinach, sharp cheddar, apples, sweet potatoes, toasted pecans, dried cherries, maple-mustard vinaigrette

CHICKEN CAESAR

romaine, parmesan, homemade grilled croutons, lemon-caesar dressing

AVOCADO & ORANGE

Boston lettuce, radicchio, orange, avocado, pistachios, goat cheese, lemon-mint vinaigrette

SOUTHWESTERN CHICKEN

mesclun, avocado, corn, tomatoes, black beans, toasted corn, chipotle balsamic dressing

Shakes:

16oz 24oz.

MILKSHAKES

choose a Local Ice Cream or non-fat frozen yogurt

vanilla - chocolate - strawberry - chocolate malt - drunk elvis

FRUIT SHAKES

made with real fruit, juices, & non-fat frozen yogurt

mango - strawberry-banana

Business Licensing - Re: B Good Restaurant

From: Gary Hutcheson
To: Ann Machado; Business Licensing; Chris Pirone; Doris Calloway; Gary ...
Date: 3/23/2013 3:39 PM
Subject: Re: B Good Restaurant

Based upon our checks I see no cause for denial.

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

>>> Business Licensing 3/21/2013 11:00 AM >>>
Hello,

For your approval:

Local Food 1, LLC d/b/a B Good has submitted a Class III & IV Wine and Beer with Entertainment with Dance license for 15 Exchange St. They are more than 100 feet from Thirsty Pig, Bull Feeney's, and Gritty's, which all have entertainment licenses. This is the former location of 15 Exchange/Scarpa's. They are planning to go before Council on April 22nd.

Corporate Info:
Local Food 1, LLC, Bangor

CEO:
William Ben Zolper, d.o.b. 7/3/54, Bangor
COO:
William Eric Zolper, d.o.b. 5/12/90, 244 Ray St., Portland

Owner of Premises:
Joe Soley, 11 Exchange St.

Slips will go out today.

Thanks,
Janice

Business License Administrator
bl@portlandmaine.gov
207.874.8557



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 #: MIQ99B780099

Criminal History Record

Introduction

This rap sheet was produced in response to the following request (Produced on 2013-03-21) :

Inquiries Name(s) WILLIAM B ZOLPER (1954-07-03)

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 #: MIQ99B780100

Criminal History Record

Introduction

This rap sheet was produced in response to the following request (Produced on 2013-03-21) :

Inquiries Name(s) WILLIAM E ZOLPER (1990-05-12)

NO MATCH WAS FOUND FOR YOUR REQUEST.



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

April 10, 2013

Local Food 1, LLC
B Good
63 Woodland Dr.
Bangor, ME 04401

RE: Local Food 1, LLC d/b/a B Good

Dear Mr. Zolper and Mr. Zolper,

This letter shall serve as a reminder of the Public Hearing before the Portland City Council on Monday, April 22, 2013 at 7:00 P.M. for the review of your application for a Class III & IV Wine & Beer License with Entertainment with Dance. The meeting will take place in Council Chambers on the 2nd floor of City Hall, 389 Congress Street, Portland, ME 04101.

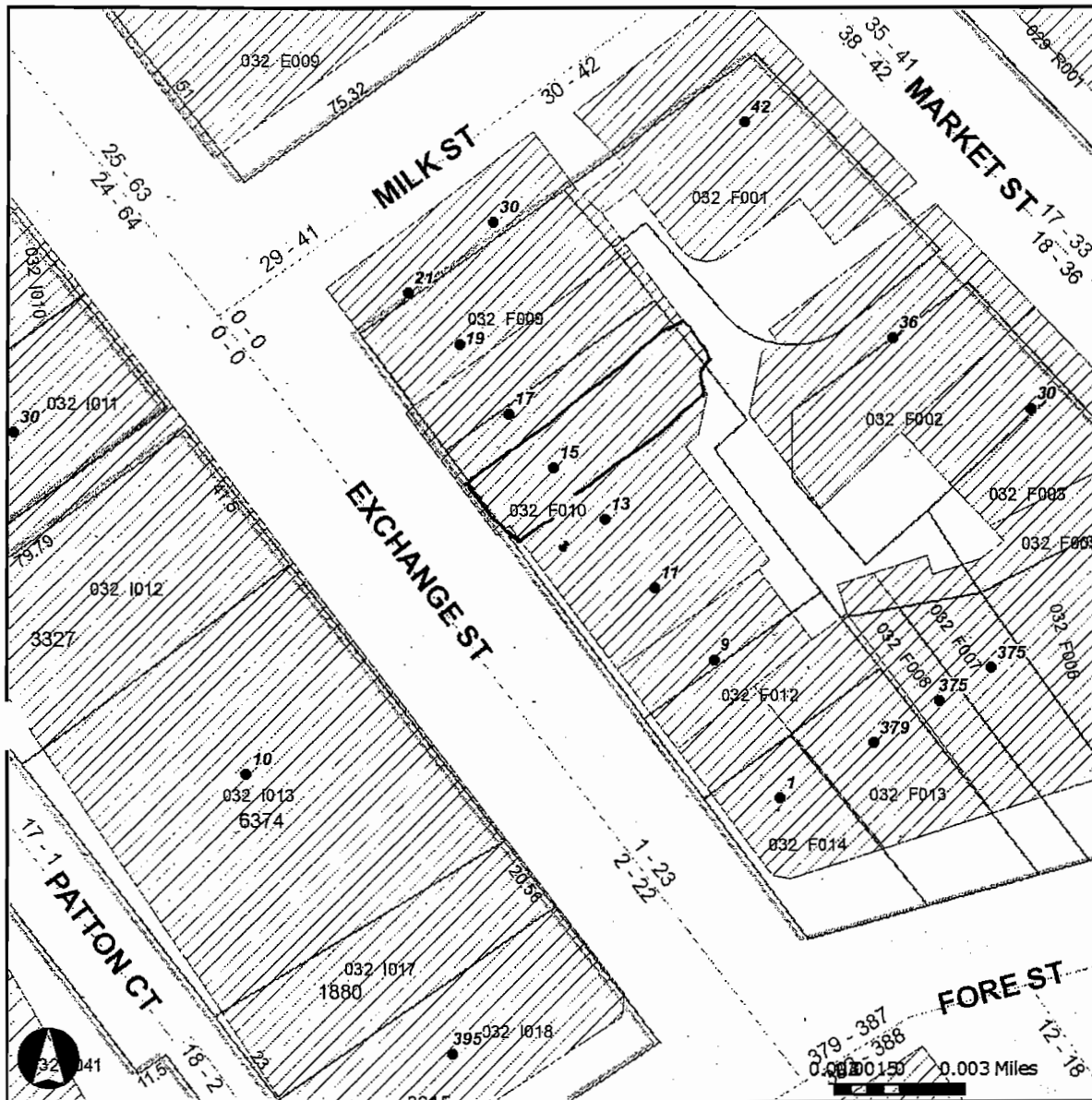
You or a representative of the business must be present at this meeting in the event that the City Council has questions regarding the license application. If there is no representation and questions arise, the issue could be postponed.

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

Fifteen Exchange



Address Candidates



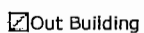
Interstate



Streets



Buildings



Parcels



Traveled Ways



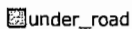
Stream



Wetland



Lake/Pond



Jetport



County Streets



A15

A21

A31

ME Towns



Ocean



0.003 Miles

Order 188-12/13
Tab 16 4-22-13

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

CITY OF PORTLAND
IN THE CITY COUNCIL

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

ORDER
GRANTING MUNICIPAL OFFICER'S
APPROVAL OF:

Fat Dragon, LLC d/b/a Empire at 575 Congress St. Application for Class XI
Restaurant/Lounge License with Entertainment with Dance.

CITY CLERK

April 1, 2013

2013-04-01 PM 2:19

Theresa Chan
Empire
575 Congress St
Portland, ME 04101

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

Dear Mayor Brennan and Members of City Council,

I have been a proud Maine business owner since 2009. I have served over 150,000 meals to happy patrons, supported local farmers and fishermen, and given back to my community whenever possible. I have found that Maine is a rewarding and incredible place to have a business.

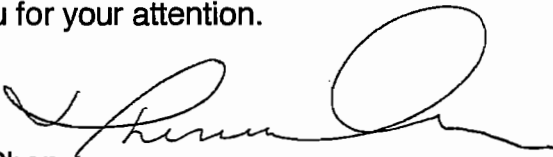
As the new owner of Empire it is my intention to honor its current use as a hub of local music, while expanding the restaurant capabilities to offer a worthy contribution to Portland's food culture. The building's facade and facilities will undergo renovations and improvements in order to support a calendar of music, art, and private events. The downstairs will become a new restaurant offering a menu of traditional Chinese Dim Sum and other authentic dishes.

I am excited to focus my energy and experience toward building a respected Portland business.

Thank you for your attention.

Sincerely,

Theresa Chan

A handwritten signature in black ink, appearing to read 'Theresa Chan', written over a horizontal line.

Legal Advertisement
Notice of Public
Hearing
City of Portland
Public Hearing will be
held on April 22, 2013 at
10 P.M. in City Coun-
cil Chambers, 389 Con-
gress St., on the appli-
cation for Fat Dragon,
d/b/a Empire, 575
Congress St. Applica-
tion for Class XI Restau-
rant License
in the City of Portland.
Sponsored
by Katherine L. Jones,
Clerk.
4808923

389 Congress Street
Portland, ME 04101
(207) 874-8557

Application for Food Service Establishment With Alcoholic Beverages

Class of Liquor License Applying for: Class XI - Restaurant Lounge

Business Name (d/b/a): Empire Phone: 207-879-8988

Location Address: 575 Congress St. ZIP 04101

If new, what was formerly in this location? _____

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

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

Email: theresa@portlandempire.com

Manager of Establishment: Theresa Chan Home Phone: 207-406-0344

Landlord of Premises: 571 Enterprises, LLC

Address of Landlord: 138 Grant Rd, Freeport, ME ZIP 04032

Does the issuance of this license directly or indirectly benefit any City employee(s)? Yes _____ No ☒
If yes, list name(s) of employee(s) and department(s): _____

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

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

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

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

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

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

Corporation Name: Fat Dragon, LLC
Corporation Mailing Address: 575 Congress, ST, Portland, ME ZIP 04101
Contact Person: _____ Phone Number: _____

MUNICIPAL OFFICERS: (continued on back page; if more space is needed, please attach a separate page)

Name Theresa Chan Title President DOB 5/24/1986
Residence Address 138 Grant Rd, Freeport, ME 04032

Payment Method for Business License and application fees:
Cash, Money Order or Bank Check, Visa or MasterCard

CITY CLERK

PRINCIPAL OFFICERS: (continued)

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

Type of Food Served: Chinese Cuisine

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

Percentage of Sales generated From Food: 70% From Alcohol: 30%

Hours and Days of operation: 7 Days 11am - 1am

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

If no, please explain Food service will end at around 10pm

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

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

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

Will you have after hours entertainment from 1:00A.M. to 3:00A.M.? Yes _____ No ☒

Will you have outdoor dining? Yes _____ No ☒ If yes, please indicate location on diagram.

Also, will the outdoor dining be on PUBLIC _____ or PRIVATE _____ property?

Have you applied for an (Public) 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? 5/1/2013

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

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

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

Signature [Signature] Title Manager Date 3/29/13

Revised 8-31-10

Payment Method for Business License and application fees:
Cash, Money Order or Bank Check, Visa or MasterCard

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

Supplemental Application for Dancing and Entertainment

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

Business Name (d/b/a): Empire

Location Address: 575 Congress St; Portland ZIP 04101 Phone 207-879-8988

Will music be electric or acoustical or both? Both

Will amplification used? Yes ☒ No ☐

If yes, where and at what level? Upper floor, amplification at 90 decibels

Will you permit dancing on the premises? Yes ☒ No ☐

Will you permit dancing or entertainment after 1:00AM? Yes ☐ No ☒

Will recorded music be played: Inside ☒ Outside ☐ Both ☐

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

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

This two-story commercial space will have a restaurant on the ground floor serving lunch and dinner, and the upper floor will be an event space catering to private dining events, live music, film, and occasional dancing.

If new applicant, what is your targeted opening date? : 5/1/2013

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

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

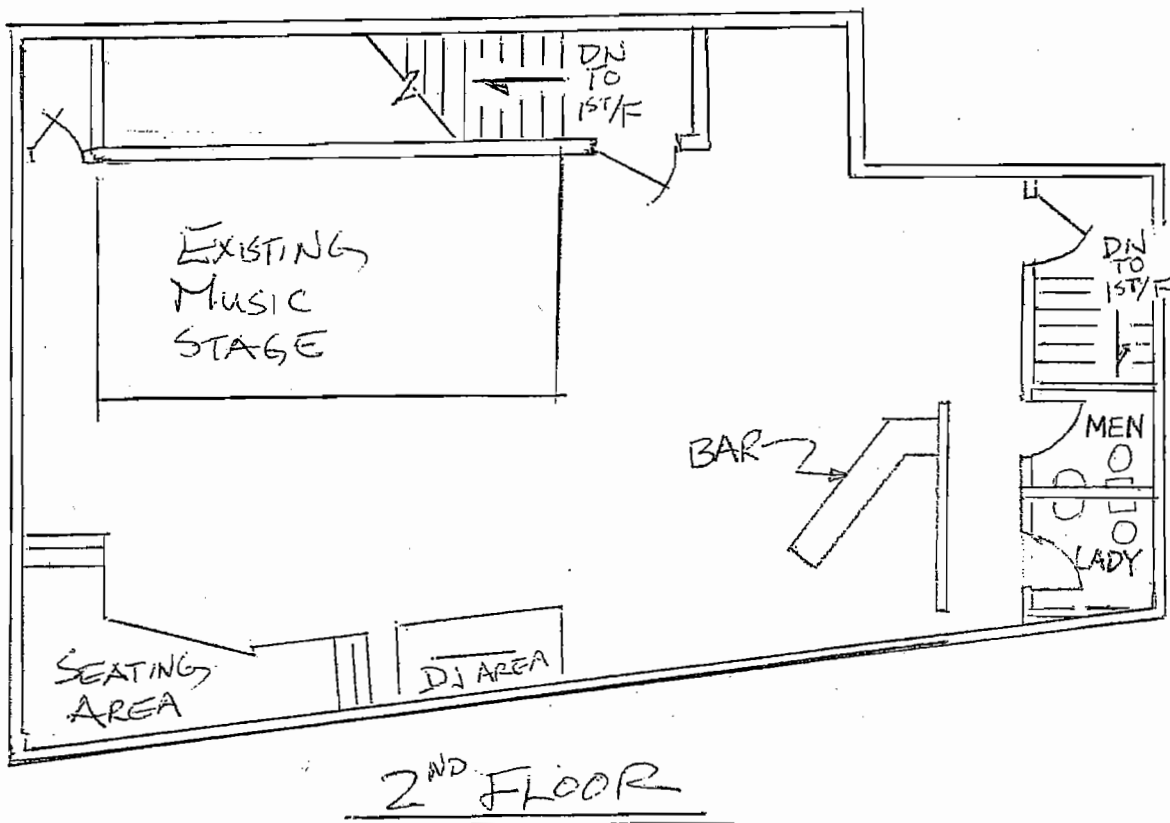
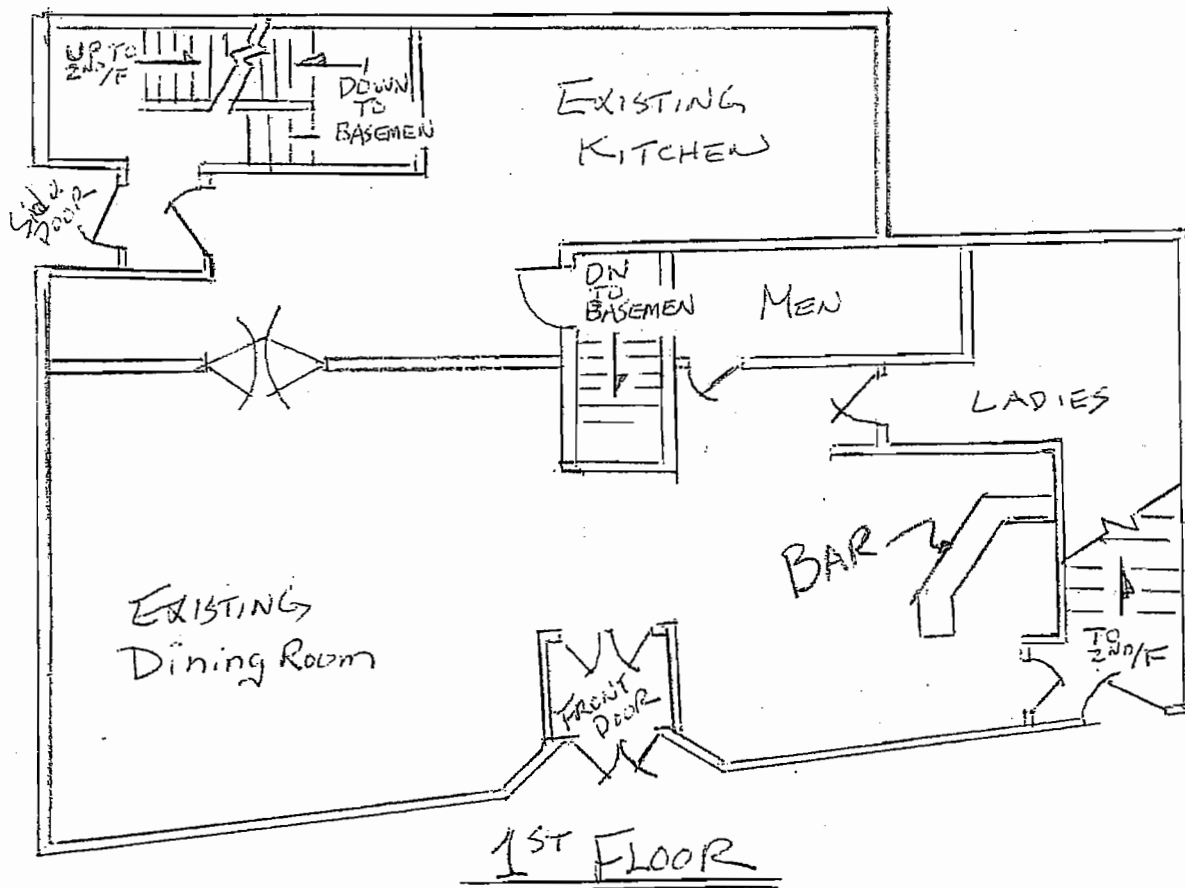
Applicant, by signature below, agrees to abide by all laws, orders, ordinances, rules and regulations governing the above license and further agrees that any misstatement of material fact may result in refusal of license or revocation, if one has been granted. Applicant agrees that all taxes and accounts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

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

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

Signature [Signature] Title Manager Date 3/29/2013

PREMISE DIAGRAM



**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-OPTINONAL 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>Fat Dragon, LLC</u> DOB: _____			2. Business Name (D/B/A) <u>Empire</u>		
DOB: _____					
DOB: _____			Location (Street Address) <u>575 Congress St</u>		
Address <u>138 Grant Rd</u>			City/Town <u>Portland</u>	State <u>ME</u>	Zip Code _____
			Mailing Address <u>575 Congress St</u>		
City/Town <u>Freeport</u>	State <u>ME</u>	Zip Code <u>04032</u>	City/Town <u>Portland</u>	State <u>ME</u>	Zip Code <u>04101</u>
Telephone Number <u>207-406-0344</u>		Fax Number _____	Business Telephone Number <u>207-879-8988</u>		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: Theresa Chan

8. If business is NEW or under new ownership, indicate starting date: 5/25/2013

requested inspection date: 5/14/2013 Business hours: 11am - 11pm

9. Business records are located at: 575 Congress St; 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
Theresa Chan	5/24/86	New York, NY

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

Freeport, ME (Ms. Chan)

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: _____
571 Enterprises, LLC ; Freeport, ME 04032

17. Describe in detail the premises to be licensed: (Supplemental Diagram Required) See Attached
Two-story commercial space, downstairs restaurant and upper floor is event space

18. Does/do applicant(s) have all the necessary permits required by the State Department of Human Services?
YES ☐ NO ☒ Applied for: 4/1/2013

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? 0.5 miles Which of the above is nearest? Church
(Sisters of the Precious Blood)
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, ME on April 1st, 20 13
Town/City, State Date

Please sign in blue ink

Signature of Applicant or Corporate Officer(s)

Theresa Chan

Signature of Applicant or Corporate Officer(s)

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

**SUPPLEMENTARY QUESTIONNAIRE FOR CORPORATE APPLICANTS, LIMITED LIABILITY COMPANIES AND
LIMITED PARTNERSHIPS**

1. Exact Corporate Name: Fat Dragon, LLC
Business D/B/A Name: Empire
2. Date of Incorporation: 3/28/2013
3. State in which you are incorporated: Maine
4. If not a Maine Corporation, date corporation was authorized to transact business within the State of Maine:

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

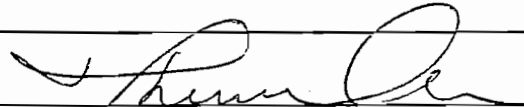
Name	Address Previous 5 Years	Birth Date	% of Stock	Title
Theresa Chan	Freeport, ME	5/24/86	100%	President

6. What is the amount of authorized stock? 100% Outstanding Stock? _____
7. Is any principal officer of the corporation a law enforcement official? () YES (✓) NO
8. Has applicant(s) or manager ever been convicted of any violation of the law, other than a minor traffic violation(s), of the United States? () YES (✓) NO.
9. If yes, please complete the following: Name: _____

Date of
Conviction: _____ Offense: _____

Location: _____ Disposition: _____

Dated at: _____ On: _____
City/Town Date

 Date: 4/1/2013
Signature of Duly Authorized Officer

Theresa Chan
Print Name of Duly Authorized Officer

EMPIRE SAMPLE MENU

Starters:

Kale and Shiitake Mushroom Spring Roll
Duck and Pan-Fried Duck Egg Salad
Crunchy Pickled Daikon "Noodle" Salad
Empire Eggroll- Bison's corned beef (Topsham, Maine), kim chee
Baked Crab Rangoon Dip- Maine crab, chives, wonton chips
Pork Belly Sliders

Dim Sum:

Shanghai Soup Dumplings
Shrimp Har Gow
Lobster Dumplings
Shu Mai
Peking Duck Buns
Grilled Turnip Cakes
Shrimp Rice Crepes
Stuffed Jalapeno Bites
Grilled Stuffed Eggplant

Rice and Noodles:

Bison's Bacon Fried Rice
Crabmeat Fried Rice
Lobster and Shanghai Noodles
Foraged Conch Noodles
Garlic Green Beans with Truffled Rice
Braised 5-spice Short-ribs and Rice Noodles



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 #: MIQ99B789766

Criminal History Record

Introduction

This rap sheet was produced in response to the following request (Produced on 2013-04-01) :

Inquiries Name(s) THERESA CHAN (1986-05-24)

NO MATCH WAS FOUND FOR YOUR REQUEST.



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

April 10, 2013

Fat Dragon, LLC
Empire
575 Congress St.
Portland, ME 04101

RE: Fat Dragon, LLC d/b/a Empire Application for Class XI Lounge License with Entertainment with Dance

Dear Ms. Chan,

This letter shall serve as a reminder of the Public Hearing before the Portland City Council on Monday, April 22, 2013 at 7:00 P.M. for the review of your application for a Class XI Lounge License with Entertainment with 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

Empire

575 Congress St.



Order 189-12/13
Tab 17 4-22-13

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

CITY OF PORTLAND
IN THE CITY COUNCIL

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

ORDER
GRANTING MUNICIPAL OFFICER'S
APPROVAL OF:

Crobo LLC d/b/a Port City Music Hall at 504 Congress St. Application for Class XI
Restaurant/Lounge License with Entertainment with Dance and After-Hours Entertainment.

Crobo LLC

DBA Port City Music Hall
504 Congress St
Portland, ME 04101

CITY CLERK

2013 MAR 27 AM 11:46

March 1, 2013

Mayor Nicholas M. Mavodones
And the Member of the City Council
City Hall of Portland
389 Congress St
Portland, ME 04101

Dear Sirs and Madams-

Crobo LLC is proud to serve as the new tenant of the performing arts and restaurant/ lounge space known as Port City Music Hall, located at 504 Congress St in Portland, Me. As the General Manager of the venture, I am excited and honored to contribute to the vital urban and creative environment of Portland, Maine.

Crobo LLC (hereby known as the applicant) has enclosed the following applications so that the applicant may acquire a Class XI Restaurant/ Lounge license:

- Application for Food Service Establishment with Alcoholic Beverages
- Supplemental Application for Dancing and Entertainment

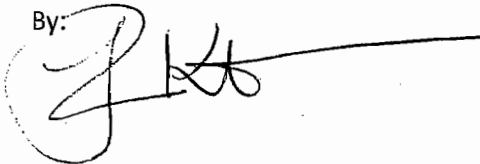
As the applicant, Crobo LLC is prepared to take all responsible measures to ensure that the surrounding neighborhoods are minimally impacted from the effects of the operation of Port City Music Hall. We will address all issues involving noise, crowd control and parking for the benefit of the Portland community.

Please do not hesitate to contact us with any questions you may have or any additional information that you may need.

Regards,

Crobo LLC

By:



Lauren Wayne
General Manager
lauren@statetheatreportland.com
207 956 6001

PUBLIC NOTICE
Legal Advertisement
Notice of Public
Hearing
City of Portland
A Public Hearing will be held on April 22, 2013 at 7:00 P.M. in City Council Chambers, 389 Congress St., on the application of Crobo LLC d/b/a Port City Music Hall, for a Class XI Restaurant/Lounge License with Entertainment with Dance and After-Hours Entertainment. Sponsored by Katherine L. Jones, City Clerk.
4808882

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: Class XI Restaurant / Lounge

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

Business Name (d/b/a): Port City Music Hall Phone: 207 956 6001

Location Address: 504 Congress St ZIP 04101

If new, what was formerly in this location: _____

Mailing Address: same ZIP _____

Contact Person: Lauren Wayne Phone: 207 838 5552

Manager of Establishment: Same as above Home Phone # _____

Owner of Premises (landlord): Family Fun Entertainment, LLC

Address of Premises Owner: 737 River Road Windham, ME ZIP 04062

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):

The State Theatre, 609 Congress St

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: Crobo LLC

Corporation Mailing Address: 142 High St, Ste 200 Portland, ME ZIP 04101

Contact Person: Lauren Wayne Phone Number: 207 838 5552

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

Name	Title	DOB	Residence Address
<u>Alex James Crother</u>	<u>Partner</u>	<u>6/19/75</u>	<u>Burlington, VT</u>
<u>James F. Glanville</u>	<u>Partner</u>	<u>6/17/61</u>	<u>New York, NY</u>
<u>James Alex Crother</u>	<u>Partner</u>	<u>6/19/75</u>	<u>Burlington, VT</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

(Please see reverse side)

Type of Food Served: BBQ

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

Percentage of sales – Generated from Food: \$420K Generated from Alcohol: \$65K

Hours and Days of operation: Variable; dependent on show schedule

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? : April 15, 2013

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

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

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

Signature [Signature] Title GM/officer Date 3/15/13

Application attachment to other City license

\$485. With Dance
\$270. Without Dance
\$545 After Hours (1AM-3AM).
Total due: 11030

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): Port City Music Hall

Location Address: 504 Congress St ZIP 04101 Phone 207 956 6001

Will music be electric or acoustical or both? both

Will amplification used? Yes ☒ No ☐

If yes, where and at what level? Stage, less than 55 decibels

Will you permit dancing on the premises? Yes ☒ No ☐

Will you permit dancing or entertainment after 1:00AM? Yes ☒ No ☐

Will recorded music be played: Inside ☒ Outside ☐ Both ☐

What is the distance to the nearest residential dwelling unit both inside and outside the building from where the entertainment will take place? Est 100 ft

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

Live music venue, serving food and beverage.

If new applicant, what is your targeted opening date? : April 1, 2013

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

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

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

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

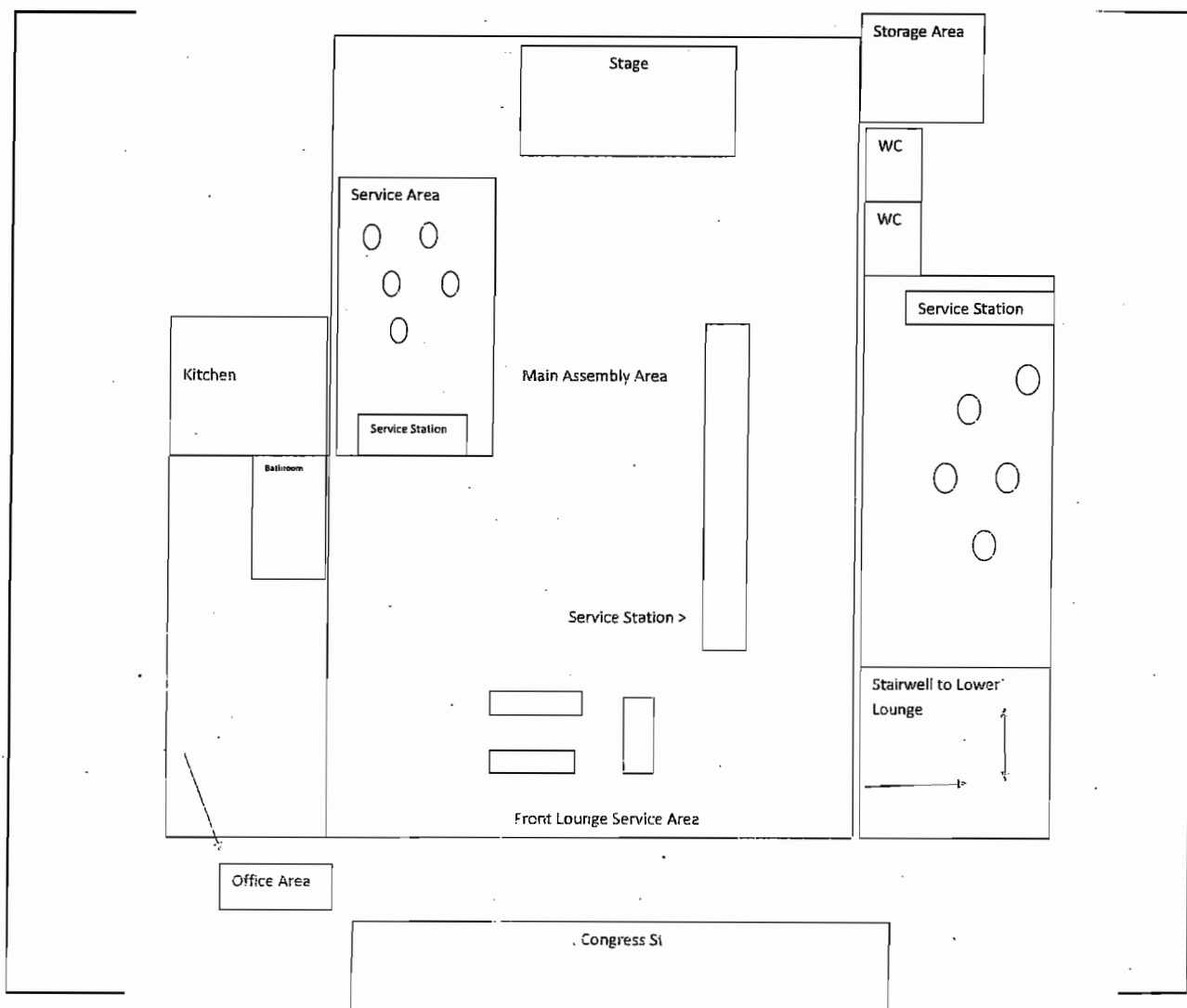
Signature [Signature] Title GM/Officer Date 3/16/13



SUPPLEMENTAL APPLICATION FORM ON-PREMISE DIAGRAM

In an effort to clearly define your license premise and the areas that consumption and storage of liquor is allowed, The Liquor Licensing & Inspection Division is requiring all applicants to submit a diagram of the premise to be licensed in addition to a completed license application.

Diagrams should be submitted on this form and should be as accurate as possible. Be sure to label the areas of your diagram including entrances, office area, kitchen, storage areas, dining rooms, lounges, function rooms, decks and all areas that you are requesting approval from the Department for liquor consumption.



**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)

☒ RESTAURANT/LOUNGE (Class XI)

☐ HOTEL-OPTIONAL FOOD (Class I-A)

☐ HOTEL (Class I,II,III,IV)

☐ CLASS A LOUNGE (Class X)

☐ CLUB-ON PREMISE CATERING (Class I)

☐ CLUB (Class V)

☐ GOLF CLUB (Class I,II,III,IV)

☐ TAVERN (Class 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)		
Crobo LLC			Port City Music Hall		
DOB:			DOB:		
DOB:			DOB:		
DOB:			Location (Street Address)		
Address			504 Congress Street		
142 High St			City/Town	State	Zip Code
Suite 200			Portland	ME	04101
City/Town			Mailing Address		
Portland			142 High St, Ste 200		
State	Zip Code	City/Town	State	Zip Code	
ME	04101	Portland	ME	04101	
Telephone Number	Fax Number	Business Telephone Number	Fax Number		
207 956 6001		207 956 6001			
Federal I.D. #	Seller Certificate #				
27-2503780	1146133				

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 \$ 65,000 LIQUOR \$ 420,000

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: Lauren Wayne

8. If business is NEW or under new ownership, indicate starting date: 4/1/13

Requested inspection date: 4/2/13 Business hours: by appointment

9. Business records are located at: 504 Congress Street

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
Lauren Wayne (General Manager)	8/15/73	Arlington, VA
Mary Fayth Proyer (Bar Manager)	7/28/76	Ht. Pleasant, NJ

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

Portland, ME
Brooklyn, NY

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) Main Assembly area, front lounge, lower lounge

18. Does/do applicant(s) have all the necessary permits required by the State Department of Human Services?
YES ☐ NO ☒ Applied for: March 2013

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? 1/2 mile Which of the above is nearest? School

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, ME on MARCH 15, 20 13
Town/City, State Date

Please sign in blue ink

Signature of Applicant or Corporate Officer(s)

LAUREN WAYNE

Signature of Applicant or Corporate Officer(s)

James Blaney

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

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

1. Exact Corporate Name: Crobo LLC
Business D/B/A Name: Port City Music Hall
2. Date of Incorporation: May 2010
3. State in which you are incorporated: Maine
4. If not a Maine Corporation, date corporation was authorized to transact business within the State of Maine:

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

Name	Address Previous 5 Years	Birth Date	% of Stock	Title
James Alex Crathers	Burlington, VT	6/19/75	50	Partner
James F. Glancy	New York, NY	6/17/61	50	Partner

6. What is the amount of authorized stock? LLC Outstanding Stock? 0
7. Is any principal officer of the corporation a law enforcement official? () YES (✓) NO
8. Has applicant(s) or manager ever been convicted of any violation of the law, other than a minor traffic violation(s), of the United States? () YES (✓) NO.
9. If yes, please complete the following: Name: _____

Date of
Conviction: _____ Offense: _____

Location: _____ Disposition: _____

Dated at: PORTLAND On: MARCH 15, 2013
City/Town Date

[Signature]
Signature of Duly Authorized Officer
LAUREN WAYNE
Print Name of Duly Authorized Officer

Date: MARCH 15, 2013

[Signature]
James Glancy
Print Name of Duly Authorized Officer

Port City Music Hall Menu

Salads-\$6

Wedge with Blue Cheese- a iceberg topped with bacon and blue cheese.

Carrots, Celery & Special Sauce

Garden Salad-lettuce, tomato, onion, green pepper, cucumber, croutons and balsamic dressing

Sandwiches- \$8

*all sandwiches served with pickles and chips

Pulled Pork Sandwich -smoked pulled pork with bbq sauce, slaw and pickles, serve on a fresh bulkie roll-

Sliders-three pup-sized cheeseburgers with onions, special sauce, served on mini-buns.

Buffalotofu-buffalo-sauced fried tofu with lettuce, tomato and onion on a wrap

Meats-\$10

*all meats served with choice of side and sauce

Pulled Pork-smoked bbq pork, pulled and tossed in our bbq sauce.

Baby Back Ribs-tender baby backs, smoked with a dry rub that will have your mouth begging for more.

Canadian Bacon- house-cured Canadian bacon, eh? first brined, then smoked.

Beef Brisket beef brisket, smoked slow and low for over 10 hours. sliced and grilled to serve. a delicacy.

Sausages- two house-smoked sausages, finished on the grill.

Sides \$3

BBQ Beans

Collard Greens

Cole Slaw

Mac & Cheese

Garlic Mash

Biscuits and Honey

Sweets\$3

Vanilla Ice Cream & Chocolate Sauce

Donut Holes

Business Licensing - Re: Port City Music Hall-Change of Ownership

From: Gary Hutcheson
To: Business Licensing
Date: 4/4/2013 10:33 AM
Subject: Re: Port City Music Hall-Change of Ownership

We have no issues with this.

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

>>> Business Licensing 4/2/2013 10:18 AM >>>
Hello,

Crobo LLC has submitted a Class XI Restaurant/Lounge application for Port City Music Hall at 504 Congress St. This is a change of ownership. They will be going on the April 22nd Council agenda.

Corporate Info:
Crobo LLC,
142 High St, Ste. 200, Portland

Partner: James F. Glancy, d.o.b. 6/17/61, NY
Partner: James Alex Crothers, d.o.b. 6/19/75, VT
Manager: Lauren Wayne, d.o.b. 8/15/73
Bar Manager: Mary Fayth Preyer, d.o.b. 7/28/76

Owner of Premises:
Family Fun Entertainment, LLC, Windham

Slips going out today.

Thank you,
Janice

Business License Administrator
bl@portlandmaine.gov
207.874.8557



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 #: MIQ99B789777

Criminal History Record

Introduction

This rap sheet was produced in response to the following request (Produced on 2013-04-01) :

Inquiries Name(s) JAMES A CROTHERS (1975-06-19)

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 #: MIQ99B789765

Criminal History Record

Introduction

This rap sheet was produced in response to the following request (Produced on 2013-04-01) :

Inquiries Name(s) LAUREN WAYNE (1973-08-15)

NO MATCH WAS FOUND FOR YOUR REQUEST.

Transaction Response #: MIQ99B789764

Introduction

Inquiries Name(s)

MARY F PREYER (1976-07-28)

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 #: MIQ99B789767

Criminal History Record

Introduction

This rap sheet was produced in response to the following request (Produced on 2013-04-01) :

Inquiries Name(s) . JAMES F GLANCY (1961-06-17)

NO MATCH WAS FOUND FOR YOUR REQUEST.



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

April 10, 2013

Crobo LLC
142 High St., Suite 200
Portland, ME 04101

RE: Crobo LLC d/b/a Port City Music Hall Application for Class XI Restaurant/Lounge License with Entertainment with Dance

Dear Ms. Wayne,

This letter shall serve as a reminder of the Public Hearing before the Portland City Council on Monday, April 22, 2013 at 7:00 P.M. for the review of your application for a Class XI Restaurant/Lounge License with Entertainment with 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

Order 190-12/13
Tab 18 4-22-13

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

CITY OF PORTLAND
IN THE CITY COUNCIL

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

ORDER
GRANTING MUNICIPAL OFFICER'S
APPROVAL OF:

Fish Shack, LLC d/b/a Boone's Fish House & Oyster Room at 6 Custom House Wharf.
Application for Class I Liquor License with Entertainment with Dance and Outdoor Dining on
Private Property.

Dear Mr. Mayor and Members of the City Council:

This letter is intended to state our intentions with our newest venture. We are renovating the former Boone's Seafood Restaurant to be Boone's Fish House and Oyster Room. We will be a two-story restaurant with a function area on the second floor as well as an oyster bar. There will be 2 outside decks, one existing first floor deck and a new 2nd story deck. We will be steaming lobster, grilling fish over a wood fire, frying clams and shucking oysters in our open kitchen concept. We have been painstakingly renovating the blighted wharf building to restore it to its former glory.

Chef Harding Lee Smith is the sole owner of the business. Chef Smith has gained acclaim with his three other restaurants in the city. The Front Room on Munjoy Hill has been in operation since 2005. The Grill Room & Bar on Exchange Street has been open since 2008 and The Corner Room Italian Kitchen & Bar since 2009.

As with the other three restaurants Chef Smith will be enhancing the area with a well-run full service restaurant on Custom House Wharf.

Thank you for consideration and time.

A handwritten signature in black ink, appearing to read 'H. Lee Smith', with a long horizontal flourish extending to the right.

Harding Lee Smith, chef/owner

Legal Advertisement
Notice of Public
Hearing
City of Portland

Public Hearing will be held on April 22, 2013 at 10 P.M. in City Council Chambers, 389 Congress St., on the application for Fish Shack, d/b/a Boone's Fish House & Oyster Room, 6 Custom House Wharf, for Class I liquor license with entertainment with indoor and outdoor seating on Private Property. Sponsored by Catherine L. Jones, City Clerk. 4808911

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

Application for Food Service Establishment With Alcoholic Beverages

Class of Liquor License Applying for: Class I

Business Name (d/b/a): Boone's Fish House & Oyster Room Phone: 319-4369

Location Address: 6 Custom House Wharf (86 Commercial St) ZIP 04101

If new, what was formerly in this location? Boone's Seafood Restaurant

Mailing Address: 6 custom house wharf, Portland, ME Box 16 ZIP 04101

Contact Person: HAND NO SMITH Phone: 319-4369

Email: handinglee.smith@gmail.com

Manager of Establishment: handing smith Home Phone: 319-4369

Landlord of Premises: Proprietors of Custom House Wharf

Address of Landlord: 18 Custom House Wharf 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: _____

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

Corporation Name: Fish Shack, LLC
Corporation Mailing Address: 73 Congress St. #1, Portland, ME ZIP 04101
Contact Person: HAND NO SMITH Phone Number: 319-4369

PRINCIPAL OFFICERS: (continued on back page; if more space is needed, please attach a separate page)
Name: HAND NO SMITH Title: owner DOB: 4/16/69
Residence Address: 73 Congress St. #1, Portland, ME 04101

Payment Method for Business License and application fees:
Cash, Money Order or Bank Check, Visa or MasterCard

CITY CLERK

2013 APR 22 PM 5:55

PRINCIPAL OFFICERS: (continued)

Name _____ Title _____ DOB _____

Residence Address _____

Name _____ Title _____ DOB _____

Residence Address _____

Type of Food Served: Seafood / Steaks / Chops / Oysters / Clams

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

Percentage of Sales generated From Food: 80 From Alcohol: 20

Hours and Days of operation: 7 days 11am - 1am

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 have after hours entertainment from 1:00A.M. to 3:00A.M.? Yes _____ No ☒

Will you have outdoor dining? Yes ☒ No _____ If yes, please indicate location on diagram.

Also, will the outdoor dining be on PUBLIC _____ or PRIVATE ☒ property?

Have you applied for an (Public) 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? June 1, 2013

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

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

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

Signature [Signature] Title owner Date 9/1/12

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): Boone's Fish House & Oyster Room

Location Address: 6 Customhouse Wharf (86 Congress St) ZIP 04101 Phone 3199368

Will music be electric or acoustical or both? both

Will amplification used? Yes X No _____

If yes, where and at what level? 2nd floor low level

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 X

What is the distance to the nearest residential dwelling unit both inside and outside the building from where the entertainment will take place? 500 ft?

Please describe in detail the type and nature of the business and proposed entertainment: We will be a 2 story seafood restaurant with full service. There is a function area on 2nd floor. Small bands for entertainment of guests.

If new applicant, what is your targeted opening date? : June 1 2013

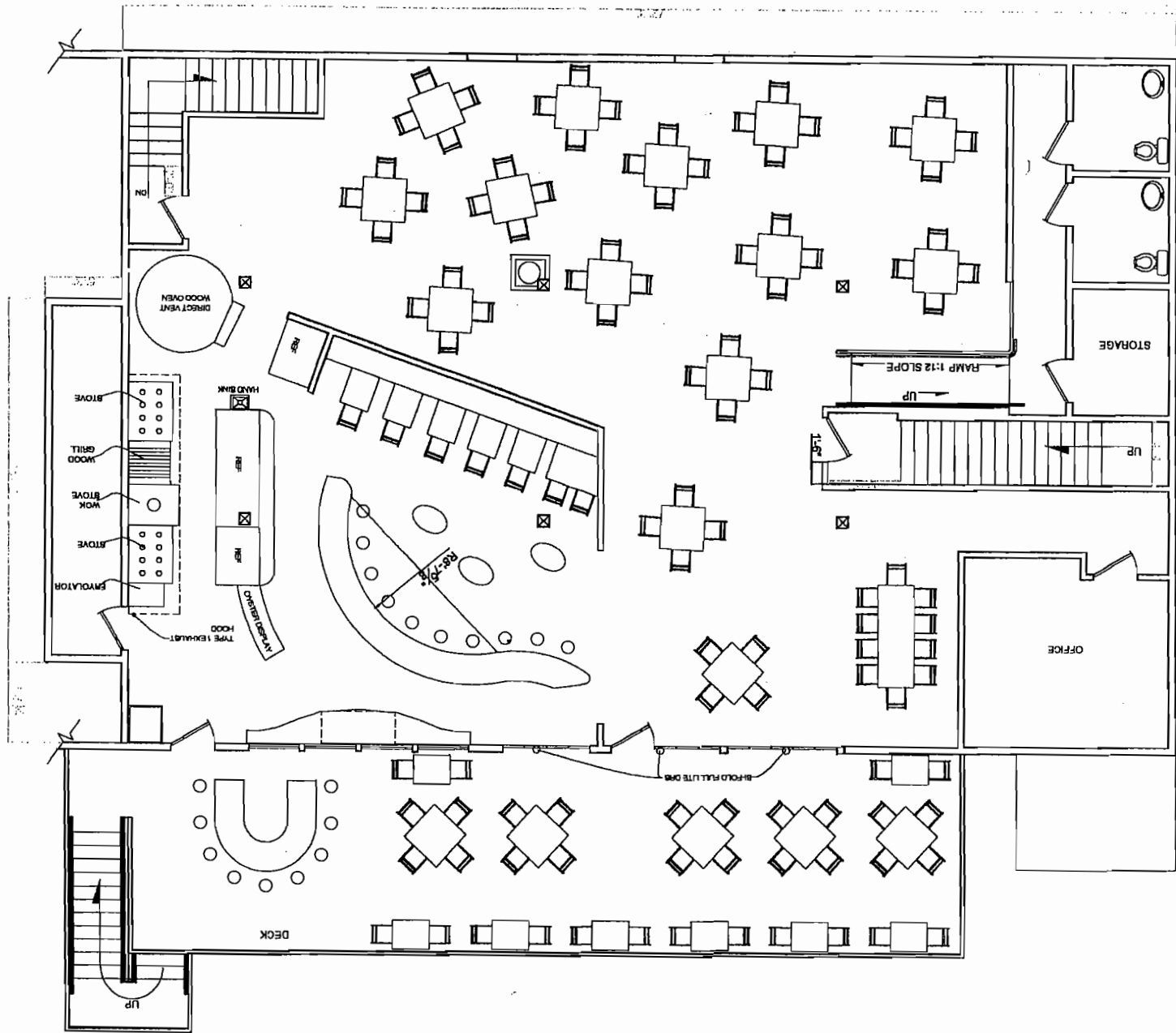
Does the issuance of this license directly or indirectly benefit any City employee? Yes _____ No X
If yes, list names of employee(s) and department(s). _____

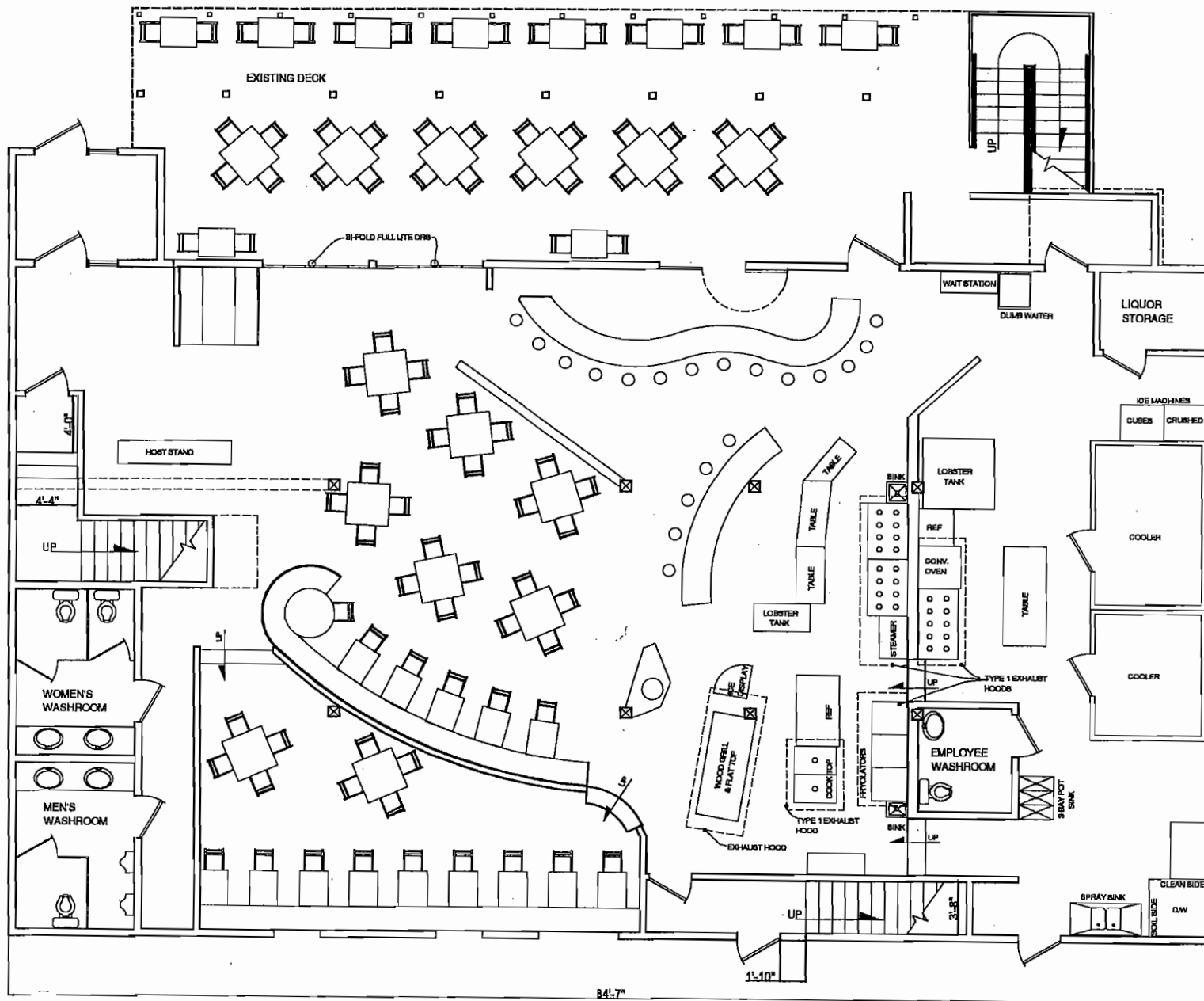
Applicant, by signature below, agrees to abide by all laws, orders, ordinances, rules and regulations governing the above license and further agrees that any misstatement of material fact may result in refusal of license or revocation, if one has been granted. Applicant agrees that all taxes and accounts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

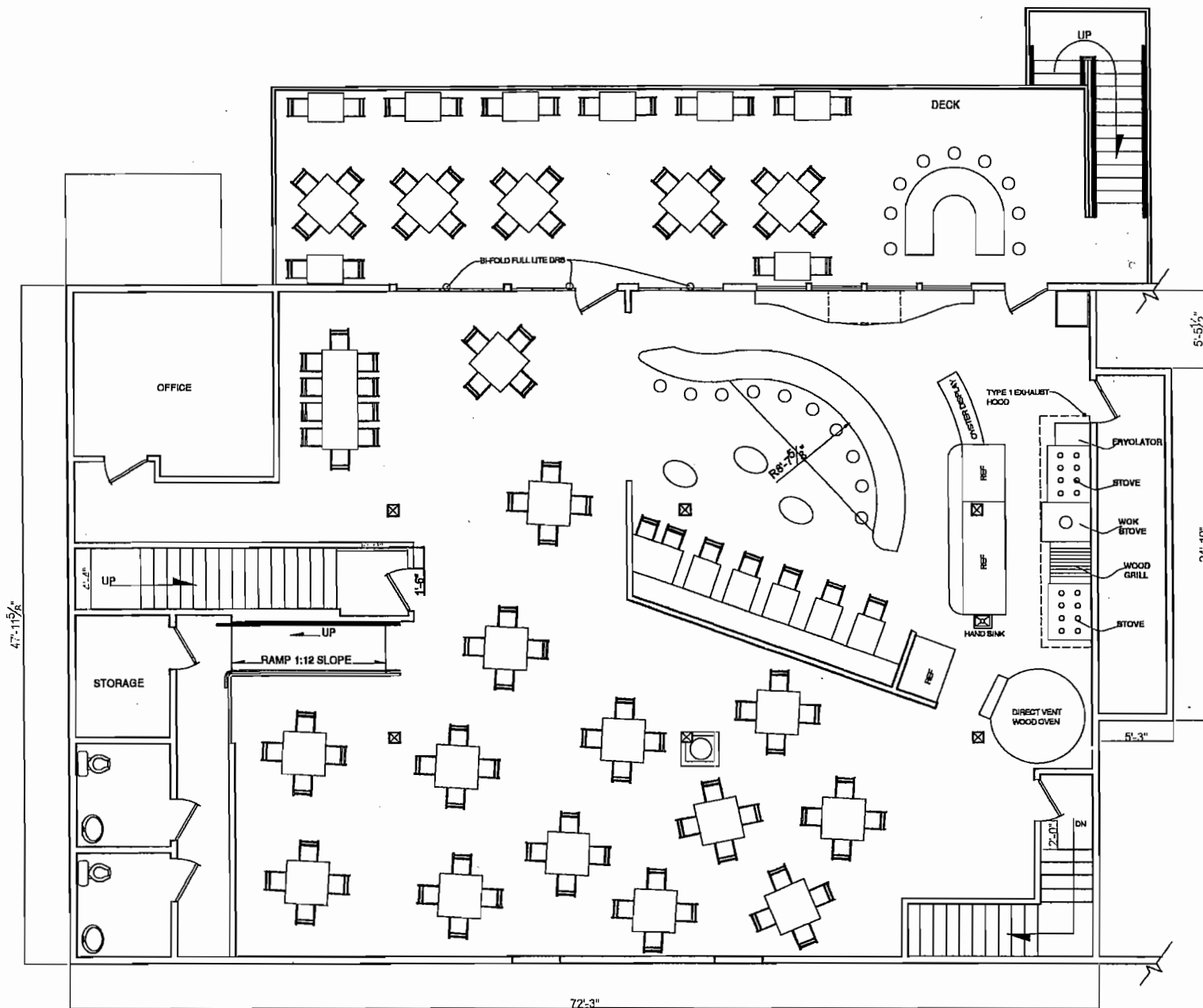
It is understood that this and any application(s) shall become public record and the applicant(s) hereby waive(s) any rights to privacy with respect thereto.

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 [Signature] Title owner Date 4/1/13







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-OPTINONAL 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)		
Fish Shark LLC			Boone's Fish House & Oyster Room		
DOB: _____			DOB: _____		
(Hans, NO Smith)			DOB: 4/16/69		
DOB: _____			DOB: _____		
Address			Location (Street Address)		
73 Congress St #1			86 Commercial St. on Custom House Wharf		
City/Town			City/Town		
Portland ME			Portland ME		
State			State		
ME			ME		
Zip Code			Zip Code		
04101			04101		
Mailing Address			Mailing Address		
6 Custom House Wharf Box 16			6 Custom House Wharf Box 16		
City/Town			City/Town		
Portland ME			Portland ME		
State			State		
ME			ME		
Zip Code			Zip Code		
04101			04101		
Telephone Number			Business Telephone Number		
319-			774-5725		
Fax Number			Fax Number		
Federal I.D. #			Seller Certificate #		
46-1020342					

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: Hans NO Smith

8. If business is NEW or under new ownership, indicate starting date: projected June 1, 2013

Requested inspection date: 5/20/13 Business hours: 11am - 1am

9. Business records are located at: 86 Commercial St.

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
HANDING C. SMITH	4/16/65	Brunswick, ME

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

73 Congress St #1, 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 ☐

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

Proprietor of custom house wharf

17. Describe in detail the premises to be licensed: (Supplemental Diagram Required) 2 story 6,000 sq. ft

Facility completely renovated and brought to code

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

YES ☐ NO ☒ Applied for: in process

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? 2000 ft Which of the above is nearest? 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: _____

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

on

4/4/

2013

Town/City, State

Date

Please sign in blue ink

Signature of Applicant or Corporate Officer(s)

Signature of Applicant or Corporate Officer(s)

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

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

1. Exact Corporate Name: Fish Shack, LLC
Business D/B/A Name: Boone's Fish House & Oyster Room
2. Date of Incorporation: 11/1/12
3. State in which you are incorporated: Maine
4. If not a Maine Corporation, date corporation was authorized to transact business within the State of Maine:

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

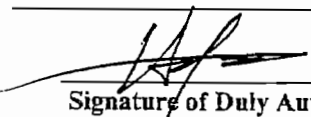
Name	Address Previous 5 Years	Birth Date	% of Stock	Title
<u>HARDING SMITH</u>	<u>Portland, ME</u>	<u>4/16/69</u>	<u>100%</u>	<u>owner</u>

6. What is the amount of authorized stock? 100 Outstanding Stock? N/A
7. Is any principal officer of the corporation a law enforcement official? () YES ☒ NO
8. Has applicant(s) or manager ever been convicted of any violation of the law, other than a minor traffic violation(s), of the United States? () YES ☒ NO.
9. If yes, please complete the following: Name: _____

Date of
Conviction: _____ Offense: _____

Location: _____ Disposition: _____

Dated at: _____ City/Town On: _____ Date


Signature of Duly Authorized Officer

Date: 4/4/13

HARDING SMITH
Print Name of Duly Authorized Officer

Sample Menu for Boones's Fish House and Oyster Room

Steamed Lobster of any size.....market price

Fried Clams.....mp

Lobster Roll

Crab Roll

Steamed Mussels

Snow Island Extreme Lobster Bake (for four or more)

Lobster

House made Kielbasa

Corn on the cob

Steamers

Hard Boiled eggs

Wood Grilled Fish ala carte

Strip Steak

Pork Chop

Prime Rib

Oysters on the half shell from here and away

Crisp flatbread pizzas

Business Licensing - Re: Boone's Fish House & Oyster Room - 6 Custom House Wharf

From: Gary Hutcheson
To: Business Licensing
Date: 4/8/2013 6:34 PM
Subject: Re: Boone's Fish House & Oyster Room - 6 Custom House Wharf

All set.

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

>>> Business Licensing 4/8/2013 9:09 AM >>>
Hello,

For your approval:

Fish Shack, LLC d/b/a Boone's Fish House & Oyster Room at 6 Custom House Wharf (86 Commercial St.) has submitted an application for a Class I Liquor License with entertainment with dance and outdoor dining on private property. This is the former location of Harbor's Edge, which was licensed under the Porthole/Comedy Connection.

Corporate Info:
Fish Shack, LLC
73 Congress St., #1

Owner & Manager:
Harding Smith, d.o.b. 4/16/69
73 Congress St., #1
319-4368

Owner of Premises:
Proprietors of Custom House Wharf
18 Custom House Wharf

Slips going out today.

Thank you,
Janice

Business License Administrator
bl@portlandmaine.gov
207.874.8557



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 #: MIQ99B795036

Criminal History Record

Introduction

This rap sheet was produced in response to the following request (Produced on 2013-04-08) :

Inquiries Name(s) HARDING L SMITH (1969-04-16)

NO MATCH WAS FOUND FOR YOUR REQUEST.



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

April 10, 2013

Fish Shack, LLC
Boone's Fish House & Oyster Room
6 Custom House Wharf
Portland, ME 04101

RE: Fish Shack, LLC d/b/a Boone's Fish House & Oyster Room

Dear Mr. Harding,

This letter shall serve as a reminder of the Public Hearing before the Portland City Council on Monday, April 22, 2013 at 7:00 P.M. for the review of your application for a Class I Liquor License with Entertainment with Dance and Outdoor Dining on Private Property. The meeting will take place in Council Chambers on the 2nd floor of City Hall, 389 Congress Street, Portland, ME 04101.

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

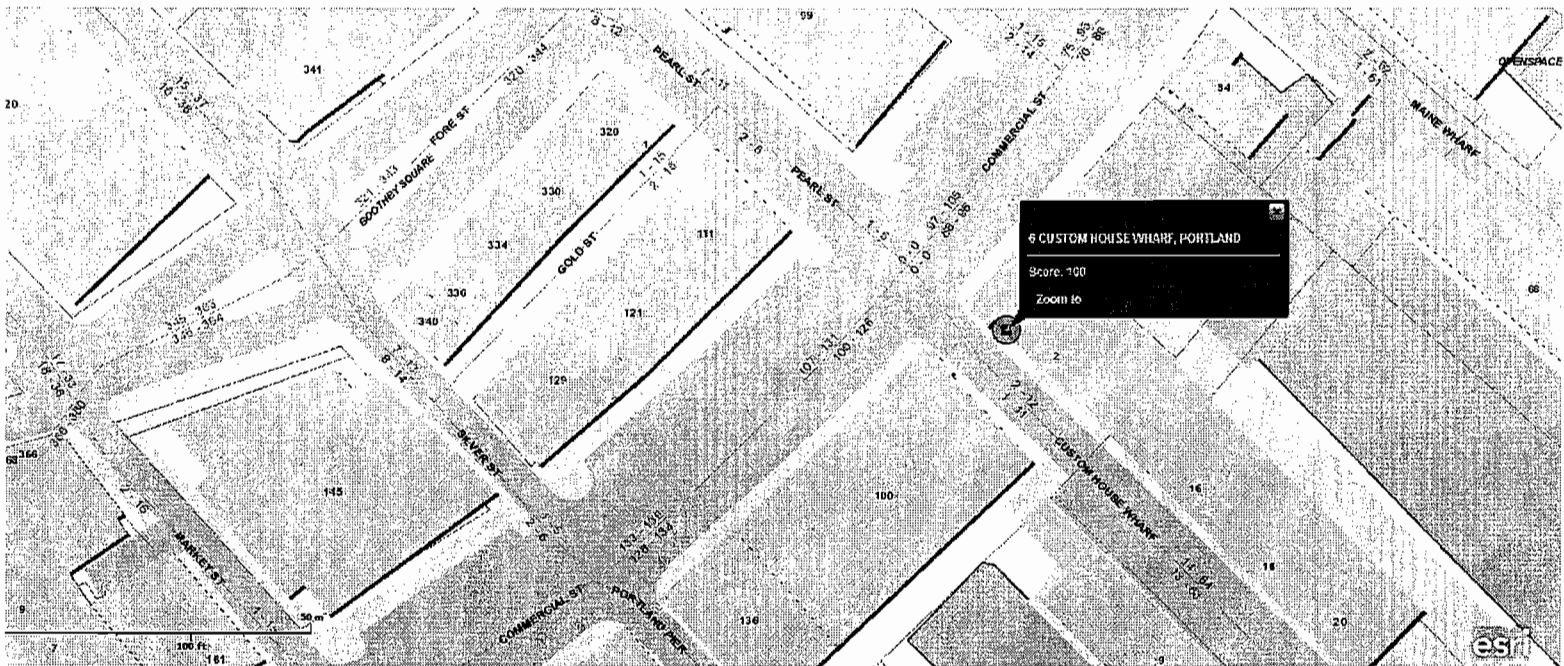
Should you have any questions or concerns, please do not hesitate to contact our office directly at (207) 874-8557 or by email, BL@portlandmaine.gov

Sincerely,

Janice Gardner
Business License Administrator

Boone's Fish House & Oyster Room

3 Custom House Wharf



Order 191-12/13
Tab 19 4-22-13

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

CITY OF PORTLAND
IN THE CITY COUNCIL

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

**ORDER
GRANTING MUNICIPAL OFFICER'S
APPROVAL OF:**

John Welliver d/b/a LFK at 188 State St. Application For Class I Liquor License and Outdoor Dining on Public Property.

LFK

188A State Street
Portland, Maine 04101
207.899.3277
lfkisfun@gmail.com

Michael F. Brennan,
Mayor of Portland

Kevin J. Donoghue
David A. Marshall
Edward J. Suslovic
Cheryl A. Leeman
John R. Coyne
John M. Anton
Nicholas M. Mavodones, Jr.
Jill C. Duson,
Portland City Council

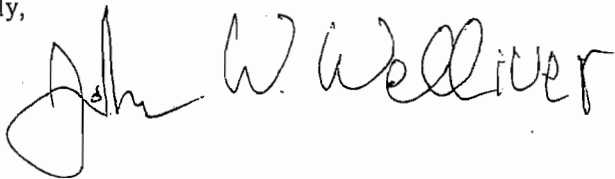
April 2nd, 2013

Dear Mayor Brennan and Portland City Councilmembers,

Please find contained herein a letter of intent to renew a Class 1 FSE License, in order to continue doing business in the fine city of Portland. Having established a devoted customer base in the past year, LFK has survived the dissolution of its original parent company, JSquared LLC [12/01/12]. It remains owned and credited by the same individual (John W. Welliver), and continues to do business as a sole proprietorship. LFK has made a name for itself as a sophisticated and welcoming haven in the heart of this terrific city, for local patrons and visitors from abroad alike.

It is our intention at LFK to continue to enrich, entertain, and enliven Portland's West End, as well as to add to the city's own distinct air of class and excitement. All of us here at LFK greatly appreciate your attention and support, and the privilege of doing business in this great city.

Sincerely,



John W. Welliver
Owner

2013-4-11 PM 2:11
CITY CLERK

Legal Advertisement
Notice of Public
Hearing
City of Portland
Public Hearing will be
held on April 22, 2013 at
10:00 P.M. in City Coun-
cil Chambers, 589 Con-
gress St., on the appli-
cation for John Welliver
d/b/a L.F.K. at 188A
State St. Application for
Class 1 Liquor License
for dining on
public property. Spon-
sored by Katherine L.
Jones, City Clerk. 4808890

Office of the City Clerk

389 Congress Street

Portland, ME 04101

(207) 874-8557

CITY CLERK

Application for Food Service Establishment With Alcoholic Beverages

Class of Liquor License Applying for: Class 1

2013-04-22-10:30

Business Name (d/b/a): LFK Phone: 207 899 3277

Location Address: 188A State St, Portland ZIP 04101

If new, what was formerly in this location? _____

Mailing Address: 188A state st, Portland ZIP 04101

Contact Person: Jeff Fortman Phone: 207 415 3718

Email: LFKISFUN@GMAIL.COM

Manager of Establishment: Jeff Fortman Home Phone: 207 415 3718

Landlord of Premises: 188 State Street LLC

Address of Landlord: PO BOX 4635 Portland, ME ZIP 04112

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): John W. Welliver DOB 07/21/81

Residence Address: 87 State St Apt 4 Portland, ME 04101

Name of Owner(s): _____ DOB _____

Residence Address: _____

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

Corporation Name: _____

Corporation Mailing Address: _____ ZIP _____

Contact Person: _____ Phone Number: _____

MUNICIPAL OFFICERS: (continued on back page; if more space is needed, please attach a separate page)

Name _____ Title _____ DOB _____

Residence Address _____

Payment Method for Business License and application fees:
Cash, Money Order or Bank Check, Visa or MasterCard

PRINCIPAL OFFICERS: (continued)

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: 35 From Alcohol: 65

Hours and Days of operation: Monday - Friday, 4pm-1am, Saturday & Sunday 12pm-1am

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 have after hours entertainment from 1:00A.M. to 3:00A.M.? Yes ☐ No ☒

Will you have outdoor dining? Yes ☒ No ☐ If yes, please indicate location on diagram.

Will the outdoor dining be on PUBLIC ☒ or PRIVATE ☐ property?

Have you applied for an (Public) 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? _____

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.

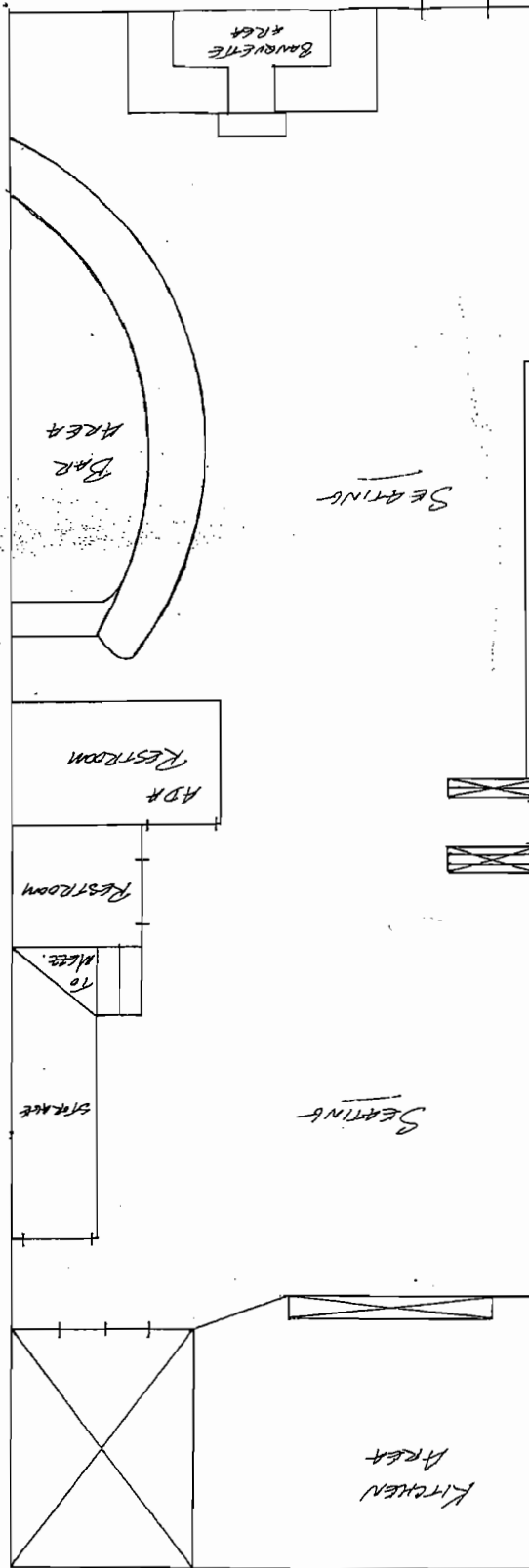
I/We, hereby authorize the release of any criminal history record information to the City Clerk's Office or licensing authority. I/We, hereby waive any rights to privacy with respect thereto.

Signature [Signature] Title owner Date 4-4-13

Revised 8-31-10

Payment Method for Business License and application fees:
Cash, Money Order or Bank Check, Visa or MasterCard

STATE STREET
SCALE: 1/4" = 1 FOOT
← OUTDOOR Dining



STATE STREET

KITCHEN AREA

SEATING

STAIRS

TOilet

RESTROOM

ADJ
RESTROOM

Bar Area

BANKET AREA

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 05/03/13

INDICATE TYPE OF PRIVILEGE: ☒ MALT ☒ SPIRITUOUS ☒ VINOUS

INDICATE TYPE OF LICENSE:

☒ RESTAURANT (Class I,II,III,IV)

☐ HOTEL-OPTINONAL 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>John W. Welliver</u> DOB: <u>07/21/81</u>			2. Business Name (D/B/A) <u>LFK</u>		
DOB: _____			Location (Street Address) <u>188A State Street</u>		
DOB: _____			City/Town <u>Portland</u> State <u>ME</u> Zip Code <u>04101</u>		
Address <u>87 188A State Street, Apt 4</u>			Mailing Address <u>188A State Street</u>		
City/Town <u>Portland</u> State <u>ME</u> Zip Code <u>04101</u>			City/Town <u>Portland</u> State <u>ME</u> Zip Code <u>04101</u>		
Telephone Number <u>207 449 6072</u> Fax Number _____			Business Telephone Number <u>207 899 3277</u> Fax Number _____		
Federal I.D. # <u>0048 21378</u>			Seller Certificate # <u>7351</u> ?		

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 \$ 0 FOOD \$ 341400 LIQUOR \$ 550028

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: Jeff Fortman

8. If business is NEW or under new ownership, indicate starting date: 12/01/12

requested inspection date: 05/01

Business hours: M-F: 4p-1am, SA&SU: 12p-1a

9. Business records are located at: 188A State St, 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
John W. Welliver	07/21/81	Calais, ME
Jeffrey Fortman	07/1/71	Portland, ME

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

Portland, ME - Both

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: 1884 State St LLC
PO BOX 4635 Portland, ME, 04112

17. Describe in detail the premises to be licensed: (Supplemental Diagram Required) Large seating area bordered by the bar and kitchen on one side and large windows on the other.

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? 50m Which of the above is nearest? 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: _____

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 on April Third 4/3/13, 2013
Town/City, State Date

Please sign in blue ink

Signature of Applicant or Corporate Officer(s)

Signature of Applicant or Corporate Officer(s)

☉Starters and Sides...

CHEESE PLATE.....	12.
variety of three cheeses, fruit, nuts, pickle, crostini	
MEAT.....	13.
prosciutto, landjaeger, spicy salami, duck liver pate, pickle, mustard, crostini	
MEAT & CHEESE COMBO PLATE	24.
both meats and cheeses with their accompaniments	
BLACK BEAN KALAMATA HUMMUS (V)	12.
flatbread, olives, marinated cherry tomatoes, crudité	
• EXTRA FLATBREAD	+1.
MAC&CHEESE.....	6.
• Add BACON	+1.
ROASTED CAULIFLOWER (V)	9.
cauliflower, romesco, mixed greens	
BACON CHEDDAR RED POTATO SALAD	6.
GERMAN POTATO SALAD (V)	6.
pickled shallot, grain mustard, parsley	
LFK TOASTED BLOODY MARY NUTS	5.
black walnut, marcona almond, cashew, peanut, wasabi peas	
Soup: OF THE JOUR	7.
...with baguette	

☉Salads...

GARDEN SALAD.....	7.
greens, carrot, cherry tomato, balsamic, montegrappa, dijon crumb	
SPRING MIX, FRUIT & NUT SALAD	9.
walnuts, pear, dates, orange vin., pickled shallots	
...w/ goat cheese.....	+2.
ROASTED BEET SALAD (GF)	10.
beets, mixed greens, goat cheese, toasted hazelnuts, sherry vinaigrette	

☉Entrees...

HANGER STEAK	16.
buttermilk garlic mash, daily veg, gorgonzola butter, gremolata	
BACON WRAPPED MEATLOAF	15.
buttermilk garlic mash, daily veg, shallot sherry gravy	
ROASTED MUSHROOM STEW	13.
portabello, oyster, crimini, button, sour cream, chive	
TEMPEH CHILI (V) (GF)	11.
three bean tempeh chili, cornbread, candied jalapeno	
KIELBASA	13.
buttermilk garlic mash, sauerkraut, juniper berry, mustard, rye cracker	

☉Sandwiches... (With LFK pickle and potato salad)

LFK BURGER	10.
garlic mayonnaise and choice of aged cheddar or pimento cheese	
VEGGIE BURGER (V)	10.
cashew, lentil, leek, and flax seed burger, red onion, dill tahini sauce	
THE REUBEN	10.
corned beef, Morse's sauerkraut, swiss, russian dressing	

☉Desserts...

PANNA COTTA	6.
FRUIT COBBLER	6.
SALTED CHOCOLATE TART (V) (GF)	7.
• Add ICE CREAM	+1.



CITY CLERK

Outdoor Dining Permit Application

2013 APR - 5 PM 3:40

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: <u>[Signature]</u> Pending Council Date: <u>4/22/2013</u>		
Location Name & Address: <u>LFK 188A State St.</u>	Chart <u>055</u>	Block <u>E039</u>
Owner & Phone #: <u>188 State St. LLC. (207)</u>	Lot <u>001</u>	
Applicant *must* be owner or lessee Name: <u>LFK (DBA) John W. Welliver</u> Address: <u>188A State St.</u> City, State & Zip: <u>Portland, ME 04101</u> E-Mail: <u>LFKISFUN@GMAIL.COM</u>	Total Square Footage of Proposed Seating Area: ¹ <u>104 sq. ft.</u> Annual Fee: <u>\$80</u> Total Sq. Ft.: <u>104</u> Sq. Ft. Fee: (sq ft x \$2) \$ <u>208.00</u> (Due when issued) Total Fees: \$ <u>288.00</u> (Permit not issued until <u>all</u> fees are paid)	
Current use: <u>Class I FSE Restaurant/BAR</u> Business name: <u>LFK</u> Seating area dimensions: <u>8' x 13' (104 sq. ft.)</u> How many chairs? <u>6</u> How many tables? <u>3</u> ☒ Yes Alcohol is served. ☐ No Alcohol being served.		
Who should we contact for the pre-inspection: <u>Jeffrey L. Fortman</u> Mailing address: <u>188A State St.</u> Phone: <u>201-416-3718</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: [Signature] Date: 4.5.13

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.

- ☐ 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 cause by the negligence of the City of Portland, its agents, officers or employees) arising out of the establishment's occupancy of the sidewalk or park space. I/We hereby agree, to the fullest extent permitted by law, to defend, indemnify and hold harmless the City of Portland, its agents, officers and employees, from and against all claims, damages, losses and expenses, just or unjust, including, but not limited to costs of defense and attorney's fees, arising out of the establishment's occupancy of the sidewalk or park space, provided that any such claims, damage, loss or expense (1) is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property including the loss of use there from, and (2) is caused in whole or in part by any negligent act or omission of the establishment, anyone directly or indirectly employed by it, or anyone for whose act it may be liable.

Signed and acknowledged: John Welliver Date: 4.5.13

Printed name John Welliver

Establishment LFK COBA

Location 188A State St., Portland, ME 04101

PINE STREET

CITY CLERK

2000-5-24-40

9'9"

LFK INTERIOR

BRICK

BRICK

BENCH SEATING
CAPACITY = 8

BOOTH SEATING CAPACITY = 4

CITY OF PORTLAND
SIGN POST



13'

15'9"

STATE STREET



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 #: MIQ99B288394

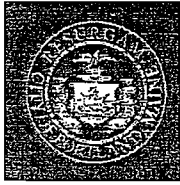
Criminal History Record

Introduction

This rap sheet was produced in response to the following request (Produced on 2011-08-16) :

Inquiries Name(s) JOHN WELLIVER (1981-07-21)

NO MATCH WAS FOUND FOR YOUR REQUEST.



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

April 10, 2013

John Welliver
87 State St., Apt. 4
Portland, ME 04101

RE: John Welliver d/b/a LFK Application for Class I Liquor License

Dear Mr. Welliver,

This letter shall serve as a reminder of the Public Hearing before the Portland City Council on Monday, April 22, 2013 at 7:00 P.M. for the review of your application for a Class I Liquor 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

LFK

188 State St.



Order 192 - 12/13
Tab 20 4-22-13

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

CITY OF PORTLAND
IN THE CITY COUNCIL

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

ORDER
GRANTING MUNICIPAL OFFICER'S
APPROVAL OF:

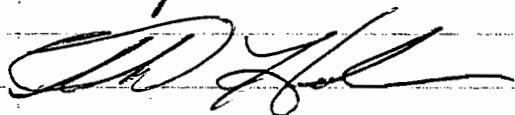
SYPP Port LLC d/b/a SYPP at 345 Fore St. Application for Class XI Liquor License.

Dear Mayor & Council Members:

First off I would like to apologize for not typing this letter. I had it done on my computer, but my printer decided it didn't want to work.

My name is Thomas Henderson and I'm writing this letter because I'm applying for a Class XI Lounge license. I plan on serving malt, spirituous and vinous. My plan is to have a upscale wine / martini bar, at 345 Fore St. I will be serving a small tapas menu. I have been in the bar / restaurant business for almost 20 years, and believe that I can make this location work.

Thank you for your consideration
Sincerely



Thomas Henderson

Legal Advertisement
Notice of Public
Hearing
City of Portland
Public Hearing will be
held on April 22, 2013 at
10 P.M. in City Coun-
cil Chambers, 389 Con-
gress St. on the appli-
cation for SYPP Port LLC
a/a SYPP, 345 Fore St.
application for Class XI
star lounge
established by
Jones, City
of Portland
4808870

389 Congress Street
Portland, ME 04101
(207) 874-8557

Application for Food Service Establishment With Alcoholic Beverages

Class of Liquor License Applying for: XI

Business Name (d/b/a): SYPP Phone: 207 671 3606

Location Address: 345 Fore St. ZIP 04101

If new, what was formerly in this location? SEASONS

Mailing Address: 345 Fore St. Suite 10 ZIP 04101

Contact Person: Thomas Henderson Phone: 671-3606

Email: THAND34@yahoo.com

Manager of Establishment: Thomas Henderson Home Phone: 671-3606

Landlord of Premises: Gerald Kuecht

Address of Landlord: 5 Moulton St. Portland Me. ZIP 04101

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

Have any of the applicants, including the corporation if applicable, ever held a business license with the City of Portland? Yes X No . If yes, please list business name(s) and location(s): Billigans 42 Wharf St. 1996

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

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): Thomas Henderson DOB 3/30/71

Residence Address: 73 Vesper St. Portland

Name of Owner(s): DOB

Residence Address:

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

Corporation Name: SYPP Port LLC

Corporation Mailing Address: 345 Fore St. Portland Me. ZIP 04101

Contact Person: Thomas Henderson Phone Number: 207 671 3606

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

Name: Thomas Henderson Title: President DOB: 3/30/71

Residence Address: 73 Vesper St. Portland Me. 04101

Payment Method for Business License and application fees:
Cash, Money Order or Bank Check, Visa or MasterCard

CITY CLERK

PRINCIPAL OFFICERS: (continued)

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

Type of Food Served: TAPAS MENU

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

Percentage of Sales generated From Food: 10 From Alcohol: 90

Hours and Days of operation: 11-5 4-1

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 have after hours entertainment from 1:00A.M. to 3:00A.M.? Yes _____ No ☒

Will you have outdoor dining? Yes _____ No ☒ If yes, please indicate location on diagram.

Also, will the outdoor dining be on PUBLIC _____ or PRIVATE _____ property?

Have you applied for an (Public) 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? Mid May

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.

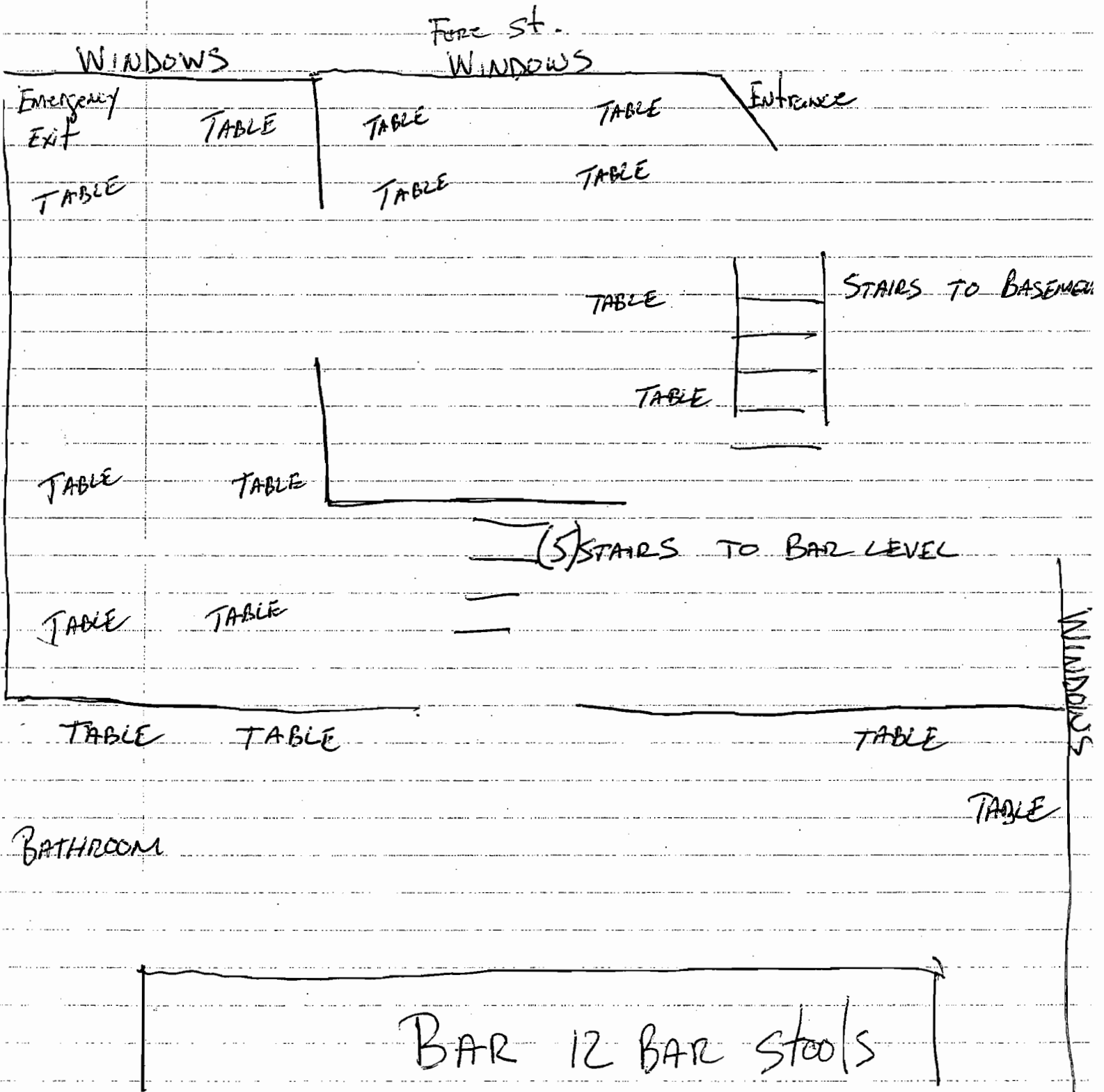
I/We, hereby authorize the release of any criminal history record information to the City Clerk's Office or licensing authority. I/We, hereby waive any rights to privacy with respect thereto.

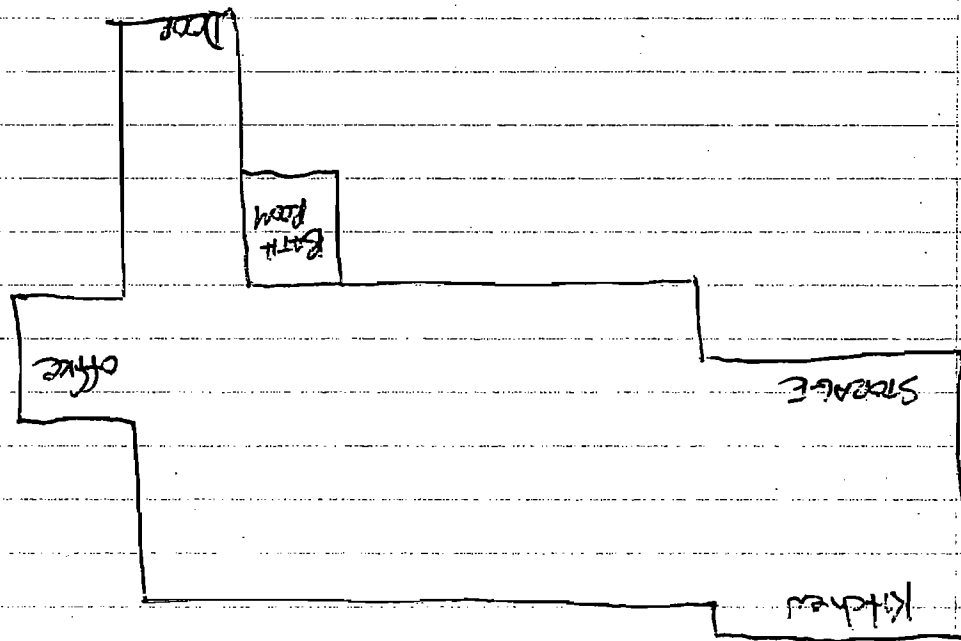
Signature [Signature] Title owner Date 4/1/13

Revised 8-31-10

Payment Method for Business License and application fees:
Cash, Money Order or Bank Check, Visa or MasterCard

St. level





Basement

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-OPTINONAL 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)		
THOMAS HENDERSON DOB: 3/30/71			SYPP		
PP REST LLC DOB:			345 Fore St.		
Address			Location (Street Address)		
73 Vesper St.			PORTLAND ME 04101		
City/Town			Mailing Address		
PORTLAND			SAA		
State			City/Town		
ME			207 671 3606		
Zip Code			State		
04101			Zip Code		
Telephone Number			Business Telephone Number		
207 671 3606			Fax Number		
Federal I.D. #			Seller Certificate #		
46-2450015			1162034		

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: THOMAS HENDERSON

8. If business is NEW or under new ownership, indicate starting date: MAY 15

Requested inspection date: 5/1/13 Business hours: M-SU 4-1

9. Business records are located at: 345 Fore St.

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

11. Is/are applicant(s) residents of the State of Maine? YES ~~X~~ 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
THOMAS HENDERSON	3/30/71	PORTLAND

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

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 ~~X~~

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 ~~X~~ If Yes, give name: _____

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

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

17. Describe in detail the premises to be licensed: (Supplemental Diagram Required) The space will be used as a upscale wine/martini bar.

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

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 mile Which of the above is nearest? 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 ~~X~~

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, Me. on 4/5, 20 13
Town/City, State Date

Please sign in blue ink

Signature of Applicant or Corporate Officer(s)

THOMAS HENDERSON

Signature of Applicant or Corporate Officer(s)

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

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

1. Exact Corporate Name: SYPP PART LLC
Business D/B/A Name: SYPP
2. Date of Incorporation: 4/4/2013
3. State in which you are incorporated: Maine
4. If not a Maine Corporation, date corporation was authorized to transact business within the State of Maine:

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

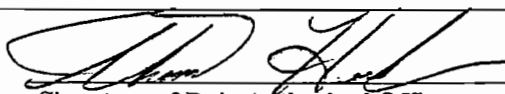
Name	Address Previous 5 Years	Birth Date	% of Stock	Title
THOMAS HENDERSON	73 Vesper St. Portland Me	3/30/71	100	President

6. What is the amount of authorized stock? 100 Outstanding Stock? 0
7. Is any principal officer of the corporation a law enforcement official? () YES (X) NO
8. Has applicant(s) or manager ever been convicted of any violation of the law, other than a minor traffic violation(s), of the United States? () YES (X) NO.
9. If yes, please complete the following: Name: _____

Date of
Conviction: _____ Offense: _____

Location: _____ Disposition: _____

Dated at: Portland On: 4/5/13
City/Town Date


Signature of Duly Authorized Officer

Date: 4/5/13

THOMAS HENDERSON
Print Name of Duly Authorized Officer

As I stated in my letter pertaining to the liquor license, I will be serving a small tapas menu. I have a chef working on it right now, so I don't have a completed menu to submit. Below is a list of some of the items that will be on the menu.

- Assorted cheese & cracker plates
- olive plate
- gazpacho
- tuna tartar
- antipasto plate
- multiple salads.



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 #: MIQ99B795038

Criminal History Record

Introduction

This rap sheet was produced in response to the following request (Produced on 2013-04-08) :

Inquiries Name(s) THOMAS HENDERSON (1971-03-30)

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; 2003-09-08)

****THIS RESPONSE IS BEING PRODUCED FOR YOUR REQUEST SENT: 2013-04-08 (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. SUBSECTION 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. SUBSECTION 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; 2002-08-28)

THE FOLLOWING ATN(S) ARE UNSUPPORTED BY FINGERPRINTS IN STATE BUREAU OF IDENTIFICATION FILES: (427304A). (CRSA)

Identification

Subject Name(s)

HENDERSON, THOMAS

Subject Description

FBI Number

State Id Number

DOC Number

ME0098156 (ME)

Unknown/NA

Social Security Number

Driver's License Number

Unknown/NA

Unknown/NA

Miscellaneous Numbers

Unknown/NA

Sex

Race

Skin Tone

Unknown/NA

Unknown/NA

Unknown/NA

Height

Weight

Date of Birth

Unknown/NA

Unknown/NA

1971-03-30

Hair Color

Eye Color

Fingerprint Pattern

Unknown/NA

Unknown/NA

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

Religion

Unknown/NA

Unknown/NA

Employment

Unknown/NA

Residence

Residence as of

2005-12-05

Location Type

PHYSICAL

Mailing Address

16 GEORGE STREET
PORTLAND, 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**

427304A

Earliest Event Date

1996-07-26

Arrest

(Cycle 001)

Arrest Date

1996-07-26

Arresting Agency

ME0030500

Subject Name(s)

HENDERSON, THOMAS

Arrest Type Adult

Charge

Charge Number 427304A 001

Charge Tracking Number 427304A

Charge Case Number 96-35856

Agency ME0030500

Offense Date 1996-07-26

Charge Description DRINKING IN PUBLIC (Charge Class E)

Statute 17 MRSA SUBSECTION 2003-A(2)(A)

State Offense Code 545 (ME)

Severity Misdemeanor

Prosecutor Disposition No data supplied

Court Disposition (Cycle 001)

Court Agency ME003035J

Charge

Charge Number 427304A 001

Charge Tracking Number 427304A

Charge Case Number 96-08214

Agency ME003035J

Offense Date 1996-07-26

Charge Description DRINKING IN PUBLIC (Charge Class E)

Statute MRSA

State Offense Code 545 (ME)

Severity Misdemeanor

Disposition GUILTY (1996-09-10; ME)

Sentencing (Cycle 001)

Sentencing Agency ME003035J

Court Case Number 96-08214

Charge Number 427304A 001

Charge Tracking Number 427304A

Sentence 1996-09-10: FINED \$50.00 PAID (1996-09-10)

Corrections No data supplied

Index of Agencies

Agency	9TH DISTRICT COURT PORTLAND; ME003035J
Contact	
Agency Telephone	207-8224205
Agency Facsimile	
Agency Email Address	
Mailing Address	205 NEWBURY ST PORTLAND, ME 04101

Agency	PORTLAND PD; ME0030500
Contact	
Agency Telephone	207-8748479
Agency Facsimile	
Agency Email Address	
Mailing Address	109 MIDDLE ST PORTLAND, ME 04111

Business Licensing - Re: SYPP - 345 Fore St.

From: Gary Hutcheson
To: Business Licensing; Gary Rogers; Michael Sauschuck; Vernon Malloch
Date: 4/8/2013 4:27 PM
Subject: Re: SYPP - 345 Fore St.

It appears to be simple drinking in public arrest back in 1996. This wouldn't preclude him from getting a liquor license.

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

>>> Business Licensing 4/8/2013 11:15 AM >>>
Hello again,

I received the SBI back for Thomas Henderson and wanted to run it by you for your feedback. Please find it attached.

Thank you,
Janice

Business License Administrator
bl@portlandmaine.gov
207.874.8557

>>> Business Licensing 4/8/2013 9:05 AM >>>
Hello,

For your approval:

SYPP Port LLC d/b/a SYPP at 345 Fore St. has submitted an application for a Class XI Liquor License. This is the former location of Sebastian's. They will go before Council on 4/22.

Corporate Info:
SYPP Port, LLC
345 Fore St.

President & Manager:
Thomas Henderson, d.o.b. 3/30/71
671-360673 Vesper St.

Owner of Premises:
Gerald Knecht, 5 Moulton St.

Slips will go out today.

Thank you,
Janice

Business License Administrator
bl@portlandmaine.gov
207.874.8557



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

April 10, 2013

SYPP Port LLC
345 Fore St., Suite 10
Portland, ME 04101

RE: SYPP Port LLC d/b/a SYPP Application for Class XI Lounge License

Dear Mr. Henderson,

This letter shall serve as a reminder of the Public Hearing before the Portland City Council on Monday, April 22, 2013 at **7:00 P.M.** for the review of your application for a Class XI Lounge License. The meeting will take place in Council Chambers on the 2nd floor of City Hall, 389 Congress Street, Portland, ME 04101.

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

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

Sincerely,

Janice Gardner
Business License Administrator

SYPP

345 Fore St.



*Order 193-12/13
Tab 21 4-22-13*

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

CITY OF PORTLAND
IN THE CITY COUNCIL

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

**ORDER
GRANTING MUNICIPAL OFFICER'S
APPROVAL OF:**

**DCL, LLC d/b/a Diamond's Edge Restaurant at 279 Diamond Ave. Application for Class I
Liquor License with Entertainment with Dance and Outdoor Dining on Private Property**

DIAMOND'S EDGE

Restaurant & Marina

April 3rd, 2013

Honorable Mayor Brennan, members of City Council

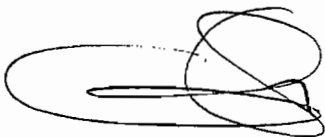
It is our pleasure to submit our application for a liquor license for DIAMOND'S EDGE RESTAURANT & MARINA on Great Diamond Island. Hart Hotels, owner and operator of the Portland Harbor Hotel, has taken over the lease for the restaurant after the current lessee decided to walk away from the location.

Our motivation to take over the operation of the restaurant and marina is to compliment the Inn at Diamond Cove project currently under way on Great Diamond. As you may know, Hart Hotels is developing the army barracks into an upscale Inn, with an option to further develop the hospital building once the hotel is successful. Our success with the Inn depends on the high level of service our guests will experience throughout their stay on the island. The restaurant, Marina, and tent site are all critical parts that will help us achieve that goal.

As partner and manager of the Portland Harbor Hotel, we feel Great Diamond Island offers a unique cultural experience to Portland visitors. People from across the country will soon be able to spend a few days and nights living the history and the experience this national historic district has to offer.

Hart Hotels is committed to Portland, the Diamond Island community, and its employees, by bringing high caliber of service that we are well known for.

Best regards,



Gerard Kiladjan
General Manager



David P. Hart
President & CEO, Hart Hotels

15 APR 13 9-00 AM

WETCO AND

PUBLIC NOTICE

**Legal Advertisement
Notice of Public
Hearing
City of Portland**

A Public Hearing will be held on April 22, 2013 at 7:00 P.M. in City Council Chambers, 389 Congress St., on the application for DLC, LLC d/b/a Diamond's Edge Restaurant, 279 Diamond Ave. Application for Class 1 Liquor License with Entertainment with Dance and Outdoor Dining on Private Property. Sponsored by Katherine L. Jones, City Clerk.

Application for Food Service Establishment With Alcoholic Beverages

Type of Liquor License Applying for: Class I

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

Business Name (d/b/a): Diamond's Edge Restaurant Phone: 207-766-5850

Location Address: 279 Diamond Avenue, Portland, ME ZIP 04101

If new, what was formerly in this location: _____

Mailing Address: 617 Dingens Street, Buffalo, NY ZIP 14206

Contact Person: Gerard Kiladjian Phone: 207-838-7811

Manager of Establishment: Gerard Kiladjian Home Phone # 207-774-2162

Owner of Premises (landlord): Diamond's Edge, LLC

Address of Premises Owner: 100 Silver Street, Portland, ME ZIP 04101

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

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

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

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

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

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

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

Corporation Name: DCL, LLC

Corporation Mailing Address: 617 Dingens Street, Buffalo, NY ZIP 14206

Contact Person: Gerard Kiladjian Phone Number: 207-838-7811

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

39 Edgewater Dr.

Name	David P. Hart	Title	President & CEO	DOB	2/29/1960	Residence Address	59 Edgewater Dr. Orchard Park, NY 14127
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: American Cuisine, Seafood

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

Percentage of sales – Generated from Food : 75% Generated from Alcohol: 25%

Hours and Days of operation: 11:00 a.m. - 10:00 p.m. / 7 days a week

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

If no, please explain _____

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

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

Will you permit dancing on the premises? Yes X No

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

Will you have outside dining? Yes X No _____. If yes, please indicate location on diagram.

Also, will the outside dining be on PUBLIC _____ or PRIVATE X property?

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

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

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

W. is your targeted opening date? : May 17, 2013

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

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

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

Signature  Title President & CEO Date 4/2/2013

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): Diamond's Edge Restaurant

Location Address: 279 Diamond Avenue, Portland, ME **ZIP** 04101 **Phone** 207-766-5850

Will music be electric or acoustical or both? Both

Will amplification used? Yes X No _____

If yes, where and at what level ? Depending on the function

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

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

Will recorded music be played: Inside _____ Outside _____ Both X

What is the distance to the nearest residential dwelling unit both inside and outside the building from where the entertainment will take place? approximately 400 feet

Please describe in detail the type and nature of the business and proposed entertainment: Restaurant
serving lunch and dinner, and functions for business, weddings, etc...

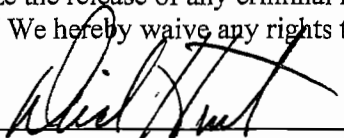
If new applicant, what is your targeted opening date? : May 17, 2013

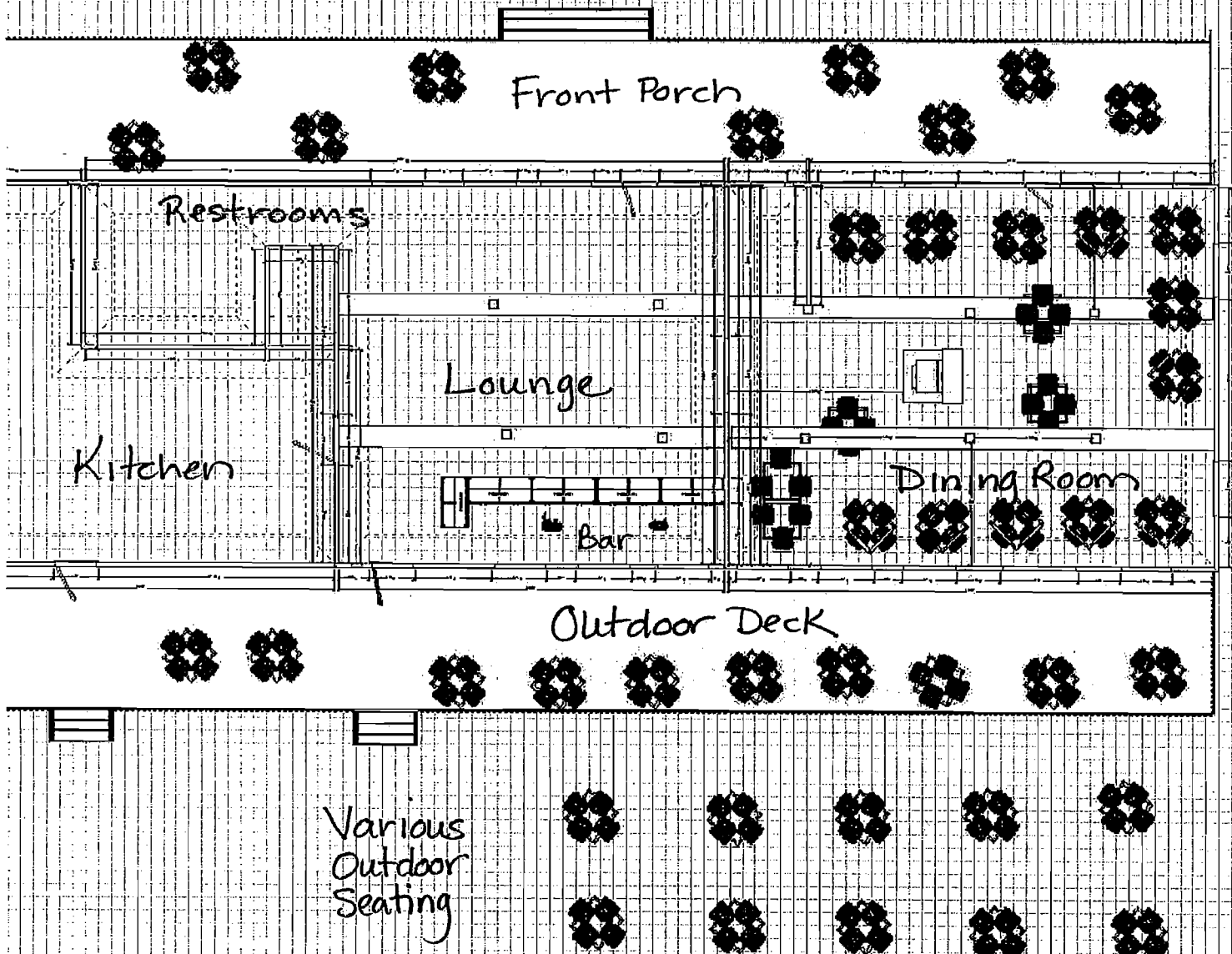
Does the issuance of this license directly or indirectly benefit any City employee? Yes _____ No X
If yes, list names of employee(s) and department(s). _____

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  **Title** President & CEO **Date** 4/2/2013



**Department of Public Safety
Division**

To avoid possible financial loss an applicant, or prospective applicant, should consult with the Division before making any substantial investment in an establishment that now is, or may be, attended by a liquor license.



Liquor Licensing & Inspection

BUREAU USE ONLY

License No. Assigned:

Class:

Deposit Date:

Amt. Deposited:

PRESENT LICENSE EXPIRES _____

INDICATE TYPE OF PRIVILEGE: X MALT X SPIRITUOUS X VINOUS

INDICATE TYPE OF LICENSE:

X RESTAURANT (Class I,II,III,IV)

ف HOTEL-OPTIONAL FOOD (Class I-A)

ف CLASS A LOUNGE (Class X)

ف CLUB (Class V)

ف TAVERN (Class IV)

ف RESTAURANT/LOUNGE (Class XI)

ف HOTEL (Class I,II,III,IV)

ف CLUB-ON PREMISE CATERING (Class D)

ف 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)			
DCL, LLC		DOB: 12/11/2012		Diamond's Edge Restaurant			
		DOB:					
		DOB:		Location (Street Address) 279 Diamond Avenue			
Address 617 Dingens Street				City/Town Portland		State ME Zip Code 04101	
				Mailing Address			
City/Town Buffalo		State NY Zip Code 14206		City/Town		State Zip Code	
Telephone Number 716-893-6551		Fax Number 716-893-6517		Business Telephone Number 207-766-5850		Fax Number	
Federal I.D. # 46-157-6936				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 ☐

If YES, complete Supplementary Questionnaire

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

7. If manager is to be employed, give name: Gerard Kilad Jain

8. If business is NEW or under new ownership, indicate starting date: May 17, 2013

Requested inspection date: May 10, 2013 Business hours: 11:00 a.m. - 10:00 p.m. / 7 days a week

9. Business records are located at: 279 Diamond 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
David P. Hart	2/29/1960	Buffalo, NY
Gerard Kiladjain	1/23/1965	Damascus, Syria

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

David P. Hart 39 Edgewater Drive, Orchard Park, NY

Gerard Kiladjian 42 Rivers Drive, 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 ☐

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

Diamond's Edge, LLC. 100 Silver Street, Portland, ME 04101

17. Describe in detail the premises to be licensed: (Supplemental Diagram Required) Restaurant serving lunch and dinner with functions

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

YES ☐ NO ☐ Applied for: 4/2/2013

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? n/a Which of the above is nearest? n/a

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, ME on 4/2, 20 13
Town/City, State Date

Please sign in blue ink

Signature of Applicant or Corporate Officer(s)

David P. Hart

Signature of Applicant or Corporate Officer(s)

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

**SUPPLEMENTARY QUESTIONNAIRE FOR CORPORATE APPLICANTS, LIMITED LIABILITY COMPANIES AND
LIMITED PARTNERSHIPS**

1. Exact Corporate Name: DCL, LLC
Business D/B/A Name: Diamond's Edge Restaurant
2. Date of Incorporation: 12/11/2012
3. State in which you are incorporated: Maine
4. If not a Maine Corporation, date corporation was authorized to transact business within the State of Maine:

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

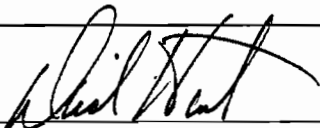
Name	Address Previous 5 Years	Birth Date	% of Stock	Title
David P. Hart	39 Edgewater Dr. Orchard Park, NY	2/29/60	100%	President & CEO

6. What is the amount of authorized stock? n/a Outstanding Stock? n/a
7. Is any principal officer of the corporation a law enforcement official? () YES (X) NO
8. Has applicant(s) or manager ever been convicted of any violation of the law, other than a minor traffic violation(s), of the United States? () YES (X) NO.
9. If yes, please complete the following: Name: _____

Date of
Conviction: _____ Offense: _____

Location: _____ Disposition: _____

Dated at: _____ City/Town On: _____ Date


Signature of Duly Authorized Officer Date: April 2, 2013
David P. Hart
Print Name of Duly Authorized Officer

DIAMOND'S EDGE

Restaurant & Marina

SOUPS

French Onion Soup 9.50

Caramelized onions, shallots and garlic in a rich broth with thyme, baked with garlic crouton and Swiss gruyere

Lobster Bisque 15

A savory creamed lobster stock with fresh Maine lobster

Bermuda Style Fish Chowder 12

A hearty tomato and vegetable fish stew accented with dark rum and sherry peppers

SALADS

Classic Caesar Salad 9

Hearts of romaine with our won garlic lemon dressing, tossed croutons and garnished with anchovies and Pecorino Romano

Diamonds Edge Salad 9.50

Baby Spinach, poached pears, toasted caramelized walnuts, grape tomatoes with goat cheese and sherry vinaigrette

Ice Wedge 8.50

Crisp iceberg lettuce with blue cheese dressing and bacon chips

Grilled Asparagus and Roasted Beet Salad 10

Braised leeks, parmesan shards, aged balsamic vinegar and virgin olive oil

APPETIZERS

Shrimp and Crab Remoulade 14

Large shrimp, empress crab claws and Louisiana style remoulade sauce

Smoked Salmon and Sweet Potato Cakes 12

Served with sauce gribiche and cucumber salad

Diver Scallops BLT 15

Charred large scallops, smoked bacon cream, toast points, charred grape tomatoes, baby spinach, green herb mayonnaise and bacon chi

Glazed Babyback Ribs 11

Maine root beer and bourbon glazed pork ribs with spicy slaw

Carpaccio Bruschetta 10

Tomato olive tapenade, mozzarella and seared tenderloin

Mussels Dijon 13

Cultivated mussels sautéed with julienne carrot, leek and garlic in a white wine Dijon mustard cream

ENTREES

Filet Mignon 34

DIAMOND'S EDGE

Restaurant & Marina

LUNCH MENU

APPETIZERS

Scallops Rumaki 11

Native sea scallops lightly tossed in seasoned bread crumbs wrapped with smoked bacon and broiled, served with pure maple syrup

Carpaccio Bruschetta 10

Tomato olive tapenade, mozzarella and seared tenderloin

Mussels Dijon 13

Cultivated mussels sautéed with julienne carrot, leek and garlic in a white wine Dijon mustard cream

Mediterranean Dips 8

Hummas and Tzatziki served with kalamata olives and pita chips

Shrimp Cocktail 14

Six large, chilled shrimp with Louisiana style remoulade sauce

SOUPS

French Onion Soup 9.50

Caramelized onions, shallots and garlic in a rich broth with thyme, baked with garlic crouton and Swiss gruyere

Bermuda Style Fish Chowder Cup 6 Bowl 10

A hearty tomato and vegetable fish stew accented with dark rum and sherry peppers

SALADS

Classic Caesar Salad 10

Hearts of romaine with our won garlic lemon dressing, tossed croutons and garnished with anchovies and Pecorino Romano

With shrimp 15 with lobster 18

Grilled Asparagus and Roasted Beet Salad 10

Braised leeks, parmesan shards, aged balsamic vinegar and virgin olive oil

Asian Grilled Chicken Salad 13

Chinese five spice marinated chicken breast, grilled, sliced and served with Thai salad and pineapple sauce

ENTREES

DIAMOND'S EDGE

Restaurant & Marina

LOUNGE MENU

BAR BITES

Scallops and bacon with pure maple syrup 12

Chicken liver pate with gherkins, red onion and baguette toasts 6

Carpaccio bruschetta, tomato olive tapenade, mozzarella and seared tenderloin 10

Hummus and Tzatziki served with kalamata olives and pita chips 8

Chilled shrimp and crab Louisiana style remoulade 14

Basket of homemade potato chips 4

SOUPS

French Onion Soup au Gratin 9

Bermuda Style Fish Chowder Cup 6

SALADS

Classic Caesar Salad 9

With chicken 13 / chilled shrimp 15

Mesclun Salad with grape tomatoes, shredded carrot and sherry vinaigrette 6.50

Iceberg wedge with blue cheese dressing and bacon 8

ENTREES

Grilled Angus Burger 11

House made 8oz patty, grilled to order served with lettuce, tomato and Bermuda onion on a toasted roll with fries

Cheddar, Swiss, American, Blue Cheese or Bacon 1.50 / Charred onions .75

Smoked Salmon Fettuccini 15

Herbed cream sauce with capers and chives

Bratwurst with baked beans and raisin brown bread 12

Mussels Dijon with fries 14

Jambalaya 14

Chicken and sausage creole stew with rice

Business Licensing - Re: Diamond's Edge Restaurant - 279 Diamond Ave., GDI

From: Gary Hutcheson
To: Business Licensing
Date: 4/8/2013 6:34 PM
Subject: Re: Diamond's Edge Restaurant - 279 Diamond Ave., GDI

All set.

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

>>> Business Licensing 4/8/2013 9:02 AM >>>
Hello,

For your approval:
DCL, LLC d/b/a Diamond's Edge Restaurant has submitted an application for a Class I liquor license with entertainment with dance and outdoor dining on private property for 279 Diamond Ave, Great Diamond Island. This is a change of ownership, and they are going before Council on 4/22.

Corporate Info:
DCL, LLC of NY

President & CEO - David P. Hart, d.o.b. 2/29/60, of NY
General Manager and Contact- Gerard Kiladjian, d.o.b. 1/23/65, 838-7811 or 766-5850

Owner of Premises:
Diamond's Edge, LLC
100 Silver St., Portland

Slips will go out today.

Thank you,
Janice

Business License Administrator
bl@portlandmaine.gov
207.874.8557



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 #: MIQ99B795035

Criminal History Record

Introduction

This rap sheet was produced in response to the following request (Produced on 2013-04-08) :

Inquiries Name(s) GERARD KILADJIAN (1965-01-23)

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 #: MIQ99B795042

Criminal History Record

Introduction

This rap sheet was produced in response to the following request (Produced on 2013-04-08) :

Inquiries Name(s) DAVID P HART (1960-02-29)

NO MATCH WAS FOUND FOR YOUR REQUEST.



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

April 10, 2013

DCL, LLC
617 Dingens St.
Buffalo, NY 14206

RE: DCL, LLC d/b/a Diamond's Edge Restaurant Application for Class I Liquor License with Entertainment with Dance and Outdoor Dining on Private Property

Dear Mr. Hart,

This letter shall serve as a reminder of the Public Hearing before the Portland City Council on Monday, April 22, 2013 **at 7:00 P.M.** for the review of your application for a Class I Liquor License with entertainment with dance and outdoor dining on private property. The meeting will take place in Council Chambers on the 2nd floor of City Hall, 389 Congress Street, Portland, ME 04101.

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

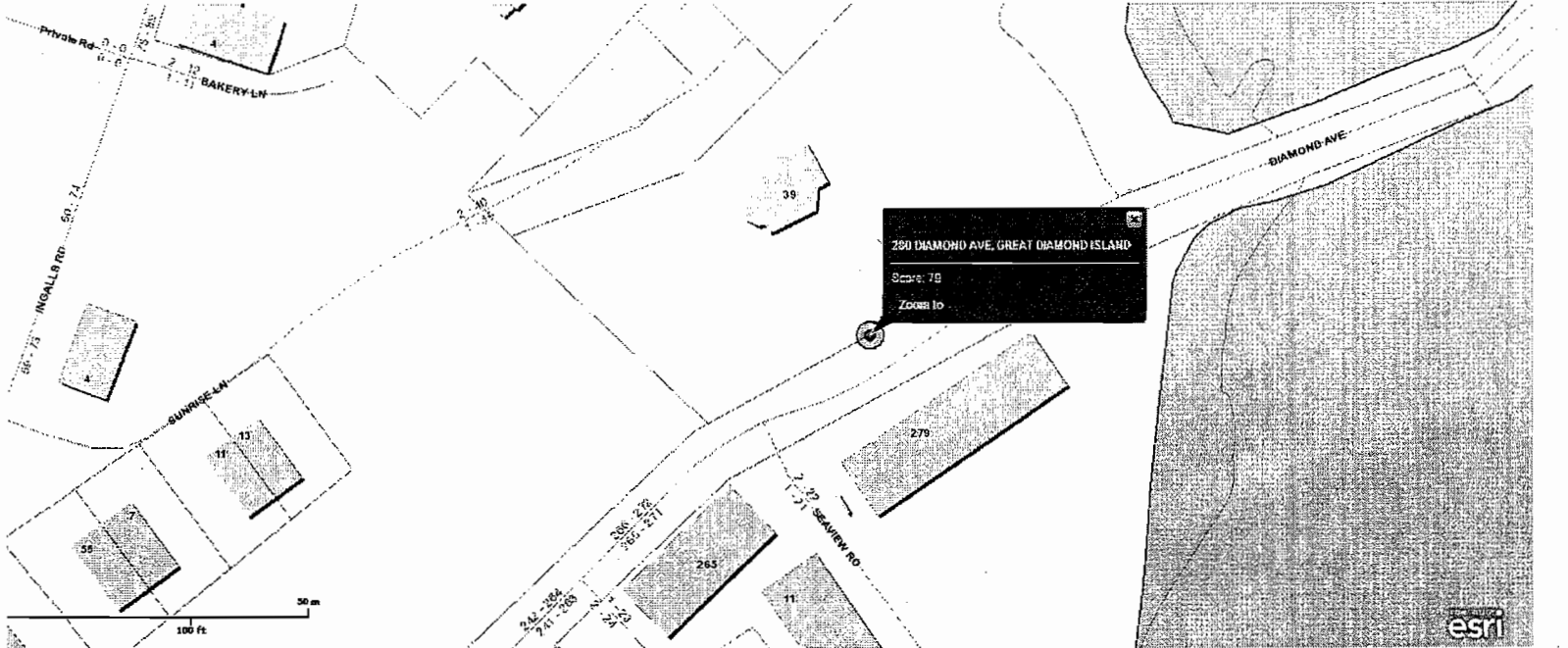
Should you have any questions or concerns, please do not hesitate to contact our office directly at (207) 874-8557 or by email, BL@portlandmaine.gov

Sincerely,

Janice Gardner
Business License Administrator

Diamond's Edge Restaurant

279 Diamond Ave.



Order 194- 12/13
Tab 22 4-22-13

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

CITY OF PORTLAND
IN THE CITY COUNCIL

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

ORDER
GRANTING MUNICIPAL OFFICER'S
APPROVAL OF:

Sol Food Group, LLC d/b/a El Rayo Taqueria at 101 York St. Application to expand existing alcohol service area for one day event on May 5, 2013.

Sol Food Group, LLC

P.O. Box 169 * Portland, Maine 04112
Phone: 207-671-5566 * Fax: 207-775-0022
asiawest@aol.com

Portland Mayor and Members of The City Council
389 Congress Street
Portland, Maine 04101

April 11, 2013

To The Portland Mayor and Members of The City Council:

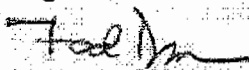
We, Sol Food Group, LLC are requesting permission to expand the scope of our outdoor patio at El Rayo Taqueria for one day only (May 5, 2013). We are planning a "Cinco de Mayo" celebration at 101 York Street, where we hope to use our parking lot to serve food and alcohol under a large tent. Our plan also includes live music, salsa dancing, face painting, and other festivities. A tent permit application is forthcoming.

We propose to close off the parking lot using 6 foot plastic fencing around the perimeter, leaving one opening on York Street for our patrons to enter and exit the property. We also plan to hire a security guard to monitor the entrance (as a precautionary measure). We have also secured alternative parking in the large parking lot behind our building.

Our hours of operation will our normal business hours (11am to 9pm).

Thank you for your consideration.

Regards,



Tod Dana
President, Sol Food Group

PUBLIC NOTICE

Legal Advertisement
Notice of Public
Hearing
City of Portland

A Public Hearing will be held on April 22, 2013 at 7:00 P.M. in City Council Chambers, 389 Congress St., on the application for Sol Food Group, LLC d/b/a El Rayo Taqueria at 101 York St. Application to expand existing alcohol service area for one day event on May 5, 2013. Sponsored by Katherine L. Jones, City Clerk.

4810386

Requested/Approved:
Fire _____
Health/Zoning _____
Police _____
Parks & Rec _____

CITY CLERK
Fee: \$35.00 per day

2013 / 12 / 12 10:2:06

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

Single Concert ~~(Dance)~~ Permit Application

If concert/dance is proposed for outdoors, in a park or on city property, have you obtained the necessary permits from Parks & Recreation? Yes No. If no, please contact Parks & Rec. at 756-8275.

Business/ Group Name(s): Sol Food Group dba El Razo Taqueria

Mailing Address: PO Box 8 Portland 04112

Business Address: 101 YORK ST Portland 04101

Applicant/Contact Person's Name: NORINE KOTTS

Daytime Phone Number: 207 831 6823

Phone number where we can reach you on the day of the event: 207 831 6823

Email address: nor@elrazo.taqueria.com

Name of Festival/Event: Cinco de Mayo Fiesta

Location of Event: 101 YORK ST

Date of Event: May 5 Time of Event – From: 11 AM To: 11 PM

Estimated number of attendees: 500

Style of music: (Anytime amplification is involved, give a short description of DJ/band setup, use back of page if a number of bands or musicians are performing) local bands w amplification →

Premises Owner's Name and Address: JB Brown Danforth St 04101

Does the award of this license benefit any City employee? Yes _____ No ✓
If yes, list name(s) and department(s): _____

Read Carefully & Sign:

I/we, understand that any misstatement of material fact in the above application may result in denial of this license or revocation if a license has already been issued.

Signature: Norine Kotts

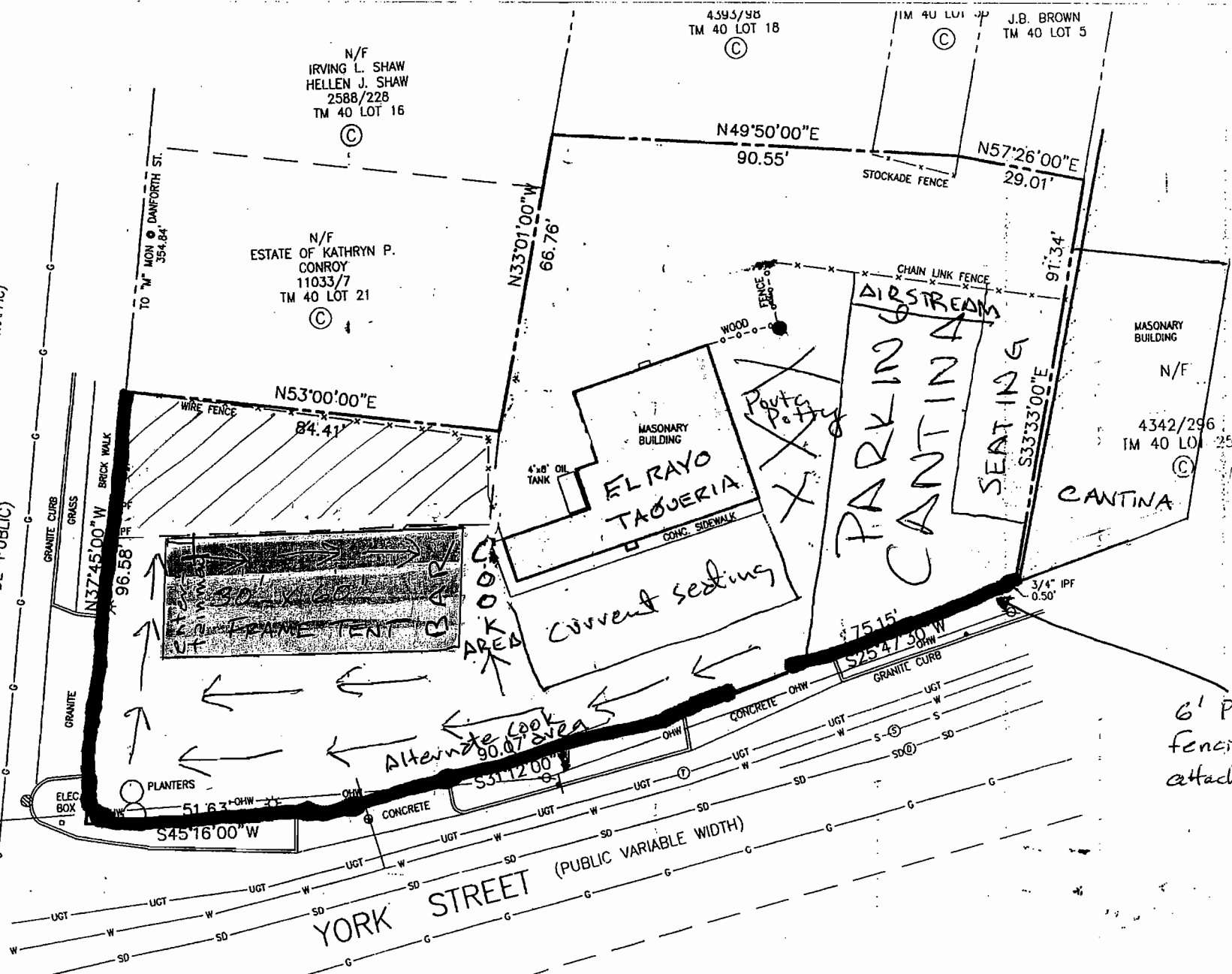
Date: 4/12/13

CITY CLERK

2007-12-10 2:06

HIGH STREET
(66' WIDE-PUBLIC)

TO CONGRESS STREET
(ONE WAY TRAFFIC)



6' Plastic
fencing, see
attachment.

CITY CLERK

2013 FEB 12 THU 2:07



Proposed
fencing for perimeter of
property

From: Michael Russell
To: Business Licensing
Date: 4/12/2013 10:49 AM
Subject: Re: Fwd: El Rayo street closure

No but I would want them to rent handwash stations that have hot water.

-----Original Message-----

From: Business Licensing
To: Michael Russell <MAR@portlandmaine.gov>

Sent: 4/12/2013 10:47:02 AM
Subject: Fwd: El Rayo street closure

Hi Mike,

I don't know if you've been cc'd on the developing plans for El Rayo's desire to have a Cinco de Mayo party on their property. I've attached an email with their latest plans and would love for you to weigh in on how we want to handle the food aspect. Both the Cantina and Taqueria have outdoor dining, but they are talking about having "outdoor cooking stations". Would you require for them to apply for a TFSE as they are expanding their food prep areas?

I'm hoping I can provide info to them today, so if you have a chance to answer this soon, that would be great.

Thanks!
Janice

Business Licensing - Re: El Rayo Cinco de Mayo

From: Ann Machado
To: Business Licensing
Date: 3/22/2013 7:34 AM
Subject: Re: El Rayo Cinco de Mayo

This is really not much of a zoning issue. As long as they get their permit for the tent with Inspections, we are OK with it.

Ann

>>> Business Licensing 3/21/2013 4:29 PM >>>
Hello,

I'm hoping you all could lend some insight into how to approach El Rayo's (Taqueria & Cantina at 85 & 101 York St.) idea to host a large Cinco de Mayo party. Here's the gist of what they are looking to do:

- Block off their parking lot to cars and use that space to place a stage (along York St.) for music from 11 a.m. to 10 p.m.
- Set up an additional bar in their parking lot under a 40' x 80' tent
- Set up a grill outside (I already told them they couldn't have it under the tent, which was their original idea.)
- Close York St. from Maple to High
- Have porta potties
- Use the lot owned by JB Brown for parking

Both establishments have a Class I FSE. The Taqueria has entertainment without dance and outdoor dining. The Cantina has outdoor dining.

I really appreciate any feedback you can provide.

Many thanks,
Janice

Business License Administrator
bl@portlandmaine.gov
207.874.8557

Business Licensing - Re: Fwd: El Rayo Taqueria's Cinco de Mayo

From: Troy Bowden
To: Business Licensing
Date: 4/16/2013 3:00 PM
Subject: Re: Fwd: El Rayo Taqueria's Cinco de Mayo

Yes.

Sgt Troy Bowden

>>> Business Licensing 4/16/2013 2:38 PM >>>
Ok, great - thank you for checking.

Does the PD ok this event?

Janice

>>> Troy Bowden 4/16/2013 2:25 PM >>>
Ok. I stand corrected. No officers are required if there is no street closure.

Sgt Troy Bowden

>>> Business Licensing 4/16/2013 2:06 PM >>>
Hi,

I'm not sure. From the email exchange between you, Troy Moon and Ted, it looked like the officers would be required if there was a street closure, which they've decided not to do. Which is correct?

Thanks,
Janice

>>> Troy Bowden 4/16/2013 1:42 PM >>>
I was told that we are requiring them to hire 2 officers for crowd control.

Sgt Troy Bowden

>>> Business Licensing 4/16/2013 11:00 AM >>>
Hi,

Sorry for the quick re-send, but this item is going before Council on 4/22. Could I get your feedback so that I may add it to the back-up? I need to submit it to the City Manager's office by tomorrow.

Many thanks!
Janice

Business License Administrator
bl@portlandmaine.gov
207.874.8557

From: Chris Pirone
To: Licensing, Business
CC: Martell, John
Date: 3/21/2013 8:14 PM
Subject: Re: El Rayo Cinco de Mayo

1. Tent permit with inspections.
2. Must make contact with Fire for seating plan, occupant load, aisle widths, emergency lighting, etc...
3. Grill needs to be 10 ft from any structure with a 2A10BC Fire extinguisher present.
4. Maintain access to existing buildings in case of emergency.

Captain Chris Pirone
Portland Fire Department
Fire Prevention Bureau
380 Congress Street
Portland, ME 04101
(t) 207.874.8405
(f) 207.874.8410

>>> Business Licensing 03/21/13 4:29 PM >>>

Hello,

I'm hoping you all could lend some insight into how to approach El Rayo's (Taqueria & Cantina at 85 & 101 York St.) idea to host a large Cinco de Mayo party. Here's the gist of what they are looking to do: Block off their parking lot to cars and use that space to place a stage (along York St.) for music from 11 a.m. to 10 p.m.

Set up an additional bar in their parking lot under a 40' x 80' tent

Set up a grill outside (I already told them they couldn't have it under the tent, which was their original idea.)

Close York St. from Maple to High

Have porta potties

Use the lot owned by JB Brown for parking

Both establishments have a Class I FSE. The Taqueria has entertainment without dance and outdoor dining. The Cantina has outdoor dining.

I really appreciate any feedback you can provide.

Many thanks,
Janice

Business License Administrator
bl@portlandmaine.gov
207.874.8557



Tent/Canopy or Temporary Event Staging 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.

Location/Address/Park of Installation or Event: <u>May 5 2013</u>		
Date of Set up/Event <u>tent set up only</u> <u>May 3 or 4 2013</u>		Date of Breakdown/ End of Event <u>May 5 2013</u>
Tax Assessor's Chart, Block & Lot Chart# Block# Lot#	Property Owner: <u>JB Brown</u>	Telephone: <u>415 1746</u>
Lessee/Buyer's Name (If Applicable) <u>Sol Food Group</u> <u>262 El Rayo</u>	Applicant Info: <u>El Rayo</u> Name: <u>Thomas Dand</u> Address: <u>101 York St</u> <u>astawest@aol</u> Phone: <u>671 5566</u> E-Mail:	Fee: <u>\$30.00</u>
The permit fee and the following items must be completed and submitted along with this application in order to receive a permit. 1. Certificate of Flammability 2. Letter of approval from property owner. If the City is owner, attach a completed copy of Application to Use City Parks & Public Space from Parks & Recreation (756-8275). 3. Company name of installer (contact info). 4. Plot Plan showing the following: Tent/Canopy or temporary event staging locations, including dimensions, exits and entrances of proposed and existing, parking and existing building locations. If this is temporary staging, you will need to include product information. (Applicant may call Parks & Recreation for maps of Portland's Parks @ 756-8275). 5. If the City is the property owner, Certificate of Insurance listing the City as additional insured. Minimum amount of coverage is \$400,000.00 Who should we contact when permit is ready. Name: <u>Thomas Dand</u> Address: <u>101 York St</u> Tel: <u>671 5566</u> E-Mail: <u>astawest@aol.com</u>		
Please submit all of the information outlined in the Tent/Canopy and Event Staging Permit Application as one package. 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: [Signature]

Date: 4/12/13

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

El Rayo Taqueria

101 York St.



Order 195-12/13
Tab 23 4-22-13

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

CITY OF PORTLAND
IN THE CITY COUNCIL

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

**ORDER RECEIVING AND REFERRING TO FINANCE COMMITTEE
FY2014 BUDGET ESTIMATES OF THE SCHOOL COMMITTEE
AND SETTING A PUBLIC HEARING THEREON**

ORDERED, that the Budget Estimates of the School Committee for Fiscal Year 2014 are hereby received and referred to the Finance Committee for review; and

BE IT FURTHER ORDERED, that the Public Hearing on the FY2014 School Budget will be on April 29, 2013, at 7:00 p.m. in the City Council Chambers, 389 Congress Street.

Com 10-12/13
Tab 24 4-22-13

CITY OF PORTLAND, MAINE
CITY COUNCIL AGENDA REQUEST FORM

Two (2) copies to be submitted (with supporting material) at least 12 days before Council meeting: Copies to:

Sonia Bean	Terry Tucker
Gary Wood	Mark Rees
Danielle West-Chuhta	Michael Brennan

1. Council meeting at which action is requested:

1st reading:

Final action: *April 22, 2013*

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

If no, why not?

3. This item is sponsored by: *City Manager Mark Rees*

(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:** *The Portland Disability Advisory Committee, a volunteer advisory body to the City Manager, is being established as a mechanism for on-going communication, engagement and activity with stakeholders working to advance the full and equal participation of people with disabilities in all aspects of city life. The Advisory Committee's purpose will include enhancing public education and awareness; advising on legal compliance, accommodations and accessibility; and the on-going evaluation of city programs, opportunities and services for all ages in a manner which fosters dignity and self determination.*

II. **REASON FOR SUBMISSION:** *To formally acknowledge the mission and membership of the Advisory Committee and to adopt (approve) its position within the organizational structure of the city.*

III. **INTENDED RESULT:** *To have active and sustained participation by people with disabilities who live, work and play in the city of Portland and to acknowledge their contributions in advancing a high quality of life for all.*

IV. **FINANCIAL IMPACT:** *Minimal expenses associated with maintaining monthly meetings and materials, communication, interpreter services, trainings, public forums, and occasional guest speakers.*

V. **STAFF ANALYSIS & RECOMMENDATION:** *This long overdue Advisory Committee will allow the city to establish trusting, transparent and collaborative relationships and a record of equitable participation from an often invisible and*

disenfranchised population in the life of the city. The staff recommendation is for full adoption of the Portland Disability Advisory Committee.

Prepared by:

Rachel Talbot Ross
Signature

March 4, 2013
Date

PORTLAND DISABILITY ADVISORY COMMITTEE

Mission Statement

The Portland Disability Advisory Committee is to provide guidance to the City Manager regarding the city's accessibility and inclusiveness of all citizens.

The committee will advise the City Manager by identifying needs and concerns of people with disabilities who live, work, or interact with the City and the greater Portland area, and by engaging in projects aimed at improving their quality of life.

Purpose and Goals of the Committee

The purpose of the committee is to provide guidance to the City Manager regarding the full integration and participation of people with disabilities within the City through the following activities.

Providing information, referral, guidance, coordination and technical assistance to insure that people with physical, cognitive, mental health and other disabilities have equal access to city facilities, services, and programs:

Facilitating increased collaboration and information exchange between persons with disabilities, city departments, and city government;

Advising and assisting city officials and employees in ensuring compliance with state and federal laws and regulations affecting people with disabilities;

Reviewing and making recommendations about policies, procedure, services, activities, and facilities of departments, boards and agencies of the City of Portland as they affect people with disabilities;

Coordinating activities of other local groups organized for similar purposes;

Serve as a resource to the greater Portland area communities (Portland, South Portland, Westbrook, Falmouth, Scarborough, Cumberland, and Cape Elizabeth).

Guiding Principles

People with disabilities have the right to participate in all community activities and shall have equal access to all programs and services that serve the public.

Policies and procedures shall be flexible enough to address the varying individual needs of persons with disabilities.

Input and participation from persons with disabilities shall be valued and considered at all levels when making decisions, setting goals, and developing policy affecting the community.

A universally accessible city is a more livable city for all persons.



Strengthening a Remarkable City. Building a Community for Life • www.portlandmaine.gov

EXECUTIVE DEPARTMENT

Rachel Talbot Ross
Director, Multicultural Affairs,
Community Development & Sister City Programs

MEMO

TO: Mayor and City Council

FROM: Rachel Talbot Ross
Director, Multicultural Affairs, Community Development & Sister City Programs

DATE: April 22, 2013

RE: City of Portland Disability Advisory Committee
Proposed Membership List

Listed below is the proposed membership list for the City of Portland Disability Advisory Committee. The membership will be citizen-based (as opposed to organization-based) and will consist of up to 15 people with cross-disability representation. Members will serve a three-year term. The Advisory Committee will meet monthly and all meetings will be open to the public.

Pursuant to the Charter any additional/future nominations to the Advisory Committee will be communicated to the City Council.

Voting Members

1. Laura Antranigian
2. Renee Berry-Huffman
3. John Dunleavy
4. Karen Evans
5. Paulina Klimet-Cornet
6. Irene Maihot

Non-voting Members

1. Rick Langley – Disability Rights Center
2. Rachel Talbot Ross – City of Portland
3. Meryl Troop – Maine Center on Deafness

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 159-12/13
~~Tab 10 3-4-13~~
~~Tab 5 3-18-13~~
JOHN R. COYNE (5)
JOHN M. ANTON (A/L)
JILL C. DUSON (A/L)
NICHOLAS M. MAVODONES (A/L)
Tab 25 4-22-13

AMENDMENT TO PORTLAND CITY CODE
CHAPTER 21 FARMERS' MARKETS*
CHAPTER 19 PEDDLERS AND SOLICITORS
CHAPTER 15 LICENSES AND PERMITS

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

1. That Chapter 21, Article I, In General, Sections 21-1 through 21-3 and Article II, License of the Portland City Code is hereby amended to read as follows:

Sec. 21-1. Days, locations and products sold.

The City Council may permit by lease or license agreement the use of City property for the purpose of operating a Farmer's markets. The Farmers' Market may be held on Mondays and Wednesdays from 7:00 a.m. to 2:00 p.m. at Monument Square and Monument Way, and Saturdays from 7:00 a.m. to Noon at Deering Oaks Park, on Farmer's Market Road and Jenny Lane, and Saturdays from 8:00 a.m. until 2:00 p.m. in community halls located in R-6 residential zones. ~~for~~ In addition to the sale of local fruit, vegetables, flowers, seedlings and plants and other items.—T, the following items may also be sold, provided that the product is produced, processed or manufactured in an establishment licensed by the department of agriculture to produce the item and that the seller has produced, processed or manufactured the item: raw fiber and spun fiber; fresh meat and meat products and fresh poultry and poultry products provided that they are stored at or below forty (40) degrees Fahrenheit during transport to and display at the public market and frozen meat and meat products, and frozen poultry and poultry products, as defined in 22 M.R.S.A. § 2511, and amendments thereto, provided that it is stored such that it remains frozen during transport to an display at the public market; pasteurized milk and milk products, as defined in 7 M.R.S.A. § 2900, and any amendments thereto, stored in compliance with state law, and unpasteurized milk and unpasteurized milk products, stored in compliance with state law.—In addition, these products will, which products must be labeled as NOT PASTEURIZED in accordance with 7 M.R.S.A. § 2902-B, and any amendments thereto. Failure to label or store in compliance with state law will result in an order to

immediately cease the sale of these unpasteurized products, or suspension or revocation of the farmers market license in accordance with Section 21-18 of the City Code; farm-fresh eggs, provided that they are stored at or below forty-five (45) degrees Fahrenheit during transport to and display at the public market; cheese provided that it is stored at or below forty (40) degrees Fahrenheit during transport to and display at the public market, honey, jams, jellies, pickles, relishes, maple syrup, apple cider, hard cider, as defined in 28-A M.R.S.A. § 2 and any amendments thereto, provided however that the producer has a farm winery license; malt liquor and wined, produced subject to the provisions of 7 M.R.S.A. § 415, and any amendments thereto; packaged herbs or herb blend mixtures and pesto. The following items may be sold, provided that the total amount of sales from all such items does not exceed forty-nine (49) percent of the total amount of sales made by the licensee at the public market: any other edible product that is a derivative of plants or produce grown by the licensee, provided that the licensee also has a license from the department of agriculture to produce the item. Any baked goods sold at a public market must be individually or collectively wrapped while displayed and sold. In no event shall any licensee sell at a public market any potentially hazardous foods, which includes any perishable food or food product not processed or stored in compliance with state law.

(Code 1968, ch. 419; Ord. No. 231-80, 12-22-80; Ord. No. 369-91, § 1, 5-6-91; Ord. No. 83-93, § 2, 9-8-93; Ord. No. 161-00, 3-6-00; Ord. No. 284-05/06, 6-5-06; Ord. No. 166-06/07, 3-19-07; Ord. No. 196-07/08, 4-28-08; Ord. No. 78-10/11, 12-6-10 emergency passage; Ord. No. 102-11/12, 2-6-12)

~~Sec. 21-2. Stalls to be assigned.~~

~~The farmer's market coordinator shall assign a stall to each licensee for his or her exclusive use and the licensee shall use such stall and no other.~~

~~(Code 1968, Ch 419; Ord. No. 231-80, 12-22-80; Ord. No. 196-07/08, 4-28-08)~~

~~Sec. 21-3. Rules and regulations.~~

~~The city clerk is hereby authorized to promulgate from time to time such reasonable rules and regulations as may be required to implement this ordinance. The city clerk shall seek input from the~~

~~Portland Farmers' Market Association when promulgating said rules~~

~~and regulations and shall consider amendments to the rules upon request by the Association. Such rules shall become final upon approval by the city manager and kept on file in the city clerk's~~

office.

~~(Ord. No. 196-07/08, 4-28-08; Ord. No. 265-10/11, 6-20-11)~~

ARTICLE II. LICENSE*

~~Sec. 21-16. Required.~~

~~No person shall sell fruit, vegetables, flowers, seedlings, plants, or any other item permitted in section 21-1 in a public market without a license from the city.~~

~~(Code 1968, § 419.2; Ord. No. 231-80, 12-22-80; Ord. No. 369-91, § 2, 5-6-91)~~

~~Sec. 21-17. Application.~~

~~In addition to the requirements of chapter 15, all applicants must first procure from the city council of the city or town where~~

~~he or she resides and file with the clerk a certificate of qualifications to the effect that he or she resides in the town or~~

~~owns or rents in the town property capable of being cultivated. Such applicant shall also certify in writing that any products offered for sale shall be of his or her own raising or that of some~~

~~other person holding a public market license or that prior to display at the public market he or she will label any fruit, vegetables, flowers, seedlings and plants that are raised by anyone~~

~~other than the licensee. No more than twenty-five (25) percent of~~

~~the total amount of a licensee's sales at the public market shall~~

~~result from the sale of any produce that is raised by someone other~~

~~than the licensee. In no event shall any sales be permitted of any~~

~~produce that was raised outside the state.~~

~~(Code 1968, § 419.2; Ord. No. 231-80, 12-22-80; Ord. No. 83-93, § 3, 9-8-93)~~

~~Sec. 21-17.1. Public liability insurance required.~~

~~City of Portland, Maine Public Markets~~

~~Code of Ordinances Chapter 21~~

~~Sec. 21-17 Rev. 3-6-12~~

~~21-4~~

~~No license for the sale at a public market of any item listed in section 21-1 shall be issued until the applicant has first filed~~

~~with the clerk a certificate, in a form satisfactory to the corporation counsel, evidencing public liability insurance coverage~~

~~in an amount not less than the maximum liability under applicable law and naming the city as an additional insured. The certificate shall also provide for notice to the clerk not less than thirty (30) days prior to any cancellation of insurance. The licensee shall maintain such insurance at all times while engaged in sales at a public market of any item listed in section 21-1. (Ord. No. 369-91, § 3, 5-6-91)~~

~~Sec. 21-18. Revocation or suspension.~~

~~The clerk shall revoke the license of any person who has combined with any other licensee in the fixing or maintaining of a price, fraudulent use of weights or measures, or who intentionally and knowingly deprives another licensee of the use of the latter's designated stall in the market. In addition, the clerk may suspend or revoke the license of any person who violates any other section of this chapter or of chapter 15, or who violates the farmer's market rules and regulations promulgated by the city clerk in accordance with this chapter. (Code 1968, § 419.6; Ord. No. 231-80, 12-22-80; Ord. No. 83-93, § 4, 9-8-93; Ord. No. 196-07/08, 4-28-08)~~

~~Sec. 21-19. General provisions to apply.~~

~~Except to the extent that this article contains a contrary provision, all provisions of chapter 15 shall be additional to the provisions of this article. (Ord. No. 231-80, 12-22-80)~~

2. *That Chapter 19, Article II, Street Vendors, Section 19-20 of the Portland City Code is hereby amended to read as follows:*

Sec. 19-20. Exceptions for license required.

(a) No street vendor's license shall be required for:

(1) Maintaining an installation authorized by a street and sidewalk occupancy permit issued pursuant to section 25-26;

(2) Conducting business on city-owned property pursuant to a lease, contract, or other agreement with the City;

(3) ~~Operating a licensed farmer's market stall~~Any seller operating in a licensed Farmers';

(4) Transporting goods or passengers for hire;

(5) Providing emergency medical or motor vehicle services; or

(6) Advertising only, on a motor vehicle.

(Ord. No. 223-01/02, § 2, 5-6-02; Ord. No. 196-07/08, 4-28-08)

2. That Chapter 15, LICENSES AND PERMITS* cross reference, Article I, In General, Section 15-12 of the Portland City Code is hereby amended to read as follows:

Chapter 15 LICENSES AND PERMITS*

*Cross reference(s)--Uniform procedure for assessments, § 1-16; administration, Ch. 2; funds due to city, § 2-201 et seq.; permits for burglaralarm systems, § 2.5-17; license for bottle clubs, § 3-26 et seq.; license for amusement devices, § 4-26 et seq.; license for music, dancing and special entertainment, § 4-51 et seq.; license for gaming, § 4-81 et seq.; license for sidewalk tanks and pumps for petroleum products, § 10-116 et seq.; inspection performance requirements, § 11-37; license for food service establishments, § 11-46 et seq.; license for street vendors, § 19-29 et seq.; license for transient sales, § 19-56 et seq.; ~~license for farmers markets, § 21-16 et seq.~~; license for pawnbrokers, junk dealers, secondhand dealers and flea markets, § 23-26 et seq.; excavator license, § 25-119; license for wreckers and vehicle towing, § 28-286 et seq.; licenses for taxicabs and limousines, § 30-31 et seq.; licenses for horse-drawn cabs, § 30-42 et seq.

Sec. 15-12. Fees and expiration dates.

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

Ch. 12, Art. VII	Operation of rendering facilities	250.00	September 30
Ch. 21	Farmer's Market	70.00	March 31
Ch. 10, Art. VI	Sidewalk tanks and pumps	25.00	December 31

MEMORANDUM

To: Mayor Brennan and City Council
From: Trish McAllister, Neighborhood Prosecutor
Re: Farmer's Market Ordinance Amendment/License Agreement
Date: February 26, 2013

On February 12, 2013, the Public Safety, Health and Human Services Committee voted unanimously to recommend approval of the attached ordinance changes to the full City Council. Also attached is a draft license agreement for your consideration.

These changes were drafted by Associate Corporation Counsel Ann Freeman after several meetings last year with Farmers Market members, as well as the City Clerk's office. The purpose is to simplify the licensing process now in place for the farmer's markets (see attached information sheet from the City Clerk's office). These changes would mean a single license is issued to the Farmer's Market Association, to be implemented pursuant to a license agreement with the City. The license agreement has been drafted to incorporate the current regulations pertaining to operation and products to be sold.

The committee held two public hearings on this issue this year. After the first public hearing, I met with two farmers who expressed concerns regarding the operation and formation of the Farmer's Market Association (FMA). See attached e-mail from Jules Fecteau.

I also met with FMA representatives and asked them to address these concerns at the next public hearing. On February 12th the FMA was represented by its current president, secretary, and membership coordinator, who confirmed that the Association has been properly formed, its by-laws have been adopted by majority vote, the Association has obtained legal non-profit status through the Maine Secretary of State, and the FMA membership has voted in favor of these proposed changes to the City's licensing process.

Staff recommends that because individual licenses have already been issued to some individuals for the upcoming season, this change not be made effective until 2014.

Attachments:

- Draft ordinance amendment
- Draft license agreement
- City Clerk's information regarding current licensing process
- Fecteau Email
- FMA By-laws
- FMA Annual Meeting minutes.

LICENSE AGREEMENT BY AND BETWEEN

CITY OF PORTLAND

AND

PORTLAND FARMERS' MARKET ASSOCIATION

THIS LICENSE made this _____ day of May, 2012, by and between the **CITY OF PORTLAND**, a municipal corporation located in Cumberland County, State of Maine (hereinafter the "**CITY**") and **PORTLAND FARMERS' MARKET ASSOCIATION**, with a mailing address of 163 Valley Farm Road, New Gloucester, ME 04260 (hereinafter "**LICENSEE**").

W I T N E S S E T H:

WHEREAS, **LICENSEE** has been conducting a farmers' market using space on City property, and **CITY** desires to provide space to **LICENSEE** for that purpose; and

WHEREAS, **CITY** recognizes **LICENSEE** as being responsible for the coordination, implementation, and administration of all of the Farmers' Market Vendors (hereinafter "Vendors") at the Portland Farmers' Market; and

WHEREAS, the **CITY** is willing to permit such use in conjunction with the Portland Farmers' Market so long as adequate protections are maintained for the **CITY** and its citizens;

NOW THEREFORE, the parties do hereby agree as follows:

1. Permit for Use of City Property.

CITY agrees to permit **LICENSEE** to operate an outdoor farmers' market as follows:

- (a) On Wednesdays from April through November from 7am – 2pm in Monument Square and Monument Way, the Farmers' Market shall be the primary use of Monument Square. From December through March, the Farmer's Market location may be relocated to accommodate other activities.

- (b) On Saturdays from April through November from 7am to Noon in Deering Oaks Park on Farmers' Market Road and Jenny Lane.
- (c) Vendors at the Farmers Market may arrive two hours prior for set-up and may remain two hours after for break-down.

2. Permit for Markets' in the R-6 Residential Zone.

CITY agrees to permit LICENSEE to operate an indoor farmers market from November – April on Saturdays from 8am-2pm in community halls located in the R-6 Residential Zone.

3. Products to be sold.

- A. In addition to fruit, vegetables, flowers, seedlings, and plants, the following items may be sold at the Farmer's Markets, provided the product is produced, processed, or manufactured in an establishment licensed by the Department of Agriculture to produce the item and that the seller had produced, or processed, or manufactured the item:
 - a. Farm fresh eggs, provided they are stored at forty-five (45) degrees Fahrenheit during transport and display.
 - b. Honey, jams, jellies, pickles, relishes, maple syrup, apple cider, packaged herbs or herb blends and pesto.
 - c. Fresh meat and meat products, and fresh poultry and poultry products, provided that they are stored at or below forty (40) degrees Fahrenheit during transport and display at the public market.
 - d. Frozen meat and meat products, and frozen poultry and poultry products, provided that it is stored such that it remains frozen during transport and display at the public market.
 - e. Pasteurized and Not Pasteurized milk and milk products labeled and stored in compliance with Maine State Law.
 - f. Cheese, provided that it is stored at or below forty (40) degrees Fahrenheit during transport and display.
 - g. Raw or spun fiber.
 - h. Hard cider, as defined in 28-A M.R.S.A. § 2 and any amendments thereto, provided however that the producer has a farm winery license; malt liquor and wine, produced subject to the provisions of 7 M.R.S.A Sec. 415, and any amendments thereto.
- B. The following items may be sold, provided that the total amount of sales from all such items does not exceed 49% of the total amount of sales made by the licensee at the Farmer's Markets:
 - a. Any other edible produce that is a derivative of local plants or produce grown by any Vendor, provided that the Vendor holds the necessary license from the Department of Agriculture to produce such item(s). It is the intention that the Vendor would be allowed to produce and sell such items such as fruit pies,

breads, squares and fruit filled cookies derived in whole or in part from the products grown on their farm. It does not allow for the sale of such items as rice crispy squares, chocolate chip cookies, chocolate fudge, or brownies, to name a few.

- b. Any baked goods eligible to be sold at the public market must be individually or collectively wrapped while displayed and sold.
- c. The sale of any potentially hazardous foods, which includes any perishable food or food products which consists, in whole or in part, of milk or any other ingredient capable of supporting rapid and progressive growth of infectious and toxigenic microorganisms, including but not limited to, cream fillings in pies, cakes or pastries, custard products, meringue topped bakery products, or butter cream type fillings in bakery products, will not be allowed.

4. **Conditions.**

- A. **LICENSEE** agrees to maintain the premises in a clean and orderly fashion and to remove from the premises all trash and debris resulting from vending activities.
- B. **LICENSEE** agrees to maintain the activities of the Farmers' Market in a peaceful and orderly fashion.

5. **Term.**

This Agreement shall be effective from the date of execution through March 31, 2017 with the option for an annual renewal of the five (5) year term, unless this License is sooner terminated by either **LICENSEE** or **CITY**, as provided herein.

6. **Fees**

LICENSEE agrees to pay to **CITY** a fee in the amount of one hundred dollars (\$100) per Vendor per year for the right to use City property as described in paragraph one (1) above. The number of Vendors shall be determined at the annual meeting of the **LICENSEE** and a list of Vendors shall be submitted to the City annually with the lease payment. In addition, there shall be an initial thirty five dollars (\$35) application fee for this License, with twenty five dollars (\$25) per annual renewal. The annual license fee and corresponding application fee will be due and payable on March 31st of each year. No refunds shall be granted in the event of early termination of this License.

For the term of this agreement as defined by paragraph five (5) above, **CITY** will credit **LICENSEE** for the amount of fees received by the **CITY** on the date of execution from currently licensed Vendors. The list of currently licensed Vendors is attached hereto as Exhibit 1. **LICENSEE** shall also credit the Vendors listed in Exhibit 1 for the amount of the license fee already paid.

7. **Repairs and Maintenance**

LICENSEE represents that it has inspected and examined the **PREMISES** and accepts them in their present condition, and agrees that **CITY** shall not be required to make any improvements or repairs whatsoever in or upon the **PREMISES** or any part thereof; **LICENSEE** agrees to keep said **PREMISES** safe and in good order and condition at all times during the term hereof, and upon expiration of this License or any sooner termination thereof, **LICENSEE** will quit and surrender the possession of the **PREMISES** quietly and peaceably and in as good order and condition as they were at the commencement hereof, reasonable wear, tear, and damage by the elements excepted; **LICENSEE** further agrees to leave the **PREMISES** free from all nuisance and dangerous or defective conditions not in existence at the commencement of this License.

8. Assignment

This License may not be assigned except as provided herein to duly authorized Vendors using the stalls with authority of **LICENSEE**.

9. Management of Association

Management of the Association shall be pursuant to Bylaws and Rules and Regulations which are not inconsistent with the City's ordinance. Any changes to the **LICENSEE's** Bylaws and/or Rules and Regulations shall be reviewed and approved by the City Clerk's office. The current Associations Bylaws and Rules are attached hereto as Exhibit 1.

10. Management of Vendors

LICENSEE shall require each Vendor to submit an application to use stalls at the Farmers' Market, said application form to be mutually agreed upon by the parties. **LICENSEE** shall obtain and maintain a copy of any required state licenses from its Vendors and shall keep them with the Vendor's application. **CITY** shall have the right to inspect **LICENSEE's** Vendor files in regard to applications and licensing.

11. Insurance

LICENSEE shall obtain comprehensive general liability insurance in the minimum amount of One Million Dollars (\$1,000,000) combined single limit covering bodily injury, death or property damage and shall name the **CITY** as additional insured thereon. Said insurance shall cover the indemnification provision herein and the operations of its Vendors and shall include products liability insurance covering the sale of food. A certificate evidencing such coverage shall be provided to **CITY** at commencement of the License term. Such insurance shall be on an occurrence basis and in the event of termination of this License. **LICENSEE** shall purchase a tail for such insurance for a minimum of three (3) years from the date of termination.

12. Indemnification

LICENSEE shall defend, indemnify and hold harmless the **CITY** and **CITY's** officers, agents, elected officials, employees, inhabitants and assigns, from and against any and all claims,

demands, suits, expenses (including reasonable attorney's fees) and judgments by or on behalf of any person or entity, arising out of **LICENSEE'S** use or occupancy of the **PREMISES** under this License, including but not limited to the operations of its Vendors at or from the **PREMISES**. Without limiting the generality of this Article, **LICENSEE** expressly agrees to defend, indemnify and hold harmless the **CITY** from and against the following:

- A. Employee Claims. Claims of **LICENSEE'S** officers or employees or their estates for workplace-related injuries or death sustained on the premises during the course of such employees' employment, including subrogated claims of such employees' workers' compensation insurance carriers pursuant to 39-A M.R.S.A. §107, as amended.
- B. Other Claims. Claims of any person, entity or estate for personal injury, property damage, or death occurring on or from the **PREMISES** or arising out of **LICENSEE'S** business operations on or off the **PREMISES**.
- C. **LICENSEE** as used herein, shall include **LICENSEE**, its officers and employees, and its contractors, subcontractors, invitees or Vendors.

This Section and Section 9 shall survive termination of this License and all insurance hereunder shall be primary to any insurance of self-insurance of **CITY**.

13. Revocable License

This License may be revoked by **CITY** at any time. **CITY** shall provide a one (1) year notice of revocation prior to its intended revocation of this license. **LICENSEE** shall have the opportunity to appeal the intended revocation to the City Manager, or his or her designee, by providing notice to the City Manager within thirty (30) days of notice of such intent to revoke.

14. Default

In the event that **LICENSEE** shall be in default of any payment of any fees, or fails to obtain and/or maintain all required licenses, or is in default in the performance of any of the terms or conditions herein agreed to be kept and performed by **LICENSEE**, then in that event, **CITY** may terminate and end this License upon a fifteen (15) day prior written notice, and thereafter **CITY** may enter upon said **PREMISES** and remove all persons and property therefrom if **LICENSEE** has failed to cure said default within said notice period. **LICENSEE** shall be liable to **CITY** for all costs incurred by it as a result of the **LICENSEE'S** default and **LICENSEE** shall pay all costs of collection and cure incurred by **CITY**, including reasonable attorney's fees.

15. Hold Over

In the event that **LICENSEE** shall hold over and remain in possession of the **PREMISES** with the consent of the **CITY**, such holding over shall be deemed to be from month to month only, and upon all the same terms and conditions as contained herein.

16. **Notices**

Any notices which are required hereunder, or which either **LICENSEE** or **CITY** may desire to serve upon the other shall be in writing and shall be deemed served when delivered personally, or when deposited in the United States mail, postage pre-paid, return receipt requested, addressed to Portland Farmers' Market Association or addressed to City of Portland, City Manager, 389 Congress Street, Portland, ME 04101.

17. **Waiver**

Waiver by either party of any default in performance by the other of any of the terms, covenants, or conditions contained herein, shall not be deemed a continuing waiver of the same or any subsequent default herein.

18. **Compliance with Laws**

Each party agrees to comply with all laws, ordinances, rules and regulations which may pertain or apply to the **PREMISES** and the use thereof, including without limitation all laws regarding non-discrimination and equal employment opportunity.

19. **Successors and Interest**

All of the terms, covenants and conditions contained herein shall continue, and bind all successors in interest of **LICENSEE** and **CITY** respectively, herein.

IN WITNESS WHEREOF, the said **CITY OF PORTLAND** has caused this License Agreement to be signed in its corporate name and sealed with its corporate seal by Mark Rees, its City Manager, thereunto duly authorized, and **PORTLAND FARMERS' MARKET ASSOCIATION** has caused this License to be signed by _____, its _____ as of the day and date first set forth above.

WITNESS:

CITY OF PORTLAND

By: _____
Mark Rees
Its City Manager

PORTLAND FARMERS'

MARKET ASSOCIATION

Print Name: _____

Its: _____

Procedures for processing new and renewing Farmer's Market applications:

The City Clerk's Office is responsible for processing and generating individual Farmer's licenses for the Farmer's Market on a yearly basis. For a new Farmer's Market participant, the procedure is as follows:

- The Farmer's Market Coordinator notifies us of a new Farmer's acceptance into the Market.
- The Farmer submits a Farmer's Market License Application with a \$35 application fee and \$70 license fee, plus:
 - The Farmer must submit a Public Market Certification form, showing that the farmer is a resident of the town in which the farm is located, and that the land identified as the farm is capable of being cultivated.
 - The Farmer must submit proof of public liability insurance in the amount of at least \$400,000 with the City of Portland listed as additional insured.
 - If the Farmer is selling goods for which the Department of Agriculture requires additional licensing, a copy of those licenses must also be submitted with the application.
- Business Licensing then process the application and, upon approval, generates a license issued to the Farmer.

For renewing Farmer's Market participants, the City Clerk's office sends out renewal applications two months in advance of the March 31st expiration date. Renewing Farmer's need to submit the renewal application, proof of insurance, and appropriate licenses from the Department of Agriculture with a renewal fee of \$25 and license fee of \$70. The Farmer's Market Association submits to us a list of approved Farmers to ensure that the correct participants are renewing. If participants don't renew in a timely manner, we first follow up with the Farmer. If we do not receive a response, we inform the Market Coordinator who then contacts the Farmer.

Throughout the year, our involvement with the day-to-day operations of the Market is minimal. If problems are brought to our attention by Market Farmers or Market attendees, we notify the Market Coordinator and Code Enforcement as needed so that they may address the issue directly.

Trish McAllister - Portland Farmer's Market

From: Serendipity Acres <goodthingshappen_2@yahoo.com>
To: <edsuslovic@portlandmaine.gov>, FreshStartFarms <sbostick@cultivatingcom...
Date: 2/4/2013 11:39 AM
Subject: Portland Farmer's Market
CC: <lalibelafarm@yahoo.com>, <trishm@portlandmaine.gov>
Attachments: PFMA Meeting Minutes Annual Meeting 2.2.13.pdf

To Ed Suslovic, Portland City Council

Dear Ed,

Thank you for your continued support of the Portland Farmer's Market.

Trish McAllister informed me on Friday that the association known as the Portland Farmer's Market Association (PFMA) has now sent in formal paperwork to apply for legal status as a nonprofit corporation within the State of Maine. I was very happy to hear this as I had serious concerns about the association collecting dues, instituting rules and regulations for its vendors, and entering into contracts with the city without actually becoming a legal entity. I look forward to hearing of the outcome of that application.

I also received minutes of the association's February 2nd meeting; which looks to have been very productive and well run. I regret that I was not able to attend the meeting in person as I am out of state until February 19th and am staying in touch by email only. (I have attached a copy of that meeting's minutes to this email). I appreciate Daniel's efforts to invite any vendors who need further explanation of the the association's activities and intentions to contact members of its steering committee. There has been a disheartening plague of misinformation circulating on both sides of these very important issues which will effect all of the farmers. I would additionally like to suggest an independent person, perhaps a pro bono or retired attorney or volunteer law student, who could explain some of these issues to farmers who have no background to be able to understand what all of these changes actually mean to their farms and businesses, and/or are generally out of the communication loop due to the fact that they do not have email service and the association only sends out announcements and documentation through email and word of mouth. I don't know if you can imagine how scary this can be to farmers who have no idea what is going on and depend on this market to support their families. Many are hoping it will just go away or be alright somehow.

That issue aside, I still have some very serious concerns about the liability that the market is preparing to take on in separating from the city. I understand that the contract that we reviewed is just a draft of and not the final contract with the city, but I fear that in their unbridled enthusiasm to move forward, the association has not begun to consider the possible ramifications of this liability for the farmers. Robin Beckwith of Beckwith Gardens, a former market manager, has hired an attorney to review the draft of the contract and has asked him to fax you a letter of his concerns regarding these liabilities on behalf of her farm. Again, an independent adviser would go a long way toward providing accurate information to all of the farmers.

I understand from Trish that the PFMA has also confirmed that if they take over responsibility and control of the farmer's market that they will be requiring all vendors to join their association, but that the earliest that this would happen would be the 2014 season, so that all current vendor's contracts will be renewed providing they have all of the necessary paperwork and fees in to the city clerk's office on time. I appreciate this clarification as many have been worried about their license for this year.

Finally, I have heard a hearsay rumor about the PFMA's possible intention to turn over Portland farmer's market to the Federation of Farmers, (an organization that runs farmer's markets and has its own entirely different set of rules) as soon as they gain control of the market from the city. Since the source of this rumor through the spouse of one of the steering committee members I would like to request that the association make a statement (or insert into their bylaws) that they will not turn the market over to this or any other organization. As of now there is nothing in their bylaws to prevent this.

I am hopeful that if communication improves with those farmers that feel they have been left in the dark in understanding these changes, and we can vote on these proposed changes in an independent poll of all of the vendors (including votes by proxy) not just those that attend the association meetings, we can move forward as united farmers. The question of whether to keep the market public and under the umbrella of the city's stewardship and protection, or to turn over the running of the market to the PFMA is a serious one, and I'm hoping all farmers can enter into it fully informed. I would be happy to volunteer my time to find a suitable independent volunteer adviser to the market when I return in late February if it is agreeable to everyone.

Thank you for your kind attention.

Respectfully,
 Jules Fecteau
 Serendipity Acres
 North Yarmouth

Portland Farmers' Market Association

Proposed By-Laws (revised 03/28/11)

· **Article 1 - Formal Title**

This organization shall be known as the Portland Farmers' Market Association

· **Article 2 Purpose**

The Portland Farmers' Markets' purpose is to celebrate and share the bounty of local Maine agriculture through the operation of a community-based farmers' market that supports small farmers and healthy urban communities. Furthermore we aim to stimulate public interest in the consumption of local farm and garden products purchased directly from the producer thereby supporting and preserving the quality of rural life in Maine.

· **Article 3 - Membership**

Any farmer qualifying with Maine homegrown products shall be eligible for membership in the organization by agreeing to abide by the established rules and by-laws of the association.

New member must have approval to participate in the Portland Farmers' Markets and for membership.

· **Article 4 - Officers and Steering Committee**

The officers shall consist of Chairperson, Secretary, Treasurer, one Market Manager per market location and Membership Coordinator. Each member may only occupy one elected position.

Steering Committee: These officers, together with at least two other elected members, shall constitute the Steering Committee. The officers shall serve for one year, or until qualified successors have been elected.

Duties of the officers and Steering Committee are as follows:

Chairperson: The Chairperson shall preside at all meetings of the Association and the Steering Committee. She/he shall request the secretary to call regular or special meetings and shall work with the steering committee to provide an agenda for each meeting. She/he shall attend to all duties (do we need to give examples) expected of such an officer. She/he shall also be a signing member on the association's bank account. She/he shall be the spokes person for the association. She/he shall oversee payments by the Treasurer. She/he shall appoint new members to vacancies on the Steering Committee between annual meetings.

Market Manager(s): She/he shall ensure that attending vendors meet all of the associations' qualifying standards to include timely payment of dues, adherence to market rules and assigning market spaces. There shall be a Market Manager for each market location. This may or may not be one person for all market days. The Market Manager for the said location must have their farm attend at least 75% of the market season on their said location.

Secretary: The Secretary shall keep record of all meetings and send out notices, whenever requested to do so by the Chairperson. The Secretary will send and/or post minutes of all the meetings to the general membership.

Treasurer: The Treasurer shall attend to the duties of the Chairperson in her/his absence or inability to serve. She/he shall keep a record of all dues and other money received from the market operation. She/he shall record any money paid out and report on the foregoing whenever requested to do so by the chairperson or a majority vote of the Steering Committee or a majority vote of the membership. She/he shall deposit all monies received in a local bank account. She/he shall sign checks for the Portland Farmers' Market Association as approved by the Chairperson. She/he shall prepare a budget for the coming year and a report of the previous years' expenses; for the annual meeting. There shall be a treasurers report at meetings of the Steering Committee.

Membership Coordinator: The Membership Coordinator shall receive all applications, both new applicants and returning member applications. She/he shall provide the steering committee with adequate copies of the potential new member applications. She/he shall be the contact between the membership and the new applicants. She/he shall communicate with new applicants about time lines and the process of membership selection.

The Steering Committee: The Steering Committee shall meet on the call of the Chairperson, or in her/his absence, the call of the Treasurer. The Steering Committee shall arrange for all meetings, and have general charge of the Association activities, including the power to authorize the treasurer to pay bills approved by the Steering Committee through the Chairperson.. The Steering Committee may sponsor advertising by newspapers, radio, or television per the budget approved by the membership and request support from various municipalities for promoting the successful operation and expansion of the market. At the request of a Market Manager, the Steering Committee shall investigate any suspicion of questionable practices employed by any seller. If verified, the Steering Committee is authorized to immediately enforce corrective action. The Steering Committee may appoint committees as needed. The Steering committee shall present a slate of officers and two members at the annual meeting.

Additional committees: Additional committees will be formed by popular vote.????

· **Article 5 - Annual Meetings**

The annual meeting shall occur on the first Saturday in February of the calendar year. The members present will constitute a quorum, in all other aspects meetings will be run using the latest edition of Robert Rules of order. Members shall be notified of the meeting at least one week prior to the annual meeting. The annual budget shall be adopted at the annual meeting.

· **Article 6 - Elections**

Nominations and elections shall be held at the annual meeting. Members in good standing shall have the privilege of voting at all association meetings. Each farm membership shall have one vote. Voting members may make nominations from the floor.

· **Article 7 - Records**

Every member shall have the right to examine, for any reasonable purpose, the books, records, roster of membership, and other appropriate records of the Association. All such examination requests shall be presented to the Steering Committee. The Steering Committee shall respond within 3 working days or sooner.

· **Article 8 - Dues and Liquidation**

Section 1. The annual dues shall be determined by the Steering Committee annually, payable to the Portland Farmers' Market Association. All dues shall be paid by the date appearing on the membership form.

Section 2. Any member of the organization whose dues fall into arrears shall, be automatically dropped from membership in the organization unless immediate payment of such dues is made.

Section 3. The Steering Committee may grant relief or adjustment of dues.

Section 4. In the event of liquidation or dissolution, all remaining assets in the Association's treasury shall be donated to one or more non-profit association that works to benefit local agriculture or community food distribution. The specific beneficiary of the Market's assets will be determined by a general vote. The sum of the donation will be any monies remaining after all debts and other obligations of the Association are satisfied.

· **Article 9 - Amendments**

The articles outlined may be amended by a two-thirds majority of members present at any regular or special meeting, providing that a notice of such revision or amendment was included in the call of the meeting, or else that the matter had been duly presented at a previous meeting.

Portland Farmers' Market Association

Annual Meeting 2/2/2013

Meeting Minutes

Meeting held at the Burton Fisher Meeting Room, One City Center, Portland Maine

Attendance:

Carolyn and John Snell, Snell Family Farm
Chris Cavendish, Fishbowl Farm
Beth Schiller, Dandelion Spring Farm
Hanne Tierny and Clayton Carter, Cornerstone & FailBetter Farms
Doug and Heather Donahue, Balfour Farm
Dan Perron, Sumner Valley Farm
Linnea Koon Morrison, Kennebec Cheesery
Mary Ellen and Austin Chadd, Green Spark Farm
Jodie Jordan, Alewife's Brook Farm
John Carter & Cynthia, Middle Intervale Farm
Richard Rudolph, Rippling Waters
Bob MacLeod, Pineview Gardens
David Buchanan, Old Ocean House Farm
Simon Frost, Thirty Acre Farm

Larry Bruns, Hanson Field Flower Farm
Mark Heidman, Maple Springs Farm
Dick and Mike Fowler, Pleasant Hill Gardens
John Pease, Merrifield Farm
Scott Howard, Olivia's Garden
Jessie Dowling, South Paw Farm & Fuzzy Udder Creamery
Lauren Pignatello, Swallowtail Farm & Creamery
Don Beckwith, Meadowood Farm
Daniel Price, Freedom Farm
Jaime Berhanu, Lalibela Farm
Mike Farwell, Uncle's Farm
Jeff Burchsted, Buckwheat Blossom Farm
Ian Jerolmack, Stonecipher Farm
Pete, Mainely Poultry

1. Welcome
2. Collection of Association dues and returning vendor applications
3. Officers Reports:
 - a. Treasury Report/Scott Howard:
 - No 2013 Budget at this time. Scott is unsure if he should continue as treasurer. There are a number of different money streams that have created a very complicated accounting process (Tokens, dues). Market bank account stays steadily just under \$20,000.
 - Dan Perron asked about using Dues money for advertising
 - Richard Rudolph expressed wanting to see a Profit & Loss statement for what was spent in 2012.
 - Scott suggested maybe there should be an accounting committee to help develop a system for keeping track of money streams.
 - Jaime suggested separating the Token money flow into a separate account.
 - b. SNAP Report/Jaime Berhanu:
 - overview of activity in 2012: loss of grant funding from Cultivating Community
 - 2012 Fundraising efforts (online Indiegogo campaign, BunkerDown Fest, market donations) resulted in \$5616.50 for the Token Program.

- Amanda Moeser was hired as the Market Information Booth Coordinator. Her duties will include coordinating volunteers, developing fundraising ideas, and running the Token Program/Info Booth.

-Booth Storage has remained at the Portland Food Coop at no charge to the market.

-Incentives at Winter Market= \$4000.00

-Total Token Sales for 2012:

<i>Total SNAP</i>	<i>Total Credit/Debit</i>	<i>Total Combined:</i>
\$49,408.00	\$121,645.00	\$171,053.00

-Token numbers show this program is a service that the community wants the market to continue to providing. This past year has proved that the program deserves stronger footing and more management involvement. 3 grant opportunities will be discussed further in the meeting.

- Additions to the market website: a) links to Vendor Surveys taken in 2012, and b)Market Meeting Schedule (which will serve as an additional way for vendors to stay updated on meetings taking place that relate to the market. (in addition to email and phone call announcements)

-Reminder that all market vendor documents are always accessible on the market's website: www.portlandmainefarmersmarket.org- click on "Vendor Page" and enter username: portlandfarmersmarket, and password: deeringoaks.

-Individual vendor token reports provided for 2012

c. Chairman's Report/Daniel Price:

-Daniel announced PSHHS Committee meeting at City Hall taking place Tuesday, February 12th to address License Agreement changes.

d. Market Manager's Report/Larry Bruns:

-Larry feels the market ran fairly smooth in 2012

-Larry reports one market member reported concern about other vendor's meat packaging/labeling at market, and the need for the market to have clear language about what is required by meat vendors' labeling.

-Hanne and Larry will clarify what is required to meet state, city, and market rules for meat labeling.

e. Winter Market Manager's Report/Lauren Pignatello:

-Lauren reported that she is looking for a new location for the 2013 Winter Market.

-Lauren is happy to welcome anyone who wants to help with organizing and managing the market (music, finding new location, promotion, etc)

-Lauren invited any summer vendors who have excess product to let her know if they'd like to vend at the Winter Market as a guest vendor because there are some open spots currently.

4. Display Logo discussion.

- Daniel presents 2 logo concepts to the group.
Hanne motions to vote on one of the two logos.
Mary Ellen seconds the vote.
- Discussion about finding a different logo, and the desire to look further.
Hanne withdraws her motion.
- Carolyn mentions that the market needs something to work with sooner than later for items like the market brochure, promotional materials like bags, signs, etc.
- Dan Perron suggested having rotating artwork each year that could be used for promotional purposes. Daniel Price mentions that the market could still do that, but it would not necessarily be considered the logo.
- A third, more detailed logo design is presented.
Ian motions to vote on 1 of the 3 logos presented
Jaime seconds the motion.
Single Carrot Design: 2 votes
Carrot w/City Scape Design: 0 votes
Market Basket Design: 22 votes
-MARKET BASKET LOGO ACCEPTED AS NEW MARKET LOGO(see below)-



5. Brochure Updating/Carolyn Snell

- Carolyn reported she had not heard back from everyone last year on the market brochure she has been working on.
- The brochure-in-progress was passed around for farms to verify the information present.

6. Association Proposed Budget 2013

- Budget will be proposed and discussed at another time (Membership Meeting?)

7. Discussion of recent grants made available to market

- Jaime presented the overview of 3 grants presented to the market to help support and continue the Token Program:
 - a) From JT Gorman Foundation/Wholesome Wave-
\$18,000.00 for capacity building (a 3 year, decreasing grant)
\$25,000.00 for Double Voucher Coupon Program
 - b) From Healthy Portland-

\$11,000.00 per year for 4 years

- Tim Fuller from Healthy Portland presented evaluation results that his department conducted during the 2012 market season that revealed how customers using the Token Program are coming to the market more often, and spending more money as a result of the access provided by the Token Program. He also reported that 33% of SNAP customers reported this was their first year coming to the farmers' market, proving that the token program is bringing new customers to the market who have not shopped there before. (For the entire report, please email lalibelafarm@gmail.com for a digital copy).
- Mary Ellen presented the idea of using some of the grant money to have a professional market review done. (For MaryEllen's entire report, please email her @ maryellenchadd@gmail.com)
- Discussion of possible uses of "capacity building" grant. (market review, promotion, computerized recordkeeping system, market computer, printing of signs, recipes, etc)
- Jaime announced she and Carolyn will be meeting with Wholesome Wave, Healthy Portland, and Maine Federation of Farmers' Market this Wednesday, 2/6/13 by conference call at 4:00pm to discuss further details of the grants, and the specific allowable uses of funds. If any vendors have any questions they would like to be answered, please let Jaime know.

8. Discussion of proposed changes to Farmers' Market Ordinance & Discussion of Changes (in general) to the way the market is run

- Daniel spoke about the Umbrella License Agreement which will allow the City to issue one license to the PFMA. Each vendor will then pay their part of the license fee directly to the PFMA (\$100/yr per vendor). This change will eliminate considerable work for the City Clerk's office and allow the PFMA to manage the market directly and with the City's approval.
- Daniel passed along information from Trish McAllister (current acting City Attorney) that the current version of the proposed License Agreement is only a draft and can be changed before it is signed. (Likely changes/clarification regarding liabilities for physical condition of the premises, liability only during market hours, etc)
- Beth asked about getting clarity on an email sent out to the market members earlier in the week from Jules Fecteau that stated that Jules and Robin Beckwith had met with Trish McAllister and the "have decided to officially continue to be known as the Portland *Public* Farmers Market". Daniel reminded the group that the city attorney does not make final decisions, that the issue must go before City Council and they are who will make any final decisions regarding the matter.

- Daniel pointed out that this new Lease/License Agreement will be a 5 year, rolling lease, which will provide the market with more of a commitment from the city to operate than the market currently has, or has had in the past.
- General questions about the changes:
 - will it still be a “public” market
 - who will issue parking permits
 - there is a need to clarify the issues around liability
- Mark mentioned that the property conditions should be continually assessed and not done as a onetime assessment of their condition.
Hanne motions to enter into the concept of the Umbrella License Agreement
Ian seconds the motion
 Discussion on the motion
- Richard suggests that we need to have an additional vote once there is a final draft of the license agreement.
- Larry mentioned he doesn't think the City wants to be “running” the market any longer and they are happy to see the farmers making an effort to manage it more proactively.
- Heather said that the Association should have a clearer way to deal with complaints. She'd like to see the market manager act on specific complaints.
- Hanne mentioned that there is structure spelled out in the Rules & By-Laws for direct and specific complaints. If a member has a complaint, it is their responsibility to report it to the Market Manager.
- Bob asked if a farmer doesn't join the Association, who will hold them to any city or state rules. The answer: as it has been in the past, likely no one, as the City has not had any presence or enforcement of rules at the market. Bob talked about how difficult it is to find someone that is unbiased and fair, to enforce the rules. Jaime asked if Bob could be that person. Bob was unsure at this time.
- Hanne talked about how the market has gotten to its current status with the License Agreement and that it was originally proposed by the city as a way of making the PFMA's management of the market work within the City process. (in other words, the city cannot allow the PFMA to manage and enforce rules to vendors who hold licenses issued BY the City. However, if the PFMA holds the license, then the PFMA would be empowered to manage and enforce rules according to the Rules and By-Laws approved by the market membership and the City.)
- Larry talked about how the new License Agreement could make the relationship with street artists clearer. *(Sidenote: artists now have to register at City Hall and receive a copy of the city's Street Artist Rules and Regulations.)*
- Jeff asked if the PFMA has a lawyer. Daniel answered: not yet
- David said he thinks the Steering Committee should include members of the public. Daniel replied that David could propose an amendment to the Rules and

By-Laws with farmer support to reflect the desired change. A reminder that *any* member can propose a change to the Rules and By-Laws.

Vote on the motion (above) to enter into the concept of the Umbrella License Agreement:

In Favor: 24

Not in Favor: 2

Abstained: 1

-MOTION PASSES-

9. Discussion of Summertime (anonymous) Survey Results

- Overview of survey results: desire for map of market at info booth & recipes at info booth, desire to continue SNAP program, parking challenges at Deering Oaks, wanting a protocol for addressing farmer conflict, Saturday market overcrowding of vendors, concern about new member selection, conflicting information when talking to city clerks office, concern about regulation transfer from city, concern about transparency of PFMA, meetings/vendor ability to express feelings and concerns at market, happy with the work the PFMA is doing)
- As most issues brought up in survey were addressed during Agenda item #8 (and throughout the meeting) this Agenda item no longer needed.

10. Market hours- discussion of changing market hours as a way of alleviating parking issues.

Hanne motions to request the (Sat & Weds) market's hours be changed to 7am-1pm

Mary Ellen seconds the motion

Discussion on the motion:

- Chris said he feels we need to spend more time talking about parking issues, that this meeting may not give us the amount of time we need to discuss it. Suggests considering a second market on Saturdays in the afternoon.
- Richard is concerned about cutting Wednesday hours, and that adding an hour on Saturday will mean the farmers are in the park much later in the day. He feels cautious about doing a vote to change market hours. Would like to see the market ask the public what they want.

Hanne amends her motion to be a vote to change the Saturday market hours to 7am-1pm (and no vote on Wednesday hours)

Mary Ellen seconds the motion

Discussion on the amended motion:

- Carolyn feels that extending Saturday's hours is much different than taking away an hour from the Wednesday market. Also, a market evaluation could give us a better sense of what the public would like to see done about hours/parking.

- John pointed out that an hour taken away from the Wednesday market could mean 100s of dollars in sales for a meat vendor
- Chris thinks we need more information before we make changes to market hours

Dan Perron moves to vote

Larry seconds

Vote on requesting the City to change the Saturday market hours to 7am-1pm:

In Favor: 19

Not In Favor: 4

Abstained: 1

-MOTION PASSES-

- Larry added that he is going to inquire about the parking lot near the info/castle. He will ask the City to expand it and redefine it to make it clearer where to park in order to maximize parking spaces. There are currently 200 parking spaces in Deering Oaks Park. He will also talk to the City about closing Rte77/State St in front of the pond during market hours to provide diagonal parking.
- Pete asked if the City absolutely does not want people parking on the grass (the answer: YES)
- Larry talked about putting in geoblocks that could be put down in the grass but that Friends of Deering Oaks would not likely be in favor.
- It was agreed that the issue of parking should become a separate committee.

11. Reminder about Appropriate Voicing of Complaints to avoid spreading rumors among vendors.

- Daniel encouraged vendors to deal with specific concerns through the market manager, and pointed out that the Rules & By-Laws spells out how the market can handle these concerns. Vendors are also encouraged to speak up about any questions or confusion regarding issues related to the market and the Association.

12. Vendor Product Changes/Updates for 2013

- Fishbowl Farm will be changing to only selling: salad greens, peppers, tomatoes, cucumbers, and ginger. They will be mostly wholesaling but want to continue coming to the market during the spring and fall, only on Saturdays and will set up their spot on the end of the market.
- (Larry mentioned that although Fishbowl Farm will not be there the entire season, the market will not be adding any new vendors to Saturdays due to the overcrowding on the end closest to Tennis Court Rd)
- Balfour Farm will be bringing some vegetables
- Thirty Acre Farm will be bringing strawberries
- Old Ocean House wants to bring in Hard Cider but the city won't allow it because the name on the processing permit is not his farm name/name on the market stand. (Daniel suggested that he could apply to the market under his

own farm/business name once he has transitioned to producing the cider under his name)

- Larry asked which farms are comprised of more than one farm business.
- Daniel pointed out that you can technically bring 25% of bought in product.
- Discussion began about whether the market wanted to continue to allow multi-business/partnership farms at the market
- Daniel suggests forming a committee to further discuss the issue of multi-farm/partnership farms at the market

Partnership Farm Committee:

Jessie Dowling, South Paw Farm/Fuzzy Udder Creamery

Larry Bruns, Hanson Field Flower Farm

Hanne Tierny, Cornerstone & FailBetter Farms

Simon Frost, Thirty Acre Farm

Beth Schiller, Dandelion Spring Farm

David Buchanan, Old Ocean House Farm

- It was later added that the Partnership Farm Committee will also work on the possibility of adding a Conflict Resolution clause to the Rules & By-Laws

13. Election of Officers

(moved to later on the agenda)

14. New Business

a. Accounting Committee formation:

Scott Howard, Olivias Garden

Carolyn Snell, Snell Farm

Mark Heidman, Maple Springs Farm

(Jaime Berhanu, Lalibela Farm)

b. Market spaces

- No new Saturday vendors
- Wednesdays, the market will add 2-3 vendors into the annex
- Wednesdays, Rippling Waters will be taking Fishbowl Farm's space
- Dan Perron asked about Lalibela Farm's Wednesday spot since they are not returning on Wednesdays. Larry said Dan could take that spot if Meadowood could move down a little bit, and it was agreeable to both Meadowood and Swallowtail. (it was agreed that Dan/Sumner Valley would move in to Lalibela's old spot)
- Larry said that leaves 1 space available on the Square available for someone from the annex to move up between Snell Farm and Olivia's Garden. *If any farms already existing on the Square want to move, they need to let Larry know asap.*

- c. Meat labeling
 - Hanne and Larry will find an accurate description for the requirements for meat vendor labeling language.
- d. Parking Committee formation:
 - Chris Cavendish, Fishbowl Farm
 - Daniel Price, Freedom Farm
 - Mary Ellen Chadd, Green Spark Farm
 - the Parking Committee will also work on customer traffic flow/space allowance to ensure customers are able to maneuver through the markets easily.
- e. Bob suggest that the Annual Meeting be split into 2 parts to separate "market issues" from "Association issues". He suggested the first half of the market should be issues that are specific to market issues so he doesn't have to sit through issues that don't pertain to non-PFMA members. Bob stated that Logos, brochure, SNAP, Officers Reports & Election are not issues that he, as a non-PFMA member, cares about.

It was asked if Bob was representing other non-PFMA members. Bob stated he is only representing himself.

 - Daniel mentioned that everyone has to sit through the entire meeting and may not necessarily care about every single Agenda item.
 - Clayton suggested Bob can specifically request certain agenda items to be re-ordered at the beginning of the meeting, or when the draft agenda is sent out with the first meeting announcement.
 - Bob said he emailed with the suggestion but didn't get a response.
 - Mary Ellen said she read his email as a statement and not a question.
 - Daniel said he also didn't read Bob's email as a specific request to change the agenda
 - Bob said he would be more specific next time with his request.
 - Larry pointed out that anyone at anytime can propose changes during the meeting, and reminded the group that meetings are run by Robert's Rules of Order.
 - Group discussion about what constitutes market issues vs. Association issues.
 - Beth expressed that all Association issues are market issues.
- f. Website Additions
 - Buckwheat Blossom Farm and Middle Intervale Farm need to be added to the website
- g. Jaime discussed the possibility of adding a Conflict Resolution clause to the Rules & By-Laws. She contacted the Maine Agricultural Mediation Program, and they have offered to be a resource to the market and could be named in the added clause as a support for specific, unresolved, internal conflicts within the market, if so desired. (This issue was assigned to the newly formed Partnership Farm Committee)
- h. Simon asked for clarity of the dues paid for the Winter Farmers' Market.

- Hanne explained that there was miscommunication and Winter Market vendors could pay \$30 instead of \$50 for dues for 2013 since \$20 had already been collected for advertisement money.
 - i. Ian talked about keeping the market "walkable", that we should be more mindful about keeping a clear walking space for customers to walk through the market easily. Larry suggests leaving a 6 ft clear path through the market. (This issue was assigned to the newly formed Parking Committee)
13. (re ordered agenda item) Election of Officers

Chairperson:

Daniel nominates Hanne Tierny
Jaime seconds the nomination
Hanne accepts the nomination

Dan Perron nominates Mary Ellen Chadd
Ian seconds the nomination
Mary Ellen declines the nomination

Vote in Favor: 18, Abstained: 1
2013 CHAIRPERSON: HANNE TIERNY

(Jodie points out that when there is no second nomination, the secretary can cast 1 vote and the nomination automatically passes- the following positions follow this rule)

Market Manager:

Hanne nominates Larry
Carolyn seconds the nomination
Larry accepts the nomination
(Larry announces that this will be his last year in this position)

Vote in Favor: 1
2013 MARKET MANAGER: LARRY BRUNS

Winter Market Manager:

Daniel nominates Lauren Pignatello
Austin and John second the nomination
Lauren accepts the nomination

Vote in Favor: 1
2013 WINTER MARKET MANAGER: LAUREN PIGNATELLO

Treasurer:

Clayton nominates Scott Howard
Carolyn seconds the nomination
Scott accepts the nomination

Vote in Favor: 1
2013 TREASURER: SCOTT HOWARD

Secretary:

Jaime nominates Mary Ellen Chadd
Carolyn seconds the nomination
Mary Ellen accepts the nomination

Vote in Favor: 1
2013 SECRETARY: MARY ELLEN CHADD

Membership Coordinator:

Daniel nominated Carolyn Snell
Clayton seconds the motion
Carolyn accepts the nomination

Vote in Favor: 1
2013 MEMBERSHIP COORDINATOR: CAROLYN SNELL

Members-At-Large:

Hanne nominates Daniel Price
Jaime seconds the nomination
Daniel accepts the nomination

Mary Ellen nominates Dan Perron
Hanne seconds the nomination
Dan accepts the nomination

Daniel nominates Simon Frost
Hanne seconds the nomination
Simon accepts the nomination

Hanne nominated Jaime Berhanu (also as "SNAP Representative")
Carolyn seconds the nomination

Jaime accepts the nomination

Mike Farwell & Jodie Jordan (returning Members-At-Large)

Vote in Favor: 1

2013 MEMBERS-AT-LARGE: DANIEL PRICE, DAN PERRON, SIMON FROST, DANIEL PRICE, JAIME
BERHANU, MIKE FARWELL, & JODIE JORDAN

15: (provisional members to be voted on at a later time)

Daniel moves to adjourn the meeting

Scott seconds the motion

Meeting adjourned

Upcoming Meetings:

- 1) (Jaime and Carolyn) Conference Call with Wholesome Wave, Healthy Portland, and
Maine Federation of Farmers' Markets: Wednesday, February 6th, 4:00pm
- 2) PSHHS Committee Meeting at City Hall in Council Chambers: Tuesday, February 12th,
5:30pm
- 3) Membership Meeting: Saturday March 16th, 2:00pm. (Jaime will confirm use of
Burton Fisher Meeting Room for this meeting)

Order 175 -12/13
Tab 21 -4-1-13
Tab 26 4-22-13

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

**CITY OF PORTLAND
IN THE CITY COUNCIL**

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

**AMENDMENT TO PORTLAND CITY CODE
CHAPTER 14. LAND USE
ARTICLE III. ZONING
(DIVISION 17. B-7 MIXED DEVELOPMENT DISTRICT ZONE)
AND
ARTICLE V. SITE PLAN**

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

1. *That Chapter 14, Article III, Division 17 (B-7 Mixed Development District Zone) of the Portland City Code is hereby amended to read as follows:*

Sec. 14-296. Conditional uses.

(a) The following uses shall be permitted as conditional uses in the B-7 zone as provided in section 14-474 (conditional uses), provided that, notwithstanding section 14-474 (a) or any other provision of this code, the planning board shall be substituted for the board of appeals as the reviewing authority:

. . .

5. *Buildings in the bayside gateway urban height district A greater than one-hundred twenty-five (125) feet but no more than one-hundred sixty-five (165) feet in height provided that:*

- a. Such buildings shall be sited to minimize encroachment into designated do not obstruct view corridors and visual landmarks to and from the downtown or that do not substantially further obstruct such corridors blocked by existing development as identified referenced in the Bayside Height Study Map and the B-7 design standards; and
- b. Portions of such buildings higher than 125 feet shall be stepped back at upper levels to provide light and air to adjacent streets, trails, and open spaces, with a ratio of no less than at

least to the extent that the ratio of building height to width of adjacent streets, trails and open spaces is equivalent to 1.5 to 1 except that the Planning Board may modify this requirement as provided for in Section 14-526 (d) (9) (viii); and

- c. Such buildings provide publicly accessible and usable open space, meeting the B-7 urban design standards, of at least ten (10) percent of the building lot area; and
- d. If located on lots including or adjacent to planned or proposed street or pedestrian way connections, land dedication to such street or connection shall be credited toward the ten (10) percent open space requirement. Buildings over one hundred and twenty-five (125) feet in height that are being reviewed as separate phases of a Master Development Plan shall be entitled to meet the ten (10%) percent open space requirement of Section 14-296(a) (5) (c) in aggregate for all such buildings over one hundred and twenty-five (125) feet in height, provided that the open space shall not fall below ten (10%) percent at any built phase or combination of built phases; and
- e. Such development shall comply with all other zoning requirement and B-7 urban design standards as required by this article.

2. That Chapter 14, Article V, (Site Plan) of the Portland City Code is hereby amended to read as follows:

Sec. 14-526. Site plan standards.

Requirements for approval. The Planning Board or Planning Authority shall not approve a site plan application unless the development proposal meets the following criteria:

. . . .

(d) *Site Design Standards*

. . . .

9. *Zoning Related Design Standards:*

- a. Development of certain types and/or proposed in certain zones, as specified below, are subject to design standards in addition to the provisions of Section 14-526 (a) in order to ensure designs that contribute to and enhance the goals and policies for specific districts of the City. The City of Portland Design Standards is listed in the City of Portland Design Manual, which is included by reference. If the development is located in a historic district or associated with a historic landmark, City of Portland Historic Preservation standards shall supersede:

. . .

(viii) B-7 Design Standards for Additional Height in District A: In the B-7 zone, the Planning Board, when conducting review of a Master Development Plan or a Level III Site Plan, as applicable, may modify the stepback provisions of Section 14-296(a) (5) (b), relating to buildings allowed as a conditional use to exceed one hundred and twenty-five (125) feet up to one hundred and sixty-five (165) feet in height, provided the following conditions are met:

a) Each building exceeding one-hundred and twenty-five (125) feet shall contain at least 20 dwelling units per building.

b) Building wall stepback requirements along public street frontage:

i. Building with frontage on one street: Minimum ten (10) foot stepback between third and fifth stories and a minimum ten (10) foot stepback between the one hundred twenty-five (125) and one hundred forty-five (145) foot level.

ii. Building with frontage on multiple

streets: Above paragraph (i) requirement along longest building façade street wall, and of the remaining street walls the same requirement as paragraph (i) or a 15 foot wide streetscape improvements area containing a public sidewalk, landscaping and other streetscape improvements within the abutting street right-of-way and/or private property along the remaining street frontage. A building with frontage on four streets shall meet the above requirement except that two of the streets shall have the stepback requirement.

iii. The Planning Board shall have the authority to waive one or more of the required stepbacks provided the following is met:

1. The depth of the building lot precludes a building having an average minimum lot depth dimension of one hundred seventy (170) feet: or

2. The proposed building has an architecturally significant design that is articulated to avoid a monolithic appearance and emphasizes slender, vertically-oriented proportions while employing a variety of scales, materials, fenestration, and massing to assure a rich visually interesting experience as viewed within the context of the downtown skyline and provide visual interest and human scale at the pedestrian level.

3. In the event such a waiver is granted the Planning Board may require the applicant to

mitigate the impacts of the
wiaver by requiring the
following:

a. Along all public street
frontages and public open
spaces, all buildings
(regardless of height) shall
meet the B-7 Design Standard
E-4 Articulation to maintain
a pedestrian scale through
the use of building elements
at the street level as listed
in this standard along no
less than 60% of the
building's horizontal length.

b. Along all public street
frontages and public open
spaces for the buildings(s)
over one hundred twenty-five
(125) feet, a canopy, awning
or similar permanent
architectural feature to
provide pedestrian protection
and wind mitigation shall be
provided within the first
thirty-five (35) feet of
height.

c. In order to preserve view
corridors and to maintain a
varied skyline, all buildings
above one hundred twenty-five
(125) feet within a single
development site should be
separated to avoid the
appearance of a tall, solid
block massing. In accordance
with this policy, development
sites of 500 feet or greater
as measured parallel to
Marginal Way, the aggregate
building façade widths above
85 feet shall not exceed
fifty percent (50% of the
total development site

distance parallel to Marginal Way. Buildings over one hundred twenty-five (125) feet in height that are being reviewed as separate phases of a Master Development Plan shall be entitled to meet the fifty percent (50%) building requirement in aggregate for all such buildings over one hundred twenty-five (125) feet in height in the Master Development Plan, provided that view corridors are retained as each phase is built.

d. The applicant shall demonstrate building design elements and location will reasonably mitigate downdraft effects of the proposed building or buildings.

II. BE IT FURTHER ORDERED that the zoning map of the City of Portland, dated December 2000 as amended and on file in the Department of Planning & Development, and incorporated by reference into the Zoning Ordinance by Sec. 14-49 of the Portland City Code, is hereby amended to reflect the height standard changes in the B-7 zone specifically identified/highlighted on the map attached hereto as Exhibit A.

[illegible]

Bayside Height Overlay: Proposed Zone Change

March, 2013

Denotes Zone
change from B to A



**City of Portland, Maine
City Council Agenda Request Form**

TO: Sonia Bean, Senior Administrative Assistant
FROM: Jeff Levine, Director of Planning and Urban Development
DATE: March 26, 2013
Re: Federated Related Zoning and Site Plan Amendments

1) Council meeting at which action is requested:

1st reading: April 1, 2013
Final action: April 22, 2013

2) Can action be taken at a later date: x YES NO
If not, why not:

3) This item is sponsored by: Mark Rees, City Manager

cc: Mark Rees, City Manager
Mayor Brennan
Danielle West-Chuhta, Corporation Counsel
Jeff Levine, Director of Planning and Urban Development
Terry Tucker, Administrative Assistant

I. SUMMARY OF ISSUE

The Federated Companies has requested certain amendments to the zoning and site plan ordinances to facilitate a proposed development in Bayside on the former rail yard property in the vicinity of Somerset Street. This project includes housing and a parking facility designed to serve both this project and the parking needs of the district generally. The Planning Board is forwarding a positive recommendation on the amendments.

The amendments include revisions to the zoning and site plan ordinances related to building height. The building height amendments are intended to provide more flexibility to an existing provision in the B-7 zone that allows building heights up to 165 feet. City staff has conducted a review of these provisions for the district generally and has advanced language that can accomplish both these goals and larger planning objectives for the B-7 zone.

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

Federated seeks amendments to the zoning and site plan ordinances to enable them to develop a mixed use development on the Bayside rail yard property. Federated's

development program includes four residential buildings (with 675 housing units) that exceed the base height (125 feet) of the A height district within the Bayside Height Overlay Zone. In addition, the development plan includes a parking garage that will include public parking spaces designed to reduce the need for surface parking lots in the district, therefore permitting those surface lots to be redeveloped over time.

The A height districts in the B-7 zone allow a building height up to 165 feet as a conditional use. However, the requirements that currently exist for the additional height have the effect, in this case, of making the additional height infeasible. An alternative review is being proposed with new standards to address this issue. As part of this rezoning request, staff also looked at all the A and B height districts in the B-7 zone to see what adjustments are warranted. As part of that analysis, the A height district would be expanded, while preserving the view corridors identified in the Bayside planning efforts as lower-height B districts.

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

The proposed amendments are intended to address site plan and zoning issues identified by City staff as obstacles to the proposed development program and the concurrent development of the public-private parking structure.

IV. FINANCIAL IMPACT

The proposed development project will significantly increase the taxable value of the Bayside rail yard property. Phase 1 of the project alone will generate an estimated \$1 million in additional tax revenue annually once the City's Section 108 loan is paid off in 2028. In addition, these zoning changes will spur additional development in the area, including future phases of this project, that could have tax benefits to the City in a shorter time frame.

V. STAFF ANALYSIS & RECOMMENDATION

After holding a public hearing, the Planning Board voted to recommend that certain height related amendments be adopted by the City Council.

The Planning Board voted 4 to 1 (Boepple opposed; Dunton, Soley absent) to recommend that the Bayside Height Overlay Map be amended.

The Planning Board voted 5 to 0 (Dunton, Soley absent) to recommend that the B-7 conditional use height section be amended.

The Planning Board also voted 5 to 0 (Dunton, Soley absent) to recommend that the site plan ordinance be amended to incorporate B-7 height standards.

The Planning Board had a thorough discussion of the amendments including holding four workshops and two public hearings. Attached is the Planning Board Report.

Note that City Council approval of revised easements within the property or land transfers may be required in the future.

Attachments:

1. Planning Board Report



PLANNING BOARD REPORT PORTLAND, MAINE

B-7 Height Zoning and Site Plan Amendments
Midtown, vicinity of Somerset, Chestnut and Elm Streets
The Federated Companies, Applicant

Submitted to: Portland City Council: April 1, 2013 Public Hearing Date: April 22, 2013 Project #: 2012-636 CBL: 34-B-2-3-4-5; 34-D-3-8-10	Prepared by: Richard Knowland, Senior Planner Date: March 28, 2013 Planning Board Report Number: 15-13
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I. INTRODUCTION

The Planning Board is forwarding a recommendation to the City Council to approve a variety of zoning and site plan amendments related to a proposed mixed use development on the former Bayside rail yard property in the vicinity of Somerset Street, Chestnut Street and Elm Street. The project is called “midtown” and is proposed by The Federated Companies in response to a request for a development of this type from the City. The development includes a parking garage designed to replace some of the surface lots in Bayside. On March 21, 2013, the Planning Board voted to recommend the zoning and site plan amendments to the City Council.

Several zoning and site plan amendments related to building height are needed to accommodate the development program. The building height amendments are intended to provide more flexibility to an existing provision in the B-7 zone that allows building heights up to 165 feet. The development program as proposed requires some modification of the existing standards.

The proposed amendments include:

Amending the Bayside Height Overlay Map (zoning)...Expands the “A” height district, which allows building height to exceed 125 feet up to a maximum of 165 feet, in an area that is not part of a view corridor.

Amending the existing Conditional Use section [sec. 14-296(a)(5)] of the B-7 zone that presently allows building height in the Bayside Gateway Urban Height District to exceed 125 feet up to 165 feet (zoning)...This provision allows for an alternative review in the Site Plan Ordinance for buildings exceeding 125 feet (see below).

Amending the Site Plan Ordinance providing new standards for reviewing B-7 conditional use height exceptions... This provision allows for an alternative review for buildings exceeding 125 feet.

Attachments 1, 2, 3, and 4 include the existing Bayside Height Overlay Map, proposed revisions to the overlay map, proposed Zoning Amendments and the Site Plan Ordinance Amendments, respectively. Attachment 5 depicts the constraints of the existing height regulations in relation to the Federated development proposal.

Attachment 6 is an excerpt from the Planning Staff memo which provides background information on the Bayside height system, including the rationale and planning for existing building height regulations, the Bayside Height Overlay Map and a description of the individual height districts. Please review this material in context with the proposed height amendments.

Development Program Summary:

Housing: 675 market rate housing units in 4 buildings. (Phase 1: 196 units)

Retail: 93,220 sf of ground floor retail in all buildings. (Phase 1: 43,660 sf)

Parking: Free-standing 700 space parking garage (Phase 1) designed in part to serve the Bayside development district as a whole; 400 space parking garage (Phase 2) attached to two residential buildings designed to serve those buildings.

Height: Tallest residential building (165 feet); tallest parking garage (70 to 75 feet).

II. Proposed Height Related Zoning and Site Plan Amendments

A. Amending Bayside Height Overlay Map (Zoning)

The Bayside Height Overlay Map amendment is requested because one of the proposed residential buildings is located in height district B (maximum height of 105 feet) rather than height district A (maximum height up to 165 feet).

The Planning Board's recommended map amendment is shown on Attachment 2.

The Bayside Height Overlay Map divides Bayside into four (4) height districts, with maximum height ranging from District A (125 feet base height with 165 feet possible) to District D (55 feet), see Attachment 1. Midtown is split by District A (Gateway Urban Height District) and District B (Intermediate Height Urban Height District), which has a maximum height of 105 feet. Along the northerly side of Somerset Street most of the properties are in District A but a significant portion of the Midtown property (east of Chestnut Street) is located in District B. This poses a concern because one of the residential buildings (proposed at 165 feet) is in District B.

The Board's evaluation included a comprehensive review of the entire Bayside Height Overlay Map.

This comprehensive review resulted in the following recommendations:

Districts A and B:

- a. Change a portion of District B to A between Somerset Street and Marginal Way approximately 175' in width, west of the extension of Pearl Street. This accommodates the need to include one of the residential buildings in the A zone while preserving designed view corridors to and from the downtown. This change also includes a portion of the DHS building property but does not include all of District B along Marginal Way which avoids the concern of a continuous wall of tall buildings blocking views of the downtown skyline and Back Cove.
- b. The block along Franklin Street between Somerset Street and Lancaster Street has a B district designation. Given its gateway location along Franklin Street and proximity to other District A zones along Franklin Street, the Board is recommending that the District A be extended through this property running on a line through the old Wilmot Street right-of-way. The affected property is a portion of the Whole Foods site.

Districts C and D: In the 2006 Bayside height review, a lot of attention was given to areas near the traditional residential neighborhoods of Bayside. For that reason District D (traditional neighborhood) and District C (transitional neighborhood) were created to protect the existing two and three story buildings found in the core residential areas of Bayside roughly described as the Cumberland Avenue and Portland Street area. The map was fine-tuned (lot by lot in some cases) during this process to make sure proposed heights were compatible with the established neighborhood. In re-reviewing the map and in the context of the height district purpose sections, there was no compelling reason to adjust these districts.

Summary: The Board's height recommendation adjusts two portions of the District B to District A in response to an overall audit of the existing Districts A and B. One of these changes accommodates the development program involving one of the residential buildings. The other change is not directly related to this development proposal, but was seen as an appropriate modification. In arriving at this recommendation, the Board reviewed five different height map alternatives including changing all of the District B to District A district between the block of Chestnut Street and Franklin Street. The Board's recommendation is consistent with the original intent of the Bayside Height Overlay Map, preserves view corridors to and from the downtown and avoids the specter of a long continuous wall along Marginal Way that would "wall off" the city.

B. Amending the Conditional Use section [sec. 14-296(a)(5)] of the B-7 zone that presently allows building height in the Bayside Gateway Urban Height District (District A) to exceed 125 feet up to 165 feet (Zoning)

Section 14-296(a)(5) of the B-7 zoning text allows a height increase above 125 feet to a maximum 165 feet as a conditional use (Planning Board) in District A provided certain standards are met. The standards include preservation of view corridors, compliance with B-7 design standards, setbacks related to adjacent street width, and provisions for open space.

All of midtown's residential buildings exceed 125 feet and therefore must take advantage of this provision. One of the standards, Section 14-296(a)(5)(b) states: "Portions of such buildings higher than 125 feet shall be stepped back at upper levels to provide light and air to adjacent streets, trails and open spaces, with a ratio of no less than at least to the extent that the ratio of building height to width of adjacent streets, trails and open space is equivalent to 1.5 to 1."

This language would limit the floorplates of the upper stories of the proposed residential buildings to the point where they are not feasible floors. This is in large part due to the shallow lots on which this development is proposed, created by the railyard subdivision plat which includes development of the Bayside Trail. A diagram illustrating this impact may be seen on Attachment 5. The Intermed building on Marginal Way (135 feet) was able to take advantage of this provision without upper floor step backs primarily because Marginal Way has a very wide street right-of-way (100 feet). Somerset Street is only 50 feet wide.

The purpose of this section (b) is to mitigate the impact of taller buildings by reducing the potential for "canyon effect" and promoting light and air. Such measures promote a more pleasant environment for pedestrians in a densely developed urban environment. This is accomplished by locating taller buildings on wide streets (such as on Marginal Way) and or stepping back the upper stories of taller buildings by reducing the apparent scale of building mass above 125 feet.

The existing zoning text with proposed revisions is shown below. As previously discussed the proposed project is unable to meet one of the standards specifically the height to street and open space ratio. Therefore paragraph b below is recommended to be revised to allow a project to meet alternative standards that are proposed in the Site Plan Ordinance and described in section C below.

Sec. 14-296(5) Conditional Use

Buildings in the Bayside gateway urban height district A greater than one-hundred twenty-five (125) feet but no more than one-hundred sixty-five (165) feet in height provided that:

- a. Such buildings shall ~~do not obstruct~~ be sited to minimize encroachment into designated view corridors and visual landmarks to and from the

downtown or that do not substantially further obstruct such corridors blocked by existing development as referenced identified in the Bayside Height Study Map and the B-7 design standards; and

Comment: The revisions recognize that certain view corridors such as Elm Street (Intermed building) already block views to and from the downtown. Without this clarification a new building would need to meet this standard even though the corridor is already blocked.

- b. Portions of such buildings higher than 125 feet shall be stepped back at upper levels to provide light and air to adjacent streets, trails, and open spaces, with a ratio of no less than at least to the extent that ratio of building height to width of adjacent streets, trails and open space is equivalent to 1.5 to 1 except that the Planning Board may modify this requirement as provided for in Section 14-526(d)(9)(vii); and

Comment: This section allows a modification to this section by providing an alternative review using new standards in the Site Plan Ordinance which are described in the next section.

- c. Such buildings provide publicly accessible and usable open space, meeting the B-7 urban design standards, of at least ten (10) percent of the building lot area; and
- d. If located on lots including or adjacent to planned or proposed street or pedestrian way connections, land dedication to such street or connection shall be credited toward the ten (10) percent open space requirement. Buildings over 125 feet in height that are being reviewed as separate phases of a Master Plan Development shall be entitled to meet the ten (10) percent open space requirement of Section 14-296(a)(5)(c) in aggregate for all such buildings over 125 feet in height, provided that the open space shall not fall below ten (10) percent at any built phase or combination of built phases.

Comment: This provision allows the open space requirement to be calculated in the aggregate for all buildings over 125 feet tall that are reviewed as a master plan development.

- e. Such development shall comply with all other zoning requirement and B-7 urban design standards as required by this article.

C. Amending the Site Plan Ordinance providing standards for reviewing conditional use height exceptions (see #B) above.

Proposed site plan standards for reviewing proposals exceeding the normal 125 foot District A height requirements (up to 165 feet) would be located in the Zoning Related Design Standards section. [sec. 14-526 (d) (9) (viii)].

Sec. 14-526(d)(9) (viii) B-7 Design Standards for Additional Height in District A: In the B-7 Zone, the Planning Board, when conducting review of a Master Plan Development Plan or a Level III site plan, as applicable, may modify the stepback provisions of Section 14-296 (a) (5) (b), relating to buildings allowed as a conditional use to exceed 125 feet up to 165 feet in height, providing the following conditions are met:

- (a) Each building exceeding 125 feet shall contain at least 20 dwelling units per building.

Comment: This reflects the Bayside Plan policy of encouraging a dense urban mixed use neighborhood with 24 hour a day activity. If a developer wishes to build a tall building they must meet this standard or build a building that meets the normal conditional use standards that doesn't have a residential requirement.

- (b) Building wall stepback requirements along public street frontage:

- i. Building with frontage on one street: Minimum ten (10) foot stepback between third and fifth stories and a minimum ten (10) foot stepback between the 125 and 145 foot level.

Comment: Stepbacks help mitigate the impact of taller buildings by reducing apparent building mass at the pedestrian level and downdraft wind impacts. This requires a lower stepback than the existing regulations but allows more building mass at the upper stories of the building. A review of planning literature indicates most cities require stepbacks to be a minimum of 10 feet because it is considered to be the minimum distance for stepbacks to be effective. The B-3 has a minimum stepback of 15 feet.

- ii. Building with frontage on multiple streets: Above paragraph (i) requirement along longest building façade street wall, and for the remaining street walls the same requirement as paragraph (i) or a 15 foot wide streetscape improvements area containing a public sidewalk, landscaping and other streetscape improvements within the abutting street right-of-way and/or private property along the remaining street frontage. A building with frontage on three or four streets shall meet the above requirement except that two of the streets shall have the stepback requirement.

Comment: This provides section provides flexibility in meeting the stepback requirement for buildings having frontage on more than one street. The stepback must be provided along the longest building façade but the remaining facades may utilize a stepback or a 15 foot wide streetscape improvement area within public or private property. Two stepbacks are required for a building having frontage on three or four (4) streets.

iii. The Planning Board shall have the authority to waive one or more of the required setbacks provided the following is met:

1. The depth of the building lot precludes a building having an average minimum depth dimension of 170 feet;

or

2. The proposed building has an architecturally significant design that is articulated to avoid a monolithic appearance and emphasizes slender, vertically-oriented proportions while employing a variety of scales, materials, fenestration, and massing to assure a rich and visually interesting experience as viewed within the context of the downtown skyline and provide visual interest and human scale at the pedestrian level.

3. In the event a waiver is granted the Planning Board may require the applicant to mitigate the impacts of the waiver by requiring the following:

A. Along all public street frontage and public open spaces, all buildings (regardless of height) shall meet the B-7 Design Standard E-4 Articulation to maintain a pedestrian scale through the use of building elements at the street level as listed in this standard along no less than 60% of the building's horizontal length.

B. Along all public street frontages and public open spaces for the building(s) over 125 feet, a canopy, awning or similar permanent architectural feature to provide pedestrian protection and wind mitigation shall be provided within the first thirty-five feet of height.

C. In order to preserve view corridors and to maintain a varied skyline, all buildings above 125 feet within a single development site should be separated to avoid the appearance of a tall, solid block massing. In accordance with this policy, development sites of 500 feet or greater as measured parallel to Marginal Way, the aggregate building façade widths above 85 feet shall not exceed fifty percent (50%) of the total development site distance parallel to Marginal Way. Buildings over 125 feet in height that are being reviewed as separate phases of a Master Development Plan shall be

entitled to meet the fifty percent building requirement in aggregate for all such buildings over 125 feet in height in the Master Development Plan, provided that view corridors are retained as each phase is built.

4. The applicant shall demonstrate building design elements and location will reasonably mitigate downdraft effects of the proposed building or buildings.

III. 'midtown' Development Concept

Zoning: B-7
Land Area: 3.24 acres
Existing Use: Vacant land plus a former scrap metal site
Proposed Uses: Housing (675 market rate housing units) (196 in Phase 1)
Retail (93,220 sf ground floor retail in all buildings) (43,660 sf in Phase 1)
Parking Garage (1100 spaces)
Buildings: 4 residential and 2 parking garages
Building Height: Tallest residential building...165 feet
Parking garage....70 to 75 feet
Parking Spaces: Phase one: 700 space parking garage
Phase two: 400 space parking garage
Parking Garage Footprint: 40,176 sf (phase one) and 23,920 sf (phase two)
Residential Building Footprint/Floor Area:
phase one (15,148 sf and 193,000 sf)
phase two (13,152 sf and 170,000 sf)
phase two (16,286 sf and 170,000 sf)
phase three (11,143 sf and 142,000 sf)

a. 'midtown' Proposal

The applicant's conceptual development scheme is shown starting on Attachment A. This plan serves as the in-progress conceptual master plan for the future development of the property. The current plan features four residential towers as contrasted with the original submission that had seven towers. Although the number of housing units remains the same, a reduction in the number of towers allows the building mass to be reshaped providing the opportunity for a more visually interesting building form (L-shaped configuration with varying height) rather than seven monolithic towers. The building form for three of the buildings incorporates a 15 story height with a variation down to 13 stories.

A chart summarizing development phasing, housing unit count, floor area, and other project statistics is shown on Attachment A.

The project is divided into three phases. The first phase comprises development between Pearl Street (extension) and Chestnut Street on Somerset Street, the second phase between Elm Street and Chestnut Street on Somerset Street with the third phase incorporating the lone building behind Trader Joes having frontage on Elm Street.

1. Pearl Street to Chestnut Street Block:

The current plan indicates a residential building at the corner of Somerset Street and Pearl Street with a parking garage (700 spaces) filling the remainder of the block to Chestnut Street. To mitigate the visual impact of a parking garage at the Chestnut Street corner, the plan has been revised to include a two story retail structure along Chestnut Street.

2. Elm Street to Chestnut Street Block:

The original elevated block long platform with four towers has been revised. The project now features a building on the corner of Elm Street with a second building on the corner Chestnut Street. The parking structure situated between the two towers is six stories high with 400 spaces and retail on the first floor. A third residential building is located behind Trader Joes. All buildings are shown with retail uses on the first floor.

3. Perspective Views of the Project:

The applicant has submitted a number of computer simulated perspective views of the current project including massing models, photo-simulations and eye level view drawings. See Attachment A.

4. Bayside Trail:

The footprint of the Bayside Trail was established as part of the 2008 subdivision of the Bayside Rail Yard Subdivision. Construction was initiated in 2009 and it was completed in 2010. The assumption at that time was the parking garage would likely be built west of Chestnut Street on the former Bayco site. Federated has proposed to build a parking garage east of Chestnut Street where lots are not as deep as the prior site.

The original parking garage concept plan occupied the mid-block area of the Chestnut to Pearl Street block. The garage has now been shifted further west to Chestnut Street where the building lots have less depth. The latest concept plan shows a 10 foot building setback from Somerset Street for the parking garage which would require the Bayside Trail to be relocated from its existing foot print (to a point closer to the Department of Human Services parking lot chain link fence) near Chestnut Street. The applicant's rationale in relocating the trail is providing an extra wide sidewalk (20 feet) along Somerset Street for retail uses, and to mitigate grading issues. This issue will be explored more fully with the applicant during the site plan review process with a goal of minimizing disturbance to the existing trail footprint.

5. Somerset Street Grade Elevations:

Bayside in the vicinity of the project site is not presently designated by FEMA as a flood hazard zone, but there are indications it might be designated as such in the future. The Back Cove flood hazard zone elevation is 10 feet. In the interests of addressing potential coastal flooding concerns, the applicant is proposing a first floor building elevation of 12 feet. Since Somerset Street has an existing elevation in the 9 to 10 feet range there is a significant grade difference to overcome in providing handicap access into the first floor of each building.

The City recently commissioned Haley & Aldrich geotechnical consultants to undertake a feasibility study of raising the grade of Somerset Street to address flooding conditions and accommodate the needed first floor elevation. Haley & Aldrich has concluded it is feasible to raise the grade of Somerset Street to address most of the grade difference. This issue will be explored more in detail during the site plan review process. The potential for raising the street grade will be of benefit to the site design and could alleviate the need for an extended parking garage setback (discussed above) from Somerset Street and minimize intrusions into the trail corridor while providing an appropriately wide sidewalk along Somerset Street. Regardless of the resolution of this issue, Federated is proposing to have the first floor elevation of the buildings at elevation 12 above the flood hazard elevation of 10.

6. Development Review Process

Assuming approval of the zoning and site plan amendments, the development will be subject to Planning Board site plan and master development plan review including the B-7 Design Principles and Standards and a Traffic Movement Permit. Subdivision review will also be required including a reconfiguration of the original 2006 rail yard subdivision modifying the layout to fit the midtown footprint and some changes in access points that connect the Bayside Trail to Somerset Street.

IV. Consistency with Comprehensive Plan

A New Vision For Bayside ("the Bayside Plan") was adopted by the City Council as an element of the City's Comprehensive Plan in 2000. The plan outlines the critical development principles to revitalize Bayside including its role as an extension of the downtown and as a dense mixed-use urban district. A number of these development principles have a direct relationship to the proposed building height and amendments in supporting a dense urban district. The Planning Board during their deliberations determined that the proposed amendments were consistent with the Comprehensive Plan. The Bayside Plan policies relevant to the proposed amendments are highlighted below.

Principle One...Urban Gateway:

"Bayside will be an attractive urban gateway and extension of the downtown business district for the City of Portland. The district will create a new front face

of the City and present the character of Portland that will encourage people to stop, visit and enjoy all that the downtown has to offer. A fully functioning urban district and neighborhood will reconnect with and add to the fabric of the peninsula from downtown to the adjacent neighborhoods. A compact blend of uses fosters lively daily interaction and a sense of community spirit...”

The B-7 height provisions help facilitate infill development so that future development on vacant or underutilized properties is of sufficient size and scale to contribute to Bayside’s role as a dynamic urban mixed-use neighborhood and gateway.

Principle Two...Economic and Employment Opportunities:

“Bayside’s location between downtown and I-295 presents a significant economic and market opportunity to be planned and managed to create the best value for development and quality of life improvements for the community, generate a broad range of employment opportunities and improve the tax base. Bayside represents prime real estate development prospects to expand the central business district...”

The Bayside Plan calls for 940 housing units, 950,000 sq. ft. of new office space and 230,000 sq. ft. of retail space. The B-7 zone provides a minimum scale of development and a more flexible upper limit of development than the previous ordinance which will result in significantly more building space within Bayside than if single story suburban development were promoted. This policy will result in significantly more jobs and property tax revenue since land is being more intensively used. The height revisions are consistent with and support this goal.

Principle Four...A Critical Mass of Dwellings:

“An urban district must have a mix of residences to be truly vital. The Bayside Plan will fill in, extend and enhance the existing residential fabric with a substantial amount of new housing units...”

The B-7 zoning and proposed height amendments support an infusion of new housing by providing higher building heights and no limitation on residential density. The Bayside Plan has a goal of 940 housing units. To qualify for the B-7 height exception a building must have a minimum 20 housing units per building.

Principle Five...Transit-Oriented Development:

“Mixed use, compact and intensive land development, and quick and convenient transit service makes Bayside a neighborhood that has genuine mobility choice...”

The B-7 facilitates mixed use and dense development with higher heights (including the proposed amendments) in supporting this principle.

Principle Six...Multi-Level Parking Structures:

“Strategically located parking structures will serve multiple functions, connect with transit services, facilitate the flow of traffic with minimal impact on neighborhood residents, and avoid extensive land consumption by surface parking lots...”

The B-7 discourages surface parking so it can be reserved for buildings rather than parking. Multi-level parking structures conserve land for other dense development rather than to be consumed by expansive surface parking lots. Mixed use allows daytime use of parking garage for workers and nighttime use for residents in parking garages a very efficient use of spaces and resources. Higher building height supports density.

Principle Ten...Environmental Remediation

“Bayside redevelopment projects will clean up the soil and recycle these underutilized parcels into productive resources for the future of the Portland Community. Redevelopment of brownfields in Bayside counters the trend toward sprawl development in this region, adding the vigorous urban center of Portland.”

The B-7 dense development pattern including higher building heights provides an incentive to clean up and redevelop brownfields properties.

V. Public Process

The Planning Board held four workshops and two public hearings on the amendments. An initial workshop on November 27, 2012 provided a general introduction to the Federated project. The second workshop (January 29, 2013) focused on the proposed zoning and site plan amendments. At the third workshop (February 12, 2013) Planning Staff provided an overview of the master plan amendments and background on the existing Bayside height system. A fourth workshop on February 26, 2013 included discussion of the height amendments and revisions to the Federated concept development plan.

An initial public hearing was held on March 12, 2013. After the public comment portion of the meeting, the Board took action on the Master Development Plan amendments but deferred action on the height related amendments until a special Board meeting held on March 21, 2013. After providing the opportunity for additional public comment at the second public hearing, the Planning Board voted to recommend approval of the proposed amendments as noted in the next section below.

Notice of the initial public hearing consisted of 88 notices mailed to property owners as well as the item appearing on the Legal Ad which ran in the Press Herald on February 25 and March 4, 2013.

Written public comment during the Planning Board review process is shown as Attachment 8.

The applicant held a neighborhood meeting on December 20, 2012 at the Avesta office building (307Cumberland Avenue). Details of the meeting including meeting notes and attendees are shown as Attachment C.

Written public comment is shown as Attachment 8.

VI. Planning Board Recommendation

At a public hearing held on March 21, 2013 the Planning Board voted on the following motions.

Bayside Height Overlay Map Amendments: The Planning Board voted 4 to 1 (Boepple against; Dundon and Soley absent) that the amendments to the Height Map are consistent with the comprehensive plan of the City of Portland, and therefore recommends the proposed Height Map amendments to the City Council.

The majority of the Board found that the proposed height amendment is consistent with the New Vision for Bayside Plan and is a reasonable adaptation of the zoning heights to accommodate the type and scale of development envisioned in the plan. Board member Boepple noted that her opposition was based on the need to change the zoning height in response to a specific development proposal, although she noted that the proposed new standards and the limited additional "A" height zone were helpful if the amendment goes through. Board member Soley was not present for the vote, but provided a written statement (included in attachment 8) in opposition to the height amendment on the basis that the plans should be further refined to meet the present standards, and that the current proposal in his view is over scaled to the immediate pedestrian environment.

Zoning Amendment to Section 14-296 (a) (5): The Planning Board voted 5 to 0 (Dundon and Soley absent) that the amendments to Section 14-296 (a) 5 of the Zoning Ordinance are consistent with the comprehensive plan of the City of Portland, and therefore recommends the proposed amendments to the City Council;

Site Plan Ordinance Amendments for the B-7 District A Height Standards (Section 14-526 d. 9 viii): The Planning Board voted 5 to 0 (Dundon and Soley absent) that the amendments to Section 14-526 (d) (9) (viii) of the Site Plan Ordinance are consistent with the comprehensive plan of the City of Portland, and therefore recommends the proposed amendments to the City Council.

Attachments:

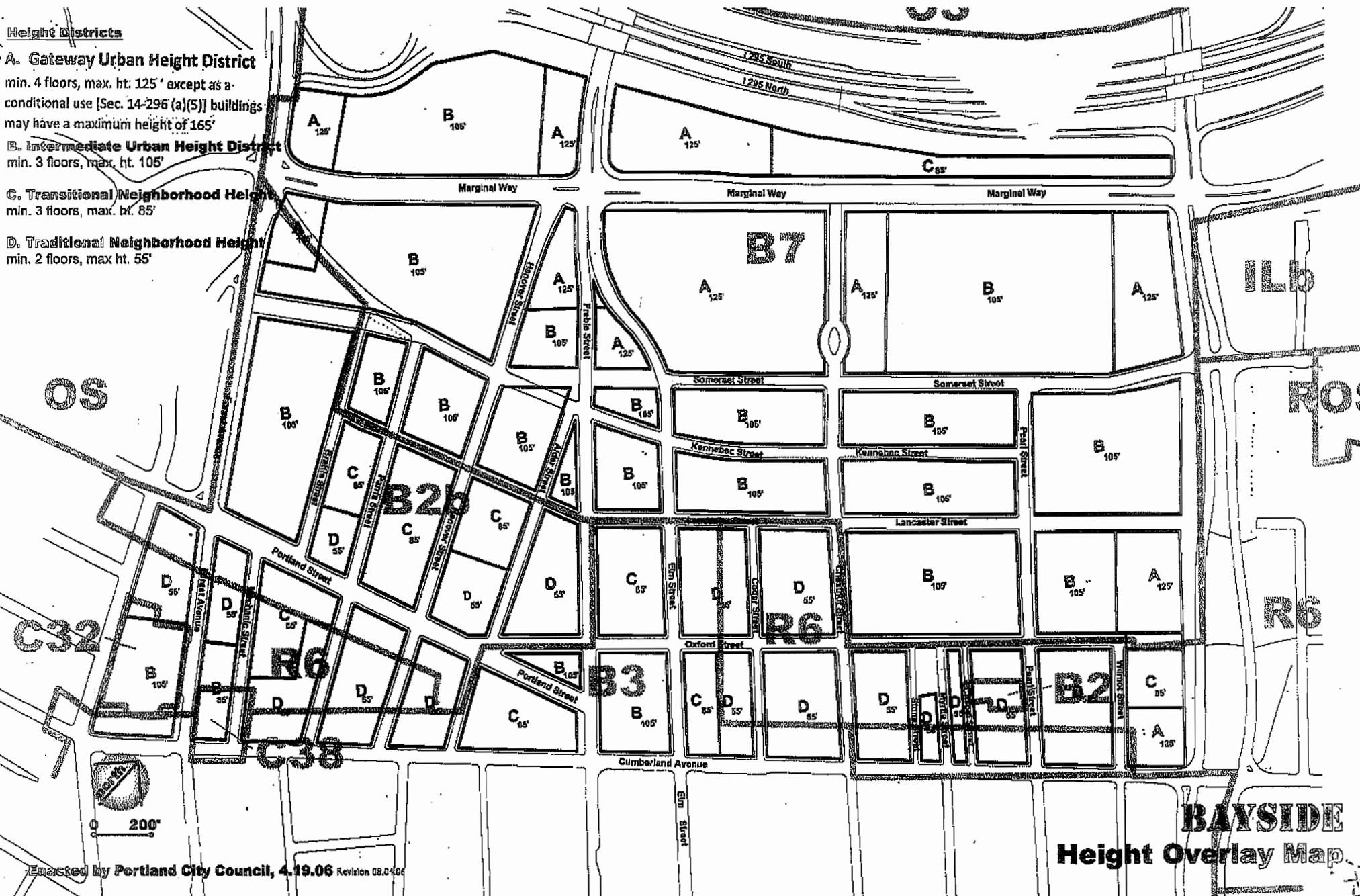
Staff Submissions

1. Bayside Height Overlay Map
2. Proposed Revisions to the Bayside Height Overlay Map
3. Proposed B-7 Zoning Height Amendment
4. Proposed Site Plan Amendments
5. Implications of Existing Height Regulations on Federated Project
6. History and Policy of Bayside Height Overlay Zone
7. Memo from Greg Mitchell, Director, Economic Development Department
8. Written Public Comment

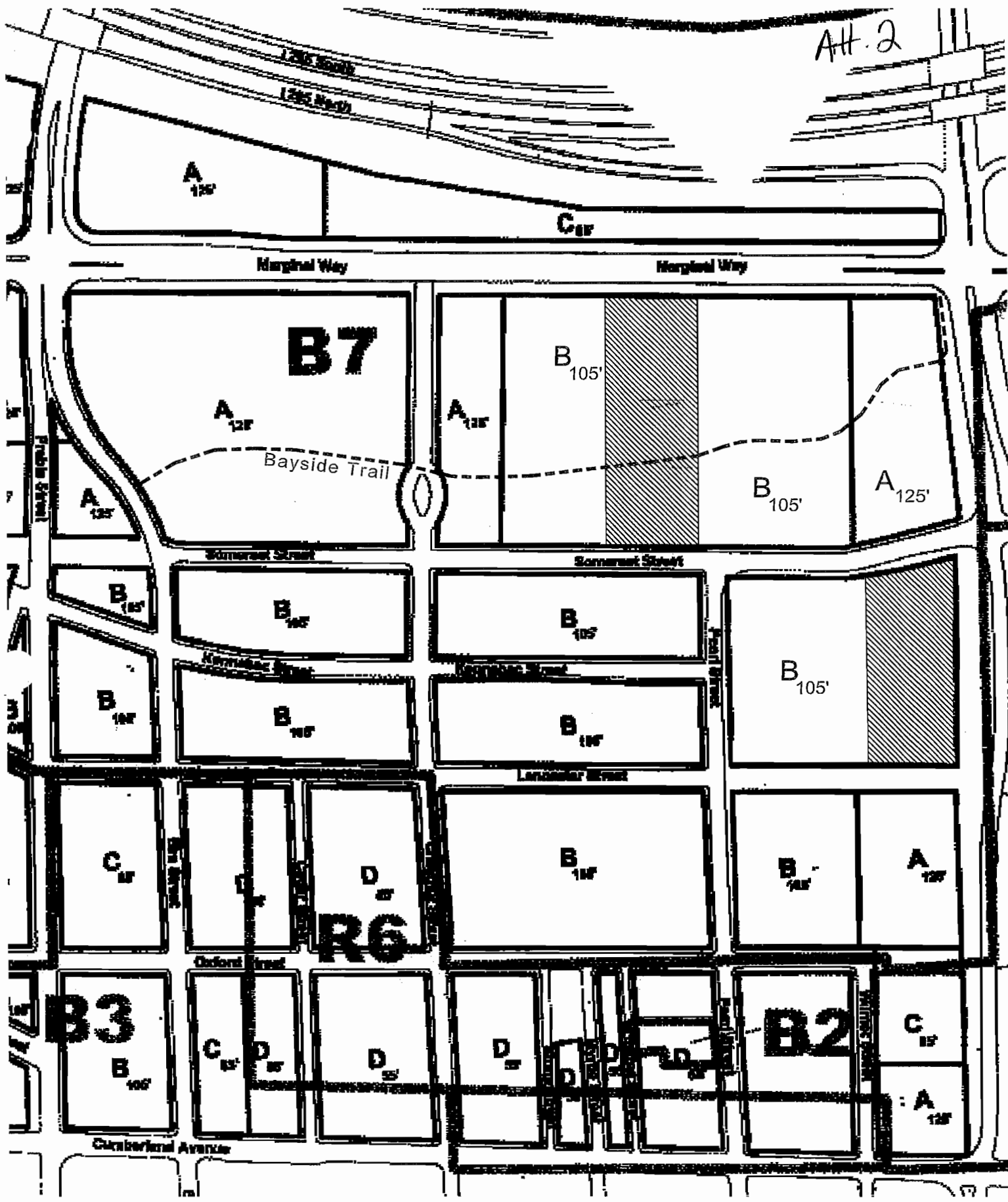
Applicant Submissions

- A. Concept Master Plan and Layout (3-14-13)
- B. Zoning/Site Plan Application
- C. Neighborhood Meeting
- D. Applicant Responses to Questions

min, 2 floors, max ht. 55'



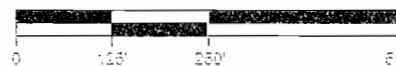
Enacted by Portland City Council, 4.19.06 Revision 08.04.06



Bayside Height Overlay: Proposed Zone Change

March, 2013

Denotes Zone
change from B to A



Att. 3

DIVISION 17. B-7 MIXED DEVELOPMENT DISTRICT ZONE

EXCERPT

Sec. 14-296. Conditional uses.

(a) The following uses shall be permitted as conditional uses in the B-7 zone as provided in section 14-474 (conditional uses), provided that, notwithstanding section 14-474 (a) or any other provision of this code, the planning board shall be substituted for the board of appeals as the reviewing authority:

(1-4 NOT INCLUDED)

5. *Buildings in the bayside gateway urban height district A greater than one-hundred twenty-five (125) feet but no more than one-hundred sixty-five (165) feet in height provided that:*

- a. Such buildings shall do not obstruct be sited to minimize encroachment into designated view corridors and visual landmarks to and from the downtown or that do not substantially further obstruct such corridors blocked by existing development as identified-referenced in the Bayside Height Study Map and the B-7 design standards; and
- b. Portions of such buildings higher than 125 feet shall be stepped back at upper levels to provide light and air to adjacent streets, trails, and open spaces, with a ratio of no less than at least to the extent that the ration of building height to width of adjacent streets, trails and open spaces is equivalent to 1.5 to 1 except that the Planning Board may modify this requirement as provided for in Section 14-526 (d) (9) (viii); and
- c. Such buildings ~~provide~~ publicly accessible and usable open space, meeting the B-7 urban design standards, of at least ten (10) percent of the building lot area; and
- d. If located on lots including or adjacent to planned or proposed street or pedestrian way connections, land dedication to such street or connection shall be credited toward the ten (10) percent open space requirement. Buildings over 125 feet in height that are being reviewed as separate phases of a Master Plan Development Plan

shall be entitled to meet the ten (10) percent open space requirement of Section 14-296 (a) (5) (c) in aggregate for all such buildings over 125 feet in height, provided that the open space shall not fall below 10% at any built phase or combination of built phases;—and

- e. Such development shall comply with all other zoning requirement and B-7 urban design standards as required by this article.

AH.4

ARTICLE V. SITE PLAN

(EXCERPT)

Section 14-526. Site Plan Standards

(d) *Site Design Standards*

9. *Zoning Related Design Standards:*

a. Development of certain types and/or proposed in certain zones, as specified below, are subject to design standards in addition to the provisions of Section 14-526 (a) in order to ensure designs that contribute to and enhance the goals and policies for specific districts of the City. The City of Portland Design Standards is listed in the City of Portland Design Manual, which is included by reference. If the development is located in a historic district or associated with a historic landmark, City of Portland Historic Preservation standards shall supersede:

(i through vii omitted from this draft)

- (viii) B-7 Design Standards for Additional Height in District A: In the B-7 zone, the Planning Board, when conducting review of a Master Development Plan or a Level III site plan, as applicable, may modify the setback provisions of Section 14-296 (a) (5) (b), relating to buildings allowed as a conditional use to exceed 125 feet up to 165 feet in height, providing the following conditions are met:
- a) Each building exceeding 125 feet shall contain at least 20 dwelling units per building.
 - b) Building wall setback requirements along public street frontage:
 - i. Building with frontage on one street: Minimum ten (10) foot setback between third and fifth stories and a minimum ten (10) foot setback between the 125 and 145 foot level.
 - ii. Building with frontage on multiple streets: Above paragraph (i) requirement along longest building façade street wall, and of the remaining street walls the same

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requirement as paragraph (i) or a 15 foot wide streetscape improvements area containing a public sidewalk, landscaping and other streetscape improvements within the abutting street right-of way and/or private property along the remaining street frontage. A building with frontage on four streets shall meet the above requirement except that two of the streets shall have the stepback requirement.

iii. The Planning Board shall have the authority to waive one or more of the required stepbacks provided the following is met:

1. The depth of the building lot precludes a building having an average minimum lot depth dimension of 170 feet; or

2. The proposed building has an architecturally significant design that is articulated to avoid a monolithic appearance and emphasizes slender, vertically-oriented proportions while employing a variety of scales, materials, fenestration, and massing to assure a rich visually interesting experience as viewed within the context of the downtown skyline and provide visual interest and human scale at the pedestrian level.

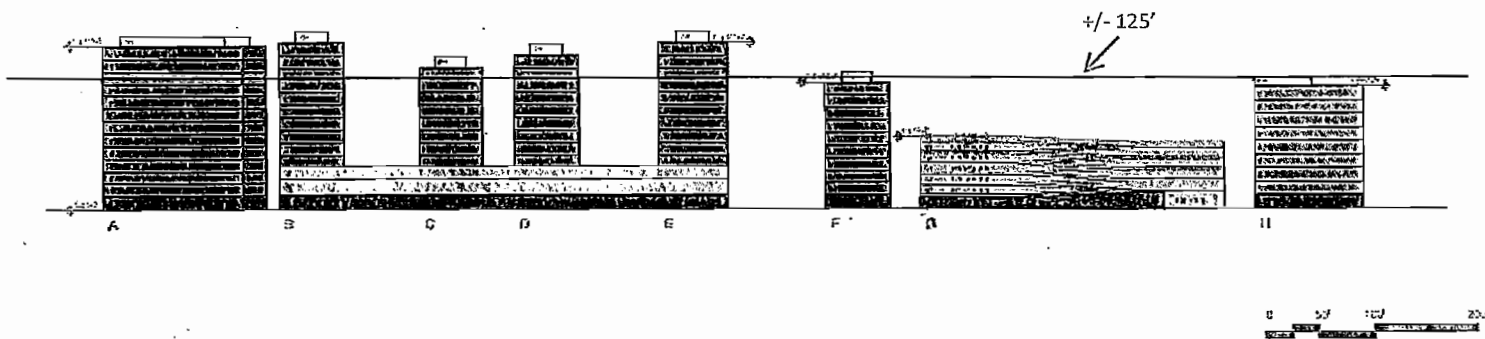
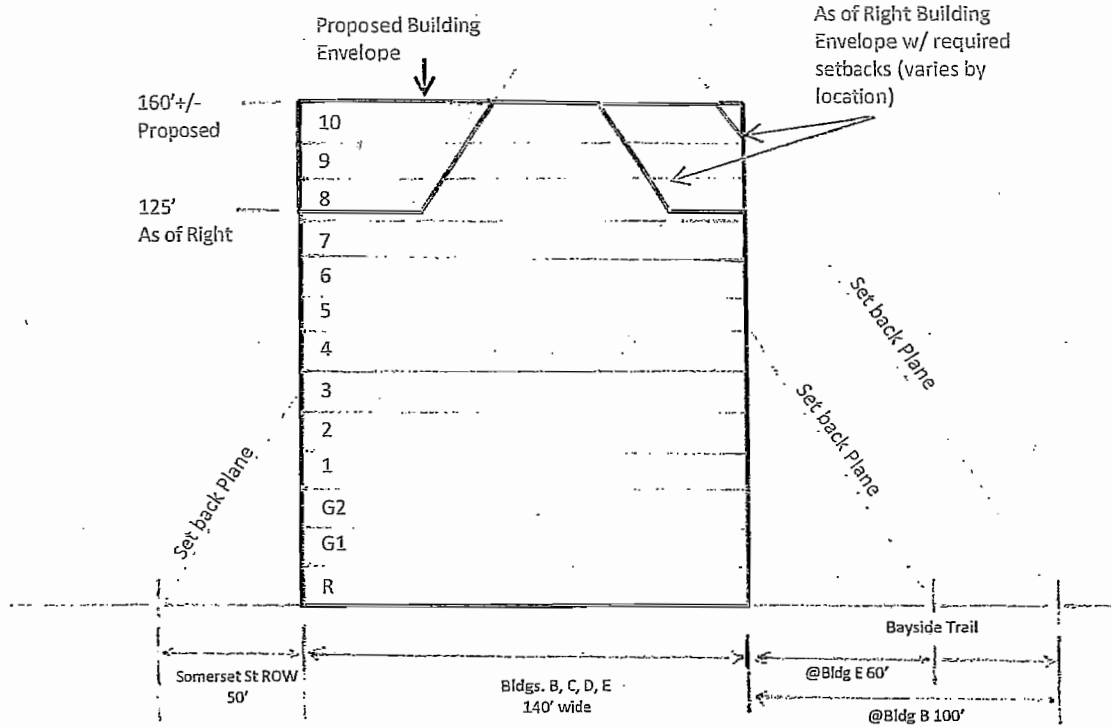
3. In the event such a waiver is granted the Planning Board may require the applicant to mitigate the impacts of the waiver by requiring the following:

a) Along all public street frontages and public open spaces, all buildings (regardless of height) shall meet the B-7 Design Standard E-4 Articulation to maintain a pedestrian scale through the use of building elements at the street level as listed in this standard along no less than 60% of the building's horizontal length.

- b) Along all public street frontages and public open spaces for the building(s) over 125 feet, a canopy, awning or similar permanent architectural feature to provide pedestrian protection and wind mitigation shall be provided within the first thirty-five feet of height.
- c) In order to preserve view corridors and to maintain a varied skyline, all buildings above 125 feet within a single development site should be separated to avoid the appearance of a tall, solid block massing. In accordance with this policy, development sites of 500 feet or greater as measured parallel to Marginal Way, the aggregate building façade widths above 85 feet shall not exceed fifty percent (50%) of the total development site distance parallel to Marginal Way. Buildings over 125 feet in height that are being reviewed as separate phases of a Master Development Plan shall be entitled to meet the fifty percent building requirement in aggregate for all such buildings over 125 feet in height in the Master Development Plan, provided that view corridors are retained as each phase is built.
- d) The applicant shall demonstrate building design elements and location will reasonably mitigate downdraft effects of the proposed building or buildings.

Implications of Existing B-7 Height Height Provisions on Maritime Landing

Att. 5



HISTORY AND POLICY OF BAYSIDE HEIGHT OVERLAY ZONE

The B-7 Bayside height system was conceived as a way to support the development principles of the Bayside Plan as a dense urban mixed use district. The previous B-5 zoning allowed a maximum height of 65 feet which was deemed insufficient to create the dense urban environment anticipated in Bayside. Although the Bayside Plan didn't recommend a specific height program, a common theme in the plan is Bayside's role as an extension of the downtown and as dense urban district. For example the plan has a goal of 940 housing units and 950,000 sq. ft. of office space which can only be achieved by a dense development pattern.

The height system was developed within the context of the Bayside Plan and was enacted as part of a comprehensive review of Bayside zoning which resulted in the enactment of the B-7 Mixed Use Development District.

This section will discuss the genesis of the Bayside Height Overlay Zone system including factors and considerations reflected in the enacted height program.

A. Rationale for Bayside Height System

The Bayside height system is intended to support the revitalization of Bayside as a dense urban mixed-use neighborhood and to provide a more visually interesting cityscape. In order for Bayside to succeed as a dense urban neighborhood it needs a critical mass of people (residents, workers and visitors).

Density is critical in achieving and sustaining the dynamic synergies that support urban districts. It supports a broad range of private and public infrastructure/facilities and services such as public transportation, retail businesses, employment opportunities, pedestrian walkways/amenities, and other services that are the backbone of a dense urban area.

There was a concern the previous building height system (65 feet high in the B-5 zone) would impede the formation of that critical mass because it limits the amount of building space that can be developed on a given parcel. Bayside has an opportunity to develop into a dynamic mixed use urban neighborhood, but people density is critical in achieving this. For example, a six or seven story building does not create the scale of density anticipated in Bayside nor does surface parking, which is strongly discouraged. An efficient use of land would be integration of an office or housing building stacked over structured parking, such as the Intermed building. A lower building height works against this efficiency because dense urban development by definition becomes more vertical.

Building height is a key ingredient for urban density. The reality is (like the downtown) not all parcels will be developed to their maximum potential so its important that height be flexible to accommodate the overall density needed to support this critical mass. Because of its current land uses (large parcels that are undeveloped) Bayside is an appropriate place to allow for greater density of housing to serve the city and the region as it grows in the

6-1

future. Carefully located nodes of high density will help fulfill the objectives for urban and transit oriented development.

Height plays such a critical element in creating density, the B-7 zone includes minimum building heights (up to 4 stories high) which is one of the few zones aside from the B-3 that has that requirement.

In a memo to the Planning Board (dated 08/01/05) Carrie Marsh, Urban Designer, stated the purposes of the Bayside Height Overlay Map.

Provide for higher buildings in a proposed B-7 Mixed Use Urban District Zone that supports the goals outlined in A New Vision for Bayside.

Establish a defined area in the city in which greater height can be provided.

Accentuate Bayside as a "front door" or gateway to the City by providing height along major corridors and street corners.

Provide for smart growth by providing high-density, mixed-use development that serves the needs of the neighborhood, the city and the region and goes up not out.

Provide a hierarchy of heights that respects residential neighborhoods and allows greater density adjacent to the traffic and other infrastructure that can support it.

Create space for a critical mass of people (residents, workers and visitors) that is needed to make a new urban neighborhood successful.

Provide opportunities for high-density housing that is adjacent to infrastructure, highways, jobs and educational opportunities.

Create a high density, transit and pedestrian-oriented, mixed use neighborhood which enhances the experience of those who live, work, learn and recreate there.

Provide opportunities for good design by allowing for a shift in building mass in order to create visually inspiring, less bulky buildings, on smaller footprints.

Preserve views looking from the south toward Back Cove and the mountains, as well as views looking both toward the spine of the Portland peninsula.

B. Downtown Height Study (1989)

6.2

To provide context to the current Bayside height plan, below is a summary of the Downtown Height Study which was commissioned by the City in 1989 to review heights for the entire peninsula.

The study recommended a concentration of the tallest buildings along the Congress Street "spine", reinforcing the historic form of the City. The study indicated "the interest of the skyline is enhanced when the massing of structures is not completely uniform and when buildings have distinct profiles".

The enacted downtown height overlay map allows a 150 to 210 foot height along much of Congress Street (between Franklin Street and High Street) with lower height as one progresses down the hill to Bayside and the waterfront. Attachment 2 is the current height map for the B-3 zone.

The Downtown Height Study also introduces the need for building setbacks to reinforce a comfortable pedestrian scale along streets and sidewalks and to allow taller portions of buildings to be sited in interior portions of lots where they will not impede sunlight and air to the streets and sidewalks. Various ratios of street width to building height are employed to derive compatible street edges with appropriate tower massing. This allows tall buildings to be built compatible with a comfortable pedestrian environment and fit with existing building fabric avoiding canyon-like streets and windswept plazas centered with gigantic building forms. The plan calls for modest scaled building meeting the sidewalk, with taller building portions stepped back onto the interior of the building lot. The setback concept was incorporated into the B-3 zoning as reflected on the current B-3 height map.

The Downtown Height Study presents the highest allowable heights along the Congress Street spine, with lower heights graduating down toward the waterfront and Bayside. The southern area of the peninsula, encompassing the Old Port and Waterfront districts, is characterized by these historic districts and is highly developed. Bayside, by contrast, is largely undeveloped, characterized by industrial and vacant brownfields. As such it provides a unique opportunity to create a new policy for taller buildings along Marginal Way and I-295. Current theory about building heights and density suggest that high density supports transit, and that a varied skyline is more dynamic and visually interesting than a static skyline.

C. Bayside Height Planning Process

Initial ideas for the Bayside height program were generated from meetings with the Bayside Development Committee which recommended higher heights to accomplish the urban density and architectural variety envisioned in the Bayside Plan. A number of the meetings were held with the Height Subcommittee of the BDC including a joint meeting with the Community Development Committee to help shape the height concept. Several Planning Board workshops were held as part of a larger series of workshops on B-7 zoning. Terrence Dewan and Associates served as the City's consultant on the height issue which included a computer simulation of the proposed height system. Images of that study as well as other height related analysis by the consultant will be provided at Tuesday's workshop. The City also consulted with Architect Winton Scott on building design and height issues.

The Downtown Height Overlay Map was viewed as too restrictive for the level of urban density required for Bayside so other height regulation concepts were considered. Various ideas were explored to ensure a reasonable build-out potential. Building height concepts were extensively explored and discussed particularly in District A. Among the concepts explored included the following;

Establishing zones of height classifications (4) with individual blocks designated accordingly.

Establishing view corridors which include streets and street extensions.

Minimum building heights.

A view shed regulation that would be less than 50% occupied by buildings at the upper levels as the target, with up to 2/3 of the sky visible.

Wedding cake height regulations for individual blocks with stepbacks.

Maximum floor area ratio.

Dimensional limitations including a maximum 100-foot building dimension parallel to Marginal Way for taller portions of the buildings.

Stepbacks from designated view corridors.

A floor plate limitation of 15,000 square feet for taller portions of buildings.

A 200 foot separation distance between portions of taller buildings.

Designated stepbacks from the Bayside Trail.

Most of the discussion during this process focused on District A in particular an appropriate maximum height as well as related provisions that would regulate massing. The Planning Board among the interested parties involved seemed less enthusiastic about a 165 foot maximum height. Also, the Board was not comfortable with concepts to mitigate height, such as mapped stepbacks, required separation distances between tall buildings and floor plate limitations, which were viewed as too complicated and prescriptive. A computer simulation model of proposed building heights generated the Board's concern. Therefore at the Board's April 4, 2006 public hearing on the B-7 zoning amendments, staff prepared two alternatives for District A, 1) a maximum height of 165 feet and 2) a maximum height of 125 feet. The Board voted 5 to 1 (Silk) to recommend a 125 foot height.

When the City Council enacted the new B-7 zoning the Council amended the text by incorporating a base height in District A of 125 feet with a conditional use provision allowing a height exceeding 125 feet up to a maximum of 165 feet providing a series of

64

standards were met. These standards include a stepback formula from trails/open space and streets that are now part of a zoning and site plan amendment discussed at the last workshop.

The height map, as enacted by the City Council, included a stepback system shown on the map along the Bayside Trail. Later that feature was amended and removed from the map because it would have posed significant limitation on building lots adjacent to the trail.

D. Bayside Height Overlay Map (enacted 2006)

Height limits were increased in key blocks where development has taken place or is likely to take place while blocks occupied by traditional residential neighborhoods are in the lower height category. The lower height category intends to preserve the existing neighborhood fabric where it exists by not providing an incentive (through higher height) to level the remaining traditional residential neighborhood.

The enacted Downtown Height Overlay Map along Cumberland Avenue (northerly side) consists of an 85-foot (maximum) height district from Forest Avenue to Chestnut Street. The remainder of Cumberland Avenue from Chestnut Street to Franklin Street followed the R-6 requirements. The proposed Bayside Height Overlay Map lowers the height in four blocks along Cumberland Avenue (within the 85 foot district) to 65 feet (now 50 feet) within the block, occupied by the traditional residential neighborhood. Higher height districts were created on certain blocks along Cumberland Avenue, such as Franklin Towers, Waterview, Back Bay Towers and Public Market parking garage.

As the topography descends from Cumberland Avenue and moves away from the traditional neighborhood, the building height of the Bayside Height Overlay Map increases. The highest heights (A District) are found in gateways and major streets such as Marginal Way, portions of Franklin Street, and Forest Avenue. In other areas south of Marginal Way such as Somerset Street and Kennebec Street (B District), the height limit is 105 feet.

The proposed Bayside Height Overlay Map differs in several ways from the Downtown Height Study:

- Height has been determined on a block- by- block basis which relates to such issues as views, land use and traffic volume rather than topography as the sole factor in determining height. The high spine along Cumberland Avenue will still have taller buildings (as referenced earlier) but concerns of protecting the existing residential neighborhood have lowered heights along certain blocks of Cumberland Avenue.
- The highest height (165 feet) will be available in certain gateway areas such as along Marginal Way and Franklin Street. This offers the opportunity to shape and highlight key gateways and major arterials into

Bayside and Downtown that are intended to complement the high spine skyline of the Downtown.

- A defining element of the peninsula is the change in topography. The high spine policy developed in the Downtown Height Study works very well at the top of the hill and along the descending contours of the hill. However in the area from Marginal Way to about Lancaster Street, the Bayside topography is very flat (near sea level). This flat area extends about 800 feet deep from Marginal Way, which is over half the distance between Marginal Way and Cumberland Ave. Given the relatively large size of this area and with little or no topographic change, this area has the potential to have a very uniform and monotonous building profile without some height flexibility.

Enacted Bayside Height Districts

The enacted Bayside Height Districts are outlined below. See Attachment 3. Note that the B-7 Design Principles and Standards provide design standards regarding massing, articulation and other factors and were crafted with higher building heights in mind. Although these heights represent the upper limit of height in these districts, a developer needs to meet the appropriate design standards.

Gateway Urban Height District...District A (min. 4 floors; max of 125 feet or as a conditional use up to 165 feet)

District A is located within gateway and redevelopment areas near I-295 and other blocks along Cumberland Avenue adjacent to the downtown. An A district offers the opportunity to frame major gateways into Bayside and the Downtown while providing appropriate redevelopment opportunities near I-295. This zone allows the highest building heights in Bayside and includes standards to encourage a more visually interesting skyline. The base height of this district allows a base height of 125 feet with a maximum height of 165 feet as a conditional use.

The A district standards have been integrated with designated view corridors so that views are preserved and enhanced by variations in individual building profiles. By allowing a higher height, the A district intends to create opportunities for concentrated nodes of higher density development than the existing B-5 height limits while encouraging a more sculpted and visually interesting cityscape. The taller height limit allows building mass to be reshaped providing the opportunity for more variety and flexible building design in gateway areas, along arterials or major streets.

The minimum building height is 4 floors.

Intermediate Urban Height District...District B (min. 3 floors; max. 105 feet)

6.6

District B areas offer significant opportunities for redevelopment. Most of the B areas are north of Lancaster Street and are commercially oriented in terms of existing uses. District B includes much of the vacant land in Bayside (part of the rail yard, Oakhurst Dairy parking lot) and all three of the scrap yards. The redevelopment potential of this area is evident in that there are only three existing buildings (DHS, Schlotterbeck & Foss and Noyes brick warehouse) north of Lancaster Street that are three stories or higher.

Like District A, District B is intended to avoid monolithic rectangular block buildings while encouraging a more sculpted and visually interesting cityscape. By increasing the present B-5 height limit, the density of Bayside may be increased while providing aesthetic variation.

Transitional Neighborhood Height District...District C (min. 3 floors; max. 85 feet)

District C areas are generally adjacent to the traditional neighborhood blocks, but offer the potential for infill development at a height compatible with the surrounding blocks. C areas include several sub-block areas near or adjacent to the Public Works complex. There are a number of non-residential properties in this zone having surface parking lots, or underutilized properties that when redeveloped could help re-knit the Bayside neighborhood.

Traditional Neighborhood Height District...District D (min. 2 floors; max. 55 feet)

District D is located within the traditional residential neighborhood of Bayside within one or two blocks from Cumberland Avenue. This neighborhood consists primarily of one, two and three story buildings built during the 1800's and early part of the 1900's. The height standards are intended to conserve the existing height, scale and character of the traditional neighborhood residential structures while providing some opportunities for compatible R-6 zone scaled infill development.

607

CITY OF PORTLAND, MAINE
MEMORANDUM

TO: Chair Cloutier and Member of the Community Development Committee

FROM: Alexander Jaegerman, Planning Division Director

DATE: April 6, 2006

SUBJECT: Planning Board Recommendations on Bayside Zoning

On April 4, 2006, the Planning Board voted to recommend the Bayside zoning package to the City Council. Attached is the Planning Report #21-06, which presents the zoning package as reviewed by the Planning Board, as well as a redline version of the text showing the specific text being recommended by the Board. The zoning amendments include the proposed new B-7 zone text, the map change from B-5 to B-7, a site plan amendment to enact design standards for the B-7 zone, and a height map of the Bayside area bounded by I-295, Forest Ave, Franklin Street, and Cumberland Avenue. Given the request by the CDC at the last meeting to adhere to an April timetable for this zoning, we placed the proposed zoning on the City Council agenda on April 3, so the Board's recommended zoning will need to be moved as an amended substitute motion. As you read Report #21-06, you will see numerous locations where we had presented alternative language choices to the Board. The Board has made selections from among these alternatives, has done some clean-up amendments from the original text, and has made some recommendations for changes to the text based on their considered judgment. In two cases involving exemptions to minimum heights, we bring some issues to the CDC's attention below for further discussion.

The CDC has also requested that an open space provision be included in the proposed zoning. At the last workshop, the Planning Board was not supportive of the concept of an open space requirement, so it was not drafted as part of the zoning package reviewed by the Board. Included within this memo is an open space concept that the CDC may want to consider adding to the B-7 zone in the CDC recommendations to the City Council.

Minimum Height Exemptions

We have some minor issues regarding one aspect of the Planning Board's recommendation having to do with the exemptions to minimum height that the CDC might want to consider. In specific, the Board rejected proposed exemptions from the minimum heights for parking structures and intermodal transportation facilities. We are anticipating the possibility of a very modest train stop in Bayside that would include a platform and some minimal waiting facility, and probably an automated ticket kiosk. While this could conceivably be placed within a larger, multi-story building, there is little likelihood of such a building being constructed on the minute land area available for the station stop. We therefore suggest that the CDC might want to recommend restoration of

this exemption. Similarly, the staff had recommended that parking structures be exempt from the minimum height to encourage even one or two level parking decks, similar to the Chestnut Street garage. We have also envisioned the possibility of a single level of parking covered by a green roof open space deck. There is strong interest in open space and park resources in Bayside, and if it proves possible to construct a layer of parking below a constructed green space, that might be a more efficient use of land, that would be frustrated by a three or four story minimum building requirement for parking structures. So even a limited exemption for this particular combination of uses might allow for such development in the future. While we do not typically recommend matters contrary to the Planning Board's recommendations, we do want to bring these possibilities to the attention of the CDC for consideration. I did inform the Board that we would be presenting these particular issues to the City Council.

Open Space Requirement Concept

In discussing the possibility of an open space requirement, we suggest that it be required only for larger projects. We are recommending that on parcels of one acre or larger, on which new building is proposed of 40,000 square feet or more, that 10% open space shall be required. Such open space to be green space or paved pedestrian plaza, to serve as buffer, landscape area, or recreation area for the site. We suggest that an option of a fee in lieu of such open space could be useful, based on current land values, and that if the site is in a location where a street extension is planned (such as Pearl Street), that dedication of street right-of-way could satisfy the open space requirement. We are still evaluating the specific sizes and percentages, and will attempt to have available examples of existing developments and their open space requirements under this concept. We would welcome feedback from the CDC on this open space concept, and we will develop formal language if so directed.

Planning Board Recommended Height Map

At the recommendation of the Bayside Development Committee's Height Subcommittee, after consultation with the full Bayside Development Committee and the CDC, we had spent considerable energy developing a height map with maximum heights at 165'. The Planning Board appropriately requested that a 3-dimensional model or simulation be developed to help understand the implications of this height. Upon seeing the simulation, the support for the highest height seemed to evaporate. Nonetheless, we continued to develop zoning regulations that would have made such heights possible and would have tempered the heights with step-backs and view corridors. At the Planning Board workshop on March 14, the Board was clear that the complicated restrictions on view corridors and step-backs were not supported at the Board level. We therefore prepared two very simplified alternatives for the Board's consideration on April 4, one with the proposed 165' height zone (the A zone), and the other with the A zone reduced to 125'. The first alternative eliminated all view corridors and all step-backs except for along the trail corridor and the bottom end of Chestnut Street. (The CDC had previously suggested that the Chestnut Street corridor be enlarged with an expanded setback.) The second alternative, at 125', further eliminated the step-back on Chestnut Street. The Board selected the second alternative with the 125' A-zone. Only one Board member, David Silk, voted against this option in preference for the taller (165') A-zone.

We are quite comfortable with the Planning Board's recommendations on height. While the view corridors and step-backs could produce a very pleasing streetscape, they are complex and prescriptive, and could frustrate some creative architecture. Our strategy is to salvage much of these concepts within the B-7 Design Standards, which are still under development. Once the Council adopts the B-7 and related site plan standard, the design standards will return to the Planning Board for adoption. We will propose that building massing be designed to avoid canyon like conditions, secure light and air to surrounding streets and open spaces, and avoid blocking views down street extension when possible. These provisions under design standards are inherently flexible and allow for site-specific solutions. Furthermore, if a developer is eager to build above 125', we can suggest a conditional rezoning for such height. So far, no one is lining up for such heights.

We look forward to presenting the Planning Board's recommendations to the CDC, and securing your recommendations to the full City Council scheduled for April 19.



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Economic Development Department
Gregory A. Mitchell, Director

AH.7

MEMORANDUM

To: Portland Planning Board
From: Greg Mitchell, Economic Development Director
Date: February 22, 2013
Re: Midtown Project – City Goals

This memorandum will provide you information related to City economic development goals associated with the Midtown Project, which is a public-private partnership in support of Bayside neighborhood economic growth.

BAYSIDE VISION

The Bayside neighborhood is a priority redevelopment area for the city which has received a lot of attention from preparation of the Bayside Plan (A New Vision for Bayside) to securing funding sources to support neighborhood economic growth.

Bayside zoning and height overlay regulations were established to restrict the amount of surface parking in recognition of the need for dense redevelopment, centralized parking structures and improved mass transit services to support Bayside neighborhood economic growth.

The Bayside Plan includes plans for five (5) appropriately placed parking structures averaging 600 spaces each to support economic growth in the entire Bayside neighborhood bounded by I-295, Franklin Street, Cumberland and Forest Avenues.

FUNDING SOURCES AND CITY REAL ESTATE

Funding sources to support Bayside economic growth include:

- ***Bayside Tax Increment Financing (TIF) District.***
- ***Housing and Urban Development (HUD) 108 Loan Program and Brownfield Economic Development Initiative (BEDI) Grant Programs.*** A total of \$12 million was secured to invest in public infrastructure, relocation assistance for two scrap yards and \$9 million to invest in one large parking structure.
- ***City Capital Improvements investment*** in annual public infrastructure.
- ***Federal funding sources*** of over \$2 million were secured to invest in the Bayside Trail along with funds to extend Somerset Street which is under design.

City owned real estate includes 3.25 acres of property along Somerset Street between Trader Joe's and Whole Foods adjacent to the Bayside Trail. This property was acquired from the Maine Department of Transportation which was originally owned by Pan Am.

7.1

PARKING STRUCTURE OPTIONS

The history of the city's involvement in Bayside parking structure partnerships include:

- **City owned Parking Structure.** In 2005/2006, the City Council and Planning Board approved construction of a 700+ space parking structure to be owned and managed by the city. The location for this planned parking structure was the former New England Metal Recycling Scrap Yard property. The city decided not to pursue this option and instead sought to partner with a private sector partner.
- **Public-Private partnership with Maine Health.** In 2008/2009, the City Council approved investment of \$9 million, in the form of a grant, in a privately owned 700+ parking structure with associated 98,000 square foot office building located on Bayside Subdivision Lot 3 located at the intersection of Somerset Street and Chestnut Street adjacent to Bayside Trail. This project was approved by the Planning Board, but Maine Health made the decision not to proceed.
- **Public-Private partnership with Federated Companies in the Midtown Project.** In 2011/2012, the City Council approved investment, in the form of a \$9 million dollar grant, in a privately owned parking structure to leverage a phased residential and commercial mixed use project.

MIDTOWN PROJECT PUBLIC-PRIVATE PARTNERSHIP OVERVIEW

An overview of the partnership documents include:

- **Purchase and Sale Agreement** to sell the city owned 3.25 acres. Default provisions are included in this Agreement in the case of nonperformance to allow the city to repurchase any undeveloped real estate at its sale price.
- **Job Creation Agreement** to satisfy use of HUD funding.
- **Parking Contribution Agreement** requiring the construction of a minimum 700 space parking structure; 24 hour "key card" access; restrictions on hourly/monthly rates; participation in the Park and Shop Program; parking availability for snow ban parking; special event parking; public 24 hour 7 day a week access; minimum 200 hourly turn-over spaces; acceptance of cash and credit card payments; adherence to parking structure maintenance standards; and requiring the parking structure to remain as a public garage for a minimum of thirty (30) years. Default provisions are included, in the case of nonperformance, to allow Federated to convey to the City the Garage and related property under certain terms and conditions.
- **Federated Corporate Guarantee** to construct Phase 1 of the Project within a specified time period at a projected municipal taxable value of \$38 million. If the projected taxable value is not achieved, the Corporate Guarantee requires Federated to fund the difference between the Phase 1 Project actual taxable and projected values annually for 17 years.

Midtown CITY PARTNERSHIP GOALS

There are many public goals and benefits associated with the Midtown Project from transforming a city gateway, increasing the supply of housing to support on Peninsula population growth to expanding Portland's vibrant downtown.

Two goals which I will focus upon include:

Parking. Large scale appropriately placed parking structures, called for in the Bayside Plan, is needed to support the Midtown Project and the redevelopment of many underutilized Bayside neighborhood properties. Construction of large parking structures is expensive. It is felt that a few large scale parking structures constructed to their maximum size, at time of construction, is the best approach to satisfy all existing and future parking demands of the Bayside neighborhood.

Tax Base. The projected tax base for Phase 1 of the Midtown Project is \$38 million dollars. Achieving this taxable value is important to the city in order to retire HUD loan debt associated with the city investment in the parking structure. Relaxation of the height restrictions associated with this Project was discussed at time of partnership document approval in order to achieve the projected taxable value.

I will be attending the February 26th Planning Board workshop on the Midtown Project and would be happy to discuss this with you or respond to your questions.

From: Jack Soley <jsoley@eastbrownco.com>
 Subject: FW: PLANNING BOARD MEETING POSTPONED TO MARCH 21ST.
 Date: March 21, 2013 11:12:40 AM EDT
 To: Carol Morrisette <resdesstudio@me.com>

From: Jack Soley
Sent: Thursday, March 21, 2013 11:12 AM
To: Carol Morrisette (mailto:resdesstudio@me.com)
Subject: PLANNING BOARD MEETING POSTPONED TO MARCH 21ST.

Thank you Carol. Please confirm receipt of this:

This is clearly a difficult site which merits compromise to current ordinances in order to facilitate development, and further growth is critical to the ongoing revitalization of Bayside. However, is the current plan as good as possible? Does this plan deserve zoning changes and/or text amendments, or could the proposal be further refined in order to create a development better suited to the site? I understand the urgency of this project. We are all anxious to move forward with a plan that does not jeopardize the great effort to secure a HUD grant/loan to the City and creates higher tax assessments necessary to cover that new debt service. But should the prospective construction of a parking garage drive a development site? Does the push for the garage merit taller and denser construction than may be reasonable?

The current proposal is the second iteration we have seen at the Planning Board from this applicant. It would appear that we still have time to revisit the plan once more in order to get closer to the criteria mandated in our ordinance, without risking this development. In general, the overall massing and scale seems inappropriate for this part of the City and I believe imperils the "livability" that the "New Vision for Bayside" specifically seeks. This project cannot meet; 1. the current B7 zoning for heights, 2. guidelines for building height to width of adjacent streets, or 3. mandated step backs. All of these important guidelines were intended to create a more intimate relationship between pedestrians and their built environment. According to the Planning Board Report prepared by senior planning staff:

"The purpose of the [building height] section is to mitigate the impact of taller buildings by reducing the potential for "canyon effect" and promoting light and air. Such measures promote a more pleasant environment for pedestrians in a densely developed urban environment. This is accomplished by locating taller buildings on wide streets (such as Marginal Way) and or stepping back the upper stories of taller buildings by reducing the apparent scale of building mass above 125 feet."

We are being asked to approve a structure taller than zoning allows while simultaneously making significant compromises to all of those factors which mitigate its monolithic appearance.

This development will be here for many generations to come. We have a responsibility to get it as close to right as possible, without creating insurmountable hurdles that forestall growth. Compromises are necessary and I believe that we should continue to work hard to get a project built on this land, but let's not relax standards in a manner that may handicap future good development in Bayside. Please consider sending this plan back to the developer in an effort to craft a design more appropriate for this site.

Jack Soley

8.1

Rick Knowland - Fwd: Midtown Project

From: Barbara Barhydt
To: Knowland, Rick
Date: 3/19/2013 12:02 PM
Subject: Fwd: Midtown Project

>>> "Brian Knoblock" <bknoblock@maine.rr.com> Tuesday, March 19, 2013 11:56 AM >>>

I would like to express my opposition to the request by the Bayside/Midtown developer to raise the height of the tallest buildings to 165 feet.

Although there has been some attempt to provide view corridors I think that overall the number, size and mass of the buildings will create a huge wall

across the Bayside neighborhood. They will cut Portland off from the Back Cove and cut the Back Cove off from the rest of the city. We already have enough examples of "sore thumb" buildings in the city – the low income housing building at Franklin and Cumberland, the monstrosity apartment building next to Ft. Allen Park and even the Intermed building. Intermed is a prime example of a too-tall building in that area and the mistake should not be repeated. While the developer should be applauded for his willingness to invest in the Bayside neighborhood, he should also respect the neighborhood and existing regulations and make the project work within those guidelines. The size and number of parking spaces and the parking structure should also be re-examined. There are too many parking spaces for the project and the garages only add to the bulk of the project. Walling off a downtown area by building huge structures on the outer edges is a mistake repeated too many times in too many cities – the west side of New York City in particular. We should not replicate those mistakes here in Portland. We are often described as a "right sized" city and our urban development projects should also be "right sized."

Brian Knoblock
60 Stonecrest Drive
Portland, ME 04103

TO THE PLANNING BOARD -- MARCH 12, 2013

The Portland Society for Architecture agrees that the Bayside neighborhood should to be renewed with a dense mix of housing and retail, and that it is good to assure that 200 new parking spaces are made available to the public. Tall buildings have a role to play in the hearts of vibrant cities, and Bayside should become a more vibrant quarter of the city.

PSA is in favor of the development plan concept that is proposed for the zoning ordinance, but under a different name as is now proposed and with shorter extension possibilities. Neighborhood Visions (formerly known as master plans) should be updated—not redone, but revisited and adjusted for newer conditions and planning strategies—before large, multi-year projects and their ‘master plans’ are considered. The word “current” in the language you are now considering should be defined—possibly as no more than five years old.

PSA also believes that significant zoning changes for major projects should only be approved after a visualization model has been developed that allows any resident or City official to readily appreciate its many impacts. It is worth noting that a previous Planning Board rejected a height of 165 feet for this part of Bayside—**after** seeing a computer model of its effect. 165 feet was added-in as a conditional option by the City Council—not a planning body. Now 165 feet is effectively becoming the new height with vastly stripped-out conditions and with no considered review of its effects—let alone a 3-dimensional view of it within the context of the city. A birds-eye ‘view corridor’ diagram does not provide a real picture of the impact of the buildings for people on the streets. Pictures of sun-drenched cafes from Mediterranean climes as stand-ins for Somerset Street are misleading. All this would be revealed with proper modeling.

PSA opposes granting the Federated Midtown Development Plan approval for many reasons: because the underlying Bayside Vision is now out-of-date—it does not consider sea level rise in the context of neighborhood nor the best thinking about parking and heights.

Even though the City is in control of this land and what happens to it, the development that is being proposed here creates superblock ‘blockades’—not unlike the effect of the Spring Street divided highway, which many are now trying to undo. PSA supports the standard in the proposed language saying that the development plans should be “designed to create a street grid pattern that reflects average city block sizes of the neighborhood for street connectivity”.

With reference to sea level rise, the City is responsible for assuring that the Bayside street and utility infrastructure meet the challenges of re-development. It is shortsighted to pass this off to developers on a building-by-building or entry-by-entry basis.

The city should be in control of this process, not the developer. There is reference in the staff report that “We have taken the applicant’s language and drafted revised language.”—while this precise example may be trivial, it speaks of a process that does not represent the best land use interests of the City of Portland, which is what zoning is supposed to do.

Approval of this plan will set a pattern for profoundly questionable development that will go with the land well into the future. The Portland Society for Architecture hopes you will send this back to the drawing boards. Thank you.

March 12, 2013

To: Planning Board, Public Hearing

From: Peter Monro, ASLA, 32 May St. 04102; ofc. 565 Congress St., 04101

Although I favor dense residential and retail development for Bayside, the current Federated proposal seeks exemptions to reasonable requirements, exemptions that will lead to buildings oversized in every dimension that will violate the spirit and letter of the Bayside vision, create unpleasant conditions on nearby streets and trails, and set precedents for inappropriate design elsewhere on the peninsula.

The Midtown scheme ignores what was best about the Bayside Vision, that Pearl and Myrtle streets would be extended/constructed between Somerset Street and Marginal Way, that fine-grained development would be placed along them, and that the results would be pedestrian friendly. This lateral expansion of Federated's proposed development has several significant negative impacts:

- It prevents through traffic in car and on foot. The fact that Mr. Quesada can maintain a continuous chainlink-fence barrier between the Bayside Trail and the social services building and Trader Joes is another negative impact of this failure to complete even a partial street grid in this area. Without true public ways, private landowners dictate who can go where, or nowhere.
- It limits on-street parking, forcing almost all visitors to pay parking garage rates
- It prevents driving to the fronts of stores and eliminates the active mix of motorists and walkers that puts the most eyes and liveliness on the street
- It blocks view corridors that the Bayside Vision specifically says should be kept open. The current zoning standard is straightforward, reasonable, and enforceable. Buildings "shall not obstruct" the designated corridors. The standard proposed by the applicant (3/4/13, Drummond Woodsum, paragraph (d)) , that "buildings will be sited to minimize encroachment into designated corridors" is too vague to be meaningful or enforceable. For instance, I assume Federated believes adopting that language would lead to approving their proposed six-story parking garages that obstruct the view corridors. If so, what meaning could possibly be attached to the term "view corridor?"

The over-expansion of the buildings in the opposite direction, fore and aft, causes other negative impacts brought up at the workshops: too narrow sidewalks on Somerset Street and narrowing—and moving—the Bay Side Trail and its corridor. However, the applicant's suggestion that the sidewalk width requirement can be eliminated all together because of "landscaping and other improvements" is inappropriate. Large streetfront buildings in the downtown need to have a sidewalk on a single level at least 10-12' wide.

As to the vertical oversizing of these buildings, the latest proposed language (in the same 3/4/13 memo) fails to adequately or appropriately address earlier objections, and it—like the other dimensional oversizings—strikes at the heart of the Bayside vision of a

neighborhood developed to be pedestrian friendly.

Specifically, I urge you to oppose paragraph b(i) that would allow a second setback as high as 145 feet. That means in the case of this development allowing an exposed façade of the building more than 100 feet above neighboring buildings with only a single setback of as little as seven feet. If the developers wish to maintain that such a minimal setback will protect people on the street from horrific downdrafts and eddies, they should be required to demonstrate it with a proper wind study.

The developers seem to concede this point in the final proposed paragraph (e), where “The applicant shall demonstrate that the building design elements and locations will reasonably mitigate downdraft effects of the proposed Building(s),” but the vagueness of “reasonably mitigate,” the lack of inclusion of eddies as well as downdrafts, and the lack of any description of the proposed demonstration make it a poor choice of verbiage. Approved language should require a full modeling or wind tunnel study that occurs *before* any Master Plan is approved or any exemptions are offered.

The developers’ proposed Paragraph b (ii) compounds the insufficiency of these standards to protect pedestrians. That paragraph if applied to this project would allow Federated to make “improvements” to the Bayside Trail—put in lights and benches, say—and escape the requirement to put any setback on the north side of these buildings. The paragraph then says that since they would have satisfied the requirements for two sides—Somerset Street and the Trail side—they don’t need to have any other setbacks.

In short, this draft language sleight-of-hand would allow Federated to have only the inadequate setbacks currently required on the longest street frontage side. I urge you to adopt instead revised language that requires setbacks on any side that will have streets or public walkways, a minimum of eight feet wide, with a second setback at or below 100 feet of façade exposed above neighboring buildings (neighboring meaning adjacent or directly across the street) or at or below 100 feet above the ground, whichever is greater.

Their proposed Paragraph b(iii) must be considered risible. The setbacks which protect street life should not be waived for any reason. The suggestion that the designation of “architecturally significant buildings” forms a meaningful or enforceable standard for doing so does not warrant discussion.

Overall, in the case of this project, is it not already clear from the applicant’s repeated use of the words “commercially viable templates” to describe the reasons for the shape and size of these buildings regardless of their poor site fit or impacts on the ground that we are talking about cookie-cutter design “from away?” Indeed, we are effectively talking about new Franklin Towers in relative location (stand-alone towers away from the real midtown) and in massing (essentially vertical boxes), and design (clearly generic, unrelated to the City of Portland or their sites). I hope you will review the project not in the rearview light of a barren Bayside in need of any proposed development but in the light of a near future Bayside that is vibrant and clearly part of the peninsula pattern.

Thank you for your thoughtful consideration of this precedent-setting project.

Thomas E. Blackburn
14 Hanover Street, Portland, Maine 04101
teblkbrn@maine.rr.com

March 12, 2013

Members of the Planning Board
City Hall
384 Congress Street
Portland, Maine

Re: Downton Crossing

Dear Ms. Morrisette, and members of the Planning Board;

I have been a resident of Bayside for over 15 years, and have seen the development potential of this neighborhood languish in relation to the other areas.

I am currently the treasurer of the Bayside Community Development Corporation, as well as the former treasurer of the Bayside Neighborhood Association, and a current board member of Creative Portland, and the Executive Director of Creative Space. However in this case I speak for myself, with the knowledge there are many others with similar views who are not here tonite.

Portland needs new housing to complement it's older housing stock, which for the most part has a low vacancy rate and Bayside needs development.

Creative Portland as part of it's mission and as part of the city's Economic Development Plan has committed to bringing 10,000 skilled workers and entrepreneurs to Portland in 10 years. Where are they going to live? Most of the other areas of the peninsula have been developed while Bayside remains available.

This is the opportunity for Bayside to fulfill a critical need for housing in Portland, and realize it's potential. Whole Foods, Trader Joes, Intermed, Drummond and Woodsum, Winxnet, Avesta, Community Counseling, and Gorham Savings, have all invested in Bayside. And now Federated will too, if the Planning Board moves this project forward.

8.6

I strongly support this project, and the associated master plan and text amendments, which will allow Federated Properties to proceed with this critical project for the following reasons:

- The purchase and sale agreement with the city contemplated the height adjustment necessary for this project to proceed
- The project is consistent with the Bayside Vision and Plan
- The railroad lots are narrow, presenting significant challenges to a developer
- Federated has assembled a national team who combined with excellent local professionals have successfully addressed these challenges working closely with the city's planning staff, especially Rick Knowland.
- A master plan will allow this project to proceed on an overall project approach rather than on a building by building basis. This approach benefits everyone, including future developers, Portland and Bayside.
- The details of the project have been thoroughly vetted as the result of compromise and are reasonable
 - Building height
 - Step backs
 - Setbacks
 - View corridors
 - Bayside trail impacts
- In order to meet flood zone issues the finished floor elevation of the building must be raised by 2 feet, this presents challenges in terms of access, thus necessitating a further set back from the street right of way. That is absolutely essential, especially in light of the recent water main break and flooding that we all know is present in this section of the city
- The railroad lots are narrow and while it does pinch the trail, it is only minimally impacted and based on the overall positive impact of the project this is an acceptable trade off.
- This project with 800 market rate apartments for young urban professionals is a demographic this city and its businesses need as the skilled work force of the future.

This project and those that will follow will change the skyline of Portland, and repopulate Bayside while affording the advantages of newer housing, and additional retail near the existing Whole foods and Trader Joes.

Thank you
Thomas E. Blackburn



BAYSIDE NEIGHBORHOOD ASSOCIATION

P.O. Box 1563, Portland, ME 04104 • 207.523.0602 • bnaportland@gmail.com • www.facebook.com/BaysideNeighborhoodAssociation

March 11, 2013

Dear Chair Morrisette and members of the Planning Board,

Board members of the Bayside Neighborhood Association are excited about the development that The Federated Companies has proposed for our neighborhood. The Board has voted, however, to oppose any changes to the Bayside Height Overlay Zone.

Sincerely,

A handwritten signature in black ink that reads "Stephen Hirshon" followed by the initials "CB". The signature is written in a cursive, flowing style.

Stephen Hirshon
President

21 Chestnut Street
Portland, ME 04101

Portland Planning Board
City Hall
Portland ME 04101

March 8, 2012

Dear Portland Planning Board,

This letter contains the views of residents of the Chestnut Street Lofts (21 Chestnut Street) whose names are signed at the bottom. We do not speak for the board of the association or for any other residents.

We welcome the proposed midtown development to the Bayside neighborhood. The addition of market rate units, mixed uses and pedestrian and bicycle accessibility will be a good fit and also a welcome change from the current uses on the property. We do not oppose the development but we do have comments on the proposed rezoning of the Bayside neighborhood. The proposed midtown development will introduce a new urban design for the Bayside neighborhood that will set the standard for years to come. Therefore, we think the Planning Board should only make zoning changes that are in the best interest of the entire Bayside neighborhood over the long run. We make these comments not only with the midtown development in mind but also other developments that may come under the new zoning in the future.

Site Plan Review Changes:

We do not have any comments on the proposed changes to the site plan review process to enable master plan review.

Height Changes:

1. Changes from District B to District A: We support the rezoning of the Whole Foods site from "B" to "A." We prefer that the current zoning be retained for the other "B" parcel that is proposed to be changed to "A," but if the Planning Board intends to make a change then we offer these comments. We think that the block bounded by Marginal Way, Franklin Avenue, Somerset Street and Chestnut Street is really two blocks divided by the Bayside Trail, a public right of way. We do not oppose (although it is not our preference) changing the block bounded by Marginal Way, Franklin Avenue, Bayside Trail and Chestnut Street to "A." The width of Marginal Way makes this street better suited to taller buildings than other narrower streets within the Bayside neighborhood. We do not think the other block (Bayside Trail, Franklin Ave, Somerset Street and Chestnut Street) should be changed from the current zoning. Across Somerset Street from the site

of the midtown development there is a "B" District. The look and feel of Somerset Street would be more cohesive with similar heights on both sides. Somerset is narrower than Marginal Way and allowing buildings up to 165 feet will contribute to a "canyon" effect along this road. Retaining the "B" District in this area will also help protect Bayside Trail from being "canyoned" by tall buildings on both sides.

2. Percentage of District A that is 165' in height. We would like the Planning Board to consider limiting the percentage of District A that is allowed to go to 165 feet in height. (We note that this was a consideration when the Bayside rezoning was last altered.) Such a limitation would avoid monotony in the development pattern and insure a variety of heights in Bayside that would result in a more interesting skyline. It would also help to limit the buildings in the district from walling off views from Marginal Way to the city skyline and from the downtown back to Back Cove. (Please see photo below as evidence).

PHOTO: View from the roof of the Chestnut Street Lofts to the Proposed Midtown Project



Source: Chris Gignoux, former architecture student, Washington University, and Clyde McCully, Photographer. Graphic software: Autodesk Map 3D and Rhino 3D primarily.

3. Mandate Shadow Studies for all Projects: Federated has submitted shadow studies for all public rights of way under its development. We believe that this is good practice and should be required of all applicants in District A.

Standards Under Which 165' Heights Would be Allowed (Sec. 14-526(d)(10)(ii):

Because the zoning changes are essentially giving a height bonus to property owners whose designation changes from District B to A, we feel that the City should get some additional protections in return. The amendments proposed by planning staff to this section would help to do that. In addition, we feel that in return for the right to go to a taller building (up to 165') there must be better protections for the pedestrian character of the streets and the view corridors. Therefore, we recommend the following for all public rights of way not just one street as currently proposed: should shadow studies show shadows on streets for a large share of the day, require larger setbacks and/or a lower setback than that at the 13th story level. Alternatively, a larger building setback from the street could be required.

Bayside Trail Protection:

The Bayside Trail is a newly completed city-wide asset that should not be compromised by private development. We believe there should be a minimum setback between any buildings in the Bayside neighborhood and the trail and if a shadow study (mentioned above) illustrates long periods of darkness on the trail, then additional building setbacks or setbacks should be required.

Parking:

We support the use of structured vs. surface parking. However, we think that the number of parking spaces should be minimized to the extent possible. Because the Bayside Plan calls for the neighborhood to be a "transit-oriented" development and a walkable neighborhood, we think the city's standards for parking, which currently require a minimum number of parking spaces, should be changed to maximums, so that no more than the city standards can be provided. We live in a nearby new housing development from which we can walk to shop, eat, work and recreate in Portland's compact downtown. We recommend adding this change to the zoning for Bayside.

Maximum Block Length:

To promote a connected and walkable neighborhood we support the midtown development's maximum block length of 900 feet and think this should be required of all developments in the neighborhood and written into the zoning changes. No block should be greater than 900 feet in length between two public rights of way.

Conditional Use Review:

We urge the Planning Board to retain the conditional use review for projects that request exceeding the 125' height in District A. The standards for conditional use review require some flexibility on the part of the Planning Board as to how each project will be reviewed. We do not think that a permitted use review is appropriate for such cases.

Thank you for the opportunity to comment on these zoning changes.

Sincerely,

Aurelia Scott
Beth Humstone
Joanne Ogden
Sue McCulley
Dan Nygaard
Deborah Van Hoewyk
Charlotte Fullam
Sara Yindra
Clyde McCulley
Bonnie McInnis
Nancy Greenleaf
Leslie Anderson
Bob Krug
Sybil R. McCarthy
Edward A. McCarthy
Sally Williams
Nan Sawyer
Larry Hamm
Dory Hamm
Avner Eisenberg
M. Jean McDevitt

8.12

March 8, 2013

Ms. Morrisette
389 Congress Street
Portland Maine. 04101

Dear Ms. Morrisette,

I'm the general manager here at Whole Foods Market and have been here since we opened in 2007. Managing 30,000 customers a week plus over 350 team members through this building and neighborhood has been one of my main concerns over the years.

I'm writing on behalf of Whole Foods Market to show support for the project known as Midtown Phase one. This includes a parking structure on Somerset Street in Portland across the street from Whole Foods Market. I am excited to see the development and provisions for all the cars that come through here. We currently rent two offsite parking lots for our own team members, and I'm sure this is going to disappear when this area gets developed eventually. I may have to explore renting the garage as well. It's also going to be useful for the hundreds of vendors that visit this store, if not for the convenience of some customers depending on exactly where it is on the street.

I plan on being here personally at this store for many more years and have a vested interest in the store development as well as the neighborhood. One of the most popular comments I get from my customers is for additional parking and a safer pedestrian way.

If I can be of any assistance please don't hesitate to call.

Kind Regards,

Marissa Perry
Store Team Leader
Portland Maine
Marissa.perry@wholefoods.com
207 774 7711

Rick Knowland - PB workshop comments re: Bayside zoning amendments

8.13

From: Christian MilNeil <c.neal.milneil@gmail.com>
 To: Rick Knowland <RWK@portlandmaine.gov>, Jeff Levine <jlevine@portlandmaine...
 Date: 2/26/2013 12:56 PM
 Subject: PB workshop comments re: Bayside zoning amendments
 CC: <whoffman@delucahoffman.com>, <m_jeffries@federatedcompanies.com>

Hi Jeff, Rick, and Greg,

As a neighbor in East Bayside and as an advocate for new housing in Portland, I'd like to offer my wholehearted support for Federated Co.'s project and working process, and request that the Planning Board move forward with a public hearing and approval for the proposed zoning amendments.

Like several of you, I do remain concerned that the developers are overbuilding parking. and that this will be an unneeded financial burden to an otherwise good project. As you are aware, the most recent large market-rate residential projects in our city — the Bay House, under construction, and West End Place, pending final PB approval — both only provide parking at a ratio of 0.8 spaces per unit, even with intense retail activity in their surrounding neighborhoods.

Contrast that with the last project to propose parking at the full 1-to-1 ratio, the "Newbury Street Lofts", which proved to be financially unworkable. Buyers and renters are generally unwilling to pay the rents necessary to finance this level of parking in Portland, a city where substantial market demand is coming from households looking to unload their cars. So I'd hate to see a similar fate befall this project due to unreasonable parking expenses.

That said, my concerns are somewhat allayed by the possibility of reducing the parking planned for Phase II. It still strikes me as a bad financial decision to build dubious infrastructure up front, but ultimately it's up to Federated to assess those risks and deal with their consequences.

My only other concern has been the "pinch point" in the Bayside Trail. I thank the applicants for their flexibility on this point and in reducing the width of the garage. But I implore planners not to let these concerns impede the zoning amendments and the execution of the purchase and sale. I'd note that, if the developers are willing to add right of way to Somerset Street, then the city's gain in new public space on the street may outweigh the loss of some trail corridor width.

I'd also encourage the planners and developers to negotiate with the abutting parking lot, where a reasonable deal might be struck for a similar conversion to compact spaces, netting another 2' of trail width in the crucial section. The City might even consider sweetening the pot for such a deal with matching funds from the P&S proceeds. As you know, these are issues that can be hashed through in the site plan review.

A final question for the planners — I'm curious to know about the ideas in the works for rebuilding Somerset Street and raising its elevation. Are there any public planning documents related to this project? What would the new cross-section look like? Would there be opportunities for stacking the new street above a new stormwater storage facility that could serve new development in the neighborhood?

Thanks for all your work on this project. Please feel free to share these thoughts with the Planning Board if it's not too late to get them included in today's workshop.

Environmental impacts militate for denial of Federated Building height exemptions

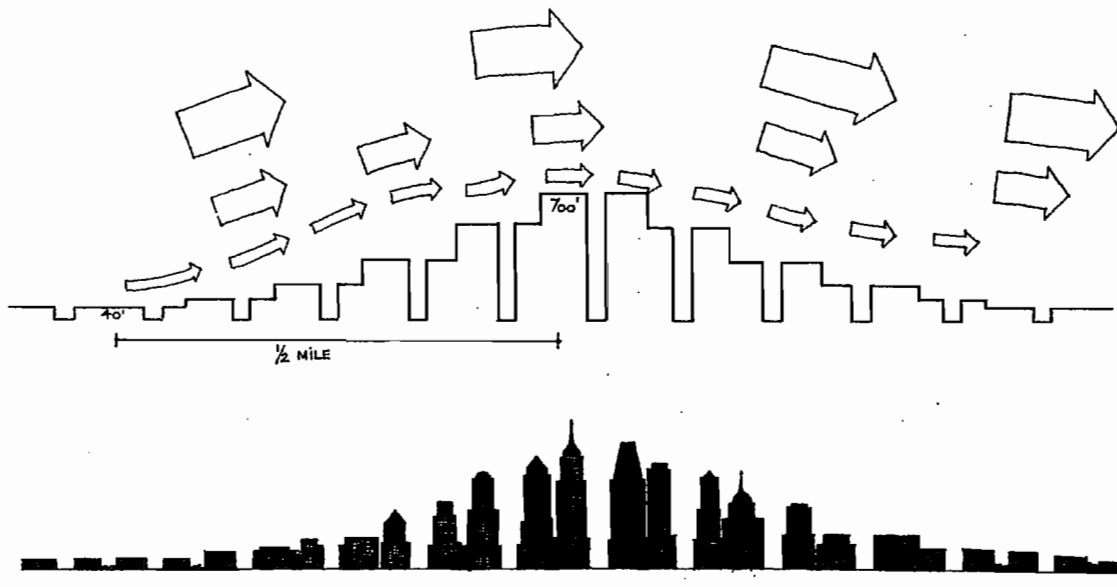
— Peter Monro, 32 May St., 04102

Among other things, tall buildings should fit with the overall urban fabric and should encourage life on the street. Because of their proposed height, location and massing, Federated's proposed buildings will distort Portland's urban fabric and will discourage street life, so exemptions to allow greater height should be denied.

Now tall buildings accentuate the peninsula's ridge as is natural and intentional, by lining up along Congress Street from the cathedral past the Monument Square buildings up to the Eastland Hotel. Zoning for tall development still centers there. Height on the ridge is part of a larger pattern that tends to create the best street conditions amidst tall buildings.

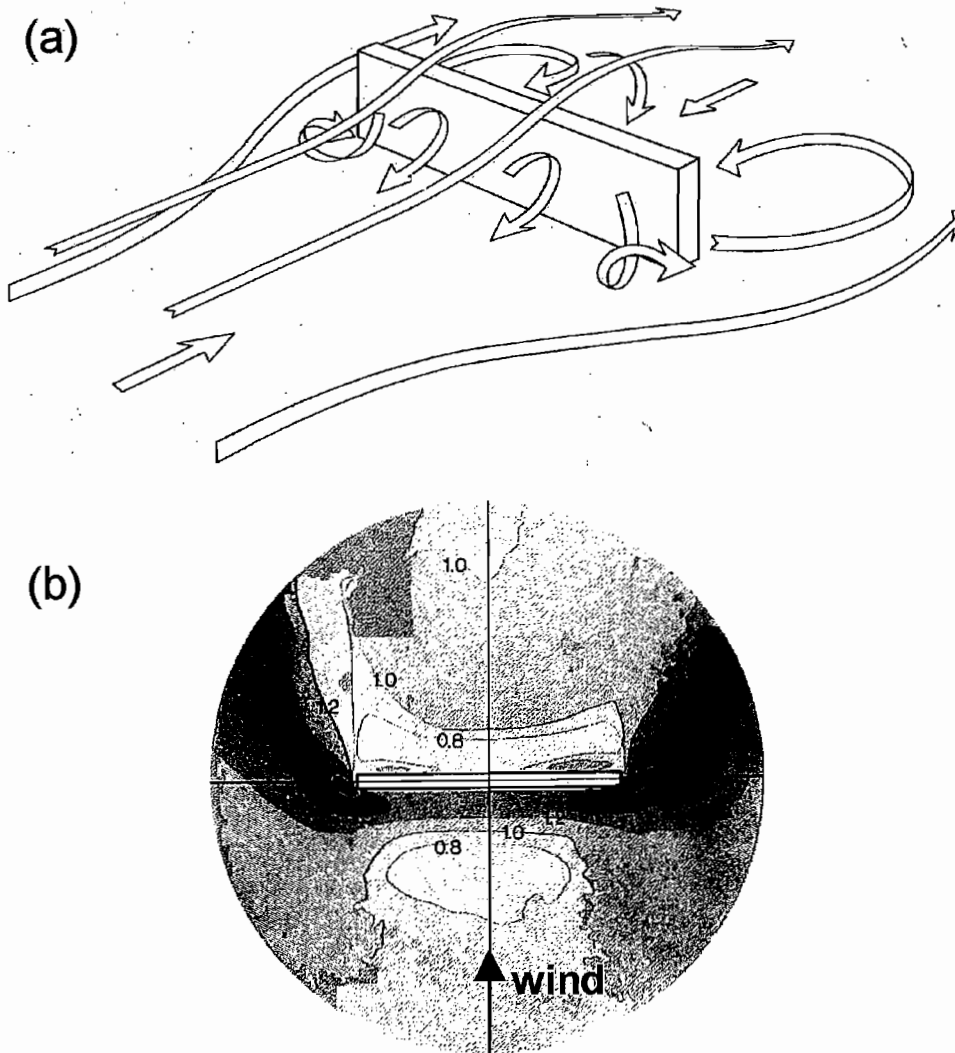
The larger pattern involves lower buildings downslope either side of the Congress Street ridge. That rise of buildings draped over rising topography achieves several purposes. It announces the uniqueness of the peninsular place that is central Portland. It also signals the spiritual and commercial heart of downtown. It permits the greatest number of users of downtown buildings to see out to either Back Cove or the harbor. And it causes winds from every direction, and thus in every season, to tend to ride up and over the peninsula, saving pedestrians on the streets below from its full impact. Only this careful organization of tall buildings creates this "shelter effect." This last reason for clustering tall buildings—to create the best possible street environment—is critical for a vibrant future Bayside and will be my focus.

Wind



The "shelter effect" depicted in a study of building and wind effects in San Francisco.

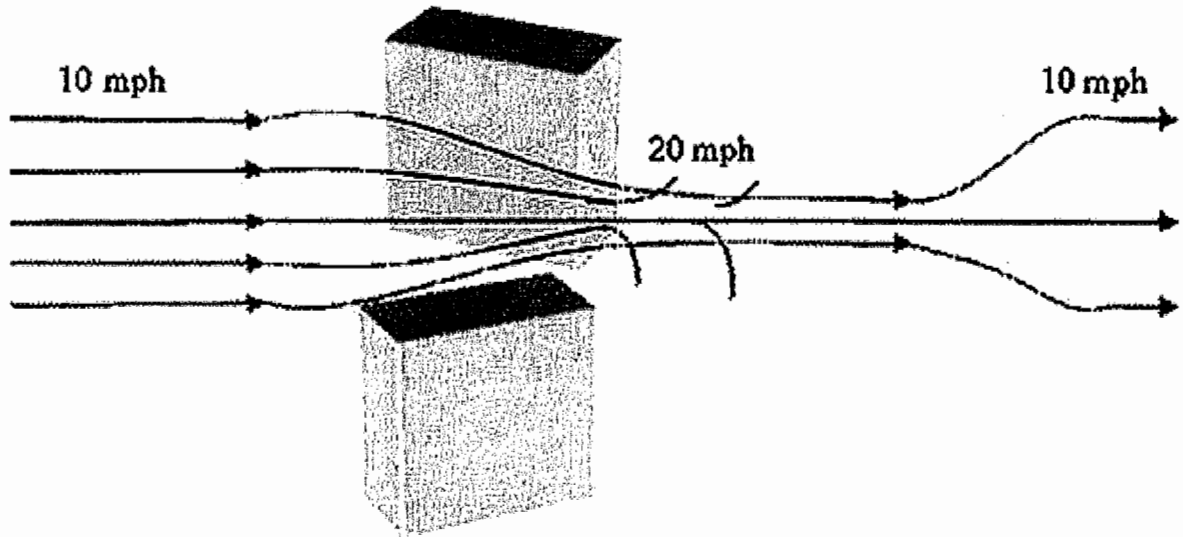
The shelter effect disappears where there are wide gaps among buildings and is reversed where an isolated tall building rises like a flat-iron hand signaling "Stop." On the windward side of such tall isolated buildings winds are magnified, increased by downdrafts a third to a half faster than the originating wind. At the windward corners of isolated towers, winds can whip past at up to twice the speed of the originating wind. These effects are exacerbated by the building's height because winds "captured" at the top of the building is almost always going faster than winds near the base, which are slowed by friction with the ground.



Tall isolated buildings (a) cause upper winds to speed down the windward wall, whip around the corners, and eddy on the leeward side. Increased wind speeds (b) are found at the base of the windward wall and the windward corners. [Blocken and Carmaliet, 2004]

The towers Federated is proposing on these two Bayside parcels are isolated. They would rise from the ground with almost no intermediate height buildings between them and winds coming from the east, west, or north. Winds from those three quadrants are dominant fall through spring and will produce downdrafts and whipping effects that will make walking past the towers in almost any season unpleasant.

Winds can also funnel between two tall buildings angled toward one another, roughly doubling the initial wind speed. Since two of Federated's proposed towers angle toward one another across the Bayside Trail, walkers there can be expected to experience serious winds as they reach Chestnut Street.

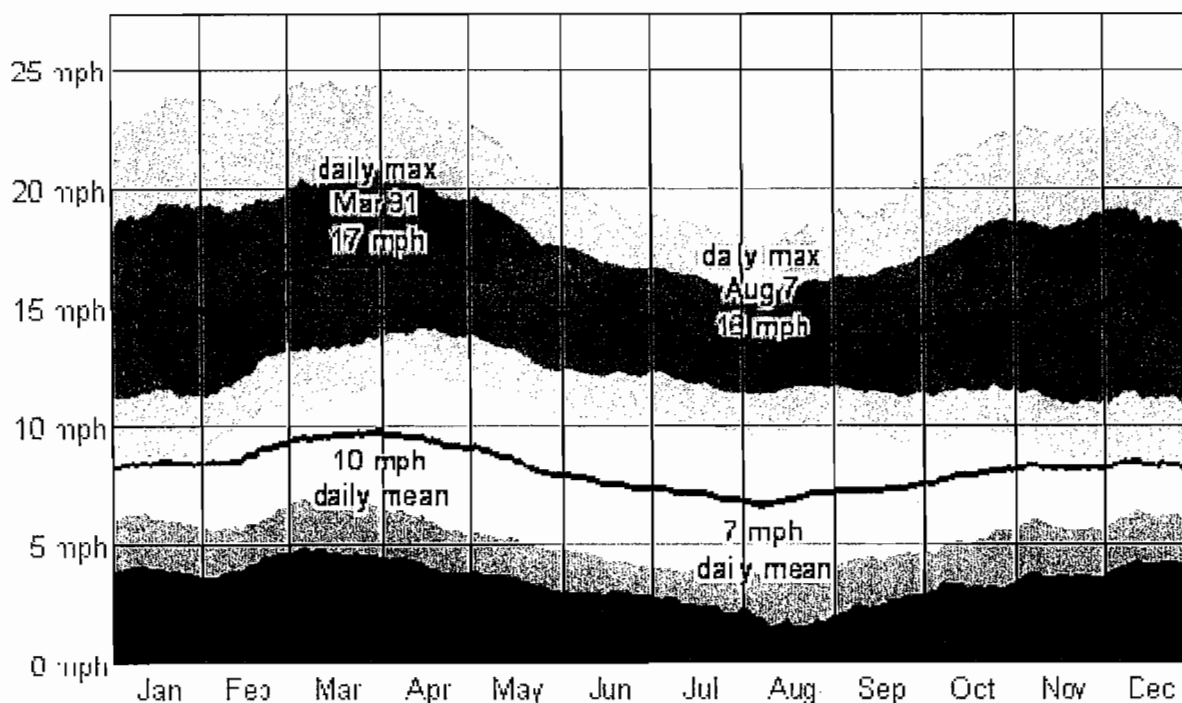


To experience magnified winds near an existing building on the scales being proposed, walk behind Franklin Towers almost any day of the year. Better yet stand there for a few minutes. This will reproduce the effect of sitting in the patio Federated is proposing behind its first-phase tower. I have stood behind Franklin Towers, on a breezy day in late April carrying out a survey, and I have seldom been so pummeled by wind or so chilled, even in midwinter.

On the south side of the proposed towers, wind eddies will occur, and will be at highest speeds from east/north/west winds whipping around the buildings' corners. In winter these winds will combine with snow and ice, the shade from these buildings or from the Noyes building across the street, and the narrow upper and lower sidewalks with connecting steps being proposed along Somerset Street to create unpleasant if not treacherous walking.



On the Somerset Street side, shade, windchill, steps, and narrow upper and lower sidewalks would challenge walkers much as they are challenged by the same arrangement at Union Station Plaza, which at least has the advantage of a protective overhang.



The average daily winds in Portland: Fifty percent of all winds occur within the dark bands, 80% within the light bands. Top wind gusts are not depicted. (Weatherspark.com)

Overall, the effects of these magnified winds would be consequential. In late March with the average maximum daily wind in Portland at 17 mph, people walking at the base of the windward side of one of these towers would be hit by 25 mph winds, and passing by the corners would be subjected to 35 mph flows. They could expect to encounter similar winds sometime each day throughout March and April. These kinds of winds can make being outdoors unpleasant and will make walking challenging.

Storms and wind gusts accentuate the issue. The record gust in Portland was 78 mph recorded three years ago, and 74 mph was recorded last month (Jan. 31, 2013). Winds at all times of the year are becoming more intense, both for average and peak, and the intensification is expected to grow as an outgrowth of climate change.

Allowing isolated towers that magnify these winds to 100 mph and beyond means accepting pedestrian injuries as part of the buildings' approval.

Building shape can be used to mitigate these wind impacts. Rounding the mass, creating holes through the building, and articulating facades can lower expected wind speeds. However, Federated is offering no such wind-modifiers so the heightened wind impacts will be unadulterated.

Wind effects

Wind speed m/sec (mph)	Effects
2 (4.5)	wind felt on face
4 (9)	newspaper reading difficult; dust and paper raised; hair disarranged
6 (13)	begins to affect control of walking
8 (18)	clothing flaps; progress into wind slowed
10 (22)	difficult to use umbrella
12 (27)	difficult to walk steadily; unpleasant noise on ears
14 (31)	almost halted into wind; tottering downwind
16 (36)	difficulty with balance
18 (40)	grabbing at supports
20 (45)	people blown over
22 (50)	cannot stand

Two researchers summarizing literature about pedestrian wind environment around buildings concluded: “Uncomfortable wind conditions have proven detrimental to the success of new buildings. A.F.E. Wise, for one, reports about shops that are left untenanted because of the windy environment that discouraged shoppers. Lawson and Penwarden report dangerous wind conditions to be responsible for the death of two elderly ladies in 1972 after being blown over by sudden wind gusts near a high-rise building. Recognizing the importance of the outdoor wind climate, many urban authorities nowadays require studies of the pedestrian wind environment for large construction projects.” (*Bert Blocken and Jan Carmeliet. 2004. http://sts.bwk.tue.nl/UrbanPhysics/pdf/JTEBS_WINDreview_preprint.pdf*)

Conclusion

Since the wind impacts from isolated towers on nearby pedestrians are relatively continuous, typically negative, and often significant, and since they increase with the height of the building, the height exemptions Federated is seeking for the towers currently proposed should be denied. The responses to denial—whether moving the easternmost tower toward Chestnut Street, lowering the towers, or reconsidering the proposal overall—will be an improvement over the current proposal for life on the trails and streets of Bayside.

####

Portland Society of Architects

8.19

FOR DISTRIBUTION TO MEMBERS OF THE PLANNING BOARD (February 26, 2013 Workshop)

Master Plan and Zoning Changes Midtown Development Proposal

Master Plan

The Portland Society of Architects submitted written testimony for last workshop favoring the inclusion of a Master Plan standard in the city's site plan ordinance, with certain provisions. One recommendation is that its name be changed (we'll call it 'Area Development Plan'), to avoid confusion with existing Master Plans. Another is that a digital model of any project and its context be included -- a model of sufficient geographic extent, quality, and detail to be able to assess the project's impacts.

This project should be eligible for Area Development Plan (ADP) consideration because of its scale, but we do not believe that it should be granted ADP/MP approval in its current configuration for several reasons, including that neither the developer nor the city has yet produced a 3-D digital model allowing the project to be reasonably appraised. As a single example of this deficiency, the developer has alleged that the development as proposed will maintain visual corridors down existing streets when in fact three of six corridors will apparently be blocked by building facades six stories or higher. The considerable impacts of these blockages, the fact that this thwarts the intention of the Bayside Vision, has not been made apparent by the developer's submissions thus far.

Another reason for not granting ADP/MP status is that this development proposal is not based on a current city master plan, another factor we mentioned in last week's memo. The Bayside Vision was completed in 1999, uninformed by considerations of climate change, evolving transportation choices, shifting views of pedestrian-friendly urban form, etc. For example, Chestnut Street was to be a city gateway because of a railroad station at its base that was never built. The Bayside Vision needs to be revisited before text changes or approval of this are considered.

Height Text Changes

The Portland Society of Architects is opposed to the granting of a change to the height standard for Zone B-7 for this project for two substantial reasons.

Here again, inadequate visual representation has been offered to adequately assess the impact of the building of this scale on the surrounding neighborhood.

Second, the Bayside Vision premised the greater heights in this neighborhood on the idea that Chestnut Street would serve as a gateway spine within Bayside and leading to downtown. This was a weak argument to begin with, considering that the primary street between Franklin Street and Forest Avenue connecting the downtown to the rest of the city is Preble Street, not Chestnut Street.

(Incidentally, that gateway is already adequately represented by the Intermed and AAA towers facing each other across Preble Street.) As a result, extending these height allowances sideways along Somerset Street violates even the weak original premise in the Bayside Vision.

Zoning should be changed when there is a clearly demonstrated need and when the changes or exemptions result in demonstrable benefits to the community in exchange. We do not believe this proposal meets such reasonable tests. In fact, in this case the city-initiated text changes may actually create a harsher environment on the street.

Portland Society of Architects

8.20

FOR DISTRIBUTION TO MEMBERS OF THE PLANNING BOARD (February 12, 2013 Workshop)

The Portland Society of Architects has reviewed the concepts contained within the proposed "Text Amendments to the Site Plan Ordinance (Article V) for Master Plans and an Overview of Bayside Vision Plan" introduced by the Planning Department.

The proposal provides flexibility within an extended time-frame that may ease some of the uncertainty faced by developers contemplating larger scale projects. In that regard, PSA supports the impetus behind the text changes.

PSA suggests the following modifications/additions to the concepts.

1. Do not refer to this device as a 'Master Plan'. The use of this term will produce continuing confusion with other community-based efforts to devise plans for neighborhoods and districts; it will haunt the public process. In addition, what is asked of the developer in this proposal is only the barest skeleton of what the term 'master plan' implies. For the sake of our comments, we offer the term 'area development plan', but there are many other choices.
2. Area Development Plans should be based on 'current' city master plans. By extending the approval to 6 or 8 years, a proposed development could be locked into ideas that no longer reflect the best thinking in urban planning, and then turn them into brick and mortar. For example, work on the 'The Vision for Bayside' started in 1998. An Area Development Plan based on that vision might not be completely built-out until 23 years after the Bayside Task Force started its work. Had that Vision been informed by climate change, it is likely that the particulars of the plan would be different. The same can be said of other vital considerations like urban form, evolving transportation choices, the realities of retail occupancy, etc. We are suggesting that city-initiated master plans should be re-visited, not that they need to be recreated from scratch.
3. The Planning Board must have adequate tools with which to identify and evaluate the impact of the Area Development Plan. Height, massing, skyline, view corridors must be presented in a way that demonstrates a plan's effect on the ground. Currently, the best way to do this is with digital 3-dimensional renderings that are easily within the range of any developer. (The City needs to develop its own digital or physical representation of the city; all the information necessary for such a production is within the existing GIS system. A city-authorized model would guarantee that any proposal could be evaluated with confidence in the underlying dimensional data.) In the meantime, Area Development Plans need to include the development area plus its surroundings. In the case of Bayside and the Midtown proposal, the graphics offered thus far fall short of being adequate to evaluate the proposal.
4. Area Development Plans must indicate the impact on city services as well as infrastructure. For example, the Portland School Department would need to plan for the impact of an additional 650-700 dwelling units on the nearby schools.

The Portland Society of Architects looks forward to reviewing the precise language of the text amendment as it evolves, but for the moment supports the concept of the amendment with the provisos described above.

The Advocacy Committee of the Portland Society of Architects

1.29.2013

2nd Planning Board Workshop, Federated proposal, Phase I

As a resident of Portland and a landscape architect, I share the vision to extend Portland's dense downtown fabric to Bayside. My design practice on Congress Street focuses on issues that make for liveable cities, as expressed in my blog, DesignForWalking.com. This project is so large and so linked to the City of Portland and its development guidelines that the way it is designed and built will affect most future outcomes in Bayside and beyond. Today's hearing is critical for that future because it addresses key precedents for developing this major extension of the city's downtown.

Unfortunately, there are two major problems with the way this project has been thought about so far. First, where a vibrant city life—such as found along Congress Street and in the Old Port—depends on foot traffic, this project is driven by cars and directed to motorists. And second, where city streets should be extended and connected to make vibrant city life possible, here it is proposed that they be blocked, dead-ended, deadening street life precisely where we want to activate it.

These two issues are linked, but I'll consider each separately.

Point One: Parking drives this project. Proof? More than half the building space being proposed in Phase One is going into parking garages. The 5½ acres of parking in this phase pushes these buildings upward, beyond any reasonable limit, which is one reason for this workshop.

Parking is generally thought of as a positive thing, allowing people to come and go for working and shopping. But that is an increasingly dated and misguided model of development, urban or suburban. This proposal is coming at just the historic moment when car use in our area and across the US has for the first time in a century begun to decline. It's the wave of the future because it is being led by young people, the 25- to 34-year-old cohort. (Portland Press Herald July 29, 2012. *Portland at forefront of decline in car ownership.*)

Sheltered parking not only drives these buildings upward, it also drives up their cost. The taller buildings in turn deaden streets, by creating more shadow, more powerful downdrafts and more wind funneling. It also creates façade length that is not designed for pedestrians. Because the cost of parking will largely be hidden from garage users, it will encourage car use, as multiple studies have shown (See, for example, Julie Campoli's *Made for Walking: Density and Neighborhood Form*, 2012.)

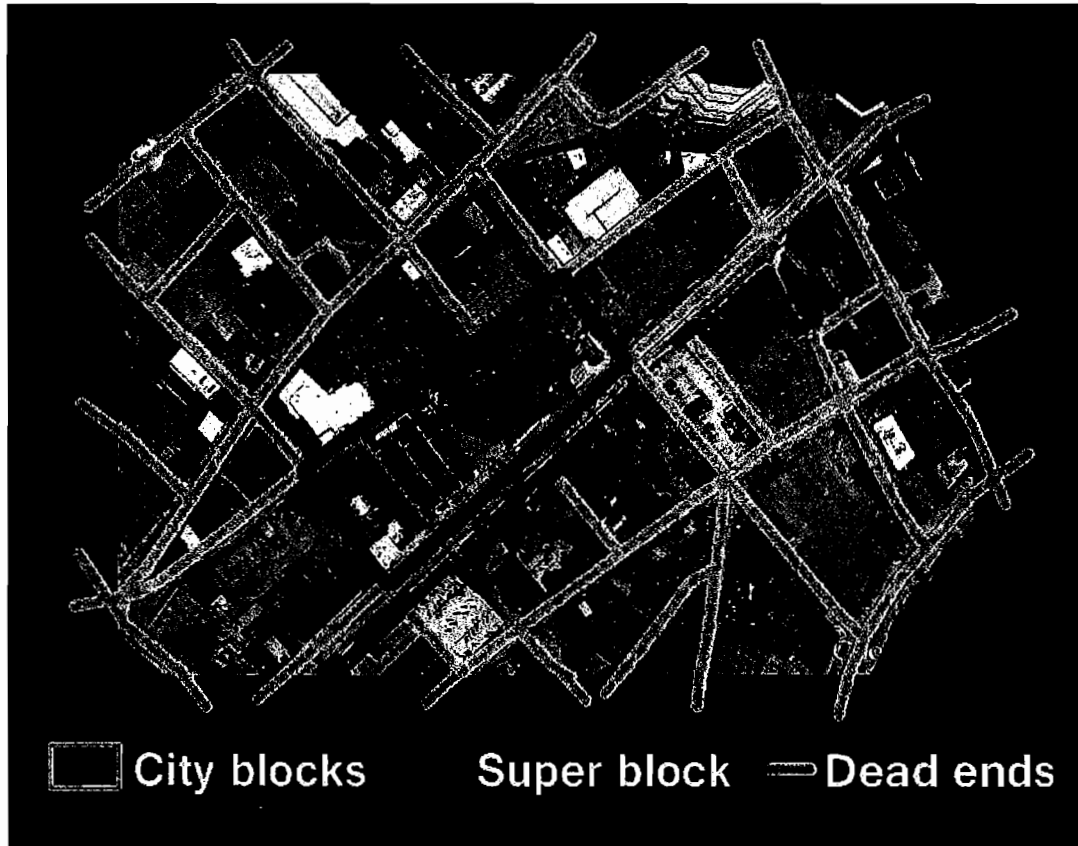
The costs will be passed onto the buyers of the apartments, skewing the occupant profile upward, as the proposed rents of more than \$1500 a month indicate. It will also be paid for, in this case, by all Portland residents. The city's \$9 million donation is specifically for parking.

Point Two: To eliminate these costs and improve street life, the streets in this area should be extended and connected to one another. The only way to create the diversity of street frontage, density of destinations and access to them, minimum distance to transit, and well designed street fronts that promote life on the street is by starting with lots of street frontage and lots of street connections.

So far, this project does just the opposite: It proposes to create two of the largest superblocks in the city. (Map below.) Of the six streets that start downhill from Oxford Street down toward the project site, only two—Preble Street and the recently extended Chestnut Street—actually reach Marginal Way. The buildings as proposed will permanently block these through routes. The proposed extension of Pearl Street is not a public street at all, but a service entrance for Tower One. (Applicant submission, p. 2-B-30) The one courtyard amenity proposed doesn't even face the street. (Applicant submission, p. 2-B-3) This is anti-street and anti-street life design by any standard.



The city has tried this before, and has been so sorry about the result that now, 30 years later we are still trying to fix it. I'm referring to the Civic Center superblock on the other side of the peninsula's spine. Its creation and related development stubbed four streets and created a dead zone just two blocks from Congress Street. (Map below)



Meanwhile, the recent Intermed and Bayside Village complex along Marginal Way is a pretty good representation—or should I say bad representation? — for what's being proposed here. Like this proposal, Intermed/Bayside Village is a combination of office, retail, residential and parking garage with a tower at one end.

A simple look at it suggests the problems. A solid wall to the street. No public cross streets. One true view corridor in the middle. Lengths of parking garages and car access points as street façade. Retail reachable primarily by car.



The Intermed complex on Marginal Way and the adjacent Bayside Village building.
FEDERATED / MONRO

So how much street life does this residential/commercial complex generate? Almost none. Why? Because unless you are a resident of Bayside Village and even then unless you are mailing a box or filling a prescription, you use a car to come and go.

Of course, you drive. Can you imagine even walking from Intermed or Trader Joes to Whole Foods? I have cycled there, but I'll bet no one else in this room has walked or biked anywhere along Marginal Way or any other street in the new Bayside. I don't blame you. It is a sea of parking lots, long blocks that encourage motorists to drive fast and requires walkers to walk long distances to any transit or retail.

This project is more of the same. Tall building facades are effectively 550 feet long and more than 600 feet long, capturing winds and blocking the sun. Sunshine will only reach the street level when the sun is precisely aligned with Somerset Street. A new Stonehenge in Portland. Three of six existing view corridors will be blocked by six-story garage or taller towers under Federated's currently proposed massing. For lack of cross streets, to walk from the corner of Somerset and Chestnut Street along the proposed buildings and around Trader Joes to its entrance is almost a quarter of a mile.

In any case, instead of view corridors, we need real public streets extending downhill at regular intervals from Somerset Street to Marginal Way. Many of the obvious routes are already on undeveloped land, public land, or along travelways through parking lots. Making these connections to extend the city should be a no-brainer. (Map below.)



Overall, then, to extend vibrant city life to this area, the City should rethink where its investment of \$9 million can do real good. I would suggest that it go to extending Bayside's streets. (And raising them to cope with the sea level rise that is already causing salt water to pond on Franklin Arterial beside Whole Foods.) These street extensions will provide cars, emergency vehicles, and pedestrians more direct access to more streetside places in the now and future Bayside.

And, importantly, they will provide more parking. Extending the uphill street pattern will provide roughly the 200 parking spaces the city has been asking the developer to build for the city—at a much lower cost. The City can still extend a subsidy to the developers, granting them permission NOT to build 200 additional parking spots. That, by the way, is what an increasing number of progressive cities like our namesake Portland, Oregon, are doing these days—setting parking maximums, instead of parking minimums.

Only with such a street grid and reduced sheltered parking will we actually extend to this area the downtown Portland fabric and street life that we have come to cherish.

At the least, at this hearing, the height exemptions sought should be denied, the setback requirements tabled, and any language that seeks to make permanent waivers or exemptions granted during this Master Planning process should also be denied because the proposals thus far are the wrong way forward.

Thank you for your consideration of these critical issues.

—Peter Monroe, 32 May St., Portland, ME 04102
Landscape Architect, Principal, Monroe Associates, 565 Congress St.

January 25, 2013

Dear Chair Morrisette and Members of the Planning Board;

We have a few initial questions about the revised conceptual plans for the "Midtown" development proposed between Somerset Street and the Bayside Trail. We are enthusiastically supportive of this project, and its potential to enliven the Bayside neighborhood by adding residential housing units and retail opportunities. The construction of mixed-use housing adjacent to the trail is exactly the type of development we have hoped for, and we are confident that the presence of more people and more activity in this area will benefit the health of the trail and the entire City.

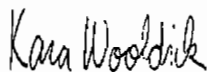
We were invited by the development team to a meeting several months ago at Avesta Housing's office, and we look forward to continuing to work with them to ensure that the trail and the proposed development compliment each other to the greatest extent possible. As some of the details have begun to emerge from the planning process we do have some concerns that we wanted to voice at this time.

It appears that the elevation of Somerset Street is prompting a re-location of the parking garage footprint further into the trail corridor. As you know, this part of the trail is already somewhat constrained by the property boundary to the north. We offer the following comments and questions, for your consideration.

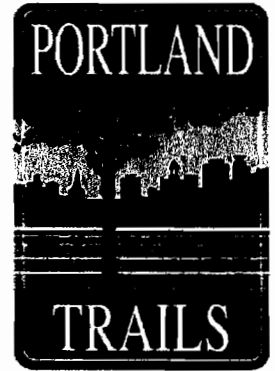
- In the area of the Chestnut Street parking garage, it seems that the trail experience may be compromised because of the tight corridor. With a chain-link fence on one side and a 6 or 7-story wall on the other, will it feel like a tunnel? Could the garage be cantilevered (and the first floor recessed)?
- If Somerset Street can be raised, will the garage not encroach into the trail corridor?
- In the same area, will there be room for amenities as depicted (lights, benches, trees...)?
- What will the Chestnut Street experience be - an active building? a blank wall? a "living" wall?
- If the retail and garage are to be accessed from the trail, as we would hope in order to maintain a vibrant public space, what will the interface look like? With only 18-20 ft, it looks like the opening of a door would impact foot /cycle traffic on the trail.
- Chestnut Street is currently a challenging interface between cars and trail users because the opaque fence makes it difficult to see/be seen by cars on Chestnut Street. How will sight lines be affected by this project?
- Is there any room for snow storage on the edge of the trail, and how will surface water be directed?
- Will the trail, or sections of the trail, remain open during construction?

We look forward to continuing the conversation with the development team and the City, and trust that the eventual outcome will be a vibrant, healthy community asset.

Sincerely,



Kara Wooldrik
Executive Director, Portland Trails



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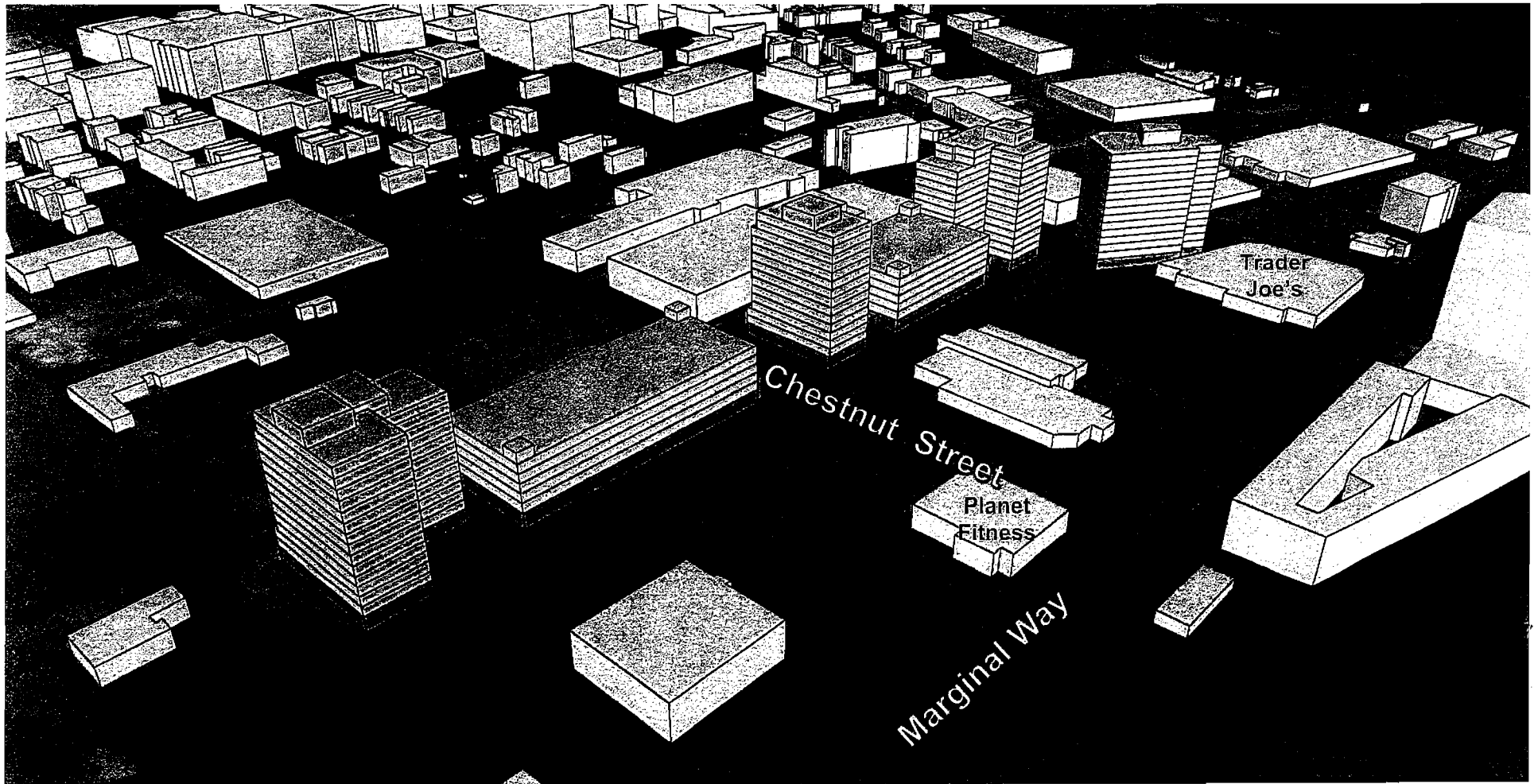
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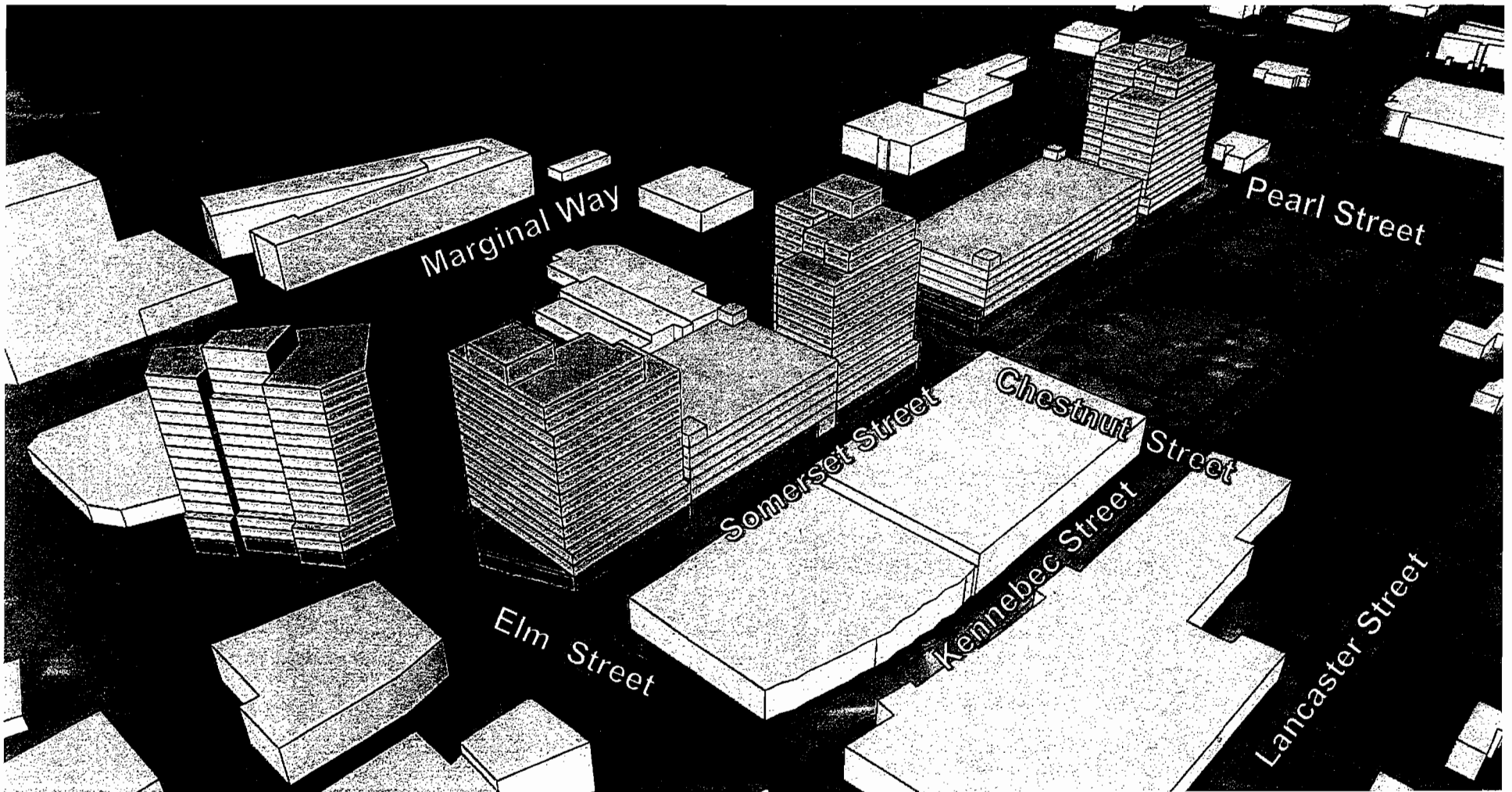
Kara Wooldrik

Current Plan – Aerial View from Northeast

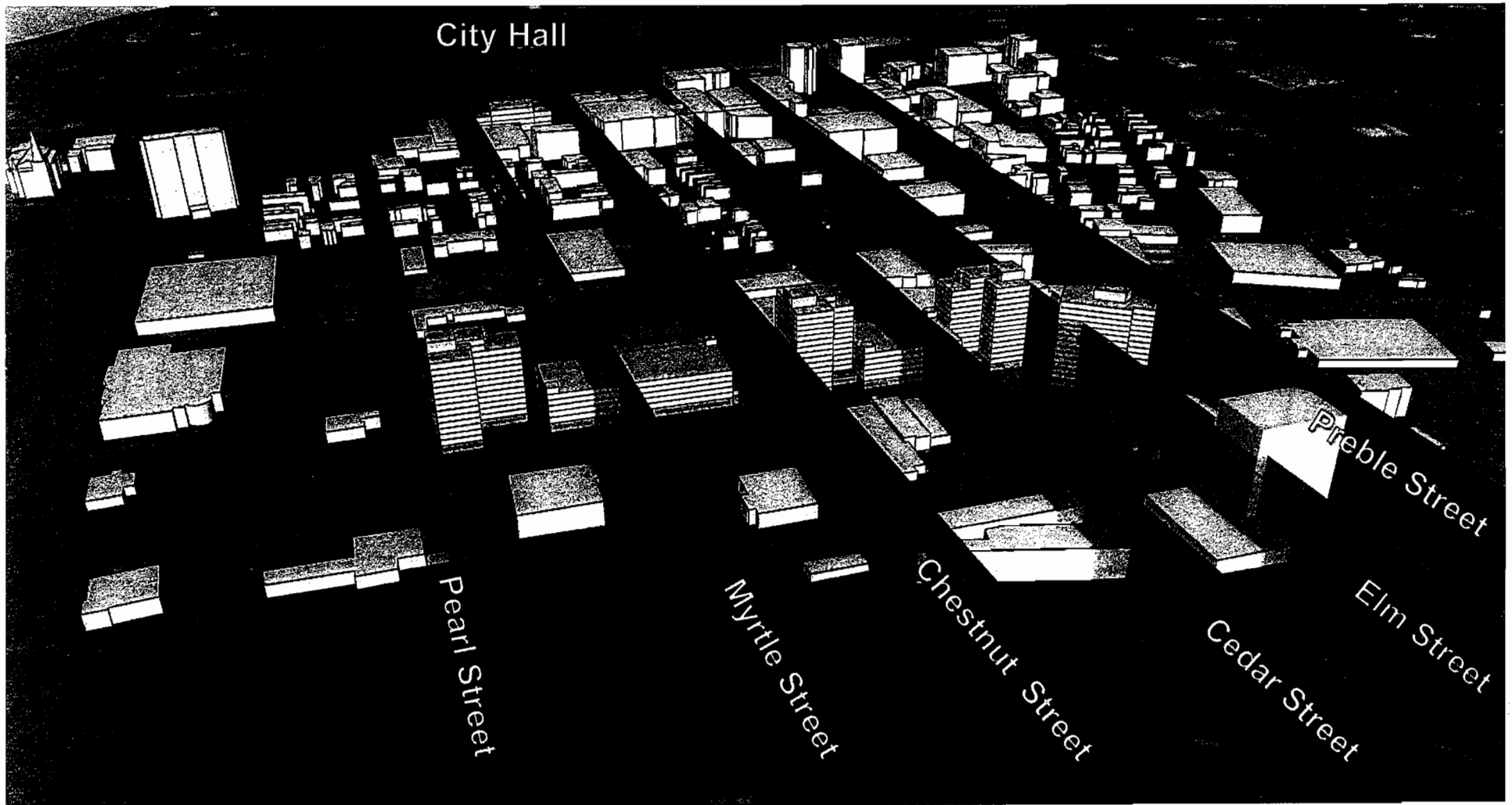


Att. A

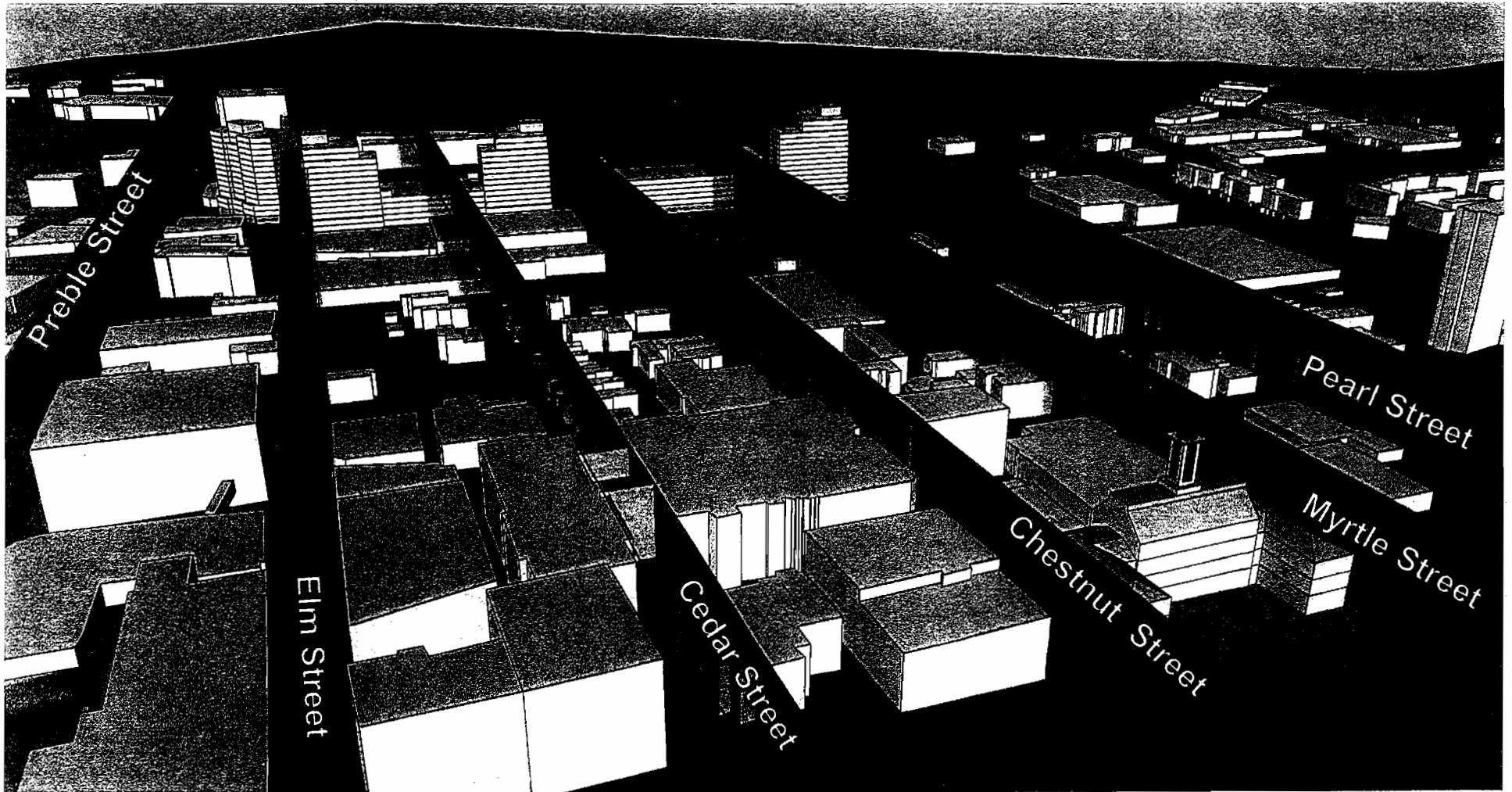
Current Plan – Aerial View from Southwest



Current Plan – Aerial View Towards Downtown with View Corridors



Current Plan – Aerial View Towards Back Cove with View Corridors



View from Back Cove



Existing View



Development View

View 2 from Back Cove



Existing View



Development View

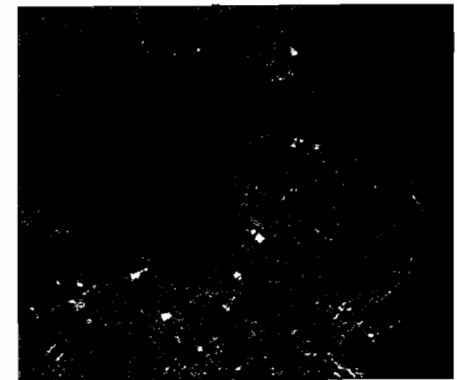
View from Interstate 295



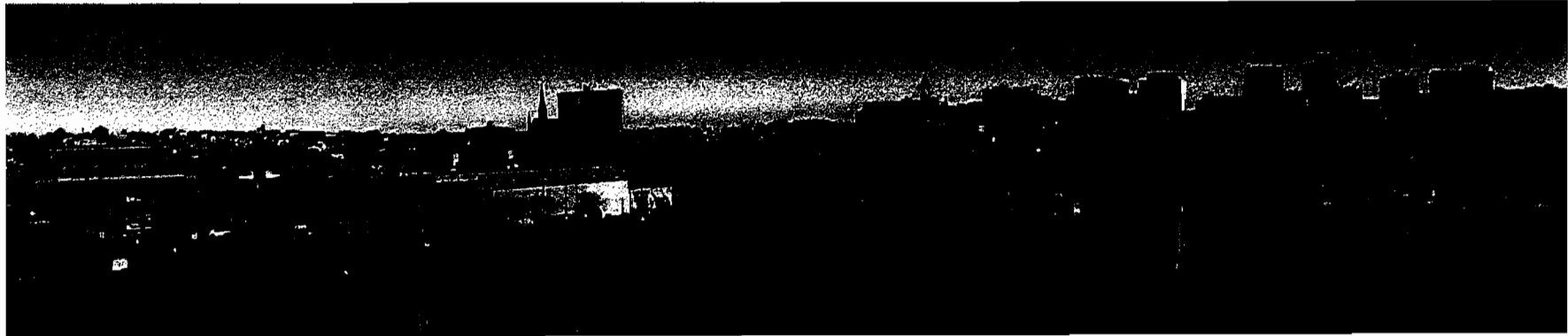
Existing View



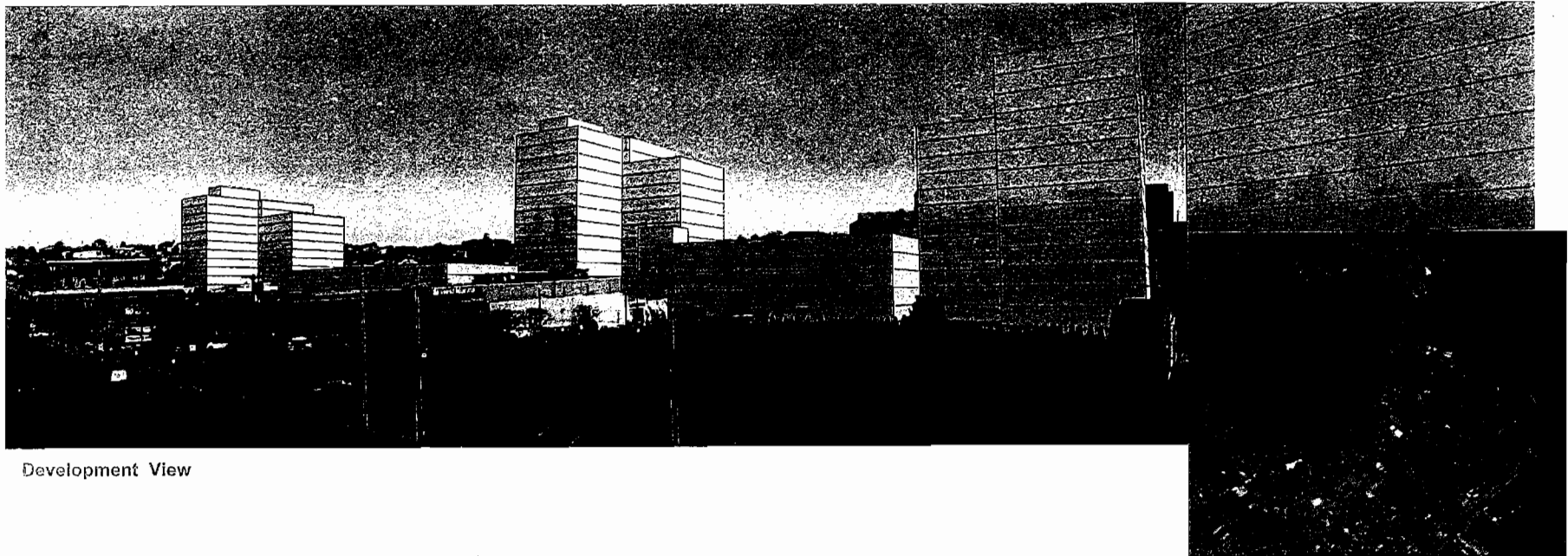
Development View



View from Marginal Way

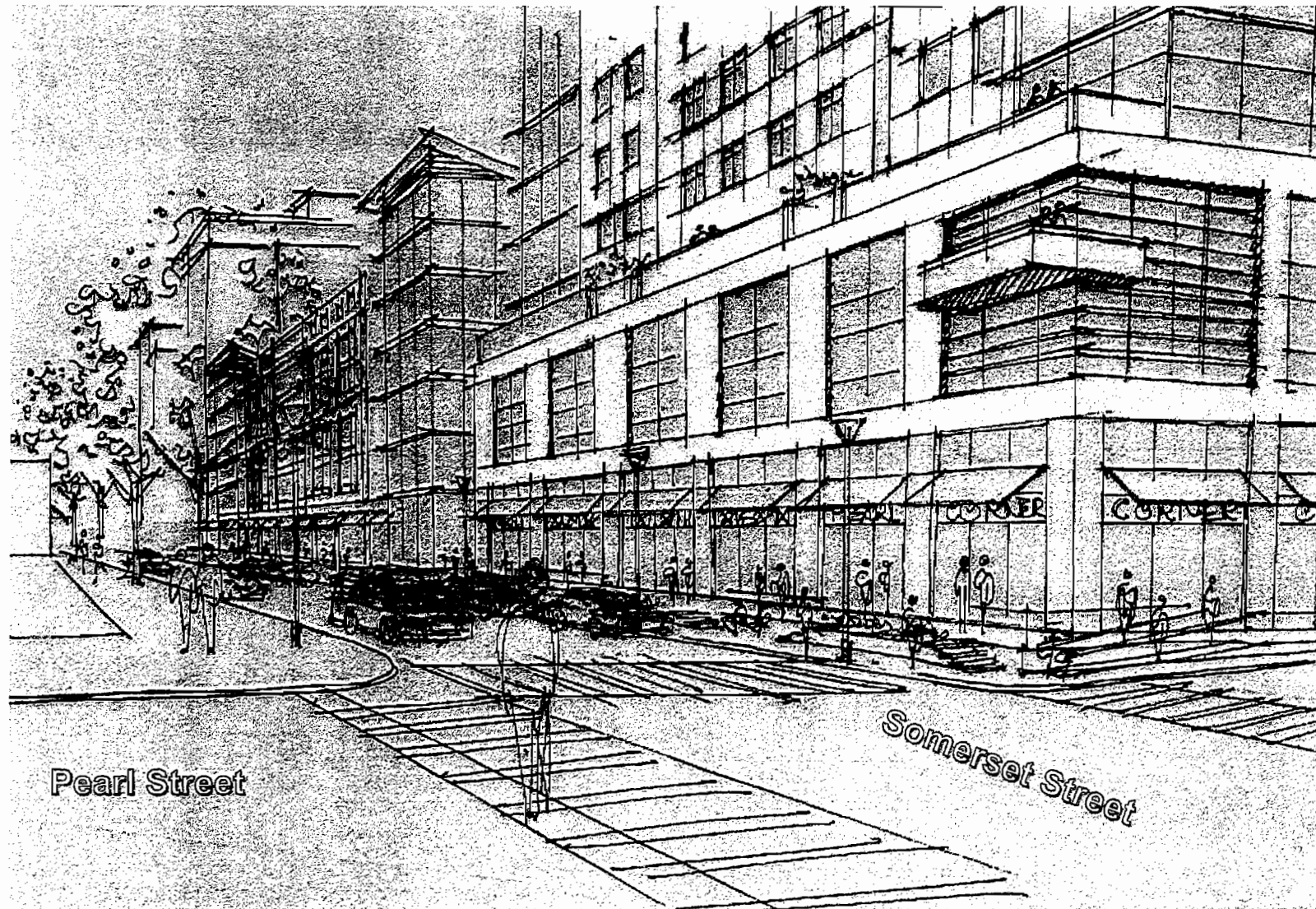


Existing View

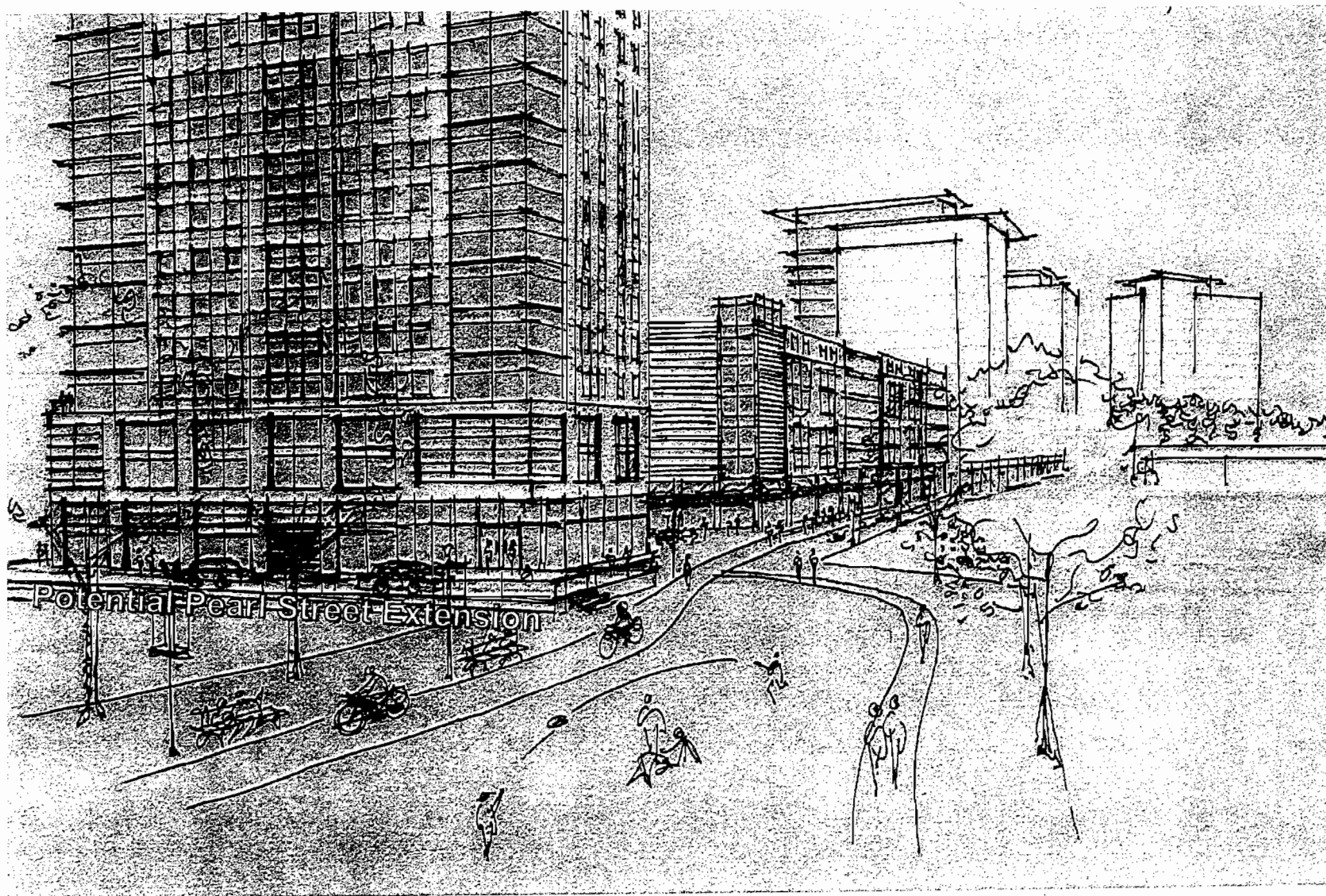


Development View

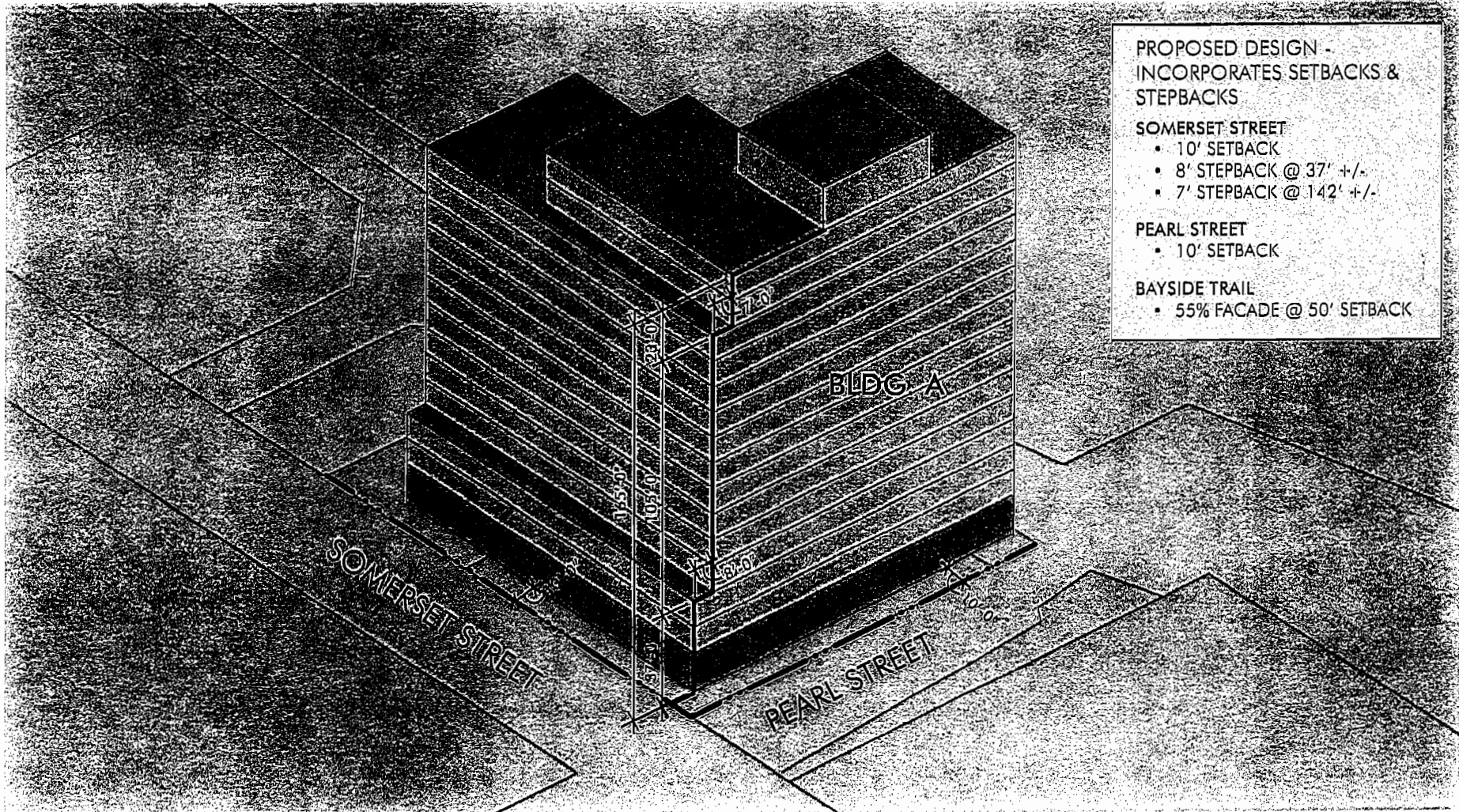
Somerset Retail View



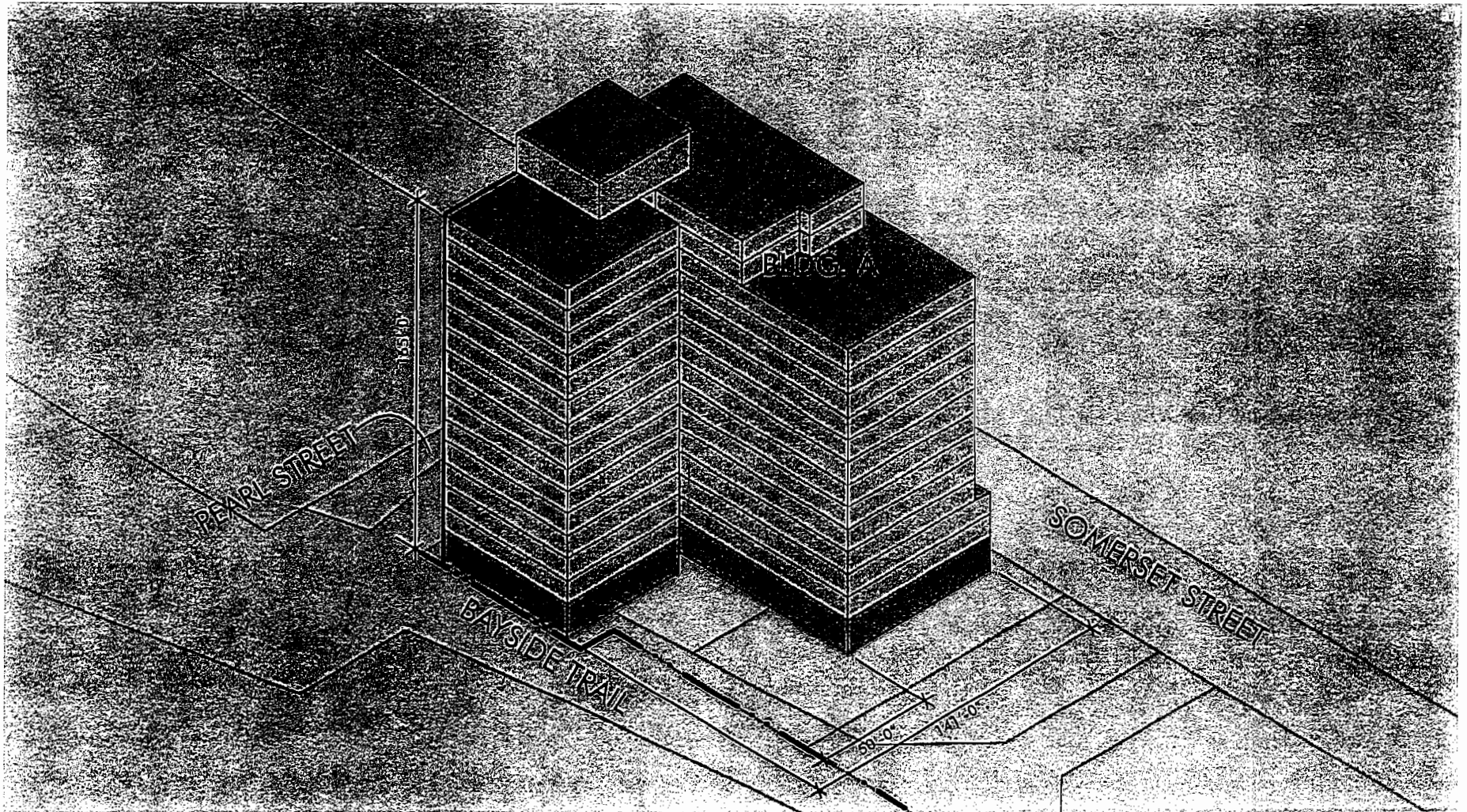
Trail View



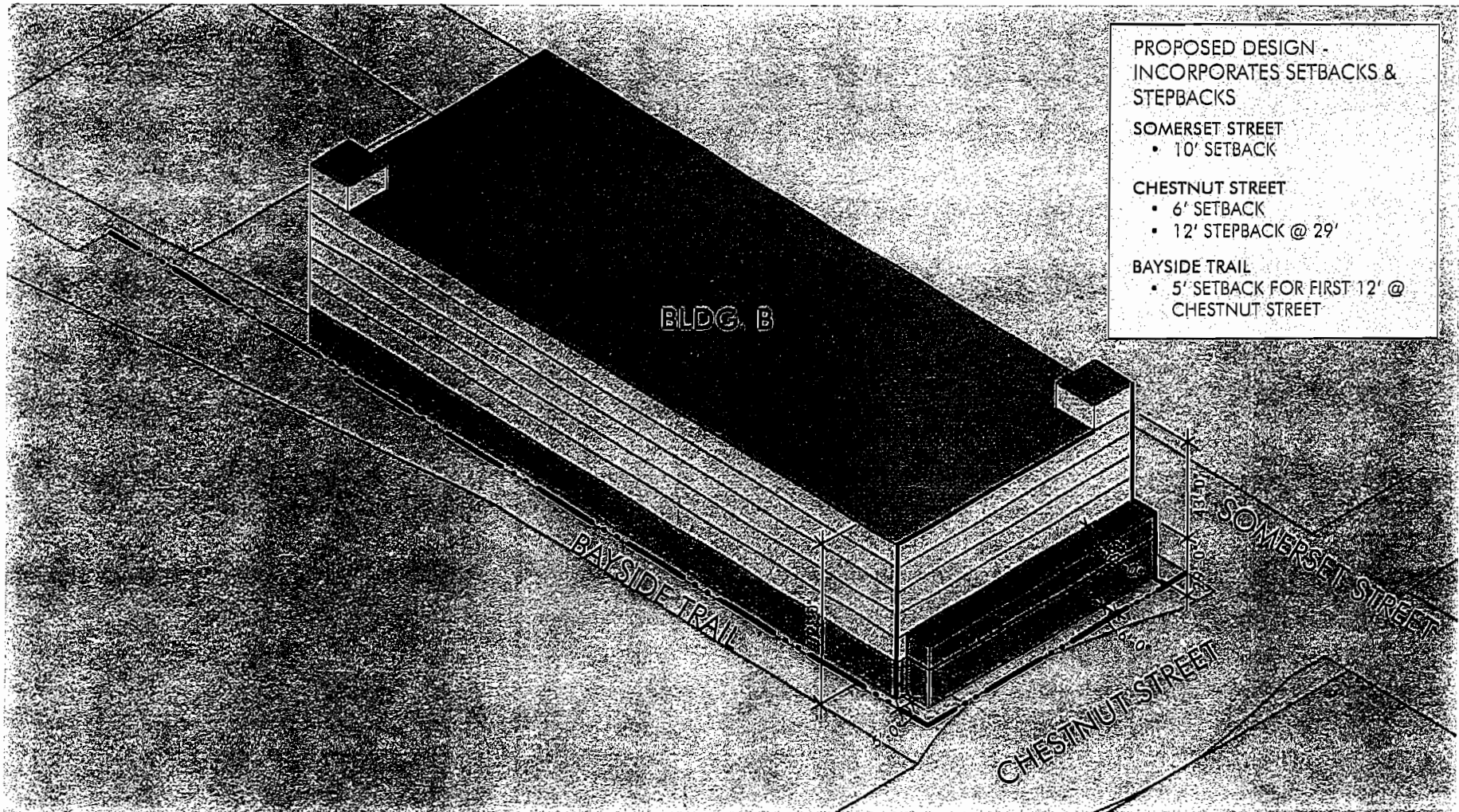
midtown: Phase One - Proposed Setbacks and Stepbacks



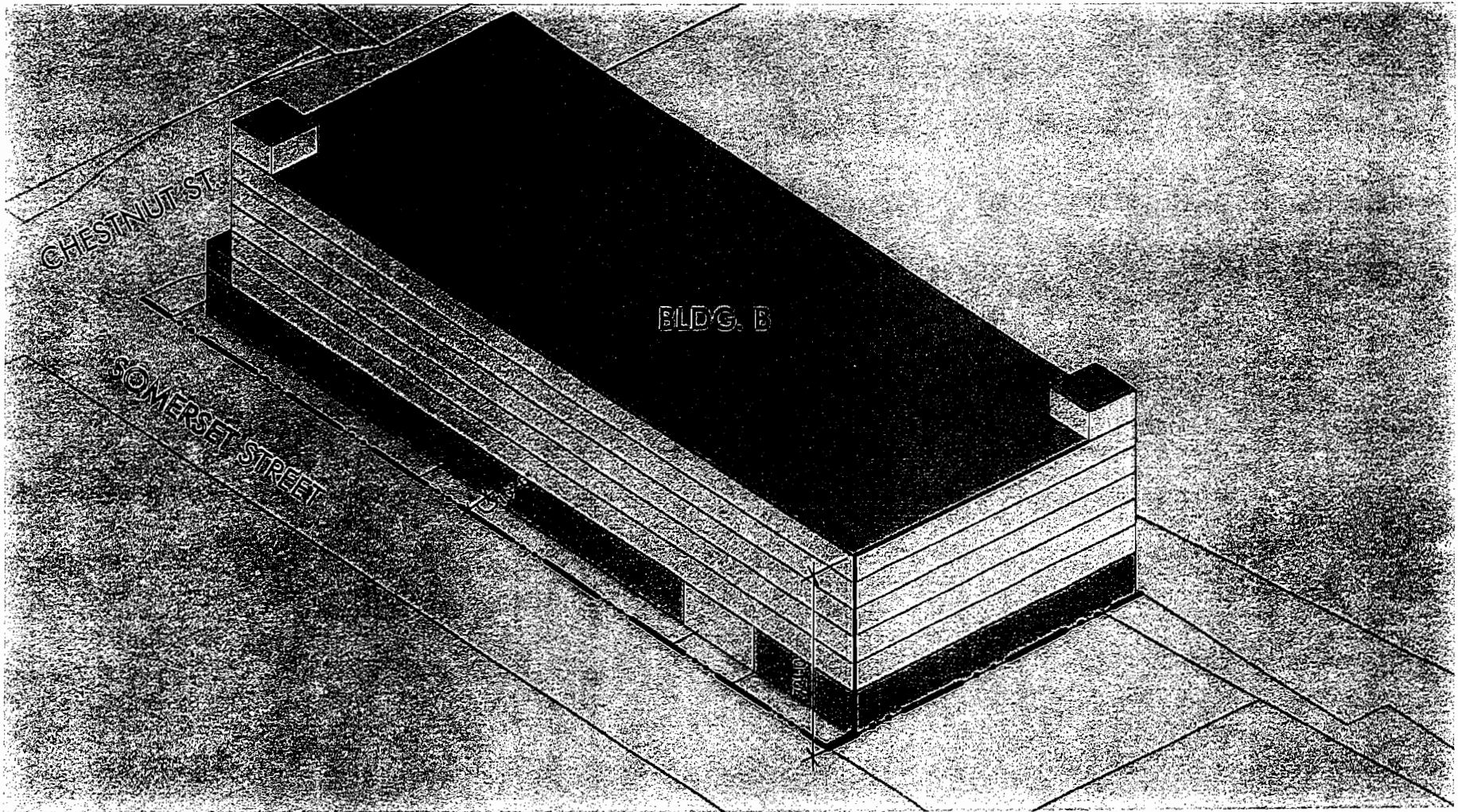
midtown: Phase One - Proposed Setbacks and Stepbacks



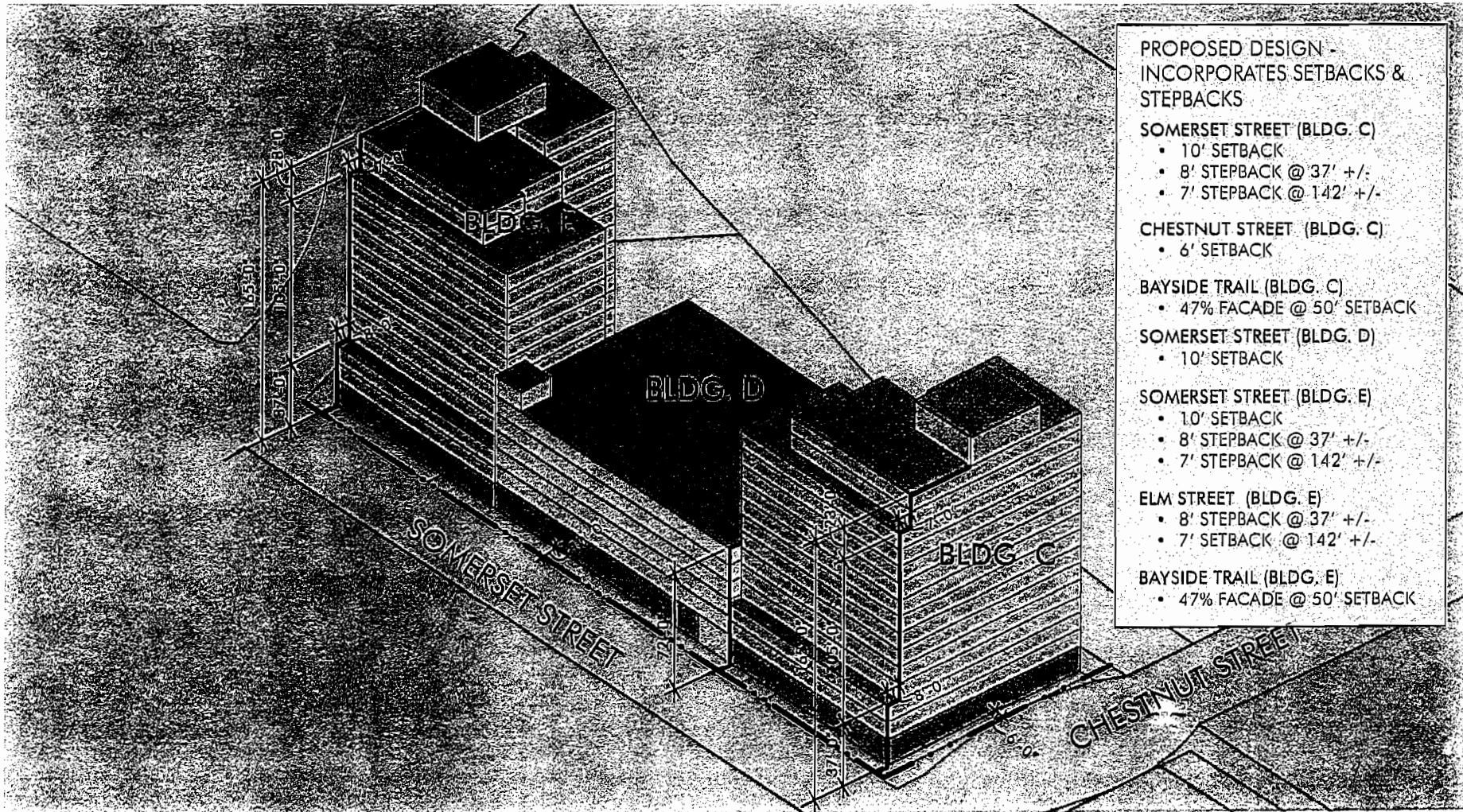
midtown: Phase One - Proposed Setbacks and Stepbacks



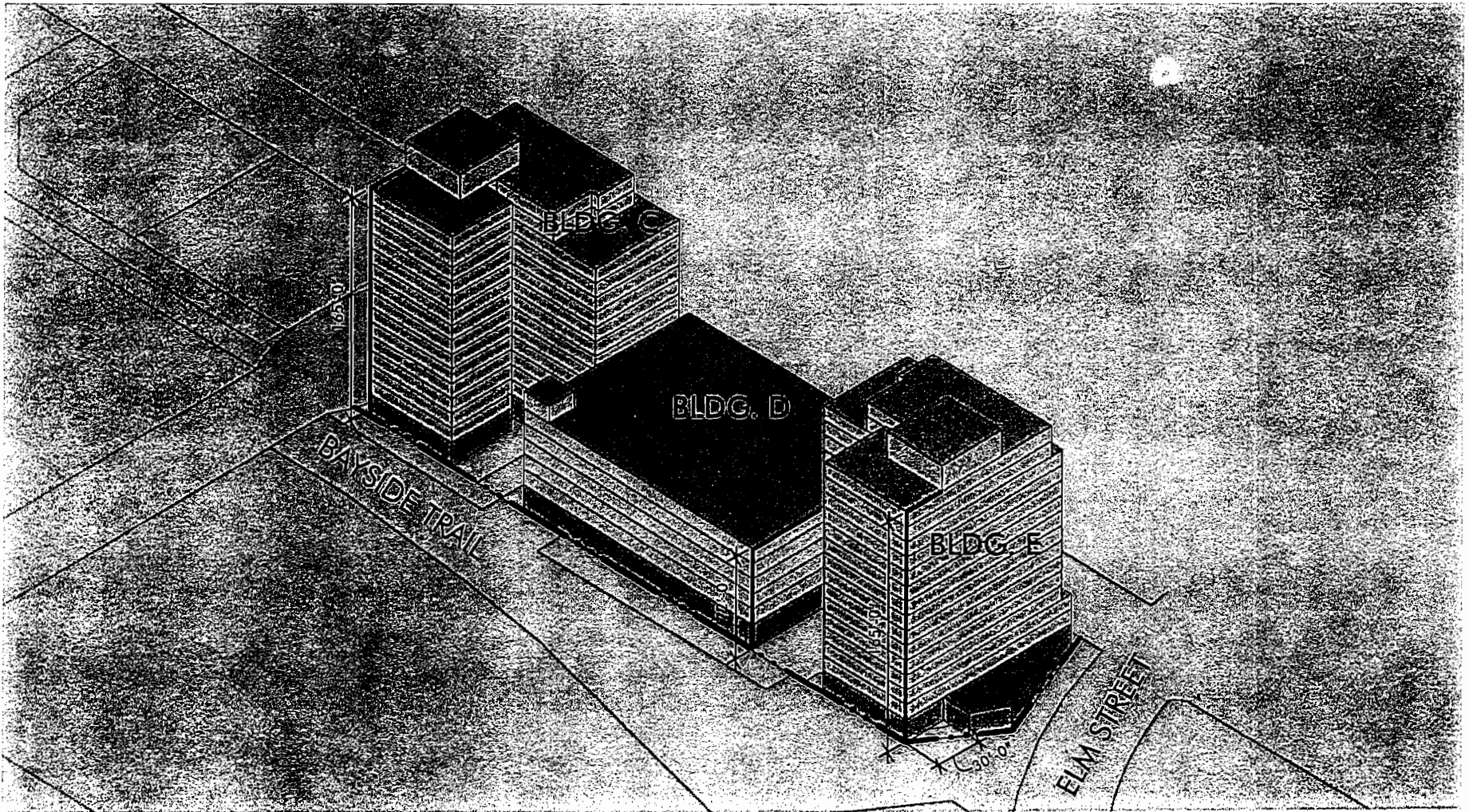
midtown: Phase One - Proposed Setbacks and Stepbacks



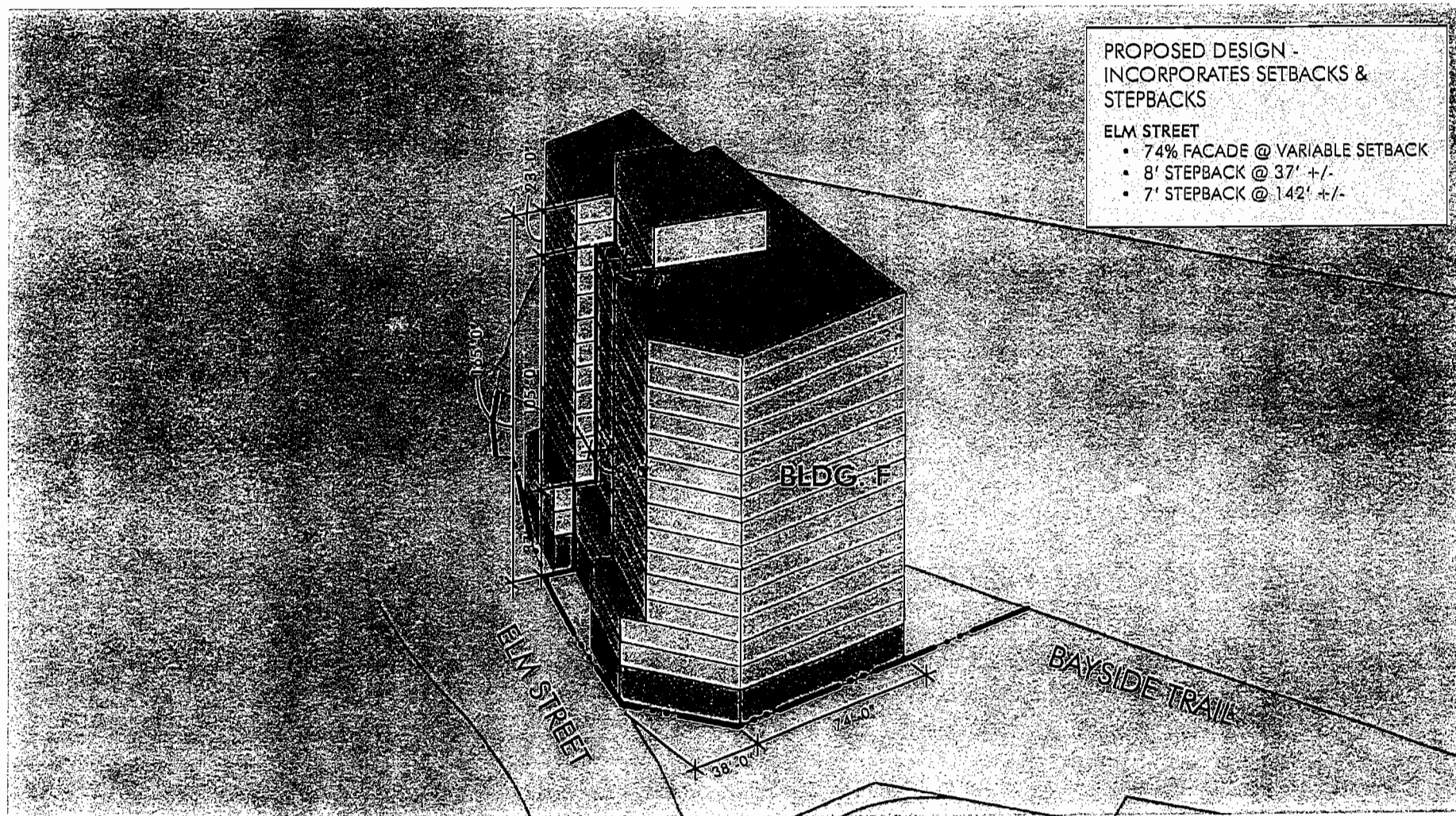
midtown: Phase Two - Proposed Setbacks and Stepbacks



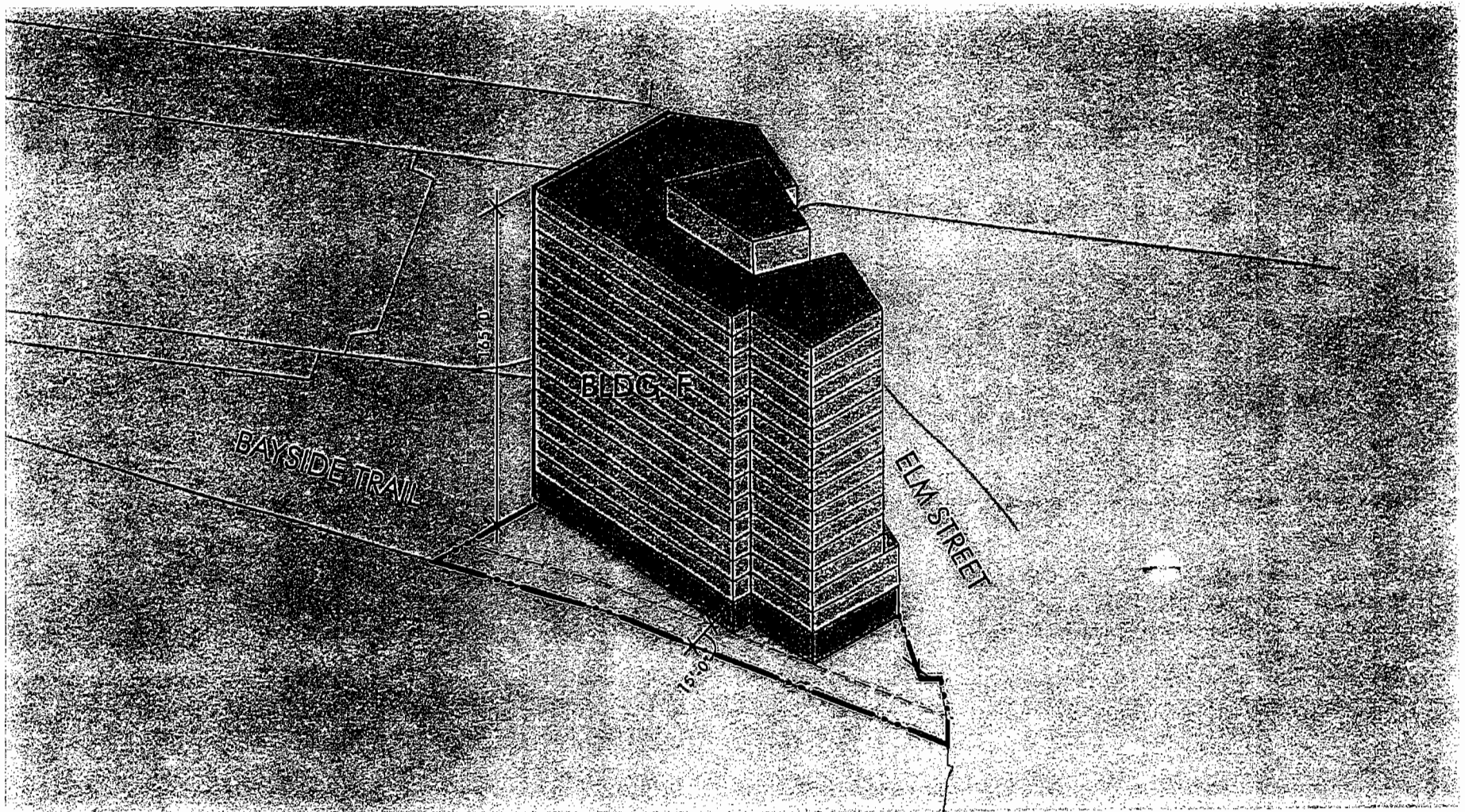
midtown: Phase Two - Proposed Setbacks and Stepbacks



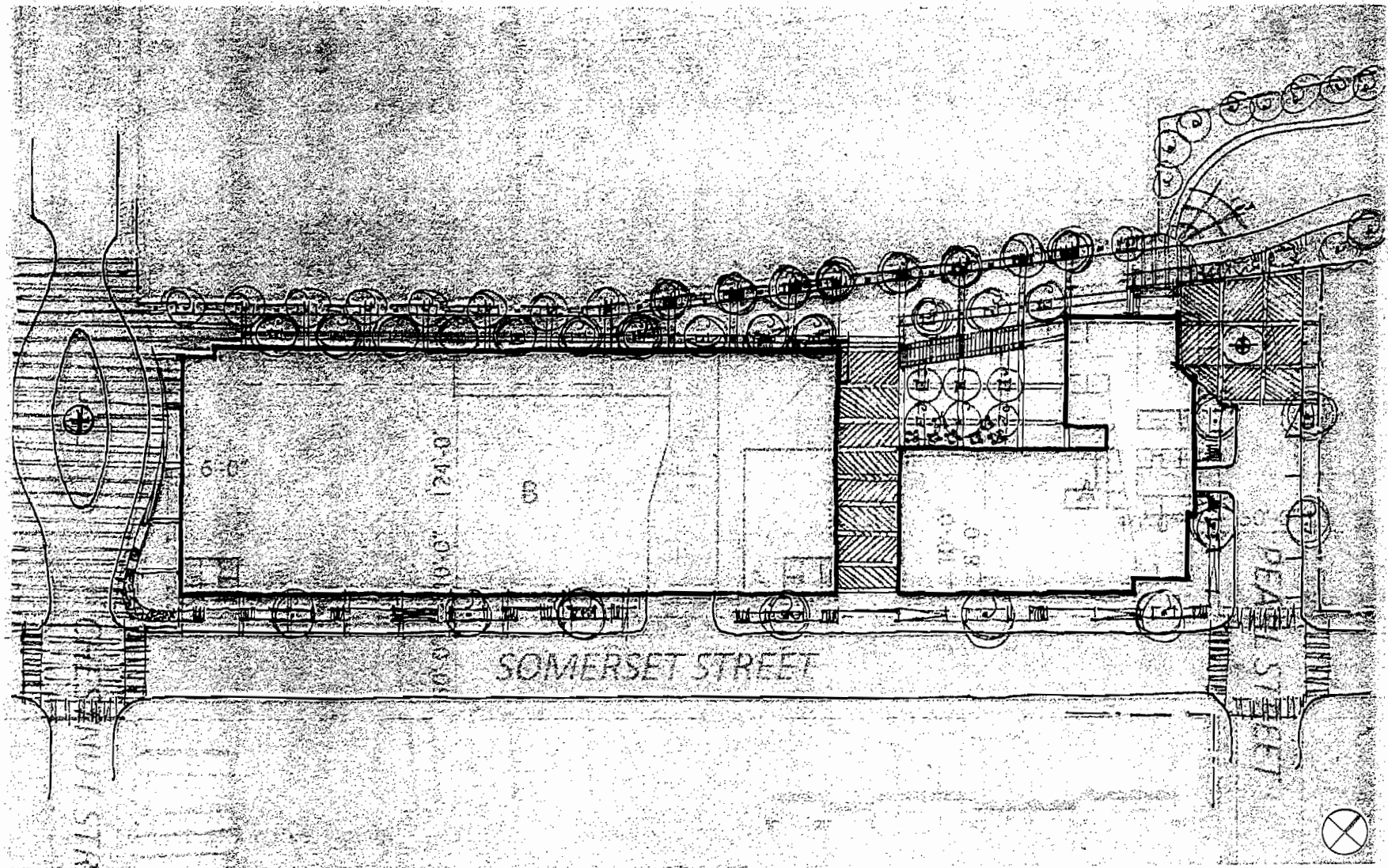
midtown: Phase Three - Proposed Setbacks and Stepbacks



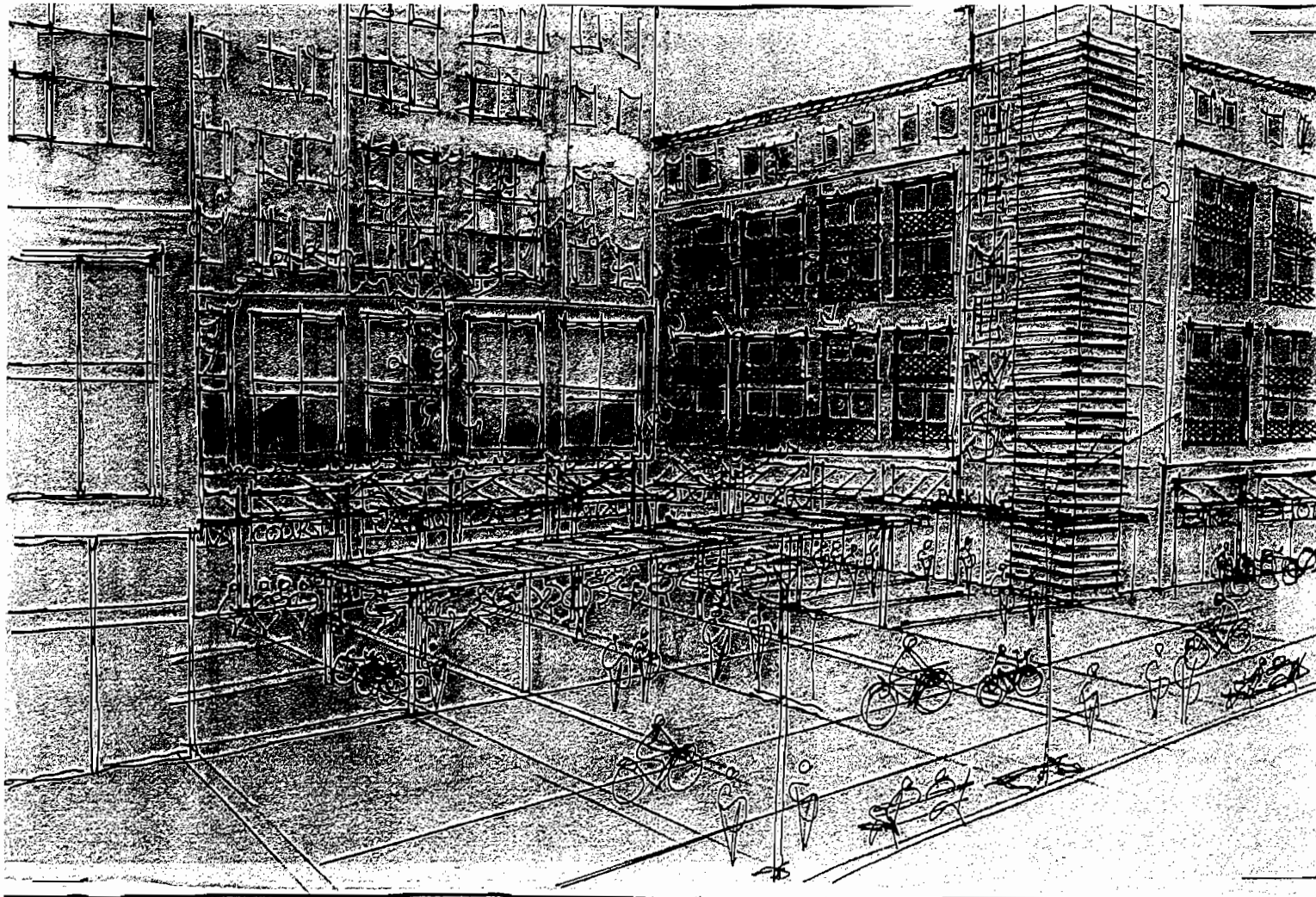
midtown: Phase Three - Proposed Setbacks and Stepbacks



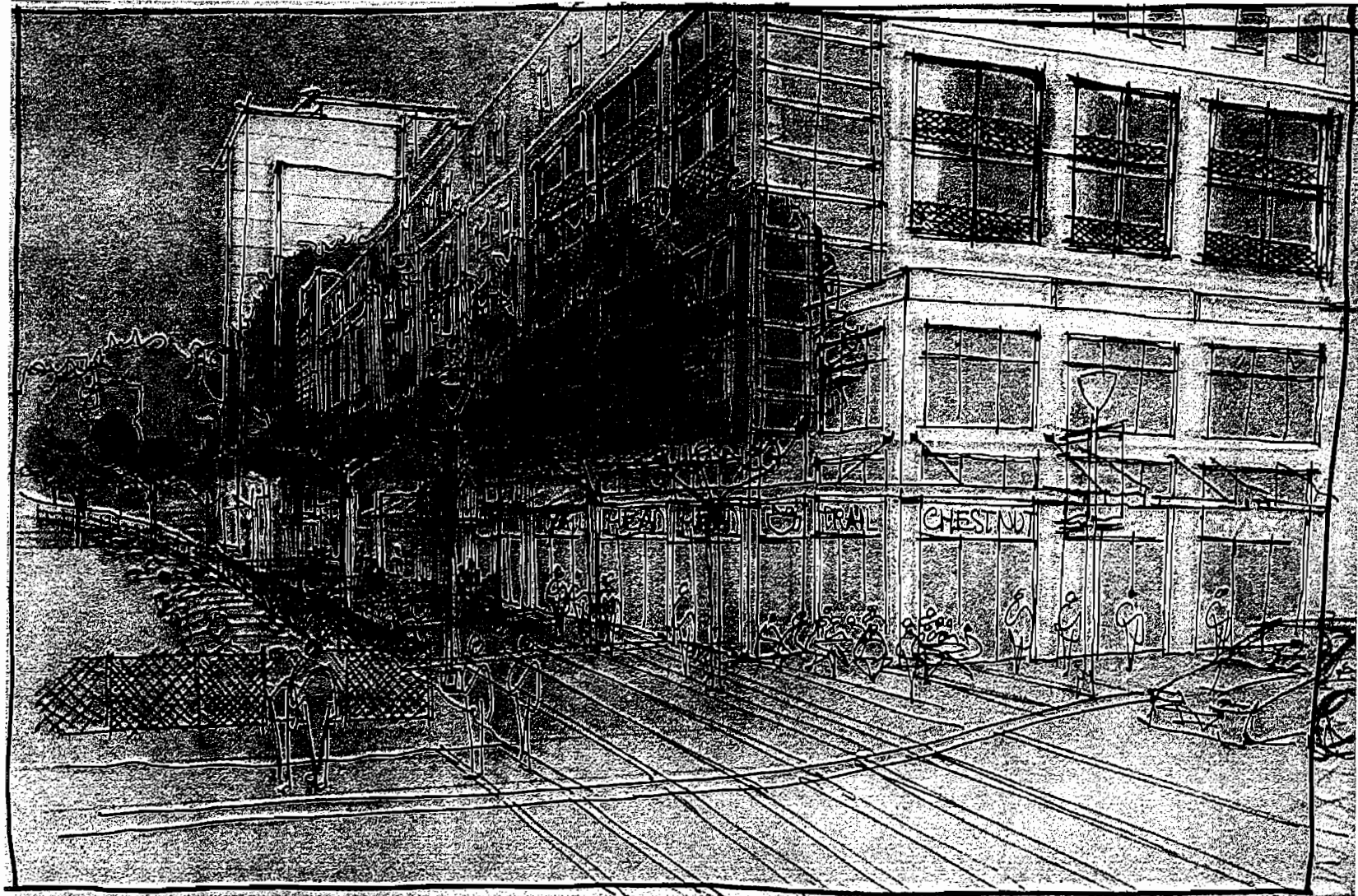
Phase 1 – Public Realm Plan



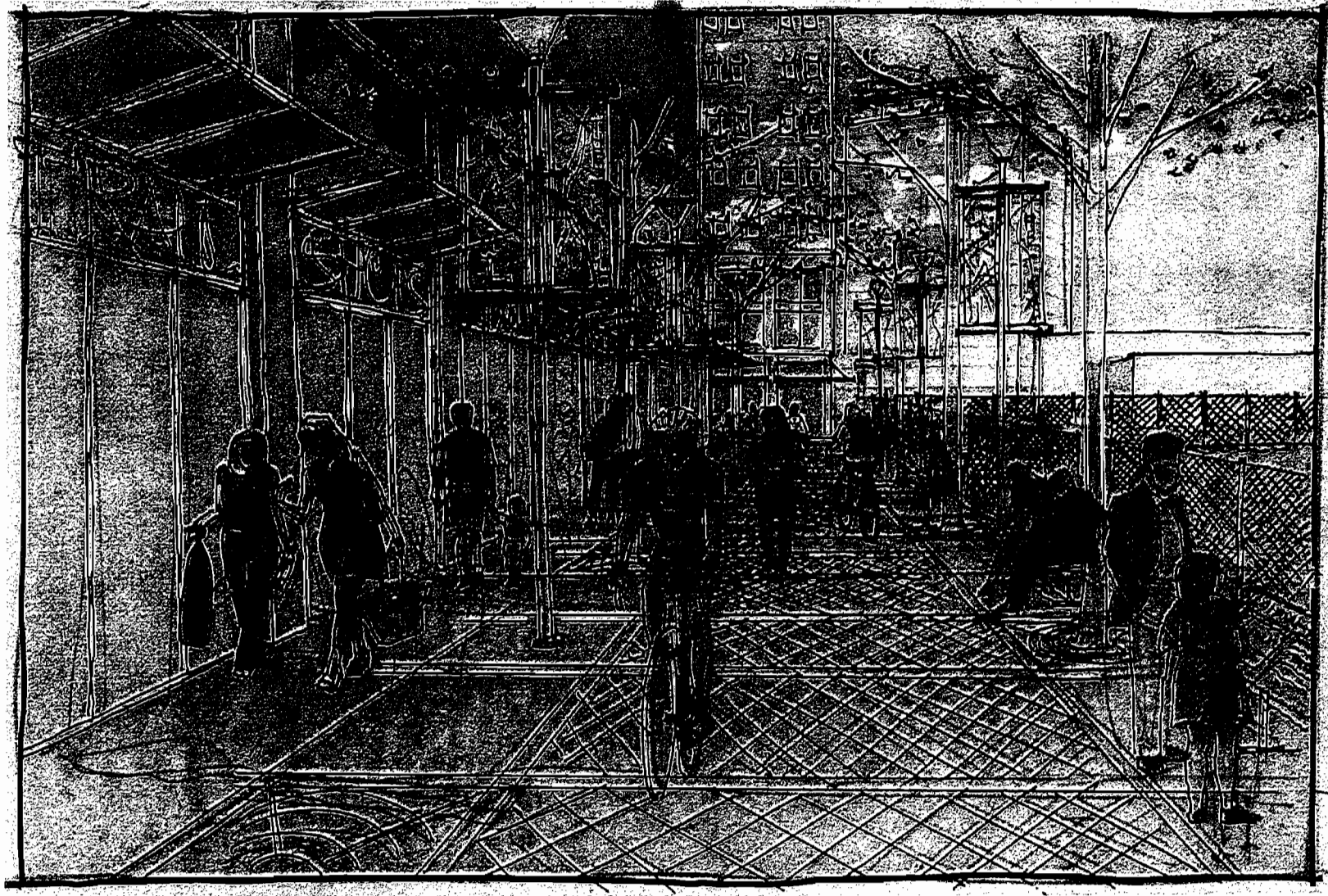
Trail View Looking Toward Mews



Trail View from Chestnut Street Looking East



Trail View to Chestnut Street Looking West



November 8, 2012

Mr. Alexander Jaegerman, Senior Planner
 Mr. Richard Knowland, Planner, City of Portland
 City of Portland Planning Board Members
 389 Congress Street
 Portland, Maine 04101

**Bayside Redevelopment of Somerset Street between Pearl Street
 Extension and Elm Street**

On behalf of The Federated Companies, we are pleased to submit this application for a Text Amendment to construct the development to be known as Maritime Landing. This revitalization of Bayside will include seven new apartment buildings, two parking structures and ground floor retail space. The site is located between Elm Street and Pearl Street Extension on both sides of Chestnut Street along Somerset Street. Attached is a survey that shows the land parcels.

Today, this parcel is owned by the City of Portland and is comprised of the open lot that has been used for snow storage on the south side of Chestnut Street; a gravel parking lot on the north side of Chestnut Street where recycling containers are located; and the former metal scrap yard on the adjacent property.

The goal of Maritime Landing is to transform this land into a new center of residential and commercial activity. This project will follow the goals and guidelines established in the document, *A New Vision For Bayside*, commissioned by the City of Portland in January 2000. As noted in that report, "maintaining a sustainable and competitive local economy" is the key to the success of Bayside. This project will create quality, permanent jobs as well as many construction-related jobs over the next several years.

In the past, Bayside was known as the back entrance to the City where heavy industrial use was the predominant activity. Classified by the United States Environmental Protection Agency as a Brownfield Site, this area was for many years the home of railroad yards and warehouses such as the old A&P

Warehouse at the corner of Somerset and Elm. The City of Portland, working with the Guilford Railroad Company and local business and community leaders, created an opportunity to redevelop the site into much needed housing with new stores and parking. This development will enhance and compliment the new trail that runs parallel to the site to the northwest, connecting to the established Portland Trails network.

During the last ten years, Bayside has witnessed the addition of several new office buildings including the Intermed Building, Gorham Savings Bank and 63 Marginal Way. Whole Foods, Trader Joe's, Verizon, AT&T, Planet Dog and other local and national retailers have established new stores in this emerging part of the City. Bayside Bowl, which is locally owned and operated, has energized the area by bringing in new customers and night life.

We have assembled a professional team of local and national experts to design and oversee the construction of Maritime Landing.

This team includes:

- Perkins Eastman, Washington, D.C. and Boston, Land Planners and Lead Architect
- CWS Architects
- Mitchell & Associates, Landscape Architects and Planners
- Deluca Hoffman, Civil Engineers
- Haley & Aldrich, Geotechnical Engineers
- Louis Berger Group, Traffic Engineers
- Owen & Haskell, Land Surveyors

The seven new apartment buildings at Maritime Landing will provide approximately 675 market rate apartments, standing approximately 14 stories high. There will be an estimated total of 91,000 square feet of ground floor retail space. The two parking garages will accommodate at least 1,100 cars.

Given the long and narrow shape of the property that is located next to the trail, it is necessary to create a Text Amendment to the B-7 zone in order to build the density needed and not be required to step the top of the buildings back. The buildings will be constructed in compliance with the current B-7 architectural design standards.

We welcome the opportunity to work with City Staff and to listen to the community as we start the design process for this great new project in a key part of Portland. Included in the attachments is the most recent rendering of Maritime Landing, depicting all three phases of construction. This image was provided to the public and the Portland City Council at a recent series of meetings. Before we continue with the development of the master plan including Phases I-III, we welcome ideas and suggestions from the community.

Construction of Phase I includes 2 apartment buildings with up to 175 apartments, retail space and a 700 car parking structure. Maritime Landing is scheduled to commence in the summer of 2013 and be completed by the winter of 2016. Phases II and III should be completed over the next several years and will be dependent upon the local market conditions.

Please do not hesitate to contact me if you desire any additional information or have questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Greg Shinberg', with a large, stylized flourish at the end.

Greg Shinberg
Owner's Representative
The Federated Companies

PROJECT ADDRESS: SOMERSET ST. FROM DEARL ST EXTENSION
TO ELM ST
 CHART/BLOCK/LOT: 34D3, 34D8, 34D10, 34B3, 34B4, 34B5, 34B2

DESCRIPTION OF PROPOSED ZONE CHANGE AND PROJECT:

A TEXT AMENDMENT TO THE B-7 ZONE TO CHANGE THE
SETBACK REQUIREMENTS. THE PROJECT TO BE KNOWN AS
MARITIME LANDING TO BE CONSTRUCTED IN 3 PHASES

CONTACT INFORMATION:

Applicant's Contact for electronic plans Name: <u>GREN SHINBERG</u> e-mail Address: <u>glseshinbergconsulting.com</u> work # <u>207 772 7070</u>	
Applicant - must be owner, Lessee or Buyer Name: <u>THE FEDERATED COMPANIES</u> Business Name, if applicable: <u>SUITE</u> Address: <u>404 WASHINGTON AVE PH</u> City/State: <u>MAINE FL</u> Zip Code: <u>33139</u>	Applicant Contact Information Work # <u>786 353 0534</u> Home# Cell # Fax# e-mail: <u>m-jeffries@federatedcompanies.com</u>
Owner - (if different from Applicant) Name: Address: City/State: Zip Code:	Owner Contact Information Work # Home# Cell # Fax# e-mail:
Agent/ Representative Name: <u>SHINBERG CONSULTING LLC</u> Address: <u>477 CONGRESS ST SUITE 1012</u> City/State: <u>PORTLAND ME</u> Zip Code: <u>04101</u>	Agent/Representative Contact Information Work # <u>207 772 7070</u> Cell # <u>207 653 7510</u> e-mail: <u>gls@shinbergconsulting.com</u>
Billing Information Name: <u>MATTHEW JEFFRIES</u> Address: <u>do THE FEDERATED COMPANIES</u> City/State: Zip Code:	Billing Information Work # <u>786 353 0534</u> Cell # Fax# e-mail: <u>m-jeffries@federatedcompanies.com</u>
Engineer Name: <u>BILL HOFFMAN</u> Address: <u>DELUCA HOFFMAN</u> <u>778 MAIN ST #B</u> City/State: <u>SOUTH PORTLAND ME</u> Zip Code: <u>04106</u>	Engineer Contact Information Work # <u>207 775 1121</u> Cell # Fax# e-mail: <u>W.HOFFMAN@DELUCAHOFFMAN.COM</u>

1 metcal@metcalinc.com
 bwalter@bwalter.com

B-4

Surveyor Name: OWEN HASKELL INC Address: US RT 1 City/State: FALMOUTH ME Zip Code: 04105	Surveyor Contact Information Work # 207 774 0424 Cell # Fax# 774 0511 e-mail: JSWAN@OWENHASKELL.COM
Architect Name: PERKINS EASTMAN Address: THE DUKE ELLINGTON BUILDING 2121 WARD COURT NW City/State: WASH. D.C. Zip Code: 20037	Architect Contact Information Work # 202 212 6062 Cell # Fax# 202 212 1326 e-mail: J.A.BELLE@PERKINS-EASTMAN.COM
Attorney TBD Name: Address: City/State: Zip Code:	Attorney Contact Information Work # Cell # Fax# e-mail:

Right, Title, or Interest: Please identify the status of the applicant's right, title, or interest in the subject property:

PURCHASE & SALE AGREEMENT - SEE ATTACHED

Provide documentary evidence, attached to this application, of applicant's right, title, or interest in the subject property. (For example, a deed, option or contract to purchase or lease the subject property.)

Vicinity Map: Attach a map showing the subject parcel and abutting parcels, labeled as to ownership and/or current use. (Applicant may utilize the City Zoning Map or Parcel Map as a source.)

Existing Use: Describe the existing use of the subject property:

LOTS 1, 2, 3, 5, 6, 7 & 8 ARE VACANT LAND PLUS THE OLD SCRAP YARD

Current Zoning Designation(s):

B-7

Proposed Use of Property: Please describe the proposed use of the subject property. If construction or development is proposed, please describe any changes to the physical condition of the property.

WE PLAN TO CONSTRUCT 7 APARTMENT BUILDINGS
WITH APPROXIMATELY 675 MARKET RATE APARTMENTS,
2 PARKING STRUCTURES WITH 1100+- PARKING SPACES
& 91,000+- SQUARE FEET OF RETAIL SPACE,

Site Plan: On a separate sheet, please provide a site plan of the property showing existing and proposed improvements, including such features as buildings, parking, driveways, walkways, landscape and property boundaries. This may be a professionally drawn plan, or a carefully drawn plan, to scale, by the applicant. (Scale to suit, range from 1" = 10' to 1" = 50'.) Contract and conditional rezoning applications may require additional site plans and written material that address physical development and operation of the property to ensure that the rezoning and subsequent development are consistent with the comprehensive plan, meet applicable land use regulations, and compatible with the surrounding neighborhood.

AH.C



EXHIBIT 2

midtown

Neighborhood Meeting Minutes December 20, 2012

In attendance:

- Greg Shinberg
- Erin K. McNamara
- Bob Metcalf
- Ben Walter
- Guy LaBreque
- Tom Blackburn
- Steve Hershon
- Zachary Barowitz
- Christian Milneil
- Ron Spinella
- Christine Spinella
- Aurelia Scott
- Joanne Ogden
- Rich Kantz
- Ben Chipman
- Sharon Vale
- Anna Trevorrow
- Alex Landry
- Rick Knowland
- Dennis Hoey
- Robert Haines
- Collette Bouchard
- Laura Cannon
- Sean Kerwin
- Nick Rosenblum

Meeting Commenced at 5:41pm and finished at 7:10 pm

GS – Introduction

Making sure everyone has signed in on the sign-in sheet

General overview of the subject of this meeting

Explained that the meeting is about what the project is becoming, as well as clarifying that the current incarnation is not what will be built ultimately.

Also what we're looking at is not what will be built

Next workshop will hopefully be Jan 8

Water main break – there's been a great deal of flooding.

Development team is aware that they must raise the building about 12 feet above tide. This creates some challenges – must be ADA accessible, working with Haley & Aldridge. Team must really look at issues "on the street," i.e. does the street need to be raised, etc.

Planning process – this is a BIG project. Looking to build a 700-car parking garage. 2 towers will be about 160-180 apartments, plus retail. That's phase 1. Phase 2 is apartments, second garage, and retail, phase 3 is apartments. This is primarily a housing project. Hope for about 675-700 apartments ultimately, plus about 1100 cars.

Bayside – There has been a great deal of effort going into bayside trail connection

No requirement and no plan for any subsidized housing in this development

Will be a market-rate apt project

GS opened the floor to general overview questions

ZB – Asked to explain where the site is

GS – Described locations

BC – Rent for apartments? There's a need for truly affordable housing in Portland, is there a way for a certain number or percentage of the units that can be lower but still at the bottom end of market rate?

GS – yes, they want to, but we can't commit to rents just yet. Given number of units, they will likely be very aggressive to keep the apartments affordable

RH - Will this be built on pilings?

GS – Yes, also explained what pilings are. The site has a VRAP, there are contaminants, getting bids to remove the contaminants and contain them properly

SV – Are the buildings on the slides to scale/proper shape?

GS – The buildings will NOT be this shape, just trying to give a sense of scale to the project, want to take into account community feedback

BW – Giving a bit more detail on the process

The team is taking what the community has been telling them, looking at solutions to the issues that have been raised thus far, there will be solutions involved in the next presentation of the plans

Looking in this particular meeting at the massing diagram done by developer and city when the sale happened

Now it's the architects' jobs to identify the challenges and issues with these plans, and make it work

First thing we'll have to deal with is the poor nature of the site (organic layer under layer of fill, layers that will crush/settle if built on)

Looking to create a useable and attractive environments

Important issues

Varied skyline – this is unique and special about Portland

This project will indeed change it, but the City skyline has been changing and it will continue to change

Want to be careful with new buildings that they will be an asset to the skyline and the city aesthetic

View from cove to downtown and view corridors from the peninsula are very important in planning this project – currently identifying what we have now for view corridors and trying to preserve them as best they can

Critical mass – need to consider the size of the development and put it into a form that is very attractive

Previous Plan

Focus was on trying to align with pre-existing view corridors
Images of the ways in which the development may affect existing city structure

City has extended the trail – it's sort of a suburban trail now
As the city continues to develop, there may be some plaza-type or more urbanized trail areas

Aerial image of view corridors

Property doesn't affect Pearl Street corridor

Myrtle – already broken by Chestnut Street parking garage at grade level

Chestnut – goes all the way through. This was recently reconnected, very preservable, also one of the few that goes up to Congress

Cedar – intent is to preserve it. Can't see from Congress because of Portland High but you CAN see it from Cumberland

Elm Street – it does curve but there is a view corridor that goes through

Previous plan shows Elm being slightly clipped by a building but primarily preserved

This is a starting point. Now we're at the point where we need to make it nice and make it good and make it work for the city and the residents

GS – Purpose of tonight's meeting: text amendment review

When B7 zone was created, you had height restrictions on the buildings

At the next workshop scheduled for January 8th, the team will present the text for a text amendment, which has been drafted by the City Planning Staff and this will then go to the next Planning Board Meeting, which is a vote to City Council by planning board members. The planning board vote is non-binding, the City Council makes the final decision to approve the Text Amendment
Text amendment mostly has to do with building height

Important to note that this is not a substitute for the Site Plan Application

Taking 2 tandem/parallel processes for the Text Amendment plus the Level III Site Plan and Amendment to the Subdivision.

RS – Can we have an idea of the text amendment's content?

RK – The text is complicated. On our website will find initial staff memo on this project, from the last meeting in November. Kind of explains existing zoning provisions, which allows heights up to 165 if at a certain angle, the upper tiers have a certain setback

Proposed text will still have a setback, but not quite as far as the existing requirement

AL - What is the formula for the setbacks?

RK – The building will reach a certain point and it goes to a plane like a Christmas tree or pyramid. Approach now would be a step-back – 10-15ft step-back at a certain floor allowing for more height at a certain level

GS – there will be a visual for the planning meeting and for the next workshop, there needs to be a drawing to understand

ZB – Angle of the buildings and property? Is this because of the trail?

GS – The angle is because of the property.

ZB – Are there plans for an anchor store?

GS – There is not currently an anchor tenant. The tenants will likely be a conglomeration of smaller uses rather than a big box.

SK – What's the green between the buildings?

GS – we're looking at creating some kind of green roof on the buildings

Related note – we're looking at the wind-tunnel effect, also next is shading

GS requested community input on the aesthetics and appearance of the project

BC – Brick is preferable. Bayside Housing is ugly, sheet metal looking is homely. Brick looks better with the city's aesthetic.

SH – wood veneer such as the new building in Boston.

RH – Is the parking garage going to be attached to the buildings beside it?

GS – Not sure, but probably not. May be connecting the apartment buildings but likely won't because of the trail connection

RH – What will be the availability of bicycle parking?

GS – The team would like to add more than the required minimum amount of bicycle parking.

BW – The team is further anticipating that transportation alternatives to cars will continue to increase here in Portland, which would necessitate more bicycle parking.

AT – Expressed her support for the project. Regarding transportation options – suggests incorporating a u-car into this project. It would be nice to have a u-car that's actually housed in a garage.

GS – The team is considering this and has thought of these concerns.

ZB – The building materials are less important than the overall aesthetic but if you want it to "blend in" then brick is always good

Then asked about view corridors

GS – Just noting that we are really looking to change the plans

BW – [Used an existing photo of the current cityscape to demonstrate where the buildings would be located and the potential effect on and changes to the existing view corridors.]

SK – Don't just attempt to recreate the Old Port. Thinks Intermed is a good model because it reflects the OP but is also different and interesting. Also a fan of the use of vertical space for public space. It would be very interesting to have public green space available on top of the parking garage/etc that isn't just private, give them access to the elevated views, perhaps retail/restaurant, and a green roof space could become a public space

GS – These suggestions regarding public and green space will be considered, but must also be respectful of residents of apartments regarding noise, etc. The team must also look at codes/ordinances, etc, but the owner does want to be creative with the use of the space.

SH – Following up, using some of the other spaces creatively publicly is great. This question, however, is for BW and RK. Regarding Pearl St, what's the timetable for breaking thru to Pearl and will that be more of a signature building than the massing suggests?

BW – Yes. Will be treating this as another primary façade.

RK – Pearl is interesting because when the original subdivision was done, a space was reserved for Pearl St. Would like for Pearl to extend along frontage of building. Pearl is currently narrowed by an existing building; will hopefully be able to get the full width from the owner in the event of a likely future remodel of their property. Pearl is going to be important for traffic circulation.

SH – One more, slightly off topic. There is land at Pearl and Somerset that is part of Whole Foods development. Is there any possibility that this will be an office building?

RK – Hoping that it can be turned into an office building, they want it to be parking, but it's not allowed currently.

AS – Question regarding zoning. Bayside Zone A and B. The team here in the text amendment will be asking to have much of the property adopted to the A height, which exceeds the B height. Concerned that this might block corridors, etc. But also that any future development would be permitted to go up to the A height.

GS – Text Amend will have certain qualifications that won't allow some things to go to 165 ft.

AT – Input on design. Likes the new and contemporary designs that have been going up recently, thinks that something based on 645 would be good.

LC – Will this project involve opening up access to the area next to the building and into Trader Joe's from the Bayside trail? Right now it's fenced off and you can't get to the stores from Bayside trail.

GS – The team favors that idea, but the fence owners have resisted because they're concerned about the transient population coming from the trail. But, "More use means less misuse"

RS – Hopefully the new construction and development of the trail will convince owners that they want to open it up

BW – As there is an increase in residential density and there are more residents in the area there will be fewer issues such as those concerning the owners of the fence.

RS – Tenants of the new projects will likely put more pressure on the landlords to open it up

GS – This project will create some really good construction jobs, as well as permanent jobs created by the retail spaces down there. Part of the HUD funds will be for the creation of new, good, permanent jobs

JO – Is this looking like a destination, with the retail, rather than the retail just serving the people who are there? Thinking this could be very charming

GS – Making this a destination is actually the hope and intent of the project.

BW – There's currently a lot of residential density, but once you get more people there it becomes more of a destination

AL – Bayside vision is to make it a destination. It's our neighborhood, but everyone comes here. There are a few features that can help make it a destination (mentioned Kennebec St. still being cobblestone, etc).

Also really glad to hear about there not being a bridge

Unbundling – you don't HAVE to have an apartment in order to rent a parking space. Suggested this as an important development consideration

AS – suggested covered parking for bicycles

AL – back to unbundling. If there are fewer spaces taken by residents, then there are more spaces to be rented for other elements of the development. Unbundling and a u-car option will be a way to increase revenue.

GS – there was a city councilor who expressed concern that the City is providing a \$9M grant for an \$11M garage. This is not an \$11M project. We'll be lucky to get the garage done for \$15M. Because of the site environment and the salt air (just eats it away) we will need more expensive materials, etc.

ZB – Paving on the trail?

BW – Trail currently exists and we will have to tie in and transition into the trail. Talking about mures – carriage house style accents to help tie in the trail and pedestrian areas. Not yet into the details but we know that it IS possible.

NR – Will this info be online?

GS – Yes

BW – We will be publishing the planning board notes

RK – Planning Board workshop on the eighth, there will be a staff memo the Friday before posted online that you can look at

AL – Intermed building: good mix.

ZB – How high will these buildings be? Will it be canyon-like?

BW – These will 14-story buildings, it will be more like Congress St with its 13-story buildings

Maritime Landing
Neighborhood Meeting

5:30 PM December 20, 2012

Avesta Housing
Cumberland Avenue

SIGN IN SHEET

Ayrelin G. Scott, 21 Chestnut St
 Channe Glen " " "
 Paul Carr Goodwill richard. cantz @ goodwillinc.org
 Erin McNamara Shierberg Consulting
 Robert C. Hains
 Colette Bouchard, 18 Hanover St
 Steve Winkler
 TEBACKBURN 14 Hanover
 ALEX LANDRY 70 Dade St
 Cady Labrecque CWS
 BEN WALTER CWS
 Anna Trosorrow 51 Mistle St Ptd 04101
 Rep. Ben Chapman 5 Mayo St #3, MD 04101
 CHRISTIAN MILNE 45 SMITH ST. #2
 RICK KNOWLSON 389 CONGROU ST.
 Laura Cannon 18 Parris St
 Sean Kevin 18 Parris St 04101
 NICHOLAS ROSENBLUM 26 MECHANIC ST
 RON & Chris Sprad 377 Cumberland Ave
 Zachary Barowitz 28 Gilman St. #1 04102
 BOB METCAL MITCHELL & ASSOCIATES

AH.D

APPLICANT

The Federated Companies
3301 NE 1st Avenue, Suite M 302
Miami, FL 33137

February 12, 2013

Mr. Alexander Jaegerman, Planning Division Director, City of Portland
Mr. Richard Knowland, Planner, City of Portland
Ms. Barbara Barhydt, Senior Planner & Interim Planning Division Director,
City of Portland
Chair Carol Morissette and The City of Portland Planning Board Members
389 Congress Street
Portland, Maine 04101

On behalf of the Federated Companies, please see the attached materials for the Planning Board Workshop scheduled for Tuesday, February 26, 2013.

At the second Planning Board Workshop held on January 29, 2013, several questions and issues were raised by the Public, City Staff and Planning Board Members.

To follow is a summary of these questions with our response:

- Explain the rationale for shifting the Phase 1 parking garage westerly to Chestnut Street
 - Placing the parking garage in its new location has many positive effects. It secures a better view corridor from both Back Cove and I-295 to City Hall and other prominent downtown buildings. This plan also maintains better view corridors as established in the Bayside Height Study. In addition, placing the garage closer to

Chestnut Street is a more central location for the existing stores located nearby such as Trader Joes and will be a better location for the proposed new retail spaces to be built at midtown.

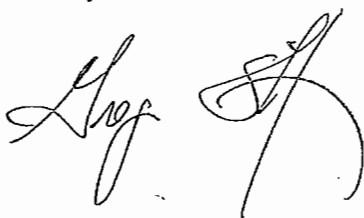
- What measures will be taken to enliven the building façade at Chestnut Street?
 - As shown in the drawing labeled “Trail View from Chestnut Street Looking East” in the Perkins Eastman package the parking garage is stepped back from the corner which allows for a bold retail statement and design.
- Is building a parking garage with 700 cars necessary?
 - Yes. We need to build at least 700 parking spaces to support the new residential apartments and the first stores and future retail users. The first phase of midtown includes approximately 180 new residential apartments and 40,000 square feet of retail space. 200 parking spaces will be maintained for public use and will help to accommodate the nearby retail stores that include Trader Joe’s, Whole Foods and other national retailers that have moved to Bayside. A second parking garage will be constructed in Phase II, and we anticipate the need for an additional 400 parking spaces, for a total of 1,100 parking spaces. With a Master Plan that includes a total of 675 apartments in all three phases and 97,000 square feet of retail, these parking spaces will be necessary to support the future development of midtown and spur the growth of the other underutilized parcels nearby.
- Does the parking garage drive the height of the residential buildings?
 - No. The height of the building is driven by the need to attract tenants to an attractive location with great curb appeal. The residential buildings combined with the retail spaces will require parking to be economically viable. As noted in the study commissioned by the City of Portland in 2000 entitled, “A New Vision For Bayside” *Build More Housing* was identified as a *Critical Action* in the redevelopment of Bayside. A key element that is essential to a new neighborhood is that housing is built to generate use at both during the day and evening hours.

- The parking garage is located near the intersection of Chestnut Street and the Portland Trail. It is close to the existing trail at the southwest corner of the garage. What measures will be taken to reduce the parking garage footprint, and how will the façade of the parking garage be treated given the close presence of the trail?
 - By creating some compact parking spaces in the new garage, we plan to reduce the depth of the garage by 2 feet. As shown in the sketches provided we have integrated the trail into the façade of the garage creating a pedestrian-friendly experience that will draw people into the retail spaces and mews.
- A concern has been raised in regards to both the setback and step-back for the planned massing of the buildings. How will midtown address these concerns?
 - When the B7 zone was created and implemented in August of 2006, the gateway urban height district allowed for a maximum height of 125', except as noted in Conditional Use Sec. 14-296(a)(5), which allows for construction of the building to a maximum height of 165'. Given the required step-backs to the trail, it has become apparent that the original intent of the City Planning Board and Council to create tall buildings in the A zone would be severely limited under the current Conditional Use terms. As shown in the materials attached on the sheets labeled "Phase One, Two, and Three – Maritime Proposal with Zoning Stepbacks," the massing allowed by the original ordinance would prevent the creation of the type of massing intended for the B7 zone. With the proposed text amendment, we can create better massing and scale which allows for better urban design. Attached in the materials labeled "midtown, Phase One, Two and Three – Proposed Setbacks and Step-backs" are examples of how the new text amendment can work.
- At the completion of Phase 1, what will be the status of the property reserved for Phase 2 and 3?
 - During the construction of Phase 1, it will be necessary to install most of the infrastructure for Phases II and III. Once these utilities are installed, the property will have loam and seed applied to create a grassy area. It is our intent to construct the next

Phases as soon as market conditions will allow. In the interim, the property will be made attractive with the expectation that the intended use is for the future development of much-needed residential apartments in the Bayside area.

Please do not hesitate to contact me if you desire any additional information or have questions.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Greg Shinberg', followed by a large, stylized flourish.

Greg Shinberg
Owner's Representative
The Federated Companies

EXHIBITS

EXHIBIT 1 Perkins Eastman materials dated February 12, 2013

PHASE I GARAGE

	<u>City Requested</u>	<u>Phase I Residential</u> # of Units 196	<u>Retail</u> Est. Total GSF 97,000	<u>Bayside Community</u> Estimated 135,000	<u>Total Spaces</u>	<u>Spaces Designed</u>
Spaces Required	200	221	194	68	682	720

NOTES: Retail spaces are estimated at 2/1000sf ratio

Residential is calculated at a 1/1 ratio including 12.5% for handicap and visitor spaces

Bayside Community consists of overparking for existing retail space in place (Whole Foods/Trader Joe's, etc.)

D-4

D-5

Rick Knowland - RE: midtown submission

From: "Greg Shinberg" <gls@shinbergconsulting.com>
To: "Jeff Levine" <jlevine@portlandmaine.gov>, "Barbara Barhydt" <BAB@po...
Date: 2/21/2013 4:45 PM
Subject: RE: midtown submission
CC: <d.smith@perkinseastman.com>, "Matthew Jeffries" <m_jeffries@federated...

Hi Jeff – Please see my responses in italics below.

1. Staff is looking for more information on the height change and why it is necessary in order to make the project viable.
 - a. *It is necessary to revise the text and allow for better setbacks at the top of the building in order to allow for better urban design, better floor plate design, and higher density. In order to construct Phase I, a substantial amount of infrastructure must be completed for all three phases, making it necessary to build more apartments in Phase I, thus creating the need for more density and height. It is important to change the B Zone on Somerset Street to an A Zone in order to create a better design. Pushing the apartment towers closer to Franklin Street creates a more attractive skyline where the parking garage separates the Phase I towers from the next towers to be build in Phase II and Phase III. When the new B-7 Zone was adopted by the city council in 2006, careful consideration was given by the planning board and council in the creation of the A and B Zones. As shown in early documents reviewed by both the council and planning board, this area on Somerset Street was originally an A Zone. Since the zone was adopted, many projects have been completed, such as the Intermed Building, Student Housing, and Portland Trail. Creating this density and height at this location responds to the development that has already occurred and will be a great addition to the Portland skyline.*
2. The Planning Board sought additional 3-D modeling of the entire building form in order to assess massing related to the surrounding context and view corridors. Not sure how feasible that is in the next day or so, but anything would help.
 - a. *Our team is working to provide additional information that we will bring to the Planning Board meeting on Tuesday. It is our intent to provide much more detail for the Level III Site Plan Application and Master Plan, to be forthcoming soon.*
3. In order to evaluate the proposed changes to setbacks and setbacks the Planning Board was interested in seeing building models that avoided "blocky" looks.
 - a. *The materials presented represent the height, form and massing that are at the heart of the text amendment discussion. Once those issues are resolved we will begin design of the Phase I buildings that effort will be part of the Level III Site Plan review process. This will look at articulation of the façade within the framework of the approved massing and height. Our intent is to build on the collaborative process with the Planning Board and other major stakeholders as we develop the design in the Level III Site Plan process.*

Greg

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 Portland, Maine 04101
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 Cell 207 653 7510
gls@shinbergconsulting.com
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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 126-12/13
~~Sub 22 4-1-13~~
~~Sub 27 4-22-13~~
JOHN R. COYNE (5)
JOHN M. ANTON (A/L)
JILL C. DUSON (A/L)
NICHOLAS M. MAVODONES (A/L)

AMENDMENT TO PORTLAND CITY CODE
CHAPTER 14. LAND USE
ARTICLE V. SITE PLAN

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

1. That Chapter 14, Article V of the Portland City Code is hereby amended to read as follows:

Sec. 14-522. Definitions.

For the purposes of this article all terms and words shall have their ordinary meanings, except as defined herein.

...

Master development plan: A Master Development Plan is a regulatory option for sites with one acre or more in cumulative lot area that designed as a cohesive and integral development program consisting of multiple buildings and associated site improvements built in phases over an extended timeframe. This option shall not apply in residential zones except for institutional uses.

...

Sec. 14-523. Required Approvals and Applicability.

(a) *Required Approval.* An application for site plan approval shall be reviewed by the Planning Board or Planning Authority as specified below. The Planning Board or Planning Authority shall approve, approve with conditions or deny an application pursuant to the standards, procedures, technical criteria and design criteria contained in this article, as demonstrated by the applicant.

...

5. Master Development Plan Review shall require the Master Development Plan approval of the Planning Board

| as provided in Section 14-524(d)(9).

...

| (g) Master Development Plan: A Master Development Plan meeting the criteria listed below will undergo a Master Development Plan Review as follows:

- | 1. A Master Development Plan for a site with one acre or larger in cumulative lot area that is designed as a cohesive and integral development program consisting of multiple buildings and associated site improvements proposed to be built in phases.
- | 2. The Master Development Plan option shall not apply in residential zones, except for institutional uses.

Sec. 14-524. Site plan review processes.

(a) The site plan review process for reach applicable development review type is listed below.

...

3. *Level II and level III site plan review:*

a. *Pre-application conference.*

- | (i) Applicants for site plan review for a Level II, ~~or Level III, or Master Development Plan applications-site plan review~~ are encouraged to schedule a pre-application conference with the Planning Authority or designated staff to introduce the development concept. The purpose of this meeting is to familiarize the applicant with the review procedures, application submission requirements and applicable review standards. A pre-application conference shall not cause the plan to be a pending application or proceeding under Title 1 MRSA 302. No decisions relative to the plan shall be made. Nor shall any advice or information provided by the city be construed as a decision.

...

c. Master Development Plan Review

(i) Application Process: Applicants for Level III site plan reviews may submit a Master Development Plan for a large, multi-phase development program consisting of multiple buildings and associated site improvements on a site of one (1) acre or more of total land area, which is designed as a cohesive and integral development program. The purpose of a Master Development Plan is to provide for a mix of land uses at designated locations to achieve a land development responsive to the assets of a site. A Master Development Plan is a well-integrated development in terms of land uses, functional activities, and major design elements such as buildings, roads, utilities, drainage systems and open space. The Master Development Plan is deemed appropriate to large scale mixed use projects that are intended to be developed in phases. The Master Development Plan shall be reviewed by the Planning Board and may be reviewed independently or concurrently with review as a site plan for a phased development. A Master Development Plan must address the submission requirements of Section 14-527.

(ii) The site plan review process for a Master Development Plan shall proceed in the same manner as a Preliminary Site Plan, as detailed in Sec. 14-524 (3)(b)(ii)-(vi).

(iii) Standards of Review. A Master Development Plan shall adhere to the following general requirements and features, and shall meet the Master Development Plan Site Plan Standards of 14-526 (d)(9):

a. A designated tract of land consisting of a parcel or parcels of contiguous land or land on both sides of a public street, totaling one (1) acre or more;

- b. Developed in a comprehensive, design-integrated manner, according to an overall master development plan;
- c. Consistent with the objectives of this ordinance;
- d. Consistent with the City's Comprehensive Plan and consistent with City Council approved master plans and facility plans for off-premise infrastructure, including but not limited to, trails, pedestrian and bicycle network, view corridors, environmental management, sewer and stormwater, streets, or other facilities (see Section 15 of the Technical Manual);
- e. Developed so as to locate buildings and improvements in a manner that provides usable open space, preserves significant natural features, as defined by the site plan ordinance standards, and preserves existing trees to the maximum extent possible;
- f. Developed so as to be in conformance with Portland's Historic Preservation Ordinance standards for designated landmarks or for properties within designated historic districts or designated historic landscapes, if applicable. When proposed adjacent to or within one hundred (100) feet of designated landmarks, historic districts or historic landscapes, the Master Plan shall be developed so as to be generally compatible with the major character-defining elements of the landmark or portion of the district in the immediate vicinity of the proposed development;
- g. An efficient use of land which properly considers topography and protects

significant natural features including, but not limited to, waterways, wetlands, floodplains and wildlife;

- h. An efficient use of land demonstrating full coordination of its own site development and surrounding context including, but not limited to, the land uses and functions contemplated, architecture, open space and pedestrian networks, vehicular access and circulation, and all other infrastructure;
- i. Linked and coordinated with surrounding land uses, infrastructure and off-site public facilities, including but not limited to the public school system, where appropriate, in a manner that is safe, efficient, non-injurious to the public, and an improvement or benefit to the public where possible;
- j. Designed with sizing of street and other infrastructure systems to accommodate the overall service demand of the Master Plan;
- k. Designed to create a street grid pattern that reflects average city block sizes of the neighborhood for street connectivity;
- l. Designed as to create a cohesive identity through building scale, massing, and articulation; use of quality exterior materials, architectural detailing at pedestrian scale; consistency of design and materials for streetscape and pedestrian amenities; framing of outdoor open space and linkages; a clear conveyance of the function and significance of various buildings, entrances, and features; and to generally comply with design and development standards of the zone in

which it is located;

m. Inclusive of provisions for the ownership and maintenance of usable open space as appropriate; and

n. For areas proposed as future development phase(s), the proposed interim conditions shall be managed and maintained to ensure stable, safe and attractive site conditions.

(iv) Phasing. One or more phases of the Master Development Plan may be reviewed as a final level III site plan concurrently with the review and approval of the Master Development Plan.

ed. Neighborhood Meetings for Level III Site Plans and Master Development Plan Applications.

(i) Neighborhood Meeting for Level III Site Plans:

~~(a)~~—Timing and location of meeting. An applicant for a subdivision of five or more units or lots and all other Level III site plan review categories shall conduct at least one neighborhood meeting within thirty (30) calendar days of filing a preliminary site plan, if applicable, or within twenty-one calendar days of filing a final site plan and the neighborhood meeting will be held on a date no less than seven (7) calendar days before a public hearing, if no preliminary plan is submitted. The meeting shall be held at a convenient location within the City of Portland neighborhood surrounding the proposed site. All costs associated with the neighborhood meeting shall be borne by the applicant.

(ii) Neighborhood Meeting Required for Master Development Plan: An applicant for a Master Development Plan shall conduct at least one (1) neighborhood meeting within thirty (30) calendar days of filing a Master Development

Plan application. The meeting(s) will be held on a date no less than seven (7) calendar days from a public workshop or public hearing. The neighborhood meeting for a Master Development Plan shall not be combined with any required neighborhood meeting for the Level III applications associated with the overall phased development. The meeting shall be held at a convenient location within the City of Portland neighborhood surrounding the proposed site. All costs associated with the neighborhood meeting shall be borne by the applicant. The workshop shall meet all other provisions of section 14-524 (d) (i).

(iii) *Procedures for the meeting.* The following procedures shall be followed in noticing and conducting the neighborhood meeting. At least ten (10) calendar days prior to the neighborhood meeting, the applicant shall do the following:

a.1. *Mail notice.* Mailed notice of said meeting to all property owners within five hundred (500) feet of the subject property lines, except that the notice range for subdivisions within industrial zones shall be one thousand (1000) feet, and to all others, including neighborhood organizations, as may be required by the Planning Authority.

b2. *Digital Copy.* Provide the Planning Authority with a digital copy of the neighborhood notice, which the City shall forward by e-mail to the City's list of interested citizens.

c3. *Notice Description.* Such notice shall contain a brief description of the application and the date, time and place of the neighborhood meeting.

d4. *Attendance Sheet.* At the neighborhood meeting the applicant shall circulate a

sign-in sheet for those in attendance who choose to sign. Such sheet shall be submitted to the Planning Authority and shall become part of the Planning Authority report submitted to the Planning Board.

e5. *Minutes.* The applicant shall keep minutes of the meeting to be submitted to the Planning Authority and shall become part of the Planning Authority report submitted to the Planning Board. Any other individual or entity also may submit comments on the neighborhood meeting to the Planning Authority and said comments shall become part of the Planning Authority report submitted to the Planning Board.

6f. *Presentation.* At the neighborhood meeting the applicant shall explain the pending proposal and provide an opportunity for public questions and comment.

de. *Planning Board Workshops.*

(i) *Request a Workshop:* The applicant may request a workshop(s) with the Planning Board for a Level III site plan. The workshop will be scheduled on a date that follows the scheduled date of the neighborhood meeting, if applicable. The proposal will be scheduled for the next available Planning Board meeting that meets all public noticing requirements contained in Section 14-525.

(ii) Required Workshop for Master Development Plan: A workshop with the Planning Board is required for a Master Development Plan application. The workshop will be scheduled on a date that follows the scheduled date of the required neighborhood meeting. The proposal will be scheduled for the next available Planning Board meeting that meets all public noticing requirements contained in section 14-524.

- (iii) Workshop Procedures: The Planning Board workshop shall be informational and shall not result in any formal approval or disapproval of the project. The Board shall review the submission to determine if the information provides a clear understanding of the site and identifies opportunities and constraints of the site and proposed development, air public comments questions and issues, and provide direction to the applicant regarding issues to be addressed during the final review process.

f. Planning Board Master Development Plan Decisions.

- (i) Review and approval: An applicant proposing a Master Development Plan is seeking approval for an overall concept of development that may be brought for Final Plan approval in two or more phases and in a phase sequence that extends beyond the timeframes allowed above for Final Plan expiration of approvals. Master Development Plan approval may be sought separately or currently with the Phase I Final Level III site plan approval, and shall have an initial approval period of six (6) years, with potential extension periods as provided for in section 14-532(d).
- (ii) Review process. The site plan review process for a Master Development Plan shall proceed in the same manner as a Preliminary Site Plan as detailed above, Sec. 14-524 (3)(b)(i)-(vi) and as a Master Development Plan as detailed above, Sec. 14-524 (3)(C)(i)-(iii).
- (iii) Public Hearing. The Planning Board shall consider a Master Development Plan at a public hearing that meets all public noticing requirements contained in Section 14-32 and the site plan ordinance.
- (iv) Decisions. The Planning Board shall approve, approve with conditions or deny a Master Development Plan application based

upon the applicable review standards. The Planning Board may waive site plan or technical standards related to the Master Development Plan application based upon the applicable review standards. AN approval, including an approval of waivers, establishes the general parameters to be adhered to for the development, including the supporting documentation for floor area ratio and/or residential density, general types of uses, building coverage, generalized open space plans and infrastructure systems.

A Master Development Plan approval shall not be construed as final authorization of the development. Approval shall confer pending proceeding status upon the development with the effect of maintaining the applicability of regulations in effect at the time of approval for as long as the Master Development Plan approval remains valid, including permissible extensions if granted.

All Level III site plans for each phase shall be in general conformance with the Master Development Plan.

ge. Final Plan.

...

Sec. 14-525. Public notices.

(a) *Administrative authorization.* Administrative authorization applications are exempt from noticing requirements fo section 14-525.

(b) *Level I site plan: minor residential development:*

1. *Receipt of Application.* When an application for Level I: Minor Residential Site Plan is submitted for review, the Planning Authority shall notify by mail the owners of all property abutting the proposed site and any property owners directly across the street from the site.

2. Site Plans: Level I Site Plan: Site Alteration, Level II, and Level III, and Master Development Plan—Site Plans.

a. *Receipt of Application.* When an application for Level I Site Alteration, Level II or Level III development is submitted for site plan review, the Planning Authority shall notify, by mail the following, where applicable:

(i) *Notice for Level I: Site Alteration and Level II Site Plans* shall be sent to all property owners within five hundred (500) feet of the subject property lines and to all others, including neighborhood organizations, as may be required by the Planning Authority.

(ii) *Notice for Level III Site Plans and Master Development Plan applications* shall be sent to all property owners within five hundred (500) feet of the subject property lines or within one thousand (1,000) feet if it is a subdivision within an industrial zone, unless the Planning Authority, in its discretion, chooses to notice a larger area and incur the additional expense for the expanded notification and notices shall be sent to all others, including neighborhood organizations, as may be required by the Planning Authority.

...

Sec. 14-526. Site plan standards.

Requirements for approval. The Planning Board or Planning Authority shall not approve a site plan application unless the development proposal meets the following criteria:

...

9. *Zoning Related Design Standards:*

a. Development of certain types and/or proposed in certain zones, as specified below, are subject to design standards in addition to the provisions of Section 14-526 (a) in order to ensure designs that contribute to and enhance the goals and policies for specific districts of the City. The City of Portland Design Standards is listed in the City of Portland Design Manual, which is included by reference. If the development is located in a historic district or associated with a historic landmark, City of Portland Historic Preservation standards shall supersede:

b. Master Development Plan Design Standards: A Master Plan shall comply with the design and development standards of the zone in which it is located, and shall achieve a cohesive land development consistent with the assets of the site, land uses, functional activities, and major design elements, such as buildings, roads, utilities, drainage systems and open space as well as with the Master Development Plan Standards of Review contained in Section 14-524.

10. *Reserved.*

...

(f) General Waiver

1. Except for the requirements set forth in Section 14-526 (a)-(d) for which individual waiver criteria are provided, the Reviewing Authority if it finds that extraordinary conditions exist or that undue hardship may result from strict compliance with these regulations may vary the regulations so that substantial justice may be done and the public interest secured; provided that such variation will not have the effect of nullifying the intent and purpose of the land development plan and the regulations of this article.

public facilities, major existing buildings and structures. There shall also be a statement and/or plan as to the general impact of the proposed Master Development Plan upon the area, indicating how the Master Development Plan relates to surrounding properties and what measures will be taken to create appropriate transitions and access from the subject property to abutting public properties (i.e. parks, waterfront, etc.) or other neighboring tracts (if applicable).

2. A conceptual site plan drawn to a scale of not less than one (1) inch equaling fifty (50) feet, or series of drawings at the same scale, and any necessary supporting information, showing:

(i) The approximate boundary lines of existing and proposed lots within and immediately adjacent to the Master Development Plan, with approximate areas and dimensions. With respect to residential areas, the proposed density, lot configuration, circulation and a typical plot plan shall be included in the application.

(ii) An analysis of the natural features of the site, including existing and/or adjacent natural waterways, wetlands, floodplains, topography, soil conditions and other natural features requested or required by the Planning Authority.

(iii) An analysis of the designated view corridors, historic resources, and archeological resource associated with the site;

(iv) Existing/proposed buildings and other significant structures, building groupings, exterior building elevations and entrances, parking areas, and other significant physical features of the site.

(v) Context drawings, perspective renderings, photographic montages, or computer generated graphics depicting the proposed development within the surrounding building and environmental context. Building elevation drawings shall include the following:

a. Illustrations of all sides of the

Sec. 14-527. Content of site plan applications.

...

(c) Level II, ~~and~~ Level III, and Master Development Plan General Submissions. The applicant shall submit for review a packet of materials and submissions in a form and content as specified by the department of planning and urban development. Such submissions shall contain, at a minimum, the following elements.

...

10. Boundary survey stamped by a professional survey or licensed to practice in the State of Maine, drawn to scale and tied into the State Plane Coordinates, NAD 1983, Maine West Zone, as specified in section 13 of the Technical Manual. A boundary survey of the site, may be waived by the Planning Authority for a review of Master Development Plan, where an existing conditions plan is available. The Boundary Survey requirement shall be met for each phase of development.

(d) Level II, and Level III Preliminary Site Plan Submissions. A preliminary site plan is an optional submittal as part of the Level II and III site plan application review process. If the applicant elects to submit a preliminary site plan for review, it shall include the following information:

...

10. Exterior Building Elevations.

(e) Master Development Plan. A Master Development Plan is an optional submittal as part of the Level III site plan application review process. IF the applicant elects to submit a Master Development Plan for review, it shall include the following information in addition to the general submission requirements of Sec. 14-527 (c)(d):

1. A neighborhood context map, at a scale not less than one (1) inch equals one hundred (100) feet, providing a graphic description of the neighborhood in which the tract lies, including roads, utilities and other

structures;

- b. Views of major entries or prominent building features;
- c. Illustration of building articulation and elements;
- d. Building finish composition; and
- e. Pedestrian and streetscape elements of the Master Development Plan.

The submission shall include a digital three-dimensional model tied to a specific location that is submitted as a KML, KMZ, DXF, or DWG file on a CD or DVD or such format as approved by the Planning Authority. IT is the applicant's responsibility that the model is complete and represents the proposed development accurately using best practice modeling techniques and layering standards.

(vi) Major circulation patterns surrounding and serving the site, the existing and proposed lines of streets (including the street width), ways, easements and any public areas within or next to the site.

(vii) Major landscaping elements, features, open space, and plans for preservation of natural features.

(viii) An analysis of the public safety services needed to support the master plan.

(ix) An analysis of the anticipated impacts on the public school system to support the master development plan.

(x) A generalized drainage plan for the site, indicating drainage ways, flows, points of outfall, and indicating impacts of development on affected drainage basins. The plan shall include contour information at not less than two-foot (2') contour intervals and document anticipated quantities of run-off characteristics. General statements concerning storm water management

techniques shall also be submitted with the application.

(xi) The plan shall clearly show Master Development Plan boundaries, north arrow, date, scale, legend, the title "Master Development Plan Concept Site Plan" followed by the formal project name, and the name(s) of applicant(s), engineer(s), designer(s) and/or agent(s);

(xii) A traffic analysis and recommendations prepared by a registered professional engineer qualified to conduct such studies, including current traffic counts for streets surrounding the project, analysis of the existing capacity of those streets, projections of the amount of traffic that will be generated by the proposed development, and the ability of the street system to absorb the increased traffic without decreasing the level of service below an acceptable level - said level to be determined by the Planning Authority in concert with the Department of Public Services. In cases where the Master Development Plan is subject to a Traffic Movement Permit (TMP) for all phases, the TMP submissions and review shall supersede these requirements.

(xiii) A utilities analysis and recommendations prepared by a registered professional engineer qualified to conduct such studies. Said analysis shall contain an inventory of existing utilities including, but not limited to, storm sewers and drains, sanitary sewers, electrical lines, fire alarm boxes and lines, gas lines/mains, water mains, lighting, curb and gutter, etc. Said inventory shall illustrate utility locations, sizes, diameters, carrying capacity and present load on the system. The engineer's report shall state if the current system is capable of adequately serving the proposed development. If the current utility system is found to be inadequate for the proposed development, the report shall confirm the deficiencies and make recommendation(s) as to the infrastructure improvements necessary to properly service the proposed development and maintain the existing service. The report shall also present a formal

plan for infrastructure improvements, documenting timing, funding mechanisms and coordination with the City; and

(xiv) Any other supportive information the applicant feels may be beneficial in the evaluation of the request.

(xv) The Planning Authority or Planning Board may reduce the level of information required at the Master Development Plan review stage, provided more detailed supportive documentation is provided at final Level III Site Plan Review of the Master Development Plan or phases thereof.

(ef) *Level II and III Final Site Plans.* A final site plan for a Level II or III site plan application shall be based upon a standard stamped boundary survey meeting City of Portland standards, be stamped by a professional engineer licensed to practice in the State of Maine, shall be submitted with all required written submittals and shall include the following information:

. . . .

Sec. 14-528. Reserved.

Sec. 14-529. Appeals.

(a) When the planning authority has approved, approved with conditions, or denied a site plan, or has approved a request to extend the expiration date of a Master Development Plan, any person aggrieved may appeal the decision to the planning board within thirty (30) calendar days of the date of the written decision of the planning authority. Upon the taking of such an appeal, the application or request for an extension shall be reviewed as a new application or request.

. . . .

Sec. 14-530. Development review fees and post approval requirements.

. . . .

4. *Site Plan Review Expenses.*

a.	Level I: Minor Residential	\$300(flat fee)
b.	Level I: Site Alteration	\$200
c.	Level II: Site Plan	\$400
d.	Level III: Site Plan	
	(i) Under 50,000 sf	\$500
	(ii) 50,000-100,000 sf	\$1,000
	(iii) 100,000-200,00 sf	\$2,000
	(iv) 200,000-300,000 sf	\$3,000
	(v) Over 300,000 sf	\$5,000
	(vi) Parking lots over 100 spaces	\$1,000
	<u>e.</u> Master Development Plan	\$1,000
	<u>fe.</u> After the Fact Review	\$1,000 plus application fee
	<u>gf.</u> Amendment to Site Plans	
	(i) Planning Board Review	\$500
	(ii) Administrative Review	\$250
	<u>hg.</u> Other Site Plan Reviews	
	(i) Administrative Authorization	\$50
	(ii) Special Exception Sign Review	\$75
	(iii) Section 14-403 Street Extensions	\$400 plus \$25 per lot
	<u>ih.</u> Fee for Development Review Services	
	(i) Planning fee per hour	\$40

- (ii) Legal fee per hour \$75
- (iii) Third-party Review Fees assessed by the Third Party Professional

j. State Delegated Review Fees

- (i) Site Location of Development \$3,000, except for residential projects which will be \$200 per lot.
- (ii) Traffic Movement Permit \$1,000
- (iii) Stormwater Quality Permit \$250

k. Performance Guarantee

- (i) As required in Section 14-530 (b) (4).

l. Inspection Fees, as required in Section 14-530 (b) (5)

- (i) Level I: Site Alteration, Level II and Level III: 2% of the performance guarantee or as assessed by Planning or Public Works Engineer at \$45 an hours with minimum inspection fee of \$300 Level I: Minor Residential Inspection Fee \$100 (flat fee).

m. Street vacation \$2,000

. . . .

Sec. 14-531. Reserved.

Sec. 14-532. General requirements and enforcement.

. . . .

(b) *Revisions and amendments to Master Plans and approved site plans.*

1. Amendments to a Master Development Plan.

a. Minor amendments. A minor amendment to a Master Development Plan shall be defined as a change which is generally consistent with the approved Master Development Plan layout of buildings, circulation infrastructure, and open spaces, and:

(i) Does not propose any new general type of use beyond those approved initially;

(ii) Does not increase the building ground coverage, floor area ratio or residential density of the Master Development Plan;

(iii) Does not decrease any specified area regulations or enumerated parking ratios; and

(iv) Does not substantially change access, circulation, or infrastructure on or adjacent to the site.

The Planning Authority shall be authorized to approve such minor amendments to a Master Development Plan upon written application and explanation of the change(s) by the owner (or its agent) of the property. No further public hearings shall be required.

12. Approved Site Plan: If at any time before or during development the applicant requests minor amendments to an approved plan for Level III development, the Planning Authority may approve such minor amendments under the procedures for minor development, provided that they do not amount to a waiver or substantial alteration of the site plan, and do not affect any condition or requirement of the Planning Board. The applicant shall supply an application and written statement of the proposed amendment(s) and proposed amended plans to the Planning Authority, whose decision as to whether the amendment is minor shall be final. The Planning Authority shall determine if a notice of amendment shall be required and the extent of such notice based on the extent and nature of the proposed amendment to plan and the demonstrated public interest related thereto.

23. Limited ~~±In-Field~~ ~~e~~Changes: approved by the Public Services Authority must be in writing and submitted to the Planning Authority and are specifically limited to minor variation necessary to deal with unforeseen difficulties that arise during the course of construction involving such technical detail as utility location and substitution of equivalent plantings and shall not include any substantial alteration of the approved plan or change any condition imposed by the Planning Board or Planning Authority.

(c) *Expiration of site plan approval.*

1. A site plan approved under this article shall expire twelve (12) months from the date of approval unless:
 - a. Development has been undertaken in accordance with the approved plan and site work or building construction is ongoing. Any lapse in construction for a period in excess of twelve (12) months shall result in an expiration of the site plan; or
 - b. Prior to the expiration of the site plan, such other time period is agreed upon, in writing, by the Planning Authority and the applicant, not to exceed three (3) years from the date of approval;

Provided that such extensions may not be granted if changes to the City's zoning ordinance would render the development nonconforming in any respect or if changes in the subdivision or site plan ordinance or in the Public Services Technical Standards Manual or Planning and Development Design Standards would otherwise significantly impact the approved site plan as determined by the Director of Planning and Urban Development.

2. Where the approval or any related land use approval granted to the same applicant by any agency of the City with respect to the same development is appealed to any court by an opponent of the development, the applicant shall be granted further extensions, beyond the expiration of said period, where the applicant has exercised due diligence with respect to defending such

appeal, which extensions shall not last beyond one (1) year from entry of final judgment.

(d) Expiration of Master Development Plan:

1. A Master Development Plan approved under this article shall expire six (6) years from the date of approval unless:

- a. Prior to the expiration of the Master Development Plan, an applicant may submit a written request to the Planning Authority for an extension of a Master Development Plan approval and associated waivers. Only two (2) such extensions may be granted by the Planning Authority, and each such extension shall be limited to two (2) years from the date of expiration of the Master Development Plan. Provided there have not been substantial changes to the underlying zoning or site plan standards since the date of the Master Development Plan approval that would have a substantial impact on the Master Development approval, the Planning Authority may grant an extension. The Planning Authority may condition the extension on an amendment of the Master Development Plan to comply with such applicable ordinance or site plan standard changes provided that the Planning Authority may not require changes in the uses approved on the Master Development Plan or changes that would reduce the gross floor area of the buildings described or shown on the approved Master Development Plan. For the purposes of this provision, gross floor area includes the sum of the gross horizontal areas of each floor of each building or structure from the exterior face of exterior walls, or from the centerline of a wall separating two buildings, but excluding any space where the floor to ceiling height is less than six (6) feet. Any decision by the Planning Authority regarding the granting of an extension may be appealed to the Planning Board as provided for in Section 14-529;
- b. Approved major or minor amendments to a Master Development Plan do not alter the expiration date for the Master Plan that is based upon the original date of approval.

| (ed) *Enforcement*.

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**City of Portland, Maine
City Council Agenda Request Form**

TO: Sonia Bean, Senior Administrative Assistant
FROM: Jeff Levine, Director of Planning and Urban Development
DATE: March 26, 2013
Re: **Article V, Site Plan Amendments for Master Development Plan**

1) Council meeting at which action is requested:

1st reading: April 1, 2013
Final action: April 22, 2013

2) Can action be taken at a later date: x YES NO
If not, why not:

3) This item is sponsored by: Mark Rees, City Manager

cc: Mark Rees, City Manager
Mayor Brennan
Danielle West-Chuhta, Corporation Counsel
Jeff Levine, Director of Planning and Urban Development
Terry Tucker, Administrative Assistant

I. SUMMARY OF ISSUE

Several large scaled projects submitted for review to the Planning Board have required additional time to obtain financing or would have benefitted from an option to phase a project over an extended time frame. While the site plan ordinance allows for phased development, site plan approvals expire in one year with the option of extending the time frame to three years from the date of approval. Projects have returned to the Board with amended plans or re-approvals in order to secure financing and proceed to construction. The current site plan ordinance does not offer a mechanism to review a master development plan in order to achieve a unified development scheme.

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

The Planning Board unanimously recommends (7-0) adoption of a Master Development Plan review process proposed for Article V, Site Plan Ordinance. The proposed text amendments recognize the need for projects on large sites to undergo an optional Master Development planning process in order to promote a cohesive and integrated development approach. The Master Development Plan process addresses the expectation that these developments (given the size and complexity) will be built in phases over an extended time frame. The proposed amendments address the need of the current financial market

for a level of certainty in the review process, which accommodates the extended time needed to undertake complex projects. The Master Development Plan review process is, in part, designed to reduce the requests for contract or conditional zoning that often accompany large and complex projects

The proposed Master Development Plan process applies to development with over 1 acre of land in all non-residential zones. It is not applicable in residential zones, except for institutional uses such as schools, hospitals and universities. An approval of a master development plan, including any approval of waivers, establishes the general parameters to be adhered to for the development. A Master Development Plan approval is not the final authorization of the development, but it will confer pending proceeding status upon the development with the effect of maintaining the applicability of regulations in effect at the time of approval for as long as the Master Development Plan approval remains valid. As proposed, an approved Master Development Plan would be valid for six (6) years with the Planning Authority able to grant two (2) two-year extensions under certain circumstances or to seek amended plans to address revised regulations. Each phase of development requires a Level III site plan review by the Planning Board for final approval.

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

The proposed amendments are intended to establish a Master Development Plan review process within the Site Plan Ordinance, in order to promote a cohesive and integrated development approach for larger scaled projects in non-residential zones or for institutional uses in residential zones. The review process for Master Development Plans includes noticing provisions, a separate required neighborhood meeting, a required Planning Board workshop, a required public hearing, and standards of review. The Master Development Plan amendments contemplate a development occurring in phases over an extended time period and establish a pending status for the overall development.

IV. FINANCIAL IMPACT

There are no known negative financial impacts associated with the proposed amendments.

V. STAFF ANALYSIS & RECOMMENDATION

At the March 12, 2013 public hearing, the Planning Board voted unanimously (7-0) to recommend the proposed text amendments for the Master Development Plan with three revisions. The recommended revisions to the text amendments included the following:

1. Require a separate neighborhood meeting for the Master Development Plan from any required Level III site plan requirements for a neighborhood meeting.
2. Make it a requirement that there is Planning Board workshop for a Master Development Plan; and
3. Add a standard of review that addresses maintaining future phases in a stable, safe and attractive site conditions.

The Council Order incorporates the amendments recommended by the Planning Board.

Attachments:

1. Planning Board Report #17-13



PLANNING BOARD REPORT TO CITY COUNCIL PORTLAND, MAINE

Article V, Site Plan Amendments for Master Development Plan City of Portland, Applicant

Submitted to: Portland City Council: Public Hearing Date: April 22, 2013 Planning Board Report Number: 17-13	Sponsored by: Portland Planning Board Prepared by: Barbara Barhydt, Development Review Services Manager Date: March 26, 2013
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I. INTRODUCTION

At the March 12, 2013 public hearing, the Planning Board voted unanimously (7-0) to recommend to the City Council the adoption of text amendments that create a Master Development Plan review process within the Site Plan Ordinance. The proposed amendments are intended to promote a cohesive and integrated development approach for larger scaled projects in non-residential zones or for institutional uses in residential zones. The review process for Master Development Plans includes noticing provisions, a separate required neighborhood meeting, a required Planning Board workshop, a required public hearing, and standards of review. The Master Development Plan amendments contemplate a development occurring in phases over an extended time period and establish a pending status for the overall development. The Master Development Plan review process is, in part, designed to reduce the requests for contract or conditional zoning that often accompany large and complex projects.

Public notice consists of 88 notices mailed to property owners as well as the item appearing on the Legal Ad which ran in the Press Herald will appear on April 15 and 22nd.

II. Article V. Site Plan, Master Development Plan Amendments for the Site Plan Ordinance

The proposed text amendments for the Site Plan Ordinance are presented in Attachment 1. Portions of the site plan ordinance are excerpted from the attachment where no amendments are proposed. Following is an outline and summary of the proposed text amendments. Revisions to the text since the February 12th workshop are identified below.

1. Sec. 14-522 Definitions

- a. Section 14-522: Add definition of Master Development Plan (Attachment 1, page 1):

A master development plan is a regulatory option for sites with one acre or more in cumulative lot area that designed as a cohesive and integral development program consisting of multiple buildings and associated site improvements built in phases over an extended time frame. This option shall not apply in residential zones except for institutional uses.

Staff Comment: The Master Development Plan concept applies to larger sites with multiple buildings that may have more complex development issues and a longer build-out time frame than smaller scale projects. This provision does not apply within residential zones, except for institutional uses. The inclusion of institutional uses is particularly useful since hospitals, colleges and schools often have long-term horizons for their plans that exceed the time frame of up to three years for site plan approvals. It also encourages large developments and institutions to engage in a long-term planning process, which is beneficial to the City, neighborhoods, institutions, and developers.

2. Sec. 14-523 Required Approvals and Applicability

- a. **Sec. 14-523 (a) Required Review f.** Add Master Development Plan to list for required review (Attachment 1, page 2):

“Master Development Plan Review shall require the Master Development Plan approval of the Planning Board as provided in Section 14-524 (d) (9).

- b. **Section 14-523 (b) Applicability.** Add Master Development Plan (g) to applicability (Attachment 1, page 2):

(g) *Master Development Plan*: A Master Development Plan meeting the criteria listed below will undergo a Master Development Plan Review as follows:

1. A Master Development Plan for a site with one acre or larger in cumulative lot area that is designed as a cohesive and integral development program consisting of multiple buildings and associated site improvements proposed to be built in phases.
2. The Master Development Plan option shall not apply in residential zones, except for institutional uses.

Staff Comment: Master Development Plan Review is listed under required reviews and stipulates that Planning Board approval is required. A separate decision making process is presented for Master Development Plans under Section 14-524 of the Site Plan ordinance (see below). The applicability section of 14-523 restates the definition of the Master Development Plan.

3. Sec. 14-524 Site Plan Review Processes

- a. **Section 14-524 (a) 3. Level II and Level III site plan review.** Add Master Development Plan to the site plan review process for Level II and Level III site plans (Attachment 1, page 3).
- b. **Section 14-524 (a) 3.a. Pre-application Conference.** Add Master Development Plan to the list of applications that are encouraged to have a pre-application meeting with City staff before submitting an application (Attachment 1, page 3).
- c. **Section 14-524 (a) 3. c. Master Development Plan Review.** Add a new review process for a Master Development Plan (Attachment 1, pages 5 -8). The proposed amendment restates the definition of a master plan and identifies the key elements for consideration of a master plan, standards for review and phasing. The proposed text amendments are as follows:

c. Master Development Plan Review

- (i) Application Process: Applicants for Level III site plan reviews may submit a Master Development Plan for a large, multi-phase development program consisting of multiple buildings and associated site improvements on a site of one (1) acre or more of total land area, which is designed as a cohesive and integral development program. The purpose of a Master Development Plan is to provide for a mix of land uses at designated locations to achieve a land development responsive to the assets of a site. A Master Development Plan is a well-integrated development in terms of land uses, functional activities, and major design elements such as buildings, roads, utilities, drainage systems and open space. The Master Development Plan is deemed appropriate to large scale mixed use projects that are intended to be developed in phases. The Master Development Plan shall be reviewed by the Planning Board and may be reviewed independently or concurrently with review as a site plan for a phased development. A Master Development Plan must address the submission requirements of Section 14-527.
- (ii) The site plan review process for a Master Development Plan shall proceed in the same manner as a Preliminary Site Plan, as detailed in Sec. 14-524 (3) (b) (ii) through (vi).
- (iii) Standards of Review. A Master Development Plan shall adhere to the following general requirements and features, and shall meet the Master Development Plan Site Plan Standards of 14-526(d)(9):
 - a. a designated tract of land consisting of a parcel of parcels of contiguous land or land on both sides of a public street, totaling one (1) acre or more;
 - b. developed in a comprehensive, design-integrated manner, according to an overall master development plan;
 - c. consistent with the objectives of this Ordinance;
 - d. consistent with the City's Comprehensive Plan and consistent with City Council approved master plans and facility plans for off-premise infrastructure, including but not limited to, trails, pedestrian and bicycle network, view corridors, environmental management, sewer and stormwater, streets, or other facilities (see Section 15 of the Technical Manual);
 - e. developed so as to locate buildings and improvements in a manner that provides usable open space, preserves significant natural features, as defined by the site plan ordinance standards, and preserves existing trees to the maximum extent possible;
 - f. developed so as to be in conformance with Portland's Historic Preservation Ordinance standards for designated landmarks or for

properties within designated historic districts or designated historic landscapes, if applicable. When proposed adjacent to or within 100 feet of designated landmarks, historic districts or historic landscapes, the Master Plan shall be developed so as to be generally compatible with the major character-defining elements of the landmark or portion of the district in the immediate vicinity of the proposed development;

g. an efficient use of land which properly considers topography and protects significant natural features including, but not limited to, waterways, wetlands, floodplains and wildlife;

h. an efficient use of land demonstrating full coordination of its own site development and surrounding context including, but not limited to, the land uses and functions contemplated, architecture, open space and pedestrian networks, vehicular access and circulation, and all other infrastructure;

i. linked and coordinated with surrounding land uses, infrastructure and off-site public facilities, including but not limited to the public school system, where appropriate, in a manner that is safe, efficient, non-injurious to the public, and an improvement or benefit to the public where possible;

j. designed with sizing of street and other infrastructure systems to accommodate the overall service demand of the Master Plan;

k. designed to create a street grid pattern that reflects average city block sizes of the neighborhood for street connectivity;

l. designed as to create a cohesive identity through building scale, massing, and articulation; use of quality exterior materials; architectural detailing at the pedestrian scale; consistency of design and materials for streetscape and pedestrian amenities; framing of outdoor open space and linkages; a clear conveyance of the function and significance of various buildings, entrances, and features; and to generally comply with design and development standards of the zone in which it is located;

m. inclusive of provisions for the ownership and maintenance of usable open space as appropriate; and

n. For areas proposed as future development phase(s), the proposed interim conditions shall be managed and maintained to ensure stable, safe and attractive site conditions.

- (iv) *Phasing.* One or more phases of the Master Development Plan may be reviewed as a final level III site plan concurrently with the review and approval of the Master Development Plan.

Staff Comment: The Master Development Plan concept as proposed is applicable for larger scaled developments in Portland's non-residential zones. This mechanism would not be

available in residential zones, except for institutions. It provides a framework for entities to consider a more comprehensive view of the site, its assets, community connections, infrastructure, and a phased approach to the build out of the site. The standards of review support the broader perspective or more conceptual planning and development of the site for an extended time frame. It anticipates consideration of key elements of a plan in a more preliminary context and does not require the full level of technical and engineered detail, as required for site plan review. The Master Plan may be reviewed separately or concurrently with the first phase of development.

Standard I is a general design standard that calls for a cohesive identity of the Master Development Plan. It lists building scale, massing and articulation, exterior materials, architectural detailing at the pedestrian scale, opens space, streetscape amenities, and conveyance of function and significance of various features of the buildings. The standard also calls for a Master Development Plan to be in general compliance with design and development standards of the zone in which it is located. There is a cross-reference to design standards applicable to the underlying zone. The non-residential zones that currently have design standards include B-1, B-2, B-3, B-5, B-7, University of Maine Overlay Zone, Eastern Waterfront Port Zone and B-6.

- d. **Section 14-524 (a) 3. d. Neighborhood Meetings for Level III Site Plans.** Add a required neighborhood meeting for Master Plan Application, which shall not be combined with a required neighborhood meeting for a Level III site plan (Attachment 1, pages 8 and 9).

(ii) Neighborhood Meeting Required for Master Development Plan: An applicant for a Master Development Plan shall conduct at least one (1) neighborhood meeting within thirty (30) calendar days of filing a Master Development Plan application. The meeting(s) will be held on a date no less than seven (7) calendar days from a public workshop or public hearing. The neighborhood meeting for a Master Development plan shall not be combined with any required neighborhood meeting for the Level III applications associated with the overall phased development. The meeting shall be held at a convenient location within the City of Portland neighborhood surrounding the proposed site. All costs associated with the neighborhood meeting shall be borne by the applicant. The workshop shall meet all other provisions of Section 14-524 (d)(i).

Staff Comment: Neighborhood meeting would be required for a Master Plan application under the same procedures as are required for a Level III site plan application; however, a separate neighborhood meeting is required for a Master Development Plan. The Planning Board concluded that the large scale of development for a Master Development Plan warranted a neighborhood meeting, which is not to be combined with a Level III site plan application for a phase of development.

- e. **Section 14-524 (e) Planning Board Workshops.** Add a new section that requires the applicant to participate in a workshop with the Planning Board for a Master Development Plan application (Attachment 1, page 11).

(i) Required Workshop for Master Development Plan: A workshop with the Planning Board is required for a Master Development Plan application. The workshop will be scheduled on a date that follows the scheduled date of the

required neighborhood meeting. The proposal will be scheduled for the next available Planning Board meeting that meets all public noticing requirements contained in Section 14-524.

Staff Comment: Under the current Site Plan Ordinance, applicants may request a workshop with the Planning Board. Workshops are not mandatory for site plan reviews. The Planning Board determined at the public hearing that a Planning Board workshop for a Master Development Plan application should be required, due to the scale and extended approval period for such developments. All other workshop procedures would apply for a Master Development Plan.

- f. **Section 14-524 (f) i-iv. Planning Board Master Development Plan Decisions.** Add a new section for Planning Board Master Plan Decisions (Attachment 1, pages 11-13). Under Portland's Site Plan Ordinance, the Board decides on final site plans, but does not act upon preliminary plans. Thus, a new section is proposed which articulates the Planning Board's decision making process for a Master Development Plan, including the granting of waivers. This section cross-references the review process for a Master Development Plan and the applicable preliminary plan review steps. The initial approval period is proposed at six (6) years. The amendments are as follows:

f. *Planning Board Master Development Plan Decisions.*

- (i) *Review and approval:* An applicant proposing a Master Development Plan is seeking approval for an overall concept of development that may be brought for Final Plan approval in two or more phases and in a phase sequence that extends beyond the time frames allowed above for Final Plan expiration of approvals. Master Development Plan approval may be sought separately or currently with the Phase I Final Level III site plan approval, and shall have an initial approval period of six (6) years, with potential extension periods as provided for in Section 14-532(d).
- (ii) *Review Process.* The site plan review process for a Master Development Plan shall proceed in the same manner as a Preliminary Site Plan as detailed above, Sec. 14-524(3)(b), (i) through(vi) and as a Master Development Plan as detailed above, Sec. 14-524 (3)c(i-iii).
- (iii) *Public Hearing:* The Planning Board shall consider a Master Development Plan at a public hearing that meets all public noticing requirements contained in Section 14-32 and the site plan ordinance.
- (iv) *Decisions.* The Planning Board shall approve, approve with conditions or deny a Master Development Plan application based upon the applicable review standards. The Planning Board may waive site plan or technical standards related to the Master Development Plan application based upon the applicable review standards. An approval, including an approval of waivers, establishes the general parameters to be adhered to for the development, including the supporting documentation for floor area ratio and/or

residential density, general types of uses, building coverage, generalized open space plans, and infrastructure systems.

A Master Development Plan approval shall not be construed as final authorization of the development. Approval shall confer pending proceeding status upon the development with the effect of maintaining the applicability of regulations in effect at the time of approval for as long as the Master Development Plan approval remains valid, including permissible extensions if granted.

All Level III site plans for each phase shall be in general conformance with the Master Development Plan.

Staff Comment: As noted above, the Planning Board does not act upon preliminary site plans, so a process is proposed for the Planning Board to consider and vote on a Master Development Plan at a public hearing. The amendments provide for an approval of an overall concept of development with each phase of development requiring a separate Level III site plan review. The Master Development Plan can be considered by itself or it can be reviewed concurrently with the Level III site plan for Phase I. The option to consider waivers at the Master Development Plan stage was added into this section per the Planning Board's direction. The Master Development Plan approval and any waivers granted, establish the general parameters to be adhered to for the overall development and confer a pending proceeding status upon the development.

4. Sec. 14-525 Public Notices.

- a. Section 14-525. 2 Add Master Development Plans in the public notice section (Attachment 1, pages 13-14), so that the same noticing requirements apply for a Master Development Plan as are required for Level II and Level III site plans.

5. Sec. 14-526 Site Plan Standards

- a. Section 14-526 (d) 9. Add a Master Development Plan Design Standard under the Site Design standards of the site plan ordinance (Attachment 1, page 15- 16) as follows:

9. Zoning Related Design Standards

b. Master Development Plan Design Standards:

A Master Plan shall comply with the design and development standards of the zone in which it is located, and shall achieve a cohesive land development consistent with the assets of the site, land uses, functional activities, and major design elements, such as buildings, roads, utilities, drainage systems and open space as well as with the Master Development Plan Standards of Review contained in the Section 14-524.

Staff Comments: A new standard is proposed to be added under the Site Design Standards of the Site Plan Ordinance. It states that the Master Development Plan shall comply with the requirements of the underlying zone and will generally comply with the design and development standards of the zone in which is it located. As noted above, there are design standards for the following non-residential zones: B-1, B-2, B-3, B-5, B-7, University of

Maine Overlay Zone, Eastern Waterfront Port Zone and B-6. Shadow and wind studies are required in some of the design standards, such as in B-3 and B-7.

- b. Section 14-526 (f) General Waiver: Add a new section for a general waiver of site plan standards (Attachment 1, page 16- 17):

(f) *General Waiver:*

- 1. Except for the requirements set forth in Section 14-526 (a) through (d) for which individual waiver criteria are provided, the Reviewing Authority if it finds that extraordinary conditions exist or that undue hardship may result from strict compliance with these regulations may vary the regulations so that substantial justice may be done and the public interest secured; provided that such variation will not have the effect of nullifying the intent and purpose of the land development plan and the regulations of this article.

Staff Comments: The Subdivision Ordinance authorizes public services and planning to promulgate technical and design standards for subdivisions and site plans. Within the subdivision ordinance the above general waiver provision is found under modifications for technical and design standards. There are also specific waiver criteria for curbs and sidewalks in the subdivision ordinance and waiver criteria for some of the standards within the Site Plan Ordinance. The proposed general waiver criteria mirrors the language contained in the subdivision ordinance and is proposed to clarify applicability of this provision within the site plan ordinance.

6. Sec. 14-527 Content of Site Plan Applications.

- a. Section 14-527 (c) Level II and Level III General Submissions. Add Master Development Plan to the general submission requirements for Level II and Level III site plan reviews (Attachment 1, pages 17-18). The general submission requirements address application form, fees, project description, right title and interest, applicable state and federal reviews, written assessment of zoning, summary of easements or other encumbrances, a summary of waivers if applicable, and evidence of financial and technical capacity. The boundary survey required for site plans may be waived for Master Development Plans. Please note that the list of requested waivers is listed within the general requirements for all applications, so a separate request for this information under the Master Development Plan submission is not proposed.
- b. Section 14-527 (d) Level II and Level III Preliminary Site Plan Submissions. Adds Exterior Building Elevations to the preliminary site plan submissions for Level II and Level III site plans (Attachment 1, page 18), which is an omission from the 2010 site plan update.
- c. Section 14-527 (e) Master Development Plan: Add a separate Master Plan submission section that lists the required information (Attachment 1, pages 19-23). The list does include an option for the Planning Authority or Planning Board to accept a reduced level of information for the Master Development Plan stage, provided that more detailed information is provided at the final Level III review. The submission requirements do include the design manual requirements for submissions and adds the requirement to submit a digital model that accurately represents the proposed development. Based upon public comment,

the standards also seek an assessment of the development on the public school system. The submission requirements are as follows:

(e) *Master Development Plan.* A Master Development Plan is an optional submittal as part of the Level III site plan application review process. If the applicant elects to submit a Master Development Plan for review, it shall include the following information in addition to the general submission requirements of Sec 14-527 (c):

1. A neighborhood context map, at a scale not less than one (1) inch equals one hundred (100) feet, providing a graphic description of the neighborhood in which the tract lies, including roads, utilities and other public facilities, major existing buildings and structures. There shall also be a statement and/or plan as to the general impact of the proposed Master Development Plan upon the area, indicating how the Master Development Plan relates to surrounding properties and what measures will be taken to create appropriate transitions and access from the subject property to abutting public properties (i.e. parks, waterfront, etc.) or other neighboring tracts (if applicable);
2. A conceptual site plan drawn to a scale of not less than one (1) inch equaling fifty (50) feet, or series of drawings at the same scale, and any necessary supporting information, showing:
 - i. The approximate boundary lines of existing and proposed lots within and immediately adjacent to the Master Development Plan, with approximate areas and dimensions. With respect to residential areas, the proposed density, lot configuration, circulation and a typical plot plan shall be included in the application;
 - ii. An analysis of the natural features of the site, including existing and/or adjacent natural waterways, wetlands, floodplains, topography, soil conditions and other natural features requested or required by the Planning Authority;
 - iii. An analysis of the designated view corridors, historic resources, and archeological resources associated with the site;
 - iv. Existing/proposed buildings and other significant structures, building groupings, exterior building elevations and entrances, parking areas, and other significant physical features of the site;
 - v. Context drawings, perspective renderings, photographic montages, or computer generated graphics depicting the proposed development within the surrounding building and environmental context. Building elevation drawings shall include the following: a) illustrations of all sides of the structures; b) views of major entries or prominent building features, c) illustration of building articulation and elements; d) building finish composition and e) pedestrian and streetscape elements of the Master Development Plan. The submission shall include a digital three-dimensional model tied to a

specific location that is submitted as a KML, KMZ, DXF, or DWG file on a CD or DVD or such format as approved by the Planning Authority. It is the applicant's responsibility that the model is complete and represents the proposed development accurately using best practice modeling techniques and layering standards;

- vi. Major circulation patterns surrounding and serving the site, the existing and proposed lines of streets (including the street width), ways, easements and any public areas within or next to the site;
- vii. Major landscaping elements, features, open space, and plans for preservation of natural features;
- viii. An analysis of the public safety services needed to support the master plan;
- ix. An analysis of the anticipated impacts on the public school system to support the master plan;
- x. A generalized drainage plan for the site, indicating drainage ways, flows, points of outfall, and indicating impacts of development on affected drainage basins. The plan shall include contour information at not less than two-foot (2') contour intervals and document anticipated quantities of run off in relation to existing run off characteristics. General statements concerning storm water management techniques shall also be submitted with the application;
- xi. The plan shall clearly show Master Development Plan boundaries, north arrow, date, scale, legend, the title "Master Development Plan Concept Site Plan" followed by the formal project name, and the name(s) of applicant(s), engineer(s), designer(s) and/or agent(s);
- xii. A traffic analysis and recommendations prepared by a registered professional engineer qualified to conduct such studies, including current traffic counts for streets surrounding the project, analysis of the existing capacity of those streets, projections of the amount of traffic that will be generated by the proposed development, and the ability of the street system to absorb the increased traffic without decreasing the level of service below an acceptable level — said level to be determined by the Planning Authority in concert with the Department of Public Services. In cases where the Master Development Plan is subject to a Traffic Movement Permit (TMP) for all phases, the TMP submissions and review shall supersede these requirements;
- xiii. A utilities analysis and recommendations prepared by a registered professional engineer qualified to conduct such studies. Said analysis shall contain an inventory of existing utilities including, but not limited to, storm sewers and drains, sanitary sewers, electrical lines, fire alarm boxes and lines, gas lines/mains, water mains, lighting, curb and gutter, etc. Said inventory shall illustrate utility locations,

sizes, diameters, carrying capacity and present load on the system. The engineer's report shall state if the current system is capable of adequately serving the proposed development. If the current utility system is found to be inadequate for the proposed development, the report shall confirm the deficiencies and make recommendation(s) as to the infrastructure improvements necessary to properly service the proposed development and maintain the existing service. The report shall also present a formal plan for infrastructure improvements, documenting timing, funding mechanisms and coordination with the City; and

- xiv. Any other supportive information the applicant feels may be beneficial in the evaluation of the request.
- xv. The Planning Authority or Planning Board may reduce the level of information required at the Master Development Plan review stage, provided more detailed supportive documentation is provided at final level III site plan review of the Master Development Plan or phases thereof.

7. Sec. 14-529 Appeals

- a. Section 14-529 (a) Add an appeal process for Planning Authority decisions to extend a Master Plan approval (Attachment 1, page 23) as follows:
 - (a) When the planning authority has approved, approved with conditions, or denied a site plan, or a has approved a request to extend the expiration date of a Master Plan, any person aggrieved may appeal the decision to the planning board within thirty (30) calendar days of the date of the written decision of the planning authority. Upon the taking of such an appeal, the application or request for an extension shall be reviewed as a new application or request.

8. Sec. 14-530 Development Review Fees and Post Approval Requirements

- a. Section 14-530 (a) 4. (e) Add Master Plan under the section for site plan review expenses and add a fee of \$1,000 (Attachment 1, page 24).

9. Sec. 14-532 General Requirements and Enforcement

- a. Section 13-532 (b) 1 Revisions and amendments to approved site plans. Add Master Development Plans under the revisions and amendments of approved site plans (Attachment 1, pages 26-27), which defines minor amendments and major amendments. Minor amendments may be approved by the Planning Authority under the following conditions and major amendments return to the Planning Board for review:

1. Amendments to a Master Plan.

- (a) Minor Amendments. A minor amendment to a Master Development Plan shall be defined as a change which is generally consistent with the approved Master Development Plan layout of buildings, circulation infrastructure, and open spaces, and:

- a. does not propose any new general type of use beyond those approved initially;
- b. does not increase the building ground coverage, floor area ratio or residential density of the Master Plan;
- c. does not decrease any specified area regulations or enumerated parking ratios; and
- d. does not substantially change access, circulation, or infrastructure on or adjacent to the site.

The Planning Authority shall be authorized to approve such minor amendments to a Master Plan upon written application and explanation of the change(s) by the owner (or its agent) of the property. No further public hearings shall be required.

- (b) Major Amendments. Any other change to a Master Plan shall be considered a major amendment and be processed through the normal Master Plan site plan review procedure before the Planning Board and full review of compliance with the requirements of this Ordinance.

Staff Comments: The Board requested that the proposal clarify that amendments to the Master Development Plan do not extend the time frame for the Master Development Plan beyond the original expiration date. Language addressing this matter is proposed within Section 14-532 (d) Expiration of Master Plan.

- b. Section 14-532 (d) Expiration of Master Development Plan. Add the expiration time frame for master plans and the provisions for an extension (Attachment 1, pages 29 and 30). The proposal as drafted is as follows:

(d) *Expiration of Master Development Plan:*

- 1. A Master Development Plan approved under this article shall expire six (6) years from the date of approval unless:
 - a. Prior to the expiration of the Master Development Plan, an applicant may submit a written request to the Planning Authority for an extension of a Master Development Plan approval and associated waivers. Only two (2) such extensions may be granted by the Planning Authority, and each such extension shall be limited to two (2) years from the date of expiration of the Master Development Plan. Provided there have not been substantial changes to the underlying zoning or site plan standards since the date of the Master Development Plan approval that would have a substantial impact on the Master Development approval, the Planning Authority may grant an extension. The Planning Authority may condition the extension on an amendment of the Master Development Plan to comply with such applicable ordinance or site plan standard changes provided that the Planning Authority may not require changes in the uses approved on the Master Development Plan or changes that would reduce the gross floor area of the buildings described or shown on the approved Master Development Plan. For the

purposes of this provision, gross floor area includes the sum of the gross horizontal areas of each floor of each building or structure from the exterior face of exterior walls, or from the centerline of a wall separating two buildings, but excluding any space where the floor to ceiling height is less than six (6) feet. Any decision by the Planning Authority regarding the granting of an extension may be appealed to the Planning Board as provided for in Section 14-529;

- b. Approved major or minor amendments to a Master Development Plan do not alter the expiration date for the Master Development Plan that is based upon the original date of approval.

Staff Comment: The intent of a Master Development Plan is to plan for the rational build-out of larger sites over an extended time frame. The text amendments set a 6 year approval period with the option for two 2-year extensions under certain conditions. Thus an approval of a Master Development Plan would establish a pending status for the development and any associated waivers for a six year period with the effect of maintaining the applicability of regulations in effect at the time of approval. An extension may be granted by the Planning Authority when substantial changes to the underlying zoning or site plan standards have not been made since the approval, which would have substantial impact on the development. If there have been ordinance changes, the Planning Authority may grant an extension with the condition that the applicant amend the Master Development Plan to comply with the current regulations; however the Planning Authority may not require changes in the uses approved or reduce the gross floor area of the buildings. Gross floor area is defined as the sum of the gross floor area as measured from the exterior face of exterior walls, but does not include floor space where the ceiling height is less than 6 feet. As in the initial draft, the Planning Authority decision can be appealed to the Planning Board.

A section is added that approved amendments to the Master Development Plan do not alter the original expiration date, thus amended Master Development Plans expire based upon the initial date of approval.

III. Consistency With Comprehensive Plan

In 2002, the City Council adopted a Community Vision, which guides the proposed amendments to the site plan ordinance for a Master Development Plan process, including standards and procedures. The applicable excerpts from the "Shaping Community Vision for Portland" are as follows:

- I. Build a Vibrant Small City
 - Build upon the distinctive fabric of Portland's built environment by rehabilitating historic resources and by developing new buildings that respect the scale and character of traditional development patterns. New development shall be pedestrian oriented and accessible.
- II. Provide High Quality Leadership
 - Create a sustainable community with vital neighborhoods, high quality infrastructure, a strong economy and a healthy environment, while keeping municipal taxes affordable.
 - Encourage excellence in City government and comprehensive planning

through increased civic involvement, responsive local government, accountable decision-making, and creative and adaptive local and regional planning. Innovative thinking and leadership will preserve those attributes of Portland that we value.

- Incorporate environmental, economic and neighborhood considerations in municipal decision-making.
- Take the lead in developing clear standards and rules and ensure adherence thereto.

III. Protect Our Community Attributes

- Protect the natural environment and historic resources.
- Strengthen alternative transportation options to create an accessible city that promotes ease of movement for all citizens, serving neighborhood needs, pedestrians, handicapped persons, bicyclists and vehicles.

IV. The Planning Board Recommendation to City Council

On March 12, 2013, the Planning Board voted unanimously (7-0) to find the proposed the amendments to establish the Master Development Plan provisions in the Site Plan Ordinance are consistent with the comprehensive plan of the City of Portland, and therefore recommends the proposed amendments to the City Council with the following revisions:

1. Require a separate neighborhood meeting for the Master Development Plan from any required Level III site plan requirements for a neighborhood meeting.
2. Make it a requirement that there is a Planning Board workshop for a Master Development Plan; and
3. Add a standard of review that addresses maintaining future phases in a stable, safe and attractive site conditions.

The Council Order and Attachment 1 to this report incorporate the amendments recommended by the Planning Board.

Attachments:

1. Proposed Site Plan Amendments – draft dated March 26, 2013

ARTICLE V. SITE PLAN*

Sec. 14-521. Purposes.

(Omitted: Purposes omitted - no changes)

Sec. 14-522. Definitions.

For the purposes of this article all terms and words shall have their ordinary meanings, except as defined herein.

(Omitted: List of definitions omitted, except for proposed definition.)

Master Development Plan; A Master Development Plan is a regulatory option for sites with one acre or more in cumulative lot area that is designed as a cohesive and integral development program consisting of multiple buildings and associated site improvements built in phases over an extended time frame. This option shall not apply in residential zones except for institutional uses.

Sec. 14-523. Required Approvals and Applicability.

(a) *Required Approval.* An application for site plan approval shall be reviewed by the Planning Board or Planning Authority as specified below. The Planning Board or Planning Authority shall approve, approve with conditions or deny an application pursuant to the standards, procedures, technical criteria and design criteria contained in this article, as demonstrated by the applicant.

1. The Planning Authority shall administratively authorize developments that meet all of the requirements of Section 14 - 523 (c).
2. Level I Site Plan Review shall require the approval of the Planning Authority.
3. Level II Site Plan Review shall require the approval of

the Planning Authority only, except as otherwise expressly provided by this article.

4. Level III Site Plan Review shall require the approval of the Planning Board, except as otherwise expressly provided by this article.
5. Master Development Plan Review shall require the master development plan approval of the Planning Board as provided in Section 14-524 (d) (9).

(b) *Applicability.* No person shall undertake development identified in Section 14-523 without obtaining a site plan improvement permit under this article.

(Omitted: Sections (c) Administrative Authorization, (d) Level I (e) Level II and (f) Level III site plans omitted from this draft- no changes proposed.)

(g) Master Development Plan: A Master Development Plan meeting the criteria listed below will undergo a Master Development Plan Review as follows:

1. A Master Development Plan for a site with one acre or larger in cumulative lot area that is designed as a cohesive and integral development program consisting of multiple buildings and associated site improvements proposed to be built in phases.
2. The Master Development Plan option shall not apply in residential zones, except for institutional uses.

(Ord. No. 277-09/10, 7-19-10; Ord. No. 25-11/12, 8-15-11)

Sec. 14-524. Site plan review processes.

(a) The site plan review process for each applicable development review type is listed below.

(Omitted: Sections (1) Administrative Authorization, and (2) Level I site plans omitted from this draft- no changes proposed)

———3. Level II, and Level III site plan review and Master Development Plan review:

a. *Pre-application Conference.*

- (i) Applicants for site plan review for a Level II, ~~or Level III, or Master Development Plan applications site plan review~~ are encouraged to schedule a pre-application conference with the Planning Authority or designated staff to introduce the development concept. The purpose of this meeting is to familiarize the applicant with the review procedures, application submission requirements and applicable review standards. A pre-application conference shall not cause the plan to be a pending application or proceeding under Title 1 MRSA 302. No decisions relative to the plan shall be made. Nor shall any advice or information provided by the city be construed as a decision.

b. *Preliminary Plan.*

- (i) *Application Process:* Applicants for Level II or Level III site plan reviews may submit an application for preliminary plan review prior to the submission of a final site plan. A preliminary plan must contain a preliminary site assessment for potential

development.

- (ii) *Filing the Application:* Every application submitted to the Planning Authority for preliminary site plan review shall include a digital set of the plans and documents that shall be uploaded to the City's designated web site for an electronic review of the material. Any proposed revisions to that site plan and any amended statement(s) shall be filed in the same way as the original submission.
- (iii) *Public Notices:* All public notices will be sent according to the Section 14-525 of the Site Plan Ordinance.
- (iv) *Complete Application:* The Planning Authority shall determine whether the application contains all of the items required in (Sec 14-527) and the Zoning Administrator will conduct a preliminary zoning review for compliance with article III of this chapter. If the application is deemed incomplete or not in compliance with Chapter III, the applicant will be contacted in writing of the finding and the additional material required to complete the submission. A review of the application will not be conducted until the application is complete. These steps shall be repeated until the application is found to be complete.
- (v) *Staff Review:* When the application meets the submittal requirements, the preliminary plan will be distributed to the City departments for review and comments.
- (vi) *Written review:* Written comments from the reviewers shall be provided to the applicant, which will include a planning staff recommendation to submit a revised

preliminary plan or to submit an application
for a final site plan.

c. Master Development Plan Review

(i) Application Process: Applicants for Level III site plan reviews may submit a Master Development Plan for a large, multi-phase development program consisting of multiple buildings and associated site improvements on a site of one (1) acre or more of total land area, which is designed as a cohesive and integral development program. The purpose of a Master Development Plan is to provide for a mix of land uses at designated locations to achieve a land development responsive to the assets of a site. A Master Development Plan is a well-integrated development in terms of land uses, functional activities, and major design elements such as buildings, roads, utilities, drainage systems and open space. The Master Development Plan is deemed appropriate to large scale mixed use projects that are intended to be developed in phases. The Master Development Plan shall be reviewed by the Planning Board and may be reviewed independently or concurrently with review as a site plan for a phased development. A Master Development Plan must address the submission requirements of Section 14-527.

(ii) The site plan review process for a Master Development Plan shall proceed in the same manner as a Preliminary Site Plan, as detailed in Sec. 14-524 (3) (b) (ii) through (vi).

(iii) Standards of Review. A Master Development Plan shall adhere to the following general requirements and features, and shall meet the Master Development Plan Site Plan Standards of 14-526(d) (9):

Excerpts from Article V - 3/26/2013
Attachment 1

a. a designated tract of land consisting of a parcel of parcels of contiguous land or land on both sides of a public street, totaling one (1) acre or more;

b. developed in a comprehensive, design-integrated manner, according to an overall master development plan;

c. consistent with the objectives of this Ordinance;

d. consistent with the City's Comprehensive Plan and consistent with City Council approved master plans and facility plans for off-premise infrastructure, including but not limited to, trails, pedestrian and bicycle network, view corridors, environmental management, sewer and stormwater, streets, or other facilities (see Section 15 of the Technical Manual);

e. developed so as to locate buildings and improvements in a manner that provides usable open space, preserves significant natural features, as defined by the site plan ordinance standards, and preserves existing trees to the maximum extent possible;

f. developed so as to be in conformance with Portland's Historic Preservation Ordinance standards for designated landmarks or for properties within designated historic districts or designated historic landscapes, if applicable. When proposed adjacent to or

within 100 feet of designated landmarks,
historic districts or historic landscapes,
the Master Plan shall be developed so as to
be generally compatible with the major
character-defining elements of the landmark
or portion of the district in the immediate
vicinity of the proposed development;

g. an efficient use of land which properly
considers topography and protects
significant natural features including, but
not limited to, waterways, wetlands,
floodplains and wildlife;

h. an efficient use of land demonstrating
full coordination of its own site
development and surrounding context
including, but not limited to, the land uses
and functions contemplated, architecture,
open space and pedestrian networks,
vehicular access and circulation, and all
other infrastructure;

i. linked and coordinated with surrounding
land uses, infrastructure and off-site
public facilities; including but not limited
to the public school system, where
appropriate, in a manner that is safe,
efficient, non-injurious to the public, and
an improvement or benefit to the public
where possible;

j. designed with sizing of street and
other infrastructure systems to accommodate
the overall service demand of the Master
Plan;

k. designed to create a street grid pattern that reflects average city block sizes of the neighborhood for street connectivity;

l. designed as to create a cohesive identity through building scale, massing, and articulation; use of quality exterior materials; architectural detailing at the pedestrian scale; consistency of design and materials for streetscape and pedestrian amenities; framing of outdoor open space and linkages; a clear conveyance of the function and significance of various buildings, entrances, and features; and to generally comply with design and development standards of the zone in which it is located;

m. inclusive of provisions for the ownership and maintenance of usable open space as appropriate; and

n. For areas proposed as future development phase(s), the proposed interim conditions shall be managed and maintained to ensure stable, safe and attractive site conditions.

(iv) Phasing. One or more phases of the Master Development Plan may be reviewed as a final level III site plan concurrently with the review and approval of the Master Development Plan.

~~(1)~~ ~~(e)~~ (d) Neighborhood Meetings for Level III Site Plans and Master Development Plan Applications.

(i) Neighborhood Meeting for Level III Site Plans:

~~(a)~~ Timing and location of meeting. An applicant for

Excerpts from Article V - 3/26/2013
Attachment 1

a subdivision of five or more units or lots and all other Level III site plan review categories shall conduct at least one neighborhood meeting within thirty (30) calendar days of filing a preliminary site plan, if applicable, or within twenty-one calendar days of filing a final site plan and the neighborhood meeting will be held on a date no less than seven (7) calendar days before a public hearing, if no preliminary plan is submitted. The meeting shall be held at a convenient location within the City of Portland neighborhood surrounding the proposed site. All costs associated with the neighborhood meeting shall be borne by the applicant.

(11) Neighborhood Meeting Required for Master Development Plan: An applicant for a Master Development Plan shall conduct at least one (1) neighborhood meeting within thirty (30) calendar days of filing a Master Development Plan application. The meeting(s) will be held on a date no less than seven (7) calendar days from a public workshop or public hearing. The neighborhood meeting for a Master Development plan shall not be combined with any required neighborhood meeting for the Level III applications associated with the overall phased development. The meeting shall be held at a convenient location within the City of Portland neighborhood surrounding the proposed site. All costs associated with the neighborhood meeting shall be borne by the applicant. The workshop shall meet all other provisions of Section 14-524 (d) (i).

(b-iii) Procedures for Site Plan and Master Development Plan neighborhood meetings: The following procedures shall be followed in noticing and conducting of any the neighborhood meeting. At least ten (10) calendar days prior to the neighborhood meeting, the applicant shall do the following:

1. Mail notice. Mailed notice of said meeting to all property owners within five hundred (500) feet of the subject

Excerpts from Article V - 3/26/2013
Attachment 1

property lines, except that the notice range for subdivisions within industrial zones shall be one thousand (1000) feet, and to all others, including neighborhood organizations, as may be required by the Planning Authority.

2. Digital Copy. Provide the Planning Authority with a digital copy of the neighborhood notice, which the City shall forward by e-mail to the City's list of interested citizens.
3. Notice Description. Such notice shall contain a brief description of the application and the date, time and place of the neighborhood meeting.
4. Attendance Sheet. At the neighborhood meeting the applicant shall circulate a sign-in sheet for those in attendance who choose to sign. Such sheet shall be submitted to the Planning Authority and shall become part of the Planning Authority report submitted to the Planning Board.
5. Minutes. The applicant shall keep minutes of the meeting to be submitted to the Planning Authority and shall become part of the Planning Authority report submitted to the Planning Board. Any other individual or entity also may submit comments on the neighborhood meeting to the Planning Authority and said comments shall become part of the Planning Authority report submitted to the Planning Board.
6. Presentation. At the neighborhood meeting the applicant shall explain the pending proposal and provide an opportunity for public questions and comment.

e. d. — Planning Board Workshops.

(i) Request a Workshop: The applicant may request a workshop(s) with the Planning Board for a Level III site plan. The workshop will be scheduled on a date that follows the scheduled date of the neighborhood meeting, if applicable. The proposal will be scheduled for the next available Planning Board meeting that meets all public noticing requirements contained in Section 14-525.

(ii) Required Workshop for Master Development Plan: A workshop with the Planning Board is required for a Master Development Plan application. The workshop will be scheduled on a date that follows the scheduled date of the required neighborhood meeting. The proposal will be scheduled for the next available Planning Board meeting that meets all public noticing requirements contained in Section 14-524.

(iii) Workshop Procedures: The Planning Board workshop shall be informational and shall not result in any formal approval or disapproval of the project. The Board shall review the submission to determine if the information provides a clear understanding of the site and identifies opportunities and constraints of the site and proposed development, air public comments questions and issues, and provide direction to the applicant regarding issues to be addressed during the final review process.

f. Planning Board Master Development Plan Decisions.

(i) Review and approval: An applicant

proposing a Master Development Plan is seeking approval for an overall concept of development that may be brought for Final Plan approval in two or more phases and in a phase sequence that extends beyond the time frames allowed above for Final Plan expiration of approvals. Master Development Plan approval may be sought separately or currently with the Phase 1 Final Level III site plan approval, and shall have an initial approval period of six (6) years, with potential extension periods as provided for in Section 14-532(d).

(ii) Review Process. The site plan review process for a Master Development Plan shall proceed in the same manner as a Preliminary Site Plan as detailed above, Sec. 14-524(3)(b), (i) through(vi) and as a Master Development Plan as detailed above, Sec. 14-524 (3)c(i-iii).

(iii) Public Hearing: The Planning Board shall consider a Master Development Plan at a public hearing that meets all public noticing requirements contained in Section 14-32 and the site plan ordinance.

(iv) Decisions. The Planning Board shall approve, approve with conditions or deny a Master Development Plan application based upon the applicable review standards. The Planning Board may waive site plan or technical standards related to the Master Development Plan application based upon the applicable review standards. An approval, including an approval of waivers, establishes the general parameters to be adhered to for the development, including the supporting documentation for floor area ratio and/or residential density, general types of

uses, building coverage, generalized open space plans, and infrastructure systems.

A Master Development Plan approval shall not be construed as final authorization of the development. Approval shall confer pending proceeding status upon the development with the effect of maintaining the applicability of regulations in effect at the time of approval for as long as the Master Development Plan approval remains valid, including permissible extensions if granted.

All Level III site plans for each phase shall be in general conformance with the Master Development Plan.

g. e. *Final Plan.*

(Omitted: g. Final Plan and 4. Expiration of Site Plan- no changes proposed)

Sec. 14-525. Public notices.

(a) *Administrative authorization.* Administrative authorization applications are exempt from noticing requirements fo section 14-525.

(b) *Level I site plan: minor residential development:*

1. *Receipt of Application.* When an application for Level I: Minor Residential Site Plan is submitted for review, the Planning Authority shall notify by mail the owners of all property abutting the proposed site and any property owners directly across the street from the site.
2. Site Plans: Level I-Site Plan: Site Alteration, Level II, and Level III, and Master Development Plan-Site Plans.

Excerpts from Article V - 3/26/2013
Attachment 1

a. *Receipt of Application.* When an application for Level I Site Alteration, Level II or Level III development is submitted for site plan review, the Planning Authority shall notify, by mail the following, where applicable:

(i) *Notice for Level I: Site Alteration and Level II Site Plans* shall be sent to all property owners within five hundred (500) feet of the subject property lines and to all others, including neighborhood organizations, as may be required by the Planning Authority.

(ii) *Notice for Level III Site Plans and Master Development Plan applications* shall be sent to all property owners within five hundred (500) feet of the subject property lines or within one thousand (1,000) feet if it is a subdivision within an industrial zone, unless the Planning Authority, in its discretion, chooses to notice a larger area and incur the additional expense for the expanded notification and notices shall be sent to all others, including neighborhood organizations, as may be required by the Planning Authority.

b. *Planning Board Workshop or Public Hearing.*

(i) In the case of workshops and public hearings, notice as described above shall be given to the general public by publication in a newspaper of general circulation in the City of Portland at least two (2) times, the date of the first publication to be at least seven (7) days prior to the hearing. The legal notice shall appear on the City's web site.

(ii) In the case of workshops and public hearings, notice shall be sent by regular

United States mail to the applicant, to the owner(s) of the subject property and to all owners of property located within five hundred (500) feet of the subject property lines or within one thousand (1,000) feet if it is a subdivision within an industrial zone unless the Planning Authority, in its discretion, chooses to notice a larger area and incur the additional expense for the expanded notification and notices shall be sent to all others, including neighborhood organizations, as may be required by the Planning Authority.

c. *Content of the Public Notice*

- (i) The public notice shall contain a brief description of the proposed development the address or location of the property involved, and contact information for the City where additional information may be obtained. The cost of said notice shall be charged to the applicant.

(Ord. No. 277-09/10, 7-19-10; Ord. No. 25, 11-12, 8-15-11)

Sec. 14-526. Site plan standards.

Requirements for approval. The Planning Board or Planning Authority shall not approve a site plan application unless the development proposal meets the following criteria:

(Sections (a) Transportation Standards, (b) Environmental Quality Standards and (c) Public Infrastructure and Community Safety standards are omitted from this draft - no changes proposed. A portion of (d) Site design standards is omitted.)

9. Zoning Related Design Standards

a.

b. Master Development Plan Design Standards:

A Master Plan shall comply with the design and development standards of the zone in which it is

located, and shall achieve a cohesive land development consistent with the assets of the site, land uses, functional activities, and major design elements, such as buildings, roads, utilities, drainage systems and open space as well as with the Master Development Plan Standards of Review contained in the Section 14-524.

(e) *Conditions*

1.1-Notwithstanding the provisions of subsections (a) through (d) of this section, the Planning Authority or Planning Board may impose any condition upon its approval of any site plan: (1) to minimize or abate any adverse impact of the proposed development on the value or utility of other private property, or on public property or facilities, to the extent feasible; or (2) to bring the development into compliance with the requirements of subsections (a) through (d); or (3) to minimize any other adverse environmental effects of the proposed development. Such conditions may include, but are not limited to, enclosing of equipment or operations, imposing limitations upon the hours of operation, or requiring the employment of specific design technologies, modes of operation, or traffic patterns, and may also include the construction of, or financial contribution to the construction of, on- or off-premises public facilities including, without limitation, streets and sewers impacted by the development. All such conditions shall be consistent with the purposes set forth in section 14-521.

1. General Waiver:

Except for the requirements set forth in Section 14-526 (a) through (d) for which individual waiver criteria are provided, the Reviewing Authority if it finds that extraordinary conditions exist or that undue hardship may result from strict compliance

with these regulations may vary the regulations so that substantial justice may be done and the public interest secured; provided that such variation will not have the effect of nullifying the intent and purpose of the land development plan and the regulations of this article.

(Ord. No. 277-09/10, 7-19-10)

Sec. 14-527. Content of site plan applications.

(Section (1) Level I General and Site Submissions are omitted from this draft)

(c) Level II, and Level III, and Master Development Plan General Submissions. The applicant shall submit for review a packet of materials and submissions in a form and content as specified by the department of planning and urban development. Such submissions shall contain, at a minimum, the following elements.

1. Application form;
2. Applicable fees;
3. Project description;
4. Evidence of right, title and interest;
5. Evidence of state and/or federal approvals, if applicable;
6. Written assessment of project compliance with applicable zoning requirements;
7. Summary of existing and/or proposed easements, covenants, public or private rights-of-way, or other burdens on the site;
8. Written requests for waivers from the city's site plan or technical standards, if applicable;

9. Evidence of financial and technical capacity;
10. Boundary survey stamped by a professional survey or licensed to practice in the State of Maine, drawn to scale and tied into the State Plane Coordinates, NAD 1983, Maine West Zone, as specified in section 13 of the Technical Manual. A boundary survey of the site, may be waived by the Planning Authority for a review of Master Development Plan, where an existing conditions plan is available. The Boundary Survey requirement shall be met for each phase of development.

(d) *Level II, and ~~and~~ Level III Preliminary Site Plan Submissions.* A preliminary site plan is an optional submittal as part of the Level II and III site plan application review process. If the applicant elects to submit a preliminary site plan for review, it shall include the following information:

1. Proposed grading and contours;
2. Existing structures with distances from property lines;
3. Proposed site layout and dimensions for all proposed structures, paved areas, and pedestrian and vehicle access ways;
4. Preliminary design of proposed stormwater management system in accordance with Section 5 of the Technical Manual;
5. Preliminary infrastructure improvements;
6. Preliminary Landscape Plan in accordance with Section 4 of the Technical Manual;
7. Location of significant natural features located on the site as defined in Section 14-526 (b)(1);
8. Proposed buffers and preservation measures for significant natural features, as defined in Section 14-526(b)(1);

99.—Location, dimensions and ownership of easements, public or private rights of way, both existing and proposed.

10. Exterior Building Elevations

——(e) Master Development Plan. A Master Development Plan is an optional submittal as part of the Level III site plan application review process. If the applicant elects to submit a Master Development Plan for review, it shall include the following information in addition to the general submission requirements of Sec 14-527 (c)d:

1. A neighborhood context map, at a scale not less than one (1) inch equals one hundred (100) feet, providing a graphic description of the neighborhood in which the tract lies, including roads, utilities and other public facilities, major existing buildings and structures. There shall also be a statement and/or plan as to the general impact of the proposed Master Development Plan upon the area, indicating how the Master Development Plan relates to surrounding properties and what measures will be taken to create appropriate transitions and access from the subject property to abutting public properties (i.e. parks, waterfront, etc.) or other neighboring tracts (if applicable);
2. A conceptual site plan drawn to a scale of not less than one (1) inch equaling fifty (50) feet, or series of drawings at the same scale, and any necessary supporting information, showing:
 - i. The approximate boundary lines of existing and proposed lots within and immediately adjacent to the Master Development Plan, with approximate areas and dimensions. With respect to residential areas, the proposed density, lot configuration, circulation and a typical plot plan shall be included in the application;

- ii. An analysis of the natural features of the site, including existing and/or adjacent natural waterways, wetlands, floodplains, topography, soil conditions and other natural features requested or required by the Planning Authority;
- iii. An analysis of the designated view corridors, historic resources, and archeological resources associated with the site;
- iv. Existing/proposed buildings and other significant structures, building groupings, exterior building elevations and entrances, parking areas, and other significant physical features of the site;
- v. Context drawings, perspective renderings, photographic montages, or computer generated graphics depicting the proposed development within the surrounding building and environmental context. Building elevation drawings shall include the following: a) illustrations of all sides of the structures; b) views of major entries or prominent building features, c) illustration of building articulation and elements; d) building finish composition and e) pedestrian and streetscape elements of the Master Development Plan. The submission shall include a digital three-dimensional model tied to a specific location that is submitted as a KML, KMZ, DXF, or DWG file on a CD or DVD or such format as approved by the Planning Authority. It is the applicant's responsibility that the model is complete and represents the proposed

development accurately using best practice modeling techniques and layering standards;

- vi. Major circulation patterns surrounding and serving the site, the existing and proposed lines of streets (including the street width), ways, easements and any public areas within or next to the site;
- vii. Major landscaping elements, features, open space, and plans for preservation of natural features;
- viii. An analysis of the public safety services needed to support the master plan;
- ix. An analysis of the anticipated impacts on the public school system to support the master development plan;
- x. A generalized drainage plan for the site, indicating drainage ways, flows, points of outfall, and indicating impacts of development on affected drainage basins. The plan shall include contour information at not less than two-foot (2') contour intervals and document anticipated quantities of run off in relation to existing run off characteristics. General statements concerning storm water management techniques shall also be submitted with the application;
- xi. The plan shall clearly show Master Development Plan boundaries, north arrow, date, scale, legend, the title "Master Development Plan Concept Site Plan" followed by the formal

project name, and the name(s) of applicant(s),
engineer(s), designer(s) and/or agent(s);

xii. A traffic analysis and recommendations prepared
by a registered professional engineer qualified
to conduct such studies, including current
traffic counts for streets surrounding the
project, analysis of the existing capacity of
those streets, projections of the amount of
traffic that will be generated by the proposed
development, and the ability of the street
system to absorb the increased traffic without
decreasing the level of service below an
acceptable level – said level to be determined
by the Planning Authority in concert with the
Department of Public Services. In cases where
the Master Development Plan is subject to a
Traffic Movement Permit (TMP) for all phases,
the TMP submissions and review shall supersede
these requirements;

xiii. A utilities analysis and recommendations
prepared by a registered professional engineer
qualified to conduct such studies. Said
analysis shall contain an inventory of existing
utilities including, but not limited to, storm
sewers and drains, sanitary sewers, electrical
lines, fire alarm boxes and lines, gas
lines/mains, water mains, lighting, curb and
gutter, etc. Said inventory shall illustrate
utility locations, sizes, diameters, carrying
capacity and present load on the system. The
engineer's report shall state if the current
system is capable of adequately serving the
proposed development. If the current utility
system is found to be inadequate for the
proposed development, the report shall confirm

the deficiencies and make recommendation(s) as to the infrastructure improvements necessary to properly service the proposed development and maintain the existing service. The report shall also present a formal plan for infrastructure improvements, documenting timing, funding mechanisms and coordination with the City; and

xiv. Any other supportive information the applicant feels may be beneficial in the evaluation of the request.

xv. The Planning Authority or Planning Board may reduce the level of information required at the Master Development Plan review stage, provided more detailed supportive documentation is provided at final level III site plan review of the Master Development Plan or phases thereof.

(f) Level II and III Final Site Plans. A final site plan for a Level II or III site plan application shall be based upon a standard stamped boundary survey meeting City of Portland standards, be stamped by a professional engineer licensed to practice in the State of Maine, shall be submitted with all required written submittals and shall include the following information:

(Omitted: Sections (1- 31 of submission requirments and g. Level II and III written materials required -no changes proposed)

Sec. 14-528. Reserved.

Sec. 14-529. Appeals.

(a) When the planning authority has approved, approved with conditions, or denied a site plan, or has approved a request to extend the expiration date of a Master Development Plan, any person aggrieved may appeal the decision to the planning board within thirty (30) calendar days of the date of

the written decision of the planning authority. Upon the taking of such an appeal, the application or request for an extension shall be reviewed as a new application or request.

(b) When the planning board has finally approved, approved with conditions, or disapproved a site plan, any person aggrieved or the City may appeal the decision to the superior court, pursuant to Rule 80B of the Maine Rules of Civil Procedure within thirty (30) days of the vote on the original decision by the planning board.

(Ord. No. 277-09/10, 7-19-10; Ord. No. 25-11/12, 8-15-11)

Sec. 14-530. Development review fees and post approval requirements.

(a) *Development Review Fees.*

***(Omitted: Sections 1- 3 Payment of Fees,
Development Review and Administrative Fees, and
Establish Fee- no changes proposed)***

4. Site Plan Review Expenses.

- | | | |
|------|----------------------------|------------------|
| a. | Level I: Minor Residential | \$300 (flat fee) |
| b. | Level I: Site Alteration | \$200 |
| c. | Level II: Site Plan | \$400 |
| d. | Level III: Site Plan | |
| i. | Under 50,000 sf | \$500 |
| ii. | 50,000-100,000 sf | \$1,000 |
| iii. | 100,000-200,00 sf | \$2,000 |

Excerpts from Article V - 3/26/2013
Attachment 1

iv. 200,000-300,000 sf
\$3,000

v. Over 300,000 sf
\$5,000

vi. Parking lots over 100 spaces s
\$1,000

e. Master Development Plan \$1,000

f. After the Fact Review \$1,000 plus application fee

g. Amendment to Site Plans

i. Planning Board Review \$500

ii. Administrative Review \$250

h. Other Site Plan Reviews

i. Administrative Authorization \$50

ii. Special Exception Sign Review \$75

iii. Section 14-403 Street Extensions \$400 plus
\$25 per lot

i. Fee for Development Review Services

i. Planning fee per hour \$40

ii. Legal fee per hour \$75

iii. Third-party Review Fees assessed by the
Third Party Professional

j. State Delegated Review Fees

i. Site Location of Development \$3,000, except
for residential projects which will be \$200
per lot.

Excerpts from Article V - 3/26/2013
Attachment 1

- ii. Traffic Movement Permit \$1,000
- iii. Stormwater Quality Permit \$250
- jk. Performance Guarantee
 - 1. As required in Section 14-530 (b) (4).
- kl. Inspection Fees, as required in Section 14-530 (b) (5)
 - i. Level I: Site Alteration, Level II and Level III: 2% of the performance guarantee or as assessed by Planning or Public Works Engineer at \$45 an hours with minimum inspection fee of \$300 Level I: Minor Residential Inspection Fee \$100 (flat fee).
- lm. Street vacation \$2,000

(Sections (b) Post-Approval submissions is omitted from this draft - no proposed changes)

Sec. 14-531. Reserved.

Sec. 14-532. General requirements and enforcement.

- (a) *Approved site plans and required permits.*

(Omitted: Sections 1-4 - no changes proposed)

- (b) *Revisions and amendments to Master Plans and approved site plans.*

1. Amendments to a Master Development Plan.

- (a) Minor Amendments. A minor amendment to a Master Development Plan shall be defined as a change which is generally consistent with the approved

Master Development Plan layout of buildings, circulation infrastructure, and open spaces, and:

- a. does not propose any new general type of use beyond those approved initially;
- b. does not increase the building ground coverage, floor area ratio or residential density of the Master Development Plan;
- c. does not decrease any specified area regulations or enumerated parking ratios; and
- d. does not substantially change access, circulation, or infrastructure on or adjacent to the site.

The Planning Authority shall be authorized to approve such minor amendments to a Master Development Plan upon written application and explanation of the change(s) by the owner (or its agent) of the property. No further public hearings shall be required.

(b) Major Amendments. Any other change to a Master Development Plan shall be considered a major amendment and be processed through the normal Master Development Plan site plan review procedure before the Planning Board and full review of compliance with the requirements of this Ordinance.

a. Approved Site Plan: If at any time before or during development the applicant requests minor amendments to an approved plan for Level III development, the Planning Authority may approve such minor amendments under the procedures for minor development, provided that they do not amount to a waiver or substantial alteration of the site plan, and do not affect any

condition or requirement of the Planning Board. The applicant shall supply an application and written statement of the proposed amendment(s) and proposed amended plans to the Planning Authority, whose decision as to whether the amendment is minor shall be final. The Planning Authority shall determine if a notice of amendment shall be required and the extent of such notice based on the extent and nature of the proposed amendment to plan and the demonstrated public interest related thereto.

2. Limited in-filed Changes: Limited in-field changes approved by the Public Services Authority must be in writing and submitted to the Planning Authority and are specifically limited to minor variation necessary to deal with unforeseen difficulties that arise during the course of construction involving such technical detail as utility location and substitution of equivalent plantings and shall not include any substantial alteration of the approved plan or change any condition imposed by the Planning Board or Planning Authority.

(c) *Expiration of site plan approval.*

1. A site plan approved under this article shall expire twelve (12) months from the date of approval unless:
 - a. Development has been undertaken in accordance with the approved plan and site work or building construction is ongoing. Any lapse in construction for a period in excess of twelve (12) months shall result in an expiration of the site plan; or
 - b. Prior to the expiration of the site plan, such other time period is agreed upon, in writing, by the Planning Authority and the applicant, not to exceed three (3) years from the date of approval;

Provided that such extensions may not be granted if changes to the City's zoning ordinance would render the development nonconforming in any respect or if changes in the subdivision or site plan ordinance or in the

Public Services Technical Standards Manual or Planning and Development Design Standards would otherwise significantly impact the approved site plan as determined by the Director of Planning and Urban Development.

2. Where the approval or any related land use approval granted to the same applicant by any agency of the City with respect to the same development is appealed to any court by an opponent of the development, the applicant shall be granted further extensions, beyond the expiration of said period, where the applicant has exercised due diligence with respect to defending such appeal, which extensions shall not last beyond one (1) year from entry of final judgment.

(d) Expiration of Master Development Plan:

1. A Master Development Plan approved under this article shall expire **six (6)** years from the date of approval unless:

a. Prior to the expiration of the Master Development Plan, an applicant may submit a written request to the Planning Authority for an extension of a Master Development Plan approval and associated waivers. Only two (2) such extensions may be granted by the Planning Authority, and each such extension shall be limited to two (2) years from the date of expiration of the Master Development Plan. Provided there have not been substantial changes to the underlying zoning or site plan standards since the date of the Master Development Plan approval that would have a substantial impact on the Master Development approval, the Planning Authority may grant an extension. The Planning Authority may condition the extension on an amendment of the Master Development Plan to comply with such applicable ordinance or site plan standard changes provided that the Planning Authority may not require changes in the uses approved on the Master Development Plan or changes that would reduce the

gross floor area of the buildings described or shown on the approved Master Development Plan. For the purposes of this provision, gross floor area includes the sum of the gross horizontal areas of each floors of each building or structure from the exterior face of exterior walls, or from the centerline of a wall separating two buildings, but excluding any space where the floor to ceiling height is less than six (6) feet. Any decision by the Planning Authority regarding the granting of an extension may be appealed to the Planning Board as provided for in Section 14-529;

- b. Approved major or minor amendments to a Master Development Plan do not alter the expiration date for the Master Plan that is based upon the original date of approval.

(e) Enforcement.

(Sections (E) Enforcement and Section 14-540 Evaluation are omitted from this draft - no proposed changes)

*Order 196-12/13
Tab 28 4-22-13*

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

CITY OF PORTLAND
IN THE CITY COUNCIL

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

ORDER AUTHORIZING SALE OF PROPERTY
RE: 60 PORTLAND PIER

ORDERED, that the City Manager is authorized to execute a Purchase and Sale Agreement in substantially the same form as that attached hereto with Mcaleney's New Meadows Lobster for the property at 60 Portland Pier (CBL 30-H-21); and

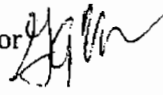
BE IT FURTHER ORDERED, that the Finance Director is authorized to execute a quitclaim deed conveying the above property.



Strengthening - Remaking - Rebuilding - Improving - for Life - and Prosperity

Economic Development Department
Gregory A. Mitchell, Director

MEMORANDUM

TO: Mayor and Members of the City Council
FROM: Greg Mitchell, Economic Development Department Director 
DATE: April 11, 2013
SUBJECT: **City Property Ownership Sale - 60 Portland Pier**

1. Council meeting at which action is requested: April 22, 2013
2. Can action be taken at a later date? Yes.

I. SUMMARY OF ISSUE

Introduction

City ownership at the end of Portland Pier dates back to the time when island car ferry service left from Portland Pier. After the car ferry facility was relocated to the new Casco Bay Ferry Terminal on the Maine State Pier, the City entered into a lease with New Meadows Lobster Company which owns property on either side of City ownership. The City's lease included a portion of a certain property toward the water end of the pier along with certain water rights extending toward the federal channel from the existing pier.

The original lease began in 1988, with a twenty (20) year term and two (2) successive five (5) year renewal options to extend the lease to 2018. Mr. McAleney is interested in purchasing the City property to unify his ownership at the end of Portland Pier.

City Ownership Overview and Terms for Sale

Attached are the following with explanation:

- ***Aerial of Portland Pier (p. 4).***
- ***Historic Photos of Portland Pier (pp. 5 to 8).*** Attached are four pages of Portland Pier photos from when the end of pier was used for car ferry service to the islands.
- ***McAleney Pier Investment History (p. 9).*** Mr. McAleney provided a summary for his investment history and annual maintenance costs. As permitted by the lease, Mr. McAleney, at his expense, extended the pier (into what was an open area for car ferry use).

- ***Municipal Assessor maps of City and Peter McAleney ownership (p. 10).*** City ownership includes a portion of the area toward the end of the pier along with water rights extending toward the federal channel from the pier.
- ***Municipal Assessor Property Value Records for City ownership (p. 11).*** Current municipal Assessor records show a total value of \$48,200 for this City property, containing approximately 7,645 square feet.
- ***Submerged Land Lease History (no attachment).*** Corporation Counsel reviewed all existing submerged land leases associated with Portland Pier. Mr. Aleney has a submerged land lease with the State of Maine, for which he makes an annual payment, related to the submerged land associated with the City's property.

II. REASON FOR SUBMISSION

This is being submitted to the Portland City Council to authorize the City Manager to enter a Purchase and Sale Agreement with McAleney's New Meadows Lobster to authorize the sale of the City property.

III. INTENDED RESULT

The intended result would allow for McAleney's New Meadows Lobster to have title unification of the property rights

At the March 27, 2013, Housing and Community Development Committee (HCDC) meeting, there was discussion about maintaining public access to the end of the pier. The underlying right-of-way would remain unchanged by this transaction, thus allowing public access to the end of the pier.

IV. FINANCIAL IMPACT

Purchase and Sale Agreement Overview

Attached is a Draft Purchase and Sale Agreement for this transaction (pp. 12 to 18). Highlights are:

Sale Price - \$48,200; supported by municipal assessment records with no commercial broker involvement in this transaction.

Deposit - \$5,000 credited toward the purchase price.

Closing - Up to six (6) months after seller execution of Agreement to close.

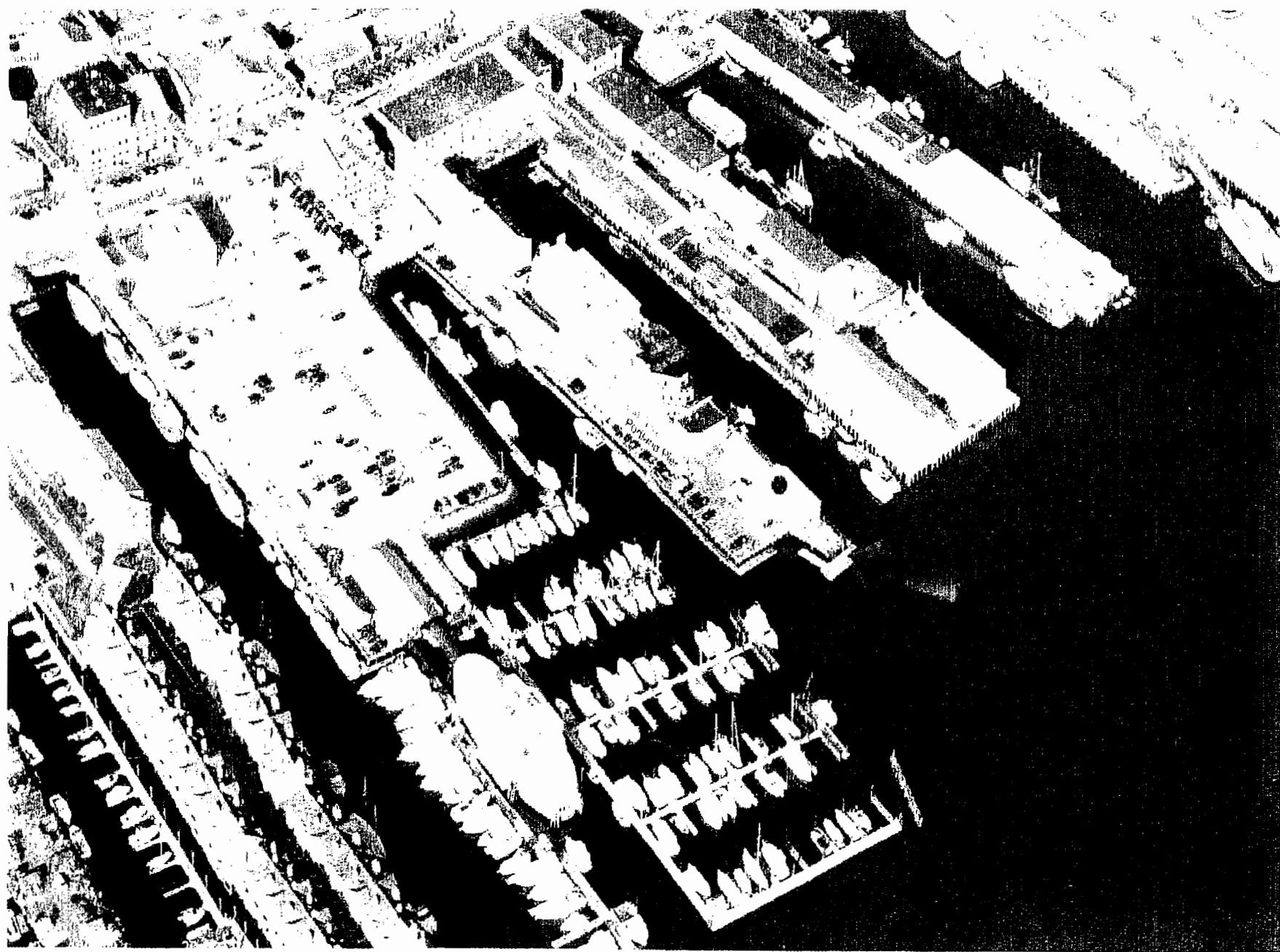
Conditions - Standard inspections, default, and remedy provisions.

V. STAFF RECOMMENDATIONS AND NEXT STEPS

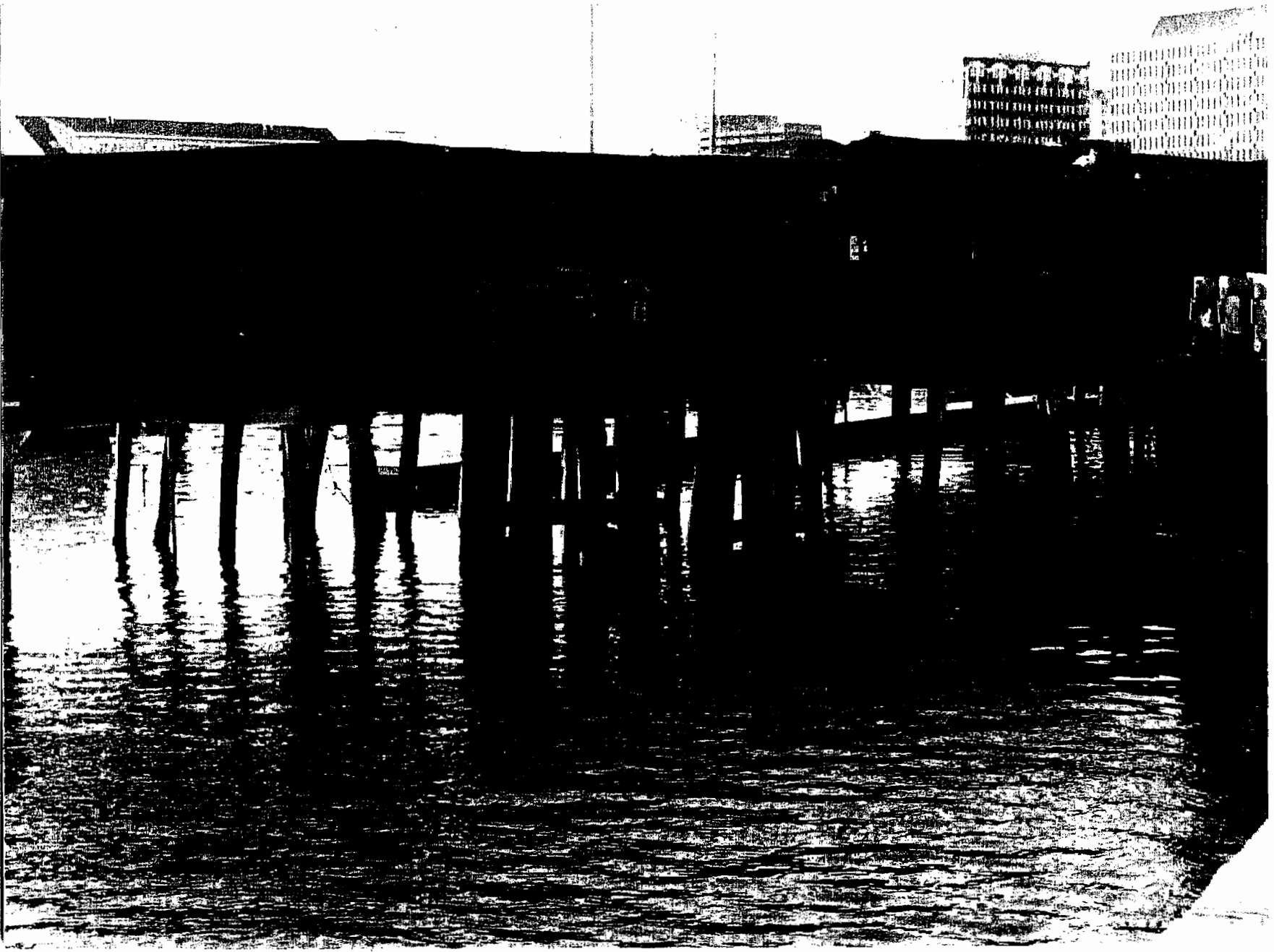
City staff recommends the City sell this property to Mr. McAleney to combine and unify his ownership at the end of Portland Pier, with the City retaining underlying public right-of-way for access to the end of the pier.

The HCDC, as noted above, reviewed this item and unanimously recommended to forward this to the City Council with a recommendation for approval of the sale. It was confirmed during the meeting that public access with the underlying right-of-way would remain as it does now.

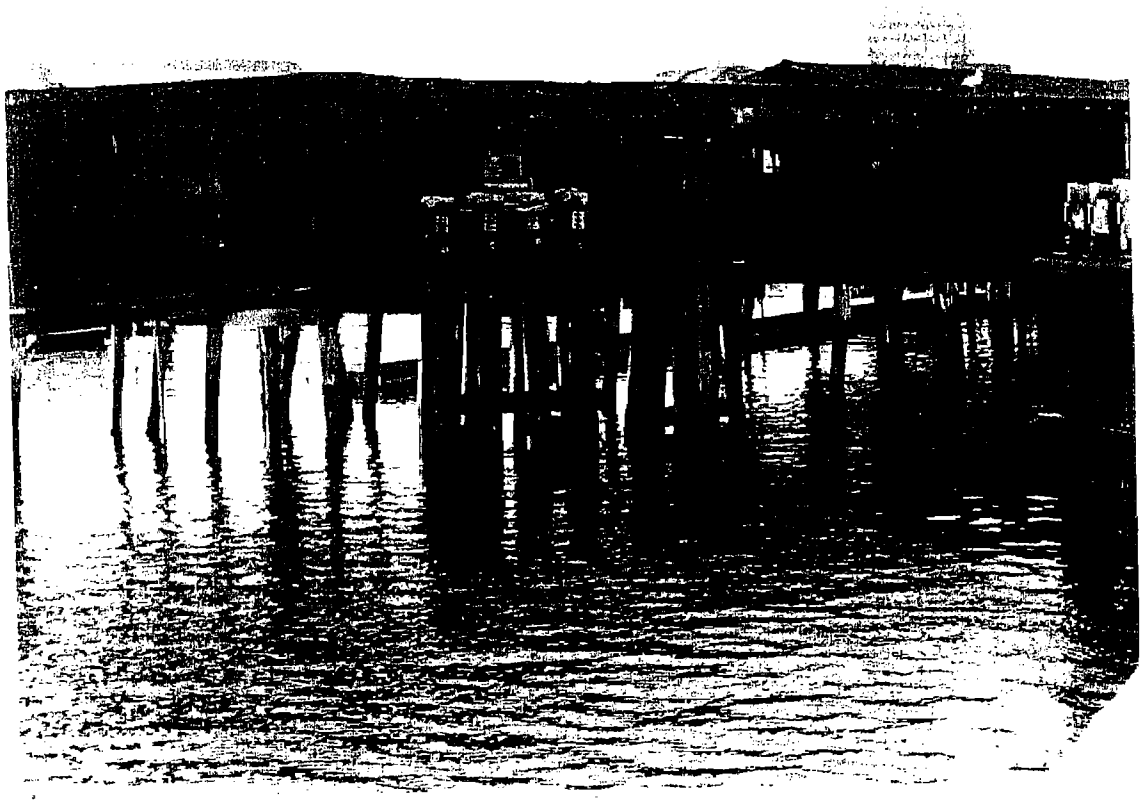
I look forward to discussing this you at your April 22 meeting and answering your questions.











PETER McALENEY
OWNER

HACCP APPROVED FACILITY



McAleney's New Meadows Lobster

MAINE SEAFOOD DEALER



Wholesale - Retail Sales: Lobster, Lobster Meat, Steamers and other Seafood Products

60 Portland Pier • Portland, Maine 04101

Tel. (207) 775-1612, 1-800-668-1612 • Fax (207) 874-2456

www.newmeadowslobster.com

History of Portland Pier Wharf Improvements

- 1978-1979 New wharf under the building and adjacent to building
Work performed by Reed & Reed, Inc.
Cost \$70,000
Note: Car Ferry was still located on Portland Pier at that time
- 1988 New wharf where the car ferry previously berthed
Work performed by Reed & Reed, Inc
Cost \$60,000
- 1995 New pilings and caps along the outside of building
Work performed by General Marine Construction
Cost \$40,000
- 1998 Re-decked entire wharf
Work performed by CRM Construction
Cost \$30,000 for New Meadows side of wharf
Cost \$25,000 for side of wharf where car ferry was previously located
- 2002 Bumper pilings added (keeps lobster boats from going under wharf)
Work performed by General Marine Construction
Cost \$20,000

Ongoing Maintenance

Plan on \$5,000-\$6,000 per year for wharf maintenance

Note: City of Portland owns the land under the wharf where the car ferry existed. New Meadows leases that land for \$1/year. New Meadows Lobster owns all other land under the wharf.

New Meadows Lobster Employees

8 Full-time, 4 Part-time

Berths

10 Commercial Boats (each berth comes with one parking spot on wharf)
2 Recreational Boats

Assessor's Office : 389 Congress Street : Portland, Maine 04101 | Room: 115 | (207) 874-8486

City Home Departments City Council E-Services Calendar Jobs

This page contains a detailed description of the Parcel ID you selected. Press the New Search button at the bottom of the screen to submit a new query.

Current Owner Information:

Services	CBL	030 H021001
	Land Use Type	GOVERNMENTAL
	Verify legal use with Inspector's Division	
Applications	Property Location	0 PORTLAND PIER
Doing Business	Owner Information	CITY OF PORTLAND 389 CONGRESS ST. PORTLAND ME 04101
Maps	Book and Page	
Tax Relief	Legal Description	30-H-24 END PORTLAND PIER, WHARF C DOCK 7645 SF
Tax Roll	Acres	0
Q & A		

Current Assessed Valuation:

browse city services >	TAX ACCT NO.	4208	OWNER OF RECORD AS OF APRIL 2012
			CITY OF PORTLAND
browse facts and links >	LAND VALUE	\$48,200.00	389 CONGRESS ST
	BUILDING VALUE	\$0.00	PORTLAND ME 04101
	PORTLAND, CITY OF	(\$48,200.00)	
	NET TAXABLE - REAL ESTATE	\$0.00	
	TAX AMOUNT	\$0.00	



Any information concerning tax payments should be directed to the Treasury Office at 874-8497 or e-mailed.

Best viewed at
800x600, with
Internet Explorer



[View Map](#)

[New Search](#)

PURCHASE AND SALE
AGREEMENT

This AGREEMENT is made and entered into this ____ day of _____, 2013, by and between the **CITY OF PORTLAND**, a body corporate and politic, with a business address of 389 Congress Street, Portland, Maine 04101 ("Seller"), and **MCALENEY'S NEW MEADOWS LOBSTER**, a Maine business corporation with an address of 60 Portland Pier, Portland, ME 04101 ("Buyer").

WITNESSETH AS FOLLOWS:

1. PURCHASE AND SALE. Seller agrees to sell and Buyer agrees to buy, on the terms and conditions hereinafter set forth, that certain parcel of rights in and over land approximately 7,645 sq. ft. in area located at the seaward end of Portland Pier, in Portland, Maine, identified on the Portland Assessor's Maps as 30-H-21, as conveyed to the seller in 1948, and as described on Exhibit A which is attached hereto and incorporated herein together with all improvements thereon and rights appurtenant thereto (the "Premises").

2. PURCHASE PRICE. Subject to any adjustments and prorations hereinafter described, Buyer agrees to pay for the Premises the sum of Forty-Eight Thousand Two Hundred Dollars (\$48,200.00). The sum of Five Thousand Dollars (\$5,000.00) as a deposit ("Deposit") is paid herewith to Seller, which Deposit shall be credited towards the Purchase Price at the closing. The balance of the Purchase Price shall be paid by certified check, bank cashier's check or wired funds at closing.

3. TITLE. Seller shall convey the Premises to Buyer at the closing by quitclaim release deed, without warranty of title.

4. CLOSING. The closing shall take place at Room 209, Portland City Hall, 389 Congress Street, Portland, Maine, one hundred and eighty (180) days after the date on which Seller executes this

Agreement (the "Effective Date"). Buyer may elect to close at an earlier date by providing ten (10) days advance written notice to Seller of the date on which Buyer wishes to close. At the closing, Seller shall execute and deliver to Buyer, against payment of the purchase price, a quitclaim release deed to the Premises (the "Deed").

5. RISK OF LOSS, DAMAGE AND INSURANCE. All risk of loss to the Premises prior to the closing shall be borne by Seller.

6. INSPECTION. Buyer may enter onto any part of the Premises at all reasonable times upon prior notice to Seller in order to inspect the Premises, conduct surveys, building inspections, engineering and environmental studies, soil tests, water quality and quantity tests, and to do such things as are reasonably necessary with respect to its acquisition, financing and development of the Premises. In the event that the inspections reveal defects or conditions which would be unacceptable to any reasonable person, then Buyer may upon notice to Seller terminate this Agreement and receive back the Deposit. Buyer agrees to hold the Seller harmless from any damage or injuries arising from such inspections of the Premises.

In the event that Buyer terminates this Agreement for the reasons set forth in this paragraph, Buyer shall provide copies of its inspection reports and other testing reports to Seller at no cost to Seller.

7. POSSESSION. The Premises shall be delivered to the Buyer at the time of the closing free and clear of all tenancies or occupancies by any person or entity, other than Buyer.

8. DEFAULT AND REMEDIES. In the event that Seller fails to close hereunder for a reason other than default of Buyer, Buyer shall have all remedies available at law and equity including the right of specific performance as to the Premises. In the event that Buyer defaults in the performance of its obligations hereunder, Seller shall have all remedies available at law.

9. BROKERAGE. Seller and Buyer represent to the other that there are no fees and commissions due any real estate brokers, other than a fee that might be due from Buyer (and not from Seller) to Malone Commercial Brokers.

13. ADJUSTMENTS, PRORATIONS AND CLOSING COSTS.

(a) Real estate taxes, assessments, rentals and utilities shall be prorated as of the closing.

(b) The Maine real estate transfer tax shall be paid by Seller and Buyer in accordance with 36 M.R.S.A. § 4641-A.

(c) The recording fee for the deed of conveyance will be paid by Buyer.

(d) A portion of the purchase price shall be withheld at the closing by Buyer if required by 36 M.R.S.A. § 5250-A.

14. MISCELLANEOUS. Time is of the essence in this Agreement. Buyer may not assign or transfer its rights under this Agreement. In the event that the date for the performance of any obligation hereunder shall fall on a holiday or weekend, then the date of performance shall be extended to the next business day. All notices, demands and other communications hereunder shall be in writing and shall be given either (i) by first class mail, postage prepaid, certified, return receipt requested, at the addresses set forth below; (ii) by hand delivery to the addresses set forth below; or (iii) by Fed Ex, or similar overnight express mail, prepaid, to the addresses set forth below. All notices shall be deemed to have been duly given if postmarked prior to the expiration date and time specified herein (in the case of mailing) or upon delivery (if hand delivered) or when delivered to a Fed Ex (or similar overnight delivery service) courier or office at the time indicated on the proof of delivery (if sent by overnight delivery service).

TO SELLER:

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

with copies to: Corporation Counsel
Portland City Hall
389 Congress Street
Portland, ME 04101

and

Director of Economic Development
Portland City Hall
389 Congress Street
Portland, ME 04101

TO BUYER: Peter McAleney
New Meadows Lobster
60 Portland Pier
Portland, ME 04101

With a copy to: Joe Malone
Malone Commercial Brokers
5 Moulton Street
Portland, ME 04101

Either party may change its address for purposes of this Agreement by giving the other party notice of the new address in the manner described herein. This Agreement will inure to the benefit of and bind the respective personal representatives, heirs, successors and assigns of Sellers and Buyer. This Agreement shall be governed by and construed in accordance with the laws of Maine. If any provision

of this Agreement is determined to be invalid or unenforceable, it shall not affect the validity or enforcement of the remaining provisions hereof.

IN WITNESS WHEREOF, Seller and Buyer have executed this Agreement as of the date first above written.

WITNESS:

CITY OF PORTLAND – Seller

By: _____
Mark H. Rees
Its City Manager
Dated: _____, 2013

McAleney's New Meadows Lobster – Buyer

By: _____
Peter McAleney
Its President
Dated: _____, 2013

O:\OFFICE\LARRY\Eco Dev\PS Agreement portland pier.doc

Exhibit A

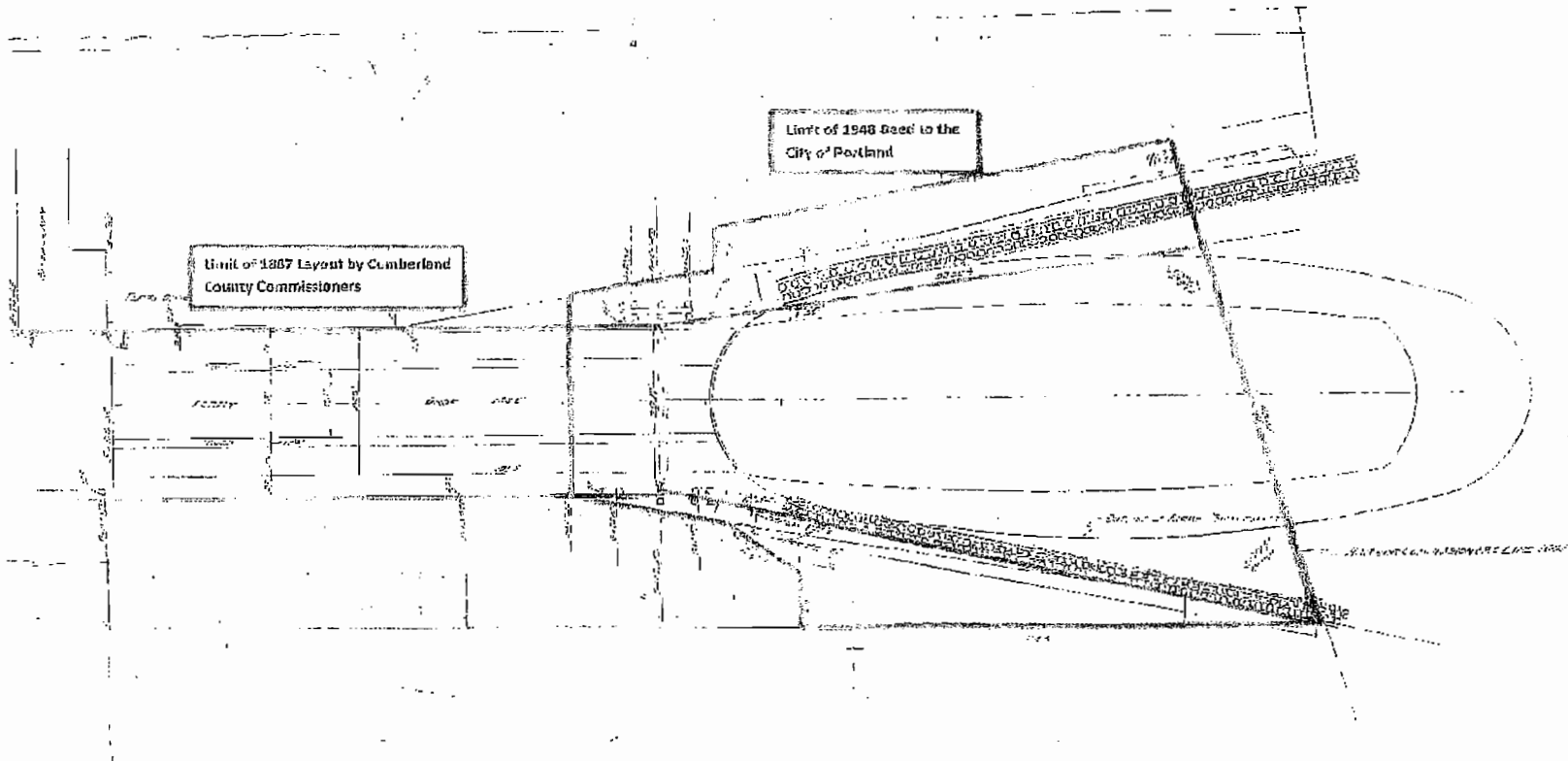
A certain lot or parcel of land with any structures thereon that comprise the area at the end of Portland Pier in said Portland extending into Portland Harbor, and bounded and described as follows:

Beginning at a point in the southwesterly side line of Portland Pier as laid out by the County Commissioners June 6, 1887, distant southeasterly along the said southwesterly side line six hundred and seventy (670) feet from its intersection with the southerly side line of Commercial Street; thence southeasterly and making an included angle of one hundred and seventy (170) degrees through the west with the northwesterly direction of the said southwesterly side line of Portland Pier and following approximately the northeasterly side line of the wharf as now exists or formerly existed, a distance of twenty-five (25) feet to a point; thence southerly and making an included angle of one hundred and fifty-seven (157) degrees through the west with the northwesterly direction of the last described course a distance of twenty-six (26) feet to a point; thence southwesterly on a course which is at right angles to the northeasterly side line of the dock between Commercial Wharf and Portland Pier a distance of eight (8) feet more or less to the said northeasterly side line of the dock between Commercial Wharf and Portland Pier; thence southeasterly by and along the said northeasterly side line of the dock between Commercial Wharf and Portland Pier and by and along the said side line of said dock produced southeasterly in a straight line a distance of eight-eight (88) feet more or less to the Harbor Commissioner's line as 1887; thence northeasterly by the said Harbor Commissioner's line a distance of eighty-seven (87) feet to a point, thence northwesterly and making an included angle of ninety-six (96) degrees with the southwesterly direction of the Harbor Commissioners Line and following approximately the southwesterly line of the wharf as it now exists or formerly existed a distance of seventy-nine (79) feet; thence southwesterly and following approximately the line of the wharf as it now exists or formerly existed and making an included angle of one hundred and one (101) degrees with the southeasterly direction of the last described course a distance of eight (8) feet to a point and an angle in the southwesterly side line of the said wharf; thence northwesterly and making an included angle of ninety-nine (99) degrees with the northeasterly direction of the last described course and following approximately the southwesterly side line of said wharf a distance of twenty-five (25) feet more or less to a point; thence southwesterly on a line at right angles to the southwesterly side line of Portland Pier as described above a distance of thirty-four (34) feet more or less to the said southwesterly side line of Portland Pier and the point begun at. Together with whatever dock and riparian rights relating to the above described premises, rights of way and easements related thereto.

This conveyance is subject to the rights and easements the public and the City of Portland have in the Public Way or Street approximately twenty-eight (28) feet wide at its northwesterly end, and expanding to approximately sixty-eight (68) feet wide at its southeasterly end, and leading southerly from said Commercial Street over and along said Pier to the Harbor Commissioners' Line; and the City of Portland hereby reserves and excepts from this conveyance a public right of access at all times over said entire length of said Way, for itself and the public.

Reference is made to the deed to this Grantor from Harbor Realty Company dated July 23, 1948 and recorded in the Cumberland County Registry of Deeds in Book 1924, Page 189; and to the Laying Out of a Street on Portland Pier in Volume 2, Page 195 of the City of Portland, Department Public Works Street Records.

EXHIBIT A 2 OF 2



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 197-12/13
Tab 29 4-22-13*

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

**ORDER APPROVING CITY-STATE
AGREEMENT WITH MAINE DEPARTMENT OF TRANSPORTATION
RE: AUBURN STREET, NEW FREEDOM PROJECT**

ORDERED, that the attached City-State Agreement with the Maine Department of Transportation for the Auburn Street, New Freedom Project is hereby approved, substantially in the form attached hereto.

WIN No. 14049.25 80% Federal Funding; 20% State Funding

**City of Portland, Maine
City Council Agenda Request Form**

TO: Sonia Bean, Senior Administrative Assistant
Danielle West-Chuta, Corporation Counsel
Theresa Tucker, Administrative Assistant

FROM: Michael Bobinsky, Director of Public Services

DATE: April 2, 2013

Subject: **Local Public Agency Agreement between the Maine Department
Of Transportation and the Municipality of Portland, Maine
Auburn Street, New Freedom Project: Federal Project ME-57-X001-01;
MDOT WIN 14049.25**

- 1) Council meeting at which action is requested:

1st reading: April 22, 2013
- 2) Can action be taken at a later date: _____ YES X NO
If not, why not: The New Freedom Program's due date has passed. The City was granted an extension to make modifications to the project.
- 3) This item is sponsored by: City Manager and Dept. of Public Services

I. SUMMARY OF ISSUE

The City of Portland has awarded a utility contract and has agreed to complete a change order that is limited to the design, scope and funding for the New Freedom Project to its Auburn Street and Washington Ave. Sewer Separation Project (bid no. 2513 dated September 27, 2012. This agreement sets out requirements for the project and terms and conditions MaineDOT's funding to the City of Portland.

II. REASON FOR SUBMISSION

The approved scope of work consists of improvements along Auburn Street to include a new sidewalk and three accessible ramps.

III. INTENDED RESULT

The new sidewalk and ramps will provide accessibility and safety at a busy intersection.

IV. FINANCIAL IMPACT

MDOT has approved a maximum amount of \$82, 282 for the project, consisting of 80% from the Federal Transit Administration (New Freedom 5317 Program) and 20% from the Maine DOT. There is no City match.



AMS ID #: _____

TEDOCS #: _____

Local Public Agency Agreement
Between the
Maine Department of Transportation
And the
Municipality of Portland, Maine

**Auburn Street, New Freedom Project: Federal Project ME-57-X001-01; MaineDOT
WIN 14049.25**

This Agreement for the above-referenced locally administered Federal-Aid Project is made between the Maine Department of Transportation, a Maine State Government agency with its headquarters on Child Street in Augusta, Maine ("MaineDOT,"), and the Municipality of Portland, a municipal corporation and body politic with its principal offices at 389 Congress Street, Portland, Maine 04101 ("the Municipality.")

WHEREAS, the **Municipality** was awarded federal and state funding for the Project described herein through **MaineDOT's**; Federal Transit Administration's New Freedom Improve Access to Transit Program (See Appendix A);

WHEREAS, this Agreement sets out requirements for the Project and terms and conditions of **MaineDOT's** funding to the **Municipality**;

WHEREAS, **MaineDOT** has completed the design portion of the Project, this Agreement sets out the terms and conditions of the construction phase of the Project;

WHEREAS, the Municipality has awarded a utility contract and has agreed to complete a change order that is limited to the design, scope and funding for the New Freedom Project, to its Auburn Street and Washington Avenue Sewer Separation Project (Bid No. 2513 dated September 27, 2012); and

WHEREAS, the Municipality's change order provisions meet all federal and state contracting requirements, including the third party procurement requirements of the Federal Transit Administration.

NOW, in consideration of the foregoing, **MaineDOT** and the **Municipality** agree as follows:

ARTICLE I. PROJECT OVERVIEW

- A. **SCOPE OF WORK.** The approved scope of work consists of improvements along Auburn Street to include a new sidewalk and three accessible ramps ("the Project.") The work shall be performed by or for the **Municipality** and accepted by **MaineDOT**. Any change to this scope of work shall be approved by **MaineDOT**.
- B. **FUNDING.** **MaineDOT** has approved a maximum amount of Eighty-Two Thousand, Two Hundred and Eighty-Two Dollars (\$82,282) for the Project, consisting of eighty percent (80%)

from the Federal Transit Administration (New Freedom 5317 Program) and twenty percent (20%) from the MaineDOT, as shown in Article III. Project costs shall not exceed this amount. Any expenditures exceeding the maximum amount will be borne one-hundred percent (100%) by the Municipality.

- C. **ROLE OF MUNICIPALITY.** The **Municipality** shall take the lead in developing the Project and shall assign a Local Project Administrator to oversee all local responsibilities. This person – or his or her qualified designee – shall be responsible for the Project at all times.
- D. **ROLE OF MAINEDOT.** **MaineDOT** will assign a Project Manager to advise, review and approve on behalf of the State. This person – or his or her designee – will have the authority to approve or deny payment of reimbursement requests; review and require revision of plans and specifications; inspect, reject and stop work; and take all other action necessary to ensure proper performance of this Agreement.
- E. **AUTHORIZATION.** The Municipality shall receive “Notice to Proceed” from MaineDOT before starting any work on the Project. Any municipal costs incurred before such authorization shall not be eligible for reimbursement.
- F. **BUDGET AND SCHEDULE.** Upon receiving “Notice to Proceed” the Municipality’s Local Project Administrator shall review with the MaineDOT Project Manager the scope of work, budget, schedule and requirements for the Project

ARTICLE II. PROJECT DEVELOPMENT

- A. **CONSTRUCTION.** The **Municipality** shall administer any construction contract and provide the supervision, inspection and documentation needed to ensure that the Project is completed to **MaineDOT**’s satisfaction in accordance with the plans, specifications and provisions of the contract, as follows:
 - 1. The **Municipality** shall use procedures acceptable to **MaineDOT** to document the quantity and quality of all construction-related work. The **Municipality** shall provide weekly progress reports and shall retain all documentation as provided under Article VI.A.
 - 2. The **Municipality** shall provide for all materials testing necessary to comply with federal regulation 23 CFR, Part 637, “Quality Assurance Procedures for Construction.”
 - 3. Traffic in work zones shall be controlled in accordance with Part VI of the Federal *Manual on Uniform Traffic Control Devices for Streets and Highways* (MUTCD).
 - 4. Within 90 days of completion of construction, the **Municipality** shall provide **MaineDOT** with “as-built” plans on Mylar or other acceptable archival-quality material.
 - 5. Upon completion, the **Municipality** shall provide compliance certification that the Project was constructed, quantities were measured and documented, and materials were tested in accordance with the plans, specifications and provisions of the construction contract, and in accordance with the policies and procedures approved by **MaineDOT**.

- B. **INSPECTION.** **MaineDOT** may inspect construction activities and documentation – and test any materials used – to ensure compliance with the construction contract. **MaineDOT** may reject any work or materials not in such compliance.
- C. **MAINTENANCE.** The **Municipality** shall develop and implement – or cause to be developed and implemented – a maintenance plan acceptable to **MaineDOT** ensuring that the completed facility is kept up appropriately for at least **twenty (20) years**. Maintenance shall consist at least of general upkeep and repairs necessitated by weather, age and public use.

ARTICLE III. COST-SHARING & REIMBURSEMENT

- A. **MAINEDOT SHARE.** **MaineDOT** – using Federal Transit Administration funding and state funding will be responsible for one-hundred percent (**100%**) of the construction-related costs eligible for such federal funding, not to exceed Eighty-Two Thousand, Two Hundred and Eighty-Two Dollars (\$82,282.00).
1. The **Municipality** also shall be responsible for all costs deemed ineligible for federal funding and all costs exceeding Eighty-Two Thousand, Two Hundred and Eighty-Two Dollars (\$82,282.00) unless otherwise approved by **MaineDOT** through a modification to this Agreement.
- B. **REIMBURSEMENT.** **MaineDOT** will reimburse the **Municipality** for the federal and state portion of eligible Project costs, as described in Paragraph A. The **Municipality** shall bill **MaineDOT** no more frequently than monthly for such costs, which are incurred when work is performed, goods and services are received, or a cash payment is made. Bills are subject to these conditions:
1. Claims shall be submitted on the **Municipality's** billhead and reference WIN 14049.25.
 2. Each invoice must be accompanied by a progress report, as described in Article II.C.
 3. Each invoice shall contain an itemized account of expenditures consistent with the approved Project budget. Backup documentation and proof of payment made must accompany each invoice.
 4. Each invoice must have an accumulative total and a breakdown of the federal and state shares of the total costs.
 5. Each claim shall include a certification from the **Municipality's** Local Project Administrator that all amounts claimed are correct, due and not claimed previously, and that all applicable work was performed in accordance with the terms of this Agreement.
 6. Any claim for less than one thousand dollars (\$1,000) shall be deferred until the next regular billing period in which at least one thousand dollars (\$1,000) is incurred or until a final invoice is submitted for reimbursement.
- C. **REPAYMENT.** **MaineDOT** reserves the right to require repayment of reimbursements to the **Municipality**, if the **Municipality** takes action without approval from **MaineDOT** resulting in

the loss of eligibility for federal funding – including but not limited to withdrawing from the Project, suspending or delaying work, or making acts of commission or omission.

1. Additionally, **MaineDOT** reserves the right to require repayment of all reimbursements for construction costs incurred if the project is not completed by December 31, 2013.

- D. SET-OFF. **MaineDOT** shall have all of its common law, equitable and statutory rights of set-off in order to recover any payment to the **Municipality** for any action or activity that is subsequently deemed ineligible for federal or state funding. **MaineDOT** shall exercise its set-off rights in accordance with normal state practices. These rights shall include without limitation **MaineDOT's** option to withhold for the purposes of set-off any money owed to the **Municipality** under this Agreement and any other agreement with **MaineDOT** or any other state agency, including any contract for a term commencing before the term of this Agreement.

ARTICLE IV. NON-APPROPRIATION

- A. Notwithstanding any other provision of this Agreement, **MaineDOT** shall be released from its obligation to make payment toward the Project – and will terminate this Agreement upon thirty (30) days' notice to the **Municipality** – if any of the following occurs:
1. **MaineDOT** does not receive adequate funds to support this Project; or
 2. Funds otherwise programmed for this Project are de-appropriated; or
 3. **MaineDOT** does not receive the authority to expend funds otherwise programmed for this Project.

ARTICLE V. DEFAULT AND TERMINATION

- A. **MaineDOT** reserves the right to terminate the payment provisions of Article III in the event of default by the **Municipality**, which is defined as:
1. Failure to show satisfactory progress – as determined by the **MaineDOT** Project Manager – within 12 months of being given notice to proceed.
 2. Use of Project funds for a purpose other than what is authorized by this Agreement;
 3. Misrepresentation or falsification of any claim submitted for reimbursement;
 4. Failure to monitor adequately the quality of materials used and work performed by any consultant or contractor, resulting in significant errors, omissions or negligence;
 5. Breach of any material provision(s) of this Agreement.
- B. **MaineDOT** will notify the **Municipality** in writing within five (5) days of learning of an event leading to a claim of default. If the **Municipality** fails to take corrective action within fifteen (15) days of receiving notification, **MaineDOT** may terminate this Agreement upon written notice to the **Municipality**.

1. Upon receiving notification, the **Municipality** and all consultants and contractors associated with the Project shall immediately cease work – except for any work required to protect public health and safety – and turn over to **MaineDOT** all Project records and documentation within thirty (30) days of the effective date of such termination.
- C. If default occurs, **MaineDOT** reserves the right to recover from the **Municipality** all federal and/or state funds reimbursed for Project-related work, as set forth in Article III.E and III.F. The **Municipality** shall forfeit all remaining federal and/or state funds in the Project.

ARTICLE VI. RECORDS RETENTION, ACCESS & AUDIT

- A. Retention. Records are plans, reports, notes, papers or other tangible work arising from this Agreement. All such printed and electronic records prepared by or for the **Municipality** shall be retained for **at least five (5) years** from the date of **MaineDOT**'s acceptance of the **Municipality**'s final claim for reimbursement, except as otherwise provided below:
 1. If any litigation, claim, negotiation, audit or other action involving such records has begun before the expiration of five (5) year period, then all records shall be retained at least until all action and resolution of all issues arising from it are complete.
- B. Access. The **Municipality** and any consultant or contractor working on its behalf shall allow authorized representatives of the State of Maine and the Federal Government to inspect and audit Project documents. Copies of requested documents shall be furnished at no cost.
- C. Audit. Audits shall meet the "Generally Accepted Government Auditing Standards."

ARTICLE VII. GENERAL TERMS AND CONDITIONS

- A. Observance of Law. All activities conducted pursuant to this Agreement shall comply with applicable laws and regulations, including without limitation the following: Title 23 in the United States Code (USC) for statutory law, Title 23 in the Code of federal Regulations (CFR) for administrative law, and 49 CFR Part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments."
- B. Independent Capacity. When carrying out the provisions of this Agreement, the **Municipality**, its employees, agents, representatives, consultants or contractors shall act in an independent capacity from **MaineDOT**, and not as officers, employees or agents of **MaineDOT**.
- C. Indemnification. To the extent permitted by law, the **Municipality** shall defend, indemnify and hold harmless **MaineDOT** and its officers, agents and employees from all claims, suits or liabilities arising from any negligent or wrongful act, error or omission by the **Municipality** or any of its consultants or contractors. Nothing herein shall waive any defense immunity or limitation of liability that may be available to the **Municipality** or **MaineDOT**, their officers, agents or employees, under the Maine Tort Claims Act (14 M.R.S. Section 8101 et seq.), the Eleventh Amendment to the U.S. Constitution or any other privileges or immunities as may be provided by law. *This provision shall survive any termination or expiration of this Agreement.*

- D. Confidentiality. Information pertaining to right-of-way matters and detailed cost estimates shall be kept confidential pursuant to Maine state law (23 MRSA, Section 63.)
- E. Equal Employment Opportunity. THE **Municipality** shall comply with applicable EEO requirements:
1. During the performance of all work undertaken pursuant to this Agreement, the **Municipality** shall not discriminate against any employee or applicant for employment because of race, color, religious creed, gender, national origin, ancestry, age, sexual orientation, or disability unless related to a bona fide occupational qualification. The **Municipality** shall take *affirmative action* to ensure that all such qualified applicants are employed and that all such employees are treated without regard to their race, color, religious creed, gender, national origin, ancestry, age, sexual orientation, or disability during any period of employment under this Agreement. Such action shall include, without limitation: employment, upgrading, demotions, transfers, recruitment, layoffs or terminations, rates of pay or other forms of compensation, and selection for training and apprenticeships. The **Municipality** shall post – or cause to be posted – prominently in conspicuous places readily accessible to all employees and applicants for such employment notices setting forth the provisions of this paragraph.
 2. The **Municipality** shall include all of the foregoing equal employment opportunity provisions in any contract for services or work under this Agreement so that the provisions are binding upon each consultant and/or contractor – except for any contract for the purchase or supply of standard commercial supplies or raw materials.
 3. The **Municipality**, its contractors and consultants shall list all employment opportunities arising out of or attributable to the Project with the Maine Job Service, except for openings to be filled with personnel already employed within those organizations before the effective date hereof and not hired in anticipation hereof.
- F. Changes. Any change(s) to the terms of this Agreement shall be approved by **MaineDOT**.
- G. Flow Down. All contracts between the **Municipality** and any consultant, contractor or other third party shall contain or incorporate by reference all applicable provisions of this Agreement, including provisions contained in Appendix B – Federal Transit Administration Contracting Provisions.
- H. No Assignment Without Approval. The **Municipality** shall not sublet, sell, transfer, assign or otherwise dispose of this Agreement or any portion of it without the consent of **MaineDOT**. In no case shall all such action release the **Municipality** from liability under this Agreement.
- I. Other Considerations. The **Municipality** and **MaineDOT** (“the Parties”) further agree that:
1. Neither the **Municipality** nor **MaineDOT** shall be bound by any previous statement, correspondence, agreement or representation not expressly contained herein.
 2. This Agreement is made and shall be construed under the laws of the State of Maine.

3. If any clause, section or provision is held to be invalid or unenforceable, that shall not affect the entire agreement. The **Parties** shall negotiate a new clause, section or provision.

ARTICLE VIII. EXPIRATION

- A. All provisions of this Agreement – except for Article II.O (maintenance), Article VI.A (records), and Article VII.C (indemnification) – shall expire not more than **four (4) years** from the final day of the month in which the undersigned **MaineDOT** representative signed and dated this Agreement, unless otherwise modified in writing by the **Parties**.

ARTICLE IX. APPROVAL

- A. Debarment. By signing this Agreement, the **Municipality** certifies – to the best of its knowledge and belief – that it and its employees, agents and/or representatives associated with the Project:
1. Are not now debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this transaction by any federal or state agency;
 2. Have not within the previous three (3) years been criminally convicted or had a civil judgment rendered against them – and are not now criminally or civilly charged – in connection with any of the following:
 - Obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; or
 - Violating federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.
 3. Have not within a 3-year period preceding this agreement had one or more public transactions (federal, state or local) terminated for cause or default.
- B. If the **Municipality** is unable to certify to any of the preceding statements in this Article IX, the **Municipality** shall attach an explanation to this Agreement.
- C. The **Municipality** agrees that it will not hire a consultant or contractor who is now debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this transaction by any federal or state agency.
- D. Municipal authorization. The undersigned municipal representative assures that the **Municipality's** official legislative body has approved the Project and the **Municipality's** entry into this Agreement, has appropriated or authorized the use of any necessary funds, and has further authorized the representative to sign this Agreement.

IN WITNESS WHEREOF, **MaineDOT** and the **Municipality** have executed this Agreement effective on the day and date last signed.

Municipality of
DUNS® Number

Maine Department of Transportation

By: _____
_____, City/Town Manager

By: _____
Joyce Noel Taylor, Director,
Bureau of Project Development

Date: _____

Date: _____

I certify that foregoing signature is true and accurate. I further certify – pursuant to 10 M.R.S.A. §9407 and §9502 – that the signature, if electronic: (a) is intended to have the same force as my manual signature; (b) is unique to me; (c) is capable of verification; and (d) is under my sole control.

Appendix A – Approved Grant Application

APPENDIX B - INDEX

1. All FTA Assisted Third Party Contracts and Subcontracts
2. Awards Exceeding the Simplified Acquisition Threshold (\$100,000)
3. Awards Exceeding \$100,000 by Statute
4. Transport of Property or Persons
5. Construction Activities
6. Non-Construction Activities
7. Transit Operations
8. Planning, Research, Development and Demonstration Projects
9. Special Notification Requirements for States
10. Miscellaneous Special Requirements

FTA REQUIRED CLAUSES FOR ALL FTA ASSISTED THIRD PARTY CONTRACTS

§2.f No Federal Government Obligations to Third Parties. In connection with the Project, the Recipient agrees that, absent the Federal Government's express written consent, the Federal Government shall not be subject to any obligations or liabilities to any sub-recipient, lessee, third party contractor, or other participant at any tier of the Project, or other person or entity that is not a party to the Grant Agreement or Cooperative Agreement for the Project. Notwithstanding that the Federal Government may have concurred in or approved any solicitation, sub-agreement, lease, third party contract, or arrangement at any tier, the Federal Government has no obligations or liabilities to any entity other than the Recipient, including any sub-recipient, lessee, third party contractor, or other participant at any tier of the Project.

§3.f False or Fraudulent Statements or Claims. The Recipient acknowledges and agrees that:

(1) **Civil Fraud.** The Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 et seq., and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to the Recipient's activities in connection with the Project. By executing the Grant Agreement or Cooperative Agreement for the Project, the Recipient certifies or affirms the truthfulness and accuracy of each statement it has made, it makes, or it may make in connection with the Project. In addition to other penalties that may apply, the Recipient also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation to the Federal Government, the Federal Government reserves the right to impose on the Recipient the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, to the extent the Federal Government deems appropriate.

(2) **Criminal Fraud.** If the Recipient makes a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation to the Federal Government or includes a false, fictitious, or fraudulent statement or representation in any agreement with the Federal Government in connection with a Project authorized under 49 U.S.C. chapter 53 or any other Federal law, the Federal Government reserves the right to impose on the Recipient the penalties of 49 U.S.C. § 5323(l), 18 U.S.C. § 1001, or other applicable Federal law to the extent the Federal Government deems appropriate.

§15.t Access to Third Party Contract Records. The Recipient agrees to permit, and require its sub-recipients to permit, the U.S. Secretary of Transportation, the Comptroller General of the United States, and, to the extent appropriate, the State, or their authorized representatives, upon their request to inspect all Project work, materials, payrolls, and other data, and to audit the books, records, and accounts of the Recipient and its sub-recipients pertaining to the Project, as required by 49 U.S.C. § 5325(g).

Index

§2.c Application of Federal, State, and Local Laws, Regulations, and Directives.

Federal Laws, Regulations, and Directives.

(1) The Recipient agrees that Federal laws and regulations control Project award and implementation. The Recipient also agrees that Federal directives, as defined in this Master Agreement, provide Federal guidance applicable to the Project, except to the extent that FTA determines otherwise in writing. Thus, FTA strongly encourages adherence to applicable Federal directives. The Recipient understands and agrees that unless the recipient requests FTA approval in writing, the Recipient may incur a violation of Federal laws or regulations, its Grant Agreement or Cooperative Agreement, or this Master Agreement if it implements an alternative procedure or course of action not approved by FTA.

The Recipient understands and agrees that Federal laws, regulations, and directives applicable to the Project and to the Recipient on the date on which the FTA Authorized Official awards Federal assistance for the Project may be modified from time to time. In particular, new Federal laws, regulations, and directives may become effective after the date on which the Recipient executes the Grant Agreement or Cooperative Agreement for the Project, and might apply to that Grant Agreement or Cooperative Agreement. The Recipient agrees that the most recent of such Federal laws, regulations, and directives will apply to the administration of the Project at any particular time, except to the extent that FTA determines otherwise in writing.

FTA's written determination may take the form of a Special Condition, Special Requirement, Special Provision, or Condition of Award within the Grant Agreement or Cooperative Agreement for the Project, a change to an FTA directive, or a letter to the Recipient signed by the Federal Transit Administrator or his or her duly authorized designee, the text of which modifies or conditions a specific provision of the Grant Agreement or Cooperative Agreement for the Project or this Master Agreement. To accommodate changing Federal requirements, the Recipient agrees to include in each agreement with each sub-recipient, each lease, each third party contract, and other similar document implementing the Project notice that Federal laws, regulations, and directives may change and that the changed provisions will apply to the Project, except to the extent that FTA determines otherwise in writing. All standards or limits in the Grant Agreement or Cooperative Agreement for the Project, and in this Master Agreement are minimum requirements, unless modified by FTA.

§11 Right of the Federal Government to Terminate.

Upon written notice, the Recipient agrees that the Federal Government may suspend or terminate all or any part of the Federal assistance to be provided for the Project if the Recipient has violated the terms of the Grant Agreement or Cooperative Agreement for the Project including this Master Agreement, or if the Federal Government determines that the purposes of the laws authorizing the Project would not be adequately served by the continuation of Federal assistance for the Project. The Recipient understands and agrees that any failure to make reasonable progress on the Project or any violation of the Grant

Agreement or Cooperative Agreement for the Project, or this Master Agreement that endangers substantial performance of the Project shall provide sufficient grounds for the Federal Government to terminate the Grant Agreement or Cooperative Agreement for the Project. In general, termination of Federal assistance for the Project will not invalidate

Index

obligations properly incurred by the Recipient before the termination date to the extent those obligations cannot be canceled. If, however, the Federal Government determines that the Recipient has willfully misused Federal assistance by failing to make adequate progress, by failing to make reasonable and appropriate use of Project property, or by failing to comply with the terms of the Grant Agreement or Cooperative Agreement for the Project including this Master Agreement, the Federal Government reserves the right to require the Recipient to refund the entire amount of Federal assistance provided for the Project or any lesser amount as the Federal Government may determine. Expiration of any Project time period established for the Project does not, by itself, constitute an expiration or termination of the Grant Agreement or Cooperative Agreement for the Project.

§12 Civil Rights. The Recipient agrees to comply with all applicable civil rights laws and regulations, in accordance with applicable Federal directives, except to the extent that the Federal Government determines otherwise in writing. These include, but are not limited to, the following:

a. **Nondiscrimination in Federal Public Transportation Programs.** The Recipient agrees to comply, and assures the compliance of each sub-recipient, lessee, third party contractor, or other participant at any tier of the Project, with the provisions of 49 U.S.C. § 5332, which prohibit discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity.

b. **Nondiscrimination – Title VI of the Civil Rights Act.** The Recipient agrees to comply, and assures the compliance of each sub-recipient, lessee, third party contractor, or other participant at any tier of the Project, with all provisions prohibiting discrimination on the basis of race, color, or national origin of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000d et seq., and with U.S. DOT regulations, “Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act,” 49 C.F.R. Part 21. Except to the extent FTA determines otherwise in writing, the Recipient agrees to follow all applicable provisions of the most recent edition of FTA Circular 4702.1A, “Title VI and Title VI-Dependent Guidelines for Federal Transit Administration Recipients,” and any other applicable Federal directives that may be issued.

c. **Equal Employment Opportunity.** The Recipient agrees to comply, and assures the compliance of each sub-recipient, lessee, third party contractor, or other participant at any tier of the Project, with all equal employment opportunity (EEO) provisions of 49 U.S.C. § 5332, with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq., and implementing Federal regulations and any later amendments thereto. Except to the extent FTA determines otherwise in writing, the Recipient also agrees to follow all applicable Federal EEO directives that may be issued. Accordingly:

(1) **General.** The Recipient agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, sex, disability, age, or national origin. The Recipient agrees to take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race,

color, religion, sex, disability, age, or national origin. Such action shall include, but not be limited to, employment, upgrading, demotions or transfers, recruitment or recruitment advertising, layoffs or terminations; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

Index

(2) **Equal Employment Opportunity Requirements for Construction Activities.** For activities determined by the U.S. Department of Labor (U.S. DOL) to qualify as "construction," the Recipient agrees to comply and assures the compliance of each sub-recipient, lessee, third party contractor, or other participant, at any tier of the Project, with all requirements of U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq.; with implementing Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order No. 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note, and with other applicable EEO laws and regulations, and also agrees to follow applicable Federal directives, except as the Federal Government determines otherwise in writing.

d. **Disadvantaged Business Enterprise.** To the extent authorized by Federal law, the Recipient agrees to facilitate participation by Disadvantaged Business Enterprises (DBEs) in the Project and assures that each sub-recipient, lessee, third party contractor, or other participant at any tier of the Project will facilitate participation by DBEs in the Project to the extent applicable as follows:

(1) The Recipient agrees and assures that it shall comply with section 1101(b) of SAFETEA-LU, 23 U.S.C. § 101 note, and U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 C.F.R. Part 26.

(2) The Recipient agrees and assures that it shall not discriminate on the basis of race, color, sex, or national origin in the award and performance of any sub-agreement, lease, third party contract, or other arrangement supported with Federal assistance derived from U.S. DOT in the administration of its DBE program and shall comply with the requirements of 49 C.F.R. Part 26. The Recipient agrees to take all necessary and reasonable steps as set forth in 49 C.F.R. Part 26 to ensure nondiscrimination in the award and administration of all subagreements, leases, third party contracts, and other arrangements supported with Federal assistance derived from U.S. DOT. As required by 49 C.F.R. Part 26, the Recipient's DBE program approved by U.S. DOT, if any, is incorporated by reference and made part of the Grant Agreement or Cooperative Agreement for the Project. The Recipient agrees that it has a legal obligation to implement its approved DBE program, and that its failure to carry out that DBE program shall be treated as a violation of the Grant Agreement or Cooperative Agreement for the Project and this Master Agreement. Upon notification by U.S. DOT to the Recipient of the Recipient's failure to implement its approved DBE program, U.S. DOT may impose the sanctions as set forth in 49 C.F.R. Part 26 and may, in appropriate cases, refer the matter to the appropriate Federal authorities for enforcement under 18 U.S.C. § 1001, or the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801 et seq., or both.

e. **Nondiscrimination on the Basis of Sex.** The Recipient agrees to comply with all applicable requirements of Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. §§ 1681 et seq., and with implementing U.S. DOT regulations, "Nondiscrimination on the Basis

of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. Part 25, that prohibit discrimination on the basis of sex.

Index

f. Nondiscrimination on the Basis of Age. The Recipient agrees to comply with all applicable requirements of:

(1) The Age Discrimination Act of 1975, as amended, 42 U.S.C. §§ 6101 et seq., and with implementing U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. Part 90, which prohibit discrimination against individuals on the basis of age in the administration of programs or activities receiving Federal financial assistance.

(2) The Age Discrimination in Employment Act (ADEA) 29 U.S.C. §§ 621 through 634 and with implementing U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. Part 1625, which prohibits discrimination against individuals on the basis of age.

g. Access for Individuals with Disabilities. The Recipient agrees to comply with 49 U.S.C. § 5301(d), which states the Federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities. The Recipient also agrees to comply with all applicable provisions of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability in the administration of programs or activities receiving Federal financial assistance; with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 et seq., which requires that accessible facilities and services be made available to individuals with disabilities; with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities; and with other laws and amendments thereto pertaining to access for individuals with disabilities that may be applicable. In addition, the Recipient agrees to comply with applicable implementing Federal regulations, and any later amendments thereto, and agrees to follow applicable Federal implementing directives, except to the extent FTA approves otherwise in writing. Among those regulations and directives are:

(1) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;

(2) U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;

(3) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB)/U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;

(4) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;

(5) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;

(6) U.S. General Services Administration (U.S. GSA) regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;

(7) U.S. EEOC, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;

Index

(8) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F;
(9) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194;
(10) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609; and
(11) Federal civil rights and nondiscrimination directives implementing the foregoing Federal laws and regulations, except to the extent the Federal Government determines otherwise in writing.

h. Drug or Alcohol Abuse-Confidentiality and Other Civil Rights Protections. To the extent applicable, the Recipient agrees to comply with the confidentiality and civil rights protections of the Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. §§ 1101 et seq., the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. §§ 4541 et seq., and the Public Health Service Act of 1912, as amended, 42 U.S.C. §§ 290dd through 290dd-2, and any amendments thereto.

i. Access to Services for Persons with Limited English Proficiency. The Recipient agrees to facilitate compliance with the policies of Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. § 2000d-1 note, and follow applicable provisions of U.S. DOT Notice, "DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficiency (LEP) Persons," 70 Fed. Reg. 74087, December 14, 2005, except to the extent that FTA determines otherwise in writing.

j. Environmental Justice. The Recipient agrees to facilitate compliance with the policies of Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 42 U.S.C. § 4321 note, except to the extent that the Federal Government determines otherwise in writing.

k. Other Nondiscrimination Laws. The Recipient agrees to comply with applicable provisions of other Federal laws and regulations, and follow applicable Federal directives prohibiting discrimination, except to the extent the Federal Government determines otherwise in writing.

§15.a Federal Standards. The Recipient agrees to comply with applicable third party procurement requirements of 49 U.S.C. chapter 53 and Federal laws in effect now or subsequently enacted; with applicable U.S. DOT third party procurement regulations at 49 C.F.R. § 18.36 or 49 C.F.R. §§ 19.40 through 19.48, and with other applicable Federal regulations pertaining to third party procurements and later amendments thereto. The Recipient also agrees to follow the provisions of the most recent edition and revisions of FTA Circular 4220.1F, "Third Party Contracting Guidance," and any later revision thereto, except to the extent FTA determines otherwise in writing. The Recipient agrees that it may not use FTA assistance to support its third party procurements unless its compliance with Federal laws and regulations is satisfactory. Although the FTA "Best Practices Procurement Manual" provides additional third party contracting information, the Recipient understands

and agrees that the FTA "Best Practices Procurement Manual" may omit certain Federal requirements applicable to specific third party contracts.

Index

§3.b Debarment and Suspension. The Recipient agrees to comply, and assures the compliance of each sub-recipient, lessee, third party contractor, or other participant at any tier of the Project, with Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note, and U.S. DOT regulations, "Non-procurement Suspension and Debarment," 2 C.F.R. Part 1200, which adopts and supplements the provisions of U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Government-wide Debarment and Suspension (Non-procurement)," 2 C.F.R. Part 180. The Recipient agrees to, and assures that its sub-recipients, lessees, third party contractors, and other participants at any tier of the Project will, review the "Excluded Parties Listing System" at <http://epls.gov/> before entering into any sub-agreement, lease, third party contract, or other arrangement in connection with the Project.

Index

AWARDS EXCEEDING THE SIMPLIFIED ACQUISITION THRESHOLD (\$100,000)

§14.a Buy America. The Recipient agrees to comply with 49 U.S.C. § 5323(j) and FTA regulations, "Buy America Requirements," 49 C.F.R. Part 661, and any amendments thereto.

§54 Disputes, Breaches, Defaults or Other Litigation. The Recipient agrees that FTA has a vested interest in the settlement of any dispute, breach, default, or litigation involving the Project. Accordingly:

a. **Notification to FTA.** The Recipient agrees to notify FTA in writing of any current or prospective major dispute, breach, default, or litigation that may affect the Federal Government's interests in the Project or the Federal Government's administration or enforcement of Federal laws or regulations. If the Recipient seeks to name the Federal Government as a party to litigation for any reason, in any forum, the Recipient agrees to inform FTA in writing before doing so. At a minimum, each notice to FTA under Section 54 of this Master Agreement shall be provided to the FTA Regional Counsel within whose Region the Recipient operates its public transportation system or implements the Project.

b. **Federal Interest in Recovery.** The Federal Government retains the right to a proportionate share of any proceeds derived from any third party recovery, based on the percentage of the Federal share awarded for the Project, except that the Recipient may return liquidated damages recovered to its Project Account in lieu of returning the Federal share to the Federal Government.

c. **Enforcement.** The Recipient agrees to pursue its legal rights and remedies available under any third party contract or available under law or regulations.

d. **FTA Concurrence.** FTA reserves the right to concur in any compromise or settlement of any claim involving the Project and the Recipient.

e. Alternative Dispute Resolution. FTA encourages the Recipient to use alternative dispute resolution procedures, as may be appropriate.

Index

AWARDS EXCEEDING \$100,000 BY STATUTE

§3.d Lobbying Restrictions. The Recipient agrees that:

- (1) In compliance with 31 U.S.C. § 1352(a), it will not use Federal assistance to pay the costs of influencing any officer or employee of a Federal agency, Member of Congress, officer of Congress or employee of a member of Congress, in connection with making or extending the Grant Agreement or Cooperative Agreement;
- (2) In addition, it will comply with other applicable Federal laws and regulations prohibiting the use of Federal assistance for activities designed to influence Congress or a State legislature with respect to legislation or appropriations, except through proper, official channels; and
- (3) It will comply, and will assure the compliance of each subrecipient, lessee, third party contractor, or other participant at any tier of the Project with U.S. DOT regulations, "New Restrictions on Lobbying," 49 C.F.R. Part 20, modified as necessary by 31 U.S.C. § 1352, as amended.

§15.i Clean Air and Clean Water. The Recipient agrees to include in each subagreement, lease, third party contract, or other arrangement exceeding \$100,000, adequate provisions to ensure that each Project participant will agree to:

- (1) Report the use of facilities placed on or likely to be placed on the U.S. EPA "List of Violating Facilities,"
- (2) Refrain from using any violating facilities,
- (3) Report violations to FTA and the Regional U.S. EPA Office, and
- (4) Comply with the inspection and other applicable requirements of:
 - (a) Section 306 of the Clean Air Act, as amended, 42 U.S.C. § 7606, and other applicable provisions of the Clean Air Act, as amended, 42 U.S.C. §§ 7401 through 7671q; and
 - (b) Section 508 of the Clean Water Act, as amended, 33 U.S.C. § 1368, and other applicable requirements of the Clean Water Act, as amended, 33 U.S.C. §§ 1251 through 1377.

Index

TRANSPORT OF PROPERTY OR PERSONS

§14.b Cargo Preference-Use of United States-Flag Vessels. To the extent applicable, the Recipient agrees to comply with 46 U.S.C. § 55305 and U.S. Maritime Administration regulations, "Cargo Preference-U.S.-Flag Vessels," 46 C.F.R. Part 381.

§14.c Fly America. The Recipient understands and agrees that the Federal Government will not participate in the costs of international air transportation of any individuals involved in or property acquired for the Project unless that air transportation is provided by U.S.-flag air carriers to the extent such service is available, in compliance with section 5 of the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 U.S.C. § 40118, and U.S. GSA regulations, "Use of United States Flag Air Carriers," 41 C.F.R. §§ 301-10.131 through 301-10.143.

Index

CONSTRUCTION ACTIVITIES

§24.a Construction Activities. The Recipient agrees to comply, and assures the compliance of each subrecipient, lessee, third party contractor, and other participant at any tier of the Project, with the following Federal laws and regulations providing protections for construction employees:

§24.a(1) Davis-Bacon Act, as amended, 40 U.S.C. §§ 3141 et seq., pursuant to FTA enabling legislation requiring compliance with the Davis-Bacon Act at 49 U.S.C. § 5333(a), and implementing U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. Part 5;

§24.a(2) Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 3701 et seq., specifically, the wage and hour requirements of section 102 of that Act at 40 U.S.C. § 3702, and implementing U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. Part 5; and the safety requirements of section 107 of that Act at 40 U.S.C. § 3704, and implementing U.S. DOL regulations, "Safety and Health Regulations for Construction," 29 C.F.R. Part 1926; and

§24.a(3) Copeland "Anti-Kickback" Act, as amended, 18 U.S.C. § 874 and 40 U.S.C. § 3145, and implementing U.S. DOL regulations, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States," 29 C.F.R. Part 3.

§15.o Bonding. Except to the extent that FTA determines otherwise in writing, the Recipient agrees to comply with the following bonding provisions, as applicable:

(1) Construction Activities. The Recipient agrees to provide bid guarantee, contract performance, and payment bonds as provided by Federal regulations and to the extent determined adequate by FTA in writing, and follow any other construction bonding provisions in FTA directives, except to the extent that FTA determines otherwise in writing.

§23.e Seismic Safety. The Recipient agrees to comply with the Earthquake Hazards Reduction Act of 1977, as amended, 42 U.S.C. §§ 7701 et seq., in accordance with Executive Order No. 12699, "Seismic Safety of Federal and Federally-Assisted or Regulated New Building Construction," 42 U.S.C. § 7704 note, and comply with implementing U.S. DOT regulations, "Seismic Safety," 49 C.F.R. Part 41 (specifically, 49 C.F.R. § 41.117).

Index

NONCONSTRUCTION ACTIVITIES

§24.b Activities Not Involving Construction. The Recipient agrees to comply, and assures the compliance of each sub-recipient, lessee, third party contractor, and other participant at

any tier of the Project, with the employee protection requirements for non-construction employees of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 3701 et seq., in particular with the wage and hour requirements of section 102 of that Act at 40 U.S.C. § 3702, and with implementing U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. Part 5.

Index

TRANSIT OPERATIONS

§24.d Public Transportation Employee Protective Arrangements. If the Grant Agreement or Cooperative Agreement for the Project indicates that public transportation employee protective arrangements required by U.S. DOL apply to public transportation operations performed in connection with the Project, the Recipient agrees to comply with the applicable requirements for its Project as follows:

(1) **Standard Public Transportation Employee Protective Arrangements.** To the extent that the Project involves public transportation operations and to the extent required by Federal law, the Recipient agrees to implement the Project in accordance with the terms and conditions that the U.S. Secretary of Labor has determined to be fair and equitable to protect the interests of any employees affected by the Project and that comply with the requirements of 49 U.S.C. § 5333(b), in accordance with U.S. DOL guidelines, "Section 5333(b), Federal Transit Law," 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in U.S. DOL's certification of public transportation employee protective arrangements to FTA, the date of which appears in the Grant Agreement or Cooperative Agreement for the Project. The Recipient agrees to implement the Project in accordance with the conditions stated in that U.S. DOL certification. That certification and any documents cited therein are incorporated by reference and made part of the Grant Agreement or Cooperative Agreement for the Project. The requirements of this Subsection 24.d(1) of this Master Agreement do not apply to Projects for elderly individuals or individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2) or subsection 3012(b) of SAFETEA-LU, Projects for nonurbanized areas authorized by 49 U.S.C. § 5311; or Projects for the over-the-road bus accessibility program authorized by section 3038 of TEA-21, as amended by section 3039 of SAFETEA-LU, 49 U.S.C. § 5310 note. Separate requirements for those Projects are set forth in Subsections 24.d(2), (3), and (4), respectively, of this Master Agreement.

(2) **Public Transportation Employee Protective Arrangements for the Elderly Individuals and Individuals with Disabilities Formula Program and for the Elderly Individuals and Individuals with Disabilities Formula Program Pilot Program.** To the extent that the U.S. Secretary of Transportation has determined or determines in the future that employee protective arrangements required by 49 U.S.C. § 5333(b) are necessary or appropriate for a governmental authority subrecipient participating in a Project authorized by 49 U.S.C. § 5310(b)(2) or subsection 3012(b) of SAFETEA-LU, 49 U.S.C. § 5310 note, the Recipient agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor necessary to comply with the requirements of 49 U.S.C. § 5333(b), in accordance with U.S. DOL guidelines, "Section 5333(b), Federal Transit Law," at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions, if any, are identified in the U.S. DOL's certification of public transportation employee protective arrangements to FTA, the date of which appears in the Grant Agreement. The Recipient

agrees to implement the Project in compliance with the conditions stated in that U.S. DOL certification, to the extent that certification is required. Any U.S. DOL certification that may be provided and any documents cited therein are incorporated by reference and made part of the Grant Agreement.

Index

(3) Public Transportation Employee Protective Arrangements for Projects in Nonurbanized Areas Authorized by 49 U.S.C. § 5311. The Recipient agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program that is most current as of the date of execution of the Grant Agreement or Cooperative Agreement for the Project, and any alternative comparable arrangements specified by U.S. DOL for application to the Recipient's project, in accordance with U.S. DOL guidelines, "Section 5333(b), Federal Transit Law," 29 C.F.R. Part 215, and any revisions thereto. Any U.S. DOL Special Warranty that may be provided and any documents cited therein are incorporated by reference and made part of the Grant Agreement.

(4) Employee Protective Arrangements for Projects Financed by the Over-the-Road Bus Accessibility Program. The Recipient agrees to comply with the terms and conditions of the Special Warranty for the Over-the-Road Bus Accessibility Program that is most current as of the date of execution of the Grant Agreement or Cooperative Agreement for the Project, and any alternative comparable arrangements specified by U.S. DOL for application to the Recipient's project, in accordance with U.S. DOL guidelines, "Section 5333(b), Federal Transit Law," 29 C.F.R. Part 215, and any revisions thereto. Any U.S. DOL Special Warranty that may be provided and any documents cited therein are incorporated by reference and made part of the Grant Agreement.

§28 Charter Service Operations. The Recipient agrees that neither it nor any public transportation operator performing work in connection with a Project financed under 49 U.S.C. chapter 53 or under 23 U.S.C. §§ 133 or 142, will engage in charter service operations, except as authorized by 49 U.S.C. § 5323(d) and FTA regulations, "Charter Service," 49 C.F.R. Part 604, and any Charter Service regulations or FTA directives that may be issued, except to the extent that FTA determines otherwise in writing. The Charter Service Agreement the Recipient has selected in its latest annual Certifications and Assurances is incorporated by reference and made part of the Grant Agreement or Cooperative Agreement for the Project. If the Recipient has failed to select the Charter Service Agreement in its latest annual Certifications and Assurances to FTA and does conduct charter service operations prohibited by FTA's Charter Service regulations, the Recipient understands and agrees that: (1) the requirements of FTA's Charter Service regulations and any amendments thereto will apply to any charter service it or its sub-recipients, lessees, third party contractors, or other participants in the Project provide; (2) the definitions of FTA's Charter Service regulations will apply to the Recipient's charter operations, and (3) a pattern of violations of FTA's Charter Service regulations may require corrective measures and imposition of remedies, including barring the Recipient, subrecipient, lessee, third party contractor, or other participant in the Project operating public transportation under the Project from receiving Federal financial assistance from FTA, or withholding an amount of Federal assistance as set forth in Appendix D to FTA's Charter Service regulations.

Index

§29 School Transportation Operations. The Recipient agrees that neither it nor any public transportation operator performing work in connection with a Project financed under 49 U.S.C. chapter 53 or under 23 U.S.C. §§ 133 or 142, will engage in school transportation operations for the transportation of students or school personnel exclusively in competition with private school transportation operators, except as authorized by 49 U.S.C. §§ 5323(f) or (g), as applicable, and FTA regulations, "School Bus Operations," 49 C.F.R. Part 605 to the extent consistent with 49 U.S.C. §§ 5323(f) or (g), in accordance with any School Transportation Operations regulations or FTA directives that may be issued at a later date, except to the extent that FTA determines otherwise in writing. The School Transportation Operations Agreement the Recipient has selected in its latest annual Certifications and Assurances is incorporated by reference and made part of the Grant Agreement or Cooperative Agreement for the Project. If the Recipient has failed to select the School Transportation Agreement in its latest annual Certifications and Assurances to FTA and does conduct school transportation operations prohibited by FTA's School Bus Operations regulations, 49 C.F.R. Part 605, to the extent those regulations are consistent with 49 U.S.C. §§ 5323(f) or (g), the Recipient understands and agrees that: (1) the requirements of FTA's School Bus Operations regulations, 49 C.F.R. Part 605, to the extent consistent with 49 U.S.C. §§ 5323(f) or (g), will apply to any school transportation service it or its sub-recipients, lessees, third party contractor, or other participants in the project provide, (2) the definitions of FTA's School Bus Operations regulations will apply to the Recipient's school transportation operations, and (3) if there is a violation of FTA's School Bus Operations regulations, to the extent consistent with 49 U.S.C. §§ 5323(f) or (g), FTA will bar the Recipient, subrecipient, lessee, third party contractor, or other Project participant operating public transportation that has violated FTA's School Bus Operations regulations, 49 C.F.R. Part 605, to the extent consistent with 49 U.S.C. §§ 5323(f) or (g), from receiving Federal transit assistance in an amount FTA considers appropriate.

§32. Substance Abuse. To the extent applicable, the Recipient agrees to comply with the following Federal regulations and guidance:

a. **Drug-Free Workplace.** U.S. OMB Guidance, "Government-wide Requirements for Drug-Free Workplace (Financial Assistance)," 2 C.F.R. Part 182, and U.S. DOT regulations, "Government-wide Requirements for Drug-Free Workplace (Financial Assistance)," 49 C.F.R. Part 32, that implement the Drug-Free Workplace Act of 1988, 41 U.S.C. §§ 701 et seq., including any amendments to these U.S. DOT regulations when they are promulgated. [U.S. OMB published final Drug-Free Workplace guidance in 74 Fed. Reg. 28149 et seq. on June 15, 2009.]

b. **Alcohol Misuse and Prohibited Drug Use.** FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 C.F.R. Part 655, that implement 49 U.S.C. § 5331.

Index

PLANNING, RESEARCH, DEVELOPMENT AND DEMONSTRATION PROJECTS

§17 Patent Rights.

a. **General.** If any invention, improvement, or discovery of the Recipient or of any subrecipient, lessee, third party contractor, or other participant at any tier of the Project is conceived or first actually reduced to practice in the course of or under the Project, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Recipient agrees to notify FTA immediately and provide a detailed report in a format satisfactory to FTA.

b. **Federal Rights.** The Recipient agrees that its rights and responsibilities, and those of each subrecipient, lessee, third party contractor, or other participant at any tier of the Project, pertaining to that invention, improvement, or discovery will be determined in accordance with applicable Federal laws and regulations, including any waiver thereof. Absent a determination in writing to the contrary by the Federal Government, the Recipient agrees to transmit to FTA those rights due the Federal Government in any invention, improvement, or discovery resulting from that subagreement, third party contract, third party subcontract, or arrangement, as specified in 35 U.S.C. §§ 200 et seq., and U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401, irrespective of the status of the Recipient, subrecipient, lessee, third party contractor or other participant in the Project (i.e., a large business, small business, State government, State instrumentality, local government, Indian tribe, nonprofit organization, institution of higher education, or individual).

c. **License Fees and Royalties.** FTA considers income earned from license fees and royalties for patents, patent applications, and inventions produced under the Project to be program income. Except to the extent FTA determines otherwise in writing, as provided in 49 C.F.R. Parts 18 and 19, the Recipient has no obligation to the Federal Government with respect to that program income, apart from compliance with 35 U.S.C. §§ 200 et seq., which applies to patent rights developed under a research project.

§18 Rights in Data and Copyrights.

a. **Definition.** The term "subject data," as used in this Section 18 of this Master Agreement means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the Grant Agreement or Cooperative Agreement for the Project. Examples include, but are not limited to: computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information. "Subject data," as used in this Section 18, does not include financial reports, cost analyses, or other similar information used for Project administration.

Index

b. **General.** The following restrictions apply to all subject data first produced in the performance of the Grant Agreement or Cooperative Agreement for the Project:
(1) Except for its own internal use, the Recipient may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Recipient authorize others to do so, without the prior written consent of the Federal Government, unless the Federal Government has previously released or approved the release of such data to the public.

(2) The restrictions on publication of Subsection 18.b(1) of this Master Agreement, however, do not apply to a Grant Agreement or Cooperative Agreement with an institution of higher learning.

c. **Federal Rights in Data and Copyrights.** The Recipient agrees to provide to the Federal Government a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for Federal Government purposes the subject data described in this Subsection 18.c of this Master Agreement. As used herein, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not provide or otherwise extend to other parties the Federal Government's license to:

(1) Any subject data developed under the Grant Agreement or Cooperative Agreement for the Project, or under a subagreement, lease, third party contract or other arrangement at any tier of the Project, supported with Federal assistance derived from the Grant Agreement or Cooperative Agreement for the Project, whether or not a copyright has been obtained; and

(2) Any rights of copyright to which a Recipient, subrecipient, lessee, third party contractor, or other participant at any tier of the Project purchases ownership using Federal assistance.

d. **Special Federal Rights in Data for Research, Development, Demonstration, and Special Studies Projects.** In general, FTA's purpose in providing Federal assistance for a research, development, demonstration, or special studies Project is to increase transportation knowledge, rather than limit the benefits of the Project to Project participants. Therefore, when the Project is completed, the Recipient agrees to provide a Project report that FTA may publish or make available for publication on the Internet. In addition, the Recipient agrees to provide other reports pertaining to the Project that FTA may request. The Recipient agrees to identify clearly any specific confidential, privileged, or proprietary information it submits to FTA. In addition, except to the extent that FTA determines otherwise in writing, the Recipient of Federal assistance to support a research, development, demonstration, or a special studies Project agrees that, in addition to the rights in data and copyrights that it must provide to the Federal Government as set forth in Subsection 18.c of this Master Agreement, FTA may make available to any FTA recipient, subrecipient, third party contractor, third party subcontractor or other participant at any tier of the Project, either FTA's license in the copyright to the subject data or a copy of the subject data. If the Project is not completed for any reason whatsoever, all data developed under the Project shall become subject data as defined in Subsection 18.a of this Master Agreement and shall be delivered as the Federal Government may direct. This Subsection 18.d, however, does not apply to adaptations of automatic data processing equipment or programs for the Recipient's use when the costs thereof are financed with Federal assistance through an FTA capital program.

Index

e. **License Fees and Royalties.** FTA considers income earned from license fees and royalties for copyrighted material, or trademarks produced under the Project to be program income. Except to the extent FTA determines otherwise in writing, as provided in 49 C.F.R. Parts 18 and 19, the Recipient has no obligation to the Federal Government with respect to that program income, apart from compliance with 35 U.S.C. §§ 200 et seq., which applies to patent rights developed under a research project.

f. **Hold Harmless.** Except as prohibited or otherwise limited by State law or except to the extent that FTA determines otherwise in writing, upon request by the Federal Government, the Recipient agrees to indemnify, save, and hold harmless the Federal Government and its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Recipient of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under the Project. The Recipient shall not be required to indemnify the Federal Government for any such liability caused by the wrongful acts of Federal employees or agents.

g. **Restrictions on Access to Patent Rights.** Nothing in Section 18 of this Master Agreement pertaining to rights in data shall either imply a license to the Federal Government under any patent or be construed to affect the scope of any license or other right otherwise granted to the Federal Government under any patent.

h. **Data Developed Without Federal Funding or Support.** In connection with the Project, the Recipient may find it necessary to provide data to FTA developed without any Federal funding or support by the Federal Government. The requirements of Subsections 18.b, 18.c, and 18.d of this Master Agreement do not apply to data developed without Federal funding or support by the Federal Government, even though that data may have been used in connection with the Project. Nevertheless, the Recipient understands and agrees that the Federal Government will not be able to protect data from unauthorized disclosure unless that data is clearly marked "Proprietary" or "Confidential."

i. **Requirements to Release Data.** To the extent required by U.S. DOT regulations, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," at 49 C.F.R. § 19.36(d), or other applicable Federal laws or Federal regulations, the Recipient understands and agrees that the data and information it submits to the Federal Government may be required to be released in accordance with the Freedom of Information Act (or another Federal law or Federal regulation providing access to such records).

Index

SPECIAL NOTIFICATION REQUIREMENTS FOR STATES

§38 Special Notification Requirements for States. To the extent required by Federal law, the State agrees that, in administering any Federal assistance Program or Project supported by the underlying Grant Agreement or Cooperative Agreement, any request for proposals, solicitation, grant application, form, notification, press release, or other publication involving the distribution of FTA assistance for the Program or the Project shall indicate that FTA is the Federal agency that is providing the Federal assistance, the Catalog of Federal Domestic Assistance Number of the program from which the Federal assistance is authorized, as may be applicable, and the amount of Federal assistance FTA provided.

Index

MISCELLANEOUS SPECIAL REQUIREMENTS

§26 Energy Conservation. The Recipient agrees to comply with applicable mandatory energy efficiency standards and policies of applicable State energy conservation plans issued in accordance with the Energy Policy and Conservation Act, as amended, 42 U.S.C. §§ 6321 et seq., except to the extent that the Federal Government determines otherwise in writing. To the extent applicable, the Recipient agrees to perform an energy assessment for any building constructed, reconstructed, or modified with FTA assistance, as provided in FTA regulations, "Requirements for Energy Assessments," 49 C.F.R. Part 622, Subpart C.

§15(k) Preference for Recycled Products. To the extent applicable, the Recipient agrees to comply with the U.S. Environmental Protection Agency (U.S. EPA), "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 C.F.R. Part 247, which implements section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962. Accordingly, the Recipient agrees to provide a competitive preference for products and services that conserve natural resources, protect the environment, and are energy efficient, except to the extent that the Federal Government determines otherwise in writing.

§15(m) National Intelligent Transportation Systems Architecture and Standards. To the extent applicable, the Recipient agrees to conform to the National Intelligent Transportation Systems (ITS) Architecture and Standards as required by SAFETEA-LU § 5307(c), 23 U.S.C. § 512 note, and follow the provisions of FTA Notice, "FTA National ITS Architecture Policy on Transit Projects," 66 Fed. Reg. 1455 et seq., January 8, 2001, and any other implementing directives FTA may issue at a later date, except to the extent FTA determines otherwise in writing.

§12 (g) Access for Individuals with Disabilities. The Recipient agrees to comply with 49 U.S.C. § 5301(d), which states the Federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities. The Recipient also agrees to comply with all applicable provisions of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability in the administration of programs or activities receiving Federal financial assistance; with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 et seq., which requires that accessible facilities and services be made available to individuals with disabilities; with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities; and with other laws and amendments thereto pertaining to access for individuals with disabilities that may be applicable. In addition, the Recipient agrees to comply with applicable implementing Federal regulations, and any later amendments thereto, and agrees to follow applicable Federal implementing directives, except to the extent FTA approves otherwise in writing. Among those regulations and directives are:

(1) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;

Index

- (2) U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;
- (3) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB)/U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;
- (4) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;
- (5) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;
- (6) U.S. General Services Administration (U.S. GSA) regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;
- (7) U.S. EEOC, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;
- (8) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F;
- (9) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194;
- (10) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609; and
- (11) Federal civil rights and nondiscrimination directives implementing the foregoing Federal laws and regulations, except to the extent the Federal Government determines otherwise in writing.

§15(a) Federal Standards. The Recipient agrees to comply with applicable third party procurement requirements of 49 U.S.C. chapter 53 and Federal laws in effect now or subsequently enacted; with applicable U.S. DOT third party procurement regulations at 49 C.F.R. § 18.36 or 49 C.F.R. §§ 19.40 through 19.48, and with other applicable Federal regulations pertaining to third party procurements and later amendments thereto. The Recipient also agrees to follow the provisions of the most recent edition and revisions of FTA Circular 4220.1F, "Third Party Contracting Guidance," and any later revision thereto, except to the extent FTA determines otherwise in writing. The Recipient agrees that it may not use FTA assistance to support its third party procurements unless its compliance with Federal laws and regulations is satisfactory. Although the FTA "Best Practices Procurement Manual" provides additional third party contracting information, the Recipient understands and agrees that the FTA "Best Practices Procurement Manual" may omit certain Federal requirements applicable to specific third party contracts.

APPENDIX B – APPROVED GRANT APPLICATION



MaineDOT

**Maine Department of Transportation
New Freedom Program – Federal Transit Administration
Improve Access to Transit Application – March 2012**

Date Application
Received

(For MaineDOT Use
Only)

Project Eligibility:

Please place an "x" next to the projects that are part of your application:

- ☒ Sidewalks
- ☒ Pedestrian signalization
- ☒ ADA accessible ramps
- ☐ Other enhancements/improvements (please list):

#1

Section 1: General Information

Applicant Name(s): City of Portland		
Contact Person: Michael Bobinsky, Director, Department of Public Services		
Mailing Address: 55 Portland Street		
City: Portland	State: ME	Zip: 04101
Daytime Phone No.: 874-8801	Email: mbobinsky@portlandmaine.gov	
County: Cumberland	Regional Transit Provider: Greater Portland Metro	

NOTE: The following sections of this application request specific project related information. If warranted, pictures, maps, exhibits, diagrams, survey summaries, etc., should be included with the application. Please be concise. If additional space is required, please attach supplemental sheets.

Section 2: Project Brief

Location of Project:

The proposed project is located on Auburn Street in Portland's North Deering neighborhood, immediately proximate to Harrison Lyseth Elementary School, Lyman Moore Middle School, and the Northgate Shopping Center. Auburn Street is served by Metro's North Deering fixed route bus service, and a bus stop (and proposed shelter) is located at the heart of the proposed project.

See attached map.

Project Purpose and Need:

The project includes approximately 1130 LF of sidewalk, six ADA accessible curb ramps, and a mid-block crosswalk to complete the existing pedestrian network on the west side of Auburn Street. The project will enhance access to Metro's #3 bus service to North Deering and a significant number of destinations to meet resident's daily needs..

Section 3: Project Details

Section 3.1 - Estimated Cost of Construction Project

Construction:					\$ 71,550
Item	QTY	Units	Unit Price		Cost
Sidewalk	1130	LF	\$ 25	\$	28,250
Curb ramps w/ DWP	6	each	\$ 2,500	\$	15,000
RRFB (2 per location)	1	each	\$ 7,500	\$	7,500
Curbing (driveways)	50	LF	\$ 45	\$	2,250
Subtotal				\$	53,000
Mobilization, Incidentals, Traffic Control			+35%	\$	18,550
Total				\$	71,550

Section 3.2 - Project Description, Eligibility and Criteria

Describe the proposed project and scope:

The proposed pedestrian network enhancements include:

- Approximately 1130 LF of bituminous sidewalk on the west side of Auburn Street, extending from Sanborn Street in the north to Washington Avenue in the south
- Six ADA compliant curb ramps with detectable warning pads at the sites where the proposed sidewalk intersects with Sanborn Street, the proposed mid-block crossing (see below), Chapman Street, and Washington Avenue Extension
- A mid-block crossing with two Rectangular Rapid Flash Beacon (RRFB) lights, to connect the existing bus stop (and proposed bus shelter) on the west side of Auburn Street with the Northgate Shopping Center

See figures attached.

Describe how this project meets the New Freedom Program Requirements and the improve Access to Transit Criteria:

The proposed improvements are located within City of Portland right-of-way, and will improve access for persons with disabilities to bus stops/shelters along Greater Portland Metro's #3 North Deering bus route. As a result, these transit users will have greater access to the businesses in the Northgate Shopping Center, the Lyseth Elementary School, the Lyman Moore Middle School, and to commercial properties on the west side of Auburn Street.

Describe how this project addresses gaps in current transportation services for individuals with disabilities:

Currently, sidewalk extends down the east side of Auburn Street from Lyseth Elementary School and Lyman Moore Middle School past the Northgate Shopping Center. However, there is no corresponding sidewalk on the west side of Auburn Street. Instead, the sidewalk terminates at Sanborn Street, leaving a gap from Sanborn Street to the Washington Avenue Extension. This gap includes the location of an existing bus stop and proposed bus shelter.

Describe how this project fulfills a demonstrated need and meets the requirements of the FTA's locally coordinated plan requirement:

The MDOT Region 6's Biennial Operations Plan recommends the improvement of "connections and pedestrian access to both fixed-route and demand-responsive services, including but not limited to street crossings, sidewalks, and shelters" as part of its locally-coordinated plan recommendations. This proposed project responds directly to this recommendation by

removing a significant infrastructure gap, improving the quality of access, and improving the safety of access to fixed-route transit service for persons with disabilities on Auburn Street.

Describe how the project addresses existing or potential safety issues for individuals with disabilities:

Given that there is no existing sidewalk on the west side of Auburn Street, where traffic volumes are high, persons with disabilities, and all pedestrians, have no safe access to this area. The proposed sidewalk will address this safety concern. In addition, the proposed mid-block crossing, with a flashing light, will allow persons with disabilities and all pedestrians to more safely cross Auburn Street in order to access the existing bus stop.

Describe and/or demonstrate the community's support for the project and coordination with the region's transit providers, individuals with disabilities, and the general public. Please include copies of the agenda and/or minutes that reflect the municipalities' approval for the project application and the authority to enter into a municipal/state agreement.

The concept of addressing the gap in the existing sidewalk network on Auburn Street was previously raised during the planning process for the School Travel Plan for Lyman Moore Middle School and Harrison Lyseth Elementary School Campus. Completing the Auburn Street sidewalk in the area of the schools was identified, through this public process, as a priority recommendation of that plan.

Early in 2012, when the city reviewed a rezoning request in this immediate vicinity, the North Deering Neighborhood Association expressed support for the idea of extending the sidewalk and developing other pedestrian and transit accommodations in this area.

The proposed sidewalk and pedestrian accommodations were presented to the public with opportunity for comment at a May 7, 2012 public hearing of the Portland City Council. The Council approved the application by vote of 8-0 after the opportunity for public comment.

In addition, a letter of support from Greater Portland Metro, RTP and the Greater Portland Council of Governments is attached.

Section 4: Locally Coordinated Plan

Describe how the project meets the FTA's Locally Coordinated Plan requirement and identify any other local, regional, or state transit plans (i.e. comprehensive plans, corridor plans, long-range plans): FTA requires that projects be derived from a locally coordinated plan, which is a plan that identifies the needs and the strategies for prioritizing public transportation services for funding and implementation utilizing a public involvement process. MaineDOT publishes the plan, known as the Biennial Operations Plan (BOP), for each of its eight transit regions. For more information please visit: <http://www.maine.gov/mdot/ptp/bop.htm>

The MDOT Region 6's Biennial Operations Plan recommends the improvement of "connections and pedestrian access to both fixed-route and demand-responsive services, including but not limited to street crossings, sidewalks, and shelters." This proposed project enhances street crossings and sidewalks in the area of a bus stop/shelter on Auburn Street, thereby improving access to fixed-route service in this area.

In addition, the proposed improvements are consistent with the City of Portland's 2011 School Travel Plan for Lyman Moore Middle School and Harrison Lyseth Elementary School Campus. One of the top ten recommendations of the School Travel Plan is to "construct missing priority sidewalk links," including those on Washington Avenue Extension and Auburn Street. The Plan states that "[l]ocations where crosswalks are missing or should be enhanced... include... Washington Avenue Extension... [and] Auburn Street."

List outreach strategies and describe how the outreach will be accomplished:

The City of Portland's 2011 School Travel Plan for Lyman Moore Middle School and Harrison Lyseth Elementary School Campus incorporated a significant public involvement process including students, parents, school staff, local business people, and representatives from neighborhood organizations.

A letter of support from Greater Portland Metro, RTP and the Greater Portland Council of Governments is attached.

The proposed sidewalk and pedestrian accommodations were presented to the public with opportunity for comment at a May 7, 2012 public hearing of the Portland City Council. The Council approved the application by vote of 8-0 after public comment.

Section 5: Authorized Signatures

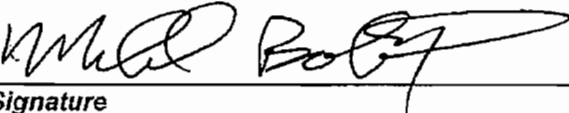
An authorized representative of the city/town must sign the application.

Name: Michael Bobinsky

Title: Director, Dept. of Public Services

Phone#: 207-874-8801

Email: mbobinsky@portlandmaine.gov



Signature

Date May 11, 2012

This signature indicates the willingness and approval of the municipality to enter into a municipal/state agreement with the Maine Department of Transportation. In order to expedite the selection process, a municipal/state agreement must be signed to ensure that projects selected are submitted to the Federal Transit Administration's New Freedom Program Grant system.

Please note that the applicant will be responsible for future maintenance of the completed project. Note that design should meet all applicable federal and State Standards and ADA Guidelines.

Send all application information as follows: **Applications must be received no later than 4:00 PM (EST) on May 11, 2012.** Seven complete hardcopy application packages (including all attachments and all required documents) must be submitted to:

MaineDOT
Attn: Penny Vaillancourt
Bureau of Transportation Systems Planning
16 State House Station
Child Street
Augusta, ME 04333-0016

APPENDIX B - INDEX

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1. All FTA Assisted Third Party Contracts and Subcontracts
2. Awards Exceeding the Simplified Acquisition Threshold (\$100,000)
3. Awards Exceeding \$100,000 by Statute
4. Transport of Property or Persons
5. Construction Activities
6. Non-Construction Activities
7. Transit Operations
8. Planning, Research, Development and Demonstration Projects
9. Special Notification Requirements for States
10. Miscellaneous Special Requirements

FTA REQUIRED CLAUSES FOR ALL FTA ASSISTED THIRD PARTY CONTRACTS

§2.f No Federal Government Obligations to Third Parties. In connection with the Project, the Recipient agrees that, absent the Federal Government's express written consent, the Federal Government shall not be subject to any obligations or liabilities to any sub-recipient, lessee, third party contractor, or other participant at any tier of the Project, or other person or entity that is not a party to the Grant Agreement or Cooperative Agreement for the Project. Notwithstanding that the Federal Government may have concurred in or approved any solicitation, sub-agreement, lease, third party contract, or arrangement at any tier, the Federal Government has no obligations or liabilities to any entity other than the Recipient, including any sub-recipient, lessee, third party contractor, or other participant at any tier of the Project.

§3.f False or Fraudulent Statements or Claims. The Recipient acknowledges and agrees that:

(1) Civil Fraud. The Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 et seq., and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to the Recipient's activities in connection with the Project. By executing the Grant Agreement or Cooperative Agreement for the Project, the Recipient certifies or affirms the truthfulness and accuracy of each statement it has made, it makes, or it may make in connection with the Project. In addition to other penalties that may apply, the Recipient also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation to the Federal Government, the Federal Government reserves the right to impose on the Recipient the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, to the extent the Federal Government deems appropriate.

(2) Criminal Fraud. If the Recipient makes a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation to the Federal Government or includes a false, fictitious, or fraudulent statement or representation in any agreement with the Federal Government in connection with a Project authorized under 49 U.S.C. chapter 53 or any other Federal law, the Federal Government reserves the right to impose on the Recipient the penalties of 49 U.S.C. § 5323(l), 18 U.S.C. § 1001, or other applicable Federal law to the extent the Federal Government deems appropriate.

§15.t Access to Third Party Contract Records. The Recipient agrees to permit, and require its sub-recipients to permit, the U.S. Secretary of Transportation, the Comptroller General of the United States, and, to the extent appropriate, the State, or their authorized representatives, upon their request to inspect all Project work, materials, payrolls, and other data, and to audit the books, records, and accounts of the Recipient and its sub-recipients pertaining to the Project, as required by 49 U.S.C. § 5325(g).

Index

§2.c Application of Federal, State, and Local Laws, Regulations, and Directives.

Federal Laws, Regulations, and Directives.

(1) The Recipient agrees that Federal laws and regulations control Project award and implementation. The Recipient also agrees that Federal directives, as defined in this Master Agreement, provide Federal guidance applicable to the Project, except to the extent that FTA determines otherwise in writing. Thus, FTA strongly encourages adherence to applicable Federal directives. The Recipient understands and agrees that unless the recipient requests FTA approval in writing, the Recipient may incur a violation of Federal laws or regulations, its Grant Agreement or Cooperative Agreement, or this Master Agreement if it implements an alternative procedure or course of action not approved by FTA.

The Recipient understands and agrees that Federal laws, regulations, and directives applicable to the Project and to the Recipient on the date on which the FTA Authorized Official awards Federal assistance for the Project may be modified from time to time. In particular, new Federal laws, regulations, and directives may become effective after the date on which the Recipient executes the Grant Agreement or Cooperative Agreement for the Project, and might apply to that Grant Agreement or Cooperative Agreement. The Recipient agrees that the most recent of such Federal laws, regulations, and directives will apply to the administration of the Project at any particular time, except to the extent that FTA determines otherwise in writing.

FTA's written determination may take the form of a Special Condition, Special Requirement, Special Provision, or Condition of Award within the Grant Agreement or Cooperative Agreement for the Project, a change to an FTA directive, or a letter to the Recipient signed by the Federal Transit Administrator or his or her duly authorized designee, the text of which modifies or conditions a specific provision of the Grant Agreement or Cooperative Agreement for the Project or this Master Agreement. To accommodate changing Federal requirements, the Recipient agrees to include in each agreement with each sub-recipient, each lease, each third party contract, and other similar document implementing the Project notice that Federal laws, regulations, and directives may change and that the changed provisions will apply to the Project, except to the extent that FTA determines otherwise in writing. All standards or limits in the Grant Agreement or Cooperative Agreement for the Project, and in this Master Agreement are minimum requirements, unless modified by FTA.

§11 Right of the Federal Government to Terminate.

Upon written notice, the Recipient agrees that the Federal Government may suspend or terminate all or any part of the Federal assistance to be provided for the Project if the Recipient has violated the terms of the Grant Agreement or Cooperative Agreement for the Project including this Master Agreement, or if the Federal Government determines that the purposes of the laws authorizing the Project would not be adequately served by the continuation of Federal assistance for the Project. The Recipient understands and agrees that any failure to make reasonable progress on the Project or any violation of the Grant

Agreement or Cooperative Agreement for the Project, or this Master Agreement that endangers substantial performance of the Project shall provide sufficient grounds for the Federal Government to terminate the Grant Agreement or Cooperative Agreement for the Project. In general, termination of Federal assistance for the Project will not invalidate

Index

obligations properly incurred by the Recipient before the termination date to the extent those obligations cannot be canceled. If, however, the Federal Government determines that the Recipient has willfully misused Federal assistance by failing to make adequate progress, by failing to make reasonable and appropriate use of Project property, or by failing to comply with the terms of the Grant Agreement or Cooperative Agreement for the Project including this Master Agreement, the Federal Government reserves the right to require the Recipient to refund the entire amount of Federal assistance provided for the Project or any lesser amount as the Federal Government may determine. Expiration of any Project time period established for the Project does not, by itself, constitute an expiration or termination of the Grant Agreement or Cooperative Agreement for the Project.

§12 Civil Rights. The Recipient agrees to comply with all applicable civil rights laws and regulations, in accordance with applicable Federal directives, except to the extent that the Federal Government determines otherwise in writing. These include, but are not limited to, the following:

a. Nondiscrimination in Federal Public Transportation Programs. The Recipient agrees to comply, and assures the compliance of each sub-recipient, lessee, third party contractor, or other participant at any tier of the Project, with the provisions of 49 U.S.C. § 5332, which prohibits discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity.

b. Nondiscrimination – Title VI of the Civil Rights Act. The Recipient agrees to comply, and assures the compliance of each sub-recipient, lessee, third party contractor, or other participant at any tier of the Project, with all provisions prohibiting discrimination on the basis of race, color, or national origin of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000d et seq., and with U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act," 49 C.F.R. Part 21. Except to the extent FTA determines otherwise in writing, the Recipient agrees to follow all applicable provisions of the most recent edition of FTA Circular 4702.1A, "Title VI and Title VI-Dependent Guidelines for Federal Transit Administration Recipients," and any other applicable Federal directives that may be issued.

c. Equal Employment Opportunity. The Recipient agrees to comply, and assures the compliance of each sub-recipient, lessee, third party contractor, or other participant at any tier of the Project, with all equal employment opportunity (EEO) provisions of 49 U.S.C. § 5332, with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq., and implementing Federal regulations and any later amendments thereto. Except to the extent FTA determines otherwise in writing, the Recipient also agrees to follow all applicable Federal EEO directives that may be issued. Accordingly:

(1) General. The Recipient agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, sex, disability, age, or national origin. The Recipient agrees to take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race,

color, religion, sex, disability, age, or national origin. Such action shall include, but not be limited to, employment, upgrading, demotions or transfers, recruitment or recruitment advertising, layoffs or terminations; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

Index

(2) Equal Employment Opportunity Requirements for Construction Activities. For activities determined by the U.S. Department of Labor (U.S. DOL) to qualify as "construction," the Recipient agrees to comply and assures the compliance of each sub-recipient, lessee, third party contractor, or other participant, at any tier of the Project, with all requirements of U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq.; with implementing Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order No. 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note, and with other applicable EEO laws and regulations, and also agrees to follow applicable Federal directives, except as the Federal Government determines otherwise in writing.

d. Disadvantaged Business Enterprise. To the extent authorized by Federal law, the Recipient agrees to facilitate participation by Disadvantaged Business Enterprises (DBEs) in the Project and assures that each sub-recipient, lessee, third party contractor, or other participant at any tier of the Project will facilitate participation by DBEs in the Project to the extent applicable as follows:

(1) The Recipient agrees and assures that it shall comply with section 1101(b) of SAFETEA-LU, 23 U.S.C. § 101 note, and U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 C.F.R. Part 26.

(2) The Recipient agrees and assures that it shall not discriminate on the basis of race, color, sex, or national origin in the award and performance of any sub-agreement, lease, third party contract, or other arrangement supported with Federal assistance derived from U.S. DOT in the administration of its DBE program and shall comply with the requirements of 49 C.F.R. Part 26. The Recipient agrees to take all necessary and reasonable steps as set forth in 49 C.F.R. Part 26 to ensure nondiscrimination in the award and administration of all subagreements, leases, third party contracts, and other arrangements supported with Federal assistance derived from U.S. DOT. As required by 49 C.F.R. Part 26, the Recipient's DBE program approved by U.S. DOT, if any, is incorporated by reference and made part of the Grant Agreement or Cooperative Agreement for the Project. The Recipient agrees that it has a legal obligation to implement its approved DBE program, and that its failure to carry out that DBE program shall be treated as a violation of the Grant Agreement or Cooperative Agreement for the Project and this Master Agreement. Upon notification by U.S. DOT to the Recipient of the Recipient's failure to implement its approved DBE program, U.S. DOT may impose the sanctions as set forth in 49 C.F.R. Part 26 and may, in appropriate cases, refer the matter to the appropriate Federal authorities for enforcement under 18 U.S.C. § 1001, or the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801 et seq., or both.

e. Nondiscrimination on the Basis of Sex. The Recipient agrees to comply with all applicable requirements of Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. §§ 1681 et seq., and with implementing U.S. DOT regulations, "Nondiscrimination on the Basis

of Sex In Education Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. Part 25, that prohibit discrimination on the basis of sex.

Index

f. Nondiscrimination on the Basis of Age. The Recipient agrees to comply with all applicable requirements of:

(1) The Age Discrimination Act of 1975, as amended, 42 U.S.C. §§ 6101 et seq., and with implementing U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. Part 90, which prohibit discrimination against individuals on the basis of age in the administration of programs or activities receiving federal financial assistance.

(2) The Age Discrimination in Employment Act (ADEA) 29 U.S.C. §§ 621 through 634 and with implementing U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. Part 1625, which prohibits discrimination against individuals on the basis of age.

g. Access for Individuals with Disabilities. The Recipient agrees to comply with 49 U.S.C. § 5301(d), which states the Federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities. The Recipient also agrees to comply with all applicable provisions of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability in the administration of programs or activities receiving Federal financial assistance; with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 et seq., which requires that accessible facilities and services be made available to individuals with disabilities; with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities; and with other laws and amendments thereto pertaining to access for individuals with disabilities that may be applicable. In addition, the Recipient agrees to comply with applicable implementing Federal regulations, and any later amendments thereto, and agrees to follow applicable Federal implementing directives, except to the extent FTA approves otherwise in writing. Among those regulations and directives are:

(1) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;

(2) U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;

(3) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB)/U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;

(4) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;

(5) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;

(6) U.S. General Services Administration (U.S. GSA) regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;

(7) U.S. EEOC, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;

Index

(8) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F;

(9) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194;

(10) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609; and

(11) Federal civil rights and nondiscrimination directives implementing the foregoing Federal laws and regulations, except to the extent the Federal Government determines otherwise in writing.

h. Drug or Alcohol Abuse-Confidentiality and Other Civil Rights Protections. To the extent applicable, the Recipient agrees to comply with the confidentiality and civil rights protections of the Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. §§ 1101 et seq., the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. §§ 4541 et seq., and the Public Health Service Act of 1912, as amended, 42 U.S.C. §§ 290dd through 290dd-2, and any amendments thereto.

i. Access to Services for Persons with Limited English Proficiency. The Recipient agrees to facilitate compliance with the policies of Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. § 2000d-1 note, and follow applicable provisions of U.S. DOT Notice, "DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficiency (LEP) Persons," 70 Fed. Reg. 74087, December 14, 2005, except to the extent that FTA determines otherwise in writing.

j. Environmental Justice. The Recipient agrees to facilitate compliance with the policies of Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 42 U.S.C. § 4321 note, except to the extent that the Federal Government determines otherwise in writing.

k. Other Nondiscrimination Laws. The Recipient agrees to comply with applicable provisions of other Federal laws and regulations, and follow applicable Federal directives prohibiting discrimination, except to the extent the Federal Government determines otherwise in writing.

§15.a Federal Standards. The Recipient agrees to comply with applicable third party procurement requirements of 49 U.S.C. chapter 53 and Federal laws in effect now or subsequently enacted; with applicable U.S. DOT third party procurement regulations at 49 C.F.R. § 18.36 or 49 C.F.R. §§ 19.40 through 19.48, and with other applicable Federal regulations pertaining to third party procurements and later amendments thereto. The Recipient also agrees to follow the provisions of the most recent edition and revisions of FTA Circular 4220.1F, "Third Party Contracting Guidance," and any later revision thereto, except to the extent FTA determines otherwise in writing. The Recipient agrees that it may not use FTA assistance to support its third party procurements unless its compliance with Federal laws and regulations is satisfactory. Although the FTA "Best Practices Procurement Manual" provides additional third party contracting information, the Recipient understands

and agrees that the FTA "Best Practices Procurement Manual" may omit certain Federal requirements applicable to specific third party contracts.

Index

§3.b Debarment and Suspension. The Recipient agrees to comply, and assures the compliance of each sub-recipient, lessee, third party contractor, or other participant at any tier of the Project, with Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note, and U.S. DOT regulations, "Non-procurement Suspension and Debarment," 2 C.F.R. Part 1200, which adopts and supplements the provisions of U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Government-wide Debarment and Suspension (Non-procurement)," 2 C.F.R. Part 180. The Recipient agrees to, and assures that its sub-recipients, lessees, third party contractors, and other participants at any tier of the Project will, review the "Excluded Parties Listing System" at <http://epls.gov/> before entering into any sub-agreement, lease, third party contract, or other arrangement in connection with the Project.

Index

AWARDS EXCEEDING THE SIMPLIFIED ACQUISITION THRESHOLD (\$100,000)

§14.a Buy America. The Recipient agrees to comply with 49 U.S.C. § 5323(f) and FTA regulations, "Buy America Requirements," 49 C.F.R. Part 661, and any amendments thereto.

§54 Disputes, Breaches, Defaults or Other Litigation. The Recipient agrees that FTA has a vested interest in the settlement of any dispute, breach, default, or litigation involving the Project. Accordingly:

a. Notification to FTA. The Recipient agrees to notify FTA in writing of any current or prospective major dispute, breach, default, or litigation that may affect the Federal Government's interests in the Project or the Federal Government's administration or enforcement of Federal laws or regulations. If the Recipient seeks to name the Federal Government as a party to litigation for any reason, in any forum, the Recipient agrees to inform FTA in writing before doing so. At a minimum, each notice to FTA under Section 54 of this Master Agreement shall be provided to the FTA Regional Counsel within whose Region the Recipient operates its public transportation system or implements the Project.

b. Federal Interest in Recovery. The Federal Government retains the right to a proportionate share of any proceeds derived from any third party recovery, based on the percentage of the Federal share awarded for the Project, except that the Recipient may return liquidated damages recovered to its Project Account in lieu of returning the Federal share to the Federal Government.

c. Enforcement. The Recipient agrees to pursue its legal rights and remedies available under any third party contract or available under law or regulations.

d. FTA Concurrence. FTA reserves the right to concur in any compromise or settlement of any claim involving the Project and the Recipient.

e. Alternative Dispute Resolution. FTA encourages the Recipient to use alternative dispute resolution procedures, as may be appropriate.

Index

AWARDS EXCEEDING \$100,000 BY STATUTE

§3.d Lobbying Restrictions. The Recipient agrees that:

- (1) In compliance with 31 U.S.C. § 1352(a), it will not use Federal assistance to pay the costs of influencing any officer or employee of a Federal agency, Member of Congress, officer of Congress or employee of a member of Congress, in connection with making or extending the Grant Agreement or Cooperative Agreement;
- (2) In addition, it will comply with other applicable Federal laws and regulations prohibiting the use of Federal assistance for activities designed to influence Congress or a State legislature with respect to legislation or appropriations, except through proper, official channels; and
- (3) It will comply, and will assure the compliance of each subrecipient, lessee, third party contractor, or other participant at any tier of the Project with U.S. DOT regulations, "New Restrictions on Lobbying," 49 C.F.R. Part 20, modified as necessary by 31 U.S.C. § 1352, as amended.

§15.I Clean Air and Clean Water. The Recipient agrees to include in each subagreement, lease, third party contract, or other arrangement exceeding \$100,000, adequate provisions to ensure that each Project participant will agree to:

- (1) Report the use of facilities placed on or likely to be placed on the U.S. EPA "List of Violating Facilities,"
- (2) Refrain from using any violating facilities,
- (3) Report violations to FTA and the Regional U.S. EPA Office, and
- (4) Comply with the inspection and other applicable requirements of:
 - (a) Section 306 of the Clean Air Act, as amended, 42 U.S.C. § 7606, and other applicable provisions of the Clean Air Act, as amended, 42 U.S.C. §§ 7401 through 7671q; and
 - (b) Section 508 of the Clean Water Act, as amended, 33 U.S.C. § 1368, and other applicable requirements of the Clean Water Act, as amended, 33 U.S.C. §§ 1251 through 1377.

Index

TRANSPORT OF PROPERTY OR PERSONS

§14.b Cargo Preference-Use of United States-Flag Vessels. To the extent applicable, the Recipient agrees to comply with 46 U.S.C. § 55305 and U.S. Maritime Administration regulations, "Cargo Preference-U.S.-Flag Vessels," 46 C.F.R. Part 381.

§14.c Fly America. The Recipient understands and agrees that the Federal Government will not participate in the costs of international air transportation of any individuals involved in or property acquired for the Project unless that air transportation is provided by U.S.-flag air carriers to the extent such service is available, in compliance with section 5 of the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 U.S.C. § 40118, and U.S. GSA regulations, "Use of United States Flag Air Carriers," 41 C.F.R. §§ 301-10.131 through 301-10.143.

Index

CONSTRUCTION ACTIVITIES

§24.a Construction Activities. The Recipient agrees to comply, and assures the compliance of each subrecipient, lessee, third party contractor, and other participant at any tier of the Project, with the following Federal laws and regulations providing protections for construction employees:

§24.a(1) Davis-Bacon Act, as amended, 40 U.S.C. §§ 3141 et seq., pursuant to FTA enabling legislation requiring compliance with the Davis-Bacon Act at 49 U.S.C. § 5333(a), and implementing U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. Part 5;

§24.a(2) Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 3701 et seq., specifically, the wage and hour requirements of section 102 of that Act at 40 U.S.C. § 3702, and implementing U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. Part 5; and the safety requirements of section 107 of that Act at 40 U.S.C. § 3704, and implementing U.S. DOL regulations, "Safety and Health Regulations for Construction," 29 C.F.R. Part 1926; and

§24.a(3) Copeland "Anti-Kickback" Act, as amended, 18 U.S.C. § 874 and 40 U.S.C. § 3145, and implementing U.S. DOL regulations, "Contractors and Subcontractors on Public Building or Public Work Financed In Whole or In part by Loans or Grants from the United States," 29 C.F.R. Part 3.

§15.o Bonding. Except to the extent that FTA determines otherwise in writing, the Recipient agrees to comply with the following bonding provisions, as applicable:

(1) Construction Activities. The Recipient agrees to provide bid guarantee, contract performance, and payment bonds as provided by Federal regulations and to the extent determined adequate by FTA in writing, and follow any other construction bonding provisions in FTA directives, except to the extent that FTA determines otherwise in writing.

§23.e Seismic Safety. The Recipient agrees to comply with the Earthquake Hazards Reduction Act of 1977, as amended, 42 U.S.C. §§ 7701 et seq., in accordance with Executive Order No. 12699, "Seismic Safety of Federal and Federally-Assisted or Regulated New Building Construction," 42 U.S.C. § 7704 note, and comply with implementing U.S. DOT regulations, "Seismic Safety," 49 C.F.R. Part 41 (specifically, 49 C.F.R. § 41.117).

Index

NONCONSTRUCTION ACTIVITIES

§24.b Activities Not Involving Construction. The Recipient agrees to comply, and assures the compliance of each sub-recipient, lessee, third party contractor, and other participant at

any tier of the Project, with the employee protection requirements for non-construction employees of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 3701 et seq., in particular with the wage and hour requirements of section 102 of that Act at 40 U.S.C. § 3702, and with implementing U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. Part 5,

Index

TRANSIT OPERATIONS

§24.d Public Transportation Employee Protective Arrangements. If the Grant Agreement or Cooperative Agreement for the Project indicates that public transportation employee protective arrangements required by U.S. DOL apply to public transportation operations performed in connection with the Project, the Recipient agrees to comply with the applicable requirements for its Project as follows:

(1) Standard Public Transportation Employee Protective Arrangements. To the extent that the Project involves public transportation operations and to the extent required by Federal law, the Recipient agrees to implement the Project in accordance with the terms and conditions that the U.S. Secretary of Labor has determined to be fair and equitable to protect the interests of any employees affected by the Project and that comply with the requirements of 49 U.S.C. § 5333(b), in accordance with U.S. DOL guidelines, "Section 5333(b), Federal Transit Law," 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in U.S. DOL's certification of public transportation employee protective arrangements to FTA, the date of which appears in the Grant Agreement or Cooperative Agreement for the Project. The Recipient agrees to implement the Project in accordance with the conditions stated in that U.S. DOL certification. That certification and any documents cited therein are incorporated by reference and made part of the Grant Agreement or Cooperative Agreement for the Project. The requirements of this Subsection 24.d(1) of this Master Agreement do not apply to Projects for elderly individuals or individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2) or subsection 3012(b) of SAFETEA-LU, Projects for nonurbanized areas authorized by 49 U.S.C. § 5311; or Projects for the over-the-road bus accessibility program authorized by section 3038 of TEA-21, as amended by section 3039 of SAFETEA-LU, 49 U.S.C. § 5310 note. Separate requirements for those Projects are set forth in Subsections 24.d(2), (3), and (4), respectively, of this Master Agreement.

(2) Public Transportation Employee Protective Arrangements for the Elderly Individuals and Individuals with Disabilities Formula Program and for the Elderly Individuals and Individuals with Disabilities Formula Program Pilot Program. To the extent that the U.S. Secretary of Transportation has determined or determines in the future that employee protective arrangements required by 49 U.S.C. § 5333(b) are necessary or appropriate for a governmental authority subrecipient participating in a Project authorized by 49 U.S.C. § 5310(b)(2) or subsection 3012(b) of SAFETEA-LU, 49 U.S.C. § 5310 note, the Recipient agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor necessary to comply with the requirements of 49 U.S.C. § 5333(b), in accordance with U.S. DOL guidelines, "Section 5333(b), Federal Transit Law," at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions, if any, are identified in the U.S. DOL's certification of public transportation employee protective arrangements to FTA, the date of which appears in the Grant Agreement. The Recipient

agrees to implement the Project in compliance with the conditions stated in that U.S. DOL certification, to the extent that certification is required. Any U.S. DOL certification that may be provided and any documents cited therein are incorporated by reference and made part of the Grant Agreement.

Index

(3) Public Transportation Employee Protective Arrangements for Projects in Nonurbanized Areas Authorized by 49 U.S.C. § 5311. The Recipient agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program that is most current as of the date of execution of the Grant Agreement or Cooperative Agreement for the Project, and any alternative comparable arrangements specified by U.S. DOL for application to the Recipient's project, in accordance with U.S. DOL guidelines, "Section 5333(b), Federal Transit Law," 29 C.F.R. Part 215, and any revisions thereto. Any U.S. DOL Special Warranty that may be provided and any documents cited therein are incorporated by reference and made part of the Grant Agreement.

(4) Employee Protective Arrangements for Projects Financed by the Over-the-Road Bus Accessibility Program. The Recipient agrees to comply with the terms and conditions of the Special Warranty for the Over-the-Road Bus Accessibility Program that is most current as of the date of execution of the Grant Agreement or Cooperative Agreement for the Project, and any alternative comparable arrangements specified by U.S. DOL for application to the Recipient's project, in accordance with U.S. DOL guidelines, "Section 5333(b), Federal Transit Law," 29 C.F.R. Part 215, and any revisions thereto. Any U.S. DOL Special Warranty that may be provided and any documents cited therein are incorporated by reference and made part of the Grant Agreement.

§28 Charter Service Operations. The Recipient agrees that neither it nor any public transportation operator performing work in connection with a Project financed under 49 U.S.C. chapter 53 or under 23 U.S.C. §§ 133 or 142, will engage in charter service operations, except as authorized by 49 U.S.C. § 5323(d) and FTA regulations, "Charter Service," 49 C.F.R. Part 604, and any Charter Service regulations or FTA directives that may be issued, except to the extent that FTA determines otherwise in writing. The Charter Service Agreement the Recipient has selected in its latest annual Certifications and Assurances is incorporated by reference and made part of the Grant Agreement or Cooperative Agreement for the Project. If the Recipient has failed to select the Charter Service Agreement in its latest annual Certifications and Assurances to FTA and does conduct charter service operations prohibited by FTA's Charter Service regulations, the Recipient understands and agrees that: (1) the requirements of FTA's Charter Service regulations and any amendments thereto will apply to any charter service it or its sub-recipients, lessees, third party contractors, or other participants in the Project provide; (2) the definitions of FTA's Charter Service regulations will apply to the Recipient's charter operations, and (3) a pattern of violations of FTA's Charter Service regulations may require corrective measures and imposition of remedies, including barring the Recipient, subrecipient, lessee, third party contractor, or other participant in the Project operating public transportation under the Project from receiving Federal financial assistance from FTA, or withholding an amount of Federal assistance as set forth in Appendix D to FTA's Charter Service regulations.

Index

§29 School Transportation Operations. The Recipient agrees that neither it nor any public transportation operator performing work in connection with a Project financed under 49 U.S.C. chapter 53 or under 23 U.S.C. §§ 133 or 142, will engage in school transportation operations for the transportation of students or school personnel exclusively in competition with private school transportation operators, except as authorized by 49 U.S.C. §§ 5323(f) or (g), as applicable, and FTA regulations, "School Bus Operations," 49 C.F.R. Part 605 to the extent consistent with 49 U.S.C. §§ 5323(f) or (g). In accordance with any School Transportation Operations regulations or FTA directives that may be issued at a later date, except to the extent that FTA determines otherwise in writing, The School Transportation Operations Agreement the Recipient has selected in its latest annual Certifications and Assurances is incorporated by reference and made part of the Grant Agreement or Cooperative Agreement for the Project. If the Recipient has failed to select the School Transportation Agreement in its latest annual Certifications and Assurances to FTA and does conduct school transportation operations prohibited by FTA's School Bus Operations regulations, 49 C.F.R. Part 605, to the extent those regulations are consistent with 49 U.S.C. §§ 5323(f) or (g), the Recipient understands and agrees that: (1) the requirements of FTA's School Bus Operations regulations, 49 C.F.R. Part 605, to the extent consistent with 49 U.S.C. §§ 5323(f) or (g), will apply to any school transportation service it or its sub-recipients, lessees, third party contractor, or other participants in the project provide, (2) the definitions of FTA's School Bus Operations regulations will apply to the Recipient's school transportation operations, and (3) if there is a violation of FTA's School Bus Operations regulations, to the extent consistent with 49 U.S.C. §§ 5323(f) or (g), FTA will bar the Recipient, subrecipient, lessee, third party contractor, or other Project participant operating public transportation that has violated FTA's School Bus Operations regulations, 49 C.F.R. Part 605, to the extent consistent with 49 U.S.C. §§ 5323(f) or (g), from receiving Federal transit assistance in an amount FTA considers appropriate.

§32. Substance Abuse. To the extent applicable, the Recipient agrees to comply with the following Federal regulations and guidance:

a. Drug-Free Workplace. U.S. OMB Guidance, "Government-wide Requirements for Drug-Free Workplace (Financial Assistance)," 2 C.F.R. Part 182, and U.S. DOT regulations, "Government-wide Requirements for Drug-Free Workplace (Financial Assistance)," 49 C.F.R. Part 32, that implement the Drug-Free Workplace Act of 1988, 41 U.S.C. §§ 701 et seq., including any amendments to these U.S. DOT regulations when they are promulgated. [U.S. OMB published final Drug-Free Workplace guidance in 74 Fed. Reg. 28149 et seq. on June 15, 2009.]

b. Alcohol Misuse and Prohibited Drug Use. FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 C.F.R. Part 655, that implement 49 U.S.C. § 5331.

Index

PLANNING, RESEARCH, DEVELOPMENT AND DEMONSTRATION PROJECTS

§17 Patent Rights.

a. General. If any invention, improvement, or discovery of the Recipient or of any subrecipient, lessee, third party contractor, or other participant at any tier of the Project is conceived or first actually reduced to practice in the course of or under the Project, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Recipient agrees to notify FTA immediately and provide a detailed report in a format satisfactory to FTA.

b. Federal Rights. The Recipient agrees that its rights and responsibilities, and those of each subrecipient, lessee, third party contractor, or other participant at any tier of the Project, pertaining to that invention, improvement, or discovery will be determined in accordance with applicable Federal laws and regulations, including any waiver thereof. Absent a determination in writing to the contrary by the Federal Government, the Recipient agrees to transmit to FTA those rights due the Federal Government in any invention, improvement, or discovery resulting from that subagreement, third party contract, third party subcontract, or arrangement, as specified in 35 U.S.C. §§ 200 et seq., and U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401, irrespective of the status of the Recipient, subrecipient, lessee, third party contractor or other participant in the Project (i.e., a large business, small business, State government, State instrumentality, local government, Indian tribe, nonprofit organization, institution of higher education, or individual).

c. License Fees and Royalties. FTA considers income earned from license fees and royalties for patents, patent applications, and inventions produced under the Project to be program income. Except to the extent FTA determines otherwise in writing, as provided in 49 C.F.R. Parts 18 and 19, the Recipient has no obligation to the Federal Government with respect to that program income, apart from compliance with 35 U.S.C. §§ 200 et seq., which applies to patent rights developed under a research project.

§18 Rights In Data and Copyrights.

a. Definition. The term "subject data," as used in this Section 18 of this Master Agreement means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the Grant Agreement or Cooperative Agreement for the Project. Examples include, but are not limited to: computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information. "Subject data," as used in this Section 18, does not include financial reports, cost analyses, or other similar information used for Project administration.

Index

b. General. The following restrictions apply to all subject data first produced in the performance of the Grant Agreement or Cooperative Agreement for the Project:
(1) Except for its own internal use, the Recipient may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Recipient authorize others to do so, without the prior written consent of the Federal Government, unless the Federal Government has previously released or approved the release of such data to the public.

(2) The restrictions on publication of Subsection 18.b(1) of this Master Agreement, however, do not apply to a Grant Agreement or Cooperative Agreement with an institution of higher learning.

c. Federal Rights In Data and Copyrights. The Recipient agrees to provide to the Federal Government a royalty-free, non-exclusive, and Irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for Federal Government purposes the subject data described in this Subsection 18.c of this Master Agreement. As used herein, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not provide or otherwise extend to other parties the Federal Government's license to:

(1) Any subject data developed under the Grant Agreement or Cooperative Agreement for the Project, or under a subagreement, lease, third party contract or other arrangement at any tier of the Project, supported with Federal assistance derived from the Grant Agreement or Cooperative Agreement for the Project, whether or not a copyright has been obtained; and

(2) Any rights of copyright to which a Recipient, subrecipient, lessee, third party contractor, or other participant at any tier of the Project purchases ownership using Federal assistance.

d. Special Federal Rights In Data for Research, Development, Demonstration, and Special Studies Projects. In general, FTA's purpose in providing Federal assistance for a research, development, demonstration, or special studies Project is to increase transportation knowledge, rather than limit the benefits of the Project to Project participants. Therefore, when the Project is completed, the Recipient agrees to provide a Project report that FTA may publish or make available for publication on the Internet. In addition, the Recipient agrees to provide other reports pertaining to the Project that FTA may request. The Recipient agrees to identify clearly any specific confidential, privileged, or proprietary information it submits to FTA. In addition, except to the extent that FTA determines otherwise in writing, the Recipient of Federal assistance to support a research, development, demonstration, or a special studies Project agrees that, in addition to the rights in data and copyrights that it must provide to the Federal Government as set forth in Subsection 18.c of this Master Agreement, FTA may make available to any FTA recipient, subrecipient, third party contractor, third party subcontractor or other participant at any tier of the Project, either FTA's license in the copyright to the subject data or a copy of the subject data. If the Project is not completed for any reason whatsoever, all data developed under the Project shall become subject data as defined in Subsection 18.a of this Master Agreement and shall be delivered as the Federal Government may direct. This Subsection 18.d, however, does not apply to adaptations of automatic data processing equipment or programs for the Recipient's use when the costs thereof are financed with Federal assistance through an FTA capital program.

Index

e. License Fees and Royalties. FTA considers income earned from license fees and royalties for copyrighted material, or trademarks produced under the Project to be program income. Except to the extent FTA determines otherwise in writing, as provided in 49 C.F.R. Parts 18 and 19, the Recipient has no obligation to the Federal Government with respect to that program income, apart from compliance with 35 U.S.C. §§ 200 et seq., which applies to patent rights developed under a research project.

f. Hold Harmless. Except as prohibited or otherwise limited by State law or except to the extent that FTA determines otherwise in writing, upon request by the Federal Government, the Recipient agrees to indemnify, save, and hold harmless the Federal Government and its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Recipient of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under the Project. The Recipient shall not be required to indemnify the Federal Government for any such liability caused by the wrongful acts of Federal employees or agents.

g. Restrictions on Access to Patent Rights. Nothing in Section 18 of this Master Agreement pertaining to rights in data shall either imply a license to the Federal Government under any patent or be construed to affect the scope of any license or other right otherwise granted to the Federal Government under any patent.

h. Data Developed Without Federal Funding or Support. In connection with the Project, the Recipient may find it necessary to provide data to FTA developed without any Federal funding or support by the Federal Government. The requirements of Subsections 18.b, 18.c, and 18.d of this Master Agreement do not apply to data developed without Federal funding or support by the Federal Government, even though that data may have been used in connection with the Project. Nevertheless, the Recipient understands and agrees that the Federal Government will not be able to protect data from unauthorized disclosure unless that data is clearly marked "Proprietary" or "Confidential."

i. Requirements to Release Data. To the extent required by U.S. DOT regulations, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," at 49 C.F.R. § 19.36(d), or other applicable Federal laws or Federal regulations, the Recipient understands and agrees that the data and information it submits to the Federal Government may be required to be released in accordance with the Freedom of Information Act (or another Federal law or Federal regulation providing access to such records).

Index

SPECIAL NOTIFICATION REQUIREMENTS FOR STATES

§38 Special Notification Requirements for States. To the extent required by Federal law, the State agrees that, in administering any Federal assistance Program or Project supported by the underlying Grant Agreement or Cooperative Agreement, any request for proposals, solicitation, grant application, form, notification, press release, or other publication involving the distribution of FTA assistance for the Program or the Project shall indicate that FTA is the Federal agency that is providing the Federal assistance, the Catalog of Federal Domestic Assistance Number of the program from which the Federal assistance is authorized, as may be applicable, and the amount of Federal assistance FTA provided.

Index

MISCELLANEOUS SPECIAL REQUIREMENTS

§26 Energy Conservation. The Recipient agrees to comply with applicable mandatory energy efficiency standards and policies of applicable State energy conservation plans issued in accordance with the Energy Policy and Conservation Act, as amended, 42 U.S.C. §§ 6321 et seq., except to the extent that the Federal Government determines otherwise in writing. To the extent applicable, the Recipient agrees to perform an energy assessment for any building constructed, reconstructed, or modified with FTA assistance, as provided in FTA regulations, "Requirements for Energy Assessments," 49 C.F.R. Part 622, Subpart C.

§15(k) Preference for Recycled Products. To the extent applicable, the Recipient agrees to comply with the U.S. Environmental Protection Agency (U.S. EPA), "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 C.F.R. Part 247, which implements section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962. Accordingly, the Recipient agrees to provide a competitive preference for products and services that conserve natural resources, protect the environment, and are energy efficient, except to the extent that the Federal Government determines otherwise in writing.

§15(m) National Intelligent Transportation Systems Architecture and Standards. To the extent applicable, the Recipient agrees to conform to the National Intelligent Transportation Systems (ITS) Architecture and Standards as required by SAFETEA-LU § 5307(c), 23 U.S.C. § 512 note, and follow the provisions of FTA Notice, "FTA National ITS Architecture Policy on Transit Projects," 66 Fed. Reg. 1455 et seq., January 8, 2001, and any other implementing directives FTA may issue at a later date, except to the extent FTA determines otherwise in writing.

§12 (g) Access for Individuals with Disabilities. The Recipient agrees to comply with 49 U.S.C. § 5301(d), which states the Federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities. The Recipient also agrees to comply with all applicable provisions of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability in the administration of programs or activities receiving Federal financial assistance; with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 et seq., which requires that accessible facilities and services be made available to individuals with disabilities; with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities; and with other laws and amendments thereto pertaining to access for individuals with disabilities that may be applicable. In addition, the Recipient agrees to comply with applicable implementing Federal regulations, and any later amendments thereto, and agrees to follow applicable Federal implementing directives, except to the extent FTA approves otherwise in writing. Among those regulations and directives are:

(1) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;

Index

- (2) U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;
- (3) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB)/U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;
- (4) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;
- (5) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;
- (6) U.S. General Services Administration (U.S. GSA) regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;
- (7) U.S. EEOC, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;
- (8) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F;
- (9) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194;
- (10) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609; and
- (11) Federal civil rights and nondiscrimination directives implementing the foregoing Federal laws and regulations, except to the extent the Federal Government determines otherwise in writing.

§15(a) Federal Standards. The Recipient agrees to comply with applicable third party procurement requirements of 49 U.S.C. chapter 53 and Federal laws in effect now or subsequently enacted; with applicable U.S. DOT third party procurement regulations at 49 C.F.R. § 18.36 or 49 C.F.R. §§ 19.40 through 19.48, and with other applicable Federal regulations pertaining to third party procurements and later amendments thereto. The Recipient also agrees to follow the provisions of the most recent edition and revisions of FTA Circular 4220.1F, "Third Party Contracting Guidance," and any later revision thereto, except to the extent FTA determines otherwise in writing. The Recipient agrees that it may not use FTA assistance to support its third party procurements unless its compliance with Federal laws and regulations is satisfactory. Although the FTA "Best Practices Procurement Manual" provides additional third party contracting information, the Recipient understands and agrees that the FTA "Best Practices Procurement Manual" may omit certain Federal requirements applicable to specific third party contracts.

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APPENDIX B – APPROVED GRANT APPLICATION

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

CITY OF PORTLAND
IN THE CITY COUNCIL

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

order 198-12/13
Tab 30 4-22-13

**ORDER APPROVING NOTICE OF INTENTION
TO LAY OUT A PUBLIC EASEMENT
PURSUANT TO 23 M.R.S.A. § 3022 AND 30-A M.R.S.A. §3402
RE: WINDING WAY, PEAKS ISLAND**

ORDERED, that the Notice of Intention to Lay out a Public Easement, and to Condemn the Property Right Necessary for such Public Easement, attached hereto, is hereby approved.

AND ALSO ORDERED, THAT NOTICE IS GIVEN THAT THE CITY COUNCIL INTENDS TO MEET for this purpose on the _____ day of _____, 2013 at 7:30 p.m. in City Council Chambers, 389 Congress Street, Portland, at which all persons interested therein may be present.

By the Municipal Officers of the City of Portland, Maine.

Dated this ____ day of _____, 2013.

Mayor Michael F. Brennan

John R. Coyne, City Councilor

Cheryl A. Leeman, City Councilor

Kevin J. Donoghue, City Councilor

David A. Marshall, City Councilor

Nicholas M. Mavodones, City Councilor

John M. Anton, City Councilor

Jill C. Duson, City Councilor

Edward J. Suslovic, City Councilor

Note: This notice must be posted at least 7 days in at least 2 public places in the municipality and in the vicinity of the way, per 23 M.R.S.A. §3022

Notice of Intentions to Lay Out a Public Easement
(23 M.R.S.A. §3022 and 30-A M.R.S.A. §3402)

To the Inhabitants of the City of Portland, Maine and the following Owners of Record and Parties in Interest:

- Ralph W. Ashmore and Jean A. Ashmore (Owners of Record)

Pursuant to 23 M.R.S.A. §3022 and 30-A M.R.S.A. §3402, notice is hereby given of the intentions of the Municipal Officers of the City of Portland, Maine to lay out a public easement, as follows:

A public easement on property located on Peaks Island in the City of Portland, Cumberland County, Maine, the area or location of said easement area being bounded and described as follows:

An unnamed road or way now known as Winding Way and shown on a plan entitled "Plan of the Henry M. Brackett Estate" prepared by J. B. Jones dated October 1900 and recorded in the Cumberland County Registry of Deeds in Plan Book 9, Page 57, extending from the road now known as Maple Street easterly to the road now known as 3rd Street all as shown on the above described plan. The sources of title to the above road are deeds to the one or both of the Owners of Record, recorded in the Cumberland County Registry of Deeds in Book 16626, Page 172, and Book 16626, Page 174.

The rights of use in, under and over said easement area, hereby condemned and taken are:

1. the right to install, maintain, replace and remove conduits or pipelines for conveying water, wastewater and storm water, with all necessary fixtures and appurtenances, including electric or other energized control lines; and
2. the right to make connections with the conduits or pipelines on land adjacent to the easement area; and
3. the right to trim, cut down, and/or remove bushes, grass, crops, trees or any other vegetation, to such extent as is necessary for any of these purposes in the sole judgment of the City or its assigns; and
4. the right to change the existing surface grade of the easement area as is reasonably necessary for any of these purposes; and

5. the right to enter on the easement area at any and all times for any of these purposes; and
6. the right to enforce the following restrictions, with respect to the easement area:
 - a. No buildings or any other permanent structures shall be allowed, except pavement and utilities.
 - b. No earth shall be removed, no fill may be added, and no other change shall be made to the surface grade of the easement area.
 - c. No conduits, pipelines or facilities shall be installed within 5 feet of or above any conduit or pipeline installed in the easement area, except that pipelines and conduits may be installed if they cross perpendicular to other conduits and pipelines with a minimum vertical clearance of one foot.

AND TO MEET for this purpose on the _____ day of _____, 2013 at 7:30 p.m. in City Council Chambers, 389 Congress Street, Portland, at which all persons interested therein may be present.

By the Municipal Officers of the City of Portland, Maine.

Dated this ____ day of _____, 2013.

Mayor Michael F. Brennan

John R. Coyne, City Councilor

Cheryl A. Leeman, City Councilor

Kevin J. Donoghue, City Councilor

David A. Marshall, City Councilor

Nicholas M. Mavodones, City Councilor

John M. Anton, City Councilor

Jill C. Duson, City Councilor

Edward J. Suslovic, City Councilor

Note: This notice must be posted at least 7 days in 2 public places in the municipality and in the vicinity of the way, per 23 M.R.S.A. §3022

O:\OFFICE\LARRY\public services\Peaks sewer work\Astarita - Notice of Intentions.doc

**CITY OF PORTLAND, MAINE
CITY COUNCIL AGENDA REQUEST FORM**

2 copies to be submitted (with supporting material) **at least 12 days** before Council Meeting: 1 copy to City Manager (Sonia Bean)
1 copy to Legal (Danielle West-Chuhta)

- 1) Council Meeting at which action is requested (Date): 4/22, and also a later date
- 2) Can action be taken at a later date? Yes: _____ No: X
If no, why not? These 2 takings of easement rights by eminent domain are needed for the Sewer Expansion on Peaks Island, and construction is already underway.
- 3) Comments: _____
- 4) District Councilor Notified? Yes: X No: _____

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

I. SUMMARY OF ISSUE

The Portland Water District ("PWD") maintains and operates the City's sanitary and storm water collection system on Peaks Island pursuant to the terms of a written agreement. The City Council approved an amendment to that agreement in the spring of 2012, which allowed the design and construction of an expanded sewer collection system for Island residents. The expansion seeks to address long-term water quality services affecting Peaks Island by allowing a greater number of residents to hook up to sanitary sewer and replace older and limited septic systems that are in various stages of effectiveness. The PWD has collected about 60 easements from land owners (much of the work will be on private, unaccepted roads), but 2 owners have not voluntarily granted needed easements over areas of those the private ways. This eminent domain process will take (involuntarily) those 2 needed easements. The 2 needed easements will then be turned over to PWD (PWD does not take easements for distribution lines, such as new lines in this project).

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

See above; again, this eminent domain process will take those 2 needed easements.

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

See above; again, this eminent domain process will take those 2 needed easements.

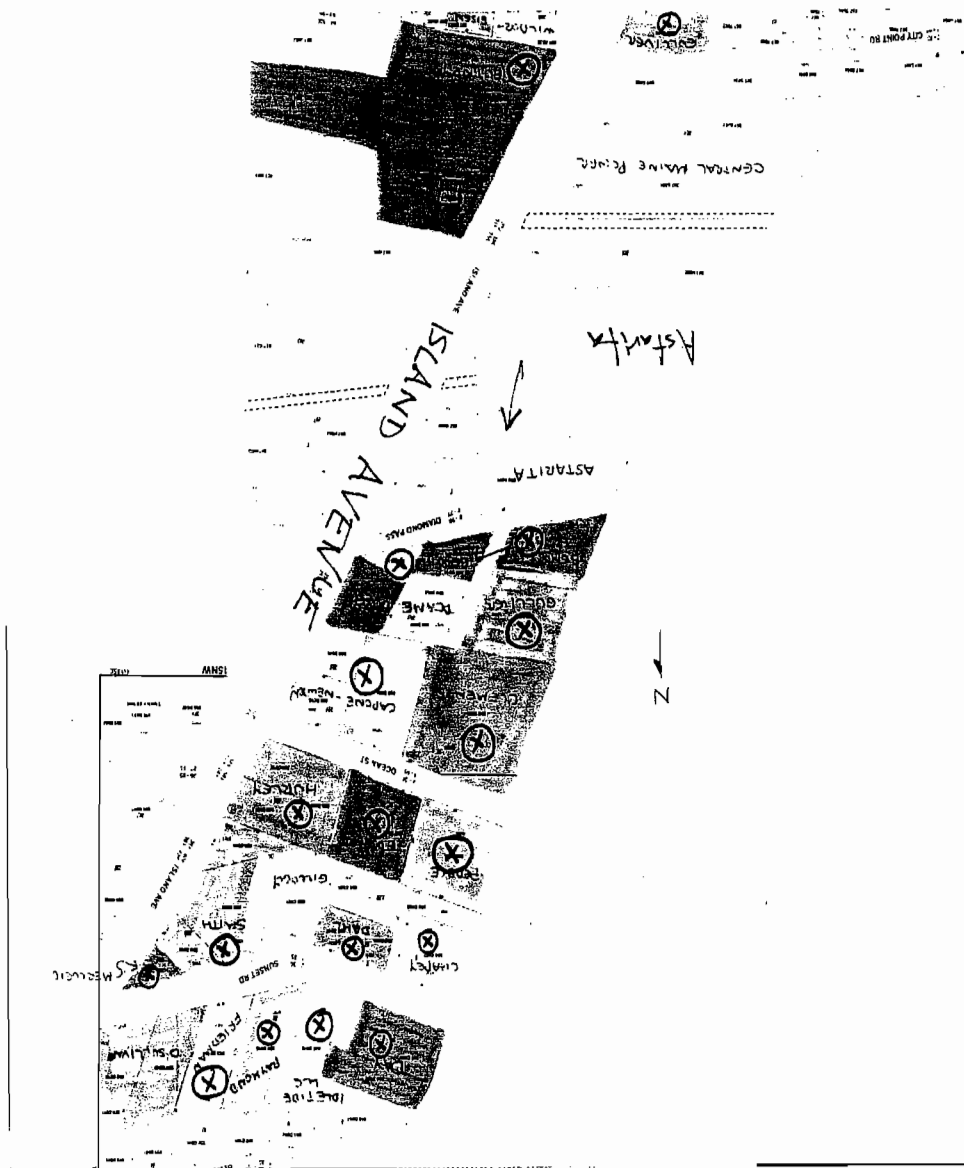
IV. FINANCIAL IMPACT

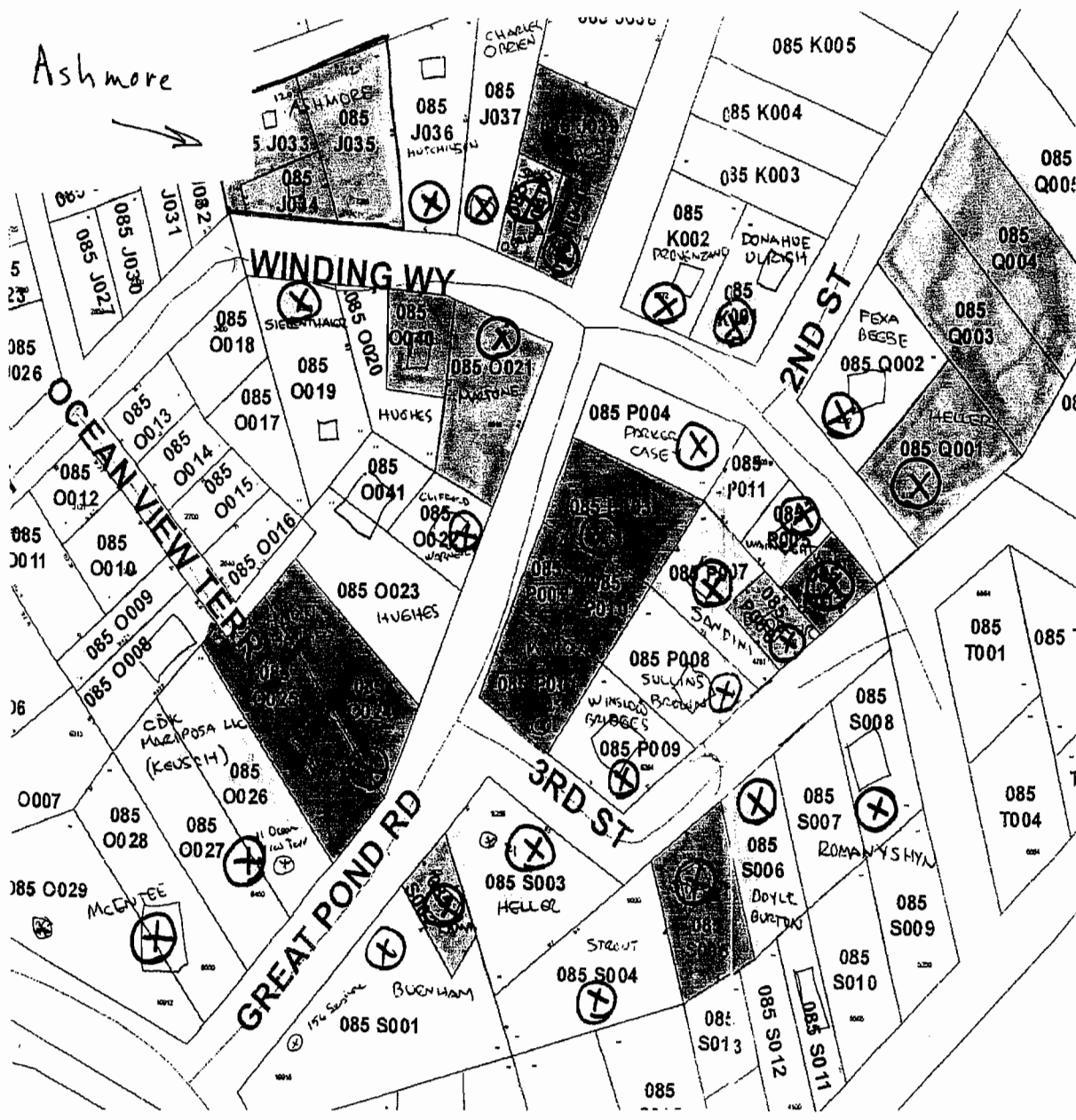
The 'damages' to the 2 property owners is being appraised now, and is expected to be small, under \$1,000.00 in each case; the values determined by those appraisals will be part of the actual Order of Eminent Domain, which will follow the required, initial step, the Council vote on an Order approving Notice of Intention to take by eminent domain.

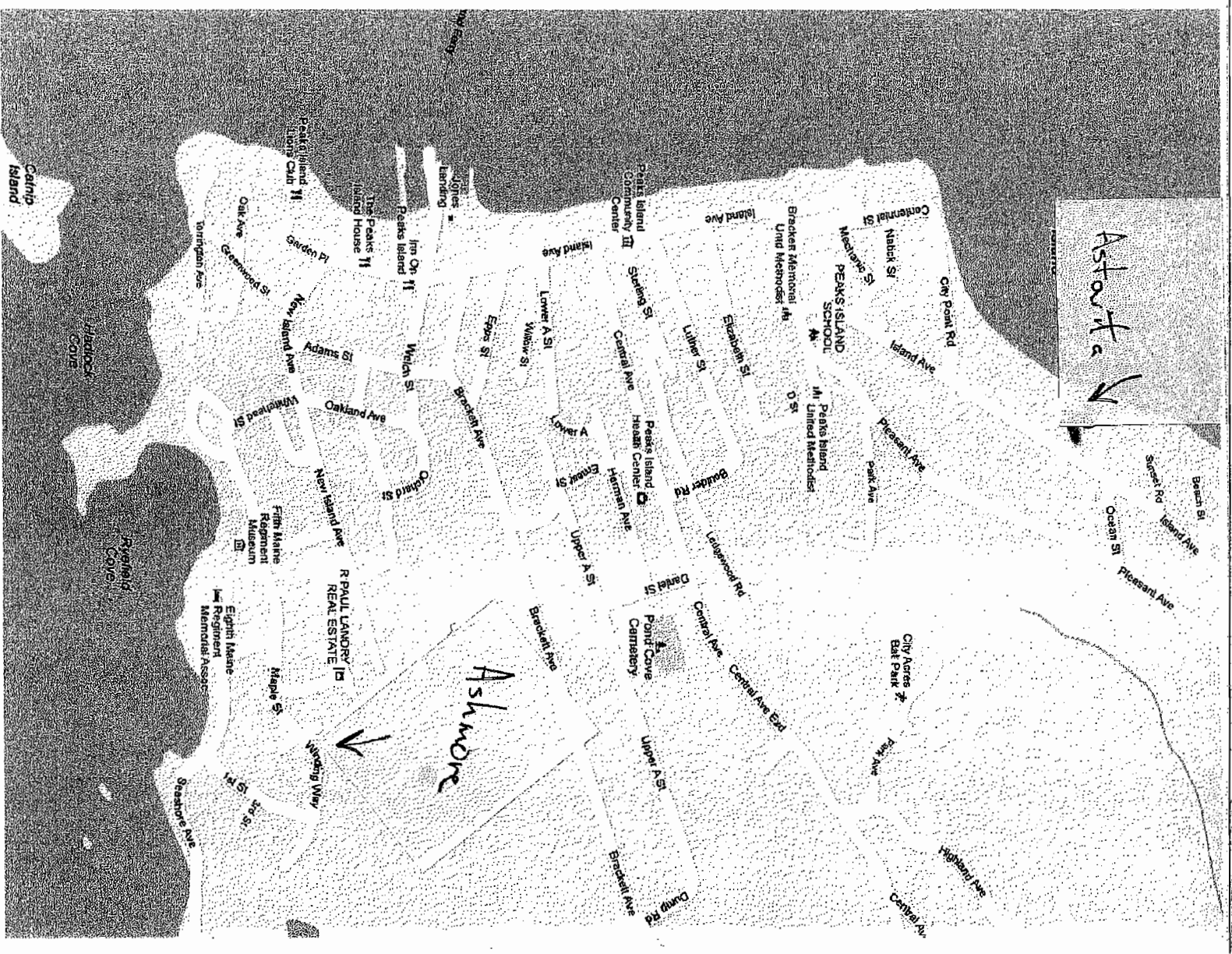
V. STAFF ANALYSIS & RECOMMENDATION

Corporation Counsel recommends approval of this Order Approving Notice of Intention, at the April 22, 2013 meeting, with approval of the Order of Condemnation to follow as soon as convenient. We have attached a background memo on the eminent domain process, generally. Also attached are maps showing the location of these 2 properties, and for each condemnation, the three core documents, including the two previously mentioned (the two Orders) and the Certificate of Taking to be completed by the City Clerk.

Date: April 5, 2013 Prepared by: Danielle West-Chuhta & Larry Walden









Strengthening a Remarkable City, Building a Community for Life • www.portlandmaine.gov

Memo

To: Danielle West-Chuhta,
From: Larry Walden
Date: 4/5/2013
Re: Eminent Domain for Peak Island Sewer Extension

This memo will provide an outline of the condemnation process and other background.

Some, but not necessarily all, of the Maine statutes authorizing the taking of property, for various purposes, are Exhibits A through G hereto. The Statute in Exhibit A is important and interesting, as this 2005 law limits the eminent domain authority of municipalities. The purposes for which eminent domain may be used include Town Ways and Public Easements (Exhibits B and C), general purposes, including parks, (Exhibit D), sewers (Exhibit E) and Community Development (Exhibits F and G). Also, a municipal housing authority may take by eminent domain (30-A M.R.S.A. § 4746), as may a municipal urban renewal authority (30-A M.R.S.A. § 5108). The State, utilities, railroads and others (e.g., MTA) also have the power of eminent domain.

This next section essentially is a quote, with editing, from the MMA's *Municipal Roads Manual*'s discussion of Eminent Domain:

Eminent domain, also called "laying out and acceptance" or "condemnation," is a process which allows the municipality to purchase private land for public use even if the landowner objects. A municipality may use eminent domain to take property for many purposes. Eminent domain can be used to create either a town way or a public easement. Title to land taken by eminent domain (for road purposes) after December 31, 1976 is in fee simple unless otherwise specified in the condemnation documents. Eminent domain is available if "the municipal officers determine that public exigency (necessity) requires the immediate taking of such property interests, or if the municipality is unable to purchase it at what the municipal officers deem reasonable valuation, or if title is defective." We recommend that the municipal officers first ask the owner to sell voluntarily for a reasonable price; if no reasonable amount is agreed upon, the municipality then may use eminent domain.

Procedure: By State statute, eminent domain is a multi-step process.

- *Appraisals of the damages to all affected landowners are obtained, see 'Damages' below.*
- *Next, the city council, either upon petition or on their own initiative, give written notice of their intention to take certain property, which includes a description of the proposed way.*
- *This notice must be posted for at least seven days in two public places in the municipality and in the vicinity of the proposed way*
- *Fourth, the city council orders the taking, drafting a clear statement of its interest in the property and the circumstances that require a taking.*
- *Fifth, the council files with the clerk an order of condemnation, specifying the property to be taken and the damages to be paid to the landowners of record.*
- *Sixth, in a city council municipality where the municipal officers have been granted the power of appropriation by charter, the condemnation order and a check for damages are served upon the owners.*
- *Seventh, a deed or a certificate evidencing the taking and attested by the town clerk is recorded in the registry of deeds. The taking is complete and title to the property passes to the city (in a city council community) when the order and check are served or the certificate is recorded, whichever occurs first.*

Damages.

The damages to which the landowner is entitled include not only the fair market value of the land taken, but also may include "severance damages," which is the reduction in value to the remaining land as a result of the taking. Municipal officers should obtain the services of a real estate appraiser for any major taking. An expert's determination will be given great weight if the matter goes to court. Underestimating damages can be costly to the municipality, as the court may fix a substantially higher price than was anticipated and litigation can be costly. Also, an expert appraisal should provide the public with greater assurance of the fairness of the amount of damages being offered and may reduce the likelihood of appeals on the issue of damages.

Appeals.

A party may appeal an eminent domain proceeding to Superior Court. The time allowed for an appeal depends upon whether the issue on appeal is the amount of damages or the necessity for the taking. Appeals of the damages award must be made within sixty days

after the taking. If, however, the landowners feel that the taking itself was not for a public use or a public exigency (necessity), they must appeal within thirty days of the taking. The courts are unlikely to overturn the legislative body's determination that a public use and a public necessity exist to support the taking unless the determination has no rational basis.

Given these steps, THREE documents are required from the City:

- Notice of Intent [to take] [with a Council Order approving that Notice]
- Order of Condemnation
- Clerk's Certificate of Taking (to be recorded in the Registry of Deeds)

These 3 documents are drafted and part of the Council agenda request form package.

Exhibit A

1 M.R.S.A. §816. LIMITATIONS ON EMINENT DOMAIN AUTHORITY

1. Purposes. Except as provided in subsections 2 and 3 and notwithstanding any other provision of law, the State, a political subdivision of the State and any other entity with eminent domain authority may not condemn land used for agriculture, fishing or forestry or land improved with residential homes, commercial or industrial buildings or other structures:

A. For the purposes of private retail, office, commercial, industrial or residential development; [2005, c. 579, §1 (NEW); 2005, c. 579, §2 (AFF).]

B. Primarily for the enhancement of tax revenue; or [2005, c. 579, §1 (NEW); 2005, c. 579, §2 (AFF).]

C. For transfer to an individual or a for-profit business entity. [2005, c. 579, §1 (NEW); 2005, c. 579, §2 (AFF).]

[2005, c. 579, §1 (NEW); 2005, c. 579, §2 (AFF) .]

2. Blight exception. Subsection 1 does not apply to the use of eminent domain by any municipality, housing authority or other public entity based upon a finding of blight in an area covered by any redevelopment plan or urban renewal plan pursuant to Title 30-A, chapter 201, 203 or 205, but just compensation, in all cases, must continue to be made to the owner.

[2005, c. 579, §1 (NEW); 2005, c. 579, §2 (AFF) .]

3. Utilities exception. Subsection 1 does not limit the exercise of eminent domain by or for the benefit of public utilities or other entities engaged in the generation, transmission or distribution of telephone, gas, electric, water, sewer or other utility products or services.

[2005, c. 579, §1 (NEW); 2005, c. 579, §2 (AFF) .]

4. Governmental purposes not affected. Nothing in this section may be interpreted to prohibit a municipal or county governing body from exercising the power of eminent domain for purposes not otherwise prohibited by subsection 1.

[2005, c. 579, §1 (NEW); 2005, c. 579, §2 (AFF) .]

SECTION HISTORY

2005, c. 579, §1 (NEW). 2005, c. 579, §2 (AFF).

Exhibit B

23 §3022. LAYING OUT OF TOWN WAYS AND PUBLIC EASEMENTS

The municipal officers may, personally or by agency, lay out, alter or widen town ways. They shall give written notice of their intentions posted at least 7 days in 2 public places in the municipality and in the vicinity of the way and shall in the notice describe the proposed way. [1975, c. 711, §8 (NEW).]

The municipal officers may, upon the petition of any person, lay out, alter or widen a town way. [1975, c. 711, §8 (NEW).]

The municipal officers may on petition therefor, personally or by agency, lay out a public easement for any occupant of land or for owners who have cultivated land in the municipality if the land will be connected to a town way or highway after the establishment of the public easement. [1979, c. 127, §153 (RPR).]

After a public easement has been laid out, it may be taken pursuant to section 3023. Notwithstanding any other provision of this chapter, public easements laid out under this section are limited to rights of access by foot or motor vehicle as defined in Title 29-A, section 101, subsection 42. [1995, c. 65, Pt. A, §153 (AFF); 1995, c. 65, Pt. A, §65 (AMD); 1995, c. 65, Pt. C, §15 (AFF).]

SECTION HISTORY

1975, c. 711, §8 (NEW). 1979, c. 127, §153 (AMD). 1995, c. 65, §§A153, C15 (AFF). 1995, c. 65, §A65 (AMD).

Exhibit C

23 §3023. EMINENT DOMAIN

A municipality may take property or interests therein for highway purposes if the municipal officers determine that public exigency requires the immediate taking of such property interests, or if the municipality is unable to purchase it at what the municipal officers deem reasonable valuation, or if title is defective. [1975, c. 711, §8 (NEW).]

In municipalities where the municipal officers have the legislative power of appropriation, the municipal officers shall file with the municipal clerk a condemnation order that includes a detailed description of the property interests to be taken, which shall specify its location by metes and bounds, the name or names of the owner or owners of record so far as they can be reasonably determined and the amount of damages determined by the municipal officers to be just compensation for the property or interest therein taken. The municipal officers shall then serve upon the owner or owners of record a copy of the condemnation order and a check in the amount of the damages awarded. In the event of multiple ownership, the check may be served on any one of the owners. Title shall pass to the municipality upon service of the order of condemnation and check or upon recordation in accordance with section 3024, whichever occurs first. [1975, c. 711, §8 (NEW).]

In towns where the town meeting has the legislative power of appropriation, the municipal officers shall file the condemnation order described in the previous paragraph with the town clerk and send a copy to the owner or owners of record by registered mail. No interest shall pass to the town unless an article generally describing the property interest to be taken and stating the amount of damages to be paid has been approved by a duly called town meeting. The town meeting may not amend the article, except to increase the amount of damages to be paid. If the article is approved, a check in the amount of damages authorized shall be served immediately upon the owner or owners of record. In the event of multiple ownership, the check may be served on any one of the owners. Title shall pass to the town upon service of the check or upon recordation in accordance with section 3024, whichever occurs first. [1975, c. 711, §8 (NEW).]

Unless specifically provided in the order of condemnation or unless the property or interests to be taken include land or right-of-way of a railroad corporation or a public utility, title to property taken for town ways after December 31, 1976, shall be in fee simple absolute. [1975, c. 770, §98 (RPR).]

In all proceedings under this section, an award of damages by the municipal legislative body shall be considered an appropriation for that purpose. [1975, c. 711, §8 (NEW).]

SECTION HISTORY

1975, c. 711, §8 (NEW). 1975, c. 770, §§98,99 (AMD).

Exhibit D

30-A §3101. EMINENT DOMAIN POWER

A municipality may acquire real estate or easements for any public use by using the condemnation procedure for town ways, as provided in Title 23, chapter 304, subject to the following provisions. The limitations set forth in this section do not apply to any taking authorized by any other law. [1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. A, §29 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD).]

1. Owner resides on land. The municipality may not take any land without the consent of the owner if, at the time of the taking, the owner or the owner's family resides in a dwelling house located on the land.

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

2. Limitation on use. Except as provided in paragraph A, land taken under this section may not be used for any purpose other than the purposes for which it was originally taken.

A. Land in any municipality which is taken for a public park may, by authority of a majority vote of the municipal legislative body, be conveyed to the Federal Government to become part of a national park. [1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD).]

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

3. Business relocation benefits. Whenever the acquisition of real property pursuant to this section results in the displacement of a business or farm, the municipality shall provide payment for moving and related expenses as applicable under Title 23, section 244.

[2005, c. 642, §4 (NEW) .]

4. Residence relocation benefits. Whenever the acquisition of real property pursuant to this section results in the displacement of a person from a dwelling, the municipality shall provide payment for moving and related expenses, as well as replacement housing as applicable under Title 23, sections 244 to 244-C.

[2005, c. 642, §4 (NEW) .]

SECTION HISTORY

1987, c. 737, §§A2,C106 (NEW). 1989, c. 6, (AMD). 1989, c. 9, §2 (AMD). 1989, c. 104, §§A29,C8,C10 (AMD). 2005, c. 642, §4 (AMD).

Exhibit E

30-A §3402. CONSTRUCTION OF DRAINS; EXPENSE AND CONTROL; NOTICE; DAMAGES

1. Construction of sewers and drains. The municipal officers of a municipality, or a committee duly chosen by the municipality, may construct public drains or sewers, sewer systems or sewage disposal systems at the municipality's expense, along or across any public way in the municipality and through or upon any lands of persons when they consider it necessary for public convenience or health. Neither the municipal officers nor such a committee may construct any public sewer, sewer system or sewage disposal system in the municipality until that sewer is authorized by vote of the municipal legislative body and an appropriation made for the purpose. When constructed, these sewers, sewer systems or sewage disposal systems are under the control of the municipal officers.

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

2. Taking of land. Before the land is taken for the construction of any sewer, notice shall be given and damages assessed and paid for the land as is provided for the location of town ways under Title 23, chapter 304.

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

SECTION HISTORY

1987, c. 737, §§A2,C106 (NEW). 1989, c. 6, (AMD). 1989, c. 9, §2 (AMD).
1989, c. 104, §§C8,10 (AMD).

Exhibit F

30-A §5203. MUNICIPAL POWERS

1. Appropriations. A municipality may raise or appropriate money and may accept and appropriate state or federal grants to provide decent housing and a suitable living environment and to expand economic opportunities under a duly approved and adopted community development program.

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

2. Community development program. The municipal officers of a municipality may prepare or have prepared a community development program. Before recommending a community development program to the municipal legislative body for approval, if the program has not been prepared by the planning board, the municipal officers shall submit the program to the municipal planning board for review and recommendations as to its conformity with the comprehensive plan and any applicable zoning ordinances. The planning board shall submit its written recommendations to the municipal officers within 45 days after receiving the program for review. The municipal officers shall, after 10 days' notice, hold public hearings on the plan upon receipt of those recommendations or, if no recommendations are received within the 45-day period, then without the recommendations. After the hearings are completed, the municipal officers shall submit the program and any recommendations of the planning board to the municipal legislative body for their approval and adoption.

A. Notwithstanding any other provision of this subsection, any community development program approved by a municipal legislative body before July 1, 1975, is deemed approved and adopted under this section if the program conforms with the municipality's comprehensive plan. [1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD) .]

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

3. Development powers. Except as provided, the municipal officers of a municipality may exercise, pursuant to a duly approved and adopted community development program, all appropriate and necessary powers to implement and complete the program, including, but not limited to:

A. Acquisition by purchase or by eminent domain of any vacant or undeveloped land and of any developed land and structures, buildings and improvements existing on the land located in designated slum or blighted areas for the purposes of the demolition and removal or rehabilitation and repair or redevelopment of property so acquired;

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

B. Loaning or granting of money or the guaranteeing of loans to encourage owners of property to voluntarily rehabilitate and repair their properties to comply with all zoning, housing, building, plumbing, electrical and other structural and constructional ordinances, regulations and standards of the municipality or State or to voluntarily demolish their properties; [1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD) .]

C. Installation, construction or reconstruction of streets, utilities, parks, playgrounds and other improvements necessary for carrying out the objectives of the community development program; [1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD) .]

D. Contracting with, delegating of powers to or loaning or granting of money to any other political subdivision of the State, quasi-municipal corporation or agency of the State or its political subdivisions as may be required to implement and complete all or any portion of the community development program; and [1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2

(AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD).]

E. The disposition of acquired property, provided that the municipality may not, within 10 years of the date of acquisition, sell undeveloped or unrehabilitated property, in whole or in part, that was acquired by eminent domain without first offering it to the prior owner, owners or their heirs, except as provided in subparagraph (1). This offer must be kept open for at least 60 days and must be at a price no more than the sum of the compensation and damages given in the eminent domain proceedings, any relocation payments or benefits and the costs of the municipality for any improvements. The offer may be limited by requiring use of the property in accordance with the community development program.

(1) When the property to be sold is one of 3 or more contiguous or abutting parcels or lots that are to be redeveloped or rehabilitated as a unit, the property may be sold without first offering it to the prior owner, owners or their heirs.

(2) Any disposition of acquired property, other than to the prior owner, owners or their heirs, must require use of the property in accordance with the community development program. [1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD).]

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

4. Tax increment revenues from rehabilitated or developed property. The legislative body of a municipality may provide that tax increment revenues from property rehabilitated or developed and subsequently sold by the municipality will be set aside annually and deposited to the credit of a sinking fund, which is pledged to and charged with the payment of the interest and principal as they fall due, and the necessary charges of paying agents for paying interest and principal of any notes, bonds or other evidences of indebtedness that were issued to fund or refund the rehabilitation or development of the property.

A. Tax increment revenues from property rehabilitated or developed shall be the real property tax revenues received, based on the amount of valuation that exceeds the valuation of the property on the April 1st immediately preceding the adoption of the municipal community development plan. [1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD).]

B. The sinking fund is a fund for the benefit of the notes, bonds or other evidences of indebtedness issued to fund or refund the rehabilitation or development of the property, and any money deposited in this fund shall be held and applied solely for that purpose. [1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD).]

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

SECTION HISTORY

1987, c. 737, §2, C106 (NEW). 1989, c. 6, (AMD). 1989, c. 9, §2 (AMD). 1989, c. 104, §8, 10 (AMD).

Exhibit G

30-A §5204. EMINENT DOMAIN

The following provisions govern the exercise of eminent domain powers by the municipal officers.
[1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD).]

1. Adoption of resolution of condemnation. The municipal officers shall adopt a resolution of condemnation. This resolution must:

- A. Specifically describe the property, or interest in the property to be acquired, and its location by metes and bounds; [1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD).]
- B. Specify the name or names of the owner or owners; [1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD).]
- C. Set forth the amount of damages determined by the municipal officers to be just compensation for the property or interest in the property taken; and [1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD).]
- D. Declare that the acquisition is pursuant to a duly adopted community development program. [1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD).]

The resolution shall be served on the owners either personally or by registered mail, and then shall be submitted to the municipal legislative body for approval or disapproval. The municipal legislative body may not amend the resolution to decrease the amount of damages to be paid.

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

2. Filing, bonds and notice. Within 3 months after the municipality approves the resolution:

A. The municipal officers shall have a copy of the resolution filed in the registry of deeds of the county in which the property is located. After this copy is filed, the municipal officers shall have filed in the Superior Court of the county in which the property is located:

- (1) A copy of the resolution; and
- (2) A statement of the sum of money approved by the municipality as just compensation for the property taken; [1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD).]

B. After the copy of the resolution has been filed in the registry and the statement of estimated just compensation has been filed in the Superior Court, the municipal officers shall have bonds deposited in the Superior Court with surety satisfactory to the clerk of the court, in the amounts that the court determines to be sufficient to satisfy the claims of all persons interested in the property. These bonds shall be deposited for the use of persons entitled to them. The court may, in its discretion, take evidence on the question to determine:

- (1) The amounts of the bonds to be deposited;
- (2) Title to the property; or
- (3) Interest in the property; and [1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD).]

C. After the copy of the resolution has been filed in the registry and the statement of just compensation has been filed in the Superior Court, the municipal officers shall have notice of the taking of the property or interest in the property

served upon the owners of the property by a sheriff or deputies. Service shall be made by leaving a true and attested copy of the resolution and the statement of estimated just compensation with each owner personally or at the last known address in the State or with some person living at that address.

(1) If any owner is not a resident of the State, a true and attested copy of the resolution and statement shall be sent by registered mail, return receipt requested, to the owner at the last known address.

(2) In addition, municipal officers shall have a copy of the resolution together with the names of the owners of the property and the amount to be awarded to each of them, published in a newspaper having general circulation in the county, at least once a week for 3 consecutive weeks; and [1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD).]

After the bonds are deposited in the Superior Court, and notice is given, title to the property vests in the municipality in fee simple absolute and the municipality may take possession of the property.

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

3. Unknown ownership. If ownership of the property cannot be ascertained after due and diligent search, an award shall be made to persons unknown for the value of the property, and bonds for that amount running to the treasurer of the county for the use of the persons entitled to them, shall be deposited in the Superior Court. If no person has been able to prove ownership of the property within 2 years after the bonds are deposited, the Superior Court shall order those bonds to be cancelled and delivered up to the municipality.

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

4. Agreement and cancellation of bonds. When any person entitled to the bonds agrees with the municipality for the price of the property or interest in the property so taken and the sum agreed upon is paid by the municipality, the court shall order the bond deposited under this section to be cancelled and delivered up to the municipality.

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

5. Complaint to Superior Court; trial. Any owner of the property taken under this section, who cannot agree with the municipality on the price of the property or interest in the property in which the owner is interested, may apply by complaint to the Superior Court in the county where the property is located.

A. The complaint must be made within 3 months after personal notice of the taking or, if the owner has no personal notice, within one year from the first publication of the copy of the resolution and description required in subsection 2, paragraph C. It must set forth the taking of the property or interest in property, and pray for the assessment of damages by jury or, by agreement of the parties, by a referee or referees appointed by the court. [1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD).]

B. When the complaint is filed, the Superior Court shall have 20 days' notice of the pendency of the action given to the municipality by serving the municipal clerk with a certified copy of the complaint. The court may proceed after this notice to obtain a trial of the action. [1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD).]

C. The trial shall determine all questions of fact relating to the value of the property or interest in the property and the amount of that interest. Judgment shall be entered upon the verdict of the jury and execution shall be issued for that judgment against the money deposited in the court. [1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD).]

[1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989,

c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD) .]

6. Conflicting ownership. If the municipal officers are in doubt as to conflicting ownership or interest, the municipality may file a complaint in the Superior Court for the county in which the property is located for a determination of the various rights and amounts due. If 2 or more plaintiffs make claims to the real property, or to any interest in the property, or to different interests in the same property, the Superior Court, upon motion, shall consolidate their several complaints for trial at the same time by the same jury and may frame all necessary issues for the trial of those actions.

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

7. Appeal. An appeal from the decision of the Superior Court may be made in the manner provided for appeals in civil cases.

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

8. Guardian ad litem. If a municipality takes any real property or interest in property in which any minor or other person not capable in law to act in the minor's or other person's own behalf is interested, the appropriate Superior Court may, upon the filing of a complaint under subsection 5 by or on behalf of the minor or other person, appoint a guardian ad litem for the minor or other person. This guardian may appear and be heard on behalf of the minor or other person and may, with the advice and consent of the Superior Court and upon such terms as the Superior Court prescribes, release to the municipality all claims for damages for the property of the minor or other person or for any interest in the property.

Any lawfully appointed, qualified and acting guardian or other fiduciary of the estate of any such minor or other person, with the approval of the Probate Court having jurisdiction to authorize the sale of real property within this State, may, before filing any complaint under this section, agree with the municipality on the amount of damages suffered by the minor or other person by any taking of property or of interest in the property and may, upon receiving that amount, release to the municipality all claims for damages of the minor or other person for the taking.

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

9. Expedited proceedings; property devoted to public use. In any proceedings for assessment of compensation and damages for property or interest in the property taken or to be taken by eminent domain by the municipality, the following provisions apply.

A. At any time during the pendency of the action or proceedings, the municipality or an owner may apply to the court for an order directing the owner or the municipality, as the case may be, to show cause why further proceedings should not be expedited. Upon this application the court may make an order requiring that the hearings proceed and that any other steps be taken with all possible expedition. [1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD).]

B. If any property or interest in property is devoted to a public use, it may nevertheless be acquired and the taking is effective, provided that:

(1) No property or interest in property belonging to any governmental agency may be acquired without its consent; and

(2) No property or interest in property belonging to a public utility corporation may be acquired without the approval of the Public Utilities Commission or other officer or tribunal having regulatory power over the corporation. [1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD) .]

C. Any property or interest in property previously deeded to or acquired by the municipality may be included within the taking for the purpose of acquiring any outstanding interests in the property. [1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD).]

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

10. Business relocation benefits. Whenever the acquisition of real property pursuant to this section results in the displacement of a business or farm, the municipality shall provide payment for moving and related expenses as applicable under Title 23, section 244.

[2005, c. 642, §5 (NEW) .]

11. Residence relocation benefits. Whenever the acquisition of real property pursuant to this section results in the displacement of a person from a dwelling, the municipality shall provide payment for moving and related expenses, as well as replacement housing as applicable under Title 23, sections 244 to 244-C.

[2005, c. 642, §5 (NEW) .]

SECTION HISTORY

1987, c. 737, §§A2,C106 (NEW). 1989, c. 6, (AMD). 1989, c. 9, §2 (AMD). 1989, c. 104, §§C8,10 (AMD). 2005, c. 642, §5 (AMD).

Order 199-12/13
Tab 31 4-22-13

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

CITY OF PORTLAND
IN THE CITY COUNCIL

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

**ORDER APPROVING NOTICE OF INTENTION
TO LAY OUT A PUBLIC EASEMENT
PURSUANT TO 23 M.R.S.A. § 3022 AND 30-A M.R.S.A. §3402
RE: DIAMOND PASS, PEAKS ISLAND**

ORDERED, that the Notice of Intention to Lay out a Public Easement, and to Condemn the Property Right Necessary for such Public Easement, attached hereto, is hereby approved.

AND ALSO ORDERED, THAT NOTICE IS GIVEN THAT THE CITY COUNCIL INTENDS TO MEET for this purpose on the _____ day of _____, 2013 at 7:30 p.m. in City Council Chambers, 389 Congress Street, Portland, at which all persons interested therein may be present.

By the Municipal Officers of the City of Portland, Maine.

Dated this ____ day of _____, 2013.

Mayor Michael F. Brennan

John R. Coyne, City Councilor

Cheryl A. Leeman, City Councilor

Kevin J. Donoghue, City Councilor

David A. Marshall, City Councilor

Nicholas M. Mavodones, City Councilor

John M. Anton, City Councilor

Jill C. Duson, City Councilor

Edward J. Suslovic, City Councilor

Notice of Intentions to Lay Out a Public Easement
(23 M.R.S.A. §3022 and 30-A M.R.S.A. §3402)

To the Inhabitants of the City of Portland, Maine and the following Owners of Record and Parties in Interest:

- Bruce T. Astarita and Susan G. Astarita (Owners of Record)

Pursuant to 23 M.R.S.A. §3022 and 30-A M.R.S.A. §3402, notice is hereby given of the intentions of the Municipal Officers of the City of Portland, Maine to lay out a public easement, as follows:

A public easement on property located on Peaks Island in the City of Portland, Cumberland County, Maine, the area or location of said easement area being bounded and described as follows:

The road or way known as Diamond Pass and shown on Plan No. 2 of a set of plans entitled "Plan of Land Peak's Island Maine" and recorded in the Cumberland County Registry of Deeds in Plan Book 8, Page 51. The source of title to the Owners of Record interest in the above road is a deed to Owners of Record, which is recorded in the Cumberland County Registry of Deeds in Book 10122, Page 292.

The rights of use in, under and over said easement area, hereby condemned and taken are:

1. the right to install, maintain, replace and remove conduits or pipelines for conveying water, wastewater and storm water, with all necessary fixtures and appurtenances, including electric or other energized control lines; and
2. the right to make connections with the conduits or pipelines on land adjacent to the easement area; and
3. the right to trim, cut down, and/or remove bushes, grass, crops, trees or any other vegetation, to such extent as is necessary for any of these purposes in the sole judgment of the City or its assigns; and
4. the right to change the existing surface grade of the easement area as is reasonably necessary for any of these purposes; and
5. the right to enter on the easement area at any and all times for any of these purposes; and

6. the right to enforce the following restrictions, with respect to the easement area:

a. No buildings or any other permanent structures shall be allowed, except pavement and utilities.

b. No earth shall be removed, no fill may be added, and no other change shall be made to the surface grade of the easement area.

c. No conduits, pipelines or facilities shall be installed within 5 feet of or above any conduit or pipeline installed in the easement area, except that pipelines and conduits may be installed if they cross perpendicular to other conduits and pipelines with a minimum vertical clearance of one foot.

Meaning and intending to describe a portion of said land or rights in land now or formerly of Bruce T. Astarita and Susan Astarita (Deed Book 10122, Page 292).

AND TO MEET for this purpose on the _____ day of _____, 2013 at 7:30 p.m. in City Council Chambers, 389 Congress Street, Portland, at which all persons interested therein may be present.

By the Municipal Officers of the City of Portland, Maine.

Dated this ____ day of _____, 2013.

Mayor Michael F. Brennan

John R. Coyne, City Councilor

Cheryl A. Leeman, City Councilor

Kevin J. Donoghue, City Councilor

David A. Marshall, City Councilor

Nicholas M. Mavodones, City Councilor

John M. Anton, City Councilor

Jill C. Dusen, City Councilor

Edward J. Suslovic, City Councilor

Note: This notice must be posted at least 7 days in 2 public places in the municipality and in the vicinity of the way, per 23 M.R.S.A. §3022

*Order 200 - 12/13
Tab 32 4-22-13*

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

CITY OF PORTLAND
IN THE CITY COUNCIL

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

**ORDER ADOPTING THE SPRING STREET-FREE STREET STREETSCAPE
AREA PLAN AS AN APPROVED MASTER PLAN**

ORDERED, that the Spring Street-Free Street Streetscape Area Plan is hereby approved
as a Master Plan in substantially the form attached hereto.



**City of Portland, Maine
City Council Agenda Request Form**

TO: Sonia Bean, Senior Administrative Assistant
FROM: Alex Jaegerman, Planning Division Director
DATE: April 4, 2013
Re: Spring Street - Free Street Area Streetscape Plan

- 1) Council meeting at which action is requested:

1st reading: _____
Final action: April 22, 2013

- 2) Can action be taken at a later date: X YES _____ NO
If not, why not: _____

- 3) This item is sponsored by: Transportation, Sustainability and Energy Committee. The Committee at their March 20, 2013 meeting voted to recommend adoption of Spring Street – Free Street Area Streetscape Plan as noted below.

cc: Mark Rees, City Manager
Mayor Brennan
Danielle West-Chuhta, Corporation Counsel
Terry Tucker, Administrative Assistant

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

I. SUMMARY OF ISSUE

The City Council is requested to adopt the Spring Street – Free Street Streetscape Area Plan as an approved Master Plan. The plan charts a new future for Spring Street with specific recommendations to make the street a more “complete street” by providing safe and effective circulation for vehicles, pedestrians and bicycles. The plan recommends that the median barrier be removed, sidewalks widened and a reduction in the number of vehicle travel lanes from four to two.

A Public Advisory Committee appointed by Mayor Brennan met five times including a public hearing to guide the drafting of the plan. The committee represented a diverse group of people including residents, property owners, businesses, non-profits and public interest groups. Committee meetings were well attended and input very informative.

The Transportation Sustainability and Energy Committee reviewed the report at their March 20, 2013 meeting. The Committee voted to 4 to 0 to recommend approval of the plan to the City Council with the following conditions:

1. That reference to a proposed park at the corner of High Street and Spring Street be removed from the plan.
2. That reference to back-in angled parking along Spring Street be removed from the plan.

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

This plan addresses the issue of providing a new vision for the Spring Street area covering roadway and streetscape improvements. The plan includes an area bounded by Free Street, High Street, Pleasant Street and Temple/Union Street. While the plan incorporated streetscape issues for the entire project area, the focus of the plan was on Spring Street.

The rehabilitation of the Cumberland County Civic Center prompted a request by interested citizens and organizations for the City to take a fresh look at the streetscape environment of the Spring Street area and to develop a vision and improvement plan. Mayor Brennan appointed a Public Advisory Committee to help guide this effort, the results of which can be seen in the Spring Street- Free Street Area Streetscape Plan.

The plan addresses a number of important issues. Is the concrete median barrier necessary? In balancing the needs for vehicles, pedestrians and bicyclists what is an appropriate design for the street? How can pedestrian movement be facilitated? Are there opportunities to expand public spaces? Are there opportunities for redevelopment?

The Council is asked to adopt the plan as an approved Master Plan to guide future decision making and infrastructure investment decisions for this area.

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

The Spring Street – Free Street Area Streetscape Plan provides a comprehensive strategy for future roadway and streetscape improvements. Adoption of the plan as an approved Master Plan provides direction for future roadway and streetscape improvements.

An important consideration in the plan was coordinating the infrastructure improvements of the Civic Center renovation project with the streetscape and roadway recommendations of the plan. The streetscape plan recommendations parallel the existing Downtown streetscape standards so amenities such as street lights, trash containers and sidewalk materials are consistent with the Civic Center improvement plans. Staff has been working with the Civic Center in coordinating their renovation plans with the recommendations of the streetscape plan.

A concern was expressed regarding potential delays for vehicles leaving the Spring Street Garage after Civic Center events since there would be only one west bound lane available.

In response staff developed a “Special Event Traffic Option” that demonstrates the opportunity for a second special event only westbound lane to address this concern. During non-events (the vast majority of the time), there would be one through-traffic lane in each direction. During Civic Center events, on-street parking meters could be bagged and in combination with a bike lane would provide ample space for a second vehicle lane from the Spring Street Parking Garage to High Street. During the design phase this concept or variations of this concept would be further refined including details on special pavement treatments, pavement markings and signage. The “Special Event Traffic Option” is shown on the last page of the report.

IV. FINANCIAL IMPACT

The plan provides a comprehensive approach in addressing long standing roadway and streetscape issues associated with Spring Street. The FY 2013 CIP allocated \$50,000 for design work related to Spring Street. A request for the FY 2014 CIP would provide \$450,000 in funds for curb and utility work. Other significant funds include a FY 2015 CIP request of \$181,500 which would serve as a local match for a \$725,953 Maine Department of Transportation grant that would re-pave Spring Street. In the short term there are significant opportunities to move the Spring Street project forward.

The plan envisions certain strips of land along Spring Street (abutting underutilized land such as parking lots) that could be made available for redevelopment projects. A higher intensity of development along Spring Street would have a positive impact on property valuation.

V. STAFF ANALYSIS & RECOMMENDATION

The Spring Street – Free Street Area Streetscape Plan was guided by a public advisory committee composed of a diverse group of residents, property owners, businesses, non-profits and public interest groups. The committee met five times including a public hearing. Their meetings were well attended and input very informative.

The Transportation, Sustainability and Energy Committee had an initial presentation of the plan at their February 6, 2013 followed by a formal presentation at their March 20, 2013 meeting. The TSE voted 4 to 0 to recommend approval of the plan to the City Council with the following conditions:

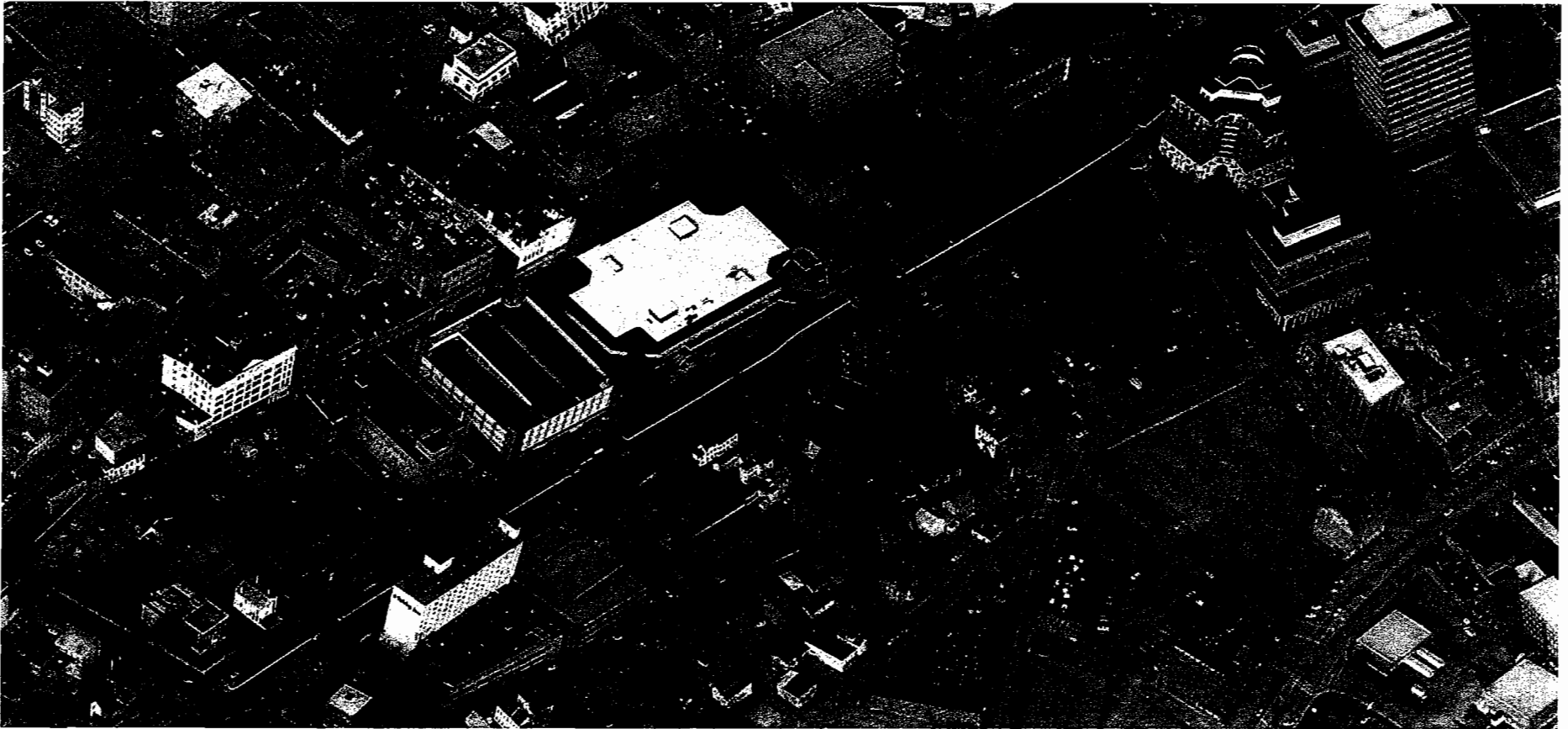
1. That reference to a proposed park at the corner of High Street and Spring Street be removed from the plan.
2. That reference to back-in angled parking along Spring Street be removed from the plan.

Note that the attached plan has not been updated to reflect the above changes but will be based on the Council’s actions.

Attachments:

1. Spring Street – Free Street Area Streetscape Plan

Spring Street - Free Street Area Streetscape Plan



March 13, 2013

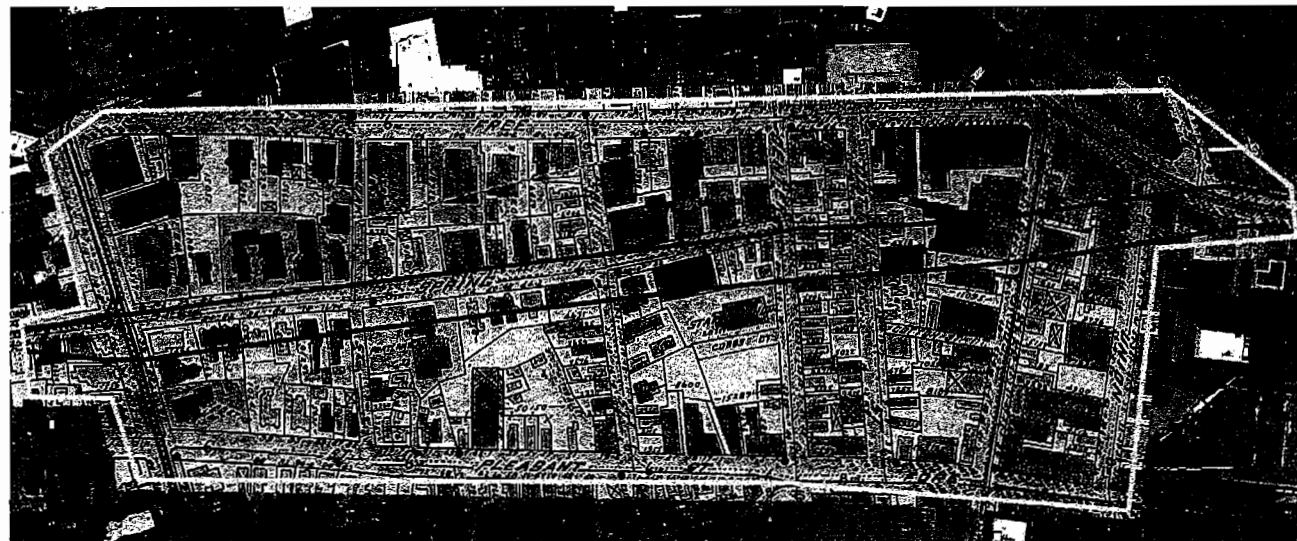
**Terrence J. DeWan & Associates, Landscape Architects
Ransom Consulting, Inc., Engineers
Portland Trails, Bicycle and Pedestrian Consultants**

**City of Portland, Maine
Department of Planning
and Urban Development**



TABLE OF CONTENTS

Introduction	4
Spring Street: Past and Present	4
The Arterial	4
Process & Participants	4
Common Questions	4
Goals and Principles	4
Existing Conditions	
Study Area Map	5
Spring Street Cross Sections	6
Spring Street Character Photos	7
Free Street Character Photos	8
Free Street Character Photos	9
Design Kit of Tools	10-17
Concept Plan	18-25
Next Steps	26
Appendix	27
A. Available Resources	
B. Opinion of Probable Cost	
C. Historic Districts with Historic Landscapes, Cemeteries & Individual Landmarks Map	
D. Pedestrian Access Assessment Recommended Needs Civic Center Vicinity	
5.24.12	
E. Civic Center Site Layout & Materials Plan Sheet CP101	
F. Request for Proposal Spring Street - Free Street Area Streetscape Plan	
5.25.12	



1914 Map of Spring Street and study area with current day Spring Street right-of-way overlaid. Image taken from the 1914 Atlas of Portland Maine by the Richards Map Company, courtesy of the City of Portland Planning Department.



Paving of Cross Street between Middle and Fore Streets, with granite blocks, circa 1900. Image obtained from the Portland Maine History 1874 to Present, Facebook page.



Former Portland Athletic Club at the intersection of Spring and Oak Streets circa 1924. Approximate location of the current Holiday Inn parking garage. Image obtained from the Maine Memory Network.

INTRODUCTION

Cities are ever changing. The best cities anticipate and shape their changes, using them to build on a common vision. As Portland evolves and adapts to new realities, there is great opportunity to render some of the mistakes of the past into the successes of the future. The repair of Spring Street is one such opportunity.

Spring Street today remains underutilized; though wide enough to accommodate four lanes of auto traffic, it does not accommodate multiple modes of urban transportation, and detracts from permeability in the downtown area. While surrounded by a high functioning urban grid, Spring Street between High and Middle sits apart; it deters pedestrian travel, limits economic development, and forms a barrier along its length that affects the function of the city beyond its footprint. Of course, Spring Street has not always been an obstacle to connectivity, and need not remain one.

SPRING STREET: PAST AND PRESENT

This report continues a civic conversation begun in the 1960's during Urban Renewal, when plans were developed to alter this inconspicuous neighborhood street into the "Spring Street Arterial". In accordance with the 1967 Victor Gruen plan Patterns for Progress, Spring Street east of High Street was widened and extended to a truncated Middle Street. The plan called for extending the new Arterial all the way to "Franklin Street Arterial" as part of a planned ring of high speed auto roads around the Portland Peninsula. The plan intentionally reduced pedestrian access along the roadway, in order to allow fast and unobstructed auto travel. The fact that Middle Street remains at all is a result of the outcry over the damage to the historic architecture and urban fabric during the first phase of construction, the consequences of which are with us to this day.

Spring Street today begins at its west end as a narrow, tree-lined residential street lined with historic wood and brick homes. Moving east it maintains this two-lane profile typical of the surrounding neighborhood streets, but begins to have a more urban feel, with a bit more density, and a mixture of uses including a school, a hospital and numerous small locally-owned shops. As Spring Street nears High Street, it abruptly widens into three lanes (including a turning lane at the intersection), and then emerges east of High Street as an extra-wide divided highway corridor known as the "Spring Street Arterial". Continuing east the Arterial descends steeply towards the Old Port, and swells to five lanes at intersections. Crossing Temple Street, the Jersey barriers of the divided highway taper to an end, and historic Middle Street emerges, revealing the dense urban fabric of historic brick buildings and a vibrant commercial district. The total length of Spring Street is 1.2 miles. This study focuses on the .4 mile "Arterial" section.

THE ARTERIAL

Along its length, the right-of-way width of the Arterial section swells to about 90 feet, with parallel street parking and sidewalks flanking both sides of the four lanes. The abutters to this street include the Cumberland County Civic Center, Maine Health Building, Portland Museum of Art, Children's Museum and Theatre of Maine, Greater Portland Landmarks, Holiday Inn by the Bay, open parking lots, and the Pleasant Street neighborhood. Connections to Free Street exist in several locations, including Oak Street, and Center Street.

PROCESS & PARTICIPANTS

The rehabilitation of the Cumberland County Civic Center prompted a formal review of Spring Street's underutilized streetscape, because the Civic Center has a significant effect on the surrounding neighborhood it was decided to include surrounding streets in

the project. Mayor Michael Brennan appointed a Public Advisory Committee comprised of property owners, abutters, and non-profit organizations, to devise a vision for the future of Spring Street, and to help guide the planning of roadway and streetscape enhancements in the study area. The Committee met four times, including a public meeting, to discuss the framing of a streetscape plan that would accommodate all modes of transportation proportional to their respective needs, and to create a guide for short-term and long-term interventions within the study area.

The following individuals served on the Public Advisory Committee (PAC).

Linda Bancroft	Aquarius Property Management
Hilary Bassett	Greater Portland Landmarks
Linda Beatry	Holiday Inn by the Bay
Jan Beitzer	Portland Downtown District
Patrick Costin	Creative Portland
Steve Crane	Cumberland County Civic Center
Don Elliot	Portland Society of Architects
Mark Filler	Filler and Associates
Kristen Levesque	Portland Museum of Art
C. Michael Lewis	Neighborhood Resident
Penny St. Louis	Maine Health
Suzanne Olson	Children's Museum & Theatre of Maine
Brian Petrovek	Portland Pirates
Ricardo Quesada	Fore River Management
Tim Soley	East Brown Cow Corp.
Lucia Stancioff	Children's Museum & Theatre of Maine
Paul Stevens	Portland Society of Architects
Corey Templeton	Portland Bicycle & Pedestrian Advisory Committee

The Committee meetings were led by a group of City of Portland Planning Division staff, the Project consultant team and the Department of Public Services comprising the following members.

Department of Planning & Urban Development

Jeff Levine	Director
Alex Jaegerman	Planning Division Director
Bruce Hyman	Senior Planner
Rick Knowland	Planning Division Intern
Kirsten Stray-Gundersen	

Department of Public Services

Michael Bobinsky	Director
Kathi Earley	Engineering Services Manager
Bruce Hyman	Bicycle and Pedestrian Program Coordinator
Jeremiah Bardlett	City Transportation Systems Engineer

Project Consultant Team

Tom Farmer	Terrence J. DeWan & Associates
John Mahoney	Ransom Environmental Consultants, Inc.
Jaime Parker	Portland Trails

After reviewing the history of the area, including numerous planning documents, the Project Staff presented streetscape design options ranging from streetscape amenities to total street reconfiguration. Subsequent revised versions were created in response to comments, concerns, goals and principles presented by Committee members. Presentations were supplemented with pertinent information and summaries of related studies including but not limited to: Victor Gruen's Patterns for Progress Plan (1967), Portland Downtown Traffic & Streetscape Study (1999), the City of Portland Way-finding System Study (2008), Liberate Spring Street (2011-12), and GIS maps of the area accessible on the City of Portland website. The presentations were followed by discussion of the positives and negatives of design plans and project goals. A project website was created for public access to all materials and information presented and discussed at the Committee meetings. Three Public Advisory Committee meetings were held before the Public Meeting. The discussions from the three PAC meetings were summarized in streetscape design options presented at the Public Meeting on November 15th. The final plan responded to comments made at the November 15th Public Meeting and the final Public Advisory Committee Meeting held on January 10th.

COMMON QUESTIONS

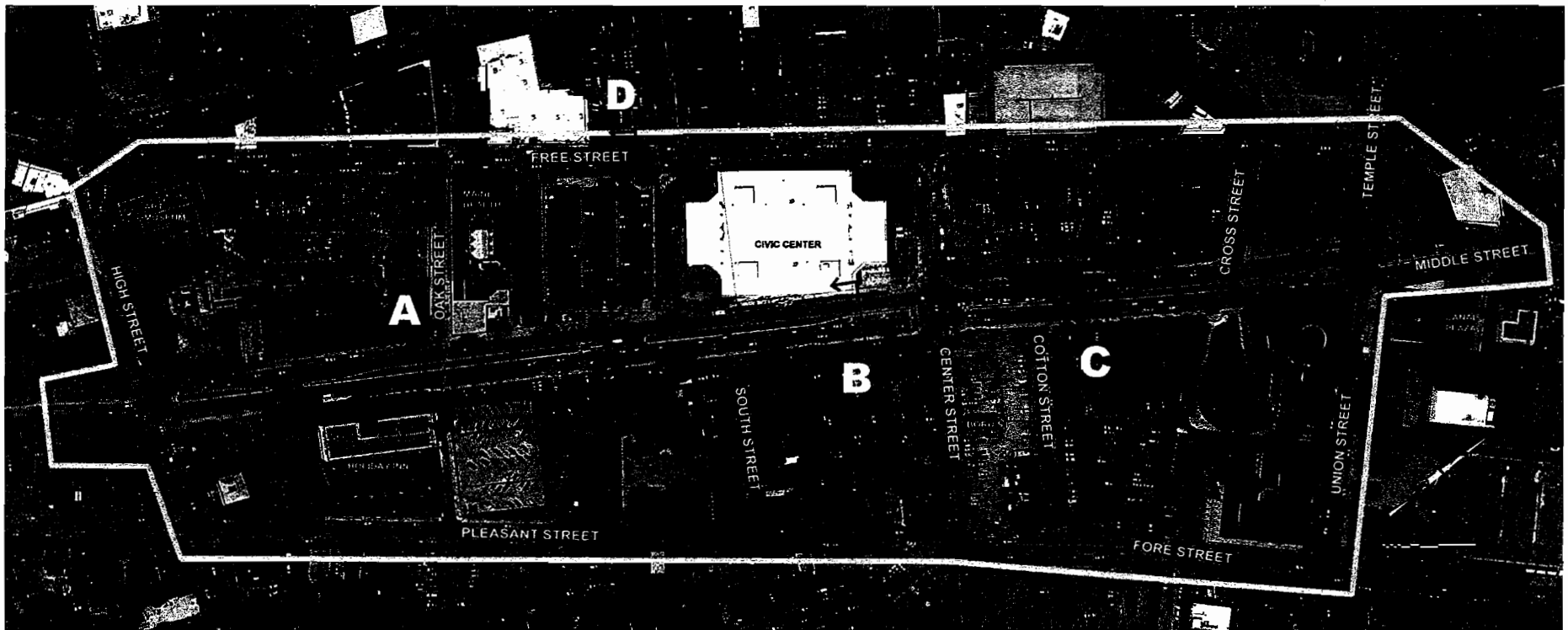
- Should Spring Street continue to serve as an arterial?
- Is the center median necessary?
- If not, what are the implications of additional space?
- Are there opportunities to expand public spaces?
- How can adjacent properties, pedestrians, bicyclists and others, be better served by a redesign?
- How can we facilitate north - south pedestrian movement?
- Are there opportunities for redevelopment/infill?
- Are there short term improvements to the functionality, safety, and appearance of Spring Street?

GOALS AND PRINCIPLES

Discussion of these questions led to creation of the following list of goals and principles:

- Reflect the area's function as an important corridor for all modes of transportation.
- Provide safe and effective facilities for vehicular, pedestrian, and bicycle use.
- Allow for future development aimed to encourage economic value and livability
- Enhance the character of the area and encourage multiple points of access to establish a desirable destination, visually and physically integrated with the Portland Downtown Area.
- Highlight existing attractions in the design of a streetscape plan to encourage interest and use.
- Enhance pedestrian connectivity between Downtown, the Arts District, the Old Port, and neighboring historic districts.
- Recognize the area as historically significant with many landmark buildings, located between the Old Port and the Arts District.

EXISTING CONDITIONS STUDY AREA



Aerial photograph of project study area (outlined in yellow). Cross-sections A, B, and C shown on next page.

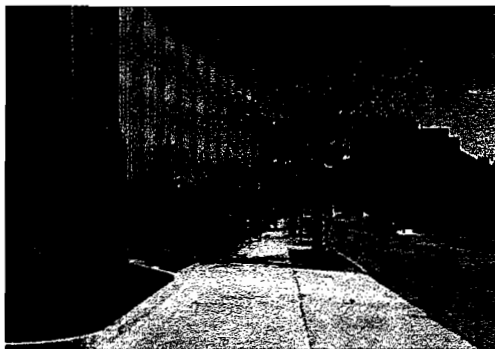
Source: City of Portland GIS Department

It is ironic that the U. S. Department of Transportation recognized the redevelopment of Spring Street in 1976 with a third place award in its ninth Annual Awards program, in recognition of an "Outstanding Example of Highway-Oriented Public or Private Enterprise Which Preserves the Environment." Today, most urban planners recognize Spring Street as an unfortunate product of an urban-renewal / urban-removal mentality that split the City, divided neighborhoods, and left an unfortunate mark that is just now being addressed.

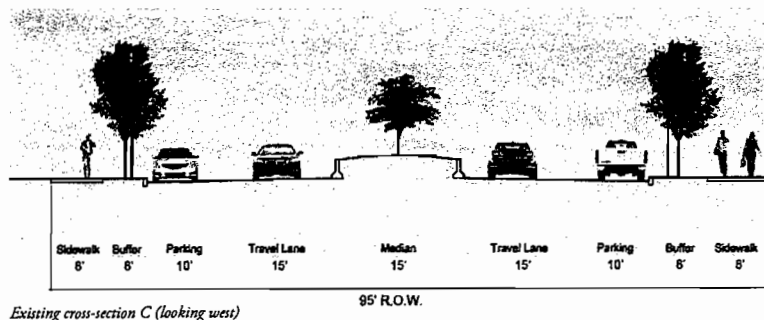
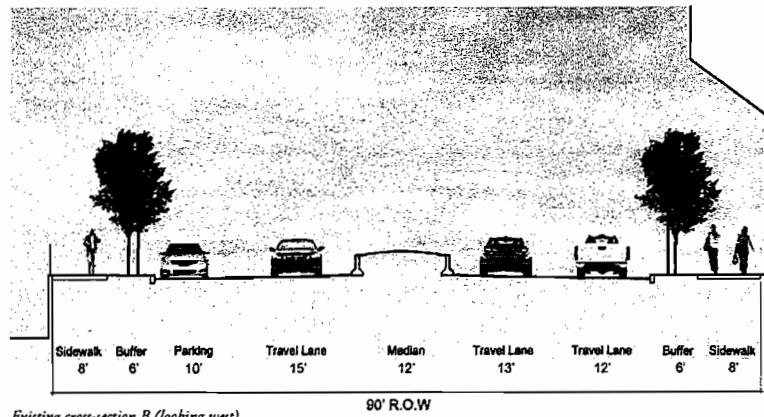
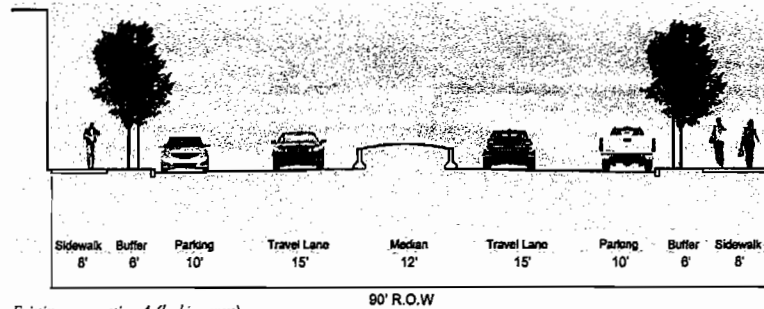
EXISTING CONDITIONS SPRING STREET CROSS SECTIONS

Spring Street between High and Temple was built as a "limited access, divided highway", with dimensions usually found on suburban arterial roads. The total Right of Way width is 90 feet. Travel lane widths vary from 12 to 15 feet, (urban streets tend to have travel lanes ranging from 9 feet to 12 feet wide). Existing parking lanes are 10 feet wide (City of Portland standards require 9 foot parking lanes) however, 8 foot parking lanes can be adequate in many urban areas. There are currently no bicycle lanes along the corridor. The raised concrete medians are a dominant feature of the roadway; these vary in width, reaching a maximum of 15 feet. Combined, these elements of the current roadway create a streetscape that is out of character with the surrounding city, and a roadway which functions differently than other streets in the area.

- Cars travel much faster than the posted speed limit of 30 mph due to the design of the road.
- Drivers do not expect pedestrians.
- The corridor has a very "generic" look and feel to it; it does not contribute to the neighborhood identity of the Arts District or surrounding neighborhoods.



Looking east on Spring Street near the Municipal Parking Garage.



Looking east on Spring Street in front of the McLellan House.

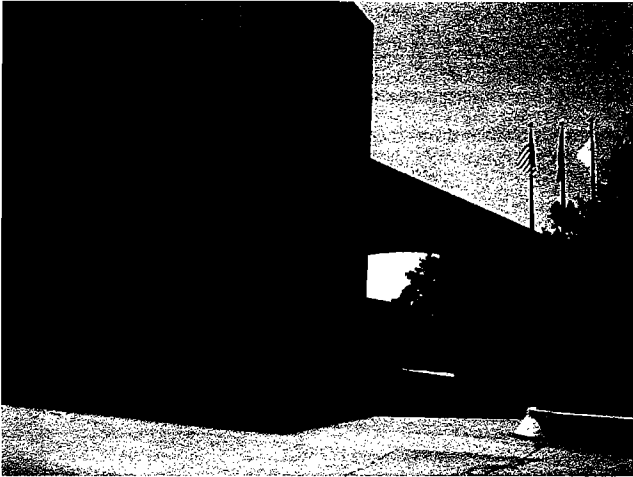


Looking west on Spring Street across from the CCCC.

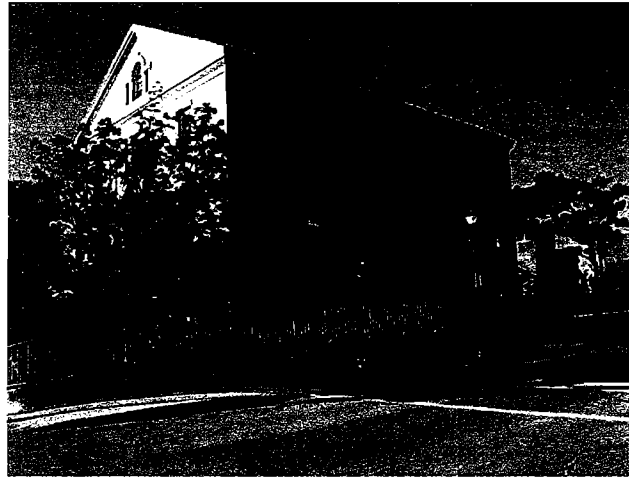
EXISTING CONDITIONS SPRING STREET CHARACTER PHOTOS

Though several historic buildings remain at the far west end of the corridor, (including the McLellan and Clapp Houses, pictured lower left), the architectural character of Spring Street within the study area mainly consists of large-scale civic and private structures built in the 1970's and 80's, following the reconstruction of Spring St. These include the Holiday Inn By the Bay, the Cumberland County Civic Center, a municipal parking garage, a large medical office building (Maine Health) with associated parking garage, and some newer tall office buildings near the corner of Temple Street. These buildings; One Portland Square (pictured) and Two City Center across Temple Street, present effective anchor buildings for this end of the corridor.

The block between Center and Cross Streets is bordered entirely by large surface parking lots, creating a distinct gap in the streetscape, and a psychological barrier for pedestrians considering travel between the Old Port and the Arts District. Overall, the wide roadway, the buildings (or lack thereof), and streetscape along the corridor is not of a pedestrian-scale, and thus the experience for those that walk or bike the corridor is compromised, and is uninviting.



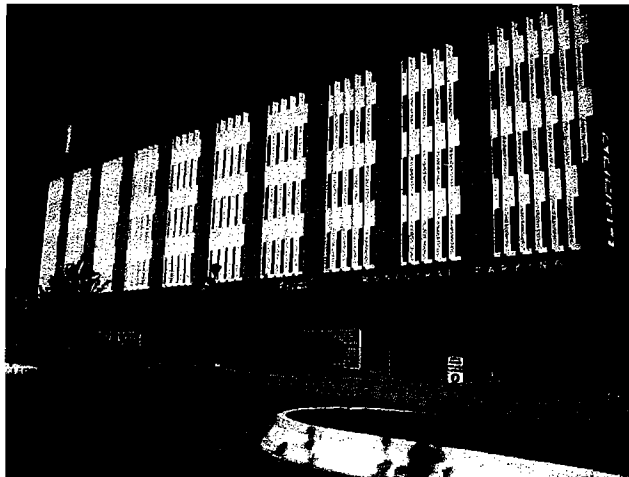
Holiday Inn By the Bay hotel.



Staples School (former Center Street School) office condominiums.



McLellan House (left) and the Clapp House (right) are both owned by the Portland Museum of Art and are on the National Register of Historic Places.



City of Portland Municipal Parking Garage.



One Portland Square office building.

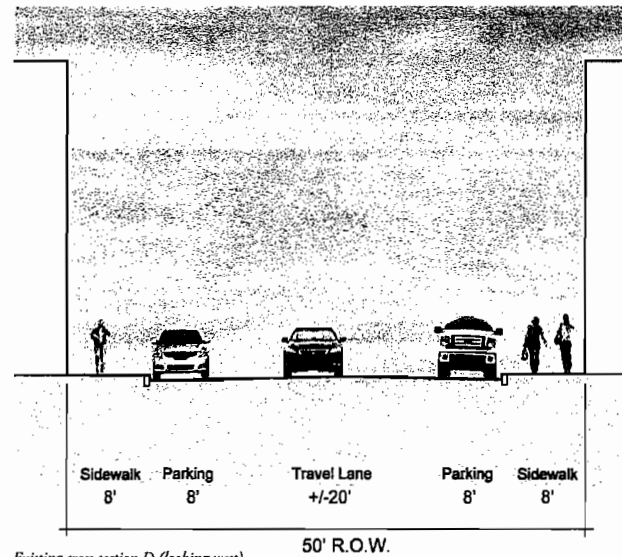
EXISTING CONDITIONS

FREE STREET

A cross-section of Free Street illustrates a one-way street with parking on both sides, a wide travel lane (enough to accommodate frequent “double-parking” for deliveries), and various width sidewalks; ranging from a minimum of $\pm 7'$ to a maximum of $\pm 12'$ along its length. The roadway appears to function well for pedestrian and vehicles; though bicycles travelling west are not legally accommodated, they are frequently observed.

Free Street has a far better massing of buildings than Spring Street, creating a mostly continuous edge and a more pleasant pedestrian experience. The hulking form of the Civic Center does dominate the streetscape in that area, and there are several surface parking lots that break up the edge, but overall Free Street presents less of a barrier, and offers more connectivity to the surrounding streets.

Architecturally, Free Street has retained many of its historic buildings, though they are interspersed with newer structures, several of which present blank walls and an alley feel. The Center Street intersection, and directly east and west of this location, is perhaps the most challenged, with several surface lots, blank walls, and a large parking structure all in close proximity.



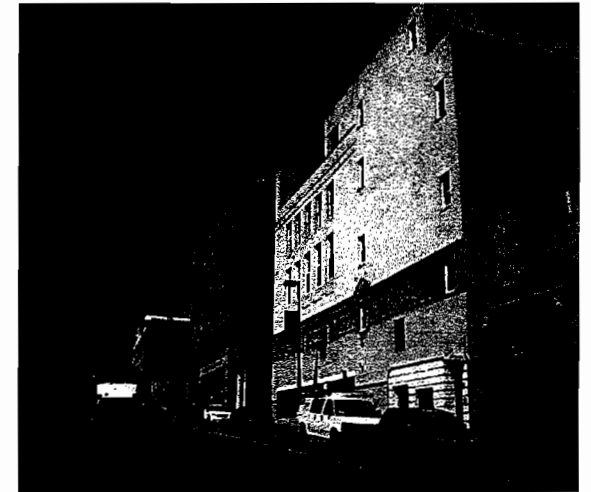
Typical street scene, looking east, from upper Free Street; note the on-street parking on both sides of the street and a surface parking lot to the right side of the photo.



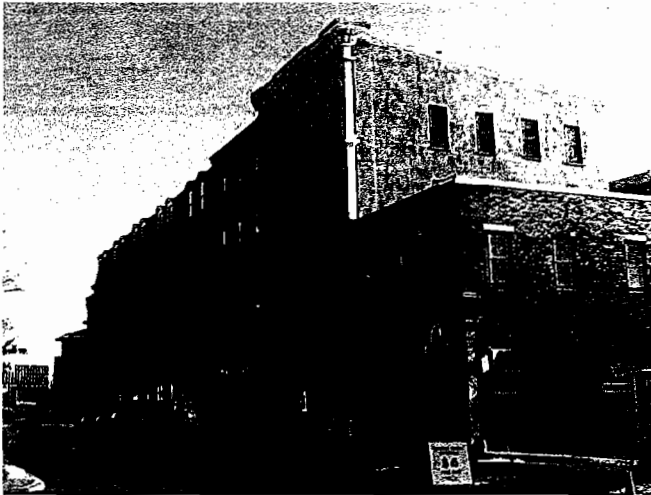
Looking west on Free Street near Center Street intersection.



Looking west on Free Street from Temple Street end.



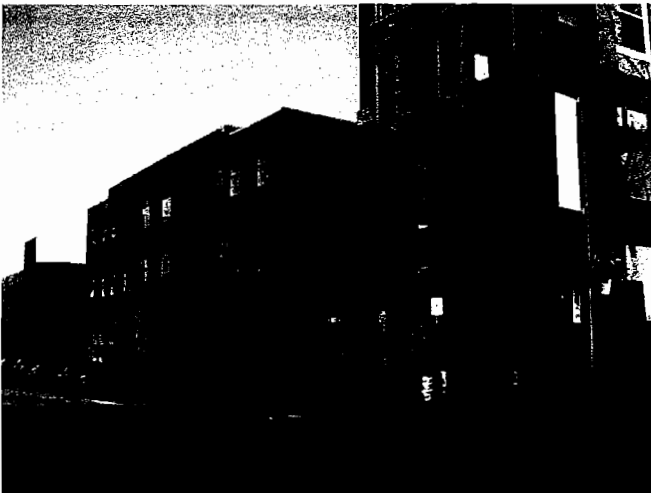
Looking west on Free Street from rear entrance to Civic Center.



Looking east on Free Street towards Temple Street.



Large surface parking lots are common along Free Street.



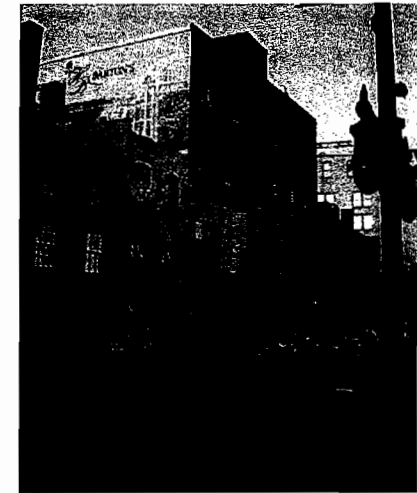
Looking east on Free Street at the intersection with Oak Street. This photo depicts a typical mix of historical and contemporary architecture.



Historic architecture at the intersection of Free and Cross Streets. This photo also shows the historical alignment of an abandoned portion of Middle Street.

EXISTING CONDITIONS FREE STREET CHARACTER PHOTOS

- Free Street should continue to allow double parking for unloading trucks as it acts as a back alley to many businesses. This is a functional street, a bike lane may diminish that important function.
- It was noted by the Committee Members that cars often mistake Free Street for a two-way street, resulting in wrong turns especially in the upper section between Oak and Congress. When snow is on the ground, street painting indicators are difficult to see.
- The improvement plan recommends either increased signage at eye-level, more efficient signage, especially at parking lot exits and street intersections.
- While a future contra-flow bike lane may be appropriate, it should not take priority over the truck deliveries.



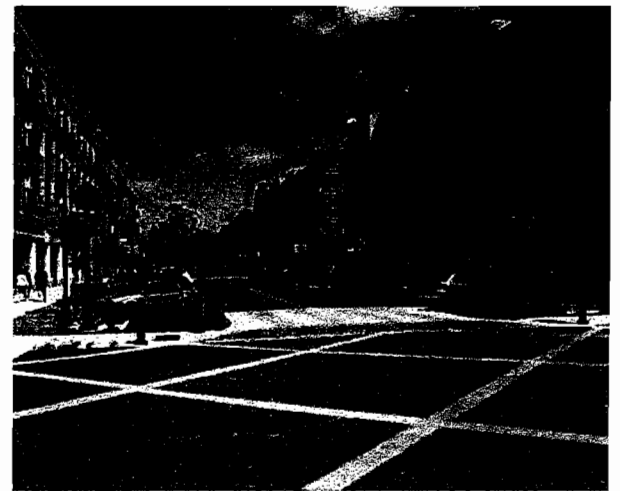
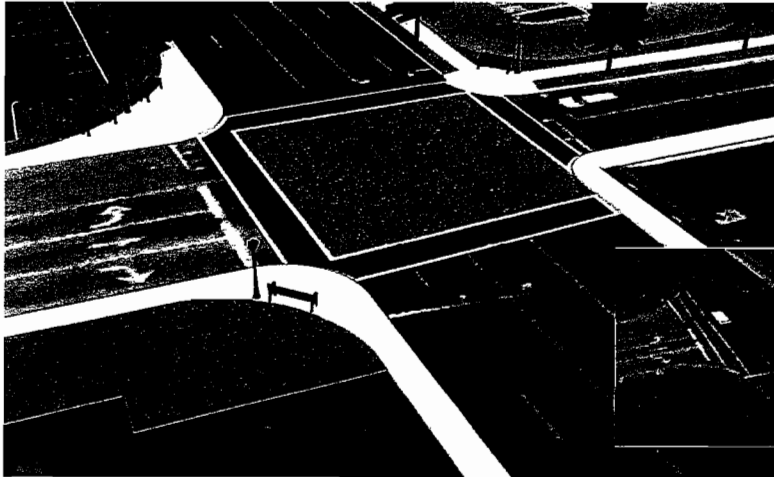
Upper Free Street looking east.

STREETSCAPE & MOBILITY KIT OF TOOLS INTERSECTION TREATMENTS

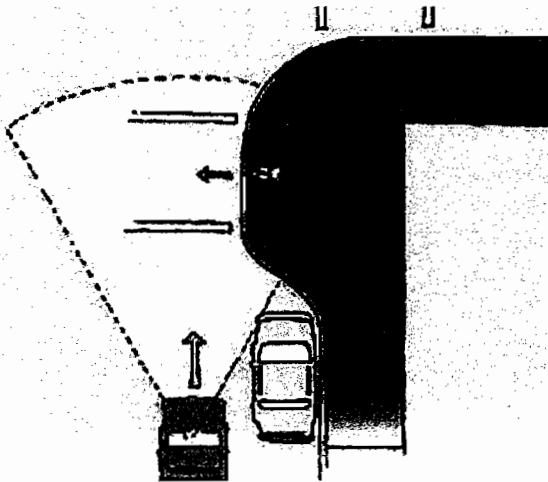
Intersection Treatments

Currently the intersections along Spring Street are fairly large, with long crossing distances for pedestrians, and limited aesthetic appeal or unique neighborhood identity. There are many tools available that can help construct better functioning intersections;

- Raised, textured or colored pavement material along crosswalks, or within the entire intersection helps provide a visual cue to drivers that this is a pedestrian zone.
- Curb extensions or “bump-outs” shorten crossing distances, provide better visibility for all modes, and can help reduce speeds by narrowing the road width at the point where pedestrians are present.
- The use of different materials, including granite edging of brick crosswalks - this durable treatment sends a visual cue to drivers and clearly delineates the crosswalk.
- Pedestrian scale lighting and amenities at crosswalks further helps identify the pedestrian zone.
- All of these elements combined can help to bring a more appropriate scale to the intersections, and can also help build neighborhood identity through consistent use of vernacular materials, colors, and textures.



STREETSCAPE & MOBILITY KIT OF TOOLS CURB - SIDEWALK EXTENSIONS



Curb extensions allow the pedestrian to enter the zone of vision of the motorist for enhanced safety.



Curb extensions are adjustments to the curbline that expand the sidewalk towards the centerline of the roadway to create a wider sidewalk in a localized area. Often referred to as "bump outs" curb extensions are typically installed at intersections or mid-block pedestrian crossings. Curb extensions work well and are often used in combination with on-street parking because the curb can project into the roadway without impacting the travel lane(s). Curb and sidewalk extensions can provide the following benefits:

- Shorten pedestrian crossing distances.
- Improve visibility between modes. The sidewalk extension allows pedestrians to stand past parked cars where they can see and be seen by approaching vehicles (see illustration, upper left).
- Reduce motor vehicle speeds by creating a narrower roadway with a more urban/pedestrian feel.
- Provide a "bookend" to on-street parking lanes and delineate vehicle areas from pedestrian areas.
- Provide a location for trees, street furniture and landscaping while maintaining an adequate clear sidewalk width for pedestrian travel.

While curb extensions can provide substantial benefits, the following factors must be considered:

- Geometric needs of tractor trailers and emergency vehicles.
- Snow removal operations. The curb extensions on Commercial Street in the Old Port have a sloped curb which assists with snow removal operations while allowing for shorter pedestrian crossings.
- Adjustments to the curbline often impact roadway drainage and may require the relocation of existing or installation of new catch basins.
- Curb extensions should not project into bike lanes or the area(s) of the roadway that cyclists typically use.



Rain gardens can be incorporated to treat and slowly infiltrate stormwater.



Example of bump outs on Commercial Street using mountable sloped curb for ease of plowing.

STREETSCAPE & MOBILITY KIT OF TOOLS

PEDESTRIAN CROSSINGS

Providing accessible, attractive, convenient and intuitive pedestrian crossings will go a long way towards the goal of improving pedestrian connectivity between Downtown, the Arts District and the Old Port. Crossings should be provided on all legs of all intersections and in mid block locations as shown on the concept plan. Spring Street is characterized by large blocks or "super blocks" that are typical of urban renewal projects, which increases the need for mid block crossings.

Several options for pedestrian crossings were considered during the study and include the following:

1. **Hardscape or Brick:** Hardscape or brick crosswalks can provide color and texture to break up the surrounding roadway asphalt and highlight pedestrian areas. The visual contrast is attractive, permanent and provides a clear message that this is a pedestrian space. The City has installed brick crosswalks in several locations, e.g. Temple and upper Congress Street.

Quality and consistent crosswalk treatment is important. "Stamping" or painted streetprints is inconsistent with the historic character of this district and undesirable to the Committee.

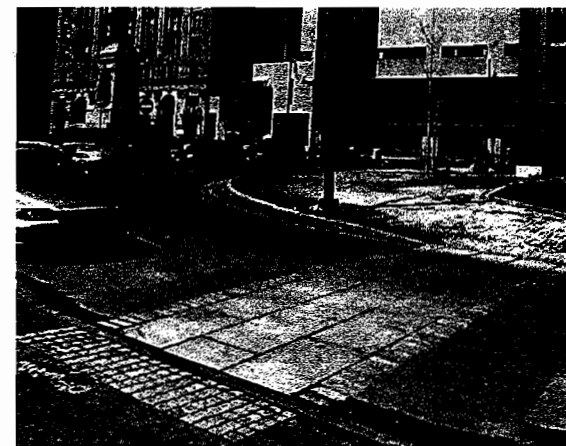
2. **Paint:** Although upfront costs are low, painted crosswalks need to be repainted at least annually. Also, while visibility is adequate immediately after painting, turning traffic on heavily traveled streets can dramatically reduce visibility within a few months.

Thermoplastic reflective paint can provide excellent visibility and is considerably more durable than paint.

One option to consider is raised pedestrian crossings or raised intersection areas. Instead of tipping the sidewalk down to meet the roadway, which is the norm for an ADA ramp, the roadway elevation could potentially be raised to meet the sidewalk. Raised crossings have the potential to increase visibility of pedestrians, improve access for mobility challenged persons and send a clear message to vehicles that this section of roadway is a pedestrian crossing area. While an abrupt change in grade would be problematic for vehicles, particularly emergency responders, a sufficiently gradual change in grade may mitigate operational issues. Should the City choose to pursue this option, the first step should be an open discussion with emergency responders. Raised crossings may require adjustments to the drainage system as well.



Example of a stamped asphalt crossing painted to match the adjacent brick sidewalk.



Example of a granite paved crosswalk on Federal Street.



Existing crosswalk at Temple and Free Street intersection.



Highly visible, universally accessible crosswalk combining a detectable warning surface, brick pavers, granite bands, and paint. Crossing of Congress Street at North Street.

STREETSCAPE & MOBILITY KIT OF TOOLS BICYCLE ACCOMODATIONS



Shared use sidewalk. Sidewalk accommodates both pedestrians and bicycles by separating travel ways with tree planted islands. The separation allows room for parked car doors to be opened and a place for people to gather without fear of bicyclists.



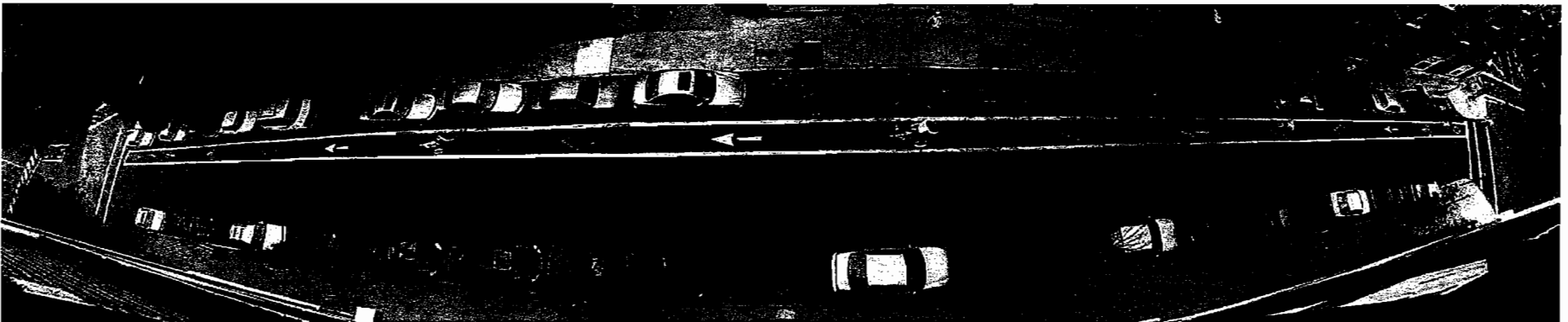
Bicycle climbing lane, Congress Street, Munjoy Hill.

Spring Street

Bicycle climbing lanes are an effective tool on steep streets where bicyclists travelling uphill cannot attain similar speeds to the auto traffic. The climbing lane provides a dedicated space for the cyclist to maintain slow and steady progress, without competing with cars for space. As with any dedicated bicycle lane, they also serve to signal drivers to expect bicyclists in the roadway. Portland's first climbing lane was recently installed on Congress Street on Munjoy Hill, and has been very well-received.

Free Street

Contra-flow bicycle lanes are effective on one-way streets where there is a desire for bicyclists to travel both ways. While there may not be room for auto travel in both directions, there is often room for a bicycle lane. Free Street is an important pedestrian connector between the Arts District at Congress Square, and the Old Port at Middle Street. This direct connection is one reason that bicycles currently travel against traffic flow. It also provides a less congested alternative to Congress Street, and is not as steep as Spring Street. It appears that there is sufficient curb to curb width to allow for an uphill, contra-flow bicycle lane on Free Street without losing parking spaces.



Example of a contra-flow bike lane which allows for two-way bicycle travel on a one-way street, as proposed for Free Street.

STREETSCAPE & MOBILITY KIT OF TOOLS

WOONERF - PEDESTRIAN STREETS

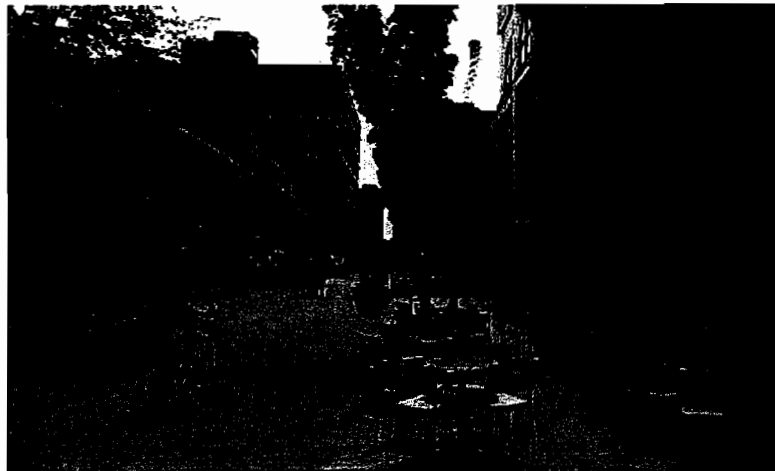
Woonerfs

A woonerf is a street design technique first developed in the Netherlands that attempts to use visual cues, textures, placement of streetscape elements, and the absence of curbs to encourage all modes to travel at the same speed. Equal priority is given to all modes of transportation including automobiles, bicycles, pedestrians, and those with disabilities. Woonerfs or similar treatments can begin to provide more equitable access to the public space of the roadway, and can help evoke a change to the assumption that automobiles always have the right of way.

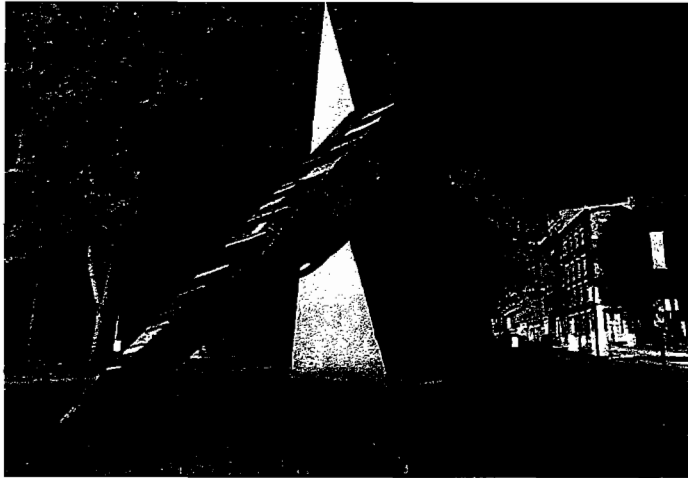
They can act as attractive pedestrian nodes that can activate less commonly used pedestrian corridors by connecting them to more commonly used corridors. They could also enhance character / placemaking, provide visual links to the surrounding area, increase vehicle awareness of pedestrians, decrease vehicular speeds, and add flexibility to the streetscape.

In some locations of the study area, (e.g. upper Free Street in front of the Art Museum, the short segment of Cross Street, leading to and from Monument Square and the heavily used desire line at Temple Street), the use of a woonerf concept may be very applicable.

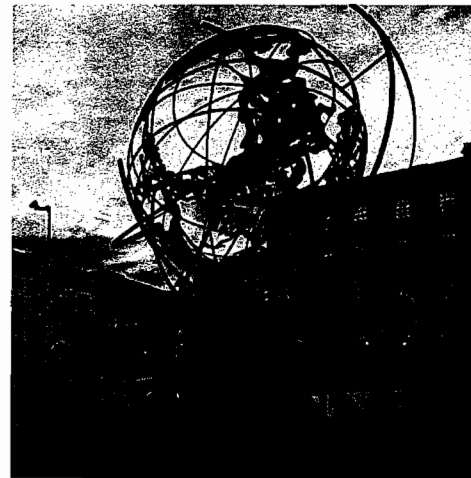
In settings where there is high pedestrian volume, and auto speeds are low, it is possible for the roadway to become more of a "shared space", where all modes can move through, but without any one mode taking precedence. The area around Free, Temple, Spring, and Middle Streets is a possible location for this type of treatment; there are significant auto and pedestrian volumes using the same space, but the function could be improved by reducing the vehicular speeds. Careful attention will need to be given to comply with the Americans with Disability Act (ADA) guidelines.



STREETSCAPE & MOBILITY KIT OF TOOLS PARK / SCULPTURE GARDEN



Contemporary sculpture at intersection of Free and Temple Streets.



Contemporary sculpture at intersection of Franklin and Commercial Streets.



Lobsterman Plaza at intersection of Temple and Spring Streets.



Interpretive Sculpture, Commonwealth Avenue, Boston, MA.

Landscape / Artscape

The streetscape plan represents a great opportunity to express Portland's commitment to the creative economy. Not only is the study area a key part of Portland's Arts District, it is also home to the Portland Museum of Art, the Civic Center, the Children's Museum, Greater Portland Landmarks, studios, artists' residences, and many other attractions. Public art – in its various forms – can be used effectively to give the area a unique personality and demonstrate support for a vision that recognizes the significance of the arts in the City. Art can take many forms – e.g., sculpture, paving patterns, lighting, creative street furnishings, wall murals... the list is limited only by the imagination.

STREETSCAPE & MOBILITY KIT OF TOOLS CURRENT "DOWNTOWN" AMENITIES

Lighting

Lighting should play a critical role in the modernization of the Civic Center and surrounding area. The recommendation for lighting is to use the Congress Street, Esplanade fixture of the Tear Drop Series by Halophane, with lower pedestrian level lights, as shown in the "Downtown Fixture" to the right. These fixtures are now available in LED, which is the recommendation for this study.

Greening the Street

Trees can be effective in providing shade, color, scale, texture, contrast, defining spaces, separating land uses, and giving individual character to special places in the urban environment.

The use of raised planting beds serves multiple functions for the streetscape and pedestrian environment. Raised planting beds protect trees and shrubs from compaction, accidental damage, and winter salting, and have proven to significantly increase the health, longevity, and size of street trees in Portland. Where there is sufficient width, placing the plantings three to five feet inside the curb can help define different zones within the pedestrian realm. The curbside zone outside of the planters allows people to open car doors and access the sidewalk, and provides a clear "pedestrian only" realm. The use of hardy native perennials and grasses should be incorporated in the tree planters to provide color and seasonal interest.

The inner sidewalk, separated physically and visually from the street, can function in many ways, including outdoor seating for restaurants and cafés, space for food carts or other vendors, or as a multi-use trail, if space allows. Spaces between planters can be used for street furniture; keeping it in-line with the planters helps maintain clear paths for pedestrians. There was general agreement from the Public Advisory Committee that sidewalks should be much wider than 8' wherever possible.

Structural Soils

Replacing trees that die because of insufficient soil is costly. Structural soils have been proven to solve this common problem. Structural Soil is a mix of aggregate and soil, with a small amount of polymer gel to hold the mix together. This mix can be compacted to 95% of dry density to support paving while still allowing for tree root growth. Studies have shown that trees growing in structural soils vastly outperform trees growing in typical urban conditions, live much longer, become larger, and provide many more environmental benefits. Structural soils can facilitate the growth of much larger trees, providing increased shade and visually reducing the scale of large monotonous buildings.



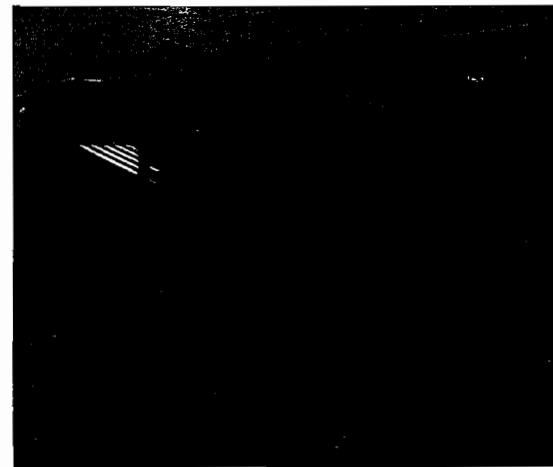
Current Downtown light fixture



Most acceptable raised planter as endorsed by PAC



Current Downtown trash receptacle

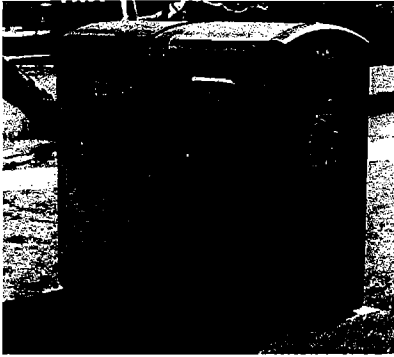


Current Downtown bench



Current Downtown bike rack. Not recommended for continued use.

STREETSCAPE & MOBILITY KIT OF TOOLS MISCELLANEOUS AMENITIES



Big Belly solar trash and recycling compactors. Restrict graphics.



On-street parking pay stations eliminate parking meters.



On-street bike parking, reduces conflicts on sidewalks



Trash receptacles

The Committee endorsed the use of the trash receptacle (pictured on previous page) approved for the Downtown District. The Department of Public Services is working to deploy "Big Belly Solar Trash and Recycling Compactors" (pictured, upper left) where appropriate throughout the City. These units have advantages over traditional trash cans, including:

- Larger capacity.
- They send a text when they are full, so City crews only empty when needed.
- Mounted to sidewalk for security.
- Built to withstand vandalism.
- The Committee agreed to restrict graphic panels for fund raising or advertising.
- Specify green to match "downtown" streetscape amenities.

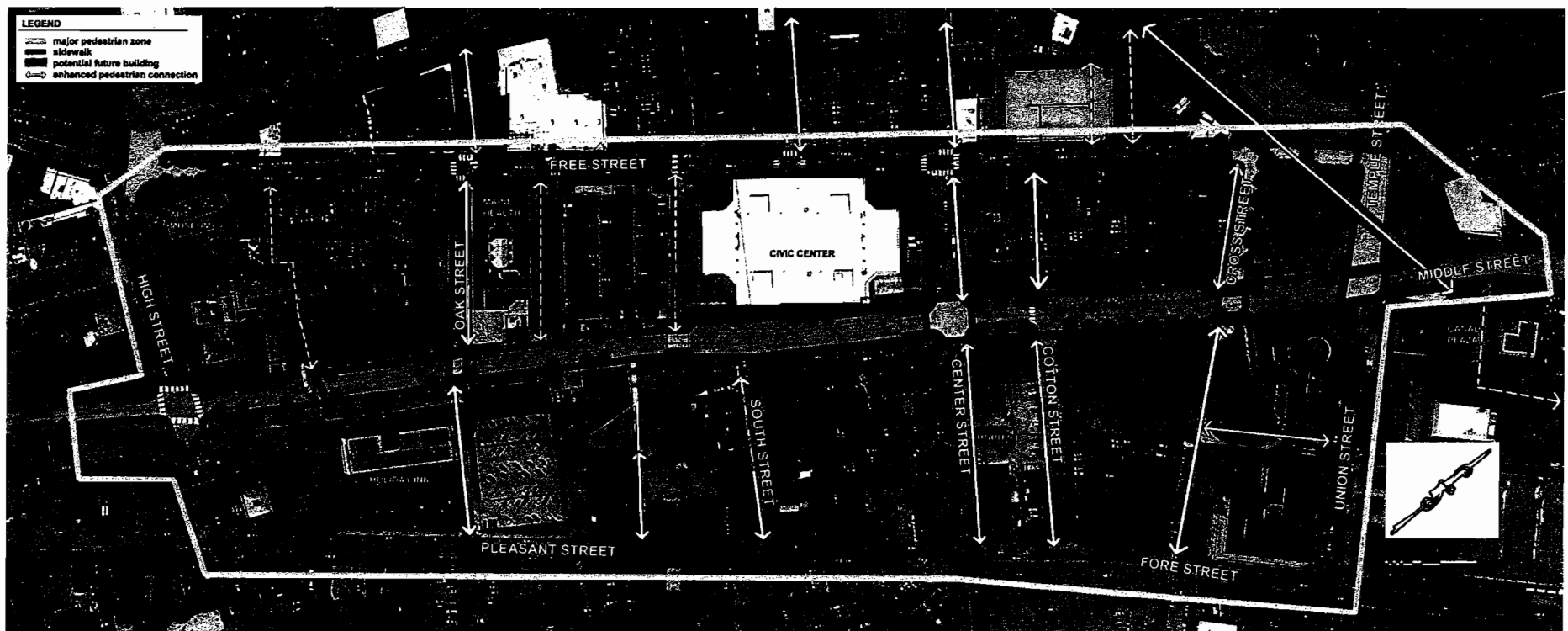
The Planning department should work with Public Services and the Downtown District to determine if the Big Belly units are compatible for locations within the study area.

Bike parking

Future bike parking within the study area should:

- Provide two points of contact for the bicycle.
- Provide some amount of covered parking.
- Work with landowners to augment bike parking required by ordinance, and avoid redundancy.
- Specify green to match "downtown" streetscape amenities.
- Look at opportunities to locate some bike parking on-street, adjacent to the curb, where numerous bikes could be parked in one location. These "bike corrals" could be in areas of anticipated high-demand, and could take the place of one or more auto parking spots. One such area identified during this study is the corner of Spring and Center Streets to serve the Civic Center.
- Street corner locations are optimal for in-street bike racks, similar to moped and motorcycle spaces.

CONCEPT PLAN



The Study Team developed the following Concept Plan based on committee process, public input, previous studies and current best practices in urban street design. This plan incorporates the goals and objectives of the Committee, and suggests areas for further study. A project as large and complex as the revitalization of the Spring Street and Free Street will not occur all at once, and will not follow any one plan exactly; but rather will emerge over many years through the planned and unplanned growth and change that is the natural process of the City. This plan represents one possible outcome, but more importantly, should serve as a framework for the next set of planned improvements resulting from the renovation of the Civic Center, and the planned paving of Spring Street in 2015.

To the extent possible the study team has endeavored to engage as many stakeholders as possible, both public and private. The successful redevelopment of the Spring Street area will require continued diligence collaboration, and communication between the City, property and business owners, and residents.

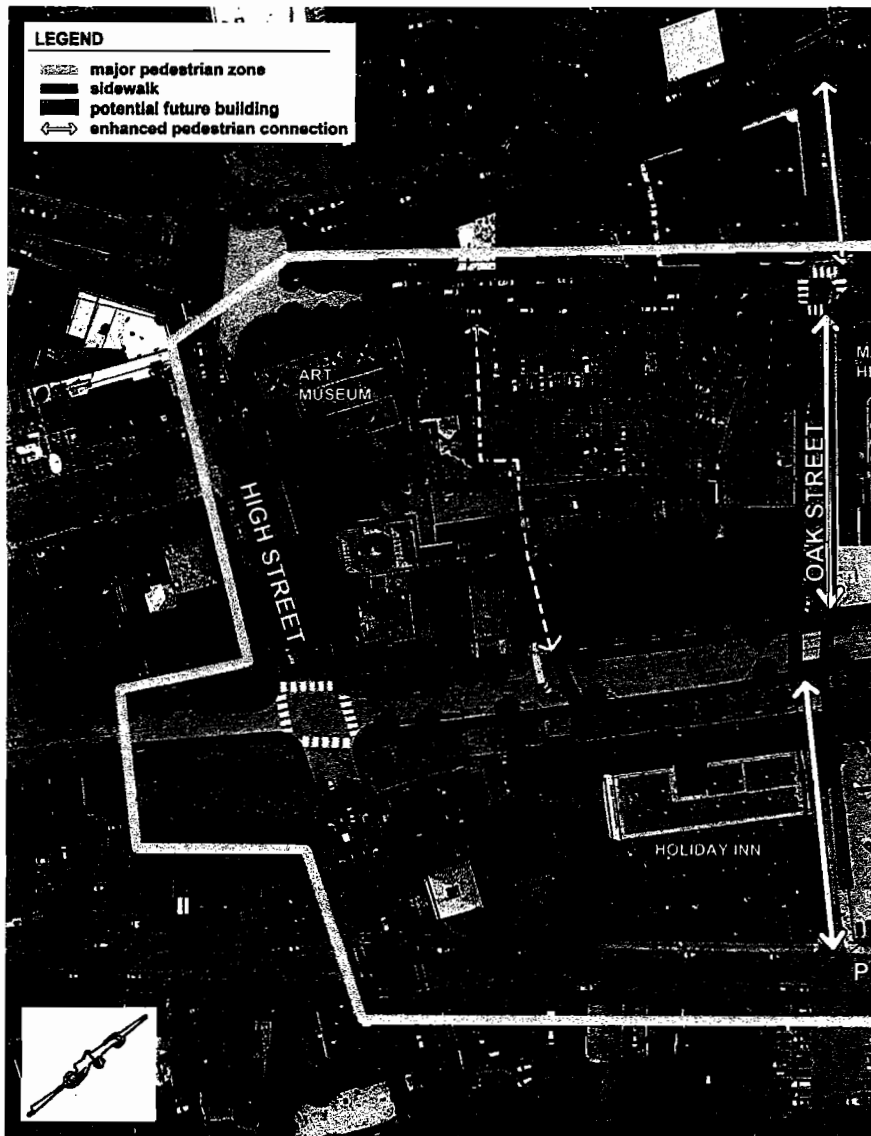
In general this plan attempts to:

- Reduce the overall footprint of the roadway, while providing optimal mobility for all modes.
- Envision a corridor that better reflects and builds the character of the neighborhood and the surrounding City.
- Improve permeability for various users by suggesting more perpendicular links, corridors, and pedestrian needs.
- Adjust the course of the roadway to allow for expanded open space and development opportunities.
- Identify "major pedestrian zones" that may be worthy of enhanced street crossings and streetscape amenities.
- Provide areas for street trees and other landscaping to improve the pedestrian experience, and enhance the urban ecology.

Specific methods to achieve the stated goals include:

- Reduce auto speeds through road design.
- Remove center "Jersey" barrier and other elements that suggest a limited access roadway.
- Depict potential infill development locations where buildings would enhance the streetscape and present economic development opportunities.
- Reduce the area occupied by surface parking lots.
- Undertake a traffic movement study to determine the changes in direction and flow based on the new plan.

CONCEPT PLAN HIGH STREET TO OAK STREET ARTS DISTRICT AREA



RECOMMENDATIONS

Spring Street

- Align the roadway to the north, holding existing curbline, to create space in front of Greater Portland Landmarks and the Holiday Inn for landscape or other improvements.
- Improve the pedestrian connection along Oak Street from Spring to Pleasant Street and consider vehicular connection (one and two-way).
- Consider a new crosswalk across from the entrance to Holiday Inn with connection to Art Museum and Free Street.
- Create an opportunity for a park and/or residential buildings on the west corner of High and Spring Streets.

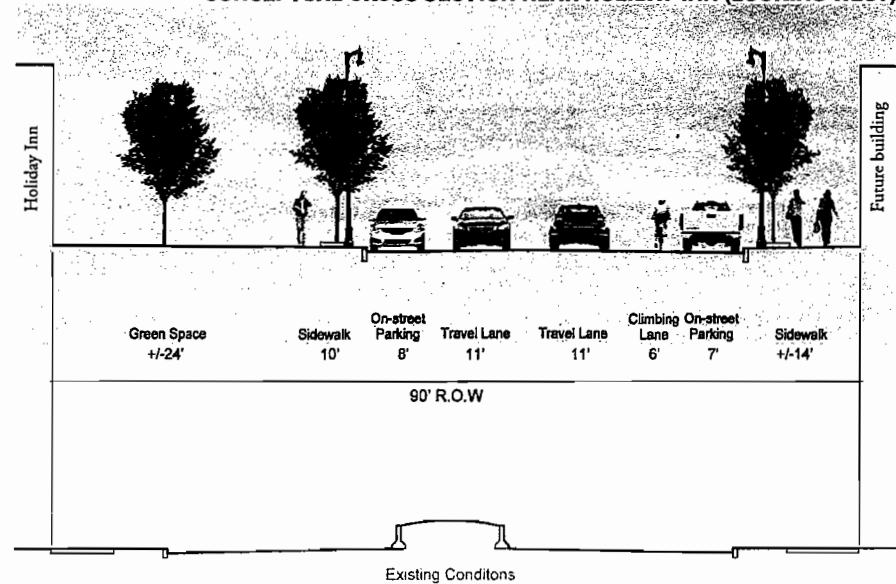
Reasoning to keep roadway to the north side of right-of-way:

- Lines up better with Spring Street west of High Street.
- Allows expansion of City owned lot at the corner of Spring/High.
- Easier grade-wise to reconnect Oak Street for vehicles and pedestrians.

Free Street

- Consider the design of a woonerf in front of the Art Museum and across Congress Street.
- Replace street lighting, as recommended in this report.
- Install four new curb extensions and street trees at Oak Street intersection.
- The majority of the sidewalks are in good shape in this section so no need to replace.

CONCEPTUAL CROSS SECTION NEAR HOLIDAY INN (LOOKING WEST)



CONCEPT PLAN PEDESTRIAN AND VEHICULAR CONNECTION FROM SPRING STREET TO PLEASANT STREET

There are places that are models of pedestrian scale and solid civic design (e.g., Portland Museum of Art campus, the eastern end of Pleasant Street), and others that are unwelcoming and auto-oriented (e.g., the Spring Street parking garage and the Holiday Inn parking garage). There are also tremendous development/redevelopment opportunities that need to be recognized (e.g., the former YWCA property on Spring Street owned by PMA, the extensive parking lots east of Center Street between Spring and Fore Streets). To be effective, the streetscape treatment should reflect and reinforce the many positive elements that abound in the study area, while helping to direct a vision for abutting properties that are vacant, underutilized, or are being redeveloped. Just as one size in the wardrobe will not fit all actors, the streetscape should have many options/styles/sizes to properly outfit this diverse cast of urban characters.

The Spring Street Arterial disrupted the historic street grid and limited pedestrian mobility between Pleasant Street and Free Street. There are several opportunities to make or improve connections between the two streets, though grade differences will pose challenges.

There is an existing pedestrian connection along Oak Street between the Holiday Inn and associated parking garage, however this connection is unattractive and not ADA compliant. A streetscape plan should be developed to make this connection a pleasant and pedestrian friendly environment. It appears that the connection could also function for vehicles if the Spring Street roadway was shifted to the north, though further engineering would be needed to confirm this. As part of the streetscape plan, dumpsters and containers should be moved from the street right-of-way.

Although the South Street right-of-way appears to connect to Spring Street, and residents report that there has been a wooden staircase in recent memory, there is currently no access between the two streets, with South Street ending at a vertical wall. Residents have expressed concern that a connection between the two streets would invite large numbers of people attending Civic Center events onto a quiet residential street. The consultant team feels strongly that this connection should be established, but that it should be designed as a simple set of stairs, perhaps unmarked, and intended primarily for local residents. The other connections between the two streets should be more fully developed, and signed as pedestrian routes in order to direct the vast majority of Civic Center visitors towards these more primary routes.

There is an opportunity to create a more substantial connection between Spring Street and Pleasant Street through the Pleasant Street Park. While Oak and South Streets are fairly narrow, and abut private businesses and residences, the Pleasant Street Park is a large City-owned property with an existing expectation for public access and activity. Located in the middle of the three obvious connections between Pleasant and Spring Streets, Pleasant Street Park would be the logical place for a more elaborate design for a stairway and ramp system that would satisfy ADA requirements, as well as creating an opportunity for place making and landscape design. Refer to next three pages for more information and location of Pleasant Street Park connection.



SketchUp model of Oak Street pedestrian improvements: view from Pleasant Street.



The study area has several view corridors with picturesque views. This one is at the intersection of Oak and Free Streets, looking southeast toward Meeting House Hill in South Portland.



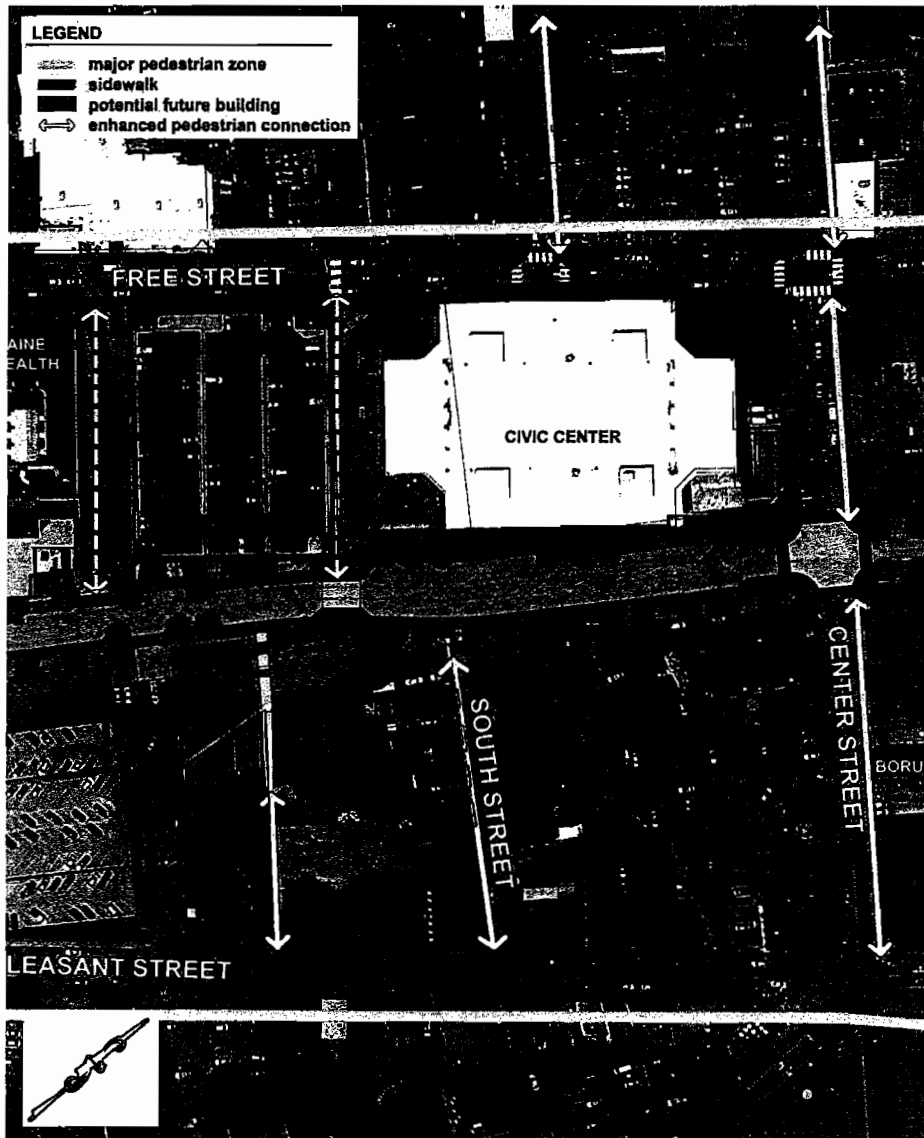
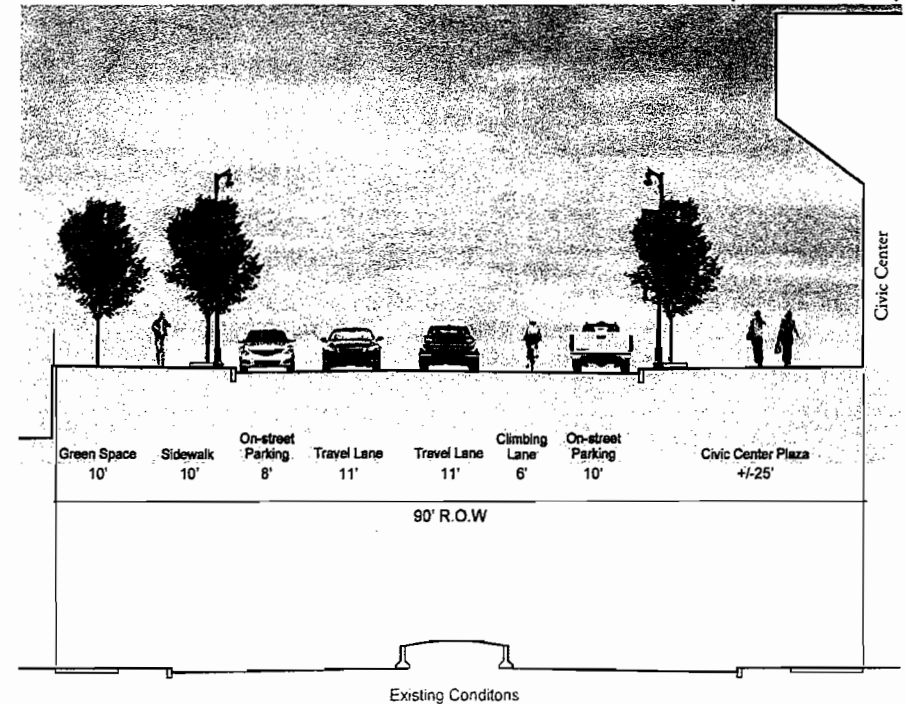
One of the few harbor views from the study area; taken from the intersection of Free and Center Streets.

CONCEPT PLAN OAK STREET TO CENTER STREET CIVIC CENTER DISTRICT AREA

RECOMMENDATIONS

- Align the roadway north as it approached Oak Street, to allow for optimal building footprints on the south side of the roadway.
- From Center Street to South Street align the roadway to the south, to create an expanded pedestrian zone at the Civic Center.
- Provide a stairway and ADA ramp connection to Pleasant Street through the Pleasant Street Park.
- Provide a South Street stairway connection to Pleasant Street.
- Allow flexibility in the public space in front of the Civic Center.
- Create an enhanced pedestrian zone at the junction of Center and Spring Streets.
- Allow for a right turn lane into parking garage during events, on-street parking during non-events.
- Allow for a bus and vehicular drop-off / pick-up aisle at Civic Center southwest entrance.
- Consider the use of food trucks / merchandise vendors along the southern sidewalk of Spring Street within the green space strip. Work with Creative Portland for kiosk design and potential list of crafts people and artisans.

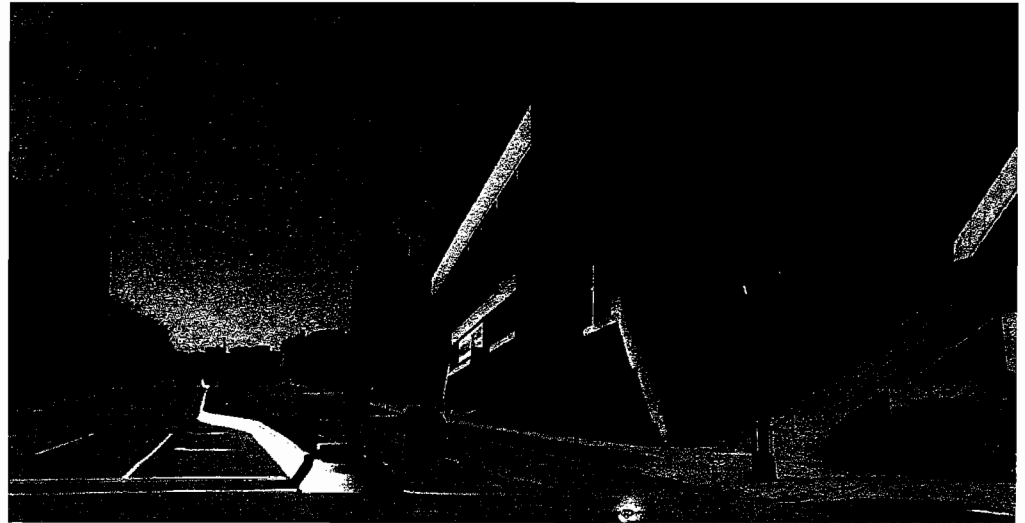
CONCEPTUAL CROSS SECTION NEAR CIVIC CENTER (LOOKING WEST)



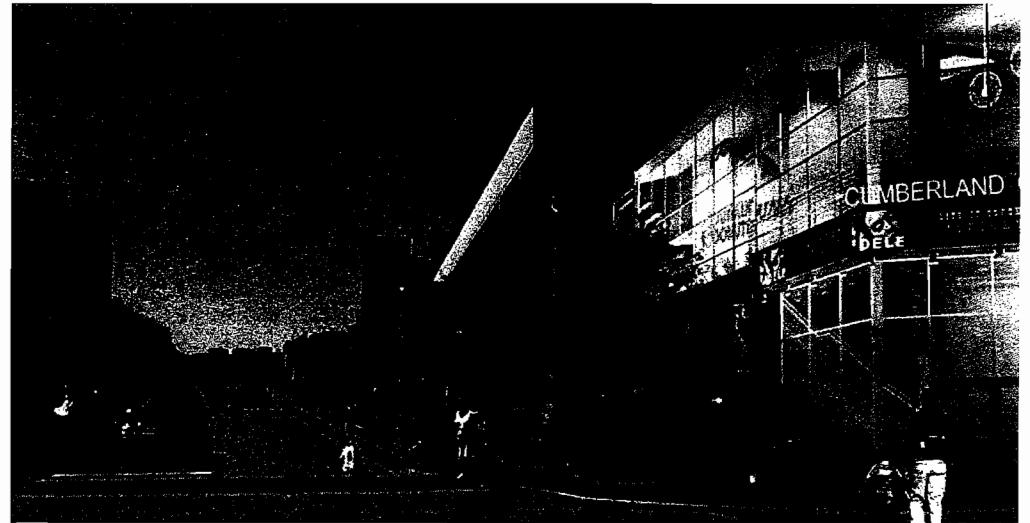
**CONCEPT PLAN
SPRING STREET
ADDITIONAL DESIGN THOUGHTS & RECOMMENDATIONS**

Currently a mid-block pedestrian crosswalk exists on Spring Street, just west of the public parking garage. The conflict with the current mid-block crosswalk location is that when an event is over at the Civic Center, many people walk west up the sidewalk and across the exit ramp of the garage, holding up the hundreds of cars trying to leave the garage following events. If the crosswalk were relocated to the Civic Center's main entrance/exit it would not only help the exiting vehicles from the garage but also disperse people to the other side of Spring Street more quickly, freeing up the Civic Center sidewalk congestion.

Another possibility for a pedestrian connection is the space between the Civic Center and adjacent parking garage. This space has potential for a pocket park as well. The grade difference between Free Street and Spring Street, existing utilities and lobby space in this area and the need for security at the Civic Center will all pose challenges. Close coordination with the Civic Center team would be required.

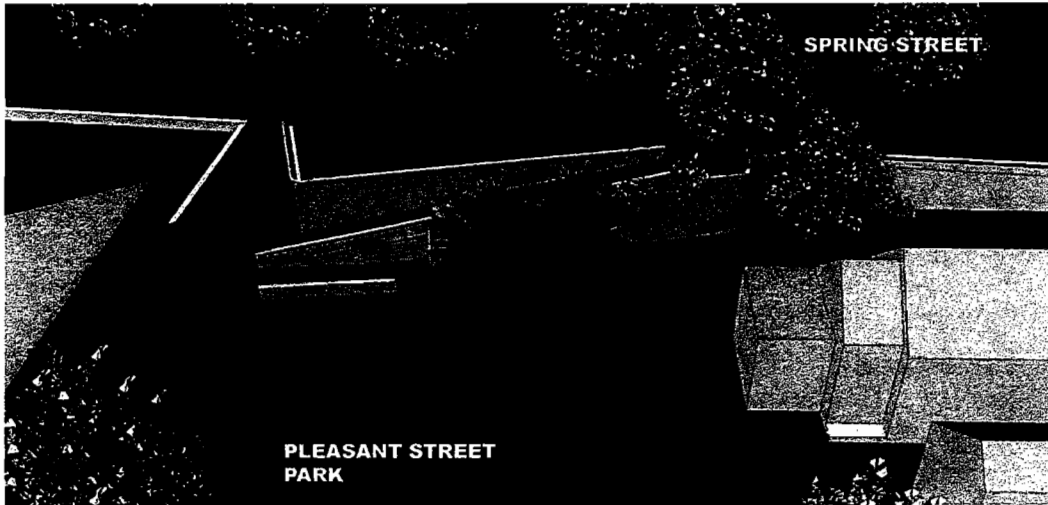


Existing conditions photo (looking west) from the Spring and Center Street intersection.



Photosimulation (looking west) from the Spring and Center Street intersection.

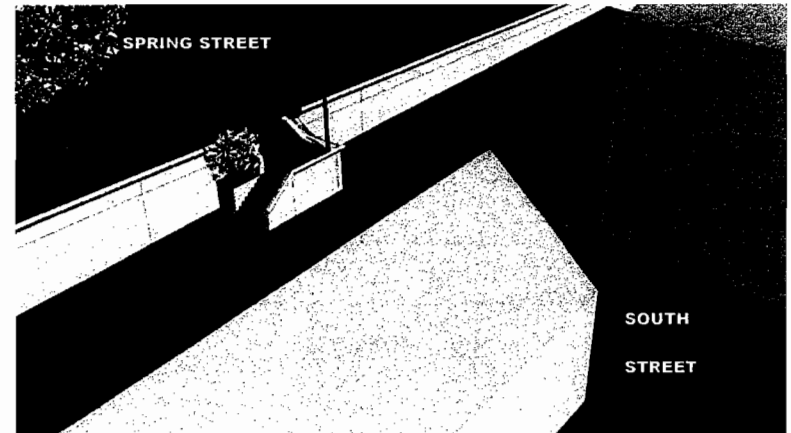
CONCEPT PLAN CONNECTION TO SOUTH STREET, PLEASANT STREET, AND PLEASANT STREET PARK



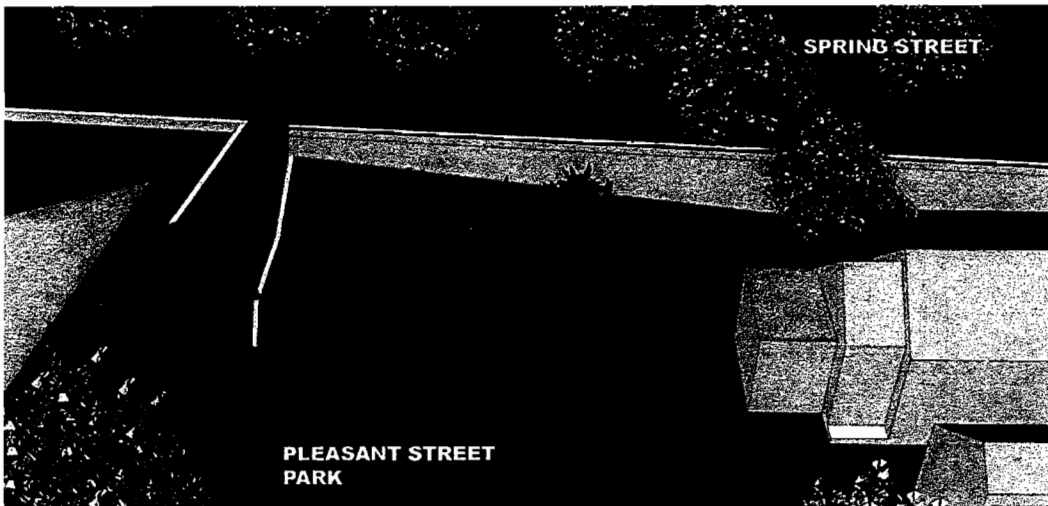
Spring Street to Pleasant Street Park connection with ADA ramps

The existing 6' high fence / wall combination from Oak Street, near the Holiday Inn, to the Center Street intersection essentially restricts north-south pedestrian movement for over 820'. Furthermore, there is an existing concrete retaining wall that is approximately 6' high on the South Street residential neighborhood side of Spring Street.

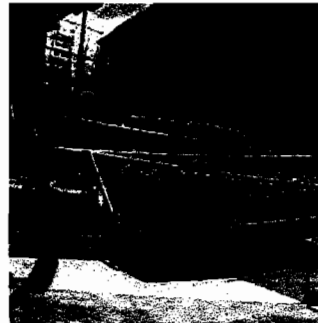
There is a very strong demand for one or two pedestrian north-south connections in this area. The Pleasant Street Park and the terminus of South Street seem to be the desire lines. The connection to South Street should also consider South Street sidewalk improvements / reconstruction.



Spring Street to South Street staircase connection



Spring Street to Pleasant Street Park connection with staircase alternative



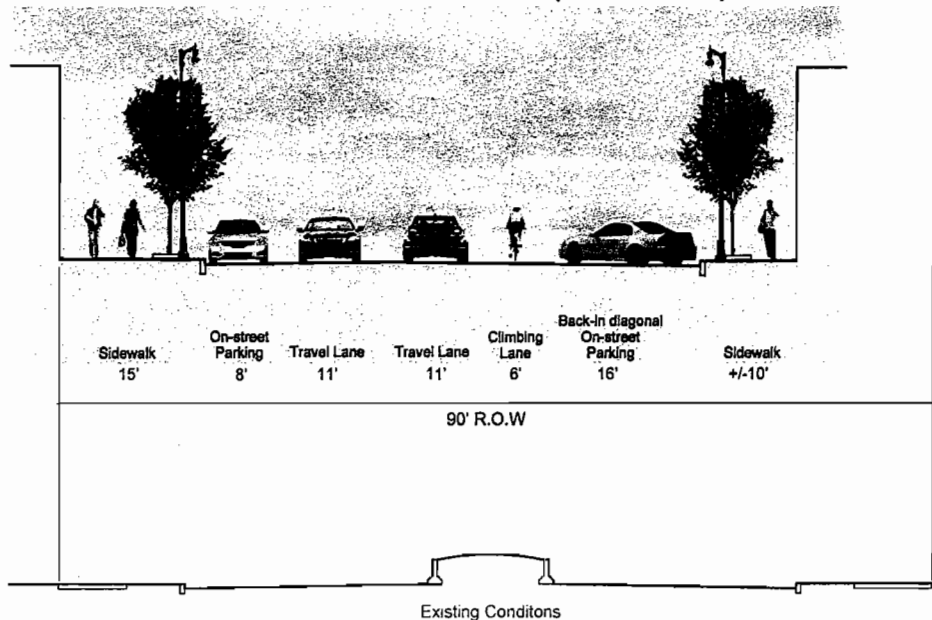
Examples of staircase and ramp connections

CONCEPT PLAN CENTER STREET TO TEMPLE / UNION STREET DOWNTOWN AREA

RECOMMENDATIONS

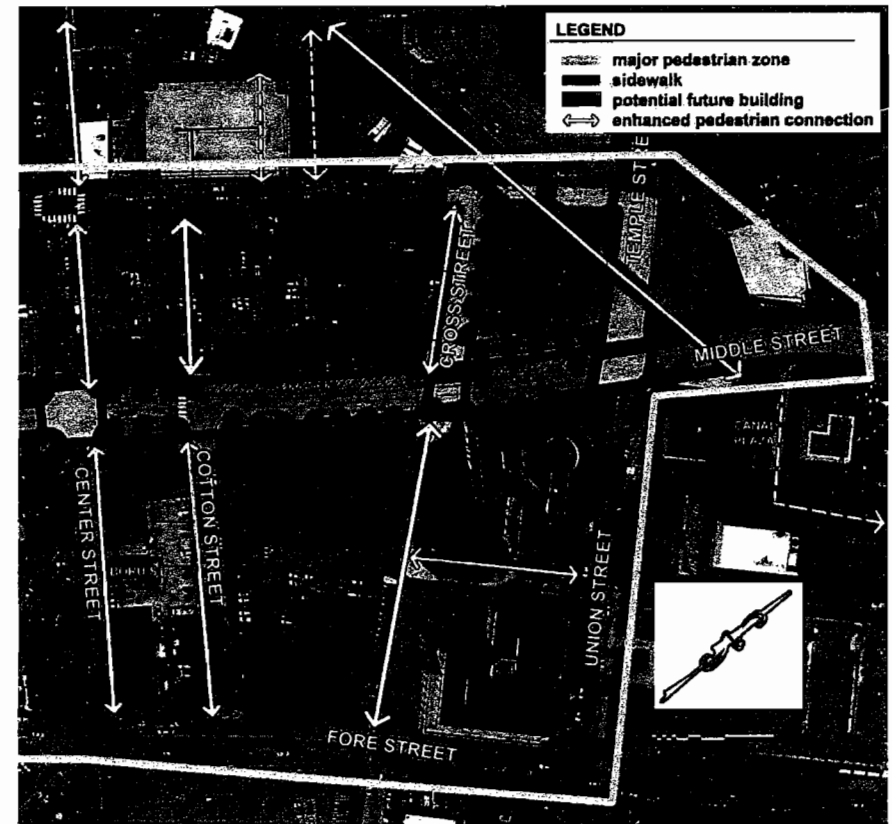
- Enhance connections on all perpendicular streets and pathways.
- Align the street to enable expanded building lot footprints, in order to spur re-development of surface parking lots.
- Create "back in diagonal" parking to increase on-street parking, and improve safety for bicyclists.
- Provide pedestrian permeability through current surface parking lots.
- Research ownership of Cotton Street and parking lot parcels for vehicular and or pedestrian connections.
- Enhance the streetscape and encourage more use of Cross Street.
- Create a "pocket park" opportunity between Temple and Cross Streets along the west side of Free Street.
- Create a pedestrian crossing at the "desire line" along the alignment of the old Middle Street.

CONCEPTUAL CROSS SECTION NEAR CROSS STREET (LOOKING WEST)



Back in angled parking is when drivers pull slightly ahead of the spot and then back in. This concept has seen increased use in recent years as it can provide the following benefits.

- Driver visibility is significantly improved because vehicles pull out into traffic forwards.
- When backing in, drivers have much better visibility of approaching vehicles.
- Eliminates the risk of opening a door into the path of a bicyclist.
- Doors open to block access to the travel lane and guide pedestrian onto the sidewalk.
- Cargo, usually in the trunks or truck beds, can be unloaded onto the sidewalk as opposed to the street.



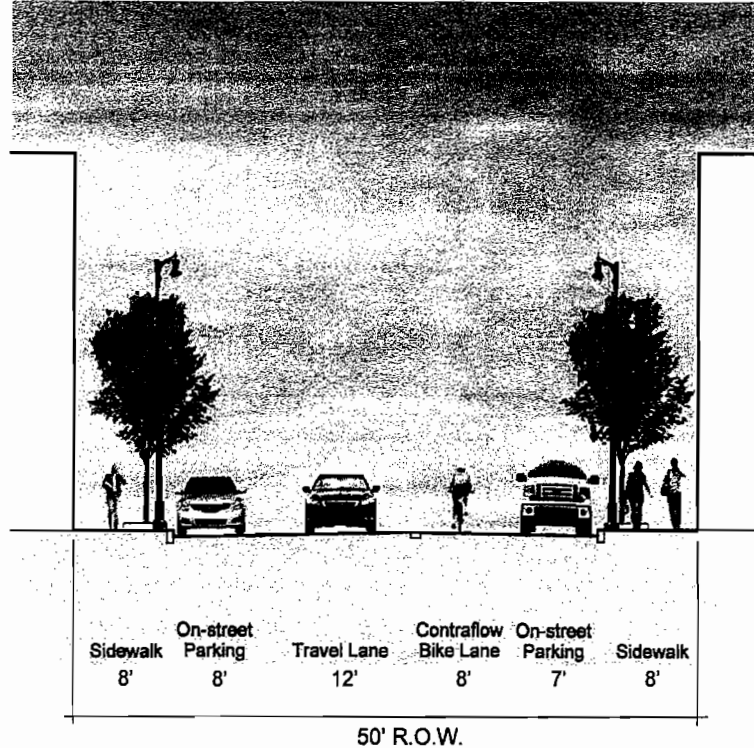
The city of Tucson Arizona "tracked data for bicycle/car crashes before and after installing back-in angle parking, and found an average of three to four crashes per month with front-in angle parking compared to zero reported bicycle/car crashes for the first four years following implementation of back-in angle parking." Quote from Bicycle and Pedestrian Information Center: <http://www.walkinginfo.org/faqs/answer.cfm?id=3974>

While back-in parking can provide significant benefits the following factors should be considered:

- Public education and appropriate signage are critical. We recommend studying successful back in parking installations to determine the best strategy.
- Careful site planning is required to ensure that vehicles do not encroach into pedestrian space.
- Engines should not idle as exhaust fumes are now directed at the sidewalk which is particularly undesirable for outdoor seating areas.

CONCEPT PLAN FREE STREET DOWNTOWN AREA

CONTRA - FLOW BIKE LANE (LOOKING WEST)



At the eastern end of Free Street, where it meets Cross and then Temple Street, there is a considerable opportunity for connectivity and place making. Probably the most significant single barrier that Spring Street creates is the connection between the Old Port and Monument Square via the old Middle Street alignment. Hundreds, if not thousands of people every day traverse this area, and the vast majority cross Temple Street along the straightest and most logical path, the old alignment of Middle Street. From Monument Square to Temple Street this alignment is currently a fairly successful pedestrianized mall space. However, this space is abruptly truncated at Temple Street. The logical path, and the one that most people take, is to "jaywalk" across Temple Street, cross through Lobsterman Park (specifically through a planted berm, and several benches placed directly in the desired alignment), and then to "jaywalk" again across Middle Street (many people actually hop up onto and off of the jersey barrier island), while moving to and from the Old Port.

RECOMMENDATIONS

- Determine where sidewalk improvements are necessary and build into CIP funding.
- Install contra flow bike lane.
- Consider Congress Square / PMA plaza changes, possible woonerf.
- Show buildable lots on surface parking-consider dedicating land to development.
- Consider artwork / façade treatments to CCCC and Asylum along blank walls of their facades.
- Improve connection to Lobsterman Park.
- Install street trees.



NEXT STEPS...

The next steps for this project involve submission of the plan to the Transportation, Sustainability and Energy Committee and City Council for their review and comment. The City Council will be asked to adopt this study as an approved Master Plan.

The next phase of the project should include a detailed traffic modeling study which will include testing the conceptual plan through various traffic demands, including special events at the CCCC. The traffic model should also consider the possibility of High Street becoming converted to two-way traffic. We recommend that the City consider a series of short-term "pilot" projects in order to test some of the concepts within this report, e.g. the contra-flow bike lane on Free Street, temporary bump-outs / curb extensions and woonerfs.

Technical documents and preliminary engineering drawings required for the City and the Maine Department of Transportation would then be developed. These Design Development drawings would include required adjustments to the existing drainage system. Additionally more detailed cost estimates would be developed to determine potential construction phasing and prioritization of construction items.

PROJECT WEBSITE: www.PortlandMaine.Gov/SpringStreetFreeStreet.htm

1. List of Committee Members, City Staff, & Consultants
2. Background Material:
 - Meeting Summaries, Agendas, and Presentations
 - City Technical Manual
 - Previous Studies
 - Portland Downtown Traffic & Streetscape Study (1999)
 - Portland Wayfinding Report (2008)
 - Liberate Spring Street (2012) - Portland Society of Architects
3. Resource Material
 - Meeting 1 Summary <http://www.portlandmaine.gov/springstreet/sssmeeting1summary.pdf>
 - Meeting 1 Tom Farmer PowerPoint <http://www.portlandmaine.gov/springstreet/tomfarmerpowerpoint.pdf>
 - Meeting 2 Agenda <http://www.portlandmaine.gov/springstreet/sssmeeting2agenda.pdf>
 - Meeting 2 Summary <http://www.portlandmaine.gov/springstreet/committeemeeting2summary.pdf>
 - Background Information <http://www.portlandmaine.gov/springstreet/ssfsbackgroundinformationpresentationksg.pdf>
 - Background Information Talking Points <http://www.portlandmaine.gov/springstreet/backgroundinfoforslideslidingtalkingpoints.pdf>
 - PSA Liberate Spring Street Presentation <http://www.portlandmaine.gov/springstreet/psaspringstreet20121011stakeholderspresssmall.pdf>
 - Downtown Vision <http://www.portlandmaine.gov/springstreet/downtownvision.pdf>
 - Downtown Traffic Streetscape <http://www.portlandmaine.gov/springstreet/downtowntraffictreetscapesstudy1999.pdf>
 - Henry Cobb Lecture <http://www.portlandmaine.gov/springstreet/hcobbpmia20110616.pdf>
 - Henry Cobb Lecture PowerPoint <http://www.portlandmaine.gov/springstreet/cobbppt2011.pdf>
 - Liberate Spring Street <http://www.portlandmaine.gov/springstreet/liberatespringstreet.pdf>
 - Patterns for Progress <http://www.portlandmaine.gov/springstreet/patternsforprogress.pdf>
 - Spring Street Consultant Proposal <http://www.portlandmaine.gov/springstreet/tjdaspringstreetproposal.pdf>
 - Technical Manual <http://www.portlandmaine.gov/planning/technicalmanual2010.pdf>
 - Wayfinding Report <http://www.portlandmaine.gov/planning/wayfindingreport.pdf>



Spring Street - Free Street Streetscape Plan Opinion of Probable Cost

Date: December 20, 2012

Project No: 121-06093

By: J. Mahoney

Checked By: Steve Bradstreet

Total Cost for Improvements by Area

Area	Description	Cost
1	Upper Free Street: Congress St to Civic Center	\$577,330.57
2	Middle Free Street: Civic Center to Center Street	\$467,719.41
3	Lower Free Street: Center Street to Cross Street	\$342,811.74
4	Upper Spring Street: West of High St to Civic Center	\$1,394,942.25
5	Middle Spring Street: Civic Center to Center Street	\$931,429.20
6	Lower Spring Street: Center Street to Middle Street	\$1,482,152.10
7	Cross-Temple-Free Street Woonerf	\$1,052,007.00
8	Reconnect Cotton Street	\$214,949.80
9	South Street Stairs	\$15,000.00 *
10	Pleasant Street Stairs	\$60,000.00 *
11	Reconnect Oak Street	\$155,807.60
12	Oak Street: Spring Street to Free Street	\$140,290.55
13	Center Street: Spring Street to Free Street	\$208,138.40
Grand Total:		\$7,042,578.61 **

* Allowance only, recommend providing itemized cost estimates as concepts are refined.

** Area and unit cost totals differ slightly (less than 0.1%) due to adjustments in unit costs

Potential Revenue from Sale of Right of Way

Area	Description	Quantity	Unit	Unit Price	Cost
4	Upper Spring Street	0.46	Acre	\$1,500,000.00	(\$690,000.00)
6	Lower Spring Street	0.32	Acre	\$1,500,000.00	(\$480,000.00)
Total:					(\$1,170,000.00)



Spring Street - Free Street Streetscape Plan Opinion of Probable Cost

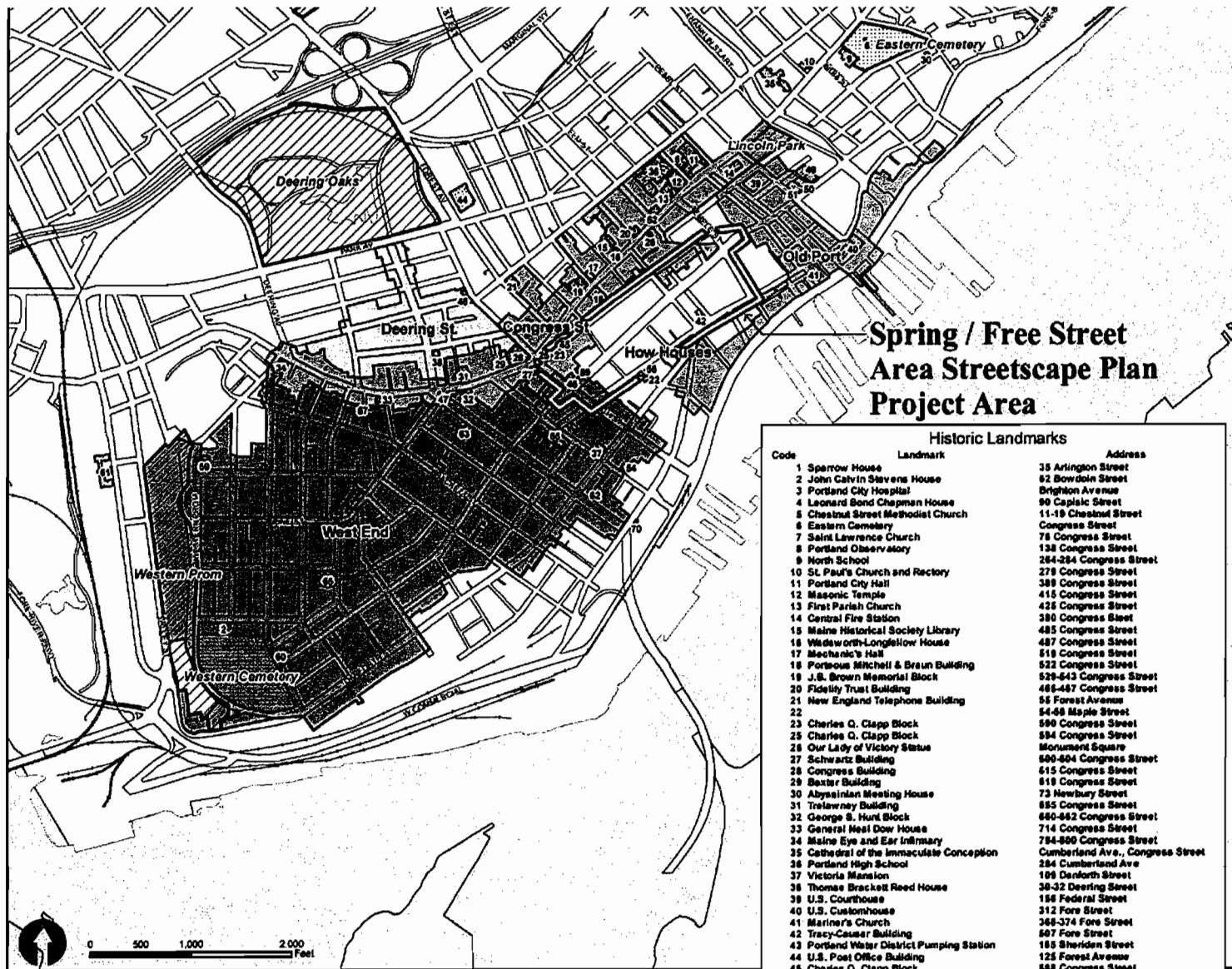
Date: December 20, 2012
Project No: 121-06093
By: J. Mahoney
Checked By: Steve Bradstreet

Total Costs by Item

Item	Description	Cost
1	New Vertical Granite Curb	\$135,800.00
2	Reset Vertical Granite Curb	\$108,850.00
3	ADA Ramp	\$53,000.00
4	Loam Seed and Mulch	\$12,600.00
5	Brick Sidewalk	\$1,523,600.00
6	Roadway Hardscape for Pedestrian Areas	\$844,200.00
7	Trees	\$252,000.00
8	Relocate Catch Basin	\$145,000.00
9	Utility Adjustments	\$126,000.00
10	Excavation	\$22,650.00
11	Pavement Markings	\$13,630.00
12	Wayfinding and Signage	\$18,500.00
13	Benches	\$58,500.00
14	Trash Receptacles	\$60,000.00
15	Neighborhood Art Project	\$80,000.00
16	Rain Gardens/Stormwater Treatment	\$72,500.00
17	Full Depth Road Reconstruction	\$42,000.00
18	Common Borrow	\$3,900.00
19	Pavement	\$77,000.00
20	Pavement Removal and Fine Grading	\$87,760.00
21	Lighting	\$1,200,000.00
22	Erosion Control	\$51,000.00
23	Traffic Control	\$98,000.00
24	Mobilization 5%	\$251,474.50
Allowances for Pleasant and South Street Stairs		\$75,000.00
Project Total:		\$5,412,964.50
Design:		\$541,296.45
20% Contingency:		\$1,082,592.90
Grand Total:		\$7,036,853.85

Preliminary budget cost to be refined/confirmed

** Area and unit cost totals differ slightly (less than 0.1%) due to adjustments in unit costs



Spring / Free Street Area Streetscape Plan Project Area

Historic Landmarks

Code	Landmark	Address
1	Sparrow House	35 Arlington Street
2	John Calvin Stevens House	82 Bowdoin Street
3	Portland City Hospital	Brighton Avenue
4	Leonard Bond Chapman House	90 Caplisp Street
5	Chestnut Street Methodist Church	11-19 Chestnut Street
6	Eastern Cemetery	Congress Street
7	Saint Lawrence Church	78 Congress Street
8	Portland Observatory	138 Congress Street
9	North School	284-284 Congress Street
10	St. Paul's Church and Rectory	278 Congress Street
11	Portland City Hall	385 Congress Street
12	Masonic Temple	415 Congress Street
13	First Parish Church	428 Congress Street
14	Central Fire Station	380 Congress Street
15	Maine Historical Society Library	485 Congress Street
16	Widsworth-Longfellow House	487 Congress Street
17	Mechanic's Hall	518 Congress Street
18	Porteous Mitchell & Braun Building	522 Congress Street
19	J.B. Brown Memorial Block	529-643 Congress Street
20	Fidelity Trust Building	485-487 Congress Street
21	New England Telephone Building	55 Forest Avenue
22		54-58 Maple Street
23	Charles G. Clapp Block	590 Congress Street
24	Charles G. Clapp Block	594 Congress Street
25	Our Lady of Victory Statue	Monument Square
26	Schwartz Building	600-604 Congress Street
27	Congress Building	615 Congress Street
28	Baxter Building	618 Congress Street
29	Abyssinian Meeting House	73 Newbury Street
30	Tollway Building	855 Congress Street
31	George S. Hunt Block	680-682 Congress Street
32	General Neal Dow House	714 Congress Street
33	Maine Eye and Ear Infirmary	784-800 Congress Street
34	Cathedral of the Immaculate Conception	Cumberland Ave., Congress Street
35	Portland High School	284 Cumberland Ave
36	Victoria Mansion	109 Danforth Street
37	Thomas Brackett Reed House	30-32 Deering Street
38	U.S. Courthouse	158 Federal Street
39	U.S. Customhouse	312 Fore Street
40	Mariner's Church	368-374 Fore Street
41	Tracy-Cassier Building	607 Fore Street
42	Portland Water District Pumping Station	185 Sheridan Street
43	U.S. Post Office Building	125 Forest Avenue
44	Charles G. Clapp Block	888 Congress Street
45	McLellan-Sweet Mansion	111 High Street
46	Longfellow Monument	Longfellow Square
47	Griffin House	280 High Street
48	Thompson Block	117-125 Middle Street
49	Rackieff Building	127-133 Middle Street
50	Woodman Building	133-141 Middle Street
51	Clapp Memorial Block	Monument Square
52	John B. Russell House	238 Ocean Avenue
53	William Minor House	45 Park Street
54	Park Street Row	88-114 Park Street
55	Nutter House	68 Pleasant Street
56	Fifth Maine Regiment Community Center	Seashore Avenue, Peaks Island
57	Green Memorial A.M.E. Zion Church	46 Sheridan Street
58	Charles G. Clapp House	97 Spring Street
59	The Gothic House	387 Spring Street
60	Maine Central Railroad General Office Building	223-224 St. John Street
61	Joseph Holt Ingraham House	51 State Street
62	Portland Club	156 State Street
63	F.O.J. Smith Tomb	Stevens Ave., Evergreen Cemetery
64	Williston-West Church & Parish House	32 Thomas Street
65	Marine Hospital	331 Veranda Street
66	A.B. Butler House	4 Walker Street
67	Tate House	1270 Westbrook Street
68	Adam P. Leighton House	281 Western Promenade
69	Nathaniel Dyer House	168 York Street
70	Fort Gorges	Fort Gorges
71		

Historic Districts with Historic Landscapes, Cemeteries & Individual Landmarks

City of Portland Peninsula

Effective April 15, 2009

Historic Districts

Congress St	Old Port	Historic Landmarks
Deering St.	Stroudwater	Historic Landscapes
Fort McKinley	West End	Historic Cemeteries
How Houses	Westbrook	

Possible curb extensions along Free Street

Rehab brick sidewalk

New brick sidewalk

CHAMBERLAND COUNTY CIVIC CENTER

New brick sidewalk

Rehab/New brick sidewalk

Possible curb extensions along Spring Street

Rehab

**Ped.
Countdown**

Rehab
Refuge,
+2 DWP

**New Pedestrian
Crossing to
Supplement or
Replace
Crossing west
of Spring St.
Garage**

BAH
DRAFT 5/24/12

SPRING STREET-FREE STREET AREA STREETSCAPE PLAN SCOPE OF SERVICES

June 8, 2012

The City of Portland seeks proposals from qualified landscape architects and urban planners to assist the City of Portland in developing a streetscape improvement plan for the Spring Street-Free Street area as described below.

Scope of Consulting Services

In association with the work plan described below, which will be carried out by the Portland Planning Department, there will be a need for technical and design concepts, specifications, and cost estimates to be created.

The City will conduct a review of past plans, designs, and streetscape details in and around this area for consideration. To the extent that the process expands or modifies those existing plans, the consultant will be asked to prepare appropriate documentation, including layout plans and technical specifications for streetscape features proposed within the Study Area. Detailed engineering and construction documents are not required at this stage. Catalogue cuts, plans, drawings, and illustrative graphics are required. Cost estimates are required.

Design consultants will participate in key meetings with an advisory committee to assist them in evaluating design approaches and features. Following such meetings and during the course of the planning process, alternatives and recommendations will be developed for further consideration. At the conclusion of the plan, final materials related to the technical work will be produced by the consulting team. The consulting team will not be responsible for organizing, running, or recording the meetings, beyond the duties described in this section.

Attached is the scope of the ***Spring Street – Free Street Area Streetscape Plan***. The consulting team will provide technical and design assistance in assessing and preparing recommendations and final work products for the items described in the attached scope and objectives items : **3. Streetscape Plan; 4. Short-term Spring Street Intervention; and 5. Pedestrian Crossings.**

Work Plan –

The work for this project will be managed and facilitated by the Planning and Urban Development Department with the input of a stakeholder committee as outlined in the attached project description.

Aside from the from the Public Advisory Committee meetings and public meeting described in the attached project description, the consultant shall be expected to meet with staff periodically during the course of the project to review draft product, coordinate project elements and to review the progress of the project.

Project Time Frame—

The project must be completed by September 14, 2012. If Consultant is unable to complete the project within this time frame, please indicate a time frame that would work for your firm.

Consultant Selection Process

Interested consultants shall submit their proposal to the Portland Planning Office by Monday, June 18, 2012 at 1:00 pm. Proposals may be mailed or paper copies (two) delivered to the Planning Office. Proposals by email shall be sent to rwk@portlandmaine.gov. Paper copies of consultant proposals shall be delivered to the Portland Department of Planning and Urban Development, Attention: Richard Knowland, 4th Floor, 389 Congress Street, Portland, Maine 04101.

Questions concerning the scope of services should be addressed in writing via email to rwk@portlandmaine.gov.

Note the consultant fee for this project is a maximum \$7,500.

Proposals shall include the following information:

1. A description of specific work products the consultant shall provide for the \$7,500 fee.
2. A list of consultant team members and detailed person-hour assignments by task.
3. Proposal shall include details of the cost, by task, for total work hours and for work hours by personnel classification and miscellaneous expenses. Direct costs, overhead costs and profit must also be shown.

Selection Criteria

1. Quality and depth of the described consultant work products in accomplishing the objectives of the study. (80 points)
2. Relevant experience of assigned consultant team members. (20 points)

SPRING STREET-FREE STREET AREA STREETSCAPE PLAN

Background –

With the pending Civic Center renovation, various community constituents (e.g. Portland Downtown District (PDD), Greater Portland Landmarks, the Portland Society of Architects (PSA) and others) have expressed interest in commencing an improvement program for the Spring Street area; specifically the area including and in the vicinity of the Civic Center, Spring Street and Free Street. The upcoming Civic Center redevelopment affords an ideal opportunity to enhance the street edge relationship of the Civic Center to its neighbors and to plan for roadway and streetscape enhancements within the surrounding area. In the long run, the design of Spring Street itself, from High Street to Temple/Union Streets, is a target for reconsideration.

Project Goal –

Leveraging the upcoming Civic Center modernization plan, develop and implement both short and long term planning for the Spring Street area in order to enhance economic development, assure that the Civic Center redevelopment interfaces successfully with the neighboring area on all sides, improve bicycle and pedestrian access, improve connectivity between districts of the downtown and with adjacent neighborhoods and encourage the development or redevelopment of underutilized properties. The project will also address the continued need to move large volumes of vehicles, including tractor trailers, to and from Civic Center events safely and efficiently.

The end product of this project should represent a Context Sensitive Solution.

Study Area –

The study area includes an area bounded by the west side of High Street, the north side of Free Street, the east side of Union Street and the north side of Pleasant Street (see attached map). The area includes a mix of medium to high density residential, commercial retail, office and restaurants, the Cumberland County Civic Center, the Portland Museum of Art, one and two way local streets, the Spring Street Arterial and structured and surface parking.

Zoning is comprised primarily of B3 business with portions of the neighborhood also designated as historic districts. A majority of the study area is designated as either a Pedestrian Activities District (PAD) or PAD Encouragement Area. There is a small area of R6 residential zone in the southwest corner of the study area.

Short Term Scope and Objectives –

1. **Public Process:** Identify desired outcomes through a targeted public process including multiple stakeholders.
2. **Pedestrian Activities District:** Examine and re-adjust where necessary the boundaries of the PAD and/or PAD Encouragement Area to support desired outcomes.
3. **Streetscape Plan:**
 - (a) Assess the existing streetscape in the project area, including lighting, sidewalks, street trees, street furniture and other pedestrian amenities. The assessment should consider such factors as pedestrian safety, comfort, function, aesthetics and compatibility with present city standards and streetscape related plans for the study area and adjacencies.
 - (b) Using the above assessment, review existing city streetscape standards and plans for the study area and provide recommendations on these design features which will form the basis of a working streetscape plan for the study area. The recommendation should address any gaps in existing streetscape standards as well as any suggested changes in the menu of the streetscape improvements that are appropriate for the study area.
4. **Short-term Spring Street Intervention:** Evaluate short term alternatives for removal or reconstruction of the median along Spring Street, pedestrian crossings, lighting or other improvements as appropriate to support desired outcomes. Develop specifications and cost estimates, as appropriate.
5. **Pedestrian Crossings:** Evaluate the location and condition of existing pedestrian crossings. Recommendations should update them to current standards as necessary, and explore potential new crossings in coordination with the Civic Center redevelopment to ensure safe and convenient neighborhood access to all Civic Center entrances, other important area destinations and, ultimately, to successfully reconnect the downhill Pleasant Street residential area with the downtown and Arts District.

Long-Range Improvements to Spring Street Arterial–

- Develop scope of services for planning and associated engineering and reconstruction of Spring Street Arterial to align with identified stakeholder goals to be established during a public process.

Work Plan –

The work for this project will be managed and facilitated by the Planning and Urban Development Department with the input of a stakeholder committee as outlined below.

Public Process –

The public process shall include a project Public Advisory Committee to participate in the overall study process, provide and disseminate information to their constituents, review and comment on draft documents, and address issues associated with the development of study recommendations. The role of the Public Advisory Committee will be advisory with the purpose of providing a range of insights and reaction to study direction and findings. The committee may include but is not limited to Portland Downtown District, Greater Portland Landmarks, Neighborhood Residents, the City of Portland, the Portland Children's Museum, the Civic Center

and Cumberland County, the Portland Bicycle and Pedestrian Advisory Committee, Portland Society of Architects, Property Owners, the Portland Museum of Art, the Holiday Inn, Portland Pirates, Maine Health, Creative Portland and others to serve in an advisory capacity on this project.

The public process will include 3 Public Advisory Committee meetings to be held at points in the study at which public comment and input are needed. In addition or concurrent with the above committee meetings, one (1) public meeting will be held at which there will be opportunities for public engagement on the report's findings and recommendations.

Key Resources—

Key background resource documents include:

City of Portland Technical Manual...Includes standards for sidewalks and street lights.

City of Portland Land Use Code...B-3 zone

Downtown Vision: A Celebration of Urban Living and A Plan For the City For The Future of Portland- Maine's Center For Commerce and Culture (1991)

Portland Downtown Traffic & Streetscape Study (1999)

Liberate Spring Street: A Portland Society of Architects Design Event (Sept 2011)

Portland Way Finding Study

Draft Bikeway Network Map (April 2012)



**Spring Street Neighborhood Planning
Project Boundary**

Map produced by the City of Portland Planning Commission, May 2012. All
rights reserved. This map is for informational purposes only.





Order 201- 12/13
Tab 33 4-22-13

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

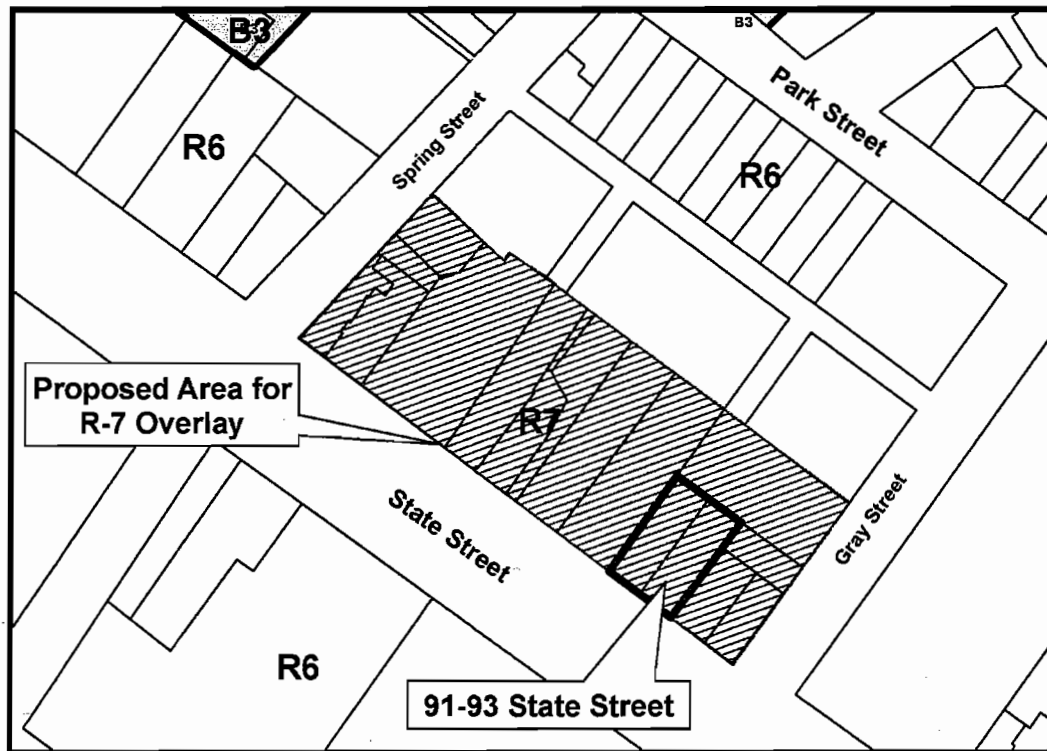
CITY OF PORTLAND
IN THE CITY COUNCIL

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

AMENDMENT TO ZONING MAP
RE: 91 STATE STREET REZONING FROM R-6 RESIDENTIAL ZONE
TO R-7 COMPACT URBAN RESIDENTIAL ZONE

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

That the Zoning Map of the City of Portland, dated December 2000, as amended and on file in the Department of Planning and Urban Development, and incorporated by reference into the Zoning Ordinance by §14-49, be and hereby is amended by adopting the following map change amendment depicted below.



Proposed Zoning Map Amendment from R-6 to R-7

**City of Portland, Maine
City Council Agenda Request Form**

TO: Sonia Bean, Senior Administrative Assistant
FROM: Alexander Jaegerman, Planning Division Director
DATE: April 10, 2013
Re: Map Amendment R-6 to R-7 – 91 State Street

- 1) Council meeting at which action is requested:

1st reading: April 22, 2013
Final action: May 6, 2013
 - 2) Can action be taken at a later date: ____ YES ____ X NO
Applicant Kevin Butterfield has requested a first reading on April 22nd. A
Planning Board hearing is scheduled for April 23rd.
 - 3) This item is sponsored by: Carol Morrissette, Planning Board Chair
- cc:** Mark Rees, City Manager
Mayor Brennan
Danielle West-Chuhta, Corporation Counsel
Terry Tucker, Administrative Assistant

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

Kevin Butterfield applied for a Zoning Map Amendment for a property located at 91 State Street. The proposed change would be from R-6 Residential to R-7 Compact Urban Residential Overlay Zone. The property was formerly owned and occupied by Mercy and served as the McAuley Residence convalescent center with sanitarium with seven (7) group housing units and ground floor office space. The proposal seeks to convert the previous uses into 10 market-rate residential units. The proposed map amendment is requested in order to allow for a higher residential density for this site and a reuse of the existing structure.

II. REASON FOR SUBMISSION

The R-6 zoning would permit five (5) residential units within the existing building. The R-7 designation would allow up to 12 units, thus the applicant is seeking the map amendment to enable the conversion of the building into 10 market-rate residential units. The map amendment also would allow the units to be a minimum of 400 square feet rather

than R-6 threshold of 600 square feet. It is based on these limitations that the applicant seeks relief.

III. INTENDED RESULT

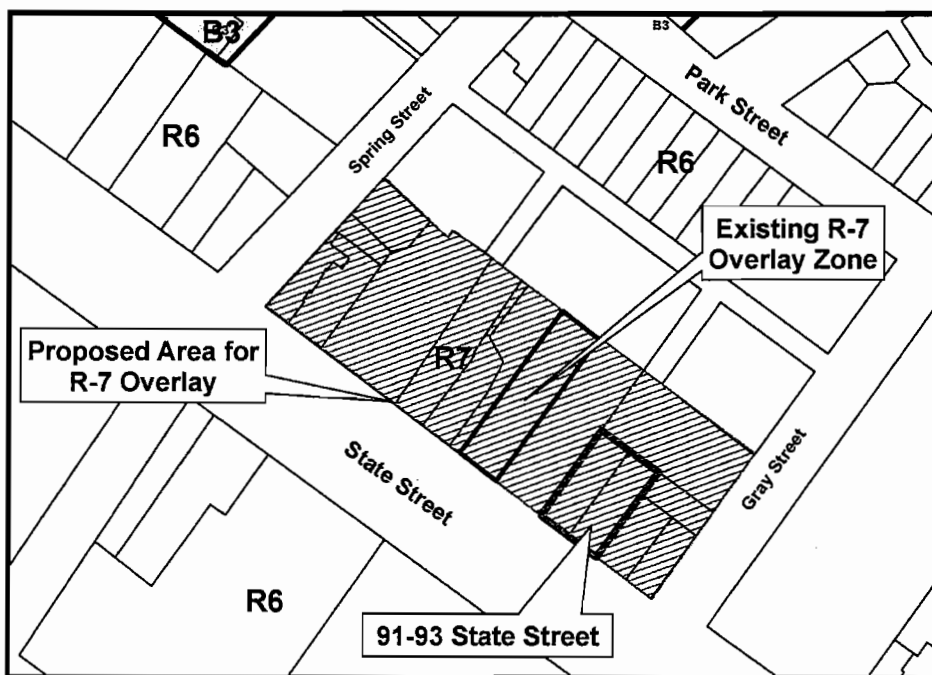
The zoning change would allow the reuse of an existing building to be converted to market-rate residential space, resulting in ten (10) residential units. The proposal is consistent with the goals and policies of the Comprehensive Plan. The proposed map amendment is in keeping with the intent of the R-7 Overlay zone. There is a precedent for an R-7 map amendment within the same block at 99 State Street. 99 State Street was an R-6 parcel which went through the map amendment process in 2003 in order to convert a carriage house into a condo unit.

IV. FINANCIAL IMPACT

There is no financial impact to the City.

V. STAFF ANALYSIS & RECOMMENDATION

A Workshop with the Planning Board was held on April 9th during which the Board made the decision to advertise the properties fronting on State Street between Spring and Gray Streets for a rezoning map amendment from R-6 to R-7. The Board and public comments were in favor of the map amendment for the 91 State Street property and felt the proposal met the intent of R-7 as well as the Comprehensive Plan. The major concern raised at the workshop was regarding parking. The property is exempt from providing on-site because it is within the Historic District, however, the applicant is seeking off-site parking strategies. The Planning Board recommendation will be forwarded to the City Council prior to the second reading, which will be held on May 6, 2013.



Proposed Zoning Map Amendment from R-6 to R-7

*Order 202-12/13
Tab 34 4-22-13*

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

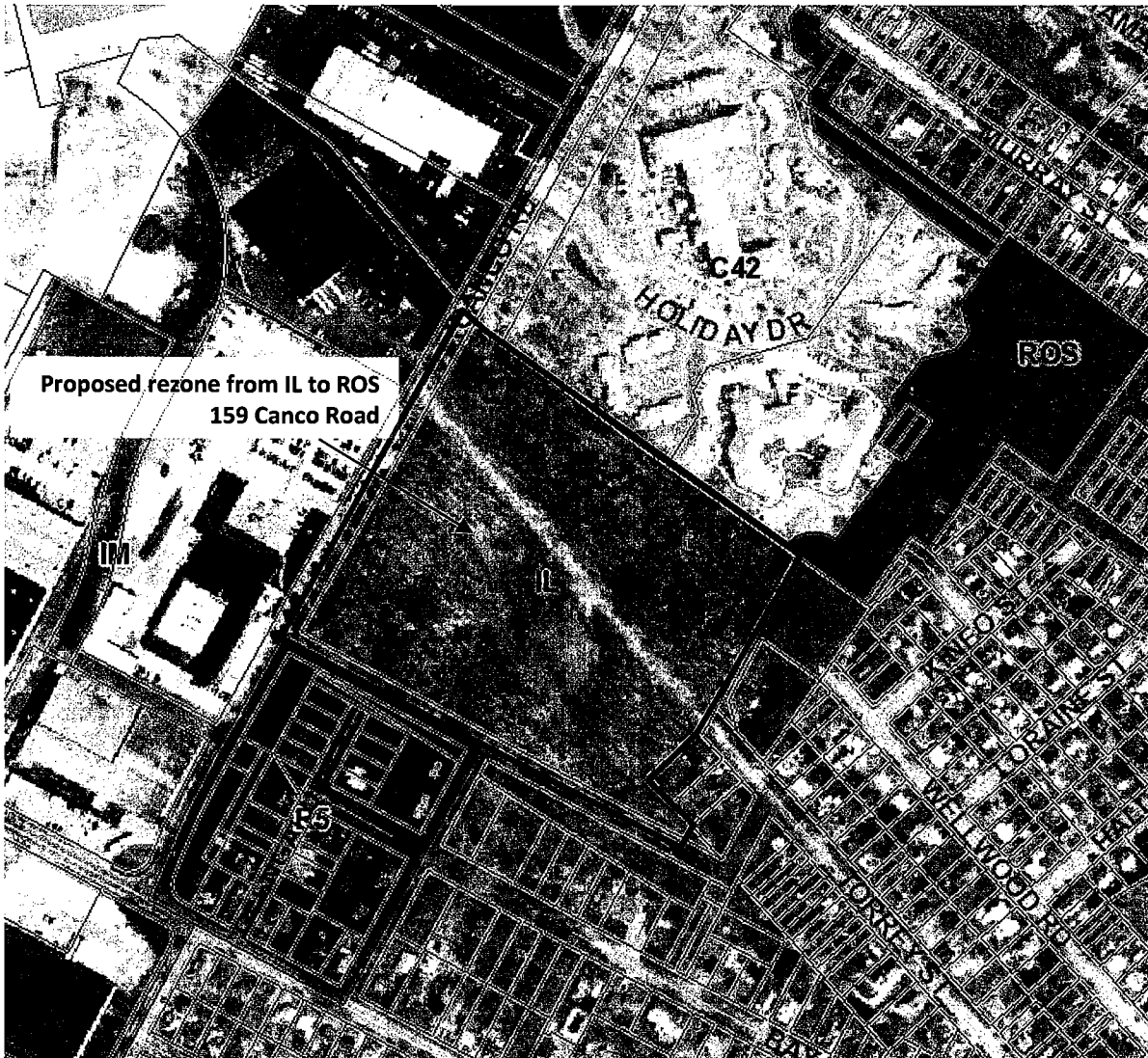
CITY OF PORTLAND
IN THE CITY COUNCIL

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

AMENDMENT TO ZONING MAP
RE: 159 CANCO ROAD FROM I-L LOW IMPACT INDUSTRIAL ZONE
TO ROS RECREATION OPEN SPACE ZONE

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

That the Zoning Map of the City of Portland, dated December 2000, as amended and on file in the Department of Planning and Urban Development, and incorporated by reference into the Zoning Ordinance by §14-49, be and hereby is amended by adopting the following map change amendment depicted below.



**City of Portland, Maine
City Council Agenda Request Form**

TO: Sonia Bean, Senior Administrative Assistant

FROM: Alexander Jaegerman, Planning Division Director

DATE: April 3, 2013

1) Council meeting at which action is requested:

1st reading: April 22, 2013

Final action: May 6, 2013

2) Can action be taken at a later date: X YES NO

If not, why not:

3) This item is sponsored by: Ms. Carol Morrisette, Chair, Portland Planning Board.

cc: Mayor Michael Brennan; Mark Rees, City Manager; Danielle West-Chuhta, Corporation Counsel; and Terry Bourgoin, Administrative Assistant

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

Though it is currently zoned IL, or Low-Impact Industrial, neighborhood residents have historically used the property at 159 Canco Road as a passive recreational open space. The site includes woodlands, wetlands, streams, a pond, and a number of hiking, biking, and cross-country skiing trails. As a result of a partnership with neighborhood residents, the Trust for Public Land, and Portland Trails, the city now owns the 12.9-acre property. The City Council has placed it under a conservation easement to Portland Trails, with the intent that it remain protected open space in perpetuity. Upon conveying the conservation easement, the Council referred the issue of rezoning the property to the Planning Board, and recommended that the zoning be changed to Recreation and Open Space (ROS) in order to align more closely with existing and potential uses on site.

On March 19, 2013, the Planning Board voted unanimously (5-0, Soley and Dundon absent) to recommend a proposed zoning map amendment for the property at 159 Canco Road to change the zoning designation from Low-Impact Industrial (IL) to Recreation Open Space (ROS).

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

The proposed amendment represents an effort align the zoning for the property at 159 Canco Road with the present and future use.

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

The proposed amendment, as recommended by the Planning Board, changes the zoning for the Canco Woods property from IL to ROS. This amendment will thus codify the use of the site as an existing open space.

IV. FINANCIAL IMPACT

There is no anticipated financial impact to the city.

V. STAFF ANALYSIS & RECOMMENDATION

On March 19, 2013, the Planning Board voted unanimously (5-0, Solely and Dundon absent) that the proposed map amendment for the property at 159 Canco Road to change the zoning from Low-Impact Industrial (IL) to Recreation Open Space (ROS) is consistent with the Comprehensive Plan. The Planning Board recommends adoption of the proposed amendment to the City Council.

Attachments:

1. Order
2. Planning Board Report to City Council (#18-13)



CITY COUNCIL REPORT

From PLANNING BOARD PORTLAND, MAINE

159 Canco Road
Rezone from IL to ROS
City of Portland, Applicant

Submitted to: Portland City Council
First Reading: April 22, 2013
Second Reading: May 6, 2013

Prepared by: Portland Planning Board
Date: April 10, 2013
City Council Report Number: 18-13



Figure 1: Canco Woods trail, courtesy of Friends of Canco Woods

I. INTRODUCTION

On March 19, 2013, the Planning Board voted unanimously (5-0, Soley and Dundon absent) to recommend to City Council a map amendment for the property at 159 Canco Road to change the zoning from Low-Impact Industrial (IL) to Recreation and Open Space (ROS). Legal notice for the May 6 City Council public hearing will be posted in the *Portland Press Herald* on April 22 and 29, 2013. Notices will be sent to the interested citizen list and posted on the city's web page.

II. BACKGROUND AND EXISTING CONDITIONS

Though it is currently zoned IL, or Low-Impact Industrial, neighborhood residents have historically used the property at 159 Canco Road as a passive recreational open space. The site includes woodlands, wetlands, streams, a pond, and a number of hiking, biking, and cross-country skiing trails (See *Figure 1*). The site also houses a sewer line, contained within a 50' city right-of-way dating from May 1960

(See *Attachment 1*). The land directly above this sewer right-of-way is cleared. Its southern half is contained within the vacated right-of-way of Torrey. A survey of the property is included as *Attachment 2*.

In early 2012, the property's then-current owner, the Union Water Power Company, a company associated with Central Maine Power, proposed the sale of the site. Neighbors, in an effort to preserve the site in its current form, formed the 'Friends of Canco Woods,' a non-profit

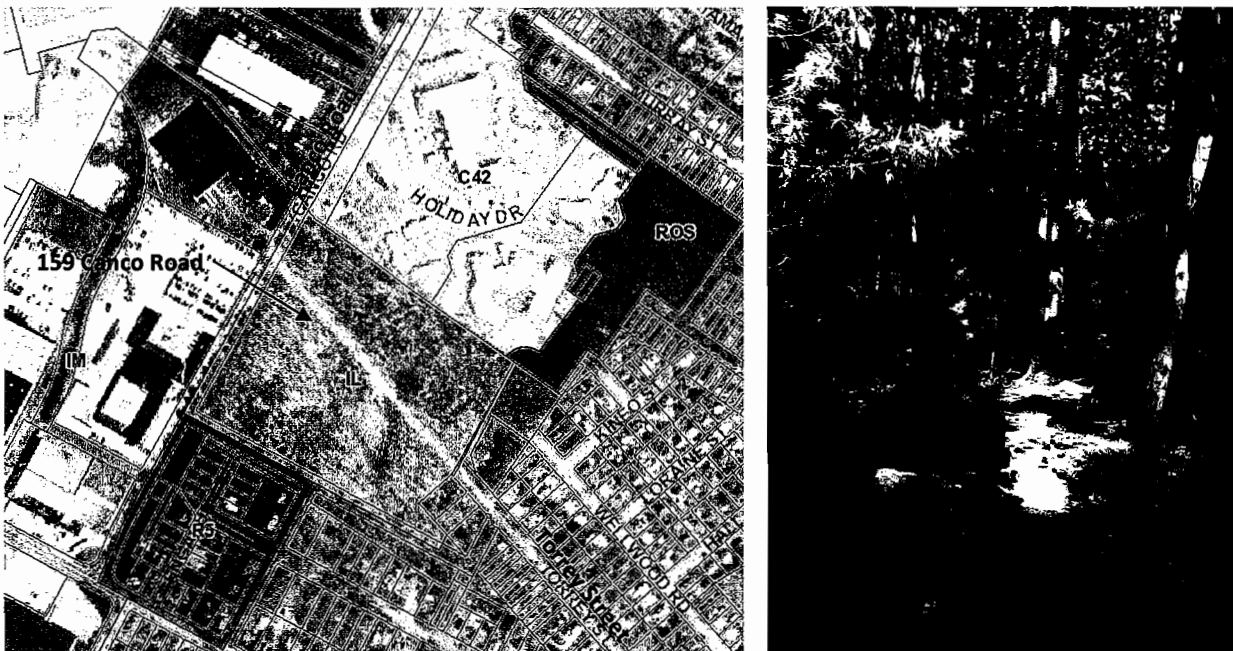
organization with the mission of protecting the property, and began raising funds toward that end (www.friendsofcancowoods.org/about). Through a partnership with the Trust for Public Land, additional funds were acquired, and in early December of 2012, the Trust for Public Land purchased the property. On the recommendation of the city's Land Bank Commission, the site was then conveyed to the City of Portland, which immediately placed the property under a conservation easement with rights granted to Portland Trails (See *Attachment 3*).

The purposes of the easement, as stated in the easement itself, include to:

- “protect the property...in perpetuity, in a predominantly undeveloped, open space, natural, scenic, and forested condition, for the scenic enjoyment of the general public;
- protect, conserve, and promote the conservation of forests, wetlands, and wildlife thereon, and perpetuate the plant and animal ecosystems....;
- allow the City of Portland...or Portland trails...to construct pedestrian trails...and otherwise generally provide for low-impact, non-commercial outdoor recreational use by the general public...; and
- prevent uses that would significantly impair or interfere with the conservation values of the...property; and confine, in perpetuity, the uses of the...property to activities which are compatible with these purposes and the protection of wildlife habitat and preservation of these scenic, open space and natural values.”

The easement provides Portland Trails the right to “maintain and operate unpaved pedestrian trails through the Protected Property for public access for daytime use for low-impact, non-motorized recreational activities, including walking, hiking, biking, nature observation, cross-country skiing, snowshoeing, and picnicking.” The easement does not identify any additional recreational activities.

As seen in *Figure 2*, zoning surrounding the property on the east side of Canco Road is largely residential in nature, with residential development adjacent to the property on three sides. The west



Figures 2 and 3 (from left): Canco Woods property, surrounding neighborhood, and current zoning; existing trail (image courtesy of Trust for Public Land)

side of Canco Road, in contrast, is predominantly zoned industrial (IM). Light industrial uses sit directly across Canco Road from the site. Several additional parcels zoned Recreation and Open Space (ROS), which were created as part of the rezoning for the Woods at Canco, a senior assisted-living facility, lie directly to the northeast. These properties exist as open spaces mainly for passive recreation.

III. FINDINGS & PROPOSED MAP AMENDMENT

Current Zoning: IL (Low Impact Industrial)
Proposed Zoning: ROS (Recreation and Open Space)
Current and Proposed Uses: Vacant vegetated land with passive recreation facilities
Parcel Area: 12.9 acres

IV. ZONING ANALYSIS

The purpose of the proposed zone change is to align the property's zoning with existing and potential uses. As noted above, the property is largely a natural passive recreation area in its current form and, under the terms of the conservation easement, will remain this way in perpetuity.

The current designation for the property is Low Impact Industrial. The purpose of the IL zone is mainly to provide light industrial areas which serve as buffers between higher intensity industrial uses and residential neighborhoods. The IL zone allows uses such as lumber yards, building contractors, dairies, and distribution centers.

Per the city's ordinance, the Recreation and Open Space zone, or the proposed zoning designation, in contrast, is designed to protect open space; insure its continued use for scenic, recreation, or conservation purposes; and provide sites for large athletic facilities. By right, the ROS zone allows natural parks and trails, ballfields, golf courses, and swimming pools. Most of the city's parks, such as Deering Oaks, Payson Park, the Eastern Promenade, and the Riverside Golf Course are zoned ROS. The ROS designation also covers most of the city's cemeteries.

As noted above, there is land contiguous to Canco Woods which is currently zoned ROS. This area is natural in its existing state. Likewise, other natural areas in the city, including Baxter Woods and Capisic Pond, also exist under the ROS designation.

Tables 1 and 2 provide a comparison of dimensional requirements and permitted uses under the existing and proposed zoning.

Table 1: Dimensional Requirements, I-L and ROS Zones

	IL	ROS
Min. front yard	25 ft.	25 ft.
Min. rear yard	25 ft., or 40 ft. if abutting residential	25 ft.
Min. side yard	25 ft., or 40 ft. if abutting residential	12 ft.
Min. lot size	None	2 acres
Max. building height	45 ft.	35 ft., or 45 ft. if > 1,000 ft. from shoreland zone
Max. lot coverage	None noted	Sports complexes: 75% Other: 25%
Max. FAR	None noted	.5
Min. lot frontage on street	60 ft.	None noted

Table 2: Purpose and Uses, I-L and ROS Zones

	Purpose	Permitted Uses	Conditional Uses
IL	To provide areas in which low impact industrial uses and other uses serving employees and residents of the surrounding neighborhood will be compatible with adjacent residential uses, will provide a buffer between residential neighborhoods and the I-M or I-H industrial zones, or will stand alone as a smaller scale industrial district	Low-impact industrial uses (e.g. bakeries, breweries) Research and development Indoor amusement and recreation centers Plant and tree nurseries Lumber yards Commercial kitchens or other food preparation Building contractors Repair services Day care facilities Dairies Dog training services Intermodal transportation facilities Utility substations Marinas Distribution centers Back office uses Incidental accessory uses Registered medical marijuana cultivation facilities Neighborhood centers Places of religious assembly Wind energy systems	Temporary wind anemometer towers
ROS	To preserve and protect open space as a limited and valuable resource; To permit the reasonable use of open space, while simultaneously preserving and protecting its inherent open space characteristics to assure its continued availability for public use...; To coordinate with and carry out federal, state, regional, and city recreation and open space plans; and To provide a suitable location for large-scale regional sports and athletic facilities	Municipal parks, public open spaces Cemeteries Arboretums Golf courses, excluding mini golf Boat landings, beaches, and marinas for public use Outdoor ballfields and public athletic fields Swimming pools and tennis courts Picnic groves and areas Natural parks and scenic overlooks Hiking, walking, bicycling or cross-country ski trails Community gardens Sewage pumping stations and sewage treatment facilities Sports complexes Accessory uses < 2,500 SF Wind energy systems	Accessory uses > 2,500 SF Other public recreational facilities Water pumping stations Temporary wind anemometer towers

V. PUBLIC COMMENT

The Planning Division received one public comment related to the proposal from a neighboring property owner. This was an offer to sell a nearby lot.

VI. CONFORMANCE WITH THE COMPREHENSIVE PLAN

The proposed change in the zoning of the Canco Woods property from IL to ROS is consistent with the city's *Comprehensive Plan*. The zone change actualizes portions of the *Comprehensive Plan's* Vision for Portland by:

- "Protect[ing] the natural environment;" and
- "Preserv[ing] and enhanc[ing] the park system with its trails, active recreation facilities and natural areas" (20).

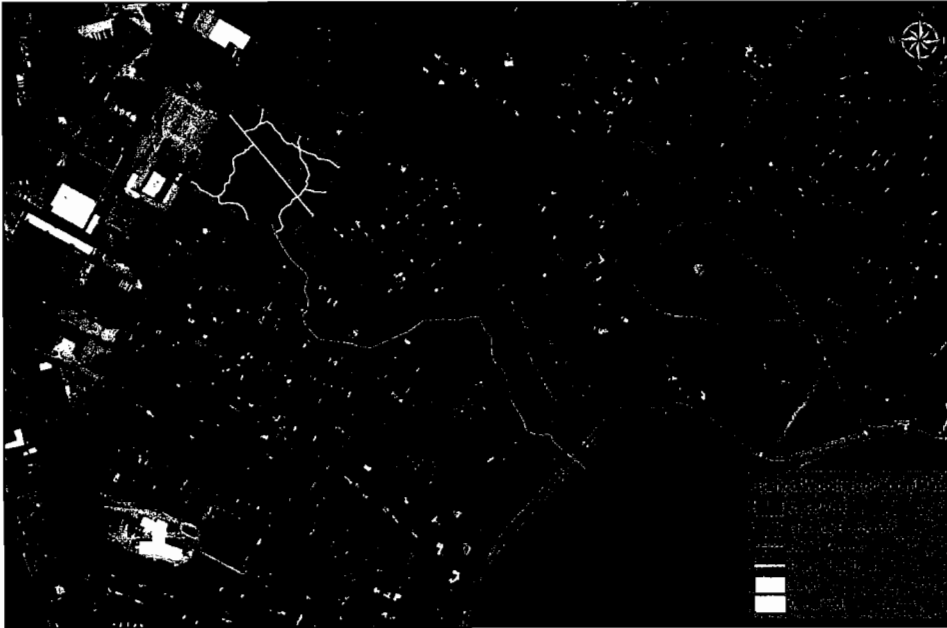


Figure 4: Canco Woods property, including trails and water resources (image courtesy of Trust for Public Land)

The zone change presented here also realizes aspects of the city's major open space planning efforts. One of the major goals of *Green Spaces, Blue Edges* (2006), the city's open space plan, is to "[i]dentify, conserve, protect, and enhance recreation and open space resources in the [c]ity" (6). Likewise, *Green Spaces, Blue Edges* lists "[e]xtend[ing] the public's range of open space opportunities and the ability to

pursue its choice of use without social or economic constraint, elaborate planning, or community intervention" as a major goal (6).

In addition to simply providing additional open space, the proposed zone change would allow the city to formalize existing natural resource benefits of the site which are consistent with goals of the city's master planning efforts. For instance, *Green Spaces, Blue Edges* identifies "develop[ing] an open space system that considers the natural forces of air, water, vegetation, and landform to minimize foul odors, eyesores, and noise, and to maximize clean soil, clean air, and clean water in Portland" as a major goal. The zone change at Canco Woods would allow the city to extend a linear open space element in the area of Canco Road which serves as a natural buffer, provide an area for wildlife habitat and woodland growth, and preserve land around one of the city's water resources.

Likewise, *Green Spaces, Blue Edges* includes a goal stating that the city should "provide a wide range of recreation and open space opportunities to address the athletic, recreation, leisure, ecological, and scenic needs of Portland's diverse population" (5). The proposed zone change will both ensure the preservation and allow the extension of the city's trail network, facilitating active, healthy lifestyles for residents. It will also allow neighbors to continue to use Canco Woods for other passive recreation activities.

VII. PLANNING BOARD RECOMMENDATION

On March 19, 2013, the Planning Board voted unanimously (5-0, Soley and Dundon absent) to recommend the following:

Based on the material provided in Planning Report #14-13, public testimony, a review of applicable policies, and other information, the Planning Board finds that the proposed map amendment for the property at 159 Canco Road to change the zoning from Low-Impact Industrial (IL) to Recreation Open Space (ROS) is

consistent with the Comprehensive Plan and does recommend adoption of the proposed amendment to the City Council.

ATTACHMENTS

1. Certificate of Taking of Property (City of Portland)
2. Standard Boundary Survey (Former Coyne Lot, Canco Road)
3. Conservation Easement (City of Portland to Portland Trails)

221

CITY OF PORTLAND - CERTIFICATE OF TAKING OF PROPERTY

I, Arthur H. Duffett, being the duly elected and qualified City Clerk of the City of Portland, do hereby certify that the following Return of the Municipal Officers of the City of Portland, dated May 2, 1960 laying out certain property for Torrey Street Sewer Right-of-Way was duly accepted by final action of the City Council of the City of Portland on May 16, 1960.

I do hereby further certify that this Certificate is being filed in the Cumberland County Registry of Deeds in conformity with the provisions of Section 73A of Chapter 96 of the Revised Statutes of Maine, 1954.

ATTEST:

Arthur H. Duffett
City Clerk of the City of Portland, Maine.

Carney
&
to
Portland
City of
--
Cert

THE UNDERSIGNED, THE MUNICIPAL OFFICERS OF THE CITY OF PORTLAND, MAINE, gave due and legal notice to all parties interested therein of the time and place they would meet to hear all interested parties in the taking of a Right of Way for the purpose of providing a location within which the Torrey Street and Canco Road Sewer may be constructed and maintained, beginning at the northwesterly terminus of Torrey Street and extending northwesterly to Canco Road, by publishing said notice in two daily papers published in Portland to wit: the Portland Press Herald and the Portland Evening Express, and by posting four notices of their intention at least seven days previous to the date of said hearing; one on a telephone or light pole at the northwesterly terminus of Torrey Street; one on a telephone or light pole at the corner of Read Street and Canco Road; one on the bulletin board in the basement of City Hall and one on the bulletin board at the Cumberland County Court House, two being in the vicinity of the proposed Right of Way and two being public places in the City of Portland, and having met pursuant to said notice in the City Council Chamber Room 213 in the City Hall on the 2nd day of May at 7:00 o'clock P.M., A.D., 1960, and having heard all parties interested therein, said Municipal Officers did thereupon determine and adjudge that a Right of Way should be taken for the purpose of providing a location within which the Torrey Street and Canco Road sewer may be constructed and maintained and said Municipal Officers accordingly proceeded to take the strip of land as hereinafter described for the purpose of providing a location for said sewer, to wit:-

Beginning at a point in the center line of Torrey Street, said point being the northwesterly terminus of Torrey Street as accepted by the City Council October 7, 1957, said point also being distant 1107.35 feet northwesterly along the center line of Torrey Street from the northwesterly side line of Ocean Avenue; thence northwesterly on a prolongation in a straight line of the said center line of Torrey Street a distance of 919.54 feet to a point and an intersection with the southeasterly side line of Canco Road.

Said right of way to be fifty (50) feet wide and to lie equally on either side of the above described line.

Part of said Right of Way is a portion of a proposed extension of Torrey Street.

Said Right of Way will pass over land of the following persons, or corporations:

Robert Carney
City of Portland
Parties Unknown

The said Municipal Officers have considered and estimated the damages sustained in their property by the several owners aforesaid and all other persons, by the taking of said Right of Way and hereby award the same as follows, to wit:-

To the said Robert Carney the sum of Nothing
 To the said City of Portland the sum of Nothing
 To the said Parties Unknown the sum of Nothing

for the damages sustained by them respectively as aforesaid to be paid them by the City.

And said Municipal Officers have this day filed as a part of this report with said City Clerk of said City at his office, a plan showing the location of said Right of Way, the land taken for said Right of Way and the distances and admeasurements of said location.

GIVEN UNDER OUR HAND THIS 2nd DAY OF May A.D., 1960.

Mitchell Cope

Harold B. Frank

Perley J. Lessard

Ira E. Ball, Sr.

Ralph Amergian

S. T. Bernstein

Municipal Officers of the City of Portland, Maine.

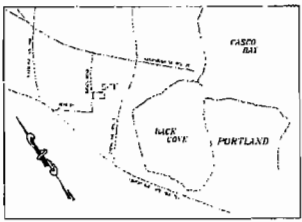
REGISTRY OF DEEDS, CUMBERLAND COUNTY, MAINE JUN 21 1961

Received at 9 H 40 M A.M. and recorded in
 BOOK 2611 PAGE 221 Swal 0871 for Register

NORMAL DESCRIPTIONS

PT.	DESCRIPTION
157	1.5" Cont. Pipe 100' dia.
158	1.5" Cont. Pipe 100' dia.
159	1.5" Cont. Pipe 100' dia.
160	1.5" Cont. Pipe 100' dia.
161	1.5" Cont. Pipe 100' dia.
162	1.5" Cont. Pipe 100' dia.
163	1.5" Cont. Pipe 100' dia.
164	1.5" Cont. Pipe 100' dia.
165	1.5" Cont. Pipe 100' dia.
166	1.5" Cont. Pipe 100' dia.
167	1.5" Cont. Pipe 100' dia.
168	1.5" Cont. Pipe 100' dia.
169	1.5" Cont. Pipe 100' dia.
170	1.5" Cont. Pipe 100' dia.
171	1.5" Cont. Pipe 100' dia.
172	1.5" Cont. Pipe 100' dia.
173	1.5" Cont. Pipe 100' dia.
174	1.5" Cont. Pipe 100' dia.
175	1.5" Cont. Pipe 100' dia.

DATE	BY	REVISION
10/20/20	10/20/20	10/20



LOCATION MAP

- NOTES:**
- All bearings refer to magnetic North 1974 as shown on the plan reference to note 10.
 - All Block & Page numbers refer to the Cumberland County Registry of Deeds unless otherwise noted.
 - SOURCE RECORDS:**
 - See Record of John C. Coyne to Central Maine Power Co. dated 10/18/20 and 10/19/20 recorded in Book 3048, Page 217, and Book 3048, Page 218.
 - See Record of the City of Portland to Central Maine Power Co. dated 10/18/20, recorded in Book 3048, Page 218.
 - REFERENCE PLANS:**
 - City of Portland Tax Map #s 148, 149, 150, 151.
 - Portland Water District Map #s 14, 15, 16.
 - City of Portland Engineering Department Drawing of City Street Layout, 100' Center Road, Street, and Bay Street.
 - City of Portland Engineering Department Drawing of "Map of City of Portland" on Casco Road, dated 10/18/20.
 - Property Map Coyne Lot & City of Portland Lot, dated 10/18/20, recorded in Book 3048, Page 217.
 - Portland Boundary Survey on "Terry Street" Portland, dated 10/18/20, recorded in Book 3048, Page 218.
 - Plan of Land on Moody Street for Portland Boundary Survey, dated March 23, 1960, and recorded in 1960, Vol. 10, Page 164.
 - "Plan of Moody Street" dated May 1925, and recorded in 1925, Vol. 10, Page 164.
 - All lot lines are 1/4" dia. by 1/4" long with grey bearing identification. One bearing "Terry Street" from the "Terry Street" station, Portland, dated 10/18/20, recorded in Book 3048, Page 218.
 - These plans conform to the latest Board of Survey for Portland Boundary Survey for a Portland Boundary Survey, dated 10/18/20, recorded in Book 3048, Page 218.

CLIENT: Union Water Power Company
100 Water Avenue
Portland, Maine 04101



- LEGEND**
- (1/4" dia. by 1/4" long) (see Note 10)
 - Iron Pin to 1/4" dia.
 - ⊙ Survey Station
 - Boundary
 - Utility Pipe
 - Water Main
 - Sewer Main
 - Property Line
 - Edge of Portland
 - Edge of B.C.N.

REFERENCE DRAWINGS

NO.	REVISION	DATE	BY	DATE	BY	DATE	BY
1	Original	10/20/20	10/20/20	10/20	10/20	10/20	10/20
2	Revised	10/20/20	10/20/20	10/20	10/20	10/20	10/20

NO.	REVISION	DATE	BY	DATE	BY	DATE	BY
1	Original	10/20/20	10/20/20	10/20	10/20	10/20	10/20
2	Revised	10/20/20	10/20/20	10/20	10/20	10/20	10/20

STANDARD BOUNDARY SURVEY			
FOR	UNION WATER POWER COMPANY	PORTLAND, MAINE	
FORMER	COYNE LOT		
ON	CASCO ROAD		
REVIEWED	10/20/20	10/20/20	10/20
DATE	10/20/20	10/20/20	10/20

8130-C3

Doc#: 74623 Bk:30242 Pg: 108

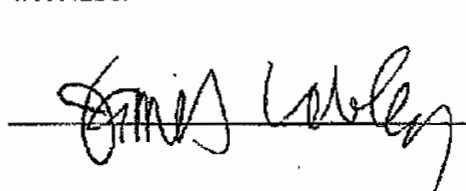
CONSERVATION EASEMENT

In consideration of the payment of one dollar, **CITY OF PORTLAND**, a Maine municipal corporation, with a mailing address of 389 Congress Street, Portland, Maine 04101 ("Grantor") hereby releases to **PORTLAND TRAILS**, a Maine nonprofit corporation with a place of business at 305 Commercial Street, Portland, Maine 04101 ("Grantee"), a conservation easement encumbering the land described in Schedule B hereto, on the terms and conditions and with the restrictions detailed and delineated in Schedule A hereto.

To have and to hold the said easement and all rights granted hereunder to the said Grantee and their successors and assigns forever.

IN WITNESS WHEREOF, Grantor has caused this easement to be executed by Ellen Sanborn, its duly authorized Finance Director, on this 17th day of December, 2012.

WITNESS:



CITY OF PORTLAND

By: 
Ellen Sanborn, its Finance Director

State of Maine
County of Cumberland, ss.

December 17, 2012

Personally appeared the above-named Ellen Sanborn, Finance Director of the City of Portland as aforesaid, who acknowledged the foregoing instrument to be her free act and deed in her said capacity and the free act and deed of said City of Portland.

Before me,



Print Name: Margaret M. Axelson
Notary Public/Attorney-at-Law

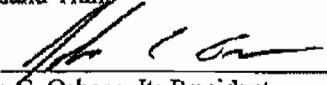
Margaret M. Axelson
Notary Public, Maine
Exp. 12/31/2016

SEAL

GRANTEE ACCEPTANCE

The above and foregoing Conservation Easement was authorized to be accepted by Portland Trails, and Portland Trails does hereby accept the foregoing Conservation Easement, by and through John G. Osborn, its President, hereunto duly authorized as of this 10TH day of December, 2012.

Portland Trails

By: 

John G. Osborn, Its President

O:\OFFICE\LARRY\final canoe woods easement.docx

SCHEDULE A

To Conservation Easement

(A) PURPOSES AND CONSERVATION ATTRIBUTES.

The purposes of this Conservation Easement are:

(1) to protect the property described in Schedule A hereto (hereinafter called the "Protected Property"), in perpetuity, in a predominately undeveloped, open space, natural, scenic, and forested condition, for the scenic enjoyment of the general public;

(2) to protect, conserve and promote the conservation of forests, wetlands, and wildlife thereon, and perpetuate the plant and animal eco-systems on the Protected Property;

(3) to allow the City of Portland, its successors and assigns, ("Grantor") or Portland Trails, its successors or assigns ("Grantee" or "Easement Holder"), to construct trails through the Protected Property, and otherwise generally provide for low-impact, non-motorized and non-commercial outdoor recreational use by the general public of the Protected Property; and

(4) to prevent uses that would significantly impair or interfere with the conservation values of the Protected Property; and confine, in perpetuity, the uses of the Protected Property to activities which are compatible with these purposes and the protection of wildlife habitat and preservation of these scenic, open space and natural values.

The conservation attributes (hereinafter the "conservation values" of the Protected Property are as follows:

(B) GRANTOR'S RESERVED RIGHTS.

(1) The Grantor and the Grantee, shall both have the right and easement to establish and maintain unpaved trails through the Protected Property for public access for daytime use for low-impact, non-motorized recreational activities, including walking, hiking, biking, nature observation, cross-country skiing, snowshoeing, and picnicking, subject to all applicable laws and regulations concerning such activities and the limitations set forth herein. The trails shall be constructed and maintained in an environmentally sound manner, including the following: constructing water bars, bridges for stream crossings, bog bridges, stone steps, erosion control measures, and trail markings such as tree blazes or other like markings.

In addition, Grantor shall have the right to:

(2) remove dead or diseased trees, vegetation and forest cover, and to clear and restore forest cover and vegetation that is materially damaged by the forces of nature and to implement appropriate measures with respect to such dead, diseased and damaged forest cover and vegetation;

(3) prune and clear vegetation and forest cover to remove safety hazards to the uses permitted hereunder and prevent the spread of active fire; to improve wildlife habitat; to prevent or reduce the threat of fire, plant disease or exotic intrusion; provided that all such activities shall be designed, limited, located and conducted in a manner that reasonably minimizes the impact on the conservation values of this easement and consistent with the expressed purposes hereof. Said work shall be carried out in accordance with then-current, generally accepted good management practices for the sites, soils and

terrain of the Property. In order to protect riparian areas and water quality, there shall be no use of fertilizers, introduction of non-native plants or animals, spraying of biocides, or significant disturbance of soils within the Property. Notwithstanding the foregoing, the Grantor shall have the right to remove, and consent to the removal of, invasive and exotic species (including the spraying of biocides) within the Property if the removal and the use of removal techniques, including the spraying of biocides, is recommended in writing by a professional forester or other recognized forest conservation professional;

(4) erect signs identifying the public trail and informing the public of rules for proper use of the trails, as well as temporarily closing or rerouting such trails for public safety or maintenance; and

(5) within the existing sewer pipe line right of way only, place, use, maintain, repair and replace underground utilities including conduits, utility lines, pipes and related fixtures and underground equipment, and drainage ditches and culverts and other elements of surface drainage systems, and to utilize existing above ground utility lines. However, this right shall not be construed as an obligation. Without limited the generality of the foregoing, reference is made to the Right of Way or easement cited in the last paragraph of this Schedule A.

(6) place, use, maintain, repair and replace any and all wetland and drainage changes and improvements required by the Trust for Public Land or by any plans submitted prior to the execution of, or in connection with (even if subsequent to the execution of), this Conservation Easement, for such changes and improvements to regulatory agencies, including but not limited to the Maine Department of Environmental Protection.

(C) RESTRICTIONS ON THE PROTECTED PROPERTY.

The Protected Property will at all times be held, used, and conveyed subject to, and not used in violation of, the following restrictions, which shall run with the Protected Property in perpetuity, subject, however, to the rights reserved by Grantor:

(1) The Protected Property, including without limitation any body of water thereon, shall be continued predominantly in an undeveloped and natural condition, and shall not be used for residential, industrial or commercial use.

(2) No paved driveway, improved road associated with development, aircraft landing strip, billboard or other advertising display, mobile home, utility pole, tower, conduit or line (except for underground conduits and utilities lines), equipment, fixture, trailer, antenna or other temporary or permanent improvement shall be constructed, placed or permitted to remain on the Protected Property. Grantor and Grantee shall have the right to use, maintain, repair and replace from time to time any existing utility lines and facilities across said Protected Property, provided the foregoing rights are exercised in a manner to minimize the impact on the conservation values of the Protected Property and consistent with the expressed purposes of this easement.

(3) No structures, temporary or permanent, are permitted on the Protected Property; however, the trail improvements discussed in section (a) above are not restricted by this provision. For the purposes of this Conservation Easement, a "structure" is defined as any manmade combination of materials on, over, in and/or under the ground. A structure may be primarily two dimensional, such as a paved parking lot or a sign, or three dimensional, such as a building, wall or piping.

(4) No soil or like shall be moved on or removed from the Protected Property, unless such work is part of the wetlands restoration or remediation work needed to comply with the MNRCP grant related to the Protected Property expected to be awarded before January 1, 2013.

(5) [Intentionally omitted]

(6) No refuse, trash, vehicle bodies or parts, rubbish, debris, junk, waste, radioactive or hazardous waste, or other similar substance or material whatsoever shall be placed, stored, dumped or permitted to remain on the Protected Property.

(7) No use shall be made of the Protected Property, and no activity shall be permitted thereon which is or may be inconsistent with the intent hereof. No activity (including, but not limited to, drainage or flood control activities) shall be carried on which is detrimental to the conservation values of the Protected Property or detrimental to water quality, soil conservation, wildlife conservation, or woodland management practices.

(8) No hunting or trapping shall be permitted on the Protected Property.

(9) No division or subdivision of the Protected Property shall be permitted. The Grantor further covenants and agrees not to undertake any action that would have the effect of dividing or subdividing all or any part of the Property through the allocation of property rights among partners, shareholders or members of any successor entity, the creation of a condominium, leasing or any other means except as specifically allowed herein.

(10) The use of motorized vehicles, including recreational vehicles, all-terrain vehicles, motorcycles, dirt bikes and snowmobiles, of any sort shall not be permitted on the Protected Property except for equipment used for restoration, stewardship or maintenance in accordance with the Stewardship and Management plan. This prohibition against motorized vehicular use on the Protected Property by the general public shall not be construed to prevent use of wheel chairs or similar devices for the disabled by members of the public on the Protected Property or prevent authorized agents of Grantor or Grantee from using motorized vehicles on paths as necessary for maintenance purposes, life safety purposes, and emergency use.

(11) Conveyance of the Protected Property shall require prior written consent by the Easement Holder, which shall not be unreasonably withheld.

(D) GRANTEE'S RIGHTS.

The Grantee shall have these rights:

(1) to enter the Protected Property for inspection and monitoring purposes and for enforcement, at a reasonable time and in a reasonable manner that is consistent with the conservation purposes hereof.

(2) to place signs and/or tags on the Protected Property boundaries and at trail entrances for the purpose of marking boundaries and identifying it as conservation easement land protected by the Grantee.

(3) the rights set forth in Section B(1) above.

(E) LIMITATION ON LIABILITY.

This Conservation Easement is granted pursuant to the Maine Conservation Easement Act at Title 33, Maine Revised Statutes, Sections 476 through 479-C, and to Title 33 M.R.S.A. Sections 1581 et seq.,

as amended, and shall be construed in accordance with the laws of the State of Maine. Grantor and Grantee agree that this easement is being granted without charge for the purpose of recreational activities by the general public pursuant to and in accordance with Title 14 M.R.S.A. Section 159-A, and that Grantor and Grantee shall have the benefit of the terms and provisions thereof. Notwithstanding any public use of the Protected Property and any insurance coverage thereof, neither Grantor nor Grantee assume any liability to the general public for accidents, injuries, acts or omissions. This Conservation Easement does not create in the Grantor or Grantee, any duty, not otherwise existing, to keep the Protected Property safe for entry or for use by members of the general public for recreational purposes or to give warning of any hazardous condition, use, structure or activity on such premises to persons entering for recreational purposes, or to extend any assurance that the premises are safe for any such purposes, or to make any person entering upon the Protected Property an invitee or licensee to whom a duty of care is owed, or to assume responsibility for or incur liability for any injury to person or property caused by any act of any person or any other cause. Grantor and Grantee, for themselves and for their successors, assigns, leases and others claiming by or through any of them, claim all of the rights and immunities against liability for injury to the public to the fullest extent of the law under Title 14 M.R.S.A. Section 159-A, et seq. as amended and any successor provision thereto and under any similar or other law, and under any other applicable provision of law and equity. Neither Grantor nor Grantee, for themselves and for their successors, assigns, leases and others claiming by or through any of them, assume any liability to the general public for accidents, injuries, acts or omissions. It is expressly intended that all activities of the Grantor, and the general public entering upon the Protected Property shall be subject to the limited liability provisions of Title 14, Maine Revised Statutes, as amended, Section 159-A, or its successor provisions.

(F) QUALIFICATION.

Grantee is qualified to hold conservation easements pursuant to Title 33, Maine Revised Statutes Annotated, 1988, Sections 476 (2)(B), as amended, , to wit: a governmental body empowered to hold an interest in real property under the laws of this State or the United States, and a publicly supported nonprofit 501(c)(3) preserving and protecting natural, scenic, educational, recreational or open-space values of real property, and with the commitment to preserve the conservation values of the Protected Property, respectively.

(G) ENFORCEMENT.

Grantee's rights shall include the right to enforce this Conservation Easement by appropriate legal proceedings and to obtain injunctive and other equitable relief against any violations, including, without limitation, relief requiring restoration of the Protected Property to its condition prior to the time of the injury complained of (it being agreed that the Grantee may have no adequate remedy at law), and shall be in addition to, and not in limitation of, any other rights and remedies available to the Grantee, after providing Grantor with prior notice and reasonable opportunity to cure any breach, except where emergency circumstances require more immediate enforcement action. Grantee may not bring an enforcement action against Grantor for injury to or change in the Protected Property resulting from actions by others or natural causes or environmental catastrophe beyond their control or "acts of God" so called, such as, but not limited to, fire, flood, storm, industrial accident, and earth movement, or for the acts of vandals or trespassers, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Protected Property resulting from such causes. Grantor specifically acknowledges that events and circumstances of non-compliance constitute immediate and irreparable injury, loss and damage to the Protected Property. The Grantee's delay or omission in exercising any right or remedy upon any breach by Grantor shall not impair the Grantee's rights or remedies, or be construed as a waiver.

(H) MISCELLANEOUS.

Grantor and Grantee do not undertake any liability or obligation relating to the condition of the Protected Property, except as otherwise expressly provided in this Conservation Easement.

If any provisions of this Conservation Easement shall to any extent be held invalid, the remainder shall not be affected.

Any election by the Grantee as to the manner and timing of its right to enforce this Conservation Easement or otherwise exercise its rights herein shall not be deemed or construed to be a waiver of such rights.

Grantor shall be obligated to notify the Grantee in writing thirty (30) days before taking any action, the exercise of which may impair any conservation values associated with the Protected Property. The notice shall describe the nature, scope, design, location, timetable and any other material aspect of the proposed activity in sufficient detail to enable the Grantee to confirm that the proposed activity is permitted under the terms of this Conservation Easement.

The terms and provisions of this Conservation Easement shall run with the Protected Property in perpetuity, and shall be binding upon the Grantor and Grantee holding any interest in the Protected Property, and shall benefit the Grantee. The Grantee is authorized to record or file any notices or instruments appropriate to assure the perpetual enforceability of this Conservation Easement. Without limiting the foregoing, the Grantor agree to execute any such instrument upon the Holder's reasonable request. This Conservation Easement shall be assignable from time to time, subject to the following: (1) As a condition of any assignment, the Grantee shall require that the purposes of this Conservation Easement continue to be enforced, and (2) The assignee, at the time of assignment, must be a qualified conservation agency or conservation organization, and as a condition of transfer, the assignee shall agree to uphold the conservation purposes of this grant. Wherever the term "Grantor" appears in this Conservation Easement, including the foregoing Covenants, it shall also refer, as appropriate, to any transferee, assignee or successor in interest of the Grantor to this Conservation Easement.

Grantor and Grantee recognize that circumstances could arise which warrant modification of certain of the provisions of this Conservation Easement. To this end, subject to more restrictive laws and regulations, if any, Grantor and Grantee have the right to agree to amendments to this Conservation Easement without prior notice to any other party, provided that in the sole and exclusive judgment of Grantor and Grantee, such amendment enhances or is not detrimental to the conservation values intended for protection by this Conservation Easement. Amendments will become effective upon recording at the Cumberland County Registry of Deeds. Nothing in this paragraph shall require the Grantor or Grantee to agree to any amendment or to consult or negotiate regarding any amendment. Grantor and Grantee recognize that certain activities may warrant the prior discretionary approval of Grantee, and that Grantee has the right to issue such discretionary approvals without prior notice to any other party. Nothing in this paragraph shall require the Grantee to agree to any discretionary approval or to consult or negotiate regarding any discretionary approval.

Notwithstanding the foregoing, Grantor and Grantee have no right or power to approve any action or agree to any amendment that would:

(1) materially detract from the conservation values intended for protection, without the prior approval of a court of competent jurisdiction in an action in which the Attorney General has been made a party;

(2) limit the term or result in termination of this Conservation Easement without the prior approval of a court of competent jurisdiction in an action in which the Attorney General has been made a party; or

(3) adversely affect the qualification of this Conservation Easement or the status of the Grantor under applicable laws, including the Maine Conservation Easement Act at Title 33, M.R.S.A. §476 *et seq.*, successor provisions thereof and regulations issued pursuant thereto.

This Conservation Easement may only be extinguished or terminated by judicial order in a court of competent jurisdiction. It is the intention of the parties that an extinguishment or termination be approved by a court only if all of the Conservation Purposes of this Conservation Easement are impossible to accomplish, and if both Grantor and Grantee agree. Should this Conservation Easement be terminated or extinguished as provided in this paragraph, in whole or in part, Grantee shall be entitled to be paid no less than the increase in value of the Grantor's estate resulting from such extinguishment, as determined by the court, or in the absence of such court determination, by the agreement of the parties or, in the absence of such agreement, by an independent appraiser mutually selected by Grantor and Grantee. Grantor shall use its share of the proceeds or other moneys received under this paragraph in a manner consistent, as nearly as possible, with the stated, Conservation Purposes of this Conservation Easement. Grantor agrees and authorizes Grantee to record a notice of a claim to proceeds on the Protected Property, which claim will be effective as of the date of such extinguishment, to secure its rights under this Paragraph.

Only Grantee and Grantor may bring an action to enforce this grant, and nothing herein should be construed to grant any other individual or entity standing to bring an action hereunder, unless otherwise provided by law; nor to grant any rights in the Protected Property by adverse possession or otherwise, provided that nothing in this Easement shall affect any public rights in or to the Protected Property acquired by common law, adverse possession, prescription, or other law, independently of this grant.

In order to establish the present condition of the Protected Property and its conservation attributes protected by this Conservation Easement so as to be able to monitor properly future uses of the Protected Property and assure compliance with the terms hereof, Grantor and Grantee have prepared an inventory of the Protected Property's relevant features and conditions (the "Baseline Documentation") and have certified the same as an accurate representation, to the extent known, of the condition of the Protected Property as of the date of this grant.

The interpretation and performance of this Easement shall be governed by the laws of the State of Maine. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the conservation purposes of this Easement and the policy and purpose of the Maine Conservation Easement Act at Title 33, Maine Revised Statutes, Sections 476 through 479-C, inclusive, as amended. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the conservation purposes of this Easement shall govern.

Grantor and Grantee acknowledge that the Protected Property has passing through it an existing sewer pipe line, and that it is the intent of the parties hereto that this Conservation Easement not affect or amend or supersede the rights delineated in the Certificate of Taking of Property for Torrey Street Sewer Right of Way by City of Portland, dated May 1960, and Recorded in Book 2611, Page 221; and to the extent that any provision of this conservation is to the contrary, this conservation easement is hereby subordinated to all the rights and interests established in said easement or right of way by said Taking; and the Grantor, City of Portland, hereby reserves to itself all the rights delineated in or established by the said Certificate of Taking.

SCHEDULE B

To Conservation Easement

A certain lot or parcel of land situated in Portland, Cumberland County, Maine. Said lot or parcel of land being more particularly located and described as follows:

Beginning at an iron pin set in the southeasterly sideline of Canco Road, so-called, marking a northeasterly corner of a certain parcel of land conveyed by the City of Portland to Central Maine Power Company by deed dated December 30, 1974 and recorded in the Cumberland County Registry of Deeds in Book 3636, Page 124;

thence S 23° 24' 46" E by land now or formerly of said City of Portland a distance of 36.95 feet to an iron pin;

thence S 38° 34' 46" E by said land of the City of Portland a distance of 17.77 feet to an iron pin marking a southeasterly corner of said land conveyed by the City of Portland;

thence S 38° 41' 08" E by land now or formerly of Black Bear Development Corp. a distance of 128.58 feet to an iron pin;

thence S 37° 12' 38" E by a stone wall and said land of Black Bear Development Corp. a distance of 253.25 feet to an iron pin;

thence S 38° 42' 57" E by said stone wall and said land of Black Bear Development Corp. a distance of 392.61 feet to an iron pin marking a northerly corner of land now or formerly of Patrick O'Donnell et al.;

thence S 44° 52' 39" W by said land of O'Donnell a distance of 420.79 feet to an iron pin marking a northeasterly corner of land now or formerly of Newell D. Tibbals, Jr. et al.;

thence S 64° 56' 26" W by said land of Tibbals a distance of 140.78 feet to an iron pin marking a northwesterly corner of said land of Tibbals;

thence S 25° 09' 44" E by said land of Tibbals a distance of 53.05 feet to an iron pin;

thence S 44° 08' 45" W a distance of 58.79 feet to an iron pin;

thence N 45° 35' 00" W a distance of 832.77 feet to a point in said southeasterly sideline of Canco Road;

thence N 45° 37' 14" E by said sideline of said road a distance of 745.46 feet to the point of beginning. Containing 12.85 acres more or less.

For further reference see plan entitled "Standard Boundary Survey for Union Water Power Company of former Coyne Lot, Canco Road, Cumberland County, Portland, Maine" by E-PRO Engineering & Environmental Consulting, dated July 25, 1997, and recorded in said Registry of Deeds at Plan Book 200, Page 199.

Received
Recorded Register of Deeds
Dec 21, 2012 12:00:56P
Cumberland County
Pamela E. Lovley

