

ETHAN K. STRIMLING (MAYOR)
BELINDA S. RAY (1)
SPENCER THIBODEAU (2)
BRIAN E. BATSON (3)
JUSTIN COSTA (4)

KIMBERLY COOK (5)
JILL C. DUSON (A/L)
PIOUS ALI (A/L)
NICHOLAS M. MAVODONES, JR. (A/L)

FEBRUARY 20, 2019 CITY COUNCIL AGENDA

The Portland City Council will hold a Regular City Council meeting at 5:30 p.m. in City Council Chambers. The Honorable Ethan K. Strimling, Mayor, will preside.

PLEDGE OF ALLEGIANCE:

ROLL CALL:

ANNOUNCEMENTS:

RECOGNITIONS:

PRESENTATIONS:

ANNUAL MEETING:

SPECIAL MEETING:

Special Meeting of the Corporator of Portland Development Corporation

Pursuant to the Bylaws of the Portland Development Corporation (PDC), the Portland City Council, as Corporator of the Portland Development Corporation, will hold a Special Meeting on February 20, 2019 to consider two orders.

Order 156-18/19 Amending the Portland Development Corporation By-laws - Sponsored by the Housing Committee, Councilor Jill C. Duson, Chair

The Housing Committee met on February 13, 2019 and voted 2-0 (Thibodeau absent) to forward this item to the City Council for approval.

In order for the Portland Development Corporation (PDC) to use the City's Brownfields funds for assessment activities and cleanup for multi-family residential development properties that have no commercial component and for public open space, the PDC by-laws would need to be modified to make it clear that such projects are within the PDC's purview. Without that change, solely residential projects as well as public open space and public recreational projects in Portland needing Brownfields funds for assessment activities and/or cleanup could only apply for such funds to the Greater Portland Council of Governments (GPCOG) for assistance.

Five affirmative votes are required for passage after public comment.

Order 157-18/19 Proposing Brownfields Assessment Program Guidelines, and Amending Guidelines for the Brownfields Revolving Loan Fund Program and the Brownfields Closeout Fund - Sponsored by the Housing Committee, Councilor Jill C. Duson, Chair

The Housing Committee met on February 13, 2019 and voted 2-0 (Thibodeau absent) to forward this item to the City Council for approval.

Related to the proposed amendments to the Portland Development Corporation (PDC) By-Laws, the amendments to the Brownfields Guidelines primarily address the particulars of allowing the PDC to use these funds for assessment activities and cleanup on multi-family residential development properties and public open space projects.

Five affirmative votes are required for passage following public comment.

APPROVAL OF MINUTES OF PREVIOUS MEETING:

February 4, 2019 Draft City Council Minutes.

PROCLAMATIONS:

APPOINTMENTS:

Order 158-18/19 Appointing Members to Various Boards and Commissions - Sponsored by the Nominating Committee, Councilor Pious Ali, Chair

The Nominating Committee met on January 29, 2019 and voted (3-0) to send forward the following recommendations to the Various Boards and Committees:

Name	Board and Commission	Expiration
Bob Dunfey	Planning Board	02/28/2022
Maggie Stanley	Planning Board	02/28/2022
Kenneth Lewis	Police Citizen Review Sub Committee	03/30/2022
	Pesticide Management Advisory Committee (PMAC)	
Jesse O'Brien	PMAC-Agronomist	03/30/2022
Carol Laboissonniere	PMAC- NOFA Certified	03/30/2022
Karen Snyder	PMAC-Resident	03/30/2020
Priscilla Skerry	PMAC-Resident	03/30/2020
Avery Kamila	PMAC-Resident with Organic Exp.	03/30/2021
Tim Lindsay	PMAC-Applicator	03/30/2021

CONSENT ITEMS:

LICENSES:

Order 103-18/19 Granting Municipal Officers' Approval of Pig Exchange, LLC dba Thirsty Pig. Renewal application for an Entertainment without Dance at 37 Exchange Street with the Condition of No Amplified Entertainment Outdoors - Sponsored by Jon P. Jennings, City Manager

Applicant holds a current Class A Lounge License with Entertainment without Dance and Outdoor Dining on Private Property with the condition of no amplified entertainment outdoors. At its November 19, 2018 meeting, the City Council requested that this business come back before them for renewal.

Five affirmative votes are required for passage after public comment.

Order 159-18/19 Granting Municipal Officers' Approval of Austin Street Brewery LLC dba Austin Street Brewery LLC. Application for a Class III & IV FSE with Entertainment without Dancing and Outdoor Dining on Private Property at 109 Fox Street - Sponsored by Jon P. Jennings, City Manager.

Austin Street Brewery LLC dba Austin Street Brewery LLC. Application for a Class III & IV FSE with Entertainment without Dancing and Outdoor Dining on Private Property at 109 Fox Street.

Application was filed on 1/25/2019. Applicant currently holds a Brewery License at this location.

Five affirmative votes are required for passage after public comment.

BUDGET ITEMS:

COMMUNICATIONS:

RESOLUTIONS:

Resolution 10-18/19 Calling upon the United States Congress to Propose a Constitutional Amendment to Restore Fair Elections - Sponsored by Ethan K. Strimling, Mayor

States and towns and cities in the United States have supported a request to the United States Congress to propose a 28th Constitutional Amendment in response to the Supreme Court ruling in *Citizens United v. Federal Elections Commission*, which overturned campaign finance laws and other democratically enacted laws by finding that spending money to influence elections is protected by the Free Speech Clause of the First Amendment, and that corporations have many of the same constitutional rights as people.

The proposed 28th Amendment would end the restriction on the ability of Congress and the States to impose legal limits on political contributions and spending. The non-profit organization American Promise is in charge of this effort.

Five affirmative votes are required for passage after public comment.

UNFINISHED BUSINESS:

Order 96-18/19 Approving Purchase and Sale Agreement with Waterstone Properties Group, Inc. - Sponsored by the Economic Development Committee, Councilor Justin Costa, Chair.

The Economic Development Committee met on October 16, 2018 and voted unanimously (3-0) to forward this item to the City Council with a recommendation for passage.

The City has determined that the 4.82 acre vacant parcel, located in Portland between the Maine Turnpike and the proposed large scale mixed use project in Westbrook, is not needed for municipal use and should be sold. The interested buyer for this property is the Westbrook mixed-use project developer Waterstone Properties Group, Inc.

The subject site is not a legal conforming parcel to develop because it lacks street frontage, and there is no access to public utilities. Additionally, the site is encumbered by 1.81 acres of wetlands and two CMP easements (including 1.48 acres), which prohibit erecting or maintaining structures of any kind.

The upland areas, estimated to be 1.53 acres (excluding the no-build CMP easements), are not contiguous, and access to these areas would require crossing wetlands on-site and wetlands located on the adjacent, privately owned Westbrook mixed-use project property.

The proposed purchase price is \$11,220, as determined by the City Assessor. It is noted that the property appraisal determined the value of this property to be \$0.

The Buyer agrees to indemnify the City regarding any environmental issues, and acknowledges that the property will be sold in an "AS IS WHERE IS" condition.

At the December 17, 2018 City Council meeting, this item was postponed to the February 20, 2019 meeting. Five affirmative votes are required for passage after public comment.

Order 140-18/19 Amendment to Portland City Code Chapter 14 Re: Marijuana Medical and Adult Use Regulations - Sponsored by the Planning Board, Sean Dundon, Chair.

On November 27, 2018 the Planning Board met and voted unanimously (6-0) to forward this item to the City Council with a recommendation for passage.

The Planning Board has unanimously recommended proposed zoning text amendments, which update the City's medical marijuana standards, provide a unified zoning framework for both medical and adult use marijuana, define permitted uses, identify zoning districts for marijuana uses, establish use standards and location criteria, and set size caps for marijuana cultivation and marijuana retail stores.

This item must be read on two separate days. It was given a first reading on January 23, 2019. At the February 4, 2019 City Council meeting, this item was postponed to the February 20, 2019 meeting. Five affirmative votes are required for passage after public comment.

Order 150-18/19 Approving Two-Party Agreement between Portland and the Maine Department of Transportation Re: Washington Avenue Final Engineering and Construction - Sponsored by Jon P. Jennings, City Manager.

This project received initial funding from Portland Area Comprehensive Transportation System (PACTS) and was approved by the City Council in 2016 for the preliminary design of the southernmost portion of Washington Avenue beginning at Congress Street and terminating between Cumberland Avenue and Oxford Street, inclusive of roadway, sidewalk and signal design. This project then became a locally managed project, receiving City Council approval in 2017.

The preliminary design was reviewed and approved by the Maine Department of Transportation (MaineDOT) at the end of 2018. Funding has been approved by PACTS for final design and construction. Final design and associated MaineDOT approvals are expected to be completed in early 2020, with bidding and construction likely to occur later that year.

The agreement increases the total funding from \$175,600 to \$1,880,000, or an increase of \$1,705,000. Of that total, the City is responsible for 25%, or \$470,150.00. The remaining 75% will be provided by MaineDOT/PACTS. Final design and related costs prior to construction are anticipated to be approximately \$200,000, so the Department of Public Works has requested \$50,000 in the Fiscal Year 2020 Capital Improvement Program request. The remaining part of the City's share, for construction only, will be requested in the Fiscal Year 2021 Capital Improvement Program .

This item must be read on two separate days. It was given a first reading on February 4, 2019. Five affirmative votes are required for passage after public comment.

**Order 151-18/19 Authorizing Adoption of Cultural Plan Update of 2018 -
Sponsored by the Planning Board, Sean Dundon, Chair.**

The Planning Board met on January 22, 2019 and recommended by a vote of 7-0 the adoption of the Cultural Plan Update of 2018 to the City Council.

The Cultural Plan Update of 2018: A Living Action Plan is proposed for adoption by the City Council to establish strategic priorities and an action plan to support Portland's creative economy. The Planning Board has recommended the Cultural Plan Update of 2018, A Living Action Plan, for adoption as a City plan, and as an update to the 1998 plan, Celebrating Community: A Cultural Plan for Portland, Maine.

This item must be read on two separate days. It was given a first reading on February 4, 2019. Five affirmative votes are required for passage after public comment.

Order 152-18/19 Authorizing General Obligation Bonds to Finance a Portion of the City's Fiscal Year 2020 Capital Improvement Program in an Amount not to Exceed \$40,100,000 - Sponsored by the Finance Committee, Councilor Nicholas M. Mavodones, Chair

The Finance Committee met on January 24, 2019 and voted 3-0 to forward the Fiscal Year ("FY") 2020-FY2024 Capital Improvement Program to the City Council for approval.

The FY2020-FY2024 Capital Improvement Program ("CIP") has been in development since summer 2018 and has been reviewed by the Finance Committee since their first meeting of 2019. The FY20 Capital Improvement Plan calls for \$17,000,000 of new bond authorization for general fund CIP projects and \$23,100,000 of new bond authorization for sewer and stormwater CIP projects. Two orders are required, one authorizing the FY20 CIP bonds, a second appropriating the proceeds and excess fund balance for several projects. A complete listing of the funds being appropriated is included within the orders. The City Manager recommended the FY20 projects at the 1/10/2019 Finance Committee meeting.

This item must be read on two separate days. It was given a first reading on February 4, 2019. Seven affirmative votes are required for passage after public comment.

Order 153-18/19 Appropriating Bond Proceeds and Unassigned Fund Balance in an Amount not to Exceed \$42,100,000 for the City's Fiscal Year 2020 Capital Improvement Program - Sponsored by the Finance Committee, Councilor Nicholas M. Mavodones, Chair.

This order is a companion order with Order 152-18/19, above. It appropriates the FY20-FY24 CIP proceeds and excess fund balance for several projects, as authorized by the preceding order.

This item must be read on two separate days. It was given a first reading on February 4, 2019. Five affirmative votes are required for passage after public comment.

Order 154-18/19 Amendment to Portland City Code Chapter 12 Re: Abandoned Bicycles - Sponsored by Councilor Belinda Ray

The Abandoned Bicycles Ordinance was passed in April of 2015 for the purpose of giving staff “the ability to handle abandoned bikes in an effort to make space available on the City’s limited bike racks, remove obstructions and clutter from public property, and ensure recovered bicycles are put to good use for the community” (4/6/2015 Council Agenda).

The ordinance allows for bikes to be removed if they have remained locked in one location for 30 days or longer and meet two of the following criteria:

- (1) no tires or wheels;
- (2) missing or warped wheels, handle bars, or seat;
- (3) missing, rusted, or broken chain in a state that renders it inoperative; or
- (4) visible layer of dust on the seat and/or handle bars.

The ordinance has worked reasonably well in locations where abandoned bicycles are stripped of parts or otherwise vandalized. However, in locations where abandoned bikes are not tampered with, they often remain in decent condition, which means they cannot be removed, even after sitting for years in the same location.

Additionally, many of the bicycles cluttering the bike rack in the Welch Street parking lot on Peaks Island are not locked, as the ordinance appears to require. These bikes have been left on the rack for long-term storage—some for months, others for years—resulting in a chronically overcrowded rack that cannot be used by new users due to lack of space. This amendment will enable city staff to remove abandoned bicycles from bike racks in the public way if they have remained in place for 30 days or longer, or if they have remained in place for 14 days or longer and meet two of the original ordinance criteria (see above).

This amendment has been reviewed and approved by members of the Bicycle Coalition of Maine and the Peaks Island Safety Committee. This item must be read on two separate days. It was given a first reading on February 4, 2019. Five affirmative votes are required for passage after public comment.

Order 155-18/19 Amendment to Portland City Code Chapter 12 Re: Expanding E-Card Program - Sponsored by the Sustainability and Transportation Committee, Councilor Spencer Thibodeau, Chair.

The Sustainability and Transportation Committee voted 3-0 on January 16, 2019 to recommend approval of this amendment to the City Council.

The amendment extends eligibility for the bulky waste e-card program to the owners of residential condominiums who, until now, have not received solid waste services from the City of Portland. The current ordinance restricts eligibility to the owners of buildings that receive solid waste services from the City.

This item must be read on two separate days. It was given a first reading on February 4, 2019. Five affirmative votes are required for passage after public comment.

ORDERS:

Order 160-18/19 Accepting the Donation of \$300,000 from Maine Medical Center - Sponsored by Jon P. Jennings, City Manager

In 2017, Maine Medical Center ("MMC") applied for a zone change under the Institutional Overlay Zone (IOZ) provisions of the City's land use code. Under the requirements of the code, the hospital developed a master plan, their Institutional Development Plan (IDP), which framed their short- and long- range expansion plans for the next 20 years. Over the course of the review of this IDP, and the subsequent site plan reviews, the hospital engaged with the surrounding neighborhoods to discuss neighborhood needs, the hospital-neighborhood relationship, and potential areas where the goals of the hospital and its neighbors intersect.

One of the areas that emerged is in the realm of parks and recreation. The hospital's neighborhoods have long sought improvements to park and recreation facilities in their midst, recognizing the social, economic development, and environmental benefits of these resources. St. John/Valley has pursued park improvements at the Valley Street Community Garden/Dog Park for the last decade, Bramhall Square has been the source of conceptual planning for almost as long, and the Western Promenade and West End neighborhoods are currently engaged with Parks and Historic Preservation staff to develop a master plan for improvements to the Western Promenade. Park improvements have tangible value to MMC as well; research shows that the presence of parks and recreation facilities have a demonstrable effect on public health outcomes, correlating with higher rates of physical activity, lower rates of childhood obesity, and even decreased risk of cardiovascular and respiratory disease.

Realizing the potential synergy around park and recreation facilities, Maine Medical Center seeks to make a one-time \$300,000 contribution to the City for the purpose of improving parks in these locations: Bramhall Square, the Valley Street Community Garden/Dog Park, and the Western Promenade. The money is to be used for capital improvements only, with the specific projects to be determined by the Department of Parks, Recreation, and Facilities with the input of the neighborhoods where the facilities are located, based on previous or ongoing planning and design work.

Five affirmative votes are required for passage following public comment.

AMENDMENTS:

Order 161-18/19 Amendment to the Zoning Map Re: Section of Forest Avenue to Community Business B-2B - Sponsored by the Planning Board, Sean Dundon, Chair.

In 2016, the City Council supported Councilor Ray's motion to have the Planning Board consider a zoning map amendment from the current Community Business B-2 zone and the Residential R-5 zone to the Community Business B-2b zone. The referral asked the Planning Board for a recommendation on whether the B-2b, which promotes a more urban form and limits drive-throughs, is a more appropriate zone for this area.

The Planning Board considered the Council Request and held the public hearing on March 22, 2016. The Planning Board voted (6-1, Whited opposed) to recommend to City Council the adoption of the zoning map amendment to rezone a portion of Forest Avenue to Community Business B-2b. Lisa Whited opposed the map amendment, preferring a holistic solution to addressing auto related businesses and for transforming Forest Avenue. The majority of the members supported the map amendment and agreed with Ms. Whited that further analysis of the B-2 zones and drive-throughs was warranted. The Board's recommendation for the drive-through text amendments to the B-2 zones are coming forward concurrently with the recommended map amendment. The text amendments would re-introduce the drive-through use in the B-2b zone, subject to the use being associated with the bank or pharmacy in a minimum of a 3 story building with the majority of the upper floors in residential use (a minimum of 3 dwelling units).

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

Order 162-18/19 Amendment to the Portland City Code Chapter 14 Re: Drive-throughs in the B-2, B-2b and B-2c Community Business Zones - Sponsored by the Planning Board, Sean Dundon, Chair

The Planning Board unanimously recommends adoption of text amendments to the B-2, B-2b and B2c zones to allow bank and pharmacy drive-throughs in all B-2 zones, but only when they are in developments that include upper story housing. Currently, drive-throughs associated with permitted uses are allowed in B-2 and B-2c as a conditional use, but no drive-throughs are allowed in the B-2b zone. This proposed amendment would allow drive-throughs in all of these zones, but only in multiple story buildings with housing above. Specifically, the proposed text amendments revise the B-2 Table of Uses to limit drive-throughs to those associated with a pharmacy or banking facility in the three B-2 zones as a conditional use. A proposed footnote in the Use Table clarifies that drive-throughs are not permitted for restaurant, bakery or other food or beverage service uses. The conditional use standards for drive-throughs are revised to only permit a drive-through (associated with a bank or pharmacy) in a building of 3 or more stories where a majority of the upper stories is devoted to 3 or more dwelling units. Screening, location of drive-throughs, and stacking capacity for safe pedestrian and vehicle circulation on and off site are included in the location standard and the other existing 5 standards are retained.

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

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

EXECUTIVE SESSION: