Agenda
Regular City Council Meeting
November 17, 2014

1. November 17, 2014

   Documents: AGENDA 11-17-14REV.PDF
2. Agenda And Packet November 17,2014

   Documents: AGENDA NOVEMBER 17, 2014.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)
JILL C. DUSON (A/L)
JON HINCK(A/L)
NICHOLAS M. MAVODONES, JR. (A/L)

AGENDA
REGULAR CITY COUNCIL MEETING
NOVEMBER 17, 2014

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

PLEDGE OF ALLEGIANCE:

ROLL CALL:

ANNOUNCEMENTS:

RECOGNITIONS:

ANNUAL MEETING:

APPROVAL OF MINUTES OF PREVIOUS MEETING:

(Tab 1) November 3, 2014

PROCLAMATIONS:

Proc 11-14-15 (Tab 2)	**Proclamation Honoring Kiwanis Club of Portland – Sponsored by Mayor Michael F. Brennan.**
Proc 12-14/15 (Tab 3)	**Proclamation Honoring Evidence Technician Victor Cote as Police Officer of the Month for October 2014 – Sponsored by Mayor Michael F. Brennan.**
Proc 13-14/15 (Tab 4)	**Proclamation Honoring Timothy Nangle, Fire Department, as Employee of the Month for November 2014 – Sponsored by Mayor Michael F. Brennan.**
Proc 14-14/15 (Tab 5)	**Proclamation Recognizing Dementia (Alzheimers) Awareness Month Family Caregivers Month – November 2014 – Sponsored by Mayor Michael F. Brennan.**

APPOINTMENTS:

CONSENT ITEMS:

LICENSES:

BUDGET ITEMS:

COMMUNICATIONS:

Com 5-14/15 (Tab 6)

Communication from the Congress Square Redesign Study Group (CSRSG) Evaluating the Two Congress Square Options Including an Assessment of the Necessary Improvements and Cost Estimates for Each Option – Sponsored by Councilors Kevin J. Donoghue and David A. Marshall and Co-chairs of the Congress Square Redesign Study Group.

As requested in Council Order 34-14/15, the Congress Square Redesign Study Group (CSRSG) is providing a communication evaluating two (2) Congress Square redesign options including an assessment of the necessary improvements and cost estimates for each option. Option 1 is defined as the existing footprint of Congress Square Plaza without an event center. Option 2 is defined as an event center with a public park over the event center.

Wright-Ryan Construction was consulted to provide a cost estimate for each of the two options. As outlined in the 11.5.14 memo attached from Wright-Ryan, the estimate for the cost of Option 1 – the ground level park would be $1,367,400 and the estimate for the cost of Option 2 – the elevated park with event center would be $1,739,200 not including structural improvements to the events center.

The CSRSG met three times. The details of the review conducted at these meetings are included in the memo provided in the back-up materials.

Ultimately, these concepts and cost estimates were presented to the CSRSG on November 5 for their evaluation. Some members, including Portland Downtown District, the Westin, and the Convention and Visitors Bureau, expressed the desirability to have a hybrid solution as presented in Option 2 because of the economic benefit to the community in the form of events, visitors, jobs, sale of land, and tax income.

Other members expressed concern about a rooftop option not being able to provide a public open space that was truly accessible, open, and a benefit to the community, especially those in the community that are less mobile.

Additional concerns included the higher cost to build the elevated park, the inability to phase construction in Option 2, the irreversibility and inflexibility of Option 2, and the uncertain nature of maintenance and ownership structure with public land on top of a private building. Detailed responses from CSRSG members as well as the public may be found in the meeting minutes and public comment.

Ultimately the CSRSG voted 10-5-1 (for, against, abstained) to recommend Option 1 to the City Council.

As contemplated by Order 34-14/15, the next step in the process will be review by the Land Bank Commission and the Parks Commission.

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

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Communication Re: Hall School Building Committee – Sponsored Mayor Michael F. Brennan.

This appointment is brought to the Council pursuant to the Mayor's power under the Charter, Article II Section 5(1) to appointment the members and chairs of City Council committees and various ad hoc committees subject to an override vote of at least six members of the City Council.
The Committee will consist of the following members:

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This order appoints Marion T. Oliver, Taxi Administrator, and Franklin L. Noiles, Taxi Inspector/Enforcement Office as Constables effective from January 1, 2015 through midnight December 31, 2015.

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Five affirmative votes are required for passage after public comment.

Order 86-14/15 (Tab 9)

Order Amending and Expanding the Bayside Economic Redevelopment Program and Bayside Redevelopment Tax Increment Financing District – Sponsored by the Housing and Community Development Committee, Councilor Kevin J. Donoghue, Chair.

This matter is being presented to the City Council for authorization to amend the existing approved Bayside Tax Increment Financing (TIF) District to expand the geographic area of the TIF District to align with *Bayside Vision Plan* boundaries. Also, the expansion of the TIF District will enable TIF District revenue to be invested in public infrastructure improvements in a larger area within the District.

Background Information

The existing Bayside TIF District, originally approved by the City Council on March 31, 2003, included 11 acres. This TIF District was expanded on July 6, 2005 to include a total of 62.18 acres.

To date, TIF District revenues have been used to invest in the following:

- Credit Enhancement Agreement for the Intermed Building
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- Infrastructure for Whole Foods
- HUD 108 Loan Repayment

As part of discussions to establish a new Downtown/Transit Oriented Development District, staff was directed to present amendments to expand the geographic boundaries for the existing approved Bayside TIF District geography at the same 100% TIF capture rate.

Proposed Bayside TIF District Amendments.

The primary reason to amend the existing approved Bayside TIF District is to expand the TIF District geography by adding 67 acres to align the entire Bayside TIF District boundaries with the boundaries of the *Bayside Vision Plans*. The secondary reason is to enable TIF District revenue to be invested in public infrastructure improvements in a larger area within the District.

The amendment to include this additional acreage impacts the Bayside TIF District calculations through-out the TIF District documents.

The Amended and Restated Bayside TIF District Program documents are included in the agenda backup.

It is noted that under State TIF law, there are acreage and value limitations related to establishing TIF Districts City-wide. Those TIF Limitations include:

Acreage: 5% of Total Acreage; Portland's Total Acreage is 12,386; 5% is 619.30 acres.

Value: 5% of Total Aggregate Value; Portland's FY14 Total Aggregate Value is $7,551,450,000; 5% is $377,572,500.

The proposed Bayside TIF District expansion will result in all approved TIF Districts calculations as follows (with TOD TIFs and Downtown TIFs exempted from calculations):

Acreage: 253.50 acres TIF'd, which is 2% of total; leaving 365.8 acres that can be TIF'd.

Value: $370,021,490 TIF'd, which is 4.9% of total; leaving $7,551,010 that can be TIF'd.

While the City is near the "value" limit, it is noted that proposed TIF district terminations (Bay House TIF District, Fore India Middle Street) and proposed TIF District reductions (Riverwalk and Arts) will free up value capacity that will provide enough flexibility going forward.

With the expanded Bayside TIF District, the City will realize additional savings in tax sheltering benefits in an annual estimated amount at approximately $73,062 yearly; in addition to $607,245 yearly in tax sheltering savings from the original TIF District, for a combined yearly tax sheltering savings of $680,307.

The Housing and Community Development Committee met on October 22 and voted unanimously (4-0) to forward this item to the City Council with a recommendation for passage.

This item must be read on two separate days. It was given a first reading on November 3rd. Five affirmative votes are required for passage after public comment.

Order 87-14/15 (Tab 10)

Order Appointing and Setting Salary of Dawn Stiles as Health and Human Services Director – Sponsored by Sheila Hill-Christian Acting City Manager.

This order appoints Dawn Stiles as Health and Human Services Director at a salary of $105,047 effective December 1, 2014.

This item must be read on two separate days. It was given a first reading on November 3rd. Five affirmative votes are required for passage after public comment.

Order 88-14/15 (Tab 11)

Order Renaming the Portland Ice Arena the William B. Troubh Ice Arena – Sponsored by Mayor Michael F. Brennan.

The Portland Middle School Hockey Association is requesting that the Portland Ice Arena be renamed in honor of William B. Troubh.

Former City Councilor William B. Troubh, who grew up on Sherman Street, was instrumental in building the Portland Ice Arena, as well as bringing the Portland Sea Dogs to Portland to a refurbished Hadlock Field.

Bill was the first President of the Portland Middle School Hockey Association, an organization which still provides an opportunity for approximately 40 Portland middle school hockey players to develop their hockey skills each year at the Portland Ice Arena. This year will mark the 30th anniversary of the existence of the Portland Ice Arena. The Portland Middle School Hockey Association feels that this benchmark represents an appropriate time to spearhead an effort to raise funds to rename the Portland Ice Arena in honor of William B. Troubh.

John Menario and Joe Gray, both former City Managers, as well as close friends of Bill Troubh, have agreed to serve as Honorary Chairmen of a committee which the Portland Middle School Hockey Association will put together to promote this effort. The intention is to raise private funds to pay for any changes necessary for signage or other memorialization of Bill Troubh at the arena.

This item must be read on two separate days. This item was given a first reading on November 3. Five affirmative votes are required for passage after public comment.

Order 89-14/15 (Tab 12)

Amendment to Zoning Map Re: Bishop Street – Sponsored by by the Planning Board, Stuart O'Brien, Chair.

A request for a map change for a parcel at 72 Bishop Street was submitted by Avesta Housing as part of a planned development at that parcel. The Planning Division felt, and the Planning Board agreed, that this would be an opportunity to look at the zoning along Bishop Street generally to see if it is consistent with the City's plans and policies.

The Planning Board recommends a rezoning for the south side of Bishop Street near Morrill's Corner. The Board considered the existing zoning scheme for the area at three separate workshops.

Ultimately, a majority of the Board found that much of the existing Moderate Impact (IM) zone on the south side of Bishop Street merited rezoning to Community Business (B-2c), with a portion at the northern end of Mayfield Street warranting a rezoning to Residential (R-5).

The Board's review highlighted the fact that much of the existing IM zone along the southerly edge of Bishop Street is currently neither developed nor functioning as an industrial area.

The size of lots, the fact that the lots are only partially zoned industrial, the existence of the residential neighborhood on Mayfield Street, and the presence of sensitive natural resources in the vicinity effectively limit the potential for industrial development.

Thus, the Board decided to expand the area of the proposed rezoning and ultimately directed staff to advertise the B-2c and the R-5 as the proposed zoning designations. B-2c is proposed for the five properties south of Bishop Street west of Mayfield Street. R-5 is recommended at the north end of Mayfield Street where it intersects with Bishop Street.

On October 14, 2014, the Planning Board voted 4-1 (Dean opposed, Soley and Dundon absent) that the proposed map amendment to change the zoning for the southern side of Bishop Street from Moderate Impact Industrial (IM), Residential R-3, and Residential R-5 to Community Business (B-2c) and

Residential R-5, as shown in the map below, is consistent with the Comprehensive Plan. The Board voted 4-1 (Dean opposed, Soley and Dundon absent) to recommend adoption of the proposed amendment to the City Council. Mr. Dean expressed concerns regarding the loss of industrial land to business uses. However, he articulated his support for the R-5 rezoning at the north end of Mayfield Street.

This item must be read on two separate days. This item was given a first reading on November 3. Five affirmative votes are required for passage after public comment.

Order 90-14/15 (Tab 13)

Amendment to Portland City Code Chapter 14. Land Use Chapter 14. Land Use Re: Changes to Business B-1 and Community Business B-2 Zones – Sponsored by the Planning Board, Stuart O'Brien, Chair.

The Planning Board recommends text amendments to the Neighborhood Business B-1 zone and the Community Business B-2 zone. These include changes to the existing dimensional standards and permitted uses under both zoning classifications. The amendments are designed to allow the B-1 and B-2 zones better accomplish their own purposes, particularly as they relate to form and walkable, neighborhood-scaled development.

In the summer of this year, city staff reviewed the B-2 zone in an effort to address concerns regarding the zone's efficacy in encouraging higher-density housing.

The zone is explicitly designed to encourage "moderate to high density housing in urban neighborhoods along arterials" (14-181), and the city had made prior revisions in an effort to stimulate housing development, but that development had not occurred.

The review resulted in a set of text amendments, adopted in June of 2014, which increased the permitted housing density, clarified the setback requirements, and provided for lively, urban ground floor uses.

Following adoption of these amendments, it became clear to staff that additional changes to the B-2 were needed in order to resolve concerns that arose from the June 2014 modifications.

These changes, proposed here, include a reduction in the minimum street frontage requirement, the introduction of a setback requirement when abutting a residential zone, and the elimination of drive-throughs as a permitted or conditional use in the B-2b zone.

In the fall of this year, city staff conducted a similar review on the existing B-1 zone, after realizing that it, in much the same vein, contained street frontage, setback and other restrictions which effectively precluded it from successfully encouraging the traditional small-scale commercial and mixed-

use form so prized in the city's existing neighborhood retail nodes. As with the B-2, the existing B-1 had failed to encourage the type of development the zone exists to promote; there has been very little new retail or mixed-use development in the B-1 zone. The analysis resulted in several proposed text amendments, including a reduction in the minimum street frontage requirement, a reduction in the rear and side setbacks when abutting a residential zone, the introduction of stepbacks when abutting a residential zone, and the addition of restaurants of less than 2,000 SF, combined living/working spaces, and professional, business, and general offices as permitted uses.

On October 14, 2014, the Planning Board voted 5-0 (Soley and Dundon absent) that the proposed text amendments to Division 9. B-1 and B-1b Neighborhood Business Zones and Division 10. B-2 and B-2b Community Business Zones are consistent with the Comprehensive Plan and recommended adoption of the proposed amendment to the City Council.

This item must be read on two separate days. It was given a first reading on November 3. Five affirmative votes are required for passage after public comment.

Order 91-14/15 (Tab 14)

Amendment to Portland City Code Sec. 28-15 Traffic Schedule Re: Reducing Peninsula Parking Restrictions - Sponsored by the Transportation, Sustainability and Energy Committee – Councilor David A. Marshall, Chair.

Staff has been working on proposed changes to the Traffic Schedule for several months. Action is now needed by the City Council to endorse the amended parking changes for the Peninsula. If approved, this program will not be implemented until May 1, 2015.

Based on District 1 and 2 constituent input received over the recent years, the Department of Public Services and Parking Enforcement was asked to consider reducing daytime and nighttime parking restrictions by 50 percent.

Following extensive review with involved Departments, staff developed a proposal that strikes a balance of service delivery needs and capabilities and resident convenience. Under the proposed changes, residents will move their vehicles two times per month per side of street as opposed to the current four times per month per side of street.

The proposal recognizes that basic municipal street services must be provided and City staff will line up those services with the reduced parking restrictions.

Program Benefits are as follows:

- The proposal achieves the desired result of reducing, by 50%, the number of times vehicles must move per side of street during the month.

- Current service area boundaries will remain the same. Vehicles will now be moved on either Tuesday or Wednesday nights depending on the service area. This will enable the Department of Public Services to provide service on one side of every street in every week.

- Days on which restrictions occur precede the day that Solid Waste and Recycling collection takes place. This feature is especially beneficial in the winter months as it allows the Department of Public Services the opportunity to widen snow narrowed streets by plowing, re-plowing and removing snow prior to rubbish collection.

- Daytime restrictions will be between 10 AM and 2:00 PM. This time frame is consistent with the current Parkside restriction and provides Parking Control Officers with the opportunity to complete school crossing guard tasks before assisting with parking oriented service delivery support.

- New signage will reflect a "time of restriction" change that will run from 12:01 AM to 7:00 AM. This change should be easier to understand than the current 11:30 PM to 7:00 AM restriction.

Amended parking restrictions on both the East End and West End of the Peninsula will result in residents needing to move their vehicles 50% less. This will result in more predictable services such as street sweeping during the spring, summer and fall season.

The result is improvement to quality of living within most of the Peninsula neighborhood. City wide parking bans and temporary parking bans, by street, will still be used depending on emergency conditions related to weather, special events or unforeseen incidents.

The Department of Public Services budgeted $50,000 for new replacement parking restriction signage and $35,000 in overtime costs for program implementation and to ensure minimum staffing is provided for at all times.

The Transportation, Sustainability, and Energy Committee met on September 17th and voted unanimously to forward this item to the City Council with a recommendation for passage.

This item must be read on two separate days. It was given a first reading on November 3. Five affirmative votes are required for passage after public comment.

ORDERS:

Order 92-14/15 (Tab 15)

Order Granting License Agreement to Avesta Washington Ave. LP – Sponsored by Sheila Hill-Christian, Acting-City Manager.

The Department of Planning and Urban Development is bringing forward the request to the City Council to grant a revocable license to AVESTA(owner of Washington Avenue Efficiencies) in order to allow footings to extend into the public right-of-way. On June 10, 2014 the Planning Board approved Washington Avenue Efficiencies for 18 units of affordable rental apartments in a four-story building at 134 Washington Avenue, with the condition of approval that the applicant shall obtain permission for all work outside the boundaries of the site, including building footings, to be reviewed by Corporation Counsel and approved by the City Council.

The foundation footings for the Washington Ave. project are roughly four (4) feet below grade, extends into Washington Avenue two (2) feet, for a total area of incursion into the right of way of approximately 120 square feet.
Five affirmative votes are required for passage after public comment.

Order 93-14/15 (Tab 16)

Order Approving 10-Year Extension to Fedex Ramp Lease Agreement at Portland International Jetport – Sponsored by Sheila Hill-Christian, Acting City Manager.

The Portland International Jetport is requesting approval of a ten year extension to the City's Ramp Lease Agreement with Federal Express, Inc. The current agreement allows for an additional five year option, but Federal Express, Inc. through negotiations with the Airport Director has requested a longer term extension. Approval of this item would keep all terms of the existing agreement in effect with the following changes:

- **Term**: Current agreement extended 10 years from December 1, 2014 through November 30, 2024
- **Rate**: The annual rate paid by Federal Express for continued exclusive use of the aircraft cargo ramp would be $81,300, which is a 5.7% reduction over the rate currently paid. This new rate would be increased annually by the Consumer Price Index within a range of no less than 2% and no more than 5%.

The current lease with Federal Express allows an additional option for a five year extension, but it is in the Jetport's best interest to negotiate a longer term agreement. Federal Express is an important business partner at the Jetport and to the region. The reduction in rate is appropriate since it locks in a new ten year term for the lease of the cargo ramp. Additionally the 5.7% reduction in the annual lease rate recognizes that the current agreement like the proposed extension do not allow the rate to increase less than 2% even if the CPI does so. The CPI has been less than 2% in five of the last ten years.

The proposed 5.7 % rate reduction was developed by reviewing the CPI over the past ten years and resetting the lease rate to the actual CPI over that period.

If approved, the Portland International Jetport will receive $81,300 from the aforementioned annual lease payment. In addition to this annual lease payment, Federal Express will also continue to pay landing fees which total approximately $155,000 annually. This results in total annual revenue to the Jetport of $236,300.

Five affirmative votes are required for passage after public comment.

Order 94-14/15 (Tab 17)

Order Granting a License Agreement to 638 Congress Street Partners, LLC – Sponsored by Danielle West-Chuhta, Corporation Counsel.

This License Agreement provides 638 Congress Street Partners LLC with a license permitting "encroachments" in the right of way of the city's property; specifically, to install an overhang at least eight (8) feet above the sidewalk as part of its work in a façade improvement. Nine permanent canopies made of wood and wrapped in metal were approved by the Portland Historic Preservation Commission.

Five affirmative votes are required for passage after public comment.

Order 95-14/15 (Tab 18)

Order Approving the Collective Bargaining Agreement with the City Employees benefit Association (CEBA) – Sponsored by Sheila Hill-Christian, Acting City Manager.

City staff has reached a tentative three-year agreement with our largest bargaining unit, CEBA AFSCME Local 1373 representing approximately 500 city employees. The CEBA contract expired on June 30, 2013. The parties have been negotiating a successor contract for nearly eighteen months.

Terms of the three-year agreement include a 1.0% general wage increase Fiscal Year (FY) 2014 retroactive to July 7, 2013; a 1.0% general wage increase retroactive to July 6, 2014 (or minimum $.17); a 1.0% general increase effective January 4, 2015 (or minimum $.17) and a 3.0% general wage increase effective July 5, 2015. The general wage increases are consistent with guidance received by the Council on October 6,2014, and they are consistent with other negotiated contracts for the same period. The contract term is July 7, 2013 through June 30, 2016. The total direct cost of the general wage increase is $972,000.00. However, $485,000.00 has been appropriated and accounted for through the FY 14 and FY 15 budget approval process.

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

AMENDMENTS:

LICENSE RENEWALS:

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The primary reason to amend the existing approved Bayside TIF District is to expand the TIF District geography by adding 67 acres to align the entire Bayside TIF District boundaries with the boundaries of the *Bayside Vision Plans*. The secondary reason is to enable TIF District revenue to be invested in public infrastructure improvements in a larger area within the District.

The amendment to include this additional acreage impacts the Bayside TIF District calculations through-out the TIF District documents.

The Amended and Restated Bayside TIF District Program documents are included in the agenda backup.

It is noted that under State TIF law, there are acreage and value limitations related to establishing TIF Districts City-wide. Those TIF Limitations include:

Acreage: 5% of Total Acreage; Portland's Total Acreage is 12,386; 5% is 619.30 acres.

Value: 5% of Total Aggregate Value; Portland's FY14 Total Aggregate Value is $7,551,450,000; 5% is $377,572,500.

The proposed Bayside TIF District expansion will result in all approved TIF Districts calculations as follows (with TOD TIFs and Downtown TIFs exempted from calculations):

Acreage: 253.50 acres TIF'd, which is 2% of total; leaving 365.8 acres that can be TIF'd.

Value: $370,021,490 TIF'd, which is 4.9% of total; leaving $7,551,010 that can be TIF'd.

While the City is near the "value" limit, it is noted that proposed TIF district terminations (Bay House TIF District, Fore India Middle Street) and proposed TIF District reductions (Riverwalk and Arts) will free up value capacity that will provide enough flexibility going forward.

With the expanded Bayside TIF District, the City will realize additional savings in tax sheltering benefits in an annual estimated amount at approximately $73,062 yearly; in addition to $607,245 yearly in tax sheltering savings from the original TIF District, for a combined yearly tax sheltering savings of $680,307.

The Housing and Community Development Committee met on October 22 and voted unanimously (4-0) to forward this item to the City Council with a recommendation for passage.

This item must be read on two separate days. It was given a first reading on November 3rd. Five affirmative votes are required for passage after public comment.

Order 87-14/15 (Tab 10)

Order Appointing and Setting Salary of Dawn Stiles as Health and Human Services Director – Sponsored by Sheila Hill-Christian Acting City Manager.

This order appoints Dawn Stiles as Health and Human Services Director at a salary of $105,047 effective December 1, 2014.

This item must be read on two separate days. It was given a first reading on November 3rd. Five affirmative votes are required for passage after public comment.

Order 88-14/15 (Tab 11)

Order Renaming the Portland Ice Arena the William B. Troubh Ice Arena – Sponsored by Mayor Michael F. Brennan.

The Portland Middle School Hockey Association is requesting that the Portland Ice Arena be renamed in honor of William B. Troubh.

Former City Councilor William B. Troubh, who grew up on Sherman Street, was instrumental in building the Portland Ice Arena, as well as bringing the Portland Sea Dogs to Portland to a refurbished Hadlock Field.

Bill was the first President of the Portland Middle School Hockey Association, an organization which still provides an opportunity for approximately 40 Portland middle school hockey players to develop their hockey skills each year at the Portland Ice Arena. This year will mark the 30th anniversary of the existence of the Portland Ice Arena. The Portland Middle School Hockey Association feels that this benchmark represents an appropriate time to spearhead an effort to raise funds to rename the Portland Ice Arena in honor of William B. Troubh.

John Menario and Joe Gray, both former City Managers, as well as close friends of Bill Troubh, have agreed to serve as Honorary Chairmen of a committee which the Portland Middle School Hockey Association will put together to promote this effort. The intention is to raise private funds to pay for any changes necessary for signage or other memorialization of Bill Troubh at the arena.

This item must be read on two separate days. This item was given a first reading on November 3. Five affirmative votes are required for passage after public comment.

Order 89-14/15 (Tab 12)

Amendment to Zoning Map Re: Bishop Street – Sponsored by by the Planning Board, Stuart O'Brien, Chair.

A request for a map change for a parcel at 72 Bishop Street was submitted by Avesta Housing as part of a planned development at that parcel. The Planning Division felt, and the Planning Board agreed, that this would be an opportunity to look at the zoning along Bishop Street generally to see if it is consistent with the City's plans and policies.

The Planning Board recommends a rezoning for the south side of Bishop Street near Morrill's Corner. The Board considered the existing zoning scheme for the area at three separate workshops.

Ultimately, a majority of the Board found that much of the existing Moderate Impact (IM) zone on the south side of Bishop Street merited rezoning to Community Business (B-2c), with a portion at the northern end of Mayfield Street warranting a rezoning to Residential (R-5).

The Board's review highlighted the fact that much of the existing IM zone along the southerly edge of Bishop Street is currently neither developed nor functioning as an industrial area.

The size of lots, the fact that the lots are only partially zoned industrial, the existence of the residential neighborhood on Mayfield Street, and the presence of sensitive natural resources in the vicinity effectively limit the potential for industrial development.

Thus, the Board decided to expand the area of the proposed rezoning and ultimately directed staff to advertise the B-2c and the R-5 as the proposed zoning designations. B-2c is proposed for the five properties south of Bishop Street west of Mayfield Street. R-5 is recommended at the north end of Mayfield Street where it intersects with Bishop Street.

On October 14, 2014, the Planning Board voted 4-1 (Dean opposed, Soley and Dundon absent) that the proposed map amendment to change the zoning for the southern side of Bishop Street from Moderate Impact Industrial (IM), Residential R-3, and Residential R-5 to Community Business (B-2c) and

Residential R-5, as shown in the map below, is consistent with the Comprehensive Plan. The Board voted 4-1 (Dean opposed, Soley and Dundon absent) to recommend adoption of the proposed amendment to the City Council. Mr. Dean expressed concerns regarding the loss of industrial land to business uses. However, he articulated his support for the R-5 rezoning at the north end of Mayfield Street.

This item must be read on two separate days. This item was given a first reading on November 3. Five affirmative votes are required for passage after public comment.

Order 90-14/15 (Tab 13)

Amendment to Portland City Code Chapter 14. Land Use Chapter 14. Land Use Re: Changes to Business B-1 and Community Business B-2 Zones – Sponsored by the Planning Board, Stuart O'Brien, Chair.

The Planning Board recommends text amendments to the Neighborhood Business B-1 zone and the Community Business B-2 zone. These include changes to the existing dimensional standards and permitted uses under both zoning classifications. The amendments are designed to allow the B-1 and B-2 zones better accomplish their own purposes, particularly as they relate to form and walkable, neighborhood-scaled development.

In the summer of this year, city staff reviewed the B-2 zone in an effort to address concerns regarding the zone's efficacy in encouraging higher-density housing.

The zone is explicitly designed to encourage "moderate to high density housing in urban neighborhoods along arterials" (14-181), and the city had made prior revisions in an effort to stimulate housing development, but that development had not occurred.

The review resulted in a set of text amendments, adopted in June of 2014, which increased the permitted housing density, clarified the setback requirements, and provided for lively, urban ground floor uses.

Following adoption of these amendments, it became clear to staff that additional changes to the B-2 were needed in order to resolve concerns that arose from the June 2014 modifications.

These changes, proposed here, include a reduction in the minimum street frontage requirement, the introduction of a setback requirement when abutting a residential zone, and the elimination of drive-throughs as a permitted or conditional use in the B-2b zone.

In the fall of this year, city staff conducted a similar review on the existing B-1 zone, after realizing that it, in much the same vein, contained street frontage, setback and other restrictions which effectively precluded it from successfully encouraging the traditional small-scale commercial and mixed-

use form so prized in the city's existing neighborhood retail nodes. As with the B-2, the existing B-1 had failed to encourage the type of development the zone exists to promote; there has been very little new retail or mixed-use development in the B-1 zone. The analysis resulted in several proposed text amendments, including a reduction in the minimum street frontage requirement, a reduction in the rear and side setbacks when abutting a residential zone, the introduction of stepbacks when abutting a residential zone, and the addition of restaurants of less than 2,000 SF, combined living/working spaces, and professional, business, and general offices as permitted uses.

On October 14, 2014, the Planning Board voted 5-0 (Soley and Dundon absent) that the proposed text amendments to Division 9. B-1 and B-1b Neighborhood Business Zones and Division 10. B-2 and B-2b Community Business Zones are consistent with the Comprehensive Plan and recommended adoption of the proposed amendment to the City Council.

This item must be read on two separate days. It was given a first reading on November 3. Five affirmative votes are required for passage after public comment.

Order 91-14/15 (Tab 14)

Amendment to Portland City Code Sec. 28-15 Traffic Schedule Re: Reducing Peninsula Parking Restrictions - Sponsored by the Transportation, Sustainability and Energy Committee – Councilor David A. Marshall, Chair.

Staff has been working on proposed changes to the Traffic Schedule for several months. Action is now needed by the City Council to endorse the amended parking changes for the Peninsula. If approved, this program will not be implemented until May 1, 2015.

Based on District 1 and 2 constituent input received over the recent years, the Department of Public Services and Parking Enforcement was asked to consider reducing daytime and nighttime parking restrictions by 50 percent.

Following extensive review with involved Departments, staff developed a proposal that strikes a balance of service delivery needs and capabilities and resident convenience. Under the proposed changes, residents will move their vehicles two times per month per side of street as opposed to the current four times per month per side of street.

The proposal recognizes that basic municipal street services must be provided and City staff will line up those services with the reduced parking restrictions.

Program Benefits are as follows:

- The proposal achieves the desired result of reducing, by 50%, the number of times vehicles must move per side of street during the month.

- Current service area boundaries will remain the same. Vehicles will now be moved on either Tuesday or Wednesday nights depending on the service area. This will enable the Department of Public Services to provide service on one side of every street in every week.

- Days on which restrictions occur precede the day that Solid Waste and Recycling collection takes place. This feature is especially beneficial in the winter months as it allows the Department of Public Services the opportunity to widen snow narrowed streets by plowing, re-plowing and removing snow prior to rubbish collection.

- Daytime restrictions will be between 10 AM and 2:00 PM. This time frame is consistent with the current Parkside restriction and provides Parking Control Officers with the opportunity to complete school crossing guard tasks before assisting with parking oriented service delivery support.

- New signage will reflect a "time of restriction" change that will run from 12:01 AM to 7:00 AM. This change should be easier to understand than the current 11:30 PM to 7:00 AM restriction.

Amended parking restrictions on both the East End and West End of the Peninsula will result in residents needing to move their vehicles 50% less. This will result in more predictable services such as street sweeping during the spring, summer and fall season.

The result is improvement to quality of living within most of the Peninsula neighborhood. City wide parking bans and temporary parking bans, by street, will still be used depending on emergency conditions related to weather, special events or unforeseen incidents.

The Department of Public Services budgeted $50,000 for new replacement parking restriction signage and $35,000 in overtime costs for program implementation and to ensure minimum staffing is provided for at all times.

The Transportation, Sustainability, and Energy Committee met on September 17th and voted unanimously to forward this item to the City Council with a recommendation for passage.

This item must be read on two separate days. It was given a first reading on November 3. Five affirmative votes are required for passage after public comment.

ORDERS:

Order 92-14/15 (Tab 15)

Order Granting License Agreement to Avesta Washington Ave. LP – Sponsored by Sheila Hill-Christian, Acting-City Manager.

The Department of Planning and Urban Development is bringing forward the request to the City Council to grant a revocable license to AVESTA(owner of Washington Avenue Efficiencies) in order to allow footings to extend into the public right-of-way. On June 10, 2014 the Planning Board approved Washington Avenue Efficiencies for 18 units of affordable rental apartments in a four-story building at 134 Washington Avenue, with the condition of approval that the applicant shall obtain permission for all work outside the boundaries of the site, including building footings, to be reviewed by Corporation Counsel and approved by the City Council.

The foundation footings for the Washington Ave. project are roughly four (4) feet below grade, extends into Washington Avenue two (2) feet, for a total area of incursion into the right of way of approximately 120 square feet.
Five affirmative votes are required for passage after public comment.

Order 93-14/15 (Tab 16)

Order Approving 10-Year Extension to Fedex Ramp Lease Agreement at Portland International Jetport – Sponsored by Sheila Hill-Christian, Acting City Manager.

The Portland International Jetport is requesting approval of a ten year extension to the City's Ramp Lease Agreement with Federal Express, Inc. The current agreement allows for an additional five year option, but Federal Express, Inc. through negotiations with the Airport Director has requested a longer term extension. Approval of this item would keep all terms of the existing agreement in effect with the following changes:

- **Term**: Current agreement extended 10 years from December 1, 2014 through November 30, 2024
- **Rate**: The annual rate paid by Federal Express for continued exclusive use of the aircraft cargo ramp would be $81,300, which is a 5.7% reduction over the rate currently paid. This new rate would be increased annually by the Consumer Price Index within a range of no less than 2% and no more than 5%.

The current lease with Federal Express allows an additional option for a five year extension, but it is in the Jetport's best interest to negotiate a longer term agreement. Federal Express is an important business partner at the Jetport and to the region. The reduction in rate is appropriate since it locks in a new ten year term for the lease of the cargo ramp. Additionally the 5.7% reduction in the annual lease rate recognizes that the current agreement like the proposed extension do not allow the rate to increase less than 2% even if the CPI does so. The CPI has been less than 2% in five of the last ten years.

The proposed 5.7 % rate reduction was developed by reviewing the CPI over the past ten years and resetting the lease rate to the actual CPI over that period.

If approved, the Portland International Jetport will receive $81,300 from the aforementioned annual lease payment. In addition to this annual lease payment, Federal Express will also continue to pay landing fees which total approximately $155,000 annually. This results in total annual revenue to the Jetport of $236,300.

Five affirmative votes are required for passage after public comment.

Order 94-14/15 (Tab 17)

Order Granting a License Agreement to 638 Congress Street Partners, LLC – Sponsored by Danielle West-Chuhta, Corporation Counsel.

This License Agreement provides 638 Congress Street Partners LLC with a license permitting "encroachments" in the right of way of the city's property; specifically, to install an overhang at least eight (8) feet above the sidewalk as part of its work in a façade improvement. Nine permanent canopies made of wood and wrapped in metal were approved by the Portland Historic Preservation Commission.

Five affirmative votes are required for passage after public comment.

Order 95-14/15 (Tab 18)

Order Approving the Collective Bargaining Agreement with the City Employees benefit Association (CEBA) – Sponsored by Sheila Hill-Christian, Acting City Manager.

City staff has reached a tentative three-year agreement with our largest bargaining unit, CEBA AFSCME Local 1373 representing approximately 500 city employees. The CEBA contract expired on June 30, 2013. The parties have been negotiating a successor contract for nearly eighteen months.

Terms of the three-year agreement include a 1.0% general wage increase Fiscal Year (FY) 2014 retroactive to July 7, 2013; a 1.0% general wage increase retroactive to July 6, 2014 (or minimum $.17); a 1.0% general increase effective January 4, 2015 (or minimum $.17) and a 3.0% general wage increase effective July 5, 2015. The general wage increases are consistent with guidance received by the Council on October 6,2014, and they are consistent with other negotiated contracts for the same period. The contract term is July 7, 2013 through June 30, 2016. The total direct cost of the general wage increase is $972,000.00. However, $485,000.00 has been appropriated and accounted for through the FY 14 and FY 15 budget approval process.

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

AMENDMENTS:

LICENSE RENEWALS:

Tab 1 11-17-14

IN COUNCIL REGULAR MEETING November 3, 2014 VOL. 130 PAGE 30

ROLL CALL: Mayor Brennan called the meeting to order at 7:10 P.M. (Councilor Leeman absent).

ANNOUNCEMENTS:

RECOGNITIONS:

ANNUAL MEETING:

Motion was made by Councilor Mavodones and seconded by Councilor Duson to recess the meeting of the City Council and convene the Annual meeting of the Corporator of Portland Development Corporation. Passage 8-0.

Annual Meeting of the Corporator of Portland Development Corporation – Sponsored by Mayor Michael F. Brennan.

Order 75A-15 **Order Removing the $250,000 CAP to the Portland Development Corporation's ("PDC") Portland Economic Development Plan Implementation Program (PEDPIP) and Authorizing the PDC's Board of Directors to Utilize the Corporation's Unrestricted Fund to Fund PEDPIP Grants – Sponsored by Sheila Hill-Christian, Acting City Manager.**

Motion was made by Councilor Mavodones and seconded by Councilor Duson for passage. Passage 8-0.

Motion was made by Councilor Mavodones and seconded by Councilor Marshall to adjourn the meeting of the Corporator of Portland and reconvene the regular City Council meeting.
Passage 8-0.

APPROVAL OF MINUTES OF PREVIOUS MEETING:

Motion was made by Councilor Mavodones and seconded by Councilor Marshall to approve the minutes of October 20, 2014. Passage 8-0.

PROCLAMATIONS:

Proc 8-14/15 **Proclamation Honoring Officer Kevin Murphy as Police Officer of the Month for September 2014 – Sponsored by Mayor Michael F. Brennan.**

Proc 9-14/15 **Proclamation Honoring Volunteers Who Support Yardscaping Gardens at Back Cove – Sponsored by Mayor Michael F. Brennan.**

Proc 10-14/15 **Proclamation Honoring Anne Bilodeau, Finance Department, as Employee of the Month for October, 2014 –Sponsored by Mayor Michael F. Brennan.**

APPOINTMENTS:

Order 76-14/15 **Order Appointing Constables for 2014 and 2015 – Sponsored by by Sheila Hill-Christian, Acting City Manager.**

Motion was made by Councilor Marshall and seconded by Councilor Suslovic to postpone Order 76 until November 17, 2014. Passage 7-1 (Mavodones)

CONSENT ITEMS:

Order 77-14/15 **Order Declaring Portland's Downtown District's "Light Up Your Holidays" Festival – Sponsored by Sheila Hill-Christian, Acting City Manager.**

Order 78A-14/15 **Order Declaring Portland's Downtown District's "First Friday Art Walk Holiday Edition" Festival – Sponsored by Sheila Hill-Christian, Acting City Manager.**

Order 79A-14/15 **Order Declaring Portland Winterfest as a Festival – Sponsored by Sheila Hill-Christian, Acting City Manager.**

Order 80A-14/15 **Order Approving Transfer of Funds Under 15 M.R.S.A. Secs 5824(3) and 5826(6) Re: Ian Nono– Sponsored by Sheila Hill-Christian, Acting City Manager.**

Order 81A-14/15 **Order Approving Transfer of Funds Under 15 M.R.S.A. Secs 5824(3) and 5826(6) Re: Nicholas Dipietro – Sponsored by Sheila Hill-Christian, Acting City Manager.**

Order 82A-14/15 **Order Approving Transfer of Funds Under 15 M.R.S.A. Secs 5824(3) and 5826(6) Re: Abdi Ali– Sponsored by Sheila Hill-Christian, Acting City Manager.**

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

LICENSES:

Order 83-14/15 **Order Granting Municipal Officers' Approval of Joseph A. Richards d/b/a Studio 55 Mixology Show Lounge. Application for a Class A Lounge License with Entertainment with Dance at 55 Market Street – Sponsored by Katherine L. Jones, City Clerk.**

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

BUDGET ITEMS:

COMMUNICATIONS:

Com 4-14/15 **Communication RE: Status of 2014-2015 Work Plan Associated with the Portland Economic Development Plan – Sponsored by the Housing and Community Development Committee, Councilor Kevin J. Donoghue, Chair.**

RESOLUTIONS:

UNFINISHED BUSINESS:

ORDERS:

Order 84-14/15 **Order Terminating the Bay House Tax Increment Financing District - Sponsored by the Housing and Community Development Committee, Councilor Kevin J. Donoghue, Chair.**

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

Order 85-14/14 **Order Terminating the Fore India Middle, LLC Tax Increment Financing District – Sponsored by the Housing and Community Development Committee, Councilor Kevin J. Donoghue, Chair.**

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

Order 86-14/15 **Order Amending and Expanding the Bayside Economic Redevelopment Program and Bayside Redevelopment Tax Increment Financing District – Sponsored by the Housing and Community Development Committee, Councilor Kevin J. Donoghue, Chair.**

This is its first reading.

Order 87-14/15 **Order Appointing and Setting Salary of Dawn Stiles as Health and Human Services Director – Sponsored by Sheila Hill-Christian Acting City Manager.**

This is its first reading.

Order 88-14/15 **Order Renaming the Portland Ice Arena the William B. Troubh Ice Arena – Sponsored by Mayor Michael F. Brennan.**

This is its first reading.

AMENDMENTS:

Order 89-14/15 **Amendment to Zoning Map Re: Bishop Street – Sponsored by by the Planning Board, Stuart O'Brien, Chair.**

This is its first reading.

Order 90-14/15 **Amendment to Portland City Code Chapter 14. Land Use Chapter 14. Land Use Re: Changes to Business B-1 and Community Business B-2 Zones – Sponsored by the Planning Board, Stuart O'Brien, Chair.**

This is its first reading.

Order 91-14/15 **Amendment to Portland City Code Sec. 28-15 Traffic Schedule Re: Reducing Peninsula Parking Restrictions - Sponsored by the Transportation, Sustainability and Energy Committee – Councilor David A. Marshall, Chair.**

This is its first reading.

Motion was made by Councilor Coyne and seconded by Councilor Duson to adjourn. Passage 8-0, at 8:25 P.M.

A TRUE COPY.

Janice Gardner, Assistant City Clerk

Proc 11-14/15
Tab 2 11-17-14

PROCLAMATION

RECOGNIZING

KIWANIS CLUB OF PORTLAND

November 17, 2014

****

WHEREAS: The Portland Kiwanis Club was founded in 1917, and is the oldest Kiwanis Club in Maine; and

WHEREAS: The Kiwanis Club of Portland has a longstanding and dedicated focus on helping those less fortunate, especially children; and

WHEREAS: The Kiwanis Club of Portland has been a longtime supporter of the Kiwanis Pool, providing financial support through yearly donations; and

WHEREAS: The Kiwanis Club of Portland through various efforts and fundraising has secured a $1500 donation for the City of Portland, Aquatic Division of the Recreation and Facilities Management Department.

NOW, THEREFORE, BE IT RESOLVED, THAT I, Michael Brennan, Mayor of the City of Portland, Maine, and the members of the Portland City Council do hereby recognize the **Kiwanis Club of Portland** and thank them for their efforts on behalf Kiwanis Pool and the children of Portland, Maine.

Signed and sealed this 17th day of November, 2014

_____

Michael F. Brennan, Mayor
City of Portland, Maine

Doc 12-14/15
Tab 3 11-17-14

PROCLAMATION

HONORING

EVIDENCE TECHNICIAN VICTOR COTE

WHEREAS, **Evidence Technician Cote** joined the Portland Police Department in 1996 and worked as a patrol officer for eight years before completing the extensive training to become a crime scene investigator. Over his eighteen years of service to the department and citizens of Portland he has received numerous commendations, letters of appreciation and been recognized for at least two full calendar years of perfect attendance; and

WHEREAS, **Evidence Technician Cote** has recently taken on additional responsibilities during the extended leave of a co-worker to include many on-call hours in addition to his regularly demanding schedule; and

WHEREAS, **Evidence Technician Cote** most recently has been a key member in several major cases. In a high profile murder trial he worked diligently and spent endless hours preparing for and subsequently testifying in court where a jury ultimately found the defendant guilty; and

WHEREAS, **Evidence Technician Cote's** meticulous and thorough approach to getting the job done has time and again upheld the Portland Police Department's mission to provide Leadership, Integrity and Service to the City of Portland; and

WHEREAS, **Evidence Technician Cote** remains a valuable and highly trained team member who is one of our most deserving employees.

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 **Victor Cote** as **Officer of the Month for October 2014.**

Signed and sealed this 17th day of November, 2014

Michael F. Brennan, Mayor
City of Portland, Maine

Proc 13-14/15
Tab 4 11-17-14

PROCLAMATION

HONORING

Timothy Nangle
Employee of the Month

November 2014

* * * * *

WHEREAS: **Timothy Nangle** of the Fire 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 **Timothy's** duties as a Firefighter/EMT-Paramedic with over 23 years of service. The Fire Department's mission could not be accomplished without his hard work and dedication. **Timothy** is a very productive employee and integral to the success of the department's day-to-day function; and

WHEREAS: In 2007 an injury took **Timothy** off the streets, where he loved to be, but it did not slow him down. **Timothy** has multiple responsibilities and he does them with efficiency and professionalism. Some of these responsibilities include purchasing all medical supplies for the department; maintaining and uploading all patient care reports to the billing contractor and the Maine Emergency Medical Service; repairing and maintaining the many Mobile Data Terminals; assisting the Chief of Department with Public Information and supporting the City Communications Director; being responsible for many public awareness and outreach programs; and assisting the training division with internal education and quality assurance; and

WHEREAS: **Timothy** is always willing to jump into any new project and offer a unique perspective and solution to anything he is tasked to do. He has a can-do attitude and can quickly solve the most complex problems. **Timothy** truly is an asset to the Fire 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 **Timothy Nangle** as **City Employee of the Month, November, 2014.**

Signed and Sealed this 17th day of November, 2014

Michael F. Brennan, Mayor
City of Portland, Maine

Doc 14-14/15
Tab 5 11-14-17

PROCLAMATION

RECOGNIZING

DEMENTIA (ALZHEIMERS) AWARENESS MONTH
FAMILY CAREGIVERS MONTH

NOVEMBER 2014

WHEREAS: Dementia represents a group of 50 or more causes of memory impairment, including Alzheimer's, affecting 37,000 people in Maine and over 5,000,000 people in the United States, and is the sixth leading cause of death in America; and

WHEREAS: Dementia is NOT a normal consequence of the aging process; and

WHEREAS: Dementia is caused by the death of brain cells; blockage of the chemical signals between neurons; a head injury with hemorrhaging in the brain or a reaction to a medication; and

WHEREAS: Some of the symptoms include difficulties with memory, progressing from simple forgetfulness to the inability to remember directions, recent events, and familiar faces.

WHEREAS: Most forms of dementia have no known cure or treatment; yet 20% of dementias are reversible or manageable; and

WHEREAS: President Ronald Reagan designated November as National Alzheimer's Disease Awareness Month in 1983; and

WHEREAS: Portland cares about the well-being of all its residents; and

WHEREAS: On November 18th, 2014, a free Community Memory Screening from the Alzheimer's Foundation of America will be offered to Portland residents from 9am - 4pm in Portland at Park Danforth, 777 Stevens Avenue on a walk in basis.

NOW, THEREFORE, BE IT RESOLVED, THAT I Michael F. Brennan, Mayor of the City of Portland and members of the City Council do hereby recognize November, 2014, as Portland's Alzheimer's and Dementia Awareness Month and Family Caregivers Month; and November 18th, 2014, as Portland Community Memory Screening Day.

Signed and sealed this 17th day of November, 2014

Michael F. Brennan, Mayor
City of Portland, Maine

Com 5-14/15
Tab 7 11-17-14

MEMORANDUM
City Council Agenda Item

TO: Mayor Brennan and members of the City Council

FROM: Alex Jaegerman, Planning Division Director, and Caitlin Cameron, Urban Designer, on behalf of the Congress Square Redesign Study Group

DATE: November 7, 2014

DISTRIBUTION: (City Manager, Mayor, Sonia Bean, Danielle West-Chuhta, Nancy English)

SUBJECT: Communication from the Congress Square Redesign Study Group evaluating the two (2) Congress Square redesign options including an assessment of the necessary improvements and cost estimates for each option.

SPONSOR: Councilors Donoghue and Marshall, Co-chairs of the CSRSG

COUNCIL MEETING DATE ACTION IS REQUESTED:
1st reading_____ Final Action_____x_____

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

PRESENTATION: (List the presenter(s), type and length of presentation)

I. SUMMARY OF ISSUE (Agenda Description)

As requested in Council Order 34-14/15, the Congress Square Redesign Study Group (CSRSG) is providing a communication evaluating two (2) Congress Square redesign options including an assessment of the necessary improvements and cost estimates for each option. Option 1 is defined as the existing footprint of Congress Square Plaza without an event center. Option 2 is defined as an event center with a public park over the event center.

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

Effective 8.14.2014, Council Order 34-14/15 referred review of Congress Square Redesign to the CSRSG. As part of its role to advise and guide the Council with regard to the assessment of the best use and design of Congress Square, the CSRSG was ordered that on or before November 17, 2014 to provide the City Council with a written report evaluating the two (2) Congress Square redesign options.

III. INTENDED RESULT

The intended result of this communication is to assist the Council in making a decision on which option – Option 1 ground-level park and Option 2 elevated park – the City should move forward with for the redesign of Congress Square.

IV. COUNCIL GOAL ADDRESSED

Not applicable.

V. FINANCIAL IMPACT

Wright-Ryan Construction was consulted to provide a cost estimate for each of the two options. As outlined in the 11.5.14 memo attached from Wright-Ryan, the estimate for the cost of Option 1 – the ground level park would be $1,367,400 and the estimate for the cost of Option 2 – the elevated park with event center would be $1,739,200. This is a difference of $371,800. These estimates are for the park space only and do not include the design or construction costs for the entire square. These estimates also do not include the additional design service costs for either option. Additionally, if Option 2 were to require an elevator/stair core or additional structural support to support the loads of the rooftop park, these costs would be borne by the City and are not currently accounted for in the cost estimates provided.

VI. STAFF ANALYSIS

The CSRSG, on receipt of Council Order 34-14/15, met three times to fulfill the requests of the order. On August 20, the group convened to create a strategy around fulfilling the Council Order. At that meeting, the CSRSG directed staff to evaluate the two options based on conformance with the public vision and assessment, cost, and precedents. At the second meeting on September 17, staff presented examples from other cities of ground-level and elevated parks for the group's consideration. In addition, general cost estimates based on square feet of park area were generated in consultation with several designers. The staff evaluation included an outline of potential challenges and opportunities for each option and included the observation that on the subjects of accessibility, openness, and inclusion, the ground level park was likely to be more successful than an elevated park but otherwise, it was not possible to compare the two options without concept designs. The CSRSG then gave direction to staff to work with the Co-chairs and design team to come up with a process around design and cost estimates which would then be reported back to the CSRSG.

Staff worked with the design team currently under contract for the redesign of the whole square, KMDG and Utile, to create a concept design for each option. Wright-Ryan Construction was then hired to provide more detailed cost estimates on each of those concept designs. The results of which can be found in the attachments as well as a staff memo which describes the design program given, a description of each design, additional considerations, and a scorecard which compares each option. These concepts and cost estimates were presented to the CSRSG on November 5 for their evaluation. Some members, including Portland Downtown District, the Westin, and the Convention and Visitors Bureau, expressed the desirability to have a hybrid solution as presented in Option 2 because of the economic benefit to the community in the form of events, visitors, jobs, sale of land, and tax income. Other members expressed concern about a rooftop option not being able to provide a public open space that was truly accessible, open, and a benefit to the community, especially those in the community that are less mobile. Additional concerns included the higher cost to build the elevated park, the inability to phase construction in Option 2, the irreversibility and inflexibility of Option 2, and the uncertain nature of maintenance and ownership structure with public land on top of a private building. Detailed responses from CSRSG members as well as the public may be found in the meeting minutes and public comment attached.

VII. RECOMMENDATION

The Congress Square Redesign Study Group voted to recommend Option 1, the ground-level park. The vote was taken at their meeting on Wednesday, November 5. The vote was 10 in favor, 5 opposed, and 1 abstained. Steve Hewins, representing the Portland Downtown District, chose to abstain based on an opposition to the process. Mr. Hewins opposed the motion to recommend an option stating that the Council Order asked the CSRSG to evaluate each option but not to make a recommendation.

VIII. LIST ATTACHMENTS

1) Memorandum to the CSRSG regarding the two concept designs – 11.5.14 (source: Planning staff)
2) Design Concepts for Options 1 and 2 – presentation (source: KMDG/Utile)
3) Design Concepts for Options 1 and 2 – plans (source: KMDG/Utile)
4) Cost Estimate for Options 1 and 2 (source: Wright-Ryan Construction)
5) Scorecard (source: staff)
6) Minutes from CSRSG meetings 8.20.14, 9.17.14, and 11.5.14
7) Public comment

Prepared by:

Signature

November 7, 2014
Date

Memorandum
Planning and Urban Development Department
Planning Division

To: Co-chairs Donoghue, Marshall and the Congress Square Redesign Study Group

From: Caitlin Cameron, Urban Designer, and Alexander Jaegerman, Planning Division Director

Date: November 5, 2014

Re: Congress Square Redesign – Evaluation of Two Park Design Concepts

---

The Congress Square Redesign Study Group (CSRSG) is tasked by the Council with evaluating two basic redesign scenarios for Congress Square:

1) Redesign of entire Square including existing footprint of Congress Square Plaza without an event center
2) Redesign of entire Square including an event center with a public park over the event center

Design Parameters

The design team (KMDG) was engaged according to the direction to staff provided by the CSRSG at the 9.17.14 meeting. A concept design for each options was to be provided for the park space, keeping in mind the needs and vision for the square as a whole. The team was provided with the parameters below with some additional resources as noted. The team obtained the dimensional requirements for the proposed event center under the management of City staff.

Design Parameters:

- Vision Statement (provided in September packet)
- Design Program (below)
- ADA accessible without elevators
- Equal level of finish and quality
- Equal provision of amenities/program – if a programmatic element or amenity cannot be provided, explain the reasoning or constraints

The design team was also provided with the following resources:

- Previous staff memo from 9.17.14 including the precedents/examples (staff)
- Event center design dimensions and parameters (Canal 5 Studio)
- Observations from the park use and events (Friends of Congress Square Park, attached)

Design Program

(with tally of applicable visioning data)

Desired Characteristics:

- Pedestrian Priority (less car dominance) (212)
- Public and Open/Inviting, Accessible (all ages, abilities) (129)
- Neighborhood/Community space (108)
- Safe (65)
- Clean/Maintained (56)
- Preserve and Celebrate Historic/Architectural Character (51)
- Economic Vitality (45)
- Arts District Identity (43)
- Active (40)
- All-Season Use
- Day/Night Use

Activities to be accommodated

1. Access to Green Space/Natural Elements/Enjoying Outdoors (232)
2. Food / Eating (210)
3. Performance (especially music) (152)
4. Events (especially those that activate the entire square - First Friday art walk, Markets) (144)
5. Play and Education (all ages) (107)
6. Art (potentially both permanent and temporary) (85)
7. Sitting/ Relaxing (80)
8. Hotel Entry + Apartment/Restaurant Egress
9. Gathering/Socializing (57)
10. People-watching (43)
11. Wifi/Internet access (36)
12. Restrooms (34)
13. Movie Screening (14)

Elements

1. Green/Landscaped Space (including trees) (232)
2. Seating (varied types/conditions to accommodate dining, people-watching, resting, reading, sun/shade) (113)
3. Water Feature (75)
4. Public Art (63)
5. Games/Interactive Play Elements (44)
6. Unique/identifying material palette and pavers (41)
7. Kiosk or Pavilion/Structure (38)
8. Gateway/Entry/ Place-making structures (28)

Description of Design Concepts

Option 1: Ground-level park with existing plaza footprint

In the proposed Concept 1, this option provides a mix of environments which could include a variety of activities and has flexibility. There are green spaces with lawn, hardscaped spaces near and away from the street, shaded and sunny spaces, play and discovery areas, seating walls, and areas that could accommodate tables and chairs, events, or performances. The space also varies in levels to deal with the change in grade from Congress Street to the hotel – there are distinct areas at each level but all are accessible through the use of ramps. In this concept with the ground-level park option, there is more occupiable space than Option 2 but less green space. The hotel entrance is enhanced with a new vestibule and a kiosk adjacent to provide food or information and an LED screen for movie screenings or digital art. The main axis of the park, which cuts diagonally through the square with a distinctive paving pattern, makes a clear path through the deep space visually and physically with the church and water feature as visual terminuses. The most prominent characteristic of the large park in this concept is the truss pavilion which has a strong placemaking component and brings definition to the space but is, again, flexible – it could be an armature for shade, lighting, performance, and art.

Option 2: Elevated park with Event Center

In the proposed Concept 2, this option provides for a variety of spaces at different levels – the most prominent characteristic being the terraced seating facing Congress Street. There are hardscaped plazas at Congress Street, a mid-level terrace, and then the front of the upper terrace. Landscaping is accommodated with a green lawn on the upper terrace, sloped greens at the ramp, and planters on the seating steps. The upper terrace provides the largest gathering space and would likely be the host to most events. Due to the need for ramps and stairs to travel between the levels of this design, there is less occupiable space than in Option 1 but more landscaped space than Option 1. In this concept, an LED screen adds opportunities for visual interest on the roof from the street and would be a place for screenings and digital art. A water feature was accommodated on the mid-level terrace and in combination with the sloped green spaces gives visual cues to the pedestrian at the street that the upper spaces are open and accessible. There are two trellis elements which provide shade and also placemaking by bringing some verticality to the space. The design is multi-dimensional but has a clear face the museum. A canopy and sign on High Street indicate the building entrance. A distinctive paving pattern at the street brings some unique identity to the space and could be applied across the square.

Additional comments

Building Structure
It is important to note that the cost estimate provided by Wright-Ryan does not include costs associated with having to increase the load-bearing capacity of the event center structure. This is likely an additional cost to the Option 2 budget that would need to be funded by the City or other parties.

Egress and Access
Option 2, the rooftop option, is ADA accessible through a ramp system. However, the concept does not include an elevator core to access this space. The inclusion of an elevator core would increase the cost associated with this option.

Whole Square
It is important to remember that Congress Square program needs and identity should be met throughout the entire Square and not just Congress Square Plaza. The plaza/park space is a significant portion of the public open space and its design and use are crucial to the overall success of the square, but the evaluation of the two options should keep a reasonable expectation of what is possible to achieve in the plaza and which things can or should be achieved throughout the Square and perhaps, in different areas of the Square.

Scorecard
The scorecard is one tool provided to compare the two design concepts. Staff has included some metrics for those elements that may be quantitatively compared (square feet of green space or linear feet of seating wall, for example). The scorecard also allows for CSRSG members to evaluate each aspect of the designs in a more qualitative way, ranking how the design might meet certain program needs and the vision on a scale of 1 to 5.

Attachments: Materials included for review of two design concepts

- Observations of park use, summer 2014 (source: Friends of Congress Square Park)
- Concept Design Images (source: KMDG/Utile)
- Cost Estimates (source: Wright-Ryan Construction)
- Scorecard (source: staff)

Friends of Congress Square Park - thoughts on redesign based on placemaking initiatives

1. Critical Design Elements for Congress Square Park
   - **Easily accessible** to all people of all ages and physical abilities (seniors in wheel chairs, moms & dads with strollers, etc.)
   - Must have **open visual sight lines** to draw people in and make park feel inviting and safe
     - Pedestrians must be able to see into the interior of the park both from a distance and up close
   - **Permeable edges** that allow for multiple access points and through foot traffic from High Street to Congress Street
   - **No hidden spaces** that affect safety
     - Presently the clock and new storage shed for Vinland create hidden spots that allow for unwanted behavior.
   - **Variety of attractions and destinations** within the park:
     - Flexible space for movable tables and chairs, performances, markets
     - Public sculpture and/or water feature
     - A variety of seating both fixed and movable in both sunny and shady areas
     - Active and passive areas (ex: game tables, sculptural play structures, seating to socialize with friends AND quiet places to read or rest)
     - Shade trees and greenery (currently the trees are in very large planters which makes it is difficult to sit in their shade)
   - The entire square should be **more pedestrian friendly** and have a sense of cohesion between the inner (current park space) and outer square (PMA plaza, hay building, etc.)
   - **High quality materials with a simple flexible design** that allows for programming and amenities to adapt to changing community needs and aspirations
   - A **permanent kiosk** for food or coffee. Food trucks could have a carve out on High St or Congress St for them to park with direct access to the tables and seating.

2. Critical Management and Maintenance Elements
   - A formal structure for maintenance, programming and fundraising must be established between the City and a friends group dedicated only to the success of CSP. It should provide for:
     - a central calendar for all programming events to facilitate the permitting process
     - a clear understanding of who will handle regular cleaning and maintenance
     - an understanding of which entity will fund which aspects of management.
   - Access to outdoor performance area
     - How will performance equipment be brought to the area? Where will people sit to watch performance? Where will performers park to unload equipment Is there a place for a screen? A dance area?
   - Cleaning:
     - Hardscape should be easy to wash down with a hose.
     - Green areas should be easily raked. Current ground cover in planters traps litter. Mulch is messy.
     - Need to be able to easily clear snow for year round use of entire park/square

•Storage location for tables, chairs, cleaning equipment, etc

3. Additional Observation of the existing space

- While the present park is sunken and has two walls, it's design makes for a safe place for children to play despite the busy traffic. The paths and stairs make for interesting child play.
- The back corner with the grass and lights in the trees has been transformed into a nice quite area used by many different people.
- The park has become a meeting place for residence and visitors
- Many people use the free Wi-Fi throughout the day.
- Many visitors are interested in the clock. Needs to be much better displayed.
- The center of the park gets a lot of wonderful sunlight in the summer, but it is too hot for people to sit there without umbrellas or some other shade option.
- Very few people cross through the park to go from High Street to Congress Street because of the impermeable edge of High and the stairs on Congress. Through traffic would make the entire space more lively and active.
- The outer edges of the square have limited activity. The Shwartz building has been boarded up for 5 years. The State building directly across from the park has several storefronts being used for storage. Need to address the outer square as well to create a thriving space.

kmdg utile

Redesign Options for Congress Square

Congress Square Redesign Study Group | 11.05.14

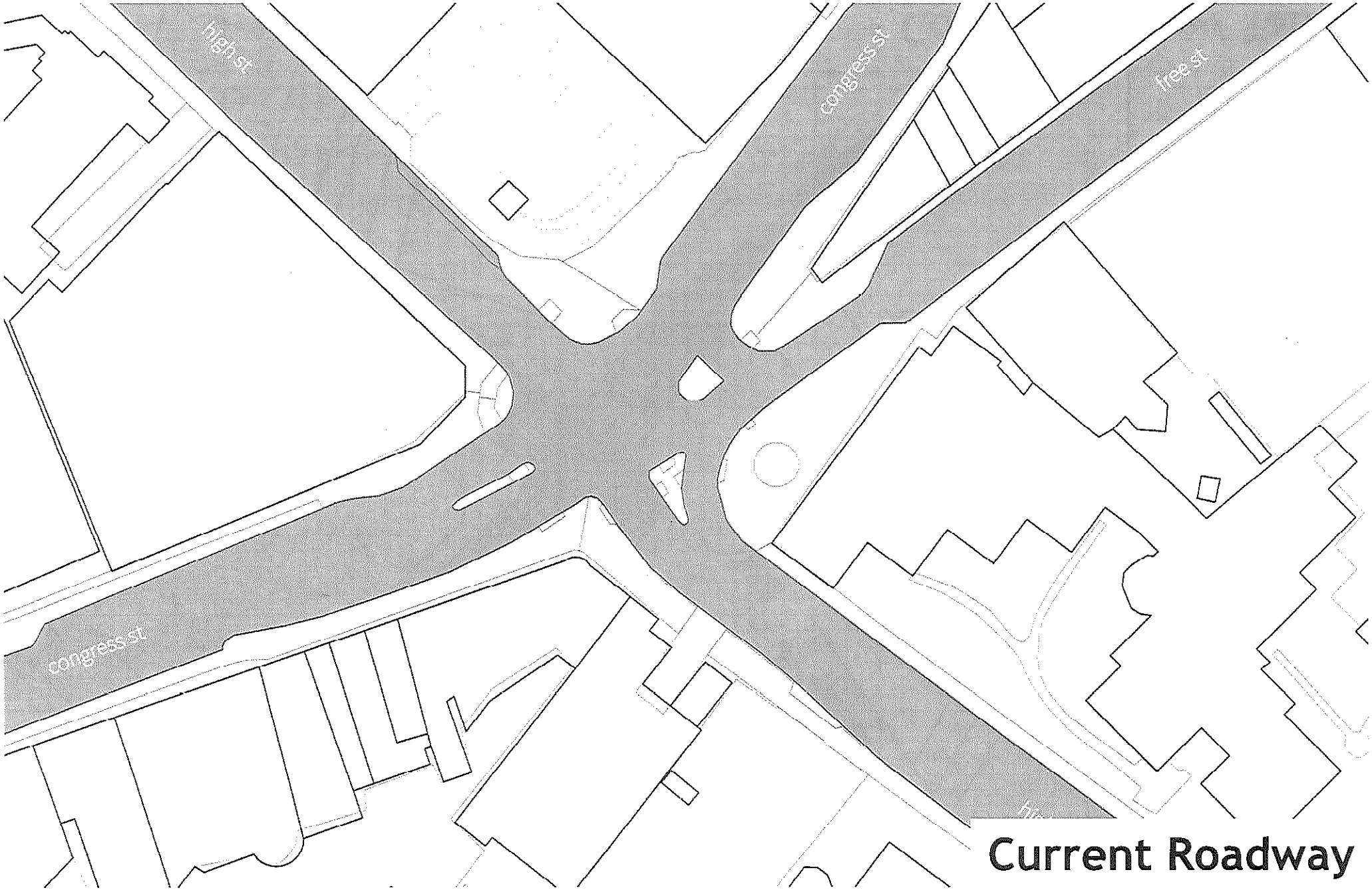
Meeting Agenda

- Vision Statement
- Reimagining Congress Square - where we left off...
- 2 Redesign Options for Congress Square
    - challenges, needs, opportunities, vision
    - cost estimation
- Discussion / Next steps

Vision Statement

Congress Square is a high quality, distinctive urban space that epitomizes the Arts District while remaining accessible and inviting to all. Year-round, the Square provides a welcome break in the dense, historic district street wall where one encounters a range of activities including events and installations that celebrate local arts and culture, and fosters spontaneity, informal gathering, and fun. As a gateway intersection, the redesigned Congress Square places priority on the pedestrian experience and safety while accommodating all transportation modes in an efficient manner.

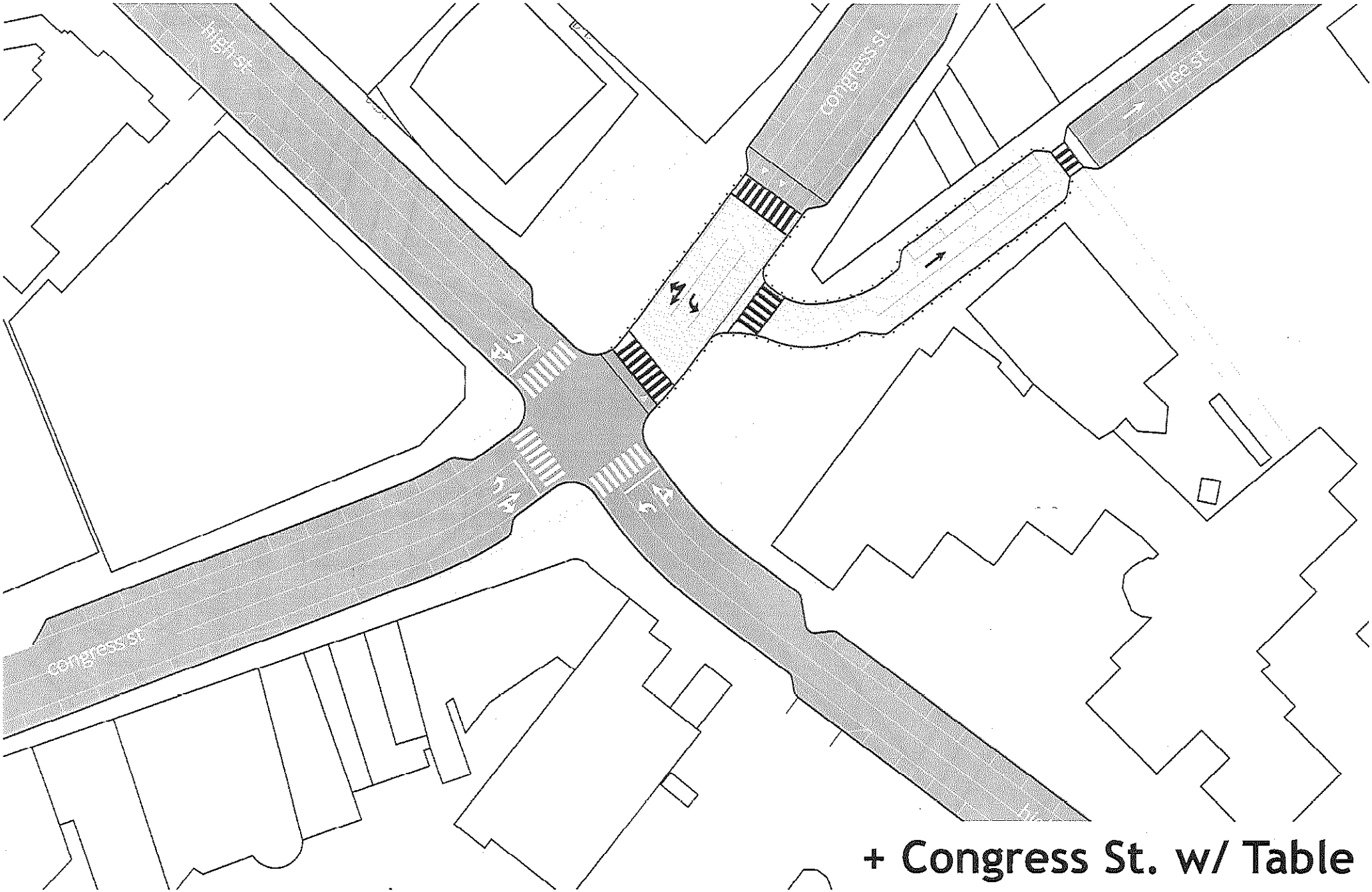
Reimagining Congress Square



Current Roadway

kmdg utile

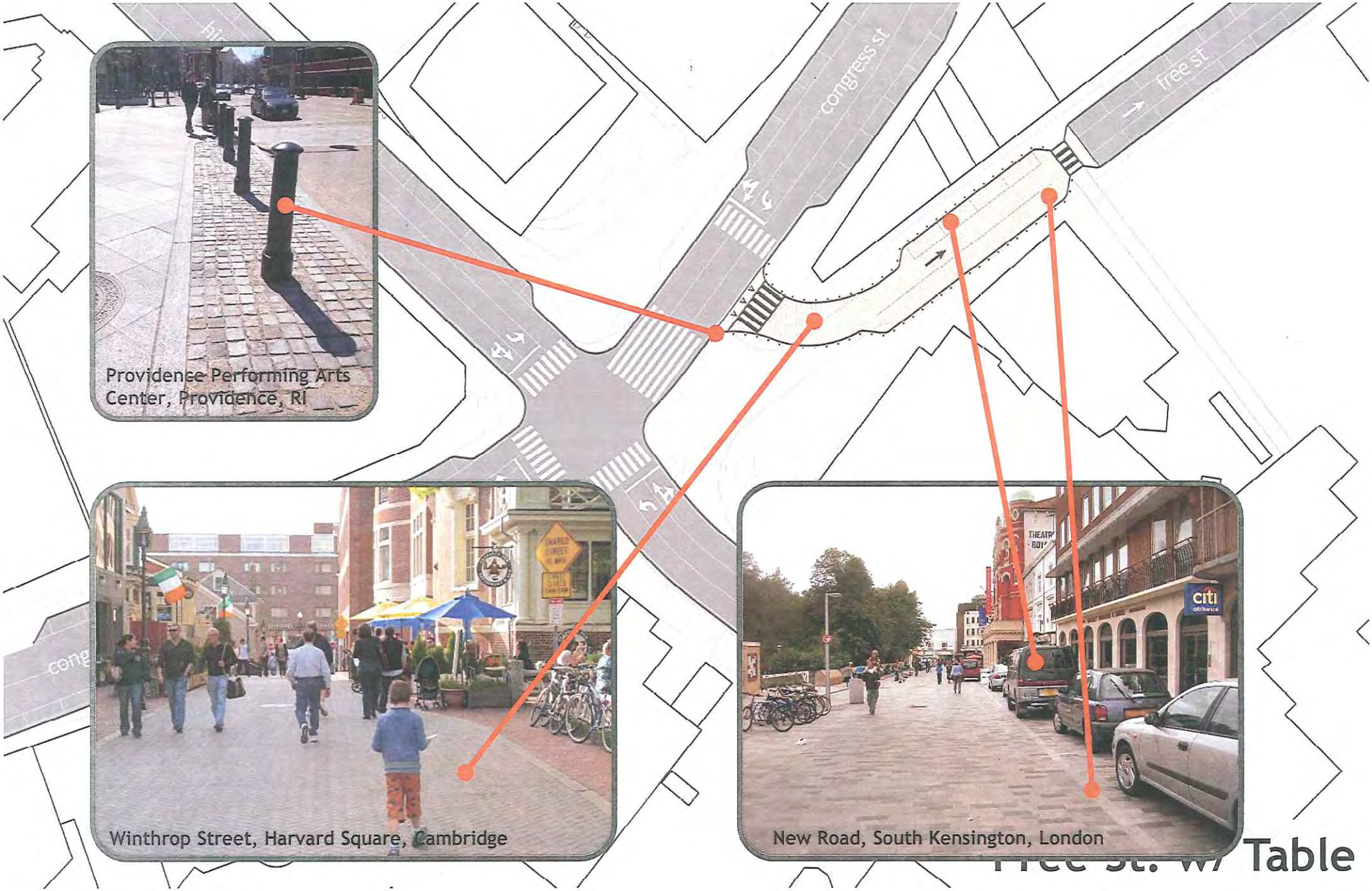
Redesign Options for Congress Square
Congress Square Redesign Study Group | 11.05.14



+ Congress St. w/ Table

kmdg utile

Redesign Options for Congress Square
Congress Square Redesign Study Group 05.14



Free St. w/ Table

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Redesign Options for Congress Square
Congress Square Redesign Study Group | 11.05.14

+ Congress St. w/ Table

kmdg utile

Redesign Options for Congress Square
Congress Square Redesign Study Group .05.14

Redesign Options for Congress Square

...park and square

ONE_ground

Eric Hopkins, Waypoints #1

precedents

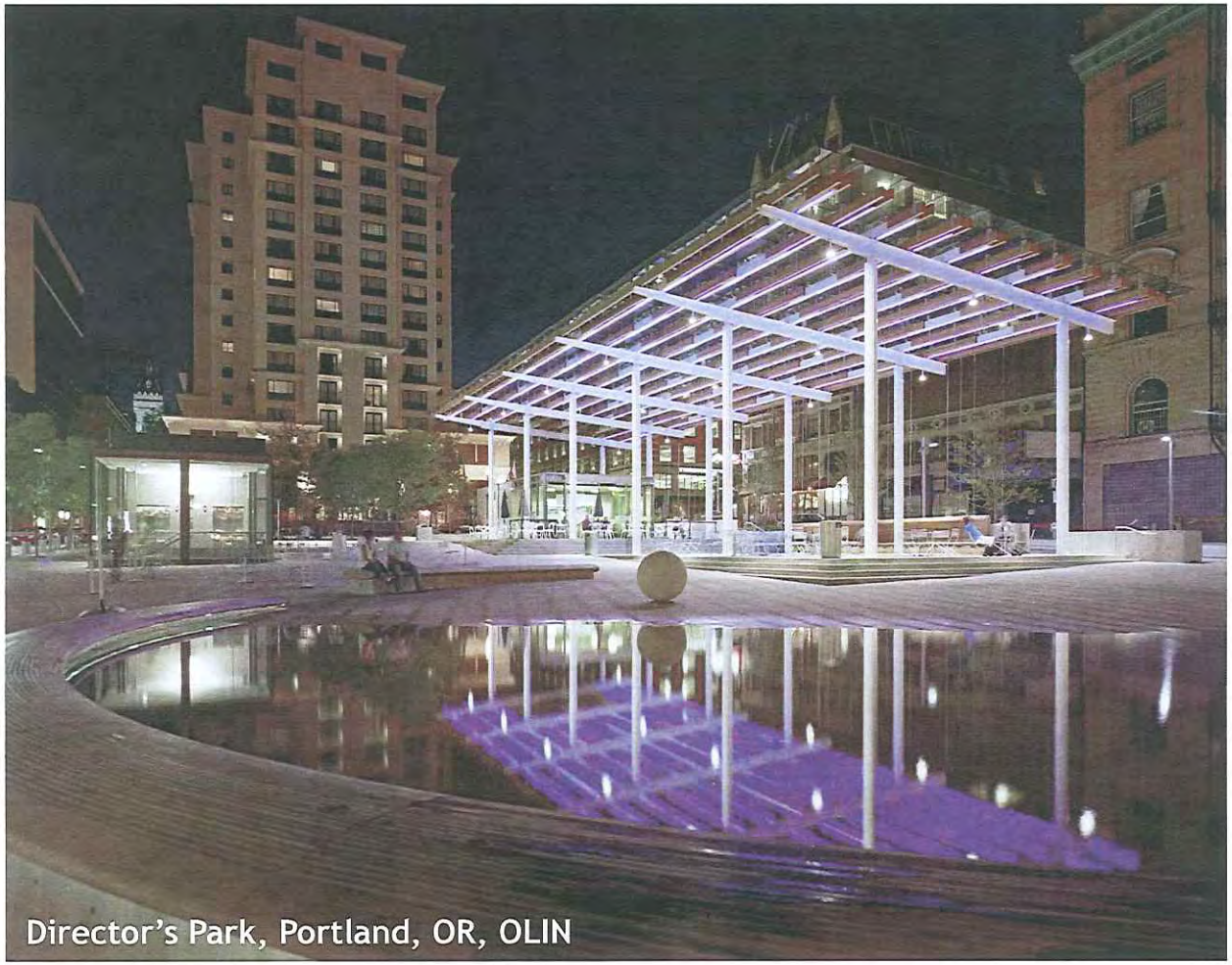
Perk Plaza at Chester Commons, Cleveland, LANDstudio

Boston Common

North End Parks, Boston

TCL, Lonsdale Street, Victoria Australia

UVA School of Architecture, NBWLA



Director's Park, Portland, OR, OLIN

BCEC, Boston, MA, Utile

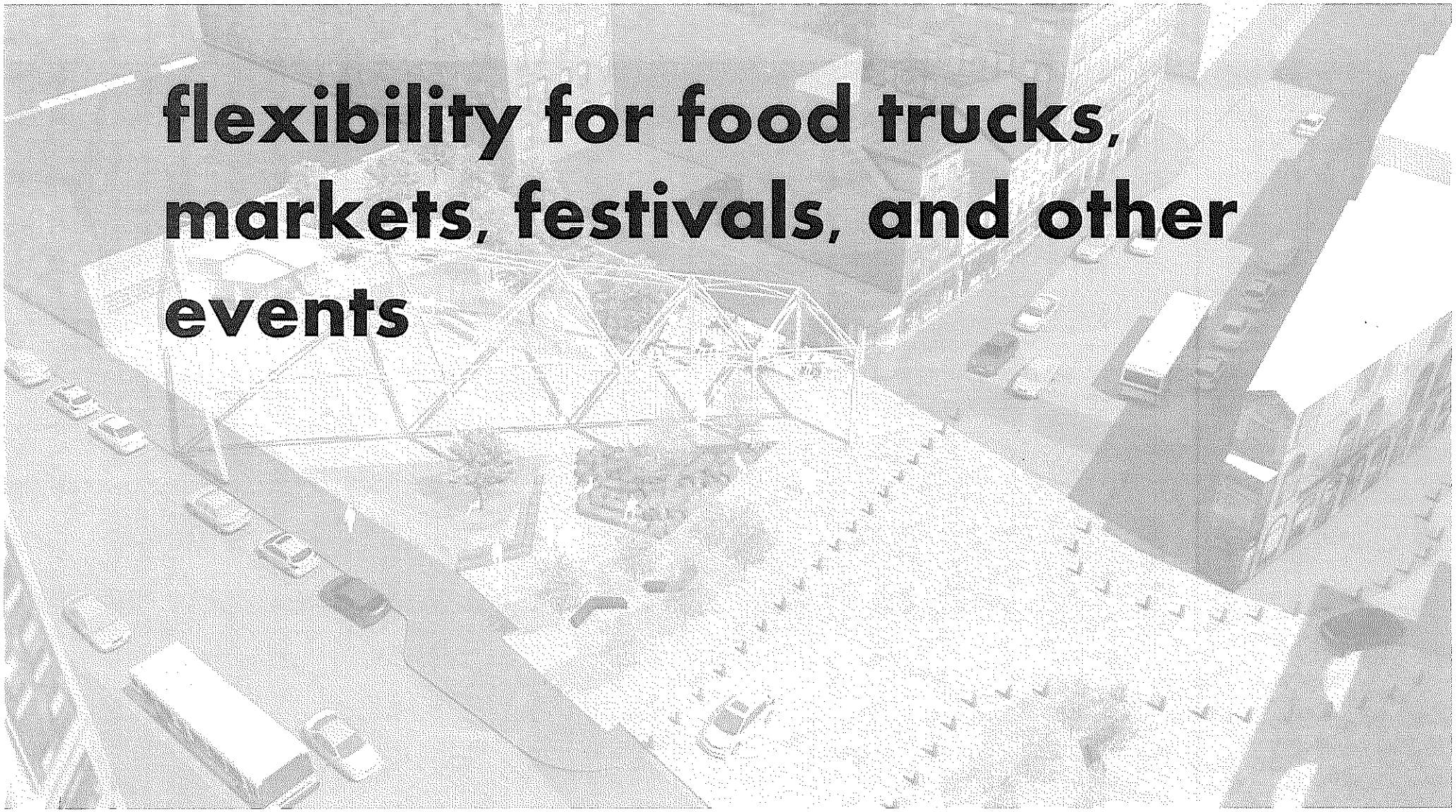
kmdg utile

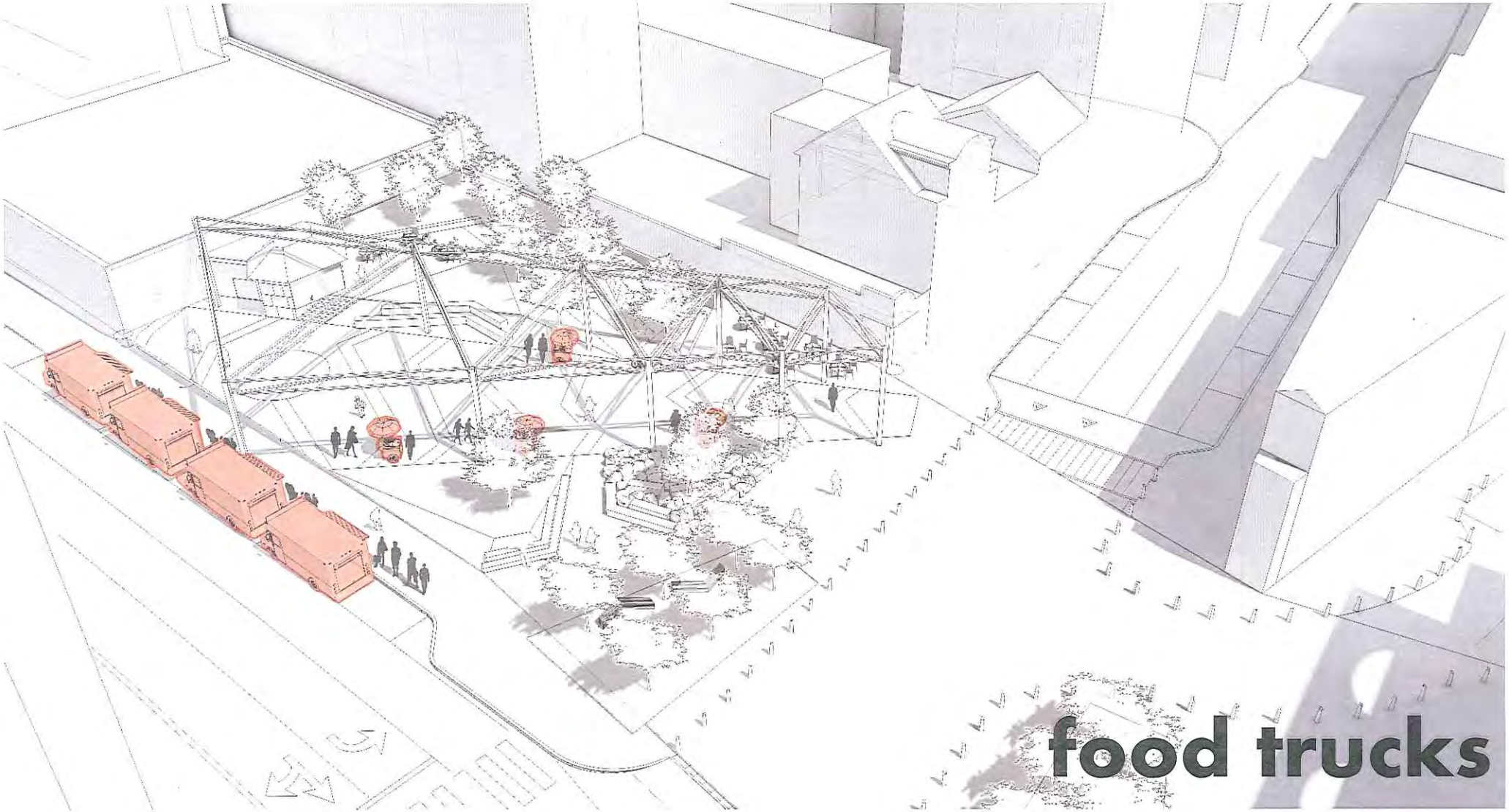
Redesign Options for Congress Square
Congress Square Redesign Study Group .05.14

kmdg utile

Redesign Options for Congress Square
Congress Square Redesign Study Group | 11.05.14

flexibility for food trucks, markets, festivals, and other events




food trucks

markets

performances

performances +

markets +

- Lawn areas
- Pergola Structure with lighting
- Water feature
- Planting
- Seating stairs
- Café seating
- Digital video screen
- Kiosk/pavilion
- Lighting

TWO_roof

Chand Baori stepwell, India

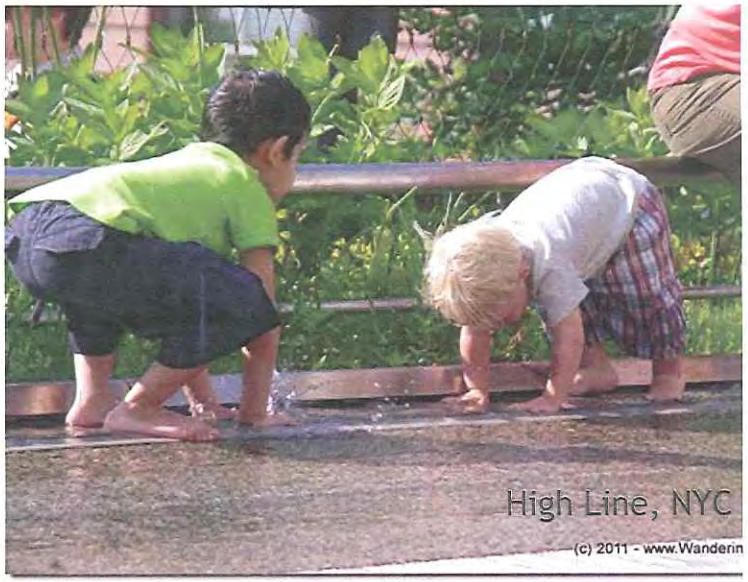
Event Center technical parameters

- 7 doors connecting to exterior
- 5000 sf event room with additional sf for circulation. Total of 8600 provided
- Finished floor of event center must meet finished floor of hotel
- Provide universal accessibility to the roof without use of an elevator. Results in 481' of inclined walkway *including* landings at 5% slope.
- Accounted for possible 6' of structure thickness in rooftop. Highest elevation of roof is 24' above interior floor.

precedents

Spanish Steps, Rome

Union Square, San Francisco



High Line, NYC

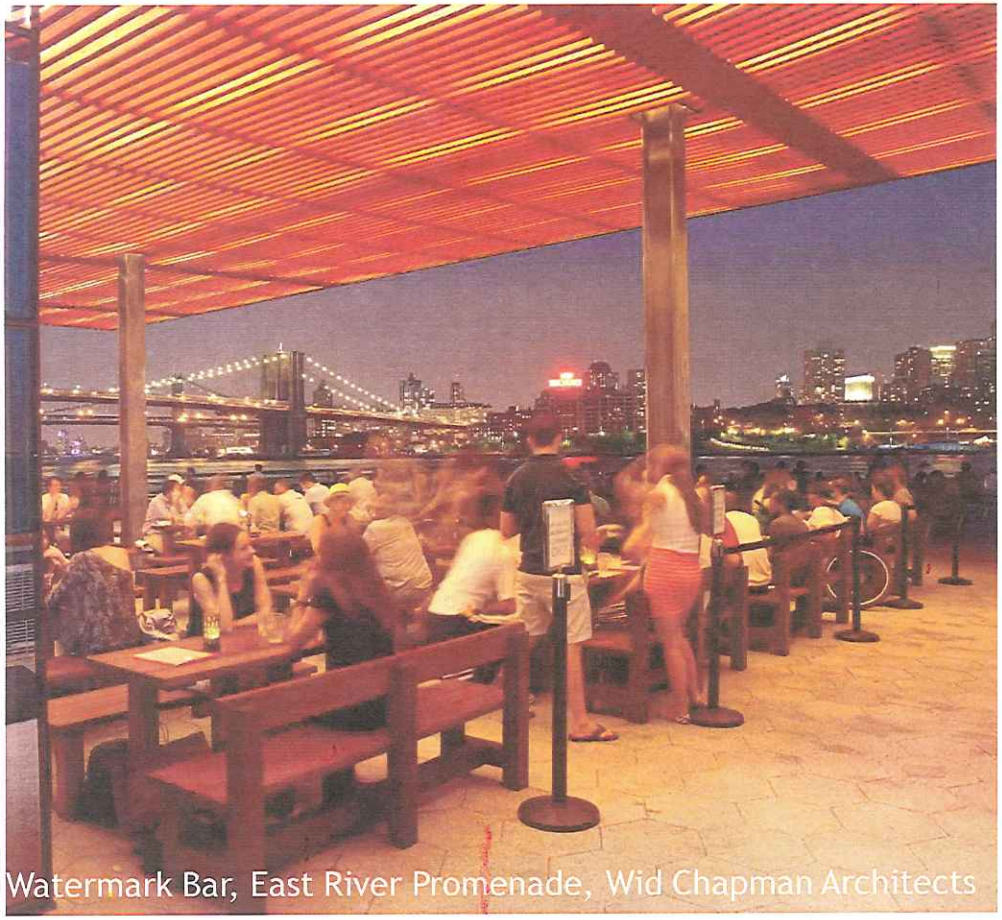
535 Mission St/100 First St, San Francisco

MGH Museum, Boston, Leers Weinzapfel

Louisville Waterfront Park, Hargreaves

incoln Center

kmdg utile



Watermark Bar, East River Promenade, Wid Chapman Architects

Art House at the Jones Center, Austin, Tx, LTL Architects

HOTEL

kmdg utile

Redesign Options for Congress Square
Congress Square Redesign Study Group | 11.05.14

kmdg utile

Redesign Options for Congress Square
Congress Square Redesign Study Group | 11.05.14

flexibility for food trucks, markets, festivals, and other events

HOTEL
food trucks

kmdg utile

Redesign Options for Congress Square
Congress Square Redesign Study Group .05.14

HOTEL
performances

HOTEL
performances +

kmdg utile

Redesign Options for Congress Square
Congress Square Redesign Study Group | 11.05.14

- Lawn
- Terraces with shade structures
- Water feature
- Planting
- Seating stairs
- Café seating
- Digital video screen
- Lighting

side-by-side comparison

ONE_ground

- Lawn areas
- Pergola Structure with lighting
- Water feature
- Planted areas
- Seating stairs
- Café seating
- Digital video screen
- Kiosk/pavilion (freestanding)
- Lighting

TWO_roof

- Lawn area
- Terraces with shade structures
- Water feature
- Planted areas
- Seating stairs
- Café seating
- Digital video screen
- Kiosk (integrated into bldg.)
- Lighting

ONE_ground

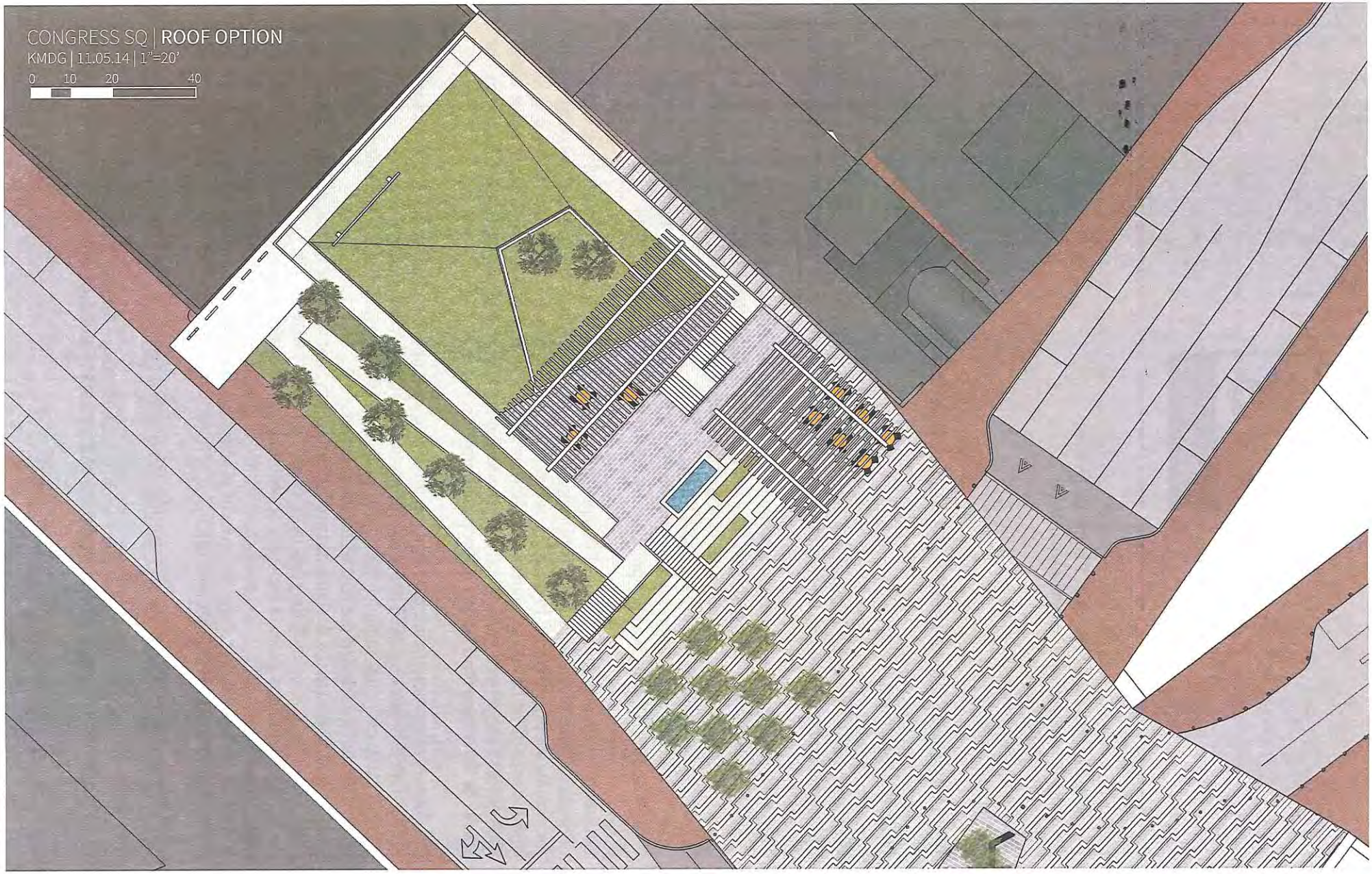
TWO_roof

DISCUSSION + QUESTIONS

Thank you.

kmdg utile

CONGRESS SQ | GROUND OPTION
KMDG | 11.05.14 | 1"=20'
0 10 20 40


CONGRESS SQ | ROOF OPTION
KMDG | 11.05.14 | 1"=20'
0 10 20 40

November 5, 2014

Mr. Alex Jaegerman, Director of Planning Division
Planning & Urban Development Department
City of Portland, Maine
389 Congress Street, 4th Floor
Portland, Maine 04101

RE: Congress Square Park, Revised Preliminary Cost Estimates

Dear Mr. Jaegerman,

Wright-Ryan Construction is pleased to provide you with the following revised preliminary costs estimates comparing the two most current design options presented to us for Congress Square Park.

The revised estimates presented below are based on the following documents:

- The Boundary Survey prepared by Owen Haskell, Inc. dated May 27, 2014.
- The Existing Conditions Plan prepared by the Engineering Division of the City of Portland's Public Services Department dated May 12, 2014.
- Ground Level Option sketches prepared by KMDG dated October 30, 2014.
- Rooftop Option sketches prepared by KMDG dated October 30, 2014.

Because of the conceptual nature of this project at this point in time, we have used our vast database of historical unit prices for similar type projects, adjusted to today's costs, to develop cost estimates for various scopes of work. In addition, when producing conceptual estimates, we have to look at some scopes of work that are currently undetermined and assign allowance values to cover costs. This process has proven very effective in producing accurate "first pass" estimates for use by our clients to determine the viability of proposed projects.

In addition, our estimates are based on the following assumptions, clarifications, and exclusions:

1. Our estimates exclude the costs of providing builders risk insurance.
2. These estimates includes the cost of providing 100% payment and performance bonds.
3. We have excluded the cost of Maine sales tax.
4. We have carried a design/estimating contingency, but we have not carried a project construction contingency typically carried by the Owner.
5. Our estimates exclude the costs of building and demolition permits that may be required by the City.
6. These estimates include the costs of purchasing sidewalk closure permits required to complete the construction work.

7. We have carried the costs for barriers, fencing and signage required for pedestrian and traffic control.
8. Our estimates excludes paying any impact and or service fees.
9. These estimates exclude paying any utility company charges.
10. We have based our estimate for the ground level option on an eight week construction schedule, and the rooftop option estimate is based on a twelve week construction schedule. The schedule for the rooftop option does not include the timeframe required for others to put the event center in place.
11. We exclude any costs related to abating, handling and/or disposing of any hazardous materials or contaminated soils.
12. These estimates exclude paying for any quality control testing or IBC Special Inspections.
13. We have not included any costs to preload the site or to remove and replace unsuitable soils.
14. These estimates include the cost to collect the on-site storm drainage and direct into an existing structure or pipe on-site. We have not carried costs for onsite storm water retention or treatment. We have not carried any costs for opening up the existing street or sidewalk.
15. We have assumed that the electrical feed for the park lighting will come from some point onsite without the need of getting into the street and/or the sidewalks.
16. Our estimates do not include any cost to rebuild the existing sidewalks or reset the existing street curbing. We have only included the cost to integrate the new work into the existing brick sidewalk.
17. The estimate for the rooftop option excludes the costs of constructing the event center, the cost of the building earthwork related to its construction, and the costs of bringing utilities to it. We have included the cost of the concrete topping on the exterior ramps and the roof of the building, which would be placed over horizontal waterproofing systems provided by others. We assume that the event center structure will support the ramps that are on the building and form a C shape. If this is not the case, and the C shaped ramps need to be supported by a separate structure, we will need to add a sizable line item for structure steel to this estimate. We also exclude any siding work on the building including that between the top of the ramp system up to the roof line and/or finished site improvements on the roof.
18. For the rooftop scheme, we have carried the cost of the foundation / retaining walls at the V shaped ramp that is free of the building as well as the concrete for the ramp itself.
19. Allowances carried are as noted below in our cost comparison. Those that are marked with an (*) were provided to us by KMDG.
20. We have assumed an allowance for lighting in the park for both schemes.
21. We have been asked to estimate the cost to upgrade the Event Center's roof structure to carry a park on the roof. We have no information about the Event Center – either with or without the park – and so would offer a best guess of an additional cost $50/s.f. to upgrade the roof structure to accept the park.

Based on the above, here is our preliminary cost comparison of the two revised options presented:

Scope of Work Description	Ground Level Option	Rooftop Option
1. Earthwork		
a) Site removals and preparations	$ 17,500	$ 17,500
b) Site cut/fill & earthwork for improvements	$ 57,500	$131,000
2. Site Utilities		
a) Storm drainage	$ 8,000	$ 12,000

b) Electrical feed for lighting	$ 7,000	$ 7,000
c) Utilities to proposed buildings - Excluded	$ 0	$ 0
3. Site Improvements		
a) Vestibule & info/snack kiosk - Allowance*	$110,000	N/A
b) OH catenary system - Allowance*	$250,000	N/A
c) Lighting – Allowance	$ 75,000	$ 75,000
d) LED Panel - Allowance*	$ 84,000	$130,000
e) Water feature - Allowance*	$ 40,000	$100,000
(Note that this allowance includes new water service if required)		
f) Event center building - Excluded	N/A	$ 0
g) Canopy structure - Allowance*	N/A	$380,000
h) Concrete seat walls	$ 30,800	N/A
i) Stone seat walls	$ 50,400	N/A
j) Concrete retaining walls	$ 31,600	$ 7,500
k) Concrete stairs, ramps, and sidewalks	$ 21,800	$143,100
l) Concrete topping at building ramps & roof	N/A	$ 20,900
m) Precast concrete pavers	$ 35,600	$ 37,100
n) Granite pavers	$138,300	$ 61,700
o) Granite steps and planters	N/A	$ 68,700
p) Flexible play surface - Allowance	$ 30,000	N/A
q) Play sculpture element - Allowance*	$ 12,000	N/A
r) Guard rails and stair rails	$ 7,000	$138,800
s) Boulders, rip-rap or stone slab - Allowance*	$ 35,000	N/A
t) Outdoor tables and chairs - Allowance	$ 27,000	$ 18,000
4. Landscaping		
a) Topsoil	$ 6,000	$ 14,000
b) Lawns	$ 3,000	$ 5,000
c) Plantings - Allowance	$ 25,000	$ 35,000
Subtotals	$1,102,500	$1,402,300
General Conditions	$ 66,200	$ 84,200
Contingency, Bonds & Fee	$198,700	$252,700
Totals	$1,367,400	$1,739,200

Our revised estimates indicate that the rooftop option costs $371,800 more than the ground level option, but please note that the costs of the event center are not accounted for in this comparison (see Clarification No. 17 above). Note that the structural upgrades for the Event Center have not been included in the above budget estimates.

Please contact us at your convenience should you have any questions relative to these revised preliminary cost estimates.

Sincerely,

Rick Bergeron
Chief Estimator

Congress Square Park - Scorecard

Updated 11/5/2014

Priority	*Design Program* *(derived from Visioning Data + City streetscape standards)*	Design Concepts: Evaluate how meets criteria (1 low, 5 high)		Metrics		
		Option 1 - Ground	Option 1 - Ground	Option 1 - Ground	Option 2 - Rooftop	Metric used (where applicable)
DESIRED CHARACTERISTICS						
212	Pedestrian Priority					
129	Public, Open/Inviting, Accessible (all ages/abilities)			Y	Y	ADA accessible - yes/no
108	Neighborhood/Community Space					
65	Safe					
56	Clean/Maintained					
51	Preserve/Celebrate Historic/Architectural Character					
45	Economic Vitality					
43	Arts District Identity					
40	Active					
	All-Season Use					
	Day/Night Use					
ACTIVITIES TO BE ACCOMMODATED						
232	Access to Green Space/Enjoying Outdoors			Y	Y	yes/no
210	Food/Eating			Y	Y	yes/no
152	Performance			Y	Y	yes/no
144	Events (non-performance, especially those that activate the entire square - First Friday, Markets)			4,840sf	4,565sf	sf of primary event space
107	Play and Education (all ages)			Y	Y	yes/no
85	Art (all types, temporary, permanent, interactive)			Y	Y	yes/no
80	Sitting/Relaxing			Y	Y	yes/no
	Hotel Entry, Apartment/Restaurant Egress and Service			Y	Y	yes/no
57	Gathering/Socializing			Y	Y	yes/no
43	People-watching			Y	Y	yes/no
36	Wifi/Internet Access			-	-	N/A
34	Restrooms			N	N	yes/no
14	Movie Screening			Y	Y	yes/no
ELEMENTS						
232	Green/Landscaping (including trees/gardens)			18; 2,850sf	19; 5,125sf	# of trees; sf of green space
113	Seating (various types/conditions to accommodate dining, people-watching, resting, reading, sun/shade)			247lf; 6,930sf	308lf; 800sf	linear feet of seating walls; areas that can accommodate tables/chairs
75	Water Feature			Y	Y	yes/no
63	Public Art			-	-	N/A
44	Games/Interactive Play Elements			1,468sf	0	sf dedicated to discovery elements/play space
41	Unique/Identifying material palette and pavers			Y	Y	yes/no
38	Kiosk or Pavilion/Structure			Y	Y	yes/no
28	Gateway/Entry/Place-making structures			Y	Y	yes/no
	Occupiable Space (for events, performance, standing, sitting)			12,175sf	7,300sf	sf of hardscape and landscape that could be occupied (minus ramps, buildings, steep slopes, planters, water features, stairs/egress)
COST						
	Cost Estimate (Wright-Ryan Construction)			$1,367,400	$1,739,200	$
TOTALS						

Meeting Minutes
Congress Square Redesign Study Group
August 20, 2014 6:00 to 7:30
Room 24, City Hall

Call to order 6:05pm

Welcome and Introductions

In attendance: Co-chair Kevin Donoghue, Co-chair David Marshall, Roseanne Graef, Frank Turek, Alex Landry, Peter Bass, Hilary Bassett, Ralph Carmona (representing Friends of the Parks Commission), Pandora LaCasse, Bruce Wennerstrom, Kristen Levesque, Bree LaCasse, Michael Boucher, Steve Hewins

Not in attendance: Jack Lufkin, Lynn Tillotson, Jon Hinck

Discussion of updated charge

- *Additional members*
- *Expansion of scope*
- *Review and evaluate two redesign options*
    1. *Existing footprint of Congress Square Plaza without an event center*
    2. *Event Center with a public park over the event center*

Councilor Marshall reminded the group that although there are two options to review for the plaza, keep in mind that the whole square is to be covered and additional options may be considered.

Hewins asked how the two-way study affects this work. Cameron replied that the Congress Square design team coordinated with TY Lin (State/High team) to set curb lines that will work for either one or two-way traffic in the intersection. The design work thus far can accommodate either option.

Landry asked whether interim measures could be considered as well. Councilor Donoghue replied that they could as long as the Council charge is met.

Back-up material and work to date:

Attachments:

1. *Council Order 60 08/09 – appointment of committee*

2. *Council Order 34 14/15 – charge to committee*
3. *Memorandum to City Council 7/21/14*
4. *Roof Park cost analysis (Friends of Congress Square Park)*
5. *Report from Project for Public Spaces (Friends of Congress Square Park)*

Staff then presented the back-up material included as attachments. Jaegerman presented the budget estimates and how they were calculated. He noted that the cost estimate for the park over the event center was for landscaping only. Cameron briefly recounted the work that has been done to date, existing and possible funding sources, and the considerations for evaluating the options moving forward.

Councilor Donoghue asked whether staff have further considered the budget estimates that were presented as part of the memorandum to Council on July 21. Jaegerman replied that staff did not invest further time into this because there is no design scheme to use to generate more precise estimates. Cameron then deferred to the CSRSG members P. LaCasse and B. LaCasse to explain the two attachments provided by Friends of Congress Square Park. One attachment was prepared by David LaCasse, in the audience, as an alternative cost estimate based on case studies with pricing data acquired from the architects and design firms of the completed projects. The second document is a report prepared by Project for Public Spaces summarizing and analyzing the visioning data generated through the public visioning process completed by the Portland Planning Department and the assessment work done by the design team hired to date. The report also includes recommendations for design amenities and ongoing management structures.

CSRSG members were then given a chance to respond to the Council discussion from the workshop on July 21, as well to the charge.

Carmona stated that the Parks Commission view was that there is a need for greater Parks Commission involvement. A letter will be sent stating the position that the role of the Parks Commission should be strengthened with a stronger advisory role in the case of the Congress Square redesign.

Graef stated that the biggest question for the West End Neighborhood Association was in regards to the ownership in a hybrid model with the public park on a private roof.

Landry stated that it was difficult to conceptualize a park on a one story building that would work well. The challenges would include making it visible and well-used. Landry also asked whether staff or the co-chairs had feedback on the second cost estimate produced by Friends of Congress Square Park.

Bass mentioned that the concept of a rooftop park is not new and when the Congress Square Redesign process began, this option was discussed. He asked why and how this particular option is back on the table. Marshall asked who, at the time, had discussed that option. Bass responded that it was a discussion between local architects and the hotel. Wennerstrom said that the rooftop option was dismissed at that time because Rockbridge was expected to carry the whole cost. Marshall clarified that he heard, on July 21st from Nathan Smith that the cost of the structure to support a public park roof would be borne by the public. Wennerstrom added that a rooftop park concept came from a desire to find a win-win solution. Bass commented that he was glad to see this option back on the table. Donoghue tried to clarify who would cover the cost of necessary upgrades to the building structure and park in this option. Wennerstrom replied that Rockbridge's understanding was the City would cover that cost.

Levesque stated that she was interested to learn more about the roof option. Donoghue wished to clarify whether choosing the rooftop option would mean the design of the event center building would remain the same as before. Wennerstrom responded that the same square footage would be needed as before but the external appearance could change.

Bassett asked how the analysis that CSRSG is charged with relates to the whole square concept and design. Donoghue stated he thought they were interrelated but not interdependent. He asked what is it important for the CSRSG to consider in making this evaluation. Bassett responded that Greater Portland Landmarks is open to a lot of different options but how the design and future square engages people is at the heart of the matter. There is an expectation for high quality design that respects context.

P. LaCasse showed concern that the cost of the roof option will be very high. She suggested that the CSRSG should consider the visioning and assessment data, which show that people want trees, green, food, tables and chairs, etcetera. She asked whether these desires could be provided for with the roof option. Accessibility of the park is very important and visual sight lines are important. The rooftop option limits both physical and visual access. She further added that food trucks have been successful in this location and a rooftop option would not support this model. Additionally, she felt the CSRSG needs to consider the vision in addition to the cost. In the Project for Public Spaces report, PPS posits that roof parks eventually become very private. Donoghue confirmed that one evaluation criteria for both options should be how well they meet the vision of the community.

Hewins agreed that historic elements and buildings need to be kept in mind. He added that he has a hard time resolving the one-way/two-way question as it relates to this design process. Hewins asked whether it was true that the cost of

the plaza would be the same in both options, as it suggests in the staff *Memorandum to City Council 7/21/14*. He also asked how the staff cost estimates compare with the Friends of Congress Square Park estimates. David LaCasse clarified that their estimates used case studies from existing completed projects from other cities with green roofs or parks over sunken structures. He further noted that the estimates do not include access equipment such as an elevator in the cost. Jaegerman reiterated that the cost estimates depend on what assumptions are made and it is difficult to compare the two because they are based on different assumptions. He further noted that his estimates did not include upgrades to the building structure that would be required to support a park. Hewins went on to add that the Portland Downtown District was supportive of an event center and win-win solutions. They are not in favor of turning this public space into a food truck parking lot; that is not seen as the best and highest use.

B. LaCasse wanted to make sure that the CSRSG uses the data from the visioning process in evaluating options. The Friends group has seen an increase in use based on management, new amenities and events. Management is a critical component to the success of the space in addition to design, so ongoing management and maintenance costs should also be considered. She suggested the CSRSG should clarify whether they were evaluating an elevated green roof or an elevated park. LaCasse liked the PPS recommendation to have a more permanent commercial kiosk or similar in the back corner to activate the back of the park. She felt that a successful park could be created without completely redesigning every aspect of the park.

Turek stated that cost is a big part of the evaluation but evaluation with the vision data is a good metric. He asked how the design meets the vision and needs assessment. He further mentioned that over the course of the summer, there has been a lot of good use of the park. Turek would like to see a cost assessment of how to reuse aspects of the park instead of a complete overhaul. He would like to consider incremental implementation or phasing built into the plan. Turek did not feel the square needed to be designed now, only the plaza. He further pointed out that the Council order calls for <u>necessary</u> improvements. He added that seeing examples of existing public/private roof parks would be helpful.

Boucher made the point that the question should not be about cost but rather about the value we are getting from the redesigned space. He added that by reaching for modest designs we won't achieve the full benefit and vision for the space and meet all the interests and needs. Getting more might cost more but the result would be more value. Boucher further added he had strong reservations about an elevated park – there are inherent limitations on movement when a space is elevated. He added that part of the functionality issue now in the plaza is in part from a change in elevation and lack of visual

connection. Boucher mentioned that other examples of elevated parks have not necessarily been successful – Lincoln Center is under-used; the High Line required a lot of resources and management in the beginning to make it work. He asked how the City will own something on top of a private building. Finally, Boucher asked whether the option to redesign the whole plaza been discounted. Donoghue clarified that was Option 1 of the two options. Boucher's final statement was that cost should not be a deterrent to doing this the right way.

Wennerstrom felt that to make a decision going forward, CSRSG members need a true scope of work and bids on what it would cost. He further encouraged the group to not lose the vision of the whole square and hoped to do something dynamic.

Hewins leaves at 7:30pm

Next steps

Donoghue reiterated that there are two clear scenarios to evaluate. He asked what is the best way for private entities to add value to public space and vice versa. Further, when considering the event center/park option, it seems that the same footprint is needed. Donoghue asked Wennerstrom to clarify if the same envelope is also needed, or if part of the event center could be sunken. Wennerstrom replied that the same one-story envelope would also be needed to have a street presence, and that the hotel was not interest in sinking the structure.

Marshall stated that he would like to keep an incremental approach in mind. Based on past City projects, $1.5-2 million seems to be on par for a redesign for this park. He added that every year the City bonds out $10 million for public infrastructure investments, and therefore, this scope seems feasible. Marshall added that he is excited to talk about the whole intersection and pointed out that some issues of the park cannot be solved without looking at whole intersection. He stated that the decision between one-way and two-way affects some aspects of the design such as the location of stop bars but it appears the configuration of the intersection can remain consistent. Marshall requested examples and hard numbers to give the CSRSG a good idea of the options. He did not feel that the process needs to go as far as a design-bid scenario to make a decision.

Cameron asked CSRSG to determine what information is needed to evaluate and make a recommendation of the options. The responses included:

- A more detailed cost estimate
- An evaluation first of the options against the needs and vision
- A conceptual design of each option

Carmona asked Wennerstrom to confirm that the Westin was not interested in paying any additional amounts to accommodate a park on the roof. Wennerstron responded that the hotel would not be interested in paying anything more than what they had budgeted for the original event center and that any additional cost would have to be borne by the city.

Carmona further asked if there were concerns about safety with an elevated park because of limited sightlines. B. LaCasse answered that there were concerns about safety. In the current park, the clock location creates a hidden space that allows certain activities to happen out of view of people passing by, which affects safety. In an elevated park, the entire space would be hidden from view of people passing by which would be problematic. P. LaCasse added that successful parks require easy physical and visual access from multiple points.

Bass stated that he saw no need for conceptual designs to facilitate cost estimates. He felt that analysis could be achieved with existing data.

How to consult with Land Bank Commission, Parks Commission, and other appropriate organizations?

Donoghue suggested that the approach here might be that any materials submitted to the CSRSG should also be submitted to the Parks Commission and Land Bank.

Public Comment

David LaCasse: Agreed with Bass that the CSRSG does not need a conceptual design to evaluate the options at this stage. Advocated for using visioning data and examples instead.

Anne Pringle: Agreed that the CSRSG can use examples rather than design to make a decision. She also stated she had trouble locating the Friends of Congress Square Park documents on the City website.

Direction to Staff

The Congress Square Redesign Study Group directs staff to evaluate two options based on conformance with public vision and assessment, cost, and precedents. Marshall moves, Carmona seconds. Unanimous vote (12-0, Lufkin, Tillotson, Hinck, and Hewins not present).

It was determined the next CSRSG meeting will be held in September (date to be determined at a later date), and staff will prepare a report for CSRSG consideration. At that time the CSRSG will decide whether one option is clearly better than the other. At that point, the CSRSG will give direction on whether to proceed with design concepts and for one or both options.

Meeting adjourned 7:55pm

Meeting Minutes
Congress Square Redesign Study Group
September 17, 2014 4:00 to 6:00
Room 24, City Hall

Call to order 4:06pm

Welcome and Introductions

In attendance: Co-chair Kevin Donoghue, Co-chair David Marshall, Rosanne Graef, Frank Turek, Alex Landry, Peter Bass, Hilary Bassett, Pandora LaCasse, Bruce Wennerstrom, Kristen Levesque, Bree LaCasse, Steve Hewins, Councilor Jon Hinck, Christine Cantwell (representing PSA), Alex Jaegerman (staff), Caitlin Cameron (staff)

Not in attendance: Jack Lufkin, Lynn Tillotson, Jaime Parker

Review and accept meeting minutes

Landry moved, Graef seconded [13-0 passes, Turek, Lufkin, Tillotson, and Parker absent]

Review of data and Presentation of two options (staff)

Attachments:

1. *Memorandum – Staff evaluation of 2 redesign options*
   Includes: Design program, Summary of Needs/Opportunities, Vision Statement
2. *Examples: Option 1*
3. *Examples: Option 2*

Staff presented the contents of the meeting materials including a description of the program needs and vision statement for Congress Square. Staff then went on to present precedents and examples of existing spaces representing the possibilities for each option. Cost estimates based on square feet of hardscape, landscape, and extensive/intensive roof landscaping were presented based on staff analysis of numbers from various consultants. Finally, the presentation concluded with an opportunities/challenges analysis pointing out the potential limitations and opportunities of each option.

CSRSG members were then given a chance to respond to the presentation.

Levesque asked who pays for the structural reinforcing of the roof and the egress. Jaegerman responded and Wennerstrom confirmed that any costs associated with the park would be borne by the City.

Graef asked staff whether they knew of any comparable ownership model as is being proposed for the event center/rooftop park option including maintenance and liability. Staff responded that they were not aware of a comparable example. The closest example is privately-owned public spaces where the property is owned privately but open to the public. In most cases, it is not the City that is responsible for maintenance of the space and does not own the space.

Hinck mentioned St. Mary's Square in San Francisco as another example of a public park that is on a roof. He asked what the ownership and maintenance arrangement was in that case. Staff did not know the answer to that but did know the example and that it was a public park in some form.

Hewins reminded the group that regardless of ownership, Portland Downtown District (PDD) would have the responsibility of maintenance for Congress Square spaces.

Hewins asked how much of the existing square feet of Congress Square Park would be elevated in the Option 2. Jaegerman responded that the current plaza space is 14,800 sf, the event center would occupy 10,000 sf. Wennerstrom confirmed that the event center is 10,000 sf.

Hewins followed up asking whether there would be a ground level open space component as well. Staff responded yes, most likely at the Congress Street side.

Marshall asked whether the ground level open space was included in the estimate. Jaegerman confirmed and referred the group to the 7.21.14 Council memo table which shows the plaza surface costs. Cameron reminded the group that these costs do not include features such as water, art, furniture, etc.

Marshall stated that it was important to consider the total costs as a comparison.

B. LaCasse expressed concern that one source of the cost estimate numbers was coming from the architect hired by Rockbridge and who is designing the event center project.

Marshall asked whether there could be an ADA accessible ramp up to the rooftop space. Cameron responded that it is not clear whether there is enough space on the site to accommodate that but it is possible.

Bassett asked how the plaza/park schemes fit into the whole square design. Cameron and Jaegerman responded that the urban design needs and shared space components need to be met either way, with either scheme and that it is important to keep in mind that this is a smaller piece of a large whole.

Turek arrives at 5:07pm

Donoghue asked whether either option works with the proposed square concept. Cameron responded that each option could be made to work with the square design but that there is likely a need for a built element of some kind whether it's the event center or a kiosk/restrooms, an armature for projection, etc.

Landry asked how we define "active use." Landry stated that he thinks the active use piece of the project is really challenging. Landry did not consider the event center to be an active edge and does not provide a true active edge. Cameron responded that there are different degrees of activity and that staff considers the event center an active edge but agree that it is not as active as a retail use, for example but more active than the current conditions. Marshall asked staff whether they thought the hotel entrance would be considered an active edge in which case he agreed with Landry that the park space already has an edge that is a hotel entrance and would not necessarily make the new space any more active.

Marshall asked staff which option, based on their expertise, best accommodated the needs and desires of the community as expressed through the data generated during the visioning process. Cameron responded that Option 1 would be better suited to accommodate accessibility, physical and visual, and creating the perception of an open and accessible space which would be more difficult to accomplish with an elevated park.

Public Comment

Barry Hoffman: Is there a rendering? (Jaegerman responded no, that was not part of the task assigned to staff). It's premature to ask who will pay for what. Go for what you want.

Patrick Costin: Are the needs of Rockbridge/the hotel considered here? (Wennerstrom responded that yes, they have been present for two years and have made their needs known). So, it appears there is no room for play with the needs of the event center.

Unknown name: Clarify the statement in the staff report about accommodating restrooms etc. (Cameron responded that with a built component, whether the event center or otherwise, program needs such as restrooms and storage are more likely and easily to be accommodated. Without a design, this is a possibility only).

Ian Jacobs: The cost estimates are problematic and likely too low. The Lincoln Center, for example, was $15.6 million.

Don Elliot: Some examples given are not comparable context to what we have here – the change of grade on the site is a challenge and the programmatic implication of the current spatial configuration is in support of planned, staged events, but hinders casual use.

Anne Pringle: Please clarify the statement about the hotel entrance as an opportunity for an active edge. Would it be publicly accessible? When the plaza was created originally, the intention was for that entrance to have a 24/7 aspect. Also, our parks already have hours and are open from dusk until dawn – it would not be unreasonable for the rooftop option to have similar hours.

Patrick Costin: I would urge the CSRSG to use the design team to help evaluate each option before making a decision with cost estimates and concrete concepts therefore giving the group a real sense of the value that would be gotten from either option. The time that we as a city have already invested in this place means that this decision deserves a thorough evaluation.

Evaluation of two options

Members of the CSRSG provided their opinion on the options and how to proceed.

Cantwell stated that the Portland Society for Architecture appreciates that the referendum brought the park space back into the public realm. She is equally open to both options at this point and the PSA believes the space could be successfully designed either way. She further stated that design is how all of these things, such as program and needs become form. This is more than just a checklist but goes beyond these programmatic concerns. She then asked how the city can create capacity for public/private partnership and legal models to do it right.

Wennerstrom stated that we have work that was begun by KMDG and that we should keep going with that work to see what comes out of it. He felt that he needs to see the two concepts to make a decision. He also reminded the group to keep the sale of the parcel money in mind as an income source. There would also be income in property taxes to the City for a new building.

Turek felt that within the existing plaza footprint the roof option does not fulfill the assessed needs. The existing challenges are design challenges that can be met and solved but the option with the roof does not address all the community needs.

B. LaCasse agreed that the challenges presented by the ground level park can be met through design solutions but the challenges in an elevated park are inherent in the design = creating challenges and problems. Safety and access barriers are important considerations here – over the course of the summer Friends of Congress Square Park have observed events where several people in wheelchairs attended – they would not have been able to observe and feel included had they needed to find a way to get up to the roof.

Hewins commended the impressive improvements and changes that have resulted from the Friends of Congress Square Park so far. PDD has the responsibility to maintain the space regardless. He supports either direction but favors an option that generates economic development with the event center. He therefore leans to the opportunities presented by the event center, the income to the City, and the money from the sale. Hewins also mentioned the Spanish Steps as an example of an elevated public space that is very successful and well-used. With the roof option, the PDD would have additional money/income for maintenance of the public spaces. Finally, he felt that there is an opportunity to unite people with the hybrid option.

P. LaCasse responded to the staff memo statements about the proportion and size saying that the proportion of the space is 1:4 which is a good proportion and that she feels it is not too large. The Post Office Park example in Boston is a good example of what we could aim for. The rooftop has a lack of ebb and flow, flexibility, street presence. A public open space is successful when people see people. Public Art is another important component – art can activate edges, is interactive, creates identity, and is placemaking. The elevated park would limit all of these possibilities. Rooftop parks are a trend but most public open spaces are on the ground level for a reason and we need to make a timeless space. She would vote for Option 1.

Hinck agreed that the success of public space is a priority. The best outcome is if this could be combined with the event center but was skeptical about the cost of that option. He was not convinced design couldn't solve the access and visibility issues. Design concepts are needed for each option from the design team - designs that minimize the costs based on our limited resources. He asked whether the event center could start lower in the ground to create less elevation to be reached. St. Mary's Square in San Francisco is a good example of a rooftop public space that has a free flow. Requests that we spend as little as possible on concepts but the group needs real design and dollars to make a decision.

Bassett agreed with the PSA in that Greater Portland Landmarks is open to either strategy. The quality of design and relationship to the entire square/intersection as well as the historic context should be considered in this decision.

Bass stated that he still thinks the event center would be good for the arts district. He respects the outcome of the referendum – the question to be asked is which option fulfills the desire of the public. He didn't think the elevated park would be an

easy solution to meet the desires/vision of the public. Both situations are design problems but we are better with what is tried and true. Therefore, he stated a preference for Option 1 but need professional design to make the decision.

Landry repeated that active edges remain a top concern. The elevated park would be more difficult and expensive and difficult to get what we want out of the program. He agreed it is a design problem but that it could be a lot of money to get a good solution. He reminded the group of weighing the value of each option and felt that the elevated option would bring value to fewer people, fewer people would access it and be served and it would be less accessible needing to be closed at night. He felt Option 1 would give what we wanted for the value.

Graef stated her concerns include the cost and legal arrangement. She pointed out that as density increases on the peninsula access to neighborhood green spaces becomes more important. Great strides were already made through Lighter, Quicker, Cheaper options. She supported phasing to get us to the end solution but that is not possible with the elevated option and it is also less reversible. Finally, she concluded that the rooftop option eliminates large gathering spaces.

Levesque stated that the highest and best used is desired. From the PMA's perspective, this area is the front yard of the museum and its visual appearance is important to the image of the city and the square and the museum. She wanted to see concept designs.

Next Steps

Donoghue asked staff how to meet the need of the CSRSG to proceed. Jaegerman responded that he would recommend using KMDG as our contracted design team to produce conceptual designs for each option. The question is how detailed the designs would need to be to make the decision.

Marshall pointed out there is limited time and the CSRSG would need to meet once more.

B. LaCasse asked how the CSRSG members could be involved with the design. Donoghue responded that it would be another meeting for the CSRSG to weigh the options based on the desire expressed at this meeting to have visual representation with costs.

Marshall asked staff to communicate with the design team about the schedule and how to proceed with concepts. He further echoed Councilor Donoghue's assessment there was not a clear consensus on direction to take.

The CSRSG directs staff to work with the Councilors and design team to come up with a process around design and cost estimates and report back to the CSRSG.

Marshall moved, Hewins seconded.

Bassett wanted to clarify the staff direction as a call for conceptual designs. Jaegerman responded that staff will have to talk with KMDG about the cost to do this work and the schedule.

Vote taken on the proposed direction to staff [10-4 passes, Landry, B. LaCasse, P. LaCasse, and Turek opposed. Lufkin, Tillotson, and Parker absent]

Meeting adjourned 6:09pm

To: Congress Square Redesign Study Group
From: Frank Turek, Parkside Neighborhood Association.
Nov. 5, 2014

The visioning process last year generated a lot of ideas and reflected the hopes of the community for the redesign of the park space as well as the vision for the whole square. We have also had the added benefit of witnessing this summer what can be done with the existing space. It is the combination of these two things have become a metric for evaluating any redesign concept.

This summer of 2014 the Parkside community greatly benefited from the variety activities in the park. To cite one example, the collaboration of PNA, Opportunity Alliance, Space Gallery and Friends of Congress Square Park brought viewings of the World Cup which was of great interests to much of the immigrant community where soccer is the prime sport. I cannot describe the positive energy at these World Cup games where gathered some of the most diverse audiences I've seen in Portland.
It is events such as these that bind the residential community of Parkside to the Arts/ Business District of the downtown corridor. There simply exists no other open space in the vicinity that can accommodate these kind of activities.

And while programming is a key factor in what the space can provide to the community, I wouldn't want to gloss over the importance that simple amenities and regular maintenance in the park space. We had a great opportunity this summer to see the success of simple, low-cost amenities and a food truck which alone activated the space more than in the last three years combined.
The park provides a peaceful buffer as Parksiders come up High St. and up into the Congress St. corridor. It's a prime meeting spot and destination for many of us.

While the 'Spanish Steps' idea provides some potentially cool people watching and a nice view of the intersection, it is detrimental to any sense of community gathering point. This past summer we have witnessed the necessity of a wide open space. Any structure, half submerged of otherwise simply cannot accommodate the needs of the community.

sincerely,
Frank Turek
Parkside Neighborhood Association, Treasurer.

Meeting Minutes (draft, not approved by CSRSG)

Congress Square Redesign Study Group

November 5, 2014 5:00 to 6:45 pm

Room 24, City Hall

Call to order 4:04pm

Welcome and Introductions

In attendance: Co-chair Kevin Donoghue, Co-chair David Marshall, Rosanne Graef, Frank Turek, Alex Landry, Peter Bass, Hilary Bassett, Pandora LaCasse, Bruce Wennerstrom, Sally Streuver (Portland Museum of Art), Bree LaCasse, Steve Hewins, Lynn Tillotson, Jaime Parker, Councilor Jon Hinck, Michael Boucher, Alex Jaegerman (staff), Caitlin Cameron (staff), Jeff Levine (staff)

Not in attendance: Jack Lufkin

Review and accept meeting minutes

Three amendments proposed to minutes by Bree LaCasse, David Marshall, and member of the public Don Elliot.

Landry moved, B LaCasse seconded [16-0 passes, Lufkin absent]

Presentation of design concepts for two park options and cost estimates (Kaki Martin, KMDG and Tim Love, Utile, and Cordelia Pitman, Wright-Ryan Construction)

Attachments:

1. *Memorandum – Staff description, design parameters*
2. *Design Concepts*
3. *Cost Estimates*
4. *Scorecard*

The design team and cost estimator presented the design concepts for each of the options being considered by the CSRSG. Those materials can be found in the attachments.

Questions from CSRSG members:

Parker asked what the square feet of event space would be. Love responded that the total square feet of event center was 8,300sf with a 5,000sf main event room.

Bass asked whether the concept design represents that 8,300sf of event center space. Martin responded that it did.

Graef asked how the money from the sale of the land would be used in the option 2 scenario – could staff clarify the CDBG situation since this parcel is currently not eligible for CDBG activities. Levine responded that this site is currently not eligible for CDBG funds so the money from the sale of the parcel would be used to offset the cost of a CDBG eligible activity elsewhere in the city unless in the next round of evaluation this area were to become CDGB eligible which is also a possibility.

Graef asked how long that CDBG process would take. Levine responded that next year's round would be for July 2016.

Steuver asked for clarification on whether this group would be making a decision on anything beyond the plaza area at this time since the rest of the intersection, sidewalk and square are depicted in the same way in both options. The response was that no, the design process would continue after this decision to address the remainder of the square and that was not part of the current task given.

Bassett asked about Item 17 in the cost estimate – does the word "excavation" refer only to excavation work for the event center building? Pitman responded that yes, all aspects of Item 17 are exclusions directly related to the event center building itself.

Bass asked the design team to explain how the grade change across the parcel is managed in Option 1. A second question was how much of the roof would need to be taken up by mechanical equipment. Martin demonstrated with the slides that the park surface slopes down from Congress Street to the hotel entry level. The back corner of the park would be elevated with access from ramps and stairs. The mechanical equipment question is a good one and the design team does not have an answer without being able to work with the event center architect. The building needs would have to be developed in tandem with the rooftop park design with coordination on things like that. Love added that in order to maximize the park area, some things like the mechanicals could be incorporated into the screen wall or onto the neighboring roof.

Donoghue asked whether the event center in this scheme was in the same location as the design presented by Rockbridge previously. Love responded that the design team had to change the proportion and position of the event center building footprint in order to accommodate the ADA accessible ramping system on site.

Donoghue further asked whether the design team changed the elevation of the event center. Martin responded that no, the height and level of the event center remain the same and could not be sunk lower because of access reasons from the existing hotel entrance.

Landry asked where there would be railings. Martin responded that railings would be present on one side of each ramp and on top of the roof for those areas where there is a falling safety risk.

Landry further asked what those railings would look like as they appeared to be rendered like glass in the design concepts. Martin responded those details would be worked out – the railings are shown as glass but could be designed in different ways.

Landry asked what the grade of the landforms between the ramps was. Love responded that they did not know the exact ratio but that they were too steep to be occupied. Landry followed with the observation that those areas would be difficult to mow.

Landry also asked about the green space depicted at the back of the alley in Option 2 and what that was intended to be. Love responded that was not meant to be green and was simply the back of the egress alley at ground level as it is now.

Hinck inquired if the Spanish Steps were a part of the influence of the Option 2 design, why were the steps not started closer to the street and why were they made so angular. Love responded that the design intention was to keep a plaza space at the street level to be used for performance. The designers also didn't want to break the façade lines of the existing buildings on Congress Street and just have the canopy peek out past that line. Hinck responded that it was clear the design team had thought about these points and made conscious decisions.

Hinck asked whether the designs need structures and water features in both options and if the designers knew of examples of places that still have working fountains in this climate. Love responded that the structures are critical in both schemes for human comfort and placemaking. The particulars of these elements can be tweaked but they ground the space and the upper trellises indicate the elevated space is open. The fountains are in-ground and can be made to accommodate the weather.

Hewins asked whether either scheme has public restrooms. Martin responded that no, there are not public restrooms in either option. Love added that in his experience, cities do not want the expense of maintaining restrooms.

Turek commented that the square feet of event space as reported in the scorecard does not look proportionate or accurate. Cameron responded that particular line item is for the major open space in each scheme and it is possible the numbers are off slightly.

Public Comment

> Barry Hoffman: Asked whether the ADA guidelines are met, what happens at Free Street, and what is the situation with easements.

Judith MacCallister: Asked what the designers have done to prevent people in the park from accessing the lower apartments at the back corner.

John Eder: Asked who is going to bear the additional costs of the event center since the public has already voted against the sale of the land.

Ian Jacobs: Pointed out there should be an allowance for the entry structure and kiosk in the estimate and asked what the cost of those items would be. Also pointed out that storm drainage should be taken into account, especially with ramp ice melt.

Don Elliot: Pointed out that winter happens here and the roof option is problematic in that sense. Urged the CSRSG to keep in mind that this is part of the whole square and would like to see views of the park space from within the square. The pergolas are superfluous and in the way – the square should be open and the surface treatment can add character to the space rather than the pergolas. He prefers the ground-level option.

Carl Eppich: Asked for clarification on the different levels of Option 2 design.

Joan Grant: Pointed out that the park is currently used by ADA users and wondered if it is really feasible to use these ramps. Asked how much it would cost for restrooms which are badly needed. She also asked if these are the only two options to vote on.

Tony Sully: Asked whether Rockbridge would absorb the costs to hold park.

Answers to questions

Jaegerman responded that the easement for egress is retained in both options.

Love affirmed that both schemes are ADA compliant.

Love responded that they weren't aware of the access issues to the neighboring apartments and would need to look at that further.

Pitman pointed out that there is an allowance in Option 1 for the kiosk structure and that dollar amount could be applied to both options.

Martin responded that storm water is an important issue and could be addressed with further design work.

Love pointed out on the slides that the Option 2 has three levels – ground plaza, a mid-level terrace, and then the upper terrace.

Pitman commented that the cost of restrooms would depend on the structure and there is the possibility of using pods. This is something they could find out if needed. Love added that code compliant and ADA restrooms also become more expensive.

Marshall responded that the additional costs would be borne by the public for extra structure. Pitman added that they would need more information for an accurate dollar amount on these costs.

CSRSG deliberation on two options

Members of the CSRSG provided their opinion on the options and how to proceed:

Tillotson commented that the city has a significant lack of convention space and loses money and events to other cities every week. There is an economic benefit with visitors coming and spending money in the city; it is not just a benefit to the Westin. The goal is to get events here.

The CSRSG moved to recommend Option 1, the ground-level park to Council.

Parker moved, Graef seconded.

> B. LaCasse included a statement (attached) from the Friends of Congress Square Park. She reinforced the role of Friends of Congress Square Park in the future success of the space and asked the CSRSG to join them in believing in the economic and social value of great public space for generations to come.
>
> Graef stated that she has heard nothing that addresses the concerns about ownership and maintenance costs. If these things do not work or it is expensive, what then?
>
> Steuver reads a statement from Mark Bessire stating discouragement at the state of the Schwartz building in the square and the negative impact it has had for several years. The PMA supports Option 1 with further discussion and attention needed.
>
> Hewins reiterated that it's PDD's role to maintain this public open space and is dedicated to that task regardless of the outcome. He supports Option 2 if it works as an urban public space – as a park first and an event center second. He likes both concepts except for the lack of public restrooms. Does not know about the financing but either way, that is not part of the CSRSG purview. He is uncomfortable with the cost estimates and believes they are moot to making this decision because it is too difficult to estimate for Option 2 separate from the event center. The public wants convergence – Option 2

can be a win-win and PDD has similar view on economic value of the event center as Lynn Tillotson. There is a need to create more opportunity downtown.

Bass found both designs compelling. Option 2 takes a lot of space for circulation and getting to the top of the park. Would like to hear from Rockbridge whether Option 2 is even possible.

Wennerstrom responded that these design concepts give the group something tangible to talk about and he is encouraged by both. The event center idea came from data on the need for such a space. The hotel is still committed to finding a win-win and make a structure that works for everyone. Originally, the event center space was 9,600sf and this is smaller, there is a loss of natural lighting, but these things can be worked out.

Turek referred to the statement distributed (attached). He prefers the ground plan park as a vital space for the Parkside neighborhood residents. It is vital to community. A revitalized park space is also an economic development magnet. He also stated the desire to amend the recent open space ordinance to include Congress Square Park.

Bassett thanked the designers for their work and ideas – it was more work than was expected. Both options would activate the space, are dynamic and exciting places. GPL has always been concerned with how the park fits into the entire intersection where there is some of the best architecture in the city. A question for Rockbrige (Wennerstrom) – would Rockbridge be willing to contribute additional investment? Wennerstrom responded that they are willing to talk about it. Bassett continued that both options have good textures and that a ground lease option may be possible for Option 2.

Hinck felt that more discussion was needed about the designs and hoped that the designs would be available online for people to comment on. In Option 1, the diagonal cut through is appealing. In Option 2, the benefits include the views, getting away from traffic, and access to more sun. As a citizen, he would not want to pay more for the benefit to go to someone else and Option 1 is probably better for that return on public investment. He will vote against the motion because he wants to hear from the public before making a decision.

Boucher commented that the traffic changes proposed here are big changes by itself and either option chosen should include these changes. Unifying pavement is strong and creates the illusion of a big open space. There is a balance yet to be struck with diversity and complexity with flexibility and timeless character of the space. Timeless spaces tend to be more simple. Rather than the fragments of elements it would be better to have larger

spaces of each type of space combined. The kiosk might also move to the corner. He proposed making it simpler and more unified. He liked the use of the diagonal but felt it should be scaled down.

P. LaCasse read a statement (attached) which emphasized the important considerations for siting artwork – sight lines, accessibility, and visibility. The ground option allows for more options to site artwork. Accessibility is key – the art needs to be accessible and the ground option works for that. Option 2 has more rigid sight lines, less clear accessibility, and is still not physically accessible to all abilities. The green space is not all useable. Flexibility is key. Option 1 will give what is needed here.

Landry like Option 2 more than he anticipated but there are too many unsurmountable issues. Visual access for neighbors – it is too close to their apartments. Option 1 is not perfect, yet, and there could be more active uses along the back wall. He supports the motion and feels we can arrive at a good solution for the City and hotel.

Parker reminded the group that there has been a long discussion about this space with the consideration of a rooftop option in the past but the ship has sailed on the putting a building on this site. He stated that it feels forced. It is clear what Rockbridge is willing to do and it is not enough. The cost estimates seem low between the two options but cost is less important to the decision. He is looking forward to getting back to the original charge and move ahead and believes through the use of vertical elements there is a way to deal with the problematic back corner.

Hewins asked a procedural question about the Council Order – does the CSRSG have to make a recommendation and if not, why is the group making a motion to recommend one option? Hewins stated he did not think it was appropriate to vote.

Bassett asked what the deadline was from the Council Order. Marshall responded that the Council is expecting the CSRSG to report back on November 17th.

Vote taken on the proposed motion [10-5 passes, 1 abstention, Hewins abstained. Lufkin absent.]

Meeting adjourned 6:50pm

Recommendation of the Friends of Congress Square Park for the Best and Highest use for CSP
based on the design concepts and cost estimates presented by KMDG and Wright Ryan on 11/5/14, as well as 6 months of successful placemaking initiatives.

The FoCSP are proud of and inspired by the tremendous results of our placemaking efforts in Congress Square Park over the past six months. Our programming, including amenities such as tables, chairs, umbrellas, planters, and food, as well as the 33 events in collaboration with SPACE gallery featuring local artists and arts organization, brought an estimated 9,000-10,000 visitors into the park. The space has been transformed from an empty and neglected space to a vibrant community gathering space. We are excited by the enthusiasm and interest from stakeholders in the community who want to partner with us to continue to develop and expand our programming model. We thank all those who have worked with us to help make this transformation possible.

We recommend that the Congress Square Redesign Study Group, our community and the City move forward with getting final designs for a ground level park incorporating the entire current footprint. Based on our evaluation, a ground level park is most consistent with the needs and desires of the community as expressed through the data generated during the City's public visioning process, as well as the recent parks referendum. We would welcome the opportunity to work with the designers to help our placemaking efforts inform the final design.

The ground level design concept by KMDG demonstrates that the CSRSG can achieve its desired goals as articulated through the group's visioning statement. Many of these goals are also important shared characteristics of successful public spaces around the country. **The ground level public space is/provides**:

- **More ACCESIBLE** to a range of users of all ages, physical and financial abilities (especially moms with strollers, young kids, and seniors – these are the users that you want to attract to create a successful park!)
- **More OPEN, INVITING AND WALKABLE** encouraging the pedestrian experience by enhancing visual sightlines and pedestrian access through the space. People can cross through from High to Congress and visa-versa. They can enter from multiple points because of the permeable edges. The outer park draws people into the inner park.
- **FLEXIBLE AND TIMELESS DESIGN** to allow for a **variety of destinations, amenities and activities**, and further, to allow the programming to **evolve with changing community needs** for generations to come.
- **EASIER ONGOING MAINTENANCE AND MANAGEMENT** to ensure that the design does not exceed our community's resources. For example, snow removal at ground level will be far easier ensuring that year-round programming is possible. Easy access to ground level event space will allow for a greater range of events. (How does a band get its equipment to the roof, or a vendor transport tables and goods for a market?)
- **OPPORTUNITY FOR AN ACTIVE EDGE** with retail or food through a permanent kiosk or structure in the back corner.
- **PLAY STRUCTURES** and a variety of spaces that are safe for play and encourage multi-generational activities.
- **BETTER OPPORTUNITY FOR PUBLIC ART** (both permanent and temporary physical and performing because of the flexibility of space) which will **enhance its identity as the heart of the Arts District**
- **BETTER VALUE** - based on these estimates, we get **more quality occupiable space** (for events, performance, standing, sitting, play), for a significantly lower cost. (Based on these concept designs, would cost $112 per sq ft of occupiable space, compared to $306 per sq ft for option 2.)

The re-imagining of Congress Square Park and the outer square is a once-in-a-lifetime opportunity for our community to declare the primacy of public life and public space in the 21st-century city, and to be a model for placemaking for cities across the country. Redesigning the entire public space at ground level affords us the opportunity to achieve the park's full potential as a vibrant gathering place, providing significant social and economic benefits for our community for generations to come.

Sincerely,
Bree LaCasse
Board of Directors, Friends of Congress Square Park

THE FRIENDS OF CONGRESS PARK

Mission Statement: The Friends of Congress Square Park is a community non-profit organization dedicated to the preservation, enhancement and use of Congress Square Park, a central part of the Portland park system. We are dedicated to the arts, public access and community involvement in Congress Square Park as a means to enhance the livability and economic potential of downtown Portland.

Based on the evaluation conducted with the Congress Square Redesign Study Group and observations through our placemaking efforts, the FoCSP strongly support the redesign of the park in its current footprint at ground level.

The FoCSP:

- Recognize that the success of any public space depends, above all, on its management. The Friends of Congress Square Park are committed to being the place manager of Congress Square Park, and to creating a lasting management structure, in partnership with the City, to ensure ongoing fundraising, programming, and maintenance of this important public space.

- Raised $37,500 for programming in 2014. The Friends also received $12,000 in in-kind support and countless hours of volunteer support. (A sub-committee of the FoCSP raised an additional $85,000 to pay for legal fees and the campaign for the citizen's initiative to save the park and add protections to all our public spaces.)

- Project a $50,000 programming budget for FY2015.

- Are launching a membership program, and are looking to hire a part-time event programmer and development assistant.

- Are finalists on a $100k national placemaking grant for expanded amenities and programming for FY2015.

- Are actively collaborating with community partners to seek larger national grants to help further develop our programming model and to bring national investment and attention to our placemaking initiative. (This model could be expanded to other public spaces in Portland.)

- Are collaborating with PDD, Creative Portland, SPACE, VIA, the Open Bench Project, and Pandora LaCasse (among other partners) to continue programming throughout the winter to make Congress Square Park a year round destination. (Programming includes: a new sculptural light installation, Merry Madness, silent video & photo projections during FFAW, activities during Winterfest, and more.)

- Filed for 501c3 status.

- Will commit to raising private funding to help pay for physical improvements and amenities as needed to make up for public funding shortfalls. We have spoken with our donor base and other supporters about giving major gifts to this effort, and have been assured that if the City commits to redesigning the park in its current footprint at ground level, they will financially support the project.

Public Comment received online from 11/6 – 11/13

Form Submitted on: 11/6/2014 1:16:15 PM

First Name: Tracie
Last Name: Reed

Comments on the two Congress Square Park Design Concepts: I am a Maine licensed architect, and car-free millennial residing in Portland's West End. I have lived in Portland for eleven years and have been car-free for 1.5 years. My life is centered on our peninsula, since I have elected to practice what I preach, which involves being highly attuned to my carbon footprint. I shop locally and recreate locally, spending winters skating on Deering Oaks pond, and summers basking in the sun atop the Eastern and Western Promenades. One of the reasons I am so enamored with our city is because of its open green and public gathering spaces. These provide a rich and diverse fabric within our urban community.

In reviewing both the concept designs and cost estimates provided by Wright-Ryan construction I am most intrigued by Option 1. It provides the most flexibility in uses and accessibility for all. This summer I frequently attended events at Congress Square Plaza, from World Cup matches, swing dances and lunches and dinners with friends when the Small Axe truck was in service. This diversity in programming was fabulous and the park has a tremendous capacity for welcoming large groups of people (like it housed for the world cup games) whilst remaining suitable for more intimate gatherings. Option 1: Ground-Level Park seeks to enhance the diversity or programming and scalability that has made this past summer's programming so successful.

I strongly encourage the City Council to re-affirm the Congress Square ReDesign Study Group's vote in favor of further development of a Ground-Level Park.

Tracie J. Reed, AIA, NCARB, LEED AP BD+C
Portland

Do you prefer an option?: Option 1: Ground-level Park

Form Submitted on: 11/6/2014 1:47:10 PM
First Name: Danielle
Last Name: LeBlanc

Comments on the two Congress Square Park Design Concepts: Please consider option one, or any other ground-level design concept for the park. It is more accessible, and more natural looking for that space.

Thank you!

Do you prefer an option?: Option 1: Ground-level Park

Form Submitted on: 11/6/2014 2:04:53 PM

First Name: Clare
Last Name: Congdon

Comments on the two Congress Square Park Design Concepts: The flatter design (option #1) seems much more accessible. It is better for people of a wider variety of ages and physical abilities.

Do you prefer an option?: Option 1: Ground-level Park

Form Submitted on: 11/6/2014 2:20:40 PM

First Name: Jenna
Last Name: Howard

Comments on the two Congress Square Park Design Concepts: The people of Portland voted not to give up our public space. With option 2, the public LOSES at least 7,700 square feet of our current usable 15,000 sq. ft. public space.
If the city is going to invest more than 1 million dollars, we would like that investment applied to the full space, and not a small portion of that.

Do you prefer an option?: Option 1: Ground-level Park

Form Submitted on: 11/6/2014 2:38:32 PM

First Name: Sandra
Last Name: Donahue

Comments on the two Congress Square Park Design Concepts: Option one meets more of the needs of the people.

Do you prefer an option?: Option 1: Ground-level Park

Form Submitted on: 11/6/2014 2:55:13 PM

First Name: Chris
Last Name: Moore

Comments on the two Congress Square Park Design Concepts: Ground Level Park
Provides flexibility for future years.
Activates square with walkway and multiple areas for sitting and temporary and permanent art.
Play structure to encourage children to the park.
Costs are reasonable and simple design will prevent cost overuns.
Maintenance of ground level park is much less expensive

Elevated park
Seems rife with major complications involving legal, management and liability issues
Cost of project is entirely unknown and is likely to increase drastically when city is required to pay for building upgrades to support park.
450 ft ramp to rooftop park is MAJOR barrier to entrance for senior citizens, the disabled and parents with strollers.
Incredibly high long term maintenance issues involving snow removal, landscaping and roof repair.
Less park -for a lot more money - not sure the point.

Do you prefer an option?: Option 1: Ground-level Park

Form Submitted on: 11/6/2014 3:04:01 PM

First Name: Amy
Last Name: Jaffe

Comments on the two Congress Square Park Design Concepts: I strongly prefer option #1

Do you prefer an option?: Option 1: Ground-level Park

Form Submitted on: 11/6/2014 3:34:35 PM

First Name: John
Last Name: Leeke

Comments on the two Congress Square Park Design Concepts: Option 1, because it does not involve selling any park land to the hotel corporation.

But, really, how do you justify spending all this money on option 1.? This is not a rhetorical question. I would like to hear a detailed answer at the council meeting.

I have surveyed conditions of the existing park and the only thing I can find wrong is about 8 lineal feet of cracked concrete in three places and none of them even present a tripping hazard. I say fix the cracks and call the park good.

Do you prefer an option?: Option 1: Ground-level Park

Form Submitted on: 11/6/2014 3:50:14 PM
First Name: John
Last Name: Leeke

Comments on the two Congress Square Park Design Concepts: Why is the study group hiding the fact

that Option 2. includes selling off part of the park's land? This is not a rhetorical question, I want and answer presented at the council meeting.

I read through all five documents and did not see this very salient fact stated. It may be there, but it is well hidden. At a minimum the main headline comparison graphic should clearly mark and label this land as "Sold to the hotel corporation."

Do you prefer an option?: Neither

Form Submitted on: 11/6/2014 4:05:14 PM

First Name: John
Last Name: Leeke

Comments on the two Congress Square Park Design Concepts: Why redesign the park at all? Every time I walk by there I stop in or walk through the park. I think it's very friendly and accessible. I see disabled people there all the time. What's the reasoning and politics behind spending over a million dollars at the park? This is not a rhetorical question. I want an answer at the council meeting.
If the city actually has a million dollars for this park, then it should spend it on programs for the existing park. They could hire a full time caretaker for the park for 25 years to provide security and help for any park visitors and still have a big pile of money left over to put on entertainments, picnics and parties.
Get a grip on reality. We really don't need more steel, concrete and bricks at this park.

Do you prefer an option?: Neither

Form Submitted on: 11/6/2014 5:02:11 PM

First Name: David
Last Name: LaCasse

Comments on the two Congress Square Park Design Concepts: The KMDG ground level option demonstrates that park attributes that are critical to a park's success can be fully achieved. The roof top park option does not come close to this same level of success.

The ground level public space is/provides:

· More ACCESSIBLE to a range of users of all ages, physical and financial abilities. All of the ground level option is accessible to everyone. The roof top option has 481 feet of ramp , 24 feet high. . For someone in a wheelchair this will be like climbing a mountain! The only truly accessible part of the roof top concept is a small square next to the sidewalk, the rest of the park will be off limits to many people that live in this area.

· More OPEN, INVITING AND WALKABLE encouraging the pedestrian experience by enhancing visual

sightlines and pedestrian access through the space. People can cross through from High to Congress and visa-versa. They can enter from multiple points because of the permeable edges. The outer park draws people into the inner park. Can you imagine a woman with children and stroller walking up 481 feet of ramp into a space she can't see from below! This roof space will not be used!

· FLEXIBLE AND TIMELESS DESIGN allowing for a variety of destinations, amenities and activities, and further, to allow the programming to evolve with changing community needs for generations to come. The ramp in the roof top option has to be there to be ADA compliant. To get to the roof requires a 480 foot ramp or approximately 40 steps.

· EASIER ONGOING MAINTENANCE AND MANAGEMENT to ensure that the design does not exceed our community's resources. For example, snow removal at ground level will be far easier ensuring that year-round programming is possible. Easy access to ground level event space will allow for a greater range of events. (How does a band get its equipment to the roof, or a vendor transport tables and goods for a market?)

· OPPORTUNITY FOR AN ACTIVE EDGE with retail or food through a permanent kiosk or structure in the back corner or food trucks on High St. Tables and Chairs can be located close the the food in the ground level option. There is no room for tables and chairs in the roof top option.

· PLAY STRUCTURES and a variety of spaces that are safe for play and encourage multi-generational activities. No space for play structures in the roof top option.

· BETTER OPPORTUNITY FOR PUBLIC ART (both permanent and temporary physical and performing because of the flexibility of space) which will enhance its identity as the heart of the Arts District

· BETTER VALUE - based on these estimates, we can get more quality occupiable space (for events, performance, standing, sitting, play), for a significantly lower cost. (Based on these concept designs, option 1 would cost $112 per sq ft of occupiable space, compared to $306 per sq ft for option 2.)

Do you prefer an option?: Option 1: Ground-level Park

Form Submitted on: 11/6/2014 5:39:42 PM

First Name: Christopher
Last Name: Parker

Comments on the two Congress Square Park Design Concepts: While I like both designs, I prefer the one with the event center.

Do you prefer an option?: Option 2: Elevated Park with Event Center

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Form Submitted on: 11/6/2014 7:34:02 PM

First Name: Robert
Last Name: Theberge

Comments on the two Congress Square Park Design Concepts: Seems like revitalizing the existing ground level park would be much less expensive to initiate and maintain than an an elevated park.
An elevated park poses several problems like access, usability, and controlling what goes on up there since most of it won't be visible from the street. There is also the issue of who is liable for roof leaks...sooner or later it's going to happen. Who is responsible for the roof system over the conference center and who pays for its' replacement when it's needed.
I see way too many problems with a roof park.

Do you prefer an option?: Option 1: Ground-level Park

Form Submitted on: 11/6/2014 9:10:31 PM

First Name: Jessica
Last Name: Tomlinson

Comments on the two Congress Square Park Design Concepts: I prefer Concept #1 for its ground level access.

Concept #2 with the park on top of an events center is a solution for a business who wants a greenspace. It is not a public park. Parks should be accessible. It also compromises the ability to do arts programming.

Do you prefer an option?: Option 1: Ground-level Park

Form Submitted on: 11/6/2014 10:08:07 PM

First Name: Emma
Last Name: Holder

Comments on the two Congress Square Park Design Concepts: Portland needs parks that are easily seen and easily accessible to all levels of mobility.

In order to participate in municipal spaces, people need to know they are there. A roof top is a great place for a private garden certainly, because its so out of sight - out of mind.
The majority of the people wouldn't make the effort to climb up to a roof top. Not to mention those in wheelchairs or with baby strollers, or trying to bring vending or musical equipment to the space.

Do you prefer an option?: Option 1: Ground-level Park

Form Submitted on: 11/6/2014 10:23:29 PM

First Name: Dominic
Last Name: Tracey

Comments on the two Congress Square Park Design Concepts: Just leave it the way it is! We are sick of hearing about this! Seriously, just tell the Westin to go screw themselves and be done with it!

Do you prefer an option?: Option 1: Ground-level Park

Form Submitted on: 11/7/2014 7:52:02 AM

First Name: Bud
Last Name: Buzzell

Comments on the two Congress Square Park Design Concepts: Hi We need the congress square park for quite a few reasons No.1 its a bery place for the kids to play in during the summer. No.2 they have quite a few summer concerts where people can go and sit to listen to them like myself. The people that you see laying or the benches is out side of the park circle. Your asking for people like us to give up the most important things thats happened to portland in a long time and i don't think thats right. My name is bud buzzell and I'm a part of the portland disability council.

Do you prefer an option?: Option 1: Ground-level Park

Form Submitted on: 11/7/2014 9:03:22 AM

First Name: Annie
Last Name: Wadleigh

Comments on the two Congress Square Park Design Concepts: I support the ground-level park option as being far more accessible and pedestrian-friendly as well as retaining the scale, open design, and spirit of Congress Square. The ground-level option would retain the pedestrian nature of Congress Street and make the area more flexible as well as reduce maintenance costs. I strongly support the ground-level vision in retaining the character of Congress Square. Thank you.

Do you prefer an option?: Option 1: Ground-level Park

Form Submitted on: 11/7/2014 2:46:41 PM

First Name: Justin
Last Name: Jaffe

Comments on the two Congress Square Park Design Concepts: Eliminate the sunken aspect by leveling the park. Add more amenities. Sculptures. Stuff for kids to climb on.

Do you prefer an option?: Option 1: Ground-level Park

Form Submitted on: 11/7/2014 4:23:01 PM

First Name: Isabel
Last Name: Anderson

Comments on the two Congress Square Park Design Concepts:
40 steps to get up to a park? This would seem to weed out two groups that are prime users of parks: moms with little kids, senior citizens. Not nice!

Maintenance in the winter would be a nightmare. And expensive.

Do you prefer an option?: Option 1: Ground-level Park

Form Submitted on: 11/7/2014 4:50:28 PM

First Name: Karen
Last Name: Snyder

Comments on the two Congress Square Park Design Concepts: Option 1 is the best and only choice.

Option 2 is ridiculous. The Portland planners and Mayor Brennan have manipulated and lied to the public. They have understated the amount it would cost to maintain a park on a building roof in which the property would still be sold to Mayor Brennan's good ol' boy at Rockport LLC who wants to buy the land. There is extreme conflict of interest and Mayor Brennan and any city council member who votes for this ridiculous scheme should be fired.

Do you prefer an option?: Option 1: Ground-level Park

Form Submitted on: 11/7/2014 4:51:30 PM

First Name: Anne
Last Name: Pringle

Comments on the two Congress Square Park Design Concepts: Since it was re-instituted, I have attended all meetings of the CSRSG I have kept an open mind on the two options the Council asked to be explored.

Following the presentation by the City's selected design team earlier this week, there is no question in my mind that a ground level park is the much better option. It will be more dynamic, be better used and available for more hours of the day, and will be a real attraction for City residents, visitors, and hotel

guests. The conceptual design for the above-ground park is disjointed (because of the substantial ramping and stairs required) and will have smaller, less interesting public spaces, culminating in a rooftop green space that will not be visible or inviting even during the day and likely not open at night without dedicated security.

I do not dispute the need for more event space, but we need to realize that one event room is NOT an "event center" and public open space should not be sacrificed for limited private benefit. Rather than focusing on selling public space to secure one event room, why don't we start talking about how to build a true, centrally located "event center" that can benefit all hotels?

As a longtime Portland resident and taxpayer, I certainly appreciate the substantial investment that Rockbridge has made in restoring the hotel, but have concluded that the community's appreciation does not warrant sale of a valuable public space that has far greater potential, as demonstrated by the efforts this summer of the Friends of Congress Square Park.

Do you prefer an option?: Option 1: Ground-level Park

Form Submitted on: 11/7/2014 5:26:25 PM

First Name: Elizabeth
Last Name: Streeter

Comments on the two Congress Square Park Design Concepts: I definitely want the entire park used for the public on the ground. The event center would only be for the hotel, with very few, if any, times when the public can use it or parts of it. It breaks up the park so that the larger activities that took place there this summer would not be possible. The green roof seem like a joke. The accessibility for baby carriages, disabled people, etc would be impossible. The space is not inviting, especially on a very hot day. What would be up there - chairs, tables, trees? How much more would it cost than a simple ground park? How much would it cost to maintain it? Would it be visible for surveillance?
This summer has shown that the space can be fine with little change. I like the stairs down - it's great seating. Make the space differentiated from the sidewalk area but not too separate.The stage area is also very good for music and performance. Perhaps relocating the clock would help with visibility . The plan you show has trees in the back corner - ridiculous! That is where unsavory activity takes place. Put some children's equipment back there - a corner for play, with good visibility. The whole problem with the park has not been the stairs, etc, but the fact that it was not maintained or programmed. Seating, shade, food and WiFi brings people! . A big help would be public toilet facilities. For everyone, not just the homeless. People from all walks of life, locals and visitors can share the same space, as they do in any of the great parks you have been studying.

Do you prefer an option?: Option 1: Ground-level Park

Form Submitted on: 11/7/2014 9:05:33 PM

First Name: Karen
Last Name: Luse

Comments on the two Congress Square Park Design Concepts: I think a ground level park is more accessible and open.

Do you prefer an option?: Option 1: Ground-level Park

Form Submitted on: 11/7/2014 10:48:04 PM

First Name: Andrew
Last Name: Graham

Comments on the two Congress Square Park Design Concepts: I find the raised park a far superior solution. The design is compelling, the multi-levels interesting, the varied heights add an interesting texture to the corner, and it deals with the topography of the site effectively. I find the concerns expressed regarding the ramps and the supposed lack of sight lines into the higher space to be specious objections that are not born out by any real data. The concern for visibility from the Congress St sidewalk should certainly be a part of the design brief, but I think it is a non-issue, personally.

The ground-level park, however, I find poorly realized. Making the primary feature a short-cut diagonal through the corner seems like a cynical solution. There seem to be far less functional space in the park in this design, with the majority devoted to what is essentially a large pedestrian way.

I would expect, however, that the Eastland and its developers should pay a large portion of the development cost of the park - at least $1M - and that they not be allowed to privatize it for events. I think that the city council should play hardball and get them to pay a substantial price to get their event center.

Do you prefer an option?: Option 2: Elevated Park with Event Center

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Form Submitted on: 11/8/2014 1:11:29 AM

First Name: suzanne
Last Name: laberge

Comments on the two Congress Square Park Design Concepts: the ground level design is entirely visible from the street, accessible to all and the space remains an open one..
the elevated park is harder to see, and could therefore be less safe. less inviting as more effort to get to. doesn't keep the spirit of the the park

Do you prefer an option?: Option 1: Ground-level Park

Form Submitted on: 11/8/2014 7:45:01 AM

First Name: Dawn
Last Name: Tully

Comments on the two Congress Square Park Design Concepts: on the street level. Available to all

Do you prefer an option?: Option 1: Ground-level Park

Form Submitted on: 11/8/2014 11:56:28 AM

First Name: Ashley
Last Name: Salisbury

Comments on the two Congress Square Park Design Concepts: Keep it simple! Aside from aesthetic and use concerns, there is so much execution risk with an elevated park. An elevated park will be way more expensive and has so many variables that make it unsuited to this climate. Remember: the high line in NY ALREADY EXISTED!

The last thing this city needs is another 300 person hotel conference room--which is what this really is. An "event center" is actually public.

Do you prefer an option?: Option 1: Ground-level Park

Form Submitted on: 11/8/2014 11:57:39 AM

First Name: Samuel
Last Name: Swenson

Comments on the two Congress Square Park Design Concepts: Hi, 'Thank You' for your time and effort. I personally am still puzzled by the rush to entirely redesign Congress Square Park. The existing space is wonderfull as is! If the original awning design was used there would be shade in the summer, the landscaping improved, the trees trimmed, and a new clock design we could have a fine park for a small expense and take the leftover money for programming for events and staffing of a info booth. I am baffled as to why people want to destroy a perfectly fine existing space. Best of luck on the most open public use of this space regardless of my criticism .
-Sam Swenson

Do you prefer an option?: Neither

Form Submitted on: 11/8/2014 12:47:11 PM

First Name: Joe
Last Name: Kievitt

Comments on the two Congress Square Park Design Concepts: Both concepts have some successful elements but both are EXTREMELY over designed and will feel outdated in 5 YEARS OR LES5 (this BTW, is the biggest issue with all of the over designed, already dated construction going up all over Portland). In addition they are unnecessarily extravagant/over priced.
This design (http://www.portlandmaine.gov/DocumentCenter/Home/View/7275, page 9) is closest to what I feel would work best , however, concrete or stone benches, good lighting and added green space/grass on the north side would be needed.

Do you prefer an option?: Neither

Form Submitted on: 11/8/2014 12:48:23 PM

First Name: Penny
Last Name: Harris

Comments on the two Congress Square Park Design Concepts: I like the both but prefer the 2nd. It seems more unique. It could create the type of interest that people will invest to update the buildings around the area and encourages people to the area and lifts expectations of ourselves. Supports the PMA new entr design.

Do you prefer an option?: Option 2: Elevated Park with Event Center

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Form Submitted on: 11/8/2014 1:10:37 PM

First Name: alison
Last Name: hildreth

Comments on the two Congress Square Park Design Concepts: After studying the 2 options presented on Wed. night I have come to the conclusion that option 1 is the only choice if a park is to exist at all in Congress Square plaza. Option 2 does not allow for any performance area, any gathering spot of sufficient size. Most of the area is taken up with 485 ft. of ramps and stairs. A small terrace is accessable by a set of 17 stairs in front of the event center. This surely not a viable gathering space and the only place left is in the middle of the sidewalk. Handicapped people and families with young children some in strollers are never going to manage stairs or 480 feet of ramp. As far as a performance space on top. How to get equipment, lights, electrical and sets up there? Then there is the safety issue. The ramp in the back and on the side are completely hidden from view. Who will patrol this area? The park had a vibrant summer with lots of events and people enjoying the space. Now that there is a Friends group with a board and the dedication to make the space a success I really think the council should vote with the majority and allow the redesign of the park to become a reality.
In terms of economic benefit which I believe is driving the idea of the event center (which will be small anyway) there will be some who are attending events, who will come out and buy a meal or a gift, but many stay in the hotel with a good restaurant, bar, TV etc. In the building that I own we are next to the

Holiday Inn and I never see many attendees heading to downtown Portland to buy. On the other hand it has been shown over and over again that a vibrant and beautiful park affects the neighboring businesses in a dramatic positive way. Bryant Park, Madison Square Park, Strauss Park, the Highline are all examples of this.
Why go this added expenditure (and it will much much more than has been estimated) when a vote has been taken, the results are in, people want and deserve a park.
And if we get a Bloomberg Grant we can have 365 days of events in the park.

Do you prefer an option?: Option 1: Ground-level Park

Form Submitted on: 11/8/2014 1:31:54 PM

First Name: not given
Last Name: not given

Comments on the two Congress Square Park Design Concepts: While I don't love either design, the essential question is about the elevated park. And, I trust that there would be many more phases before a design was selected.

-I would rather see the entire intersection be included in the "shared space" idea, not just from the PMA to the current Congress Square. This is the time to do it correctly. Even though both Congress and High can be heavily trafficked with automobiles, it is imperative that they move slowly through the space. I encourage the elimination of the traffic signals all together. This will slow everyone down and keep a more constant and logical flow of all modes.
-I like that High Street is shown as 2-way.
-The cost estimate for the elevated park seems to err on the side of being very low. The #17 and #21 comments about the reinforced roof indicate that there may be a significant difference between this estimate and reality. And, what I heard from City staff in one public meeting was that the hotel would not pay for the difference between a standard roof and one that must bear this type of weight load. Given all of the current unknowns, it seems important to determine a price range for the elevated park so the public and Council understand the real dollar amounts.

Do you prefer an option?: Option 1: Ground-level Park

Form Submitted on: 11/8/2014 5:25:53 PM

First Name: HENRY
Last Name: COBB

Comments on the two Congress Square Park Design Concepts: In my judgment option 1 is far superior, because it maximizes the accessibility and flexibility of public open space adjoining Congress Square, at the heart of Portland's Arts District. By comparison, option 2 significantly reduces the accessibility and flexibility of public open space, while significantly increasing both the initial construction cost and the

ongoing operating cost of Congress Square Park.

Do you prefer an option?: Option 1: Ground-level Park

Form Submitted on: 11/8/2014 9:26:16 PM

First Name: Grace
Last Name: Braley

Comments on the two Congress Square Park Design Concepts: The Congress Square Park space is a welcome open area at the end of a long, narrow block of Portland's interesting brick buildings.....It is a good space that lets light in, allows people to sit down or stroll or engage in a program.

Such an open space in a small area needs to be immediately open and accessible form the sidewalk. Putting it up a stairway or ramp or both, drastically reduces the accessibility, and some people might never see it at all. However clever the intention, it removes it from the "public", which is who it is for. I have been to a number of the places in the pictures (not all relevant to this), and essentially, I am only more affirming in my opinion.

So many things have been carried out there, demonstrating how it can be quite enjoyable if it is promoted and maintained. A garden/park up in the air would be more intensive maintenance, not what we need here at this time.

Do you prefer an option?: Option 1: Ground-level Park

Form Submitted on: 11/9/2014 8:52:49 AM

First Name: Gretchen
Last Name: Preneta

Comments on the two Congress Square Park Design Concepts: I favor the street level option for Congress Square Park. This option would keep the park accessible for all, which I believe is one of the most important parts of maintaining the character of the City. I am completely opposed to elevating the park and making it more of an event-specific space. A street level public place should already provide a fantastic venue for events that are, again, accessible to everyone.

I moved to Portland because there is something for everyone here, regardless of socioeconomic status. I feel that slowly creeping away with some of the decisions that the City has made, particularly with regard to making the City a tourist-focused place (never a good idea if it comes at the expense of the people who live here).

Do you prefer an option?: Option 1: Ground-level Park

Form Submitted on: 11/9/2014 5:20:34 PM

First Name: Peter
Last Name: Monro

Comments on the two Congress Square Park Design Concepts: I have attended several design sessions and am a regular visitor/ user of the park in the past year. Almost any version of an on the ground park will provide more a great deal more accessibility, space and flexibility then anything built over a room of any type.

Furthermore, to activate the park's full area will require activating its edges, which would be almost impossible atop a structure.

Please allow a full length design process to proceed toward an on the ground park integrated with Congress Square as a whole unfettered by artificial deadlines or design imperatives guided only by what is best for potential users of this space.

If so permitted to progress to its conclusion, such a design process will turn out to be the best outcome even for the Westin hotel.

Do you prefer an option?: Option 1: Ground-level Park

Form Submitted on: 11/9/2014 5:34:26 PM

First Name: Sandra
Last Name: Rudman

Comments on the two Congress Square Park Design Concepts: A real park at Congress Square will only help to make Congress Street live up to its distinction of one of the 10 best streets in the nation. The atmosphere of the park has changed so much over the last year and I look forward to upcoming improvements.

Do you prefer an option?: Option 1: Ground-level Park

Form Submitted on: 11/10/2014 8:53:31 AM

First Name: Anne
Last Name: Fowler

Comments on the two Congress Square Park Design Concepts: I think the Park should be as accessible as possible.

Do you prefer an option?: Option 1: Ground-level Park

Form Submitted on: 11/10/2014 11:00:44 AM

First Name: Lucian
Last Name: Burg

Comments on the two Congress Square Park Design Concepts: I think the 2 level elevated park is many times more interesting and makes the park area much more lively. with all those places to sit as the elevation changes. Very exciting design. Both designs are good, but many of our choices in Portland are so cautious, that I think something lively like the 2nd design is well worth considering.

Do you prefer an option?: Option 2: Elevated Park with Event Center

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Form Submitted on: 11/10/2014 11:14:24 AM

First Name: Joann
Last Name: Bisson

Comments on the two Congress Square Park Design Concepts: It seems that when you consider price, accessibility, sight lines, cleaning and maintenance the groung level park is less expensive, more accessible, and safer.

Do you prefer an option?: Option 1: Ground-level Park

Form Submitted on: 11/10/2014 2:57:37 PM

First Name: Ashley
Last Name: Bahlkow

Comments on the two Congress Square Park Design Concepts: This is actually a lot of space that is centrally located. What about turning the whole thing into a garden for food for Preble St. and or more community garden space? There are over 100 people on the waiting list for a community garden in the city.

I believe we need to start thinking more about using our spaces to beautify the city AND grow more food locally.

If this is not possible, please option 1.

Thank you.

Do you prefer an option?: Option 1: Ground-level Park

Form Submitted on: 11/10/2014 4:24:44 PM

First Name: joan
Last Name: grant

Comments on the two Congress Square Park Design Concepts: I'm all for the ground level park. Main reason is accessibility. I live nearby and doubt I'll ever wind up that long ramp to get to the top. Also it seems unwise for the city to get into such a complicated plan as the roof top when it benefits very few, maintenance will be a nightmare and expensive.
The ground level park has been successful as a community building place this summer and I think it can continue to be so without expensive changes, rather improvements can be done in small steps.
Please don't sell our park.

Do you prefer an option?: Option 1: Ground-level Park

Form Submitted on: 11/10/2014 5:12:01 PM

First Name: Clifford
Last Name: Tremblay

Comments on the two Congress Square Park Design Concepts: As a junior architect and urban designer, it is my professional opinion that Option 1 is the best choice for Congress Square Park, the surrounding neighborhood, and the City.

Option 1 is a flexible and accessible space (no steps or long ramps) and promotes interaction and cross traffic. Option 2 inhibits citizens from using the space with many barriers, physically and mentally - vertically and horizontally. KMDG / Utile mentioned that these features were "inviting," but there shouldn't be features to entice users. It should be natural, just like the cross traffic that Option 1 creates by generating a meaningful path from Congress to High Street - a shortcut. Cross traffic creates more "guardians" monitoring each other, making a safe environment with a self-fulfilling safety / user loop. Option 2 is the opposite. It has many blind corners and places to loiter, drink alcohol, urinate, and camp out for the night. It will be hard for the police to watch this site.

I commend the designers on both options, but as they said, Option 2 was hard to work around. I imagine it was like trying to put toothpaste back in the container. They even had to change the footprint of the event center to make it work. I had a professor that once said, "If you find yourself using too many tricks, materials, and complicated movements to make a project work, start over." It is like an inexperienced designer wanting to incorporate everything and ending up with a mess, like soup with too many spices! Option 1 is flexible and open. The design can change in innumerable ways at this point. Option 2 is limited, spatially and experientially. The flexibly of Option 1 will pay off in the future in terms of performances, art, markets, food, and how people will use in general.

Last, I feel the construction estimate is inaccurate and minimizes Option 2 by withholding real costs: the kiosk, the extra structure that Rockbridge will not pay for to support the roof, and the additional maintenance cost. It doesn't help that firms with vested interest in Option 2 created the two estimates. Of course you are going to cut the cost of a job you want to get!

I hope you listen to the public on this matter and not antiquated versions of urban planning and economics. Parks pay off!!

Do you prefer an option?: Option 1: Ground-level Park

Form Submitted on: 11/10/2014 7:01:37 PM

First Name: Asher
Last Name: Playts

Comments on the two Congress Square Park Design Concepts: Keep public space public!!!!

Do you prefer an option?: Option 1: Ground-level Park

Form Submitted on: 11/10/2014 10:26:34 PM

First Name: not given
Last Name: not given

Comments on the two Congress Square Park Design Concepts: great work

Do you prefer an option?: Option 1: Ground-level Park

Form Submitted on: 11/11/2014 6:36:55 AM

First Name: Laurie
Last Name: Davis

Comments on the two Congress Square Park Design Concepts: After reviewing the designs I have a very strong preference for Option 1 as it is more accessible, open, flexible and visually pleasing.

Do you prefer an option?: Option 1: Ground-level Park

Form Submitted on: 11/11/2014 6:41:33 AM

First Name: Susan
Last Name: Wiggin

Comments on the two Congress Square Park Design Concepts: Option One please.

Do you prefer an option?: Option 1: Ground-level Park

Form Submitted on: 11/11/2014 5:28:51 PM

First Name: Angelika
Last Name: Schechter

Comments on the two Congress Square Park Design Concepts: Option 2 is not inviting because:
- visitors do not like to go uphill/climb stairs (it's hard enough to get them away from Commercial St.) and even at 5% any inclination is hard on people who need to use them.
- It does not feel like a public park but like the front stoop of as private venue
- Cutting grass is much easier when flat than at an angle: believe me!
- Safe: at this height, there is no way for someone at street level to see mischief on the rooftop, or to get there quickly. Even with that open space, one could hide there most effectively especially at night.
- Clean & Safe: the alley along Vineland is a sure dirt trap and hiding place, like the one connecting Exchange St. to the Fox Court Bathrooms...
- Maintenance: In winter, snow has to be removed from all steps else the park is not accessible. Again from experience, lots of costs in labor + erosion of the steps by snow & salt.

Do you prefer an option?: Option 1: Ground-level Park

Form Submitted on: 11/11/2014 5:54:07 PM

First Name: Kathleen
Last Name: Conway

Comments on the two Congress Square Park Design Concepts: Option 1 is less costly for Portland taxpayers. The way the park sits now, it looks like a cesspool. Fill it in and make it ground level. option 2 leaves many unanswered questions costwise-Stick with Option 1.!!!

Do you prefer an option?: Option 1: Ground-level Park

Form Submitted on: 11/11/2014 6:07:27 PM

First Name: abraham
Last Name: s

Comments on the two Congress Square Park Design Concepts: Last June, I voted to save the park (as part of the Protect Portland Parks Referendum) - and that includes preserving the entire public footprint of Congress Square Park.

As a ground-level park, the potential many Portlanders witnessed this past summer can be maximized with a redesigned, rejuvenated, and re-landscaped urban public park. The vicinity that surrounds the corner of High Street and Congress Street continues to be built-up and intensified. With the resurgence of Congress Square Park, the space can counteract as a downtown oasis, and even the 35-year-old tress will become more important air-quality factors. The Park- as a ground-level park- makes all the good sense in the world, counterbalancing the burgeoning downtown, and providing public respite space for the state's most densely-populated neighborhoods (Parkside + West End), along with the Arts District.

The hybrid privatized "event" building, with the small park area, is precisely what voters opposed. It would be an unnecessary compromise and a major step backwards for Portland's public spaces. In the most practical terms, the "option 2" would be prohibitively expensive and inaccessible for those who cannot climb up ramps. This would surely exclude the elderly who live in the Plaza Building and regularly use the Park. Maintenance would also be problematic at best- considering elevators, sight-lines for law enforcement, and upkeep.

Option 1 provides for potentially vital green space, a public venue, and a unique public park that stays public.

Do you prefer an option?: Option 1: Ground-level Park

Form Submitted on: 11/11/2014 6:14:23 PM

First Name: joanna
Last Name: streeter

Comments on the two Congress Square Park Design Concepts: I work in the city of Portland and have enjoyed having beautiful parks to eat in/walk in/sit in. There is nothing appealing about having an events center in a small city park. The recent efforts of local organizers have shown that people care for their parks and will do anything to make them work for the city of Portland.
Please don't squander this resource. There are many people willing to work hard to ensure this park works for everyone. If you allow someone to build a structure, then that option is always lost. Let the people of Portland do everything they can do to fix this park, do not allow a business to have greater influence on the future of this park than the people!

thanks for taking this into consideration, and for protecting our resources!!

Do you prefer an option?: Option 1: Ground-level Park

Form Submitted on: 11/11/2014 7:48:54 PM

First Name: Doris
Last Name: Ortiz

Comments on the two Congress Square Park Design Concepts: While I do appreciate each of the designs, I feel that option 1 offers more accessibility and the performance space is located in a better place in the plan. My main concern is the idea of turning High Street into two directions with one lane heading out of Portland. The Westin valet parking already causes traffic to stop when cars are double parked in front of the hotel for loading and unloading clients. This is even more complicated when the State Theater has a performance. I recommend that High Street remain one direction.

Do you prefer an option?: Option 1: Ground-level Park

Form Submitted on: 11/11/2014 9:42:31 PM

First Name: Alice Brooks
Last Name: Spencer

Comments on the two Congress Square Park Design Concepts: I don't like elevated parks. They don't seem like a place people will actually use.

Do you prefer an option?: Option 1: Ground-level Park

Form Submitted on: 11/11/2014 9:46:28 PM

First Name: Lucky
Last Name: Hollander

Comments on the two Congress Square Park Design Concepts: The final plan needs to be welcoming, accessible and open to all. It needs to have the flexibility to be used got a variety of creative community events.

Do you prefer an option?: Option 1: Ground-level Park

Form Submitted on: 11/12/2014 5:56:08 AM

First Name: Thomas
Last Name: MacMillan

Comments on the two Congress Square Park Design Concepts: I support the ground-level park because of its accessibility and effective use of tax payer dollars. I support keeping Congress Square Park as open to the public as possible. Please do not build an event center and a rump park on Congress Square Park!

Do you prefer an option?: Option 1: Ground-level Park

Form Submitted on: 11/12/2014 6:03:02 AM

First Name: not given
Last Name: not given

Comments on the two Congress Square Park Design Concepts: I like the cost effectiveness and flexibility of option one.

Do you prefer an option?: Option 1: Ground-level Park

Form Submitted on: 11/12/2014 8:00:13 AM

First Name: Ian
Last Name: Jacob

Comments on the two Congress Square Park Design Concepts: Option 1 succeeds by applying the criteria for an effective park. The ground-level park will provide access for people of all ages and physical abilities; open visual sight lines from Congress St. and High St.; activated edges; a flexible design that can be easily adjusted to changing community needs; and the most usable space at a much lower cost than the elevated park.

Option 2 lacks many of the criteria for a successful park. Its' accessibility is significantly limited by the 481 foot ramp and stairs. The design is not flexible for a wider range of uses and thus limits programing options. The elevated park also creates limited sight lines not only from the street but also within the park by creating hidden corners that would compromise safety. Lastly, its' cost is significantly higher than a ground level park not only in initial construction costs but also in ongoing maintenance.

Do you prefer an option?: Option 1: Ground-level Park

Form Submitted on: 11/12/2014 8:28:57 AM

First Name: Elizabeth C
Last Name: Parsons

Comments on the two Congress Square Park Design Concepts: In principle, the Park should be on the ground, not elevated. The elevated option sounds too much like a boondoggle for private interests.

But both options offered in the official presentation look out of character so I hope it's not an either-or choice between these two unattractive designs. On the ground one, what's with that weird pergola? On the elevated one, why do we need a huge screen?

Why don't you issue an open RFP? How about inviting students in various local architecture, urban design, and art programs to come up with some options? Whatever happens, try to achieve a better unity between historic and futuristic than the two presented options offer.
Do you prefer an option?: Neither

Form Submitted on: 11/12/2014 9:29:37 AM

First Name: Melissa
Last Name: LaCasse

Comments on the two Congress Square Park Design Concepts: Option 1 has my vote. More accessible and versatile, and more likely to draw people walking by into the park. It is the best solution. Option 2 is unaccessible, you cannot see it well from the street, more difficult to utilize as a temporary art space, etc...

Do you prefer an option?: Option 1: Ground-level Park

Form Submitted on: 11/12/2014 9:34:42 AM

First Name: maureen
Last Name: hannigan

Comments on the two Congress Square Park Design Concepts: For the sake of the people you all represent, option 1 must be chosen. Quality of life for those who call Portland home especially those of us in wheel chairs makes option 1 the only viable choice. Our park, my park, is option 1 envisioned in beauty...rooted on one level with trees and plants and creativity.

Do you prefer an option?: Option 1: Ground-level Park

Form Submitted on: 11/12/2014 9:37:25 AM

First Name: Rosanne
Last Name: Graef

Comments on the two Congress Square Park Design Concepts: I am writing to support Option 1: Ground-level Park for the following reasons:

* provides more benefit to more people, residents, visitors and businesses alike
* flexible uses - now - different kinds of activities can be easily programmed for different-sized gatherings and types of activities
* flexible uses - future - if the park is designed without lots of infrastructure and chopped-up spaces, as population density on the peninsula increases and as people's needs and desires change, the space can be more easily adapted than a roof-top space

* more affordable - now - the cost estimates are not really comparable since the kiosk/pavilion price was left out of the rooftop option. In addition, if the ground-level park is simply designed, without a lot of extraneous features, it will be less expensive than the plan presented and could be done in phases
* more affordable - future - the costs of maintenance and security will be lower and the tasks will be

more easily accomplished with the ground level park
* CDBG eligibility not guaranteed for the expenditure of any sale price the city might receive from RockBridge and if it were, why should CDBG money be invested in a building that's owned by a private entity that's not creating a truly open and public space for the benefit of the residents of Portland?
* not encumbered by what is at this point a vague ownership, liability and responsibility agreement between the City and RockBridge - what would the City really own? Who would have ultimate control of the programming, etc. of a rooftop space. This is clear-cut with the ground-level option, not so with a rooftop park. Within a relatively few years, the City could end up in court against RockBridge and perhaps end up with nothing.

* Portland is incredibly lucky to have a public open space in heart of peninsula that's spacious and sunny where people can gather to connect to nature (the sky, birds, greenery, more distant views) and to each other - please do not squander this precious resource!

* in closing, keep it simple - the design, the ownership and maintenance agreements
* and PLEASE make some provisions for public restrooms

Do you prefer an option?: Option 1: Ground-level Park

Form Submitted on: 11/12/2014 9:42:10 AM

First Name: Yemaya
Last Name: StClair

Comments on the two Congress Square Park Design Concepts: Option 1 seems like a much better use of space than option 2. It is more open for people of all ages and physical abilities, it allows for a wider range of activities, and the simple design allows for greater long-term sustainability.

Do you prefer an option?: Option 1: Ground-level Park

Form Submitted on: 11/12/2014 1:06:47 PM

First Name: Solange
Last Name: Kellermann

Comments on the two Congress Square Park Design Concepts: I prefer Design #1 because it is more accessible to the public and will allow for a greater variety of uses. the large open area can be used by larger groups.
Design #2 has smaller sections that make users of one section not visible by users of other sections - the event center, a space facing High Street, and a space facing Congress Street. I think this configuration might invite the types of problems voiced earlier about who uses the Park.

Do you prefer an option?: Option 1: Ground-level Park

Form Submitted on: 11/12/2014 3:01:03 PM

First Name: William
Last Name: Cary

Comments on the two Congress Square Park Design Concepts: I prefer Option 1. It seems more open, inviting, and accessible and it also seems like more of a blank canvas so future generations can decide to tweak it (adding things, removing things) without having to start from square one. I like the flexibility that it presents.

Thanks,
Will

Do you prefer an option?: Option 1: Ground-level Park

Form Submitted on: 11/12/2014 3:34:29 PM

First Name: Alexander
Last Name: Landry

Comments on the two Congress Square Park Design Concepts: A. Value is greater with Option 1. It has more than double the usable space of the rooftop option, and it's all pretty much on one level.
Option 2 has half of the usable space. Ramps aren't usable; the green-colored triangles between ramps on High St side are not usable; the stairs aren't usable.

B. Option 1 would be flexible for events & programming, both physically and in terms of being a public space.
Option 2 is nowhere near as physically flexible, and the Westin/Eastland may pre-emptively reserve the space, because of their needs.

C. Edges of Option 1 could be made 'active' in the design process.
Option 2 edges wouldn't be active at all, and provide hiding places in back corner of the looong ramp, and behind the tv-screen.

D. Option 1 improves upon the current Congress Sq Park, and has more room, which would bring more people in.
Option 2 rooftop park will not draw people to it. There are either 43 steps or 481 feet of ramp to go up, to reach it, so it will have fewer people than now use Congress Sq Park.

E. Option 1 concept is flexible, in this design stage, so the design can be fine-tuned.
Option 2 isn't flexible at all. There is comparitively, much less that is changeable in this design.

F. If Option 1 needed adjustment, after it were built, it could be altered later.

If Option 2 were built, it wouldn't be changed for the duration of the 99-year lease.

In summary, Option 1 gives more people enjoying more space, built for less money!

Do you prefer an option?: Option 1: Ground-level Park

Form Submitted on: 11/12/2014 4:48:18 PM

First Name: Susan
Last Name: McCloskey

Comments on the two Congress Square Park Design Concepts: I think the elevated park would be little used except by hotel guests and a few others. Ground-level park is much more neighborhood-friendly.

Do you prefer an option?: Option 1: Ground-level Park

Form Submitted on: 11/12/2014 5:55:11 PM

First Name: Pat
Last Name: O';Donnell

Comments on the two Congress Square Park Design Concepts: The rooftop park will cost the city a lot of money, and it will have barriers for the public use.

Do you prefer an option?: Option 1: Ground-level Park

Form Submitted on: 11/12/2014 7:35:42 PM

First Name: Nat
Last Name: May

Comments on the two Congress Square Park Design Concepts: The elevated park is too disconnected from the street and the people on the street, and has too little public space.

Do you prefer an option?: Option 1: Ground-level Park

Form Submitted on: 11/12/2014 9:04:47 PM

First Name: Pandora
Last Name: LaCasse

Comments on the two Congress Square Park Design Concepts: I sit on this board as the representative to the Portland Public Arts Committee. Over three years ago we made the decision to make Congress Sq., which has been designated the heart of the Arts District a priority site for a major work of art. Since then

PPAC has committed $200,000 towards this goal. We have also recently put together an art selection committee comprised of the major stakeholders in this area. The Park has had a renewal of positive activity this summer and fall. The Friends of Congress Square Park and community members have helped to make this area a vital and vibrant space.

Public Art both permanent and temporary can play an important role in creating a sense of place and identity and can be a key factor in establishing a unique and culturally active place and an economic engine for the area. PPAC is excited to join in the effort to make Congress Sq. and Congress Sq. Park a destination place with a distinct identity for future generations by procuring an iconic public art work. We are committed to raising the additional funds that will be needed to make this happen.

Congress Square Park is also an important site for temporary art of all nature. Site-lines, accessibility, flexibility are key elements in the placement of public art both permanent and temporary.

A ground level Park offers a variety of visual experiences from different vantage points wether approaching from the south, north, west or east. Each direction reveals a different perspective of the park and its visual and dynamic role and relationship to all the elements of the entire square. There is more opportunity for an art work to visually engage people from a variety of views and allows for a more dynamic relationship with the surroundings. There is also opportunity to have art that is multi unit, activating different areas of the park while still maintaining visual connection to the whole. Site lines are limited with a park on the roof. The system of ramps, stairs, platforms that are needed for physical access create rigid spaces and decreased visibility from one area to another.

Physical Engagement in the art piece is very important to the committee. We want people to be able to have multiple experiences and being able to touch is very important for a public work of art at this location. A ground level Park is clearly easily accessible for everyone from multiple access points along Congress and High St. All areas of the Park could be good sites for a public work of art where the public can engage with it on any level. Accessibility is very restricted with a Park on the roof. Parents with strollers and small children and people like Maureen who lives in the at Congress Sq. Plaza and visits the park daily would struggle to make the trip up this ramping system to attend events or experience public art.

Temporary public art can come in many different forms and a flexible space will allow us to think out of the box. A ground level park is the only option that truly allows for flexibility.

Preservation of the historical and Architectural Character is extremely important at Congress Square. The Square is bordered by historical landmark buildings and two of the edges of the Park are multi-levels of cascading brick facades with varying depths and texture of varied window placement. There is beauty in this layered expanse and depth of structure that expands to the sky. The design of the park needs to respect the inherent beauty and integrity of this space. A ground level park can do this. The roof top park design is inflexible in the required standards, creating a maze of diagonal and horizontal lines climbing up and up with rigid lines and structure that combine to create a visual bulk that doesn't fit visually in this historical area of our city. It is visually awkward.

This Park does not have a huge footprint but the surrounding buildings do and the streets are active with traffic moving in four directions. We need a park whose design has been simplified to its essential elements, that speaks to its potential beauty, allows its elements of nature to subdue the surrounding noise and gives us a moment of pause and makes us all feel wonderful when we are there.

Do you prefer an option?: Option 1: Ground-level Park

Form Submitted on: 11/12/2014 11:02:00 PM

First Name: Michael
Last Name: Roylos

Comments on the two Congress Square Park Design Concepts: The City is stressed for money!! The designs that have been submitted are nice and all, but don't address the basic needs of a park. There is no need for a build out or sale to the hotel. If you were serious about making a park, then make a park. Not a Plaza. Fill in the sunken area with dirt, the drainage is there already, get some big rocks from BlueStone and replicate Tommy's Park. There is no need for the overhead poles, stages etc. Just make a park . Bring in some large trees, lay down some sod, and make a Park. Real simple...
Make believe that you are spending your own money, not the Hotels, and certainly not the taxpayers...
Again, make a park, not some planners dream as to what would look good on their resume.
Make A Park!!

Do you prefer an option?: Option 1: Ground-level Park

Form Submitted on: 11/13/2014 12:17:55 AM

First Name: Sally H
Last Name: Nelson

Comments on the two Congress Square Park Design Concepts: I fully agree with David Lacasse and prefer the Ground-level Park design for all the reasons he stated. Thank you for your consideration,

Sally Nelson

Do you prefer an option?: Option 1: Ground-level Park

Form Submitted on: 11/13/2014 5:49:20 AM

First Name: Holly
Last Name: Seeliger

Comments on the two Congress Square Park Design Concepts: Performance stage

Do you prefer an option?: Option 1: Ground-level Park

Form Submitted on: 11/13/2014 6:11:27 AM

First Name: Emily
Last Name: Bruce

Comments on the two Congress Square Park Design Concepts: This space is very important to this city and I'm glad the city is giving it so much consideration. My hope is the square is step one in a longer term park planning process. How this space links to the museum, to Monument Square and to Longfellow would be worthwhile longer term considerations. How pedestrians access the park and how drivers find safe, clean, easy parking will all influence how much the parks get utilized. Thank you for all the work going into this now and especially to Friends of Congress Square.

Do you prefer an option?: Option 1: Ground-level Park

Form Submitted on: 11/13/2014 9:00:24 AM

First Name: Jeanne
Last Name: Paterak

Comments on the two Congress Square Park Design Concepts: Although I can see much room for improvement on the ground level design for the park, it is my preferred option. With my education in design and horticulture and my work experience within the architectural community I firmly believe the city would be best served by going with Option 1 the Ground Level Park.

Roof Top Parks most often are designed because there is limited green space available in a more densely built area. Replacing a park with a rooftop park serves the owners of the adjacent property who want to capitalize on more built space, it does not serve the people of the city.

Having a roof top park that few would bother to use and would have some security issues, much like those that people worried before. Who would feel safe walking up to a park that they could not see before they were "trapped" there?

Additional expense of engineering, safety, material etc all warrant red flags as well.

In landscape design the addition of a ramp is typically circumvented unless vast expanses of land are available. Ramps take up valuable space much like stairwells and all that area that could be devoted to food trucks, fair venues or seating and trees for shelter does not make a lot of sense.

The water feature should be thought out further, as a water feature that runs along the wall of Vinland would free up more seating and shade areas and make the most sense. In the winter it could be a display of lights activating it as a gathering spot, and in summer the cool area would likewise attract people, which is the goal is it not?

Finally my last observation is that the pergola structure as designed for this ground level schematic,

seems out of scale. It not as "warm", plant or user friendly as the pergolas in the other schematic. Was that intentional to deter people from preferring the ground level design?

Can this design be revisited and improved upon? I believe it can. Where is the color? The plant selections seems rather limited and further consideration of this can make or break a true green-space. It seems to me more work should be done considering the direction of light as it moves through the day and the seasons to truly capitalize on this very valued space and respite for our small yet vibrate downtown district.

Do you prefer an option?: Option 1: Ground-level Park

Form Submitted on: 11/13/2014 11:51:22 AM

First Name: Judy
Last Name: Schneider

Comments on the two Congress Square Park Design Concepts: Having just returned from a walk on the high line in NYC I thought an elevated park would be fun and interesting. But I do NOT believe it would be a good idea for Congress Square because it is an end not a journey. Parks should be able to be walked through and the proposed elevated park for Congress Square is a dead end.

Do you prefer an option?: Option 1: Ground-level Park

Com 6- 14/15
Tab 7 11-12-14

HALL SCHOOL BUILDING COMMITTEE

1) Brian Jackson
2) Sean Kelsey
3) Whitney Letellier
4) Laura Newman
5) Katie Lamb
6) Pedro Nieves
7) Joseph Carter
8) Laurie Davis
9) Marnie Morrione
10) Sarah Thompson
11) Councilor Ed Suslovic, Chair
12) Councilor Nicholas Mavodones
13) Jim Banks
14) Mark Adelson or Designee
15) Bob Dohetry

Order 76-14/15
~~Tab 7 11-3-14~~
Tab 8 11-17-14

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

CITY OF PORTLAND
IN THE CITY COUNCIL

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

ORDER APPOINTING CONSTABLES FOR 2014 AND 2015 RE: JETPORT AND PORTLAND PUBLIC LIBRARY

ORDERED, that the individuals listed below are hereby appointed as constables:

PORTLAND INTERNATIONAL JETPORT
Marion T. Oliver
Franklin L. Noiles

PORTLAND PUBLIC LIBRARY
Joaquim Almeida
Miroslav M. Petrovic
Paul Tetzlaff

BE IT FURTHER ORDERED, that the appointments for the Portland International Jetport shall be effective from 12:01 a.m. January 1, 2015, until 12:00 midnight, December 31, 2015; and the appointments for the Portland Public Library will be effective upon the effective date of this Order until 12:00 midnight, December 31, 2015; 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.

MEMORANDUM
City Council Agenda Item

TO: City Council

FROM: Department Heads/City Manager

DATE: October 22, 2014

DISTRIBUTION: City Manager, Mayor Brennan, Danielle West-Chuhta, Sonia Bean, Nancy English

SUBJECT: **Appointment of Public Library Security Staff as Constable**

SPONSOR: Police Department

COUNCIL MEETING DATE ACTION IS REQUESTED:
1st reading___ next available_____ Final Action_____

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

PRESENTATION:

I. **SUMMARY OF ISSUE** Portland's Public Library administration has expressed concerns regarding increasing traffic of individuals who are no longer welcome in the library. In the instance an unwelcomed guest enters this space, the security guards must call a third party (the Portland Police Department) to issue a criminal trespass order to these individuals.

II. **REASON FOR SUBMISSION** The Library's administration and Police Department believe appointing the Library's security guards as constables and allowing them to issue criminal trespass orders will create efficiencies in providing these public services.

III. **INTENDED RESULT** The intended result of this Council action is affording the Library's security team the ability to maintain an appropriate level of security for their welcomed guests and decreasing the need for additional calls for service by the Portland Police Department where possible. It should be noted the constable appointment is only authorized to issue criminal trespass orders. This authorization does not include civil citations for City ordinance violations.

IV. **COUNCIL GOAL ADDRESSED** Customer Service.

V. **FINANCIAL IMPACT**

VI. **STAFF ANALYSIS**

VII. **RECOMMENDATION** Appoint the following security staff of the Portland Public Library as Constables: Joaquim Almeida, Miroslav M. Petrovic and Paul Tetzlaff effective immediately and expiring December 31, 2014. The December expiration allows for this group to be reappointed along with all other constables for the 2015 calendar year beginning in January 2015.

VIII. **LIST ATTACHMENTS**

Prepared by:

Signature

Date 10/22/14

CITY OF PORTLAND
MEMORANDUM

TO: Mayor Brennan and Members of the Portland City Council
CC: Sheila Hill-Christian, Acting City Manager
FROM: Danielle P. West-Chuhta, Corporation Counsel
DATE: November 14, 2014
RE: **Constables**

This memo is written in response to several questions that were raised at the November 3, 2014 City Council meeting regarding constables at the Portland Public Library. The following is a summary of city staff responses to the questions raised:

I. Constables Appointed by the City Council:

The following is a list of the current constables that have been appointed by the City Council:

PARKING CONTROL
Andy Martin
Paul Willey
John Peverada

ANIMAL CONTROL, POLICE DEPARTMENT
Debra Estrella

PORTLAND HOUSING AUTHORITY
Karin Lavigne
Shannon Rafferty-Roy
David Gagne
Annette Rogers
Marcia Yeaton

POLICE CADETS
Aaron Costar
Dylan Matthews
Ayaovi Alognon

PROCESS SERVER, PORTLAND POLICE DEPARTMENT
Kelly Watters

CLIFF ISLAND
Charles Green

DEPARTMENT OF PUBLIC SERVICES
Nancy Gagne
Craig Pyy
Trevor Nugent
Suzanne Hunt

DEPARTMENT OF BUILDING INSPECTIONS
Tammy Munson
Jonathan Rioux
Jeanie Bourke
George Froehlich
Donald McPherson
Paul Fagone
Brian LaFlamme

JETPORT (Proposed to be reappointed through 2015)
Marion T. Oliver – Taxi Administrator

Franklin L. Noiles – Taxi Inspector/Enforcement Office

PORTLAND FIRE DEPARTMENT
Captain Chris Pirone

PARK RANGERS
Nathan Robbins
Jill Mulkern
Christian Wilkins
Russell Groh
Travis Wade

II. Authority of Constables

First, under the City Code, constables have the following powers:

Sec. 20-19. Constables.

> Constables appointed by the city council pursuant to section 1 of article VI of the charter shall be empowered to serve all legal process allowable under state law on behalf of and at the request of the City of Portland and the Portland Housing Authority and shall not have any of the powers of a special police officer as provided in sections 20-17 and 20-18, except with respect to enforcement of the state's public drinking laws on the Islands of Casco Bay. A constable's certificate of appointment shall state the above applicable limitations, that he or she is not allowed to carry a weapon, concealed or unconcealed, in the performance of his or her duties . . .

Sec. 20-19.5. Park and cemetery constables.

> Persons employed by the city to work in the city's parks and cemeteries may be appointed as constables with the power to enforce the parking and animal control laws applicable within the parks and cemeteries. They shall be empowered to serve civil summons for such violations but shall not have any of the powers of a special police officer as provided in sections 20-17 and 20-18. A constable's certificate of appointment hereunder shall state the above applicable limitations, that he or she is not allowed to carry a weapon, concealed or unconcealed, in the performance of his or her duties . . .

Sec. 20-20. Removal.

> Special police officers of limited jurisdiction and special officers having all the powers of regular police officers appointed or continued in office under the terms of this article may be removed by the city council for cause after notice and hearing.

In addition, under the State law "Constables shall be appointed in the same manner and with the same effect as special police officers under section 2672." 30-A

M.R.S. section 2673. "A constable's certificate of appointment shall state whether or not the constable is allowed to carry a weapon, concealed or unconcealed, in the performance of duties. If a constable is restricted in carrying a weapon, this prohibition is not affected by any weapons license the individual may possess." Id.

For your reference under section 2672, special police officers "of limited jurisdiction may be appointed for a term of not more than one year and as provided in section 2671, subsection 1. These officers have all the powers of a police officer, except as specifically provided by charter, ordinance or the certificate of appointment.

As indicated at the Council meeting on November 3rd, most (if not all) of the constables appointed by the Council to date have been using their authority to issue civil notices of violation on alleged violators (of the various ordinances that they enforce). It is my understanding that the proposed constables at the Library would be the only constables issuing criminal trespass notices/orders. With regard to the Public Housing Authority, it relies on its five constables to serve legal documents during the eviction process. There are between 150 and 160 evictions each year from among its 985 units in the City of Portland.

III. Library Rules of Conduct

Attached are the Rules of Conduct and protocols for Rules of Behavior, Implementation and Suspension for the Portland Public Library.

IV. Criminal Trespass Process

In 2012, with the assistance of Homeless Voices for Justice, the Portland Police Department instituted a revised criminal trespass policy with respect to public property. The process is as follows:

(A) A violation of a rule, ordinance or statute occurs on public property;
(B) Alleged violator served with a notice/order specifying the violation, that the person cannot come back to that particular public property for six (6) months and indicating that the person can appeal the notice/order to the Neighborhood Prosecutor;
(C) The violation is written down and entered into the Police's computer system;
(D) If the violation/order is not appealed, and the notice/order is violated a Police Officer can arrest the individual.

Maine law makes it clear that "[a] person is guilty of criminal trespass if, knowing that that person is not licensed or privileged to do so, that person [among other things]:

> D. Remains in any place in defiance of a lawful order to leave that was personally communicated to that person *by the owner or another authorized person*. Violation of this paragraph is a Class E crime; or

> E. Enters any place in defiance of a lawful order not to enter that was personally communicated to that person *by the owner or another authorized person*. Violation of this paragraph is a Class E crime;

17-A M.R.S. §402 (emphasis added)(attached).

V. Legal Analysis

The Maine Law Court has held that arrests under section 402 (above) do not violate the State or Federal Constitutions since the statute is a legitimate limitation on speech in order to protect the public from boisterous and threatening conduct that disturbs the tranquility of spots selected or buildings that require peace and quiet to carry out their functions such as courts, libraries or schools. State of Maine v. Chiapetta, 513 A.2d 831, 833 (Me. 1986) (attached).

The Court has also made it clear that "[a]n order to leave property open to the public is lawful only when an authorized person has some justification for requesting removal." State v. Armen, 537 A.2d 1143, 1145 (Me. 1988) (attached). Such justifications have included loud conduct, swearing, prior misconduct and disorderly conduct. See State v. Tauvar, 461 A.2d 1065, 1067 (Me. 1983) (attached) (holding that prior misconduct was sufficient justification for order to leave despite the absence of evidence of a present threat to the peace); Chiapetta, 513 A.2d 831 (affirming disorderly conduct conviction of verbally abusive defendant in voting area); and State v. Gordon, 431 A.2d 855 (Me. 1981) (attached)(affirming conviction of a defendant who was talking loudly, swearing and creating a disturbance in a doughnut shop).

Additionally, the Law Court has held that the owner or authorized individual's authority is delegable to a police officer. See Gordon, 437 A.2d 855, 857 (Me. 1981).

Finally, it is important to note that other jurisdictions have also addressed the legal implications of disturbances in a library. In Kreimer v. Morristown, the Third Circuit Court made a number of conclusions that are relevant to the City's situation:

> It is clear to us that a public library, albeit the 'quintessential' locus for the exercise of the right to receive information and ideas, is sufficiently dissimilar to a public park, sidewalk or street that it cannot reasonably be deemed to constitute a traditional public forum. Obviously, a library patron cannot be permitted to engage in most traditional First Amendment activities in the library, such as giving speeches or engaging in any other conduct that would disrupt the quiet and peaceful library environment.
>
> . . .
>
> Hence, as a limited public forum, the Library is obligated only to permit the public to exercise rights that are constituent with the nature of the Library and consistent with the government's intent in designating the Library as a public forum. Other activities need not be tolerated.

> . . .
> Requiring that its patrons make use of the Library in order to be permitted to remain there is a reasonable means to achieve that end. The Library need not be used as a lounge or a shelter. Clearly the rule is reasonable and is perfectly valid.

Kreimer v. Morristown, 958 F.2d 1242, 1256-1262 (3rd Circuit, 1992) (attached).

Also, one of Kreimer's progeny, Wayfield v. Town of Tisbury, 925 F. Supp. 880 (U.S.D.C., MA, 1996) (attached), addressed the issue of what process was due a patron whose library privileges were suspended. The Court concluded that the ability to use a public library implicates First Amendment Rights and that a suspended patron should be afforded "pre-deprivation process," (i.e. notice of the charges against him and an opportunity to respond).

VI. Conclusion

Overall, since Maine law (section 402, which has been found constitutional by the Law Court) and the City ordinance sections specifically allow an authorized individual, a property owner and a police officer to serve criminal trespass notices/orders, the Council has the authority to make the library personnel in question constables. Additionally, as the Maine Law Court (and the Third Circuit) has held, such a decision and the criminal trespass process described above (since it has a built-in appeals process, etc.) would not seem to violate the Maine or Federal constitutions.

(http://www.portlandlibrary.com/)

Rules of Conduct

Welcome to the Library!

The Portland Public Library is committed to preserving a safe and welcoming environment for reading, learning, exploring ideas, creating, participating in programs, and enjoying other Library activities.

Visitors are expected to comply with the following at all PPL locations:

Act legally and ethically

Acting or attempting to act in violation of state, federal, or local law, ordinance, or regulation, or Library policy, is prohibited.

Use spaces and resources as they are intended

Drinking, eating, or cell phone use is permitted only in designated areas. Smoking, sleeping, alcohol or drug use, or improper use of restrooms is not permitted.

Communicate with respect

Obscene, harassing, or abusive language or gestures are not tolerated.

Share the space

"Share the Chair" signs indicate popular areas limited to 90 minutes of use.

Be considerate of others

Disrupting or interfering with normal operation of the Library, its staff, or other users is not allowed. This includes unreasonable noise, loud talking, and playing audible devices.

Accompany your children

Children under 8 must be in the company of a parent, guardian, or other caregiver 18 years or older who must be present at all times.

- Trained services animals only.
- Remove hoodies and sunglasses before entering the Library.
- No weapons allowed on Library premises.
- Do not leave personal items unattended (limit: 2 medium items [12"x18"x20"] plus 1 small item such as laptop or purse).

Our Full Rules of Conduct (http://www.portlandlibrary.com/wp-content/uploads/2013/06/Full.RulesofConduct.pdf) are available upon request and at all service desks. If you do not comply with these rules, you may be asked to leave the Library and may lose Library privileges. Responses will be fair and reasonable and will benefit the best interest of all users.

Protocol: WIS – 1A
Title: Rules of Behavior –Implementation
Date: 10.14.11, revised 10.8.2013
Reviewed by: Executive Director, Director of Finance and Operations, Security and Maintenance Supervisor
Distributed: 10.8.13

The Portland Public Library is open to the public for the purpose of reading, studying, researching and appropriate use of Library materials, facilities and equipment. While at the Library, in order to maintain a safe and welcoming environment for all, patrons are to be engaged in the activities associated with the use of a library.

Patrons MAY NOT do any of the following:

- Use cell phones in any area other than the Atrium - **One Warning and Next Time Leave**
- Talk, use cell phones, or play personal audio devices loud enough to disrupt the quiet use of the Library by others - **One Warning and Next Time Leave**
- Eat in non-designated areas (covered drinks allowed in all areas) - **One Warning and Next Time Leave**
- Harass patrons or staff, or act in any disorderly manner – **No Warnings - Leave**
- Use obscene or abusive language – **Leave or use judgment**
- Violate posted computer usage rules - **One Warning and Next Time Leave**
- Smoke, chew, roll or otherwise use tobacco on Library property or smoke within 25' of any entrance door (per city ordinance) or on Library property. - **Leave**
- Damage, steal or misuse Library property – **May have to leave, potential police action**
- Sleep, solicit, or block aisles, entryways or exits – **Solicit – Use Judgment, Others One Warning**
- Interfere with other library patrons' use of the facilities through extremely poor personal hygiene or exhibit signs of contagious illness – **Ask to Leave, can return**
- Use restrooms for bathing or washing clothes – **One Warning**
- Put feet on chairs or tables or rearrange furniture – **One Warning**
- Be under the influence of alcohol or drugs, or engage in any manner of substance abuse – **Leave, no warnings**
- Bring firearms or any other weapons into the Library – **Ask to Leave, can return**
- Leave children under the age of eight or dependent persons **unattended – Call Authorities, Make out Incident Report**
- Bring pets or other animals into the Library except prescribed and trained service animals (dogs and trained miniature horse only) with all required licensing, permits, and vaccinations – **Use Judgment, Ask to Leave**
- Go barefoot or shirtless or cover head or face with hoods or masks – **Comply or Leave**
- Run, skateboard or rollerblade through the Library, or bring bicycles into the Library – **Comply or Leave**
- Engage in any other conduct which:
  - Is inconsistent with the purpose of the Library
  - Disrupts the orderly operation of the Library
  - Interferes with the use of the Library by others

GUIDELINES FOR PERSONAL BELONGINGS

Patrons MAY NOT do any of the following:

- Bring into the Library more than two bags, maximum size 12" by 18" by 20", plus one small personal bag such as a purse, laptop or briefcase (total of 3 bags)
- Bring into the Library oversize items such as bedrolls, duffle bags, large suitcases, four-wheel shopping carts or large plastic bags
- Leave bags and other personal items unattended. Unattended items are subject to confiscation. The Library is not responsible for personal items that are lost, stolen or damaged in or on the grounds of the Library.

IMPROPER OR ILLEGAL BEHAVIOR IN THE LIBRARY AND ON THE LIBRARY GROUNDS IS PROHIBITED.
IF YOU ENGAGE IN SUCH BEHAVIOR, YOU WILL BE ASKED TO LEAVE.
THE POLICE MAY BE CALLED. YOU MAY BE PROSECUTED.

YOUR SAFETY AT THE LIBRARY IS IMPORTANT.
IF PROBLEMS ARISE, PLEASE GO TO STAFF FOR ASSISTANCE.

Protocol: WIS – 1A
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- Eat in non-designated areas (covered drinks allowed in all areas) - **One Warning and Next Time Leave**
- Harass patrons or staff, or act in any disorderly manner – **No Warnings - Leave**
- Use obscene or abusive language – **Leave or use judgment**
- Violate posted computer usage rules - **One Warning and Next Time Leave**
- Smoke, chew, roll or otherwise use tobacco on Library property or smoke within 25' of any entrance door (per city ordinance) or on Library property. - **Leave**
- Damage, steal or misuse Library property – **May have to leave, potential police action**
- Sleep, solicit, or block aisles, entryways or exits – **Solicit – Use Judgment, Others One Warning**
- Interfere with other library patrons' use of the facilities through extremely poor personal hygiene or exhibit signs of contagious illness – **Ask to Leave, can return**
- Use restrooms for bathing or washing clothes – **One Warning**
- Put feet on chairs or tables or rearrange furniture – **One Warning**
- Be under the influence of alcohol or drugs, or engage in any manner of substance abuse – **Leave, no warnings**
- Bring firearms or any other weapons into the Library – **Ask to Leave, can return**
- Leave children under the age of eight or dependent persons **unattended – Call Authorities, Make out Incident Report**
- Bring pets or other animals into the Library except prescribed and trained service animals (dogs and trained miniature horse only) with all required licensing, permits, and vaccinations – **Use Judgment, Ask to Leave**
- Go barefoot or shirtless or cover head or face with hoods or masks – **Comply or Leave**
- Run, skateboard or rollerblade through the Library, or bring bicycles into the Library – **Comply or Leave**
- Engage in any other conduct which:
  - Is inconsistent with the purpose of the Library
  - Disrupts the orderly operation of the Library
  - Interferes with the use of the Library by others

GUIDELINES FOR PERSONAL BELONGINGS

Patrons MAY NOT do any of the following:

- Bring into the Library more than two bags, maximum size 12" by 18" by 20", plus one small personal bag such as a purse, laptop or briefcase (total of 3 bags)
- Bring into the Library oversize items such as bedrolls, duffle bags, large suitcases, four-wheel shopping carts or large plastic bags
- Leave bags and other personal items unattended. Unattended items are subject to confiscation. The Library is not responsible for personal items that are lost, stolen or damaged in or on the grounds of the Library.

IMPROPER OR ILLEGAL BEHAVIOR IN THE LIBRARY AND ON THE LIBRARY GROUNDS IS PROHIBITED.
IF YOU ENGAGE IN SUCH BEHAVIOR, YOU WILL BE ASKED TO LEAVE.
THE POLICE MAY BE CALLED. YOU MAY BE PROSECUTED.

YOUR SAFETY AT THE LIBRARY IS IMPORTANT.
IF PROBLEMS ARISE, PLEASE GO TO STAFF FOR ASSISTANCE.

Protocol: WIS-1B
Title: Patron Suspension
Date: 11/13/2014
Reviewed by: Associate Director, Director of Finance, Security Supervisor and Staff, Executive Director
Distributed:

Introduction

Portland Public Library (the Library) exists to provide physical space and resources for the pursuit of knowledge, access to information, exchange of ideas and cultural enrichment. The Library seeks to provide a safe and welcoming environment in which these goals can best be pursued by the members of its community. The Library has written rules of behavior which are made available to all patrons. Patrons are expected to be aware of these rules and to comply with them.

In addition to addressing the mechanics of suspension, the steps below are designed to provide general context for specific steps as described in Protocol WIS-1A.

1. When the Library's Rules of Behavior are not adhered to, Security staff will approach the patron and work with him or her to gain compliance with Library policy.
2. If a patron is known to be aware of library policy and is violating it, he or she will receive a warning from security.
3. If, after receiving a warning, inappropriate behavior continues, the patron will be asked to leave, usually for the rest of the day. If misbehavior continues on subsequent visits, longer suspensions can ensue.
4. For criminal behaviors or more aggressive or disruptive behaviors criminal trespassing citations will be issued by the Portland Police for up to one year.
5. If, in the judgment of security staff, a patron is consistently unwilling to respect the rights of other patrons or continues to interfere with their enjoyment of the library, suspension can be permanent.
6. Whenever a patron returns to the library after being asked to leave, they are expected to check in with security and be cleared to return to the library.

Maine Revised Statutes

Title 17-A: MAINE CRIMINAL CODE

Chapter 17: BURGLARY AND CRIMINAL TRESPASS

§402. CRIMINAL TRESPASS

1. A person is guilty of criminal trespass if, knowing that that person is not licensed or privileged to do so, that person:

A. Enters any dwelling place. Violation of this paragraph is a Class D crime; [2001, c. 383, §56 (AMD); 2001, c. 383, §156 (AFF).]

B. Enters any structure that is locked or barred. Violation of this paragraph is a Class E crime; [2001, c. 383, §56 (AMD); 2001, c. 383, §156 (AFF).]

C. Enters any place from which that person may lawfully be excluded and that is posted in accordance with subsection 4 or in a manner reasonably likely to come to the attention of intruders or that is fenced or otherwise enclosed in a manner designed to exclude intruders. Violation of this paragraph is a Class E crime; [2001, c. 383, §56 (AMD); 2001, c. 383, §156 (AFF).]

D. Remains in any place in defiance of a lawful order to leave that was personally communicated to that person by the owner or another authorized person. Violation of this paragraph is a Class E crime; [2001, c. 383, §56 (AMD); 2001, c. 383, §156 (AFF).]

E. Enters any place in defiance of a lawful order not to enter that was personally communicated to that person by the owner or another authorized person. Violation of this paragraph is a Class E crime; or [2001, c. 383, §56 (AMD); 2001, c. 383, §156 (AFF).]

F. Enters or remains in a cemetery or burial ground at any time between 1/2 hour after sunset and 1/2 hour before sunrise the following day, unless that person enters or remains during hours in which visitors are permitted to enter or remain by municipal ordinance or, in the case of a privately owned and operated cemetery, by posting. Violation of this paragraph is a Class E crime. [2001, c. 383, §56 (AMD); 2001, c. 383, §156 (AFF).]

[2001, c. 383, §56 (AMD); 2001, c. 383, §156 (AFF) .]

2.

[2001, c. 383, §156 (AFF); 2001, c. 383, §57 (RP) .]

3.

[1979, c. 701, §23 (RP) .]

4. For the purposes of subsection 1, paragraph C, property is posted if it is marked with signs or paint in compliance with this subsection. Proof that any posted sign or paint marking is actually seen by an intruder gives rise to a permissible inference under the Maine Rules of Evidence, Rule 303 that such posted sign or paint marking is posted in a manner reasonably likely to come to the attention of intruders.

A. Signs must indicate that access is prohibited, that access is prohibited without permission of the landowner or the landowner's agent, or that access for a particular purpose is prohibited. [1995, c. 529, §2 (NEW).]

B. [2011, c. 432, §4 (AMD); T. 17-A, §402, sub-4, ¶B (RP).]

B-1. Paint markings made pursuant to this paragraph mean that access is prohibited without permission of the landowner or the landowner's agent. Paint markings made pursuant to this paragraph must consist of a conspicuous vertical line at least one inch in width and at least 8 inches in length and must be placed so that the bottoms of the marks are not less than 3 feet from the ground or more than 5 feet from the ground at locations that are readily visible to any person approaching the property and no more than 100 feet apart. Paint markings may be placed on trees, posts or stones as described in this paragraph. The Department of Agriculture, Conservation and Forestry, Bureau of Forestry shall adopt rules to determine the color and type of paint that may be used to post property pursuant to this paragraph. Rules adopted pursuant to this paragraph are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A. [2011, c. 432, §5 (NEW); 2011, c. 657, Pt. W, §§5, 7 (REV); 2013, c. 405, Pt. A, §23 (REV).]

C. Signs or paint must mark the property at intervals no greater than 100 feet and at all vehicular access entries from a public road. [1995, c. 529, §2 (NEW).]

D. Signs or paint markings are required only on the portion of the property where access is prohibited or limited. Signs or paint posted in accordance with this section have no effect on boundaries of property and do not constitute claims of possession or adverse use in accordance with state law. [1995, c. 529, §2 (NEW).]

D-1. Notwithstanding any other provision of this section, a landowner who posts that landowner's land by paint markings and who intends to prohibit access without permission of the landowner or the landowner's agent or intends to prohibit access for a particular purpose may do this by posting in a prominent place one or more qualifying signs that by words or symbols set forth the nature of the prohibition. The landowner need not post the qualifying signs at 100-foot intervals. [1999, c. 115, §1 (NEW).]

E. A person commits criminal mischief and is subject to prosecution under section 806 if that person, without permission of the owner or owner's agent:

(1) Knowingly posts the property of another with a sign or paint mark indicating that access is prohibited, that access is prohibited without permission or that access for a particular purpose is prohibited; or

(2) Removes, mutilates, defaces or destroys a sign or paint mark placed for purposes of this section. [1995, c. 529, §2 (NEW).]

Nothing in this subsection limits any manner of posting reasonably likely to come to the attention of intruders.

[2011, c. 432, §§4, 5 (AMD); 2011, c. 657, Pt. W, §§5, 7 (REV); 2013, c. 405, Pt. A, §23 (REV) .]

SECTION HISTORY
1975, c. 499, §1 (NEW). 1977, c. 128, (AMD). 1977, c. 510, §53 (AMD). 1979, c. 701, §23 (RPR). 1981, c. 317, §11 (AMD). 1989, c. 793, (AMD). 1995, c. 529, §§1, 2 (AMD). 1999, c. 115, §1 (AMD). 2001, c. 383, §§56-58 (AMD). 2001, c. 383, §156 (AFF). 2011, c. 432, §§4, 5 (AMD). 2011, c. 657, Pt. W, §§5, 7 (REV). 2013, c. 405, Pt. A, §23 (REV).

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513 A.2d 831 (1986)

STATE of Maine,

v.

Salvador CHIAPETTA.

Supreme Judicial Court of Maine.

Argued June 3, 1986.
Decided July 30, 1986.

Mary Tousignant, Dist. Atty., Michael P. Cantara (orally), Deputy Dist. Atty., Alfred, for plaintiff.

Eric B. Cote (orally), Saco, for defendant.

Before McKUSICK, C.J., and NICHOLS, ROBERTS, VIOLETTE, GLASSMAN and SCOLNIK, JJ.

McKUSICK, Chief Justice.

Our criminal trespass statute, 17-A M.R. S.A. § 402(1)(D) (1983), provides that a "person is guilty of criminal trespass if, knowing that he is not licensed or privileged *832 to do so ... [h]e remains in any place in defiance of a lawful order to leave, which was personally communicated to him by the owner or other authorized person." Defendant Salvador Chiapetta was convicted of that Class E offense in the District Court (Biddeford). He now appeals the judgment of the Superior Court (York County) affirming that conviction. Before us defendant challenges 1) the constitutionality of the criminal trespass statute on its face and as applied to him and 2) the sufficiency of the evidence to sustain his conviction. We find no merit in any of the defendant's contentions.

On election day, November 6, 1984, Chiapetta, a motel operator in Old Orchard Beach, accompanied a tenant at her request to that town's voter registration office to verify her address so that she could register to vote. Once inside the office, Chiapetta refused to cooperate with the voter registrar and became disruptive. In a loud voice, he harangued the registrar for questioning him about his motel. Chiapetta's outburst brought the registration of other voters to a standstill. As a result the chairman of the Board of Voter Registration requested him to leave the office and go to the outside hallway where she could discuss his complaints with him. Chiapetta refused to leave and persisted in his noisy protest, proclaiming the right of every American to vote and criticizing the town and its Board of Voter Registration. The chairman then left the office, returned with a uniformed police officer, and again asked Chiapetta to leave the office to discuss his complaints with her outside. Chiapetta again refused to leave. When the police officer asked him to leave the office, he again refused. The officer then forcibly removed Chiapetta from the office and arrested him for criminal trespass.

I. *Constitutionality of Section 402(1)(D)*

A.

On his appeal defendant first argues that the criminal trespass statute is void on the ground that the term "lawful order" is unconstitutionally vague on its face. That argument disregards our decision in State v. Tauvar, 461 A.2d 1065, 1067 (Me.1983), holding that "[w]ith regard to property upon which the general public is invited to enter, an order to leave the premises is lawful only when the owner has some *justification for requesting removal.*" (Emphasis added) A person's own disruptive conduct may constitute a basis for lawfully seeking his **removal**. *Id.; see also* State v. Gordon, 437 A.2d 855 (Me.1981) (request that defendant leave Dunkin Donuts shop justified because of his "talking loudly, swearing and creating a disturbance"). As construed in *Tauvar* and applied in *Gordon,* section 402(1)(D) satisfies the constitutional requirement that "the criminal offense [be defined] with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement." Kolender v. Lawson, 461 U.S. 352, 357, 103 S.Ct. 1855, 1858, 75 L.Ed.2d 903 (1983).

B.

Defendant's second constitutional argument is that his arrest and conviction for criminal trespass abridged his freedom of **speech**. *See* U.S.Const. amend. I; Me. Const. art I, § 4. Defendant does not contend, nor on this record could he contend with any plausibility, that he was arrested because the authorities disapproved of the content of his **speech**. Instead, he argues that his arrest was an impermissible restriction on his right of **free** expression. We cannot agree.

Even if we view defendant's conduct at the voter registration office to involve the expression of ideas protected by the United States and Maine Constitutions, that **speech** is nonetheless subject to reasonable restrictions as to time, place, and manner. *See* Grayned v. City of Rockford, 408 U.S. 104, 115-17, 92 S.Ct. 2294, 2302-03, 33 L.Ed.2d 222 (1972). When the government restricts the
833 exercise of **free speech** on government property, the validity of those *833 restrictions depends on the nature and function of the property. For the purpose of its **free speech** analysis, the Supreme Court of the United States classifies government properties in three different categories of forums: the traditional public forum such as streets and parks, the public forum created by government designation such as public meeting places, and the nonpublic forum. *See* Perry Education Association v. Perry Local Educators' Association, 460 U.S. 37, 45-46, 103 S.Ct. 948, 954-55, 74 L.Ed.2d 794 (1983). The extent to which the government may abridge **free speech** on its property is determined by which forum classification fits the particular property. *See* Cornelius v. NAACP Legal Defense and Education Fund, ___ U.S. ___, ___, 105 S.Ct. 3439, 3447, 87 L.Ed.2d 567, 578 (1985). In applying those forum classifications to a particular governmental property, such as a voter registration office, the court looks to "the policy and practice of the government to ascertain whether it *intended to designate* a place not traditionally open to assembly and debate as a public forum." *Id.* at ___, 105 S.Ct. at 3449, 87 L.Ed.2d at 580 (emphasis added).

On the record before us it is plain that the Board of Voter Registration did not intend to designate its registration office on election day as a public forum. By its nature and function, that office fell into the

third category; it was a nonpublic forum. The overriding governmental interest in maintaining an orderly setting for the prompt and efficient screening and registration of voters during the hours when the polls were still open outweighed any constitutional right defendant may have had in expressing his displeasure with the town and its voter registration process. Chiapetta was arrested solely because his protest was vented at a time (election day) and place (voter registration office) and in a manner (with a loud voice) that disrupted the essential functions of a government office. His **speech** in that "nonpublic forum... can be restricted as long as the restrictions are `reasonable and [are] not an effort to suppress expression merely because public officials oppose the speaker's view.'" *Id.* at ___, 105 S.Ct. at 3447-49, 87 L.Ed.2d at 578-79 (quoting *Perry Education Association v. Perry Local Educators' Association*, 460 U.S. at 46, 103 S.Ct. at 955). Defendant's arrest for criminal trespass was an appropriate limitation on his freedom of **speech** in order "to protect the public from the kind of boisterous and threatening conduct that disturbs the tranquility of spots selected by the people... for ... buildings that require peace and quiet to carry out their functions, such as courts, libraries, schools ..." and, we here add, voter registration offices. *Gregory v. City of Chicago*, 394 U.S. 111, 118, 89 S.Ct. 946, 950, 22 L.Ed.2d 134 (1969) (Black, J., concurring) (quoted with approval in *Carey v. Brown*, 447 U.S. 455, 470-71, 100 S.Ct. 2286, 2295, 65 L.Ed.2d 263 (1980)).

Thus the United States Supreme Court decisions establish that the Maine criminal trespass statute as applied in the case at bar does not violate the First Amendment. We see no reason to reach any different conclusion under article I, section 4 of the Maine Constitution, which in pertinent part reads:

> Every citizen may freely speak, write and publish his sentiments on any subject, *being responsible for the abuse of this liberty ...*

(Emphasis added) *See State v. Gordon*, 437 A.2d at 857 (defendant's arrest for "talking loudly, swearing and creating a disturbance" does not offend United States or Maine Constitution).

II. *Sufficiency of the Evidence*

Defendant's final argument is that the State failed to prove beyond a reasonable doubt that either the chairman of the Board of Voter Registration or the uniformed police officer had the requisite
834 justification for ordering him to leave. He first contends that those public officers *834 could not issue a "lawful order" unless defendant's conduct violated some other provision of the Maine criminal laws, such as the prohibition against disorderly conduct. Again, we have already provided the complete answer in *State v. Tauvar*: a lawful order need only be based upon "some justification for requesting **removal**." 461 A.2d at 1067. By that definition of "lawful order," it is plainly not an element of the crime of trespass that a defendant have committed another crime in the place from which he is ordered.

Defendant further contends that there is a difference between the type of justification that can serve as a predicate for a lawful order to leave a private place open to the public, such as the Jehovahs' Witnesses hall involved in *Tauvar* or the Dunkin Donuts shop involved in *Gordon*, and that for a lawful order to leave a government office open to the public, such as a voter registration office. That argument tries to draw a distinction where there is no real difference. As we have already discussed,

public offices may take on a nonpublic character depending on their nature and function. The Town of Old Orchard Beach, "no less than a private owner of property, has power to preserve the property under its control [such as a voter registration office] for the use to which it is lawfully dedicated." *Adderley v. Florida*, 385 U.S. 39, 47, 87 S.Ct. 242, 247, 17 L.Ed.2d 149 (1966).

Based on the record evidence viewed in a light most favorable to the State, the trier of fact could rationally find beyond a reasonable doubt that the chairman and the officer were justified in ordering defendant to leave the town's registration office. *State v. Barry*, 495 A.2d 825, 826 (Me.1985).

The entry is: Judgment of conviction affirmed.

All concurring.

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461 A.2d 1065 (1983)

STATE of Maine
v.
Timothy TAUVAR.

Supreme Judicial Court of Maine.

Argued May 4, 1983.
Decided July 1, 1983.

1066 *1066 Michael E. Povich, Dist. Atty., Sophie Spurr (orally), Michael L. Ross, Asst. Dist. Attys., Ellsworth, for plaintiff.

Silsby & Silsby, Raymond L. Williams (orally), Ellsworth, for defendant.

Before McKUSICK, C.J., GODFREY, NICHOLS, ROBERTS and CARTER, JJ.

ROBERTS, Justice.

Timothy Tauvar appeals a judgment of conviction for criminal trespass, Class E, 17-A M.R.S.A. § 402 (1)(D) (1983), following a jury trial in Superior Court, Hancock County. Because we sustain the defendant's challenge of the jury instructions concerning "lawful order," we vacate the judgment.

I.

On August 30, 1981, the Jehovah's Witnesses were to conduct their scheduled morning meeting, the "Public Talk" and the "Watch Tower Study," which was open to the public. These meetings were announced in the local newspaper as public gatherings. Between 9:30 a.m. and 10:00 a.m., the defendant and his wife entered the Jehovah's Witnesses Hall on Park Street in Bar Harbor. The meeting hall was owned by the Bar Harbor Congregation of the Jehovah's Witnesses, Inc., a private corporation.

Officer Daniel Herrick of the Bar Harbor Police Department was subsequently dispatched to the meeting hall at the request of Lorenzo Creamer, an elder of the congregation, one of the administrators of the church. Creamer was also the vice president of the corporation and a member of the board of directors. Creamer met the officer outside the hall and informed him that Tauvar, an "unwanted guest," was inside the hall. The men then entered the building and approached Tauvar who was sitting quietly with his wife. Creamer asked the defendant to leave, but Tauvar refused. Officer Herrick reiterated the request and told the defendant that if he did not leave, he would be arrested for criminal trespass. The defendant again refused to leave; the officer arrested him.

Creamer testified at trial that in the past Tauvar while in the meeting hall had vocally asserted his prophecy, which was inconsistent with that of the Jehovah's Witnesses. According to Tauvar, he did

not intend to disrupt this meeting. The defendant testified that he attended the meeting so that afterward he could present a public communication on the sidewalk outside the hall to apprise the congregation of any falsities spoken at the meeting.

Tauvar was originally tried in the District Court, Bar Harbor, and convicted of criminal trespass, 17-A M.R.S.A. § 402 On appeal to the Superior Court, Hancock County, he was afforded a *de novo* trial by jury pursuant to former M.D.C. Crim.R. 39(b), amended effective January 2, 1982. Subsequent to his conviction in the Superior Court, Tauvar filed a timely appeal to the Law Court.

II.

1067 We address only the defendant's challenge to the jury instruction regarding *1067 the lawfulness of the order. Having properly preserved the objection, the defendant argues that the justice erred by instructing the jury that finding that "an order was given, you are instructed that it was, in fact, a lawful order." The defendant claims that it was improper for the justice to suggest that all orders are lawful orders. We agree.

Title 17-A M.R.S.A. § 402(1)(D) provides:

> 1. A person is guilty of criminal trespass if, knowing that he is not licensed or privileged to do so:
>
> . . . .
>
> D. He remains in any place in defiance of a *lawful order* to leave, which was personally communicated to him by the owner or other authorized person;
>
> . . . .

(Emphasis added.) Consequently, the State must prove that a "lawful order" was issued. We must interpret criminal statutes as being free from unnecessary and superfluous language. State v. Thibeault, 402 A.2d 445, 449 (Me.1979); State v. Tullo, 366 A.2d 843, 848 (Me.1976). By using "lawful" to describe "order," therefore, the legislature intended that "lawful" have some independent meaning.

With regard to property upon which the general public is invited to enter, an order to leave the premises is lawful only when the owner has some justification for requesting **removal**. For example, when a person in an inn or restaurant is creating a disturbance, the owner may order that person to leave the premises. 30 M.R.S.A. § 2854-C (Supp.1982-1983); *see* State v. Gordon, 437 A.2d 855, 857 (Me.1981); *see also* Atwater v. Sawyer, 76 Me. 539, 541 (1884) (innkeeper may not refuse to serve dinner to soldier merely because other soldiers created disturbances). That order is "lawful" for the purposes of the criminal trespass statute only if the person sought to be ejected is disorderly. *See* Gordon, 437 A.2d at 857 (boisterous patron of Dunkin Donuts convicted of criminal trespass); *see also* Tullo, 366 A.2d at 847 (sanctions imposed for criminal trespass at common law to protect public, therefore trespass not crime unless accompanied by actual or threatened breach of peace). The

rationale supporting such a principle is that innkeepers and victualers have a duty to accommodate "strangers, travelers, and others." 30 M.R.S.A. §§ 2851-2852 (1978). Because they serve the general public, they cannot lawfully exclude certain members of the public without justification. The misconduct of the person may constitute a basis for lawfully seeking **removal** of that person.

In contrast, with regard to private property not open to the general public, the owner may lawfully order a person to leave even though the entry was authorized and peaceful. *See* Op. Me. Att'y Gen. (Mar. 4, 1980) (signs which read "no trespassing" without signature of owner constituted lawful order); *accord* *O'Brien v. United States*, 444 A.2d 946, 948 (D.C.App.1982). The mere demand of the owner constitutes a lawful order for the purposes of the criminal trespass statute.

We find applicable to this case the principle that for the purposes of the criminal trespass statute an order to leave property to which the public has been invited is lawful only when the owner has some justification. The meeting that Tauvar attempted to attend was open to members of the public including the defendant. To render Tauvar's refusal to depart the Jehovah's Witnesses Meeting Hall a violation of the statute, Creamer's order must have had some lawful justification. *See* *Snead v. Commonwealth*, 212 Va. 803, 804, 188 S.E.2d 197, 198 (1972) (office of Botetourt County Welfare Department). The State presented evidence that in the past the defendant had created a disturbance at the meeting hall. This evidence is sufficient to generate the issue of the lawfulness of the order. *See* *Atwater*, 76 Me. at 541. The sufficiency of the evidence, however, does not warrant the court's refusal to instruct the jury on the issue of whether the order was lawful.

Because we hold that, in the circumstances of this case, there must exist some justification for the church to revoke its invitation *1068 to attend the scheduled meeting, we reject Tauvar's contention that the statute impermissibly abridges his right to the **free** exercise of his religion under state and federal constitutional guarantees. We also detect no denial of access to a public forum for the exercise of Tauvar's rights of **free speech** or assembly. Although we uphold the denial of a judgment of acquittal, we must vacate the conviction because Tauvar was denied the right to have the question of a lawful order submitted to the jury.

The entry is:

Judgment vacated.

Remanded to the Superior Court for further proceedings consistent with the opinion herein.

All concurring.

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537 A.2d 1143 (1988)

STATE of Maine

v.

Hartley ARMEN.

Supreme Judicial Court of Maine.

Argued September 3, 1987.
Decided February 23, 1988.

1144 *1144 John D. McElwee (orally), Dist. Atty., Caribou, for plaintiff.

Hartley Armen, pro se (orally).

Before McKUSICK, C.J., and NICHOLS, ROBERTS, WATHEN, GLASSMAN, SCOLNIK and CLIFFORD, JJ.

ROBERTS, Justice.

Hartley S. Armen appeals from a judgment of the Superior Court, Aroostook County, affirming his conviction by the District Court, Presque Isle, of criminal trespass, 17-A.M.R.S.A. § 402(1)(D) (1983). [1] Armen contends that the order given him on July 7, 1986, to leave the district office of U.S. Representative Olympia Snowe violated his constitutional rights and was not justified. We affirm Armen's conviction.

FACTS

Armen had been designated by the Maine Coalition for Peace and Justice in Central America to seek an appointment with Rep. Snowe. He had visited the district office prior to July 7, 1986, "quite a few times" seeking information on public issues, communicating his views on those issues to the office manager and, most significantly, seeking a meeting with Rep. Snowe. On at least one prior occasion he had been arrested at the district office by members of the Presque Isle Police Department. Armen had been unsuccessful in obtaining any commitment from Rep. Snowe for an eventual meeting, either with him or with others in the state who shared his political views. In fact, he had received no answer to his last written request dated May 14, 1986. By his own admission, Armen went to the district office on July 7 feeling "disturbed... about the fact that she had not met anyone" and "feeling very stubborn about it."

At trial Armen denied that he went to the district office to get arrested or for the purpose of "sitting-in." He did, however, anticipate that the police might be called again. For that reason he went to the police department prior to going to the district office. He testified that he "felt that there was apt to be a problem" and he "wanted the police to be forewarned."

When Armen arrived at the district office on July 7, 1986, another constituent was present in the office. He voluntarily withdrew so that the individual could complete his business. Eventually Armen advised the office manager, Marion Higgins, that he still wanted a meeting with Rep. Snowe and that he had received no answer to his last request. Higgins replied that the Bangor office would have told him that Rep. Snowe could not meet with him. After further discussion Higgins asked Armen whether he intended to sit-in at the office if no meeting was arranged. He replied that he would be very reluctant to leave without progress toward arranging a meeting and that, if necessary, he would sit-in or remain in the office. When Higgins asked if he meant then, on that day, Armen replied that if necessary he would sit-in on that day. Higgins advised Armen that she could not allow him to stay in
1145 the office indefinitely and he repeated his reluctance *1145 to leave without some indication of a meeting in the future.

Higgins arranged for Armen to talk with Rep. Snowe's administrative assistant in Washington, D.C. That conversation, however, did not resolve the matter in a manner satisfactory to Armen. After further discussion with Higgins established that an eventual meeting was unlikely, Higgins asked Armen to leave. Armen refused. Higgins told Armen that she would have to call the police and have him arrested. Armen stated that he did not want to be arrested, but that was the only way he would leave. Higgins testified that she did not feel threatened and that Armen was not belligerent or abusive. She advised Armen, however, that she felt that his remaining in the office prevented her from doing her job. Although Armen argues on appeal that he then had further business to conduct at the district office, he admits that he never conveyed his intentions to Higgins.

Two police officers, one in uniform, responded to a call from the district office. Armen told the officers that Higgins had asked him to leave and that he refused. The officers asked him to leave and Armen again refused. The officers then arrested Armen.

DISCUSSION

"When, as here, a defendant challenges the sufficiency of the evidence, we will set the conviction aside only if no trier of fact rationally could have found the elements of the crime beyond a reasonable doubt." *State v. Brewer*, 505 A.2d 774, 775 (Me. 1985). A concomitant principle requires that we view the evidence in the light most favorable to the State. *State v. Barry*, 495 A.2d 825, 826 (Me.1985). The District Court's factual determinations are afforded such deference even when those determinations involve issues of constitutional dimension. *State v. Durepo*, 472 A.2d 919, 921 (Me.1984). Although the determination of the lawful nature of Higgins' order to Armen to leave the district office may have involved narrow factual distinctions, we cannot say on the evidence presented that no trier of fact rationally could have found that element of the crime beyond a reasonable doubt.

Armen contends that the order to leave and his subsequent arrest violated his constitutional rights to petition and **free speech**. U.S. Const. amend. I and Me. Const. art. I, §§ 4, 15. Although the State can place reasonable time, place and manner restrictions on the exercise of first amendment rights,[2] content-based regulations presumptively violate the first amendment. *See Ass'n of Ind. Professionals v. MLRB, et al.*, 465 A.2d 401, 409 (Me.1983). In this instance, Armen's claim of constitutional

violation fails. First, there is no evidence in the record that Higgins asked Armen to leave or that the police arrested Armen because of the content of his message. Presumably the police would arrest anyone who failed to respond to Higgins' request and attempted to remain in the office as did Armen. The District Court rationally could have found beyond a reasonable doubt that Armen was ordered to leave and finally arrested because his presence interfered with the operation of the office, not because he conveyed a particular political message. Second, on the basis of Armen's own testimony, the District Court could have found beyond a reasonable doubt that Armen had concluded his business with the field representative *before* being asked to leave. Thus, any "restriction" came *after* Armen had exercised his rights.

Armen also contends that the order to leave the district office was unlawful because it was unjustified. An order to leave property open to the public is lawful only when an authorized person "has some justification for requesting **removal**." State v. Tauvar, 461 A.2d 1065, 1067 (Me.1983). Because his
1146 actions were peaceful, Armen contends there was no justification for his *1146 **removal**. *Cf.* Snead v. Commonwealth, 212 Va. 803, 188 S.E.2d 197 (1972) (The court found no *common law* criminal trespass where defendant's entry was lawful and his conduct did not threaten a breach of the peace). In *Tauvar,* however, we did not incorporate into section 402(1)(D) the common law doctrine of *Snead.* Rather, we determined that the Legislature intended by the use of the word "lawful" in section 402(1)(D) to require "some justification" for **removal** of a person from premises to which the public is invited or within which the public must be served. We held that Tauvar's prior misconduct was sufficient justification for the order to leave despite the absence of evidence of a present threat to the peace. Tauvar, 461 A.2d at 1067.

Higgins testified that the district office is maintained for the purpose of handling constituent concerns. Members of the public are invited to enter to express their concerns and obtain information on legislation. Because of the public invitation, Armen's initial entry was not a trespass. Upon completion of his legitimate business, Armen was not privileged to remain. Armen argues, nevertheless, that Higgins arbitrarily ordered him to leave before he had the opportunity to complete his business. The record indicates and Armen concedes that he had not informed Higgins that he had additional matters to discuss. Because the evidence viewed in the light most favorable to the State supports a finding that Armen had completed his business and that his continued presence interfered with the operation of the district office, we conclude that the District Court was not compelled to entertain a reasonable doubt as to the lawfulness of Higgins' order.

The entry is:

Judgment affirmed.

McKusick, C.J., and Nichols, Wathen, Glassman and Clifford, JJ., concurring.

SCOLNIK, Justice, dissenting.

I respectfully dissent.

I conclude that Armen was peaceably engaging in a constitutionally protected form of political expression when he refused to obey an order to leave his congressional representative's field office, and therefore a criminal trespass conviction predicated on such refusal cannot stand.

At the time of the incident in question, Armen was a farmer in Linneus who was involved with the Maine Coalition for Peace and Justice in Central America (hereinafter "the Coalition"). For several months prior to July 7, 1986, Armen had been trying to arrange a meeting with Rep. Snowe on behalf of a number of organizations such as the Coalition. The Coalition and other groups wished to discuss the issue of funding for the Nicaraguan Contras. Despite Armen's efforts, no meeting had been arranged. Armen had visited the Presque Isle office of Rep. Snowe on several occasions during the preceding year to renew his request for a meeting with her.

On May 14, 1986, Armen mailed a request for a meeting to Rep. Snowe on behalf of the Coalition. He received no response. On July 7, 1986, Armen went to Rep. Snowe's Presque Isle office to follow up on his May 14 letter and pursue his earlier requests for a meeting.[1]

1147 *1147 When Armen entered Rep. Snowe's office, another constituent was in the office with the office manager, Marion Higgins. Armen asked Higgins if she wanted him to leave and not return until after the other constituent had departed. Higgins indicated she would like Armen to do so and he immediately complied with her request. The other constituent finished speaking with Higgins and left; Armen returned shortly thereafter.

Armen entered the office and talked with Higgins about his pending request for a meeting with Rep. Snowe. After a brief discussion, Higgins phoned an Administrative Assistant in Rep. Snowe's Washington office and permitted Armen to speak with him. They conversed for several minutes. The assistant had indicated to Armen it would not be possible to arrange an appointment with Rep. Snowe. At that point Armen had been in the office for 35 to 45 minutes. Higgins then asked Armen to leave, or she would call the police. Armen refused to leave. The police were called and he was arrested for criminal trespass.

As a constituent, Armen entered Rep. Snowe's office to make known his views regarding an important issue of the times. The court's opinion acknowledges that Armen's initial entry to express his concerns as a constituent was lawful. The court predicates its affirmance of the criminal trespass conviction, however, on the mistaken conclusion that at the time he was ordered to leave, Armen had completed his business and there was no longer any legitimate purpose to his visit; therefore, his continued presence interfered with the operation of the office. In this view of the circumstances, the court concludes the District Court could rationally have found that the order to leave was lawful since it was based upon "some justification." *See State v. Tauvar*, 461 A.2d 1065, 1067 (Me. 1983). Because Armen's exercise of his right of **free speech** was a persisting legitimate purpose of his visit to the district office, the court's premise that he had completed his business is critically flawed.

The court summarily dismisses Armen's claim that he was exercising his rights to **free speech** and to petition under our State and Federal constitutions. The court states "... [O]n the basis of Armen's own testimony, the District Court could have found beyond a reasonable doubt that Armen had concluded his business with the field representative [Higgins] *before* being asked to leave. Thus, any `restriction'

came *after* Armen had exercised his rights." At 1145. Further on in its opinion, the court states, "Upon completion of his legitimate business, Armen was not privileged to remain [in the field office]." At 1146. It is undeniable that Armen intended to "sit-in" in the waiting area of the field office to demonstrate his disapproval both of Rep. Snowe's refusal to meet with him and, by clear implication, her position regarding governmental policy in Central America. The court concedes that Armen clearly expressed to Higgins his intent to conduct a sit-in if he was not allowed to arrange for a meeting with Rep. Snowe. According to Armen's own testimony, upon which the court relies, he told Higgins that he would "be very reluctant to leave without some sort of an agreement to a meeting and that, if necessary, yes, I would sit-in or remain in the office, if that was what it took to get a meeting."

For at least two decades, peaceful demonstrations in the form of sit-ins have been a constitutionally acceptable form of civil protest. *See, e.g.* Taylor v. Louisiana, 370 U.S. 154, 82 S.Ct. 1188, 8 L.Ed.2d 395 (1962) (sit-in by black protesters at segregated bus terminal); Garner v. Louisiana, 368 U.S. 157, 82 S.Ct. 248, 7 L.Ed.2d 207 (1961) (sit-ins by black students at segregated lunch counters). The rights to **free speech** and petition are "not confined to verbal expression" and "certainly include the right in a peaceable and orderly manner to protest by silent and reproachful presence." Brown v. Louisiana, 383 U.S. 131, 142, 86 S.Ct. 719, 724 (1966) (Fortas, J. joined by Warren, C.J. and Douglas, J., plurality) (referring to sit-in by black students at segregated public **library**). Likewise, this court has clearly stated that "Certain nonverbal conduct is capable of categorization as expression
1148 which may be constitutionally *1148 protected." State v. Drake, 325 A.2d 52, 55 (Me.1974).

The court's suggestion that the evidence supports a rational finding by the District Court that Armen was not engaging in a cognizable form of **speech** when he quietly remained in the office is unfounded. A protester's non-verbal communication in a context in which the message is understood by those present constitutes protected **speech** within the ambit of the First Amendment. *See* Spence v. State of Washington, 418 U.S. 405, 410-11, 94 S.Ct. 2727, 2730-31, 41 L.Ed.2d 842 (1974); Drake, 325 A.2d at 55. Contrary to the court's position, no rational factual basis exists for the District Court's finding that Armen had "concluded his business" after he was finished speaking on the phone. In fact, the phone conversation had only confirmed Rep. Snowe's persistent refusal to meet with Armen or anyone from the Coalition. By staying in the office, he remained present for the purpose of engaging in First Amendment conduct in protest of this refusal and, by implication, in demonstration of his opposition to Rep. Snowe's views on the Contra question. Armen had by no means completed his "legitimate business" prior to Higgins's order to leave. In the context of this case, his silent presence conveyed a message clearly understood by Higgins and her colleagues, and his actions constituted protected **speech** under our State and Federal Constitutions. Moreover, by expressing his concerns as a constituent, Armen was acting well within the purposes of the field office.

No justification exists in these circumstances for imposing restrictions on Armen's exercise of his **free speech** rights. Even if Armen's arrest did *not* amount to a content-based restriction, as the court concludes, the trespass conviction should not stand. The government is allowed to make reasonable time, place and manner restrictions on **speech**, but *only* where those restrictions serve significant governmental interests. *See* Grayned v. City of Rockford, 408 U.S. 104, 115-16, 92 S.Ct. 2294, 2302-03, 33 L.Ed.2d 222 (1972); Tinker v. Des Moines Independent Community School District, 393 U.S. 503, 509, 89 S.Ct. 733, 737, 21 L.Ed.2d 731 (1969); Konigsberg v. State Bar of California, 366 U.S.

36, 50-51, 81 S.Ct. 997, 1006-1007, 6 L.Ed. 2d 105 (1961). Under this analysis, Armen's conviction should not be upheld for two reasons. First, neither an arbitrary order to leave nor an arrest constitute reasonable restrictions on **speech** in these circumstances. Second, there is no evidence in the record of *any* governmental interest, significant or trivial, that was served by Armen's arrest. Although Higgins claimed that Armen's presence had the *potential* to disrupt the office, the record is bereft of any evidence to support her assertion.

Accordingly, because Armen was exercising his rights under the First Amendment of the United States Constitution and Article I section 15 of the Maine Constitution by remaining peaceably and unobstructively in the district office, it ineluctably follows that his legitimate business persisted, he was privileged to remain, and the order to leave cannot be characterized as a lawful one.

Without "some justification" to support Higgins's order to leave, Armen's refusal to obey the order cannot form the basis for a criminal trespass conviction. *Tauvar*, 461 A.2d at 1067. The only evidence the court is able to cite in support of its conclusion that the District Court could have rationally found that Higgins's order to leave was justified is that Higgins "felt" his presence in Rep. Snowe's office was an interference with the operation of the office. Aside from Higgins's "feelings," there is insufficient evidence in the record before us to indicate that Armen was interfering with the functioning of the office. A mere unelaborated assertion of a feeling or fear that one single protester's presence will cause a disturbance is insufficient justification for an order to leave. *Cf. Garner*, 368 U.S. at 171-72, 82 S.Ct. at 255-56 (restaurant owner's unsubstantiated fear could not justify the arrest of black students quietly sitting at a segregated lunch counter).

The record before us plainly shows that Armen conducted himself in an orderly and civil manner while
1149 he was at the office. *1149 When Higgins was engaged in conversation with another constituent, Armen volunteered to return at a later time of day and he, in fact, did so. Higgins conceded during the trial that Armen was not threatening, abusive or belligerent during his visit. In these circumstances, where Armen was exercising his constitutional right to **free speech** in a peaceful and nondisruptive way, an order to leave cannot be deemed to be justified and thus lawful for the purposes of the criminal trespass statute. *See Tauvar*, 461 A.2d at 1067.

I am disturbed by the precedent that will be created by affirming a criminal trespass conviction of a citizen peaceably exercising his rights of **free speech** in a public place. *Compare State v. Chiapetta*, 513 A.2d 831 (Me.1986) (affirming disorderly conduct conviction of verbally abusive defendant in voting area) and *State v. Gordon*, 437 A.2d 855 (Me.1981) (affirming conviction of defendant who was talking loudly, swearing and creating a disturbance in a donut shop). I am concerned that public officials will now find approval for the arbitrary **removal** of a non-disruptive but persistently questioning citizen from a public office.

This record raises the question whether Armen was arrested and forcibly removed from Rep. Snowe's field office because he was asking too many questions concerning a controversial issue, and expressed his displeasure both with his congressional representative's refusal to meet with him and with her political position regarding that issue. Despite his undisturbing manner of conduct, Armen was considered a nuisance and was ordered to leave. Elected representatives and their employees in the field must expect and tolerate dissident expression. The right to communicate one's views to

elected public officials is an essential part of our representative political system. This court should not affirm the criminal conviction of a citizen exercising this right.

In conclusion, on the evidence in this case, the District Court judge was compelled to entertain a reasonable doubt as to the lawfulness of Higgins's order to leave. Accordingly, I would vacate the judgment and remand to the Superior Court with instructions to remand to the District Court for the entry of judgment of acquittal.

[1] Section 402(1)(D) provides:

1. A person is guilty of criminal trespass if, knowing that he is not licensed or privileged to do so:

. . . . .

D. He remains in any place in defiance of a lawful order to leave, which was personally communicated to him by the owner or other authorized person....

[2] *See Wayte v. United States*, 470 U.S. 598, 610 n. 11, 105 S.Ct. 1524, 1532 n. 11, 84 L.Ed.2d 547 (1985) (where petitioner did not argue that there was a different burden placed on his rights to petition and **free speech**, the claims were treated as "essentially the same." The two rights are separate, but "related and generally subject to the same constitutional analysis.")

[1] The court notes that Armen contacted the Presque Isle police department prior to his visit on July 7. However, the court does not fully describe Armen's purpose in notifying the police on his plans to visit Rep. Snowe's office. Armen testified at trial that he did not intend to be arrested. However, based on his prior experiences with the Presque Isle police, Armen felt it would be prudent to forewarn them of his visit to Rep. Snowe's office, so that the police would know, in Armen's words, "if [they] got a call, it was just [Armen] and not some rowdy." Armen might well have felt there was "apt to be trouble," but the record indicates he did not go to the office to seek a confrontation; his intent was to arrange for a meeting. It should be borne in mind that it was common for civil rights protesters in the South to forewarn local police departments of possible sit-ins and demonstrations. *See Brown v. Louisiana*, 383 U.S. 131, 137, 86 S.Ct. 719, 721, 15 L.Ed.2d 637 (1966). Warning the local police in this manner is not the behavior of a common ruffian intent on causing a disturbance; on the contrary, this approach shows a constructive concern for ensuring the civil, non-violent expression of a political belief.

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958 F.2d 1242 (1992)

Richard R. **KREIMER**

v.

BUREAU OF POLICE FOR the TOWN OF **MORRISTOWN**, Jay White, former chief of police, **Morristown**; J. Rota, D. McKim, D. Widdas, D. Bowerbank, R. Gibbons, Kevin Mulholland, police officers, **Morristown**, David Manahan, former mayor of **Morristown**, Norman Bloch, mayor of **Morristown**, Terrence J. Reidy, **Morristown** business administrator, Edward A. Taratko, Morris Township business administrator, Barbara Harris, mayor of Morris Township, Joint Free Public Library of **Morristown** and Morris Township: the library Board of Trustees, Elaine Weil, president of the trustees, Barbara Rice, library director, B. Riesenfeld, Elaine Kissil, Donna Cole, Cathy Prince, Ann McDade, Lois Demsky, library employees, all individually and in their official capacities, Capt. Walter Gensch.

The JOINT FREE PUBLIC LIBRARY OF **MORRISTOWN** AND MORRIS TOWNSHIP Defendant-Third Party Plaintiff,

v.

TRAVELERS INSURANCE COMPANY, and Travelers Indemnity Company, Third Party Defendants.

The Joint Free Public Library of **Morristown** and Morris Township, Appellant.

No. 91-5501.

United States Court of Appeals, Third Circuit.

Argued February 14, 1992.
Decided March 23, 1992.
Rehearing Denied April 21, 1992.

1248 *1243 *1244 *1245 Clifford W. Starrett, Sheilah O'Halloran, James P. Wyse (argued), Wendy L. Wiebalk, Schenck, Price, Smith & King, **Morristown**, N.J., for appellant.

Frank Askin (argued), Rutgers School of Law, Constitutional Litigation Clinic, Newark, N.J., Bruce S. Rosen (argued), Andrew E. Anselmi, Lowenstein, Sandler, Kohl, Fisher & Boylan, Roseland, N.J., for appellee.

Eric B. Schnurer, Philadelphia, Pa., John A. Powell, American Civil Liberties Union Foundation, New York City for amicus curiae American Civil Liberties Union and American Civil Liberties Union of New Jersey.

Bruce J. Ennis, David W. Ogden, Theresa Chmara, Jenner & Block, Washington, D.C., for amicus curiae Freedom to Read Foundation.

Stephen S. Weinstein, Valerie L. Riley, **Morristown**, N.J., for amicus curiae New Jersey Library Ass'n.

Joseph L. Yannotti, Asst. Atty. Gen., Benjamin Clarke, Deputy Atty. Gen., Robert J. Del Tufo, Atty. Gen. of N.J., for the Attorney General, amicus curiae.

David G. Sciarra, Director, Division of Public Interest Advocacy, Isabel McGinty, Asst. Deputy Public Advocate, Wilfredo Caraballo, Public Advocate of New Jersey, for the Public Advocate, amicus curiae.

1246 *1246 **OPINION OF THE COURT**

GREENBERG, Circuit Judge.

This case compels us to resolve questions concerning the breadth of a public library's authority to promulgate and enforce regulations governing the use of its facilities.

The appellee, Richard R. **Kreimer**, is a homeless man who resides in various outdoor public spaces in **Morristown**, New Jersey. **Kreimer**, who was a frequent patron of the Joint Free Public Library of **Morristown** and Morris Township ("the Library"), was expelled from the Library on at least five occasions for violating its rules governing patron conduct. In response, **Kreimer** commenced this action in the United States District Court for the District of New Jersey against the Library and others, alleging in his complaint, as ultimately amended, that the rules are facially invalid under the First Amendment, made applicable to the states by the Fourteenth Amendment, as well as under the due process and equal protection clauses of the Fourteenth Amendment, and similar provisions of the New Jersey Constitution. On cross-motions for summary judgment, the district court accepted **Kreimer's** arguments and issued an interlocutory injunction prohibiting the enforcement of several of the Library's rules. ***Kreimer** v. Bureau of Police for the Town of **Morristown**,* 765 F.Supp. 181 (D.N.J.1991). The Library appeals.

The district court's opinion unduly restricts the Library's authority to circumscribe admission to and expulsion from its facility and gives short shrift to its significant interest in achieving the optimum and safest use of its facilities. Indeed, we find that the rules are reasonable "manner" restrictions on the patrons' constitutional right to receive information. We also disagree with the district court's analysis and application of the doctrines of vagueness and overbreadth and further find fault with the court's determination that the Library intended to restrict **Kreimer's** access to it in violation of the Fourteenth Amendment. In sum, we are satisfied that the rules in issue pass muster under well-established constitutional principles governing facial attacks. Accordingly, we will reverse.

I.

BACKGROUND

The facts of this case as germane on this facial challenge are essentially undisputed. Pursuant to N.J.Stat.Ann. § 40:54-29.3 (West 1991), **Morristown** and Morris Township elected to establish and support the Library.[1] Although N.J.Stat.Ann. § 40:54-9 (West 1991) empowers the Board of Trustees of the Library ("the Board")[2] to enact regulations designed to "carry out the purposes of the joint library," the Board did not promulgate any written rules or regulations governing the use of the Library until May 1989. As stated by the Library's former director, Barbara A. Rice, prior to May 1989, the Library staff followed unwritten rules and procedures with the intent:

> to allow library patrons to use the library's facilities to the maximum extent possible. The library staff ... as trained professional librarians, understood from ... professional training ... experience, and ... common sense that anyone exhibiting behavior which interfered with another patron's reasonable use of library facilities, or who interfered with the work of the library staff, should be asked to stop.

App. at 89.

1247 **Kreimer** frequently visited the Library where he claims to have enjoyed reading *1247 newspapers, magazines or books, or occasionally sitting in silent contemplation. In the Library's view, however, **Kreimer's** presence was not so peaceful. The Library contends that he often exhibited offensive and disruptive behavior, including staring at and following patrons and talking loudly to himself and others. It also claims that **Kreimer's** odor was often so offensive that it prevented the Library patrons from using certain areas of the Library and prohibited Library employees from performing their jobs.[3]

Rice, the Director of the Library from June 1, 1986, to December 19, 1990, held monthly staff meetings to discuss how to handle more effectively what she termed "problem behavior" at the Library. This behavior included theft of property, smoking, use of drugs and alcohol, disruptively loud behavior, intimidation of patrons through staring and following them, and exuding of repulsive odors. In 1987, Rice determined that the Library should maintain written records of recurrent problem behavior. Accordingly, it began to keep a logbook detailing the disciplinary problems reported to or observed by the Library staff or patrons. As the Library's brief notes, the logbook reflects that "[b]oth before and after adoption of the written Patron Policy, the Library has been plagued by incidents involving inappropriate conduct on the part of some library patrons." Most of the entries excerpted by the Library in its brief describe **Kreimer's** alleged behavior: "1/14/89 — **Kreimer's** odor prevents staff member from completing copying task; 3/30/89 — **Kreimer** spent 90 minutes — twice — staring at reference librarians; 6/15/89 — [Library Director] called police after **Kreimer** was belligerent and hostile towards her; 7/21/89 — Patron ... followed by **Kreimer** after leaving Library. ..."

In May 1989, the Board determined that it would enact written rules expressly prohibiting certain behavior in the Library, and authorizing the Library Director to expel any patron who violated them. The stated purpose of these rules, entitled "Patron Conduct," was to "allow all patrons of the joint free public library of **Morristown** and Morris Township to use its facilities to the maximum extent possible during its regularly scheduled hours." The rules included the following provisions:

> 1. Patrons shall be engaged in normal activities associated with the use of a public library while in the building. Patrons not engaged in reading, studying, or using library materials may be asked to leave the building. Loitering will not be tolerated.
>
> . . . .
>
> 5. Patrons shall respect the rights of other patrons and shall not annoy others through noisy or boisterous activities, by unnecessary staring, by following another person through the building, by playing walkmans or other audio equipment so that others can hear it, by singing or talking to oneself or by other behavior which may reasonably result in the disturbance of other persons.
>
> . . . .
>
> 9. Patron dress and personal hygiene shall conform to the standard of the community for public places. This shall include the repair or cleanliness of garments.
>
> Any patron not abiding by these or other rules and regulations of the Library, may be asked to leave the Library premises. Library employees shall contact the **Morristown** Police if deemed advisable.
>
> Any patron who violates the Library rules and regulations may be denied the privilege of access to the Library by the Library Board of Trustees, on recommendation of the Library Director.

App. at 130.

While this set of rules was in effect, the Library expelled **Kreimer** on at least two occasions for violations of rules 1 and 9.

In response, **Kreimer** consulted with the American Civil Liberties Union of New Jersey which wrote to the Library on July 5, 1989, asserting that several provisions of this set of rules were unconstitutional. 1248 First, the ACLU-NJ stated that "the policy *1248 against loitering is vague and therefore a violation of the Due Process clause of the Fourteenth Amendment as well as a violation of our state constitution." The ACLU-NJ also indicated its view that "the library policy is ... constitutionally infirm in that it encompasses behavior which `annoys' other patrons." In addition, it found "[e]qually offensive ... section 9 of the policy which mandates that personal dress and hygiene conform to the `community standards'." Finally, the ACLU-NJ asserted that "[a]llowing library officials, in their own discretion, to ban individuals in the absence of specific guidelines and standards, makes the policy defective for its vagueness."

The Library responded to the ACLU-NJ's concerns in a letter dated July 14, 1989, noting that "access to the Library is a privilege or license granted by the Library to all on condition that the reasonable rules and regulations of the Library are complied with.... In our opinion, the Executive Director of the Library or her authorized representative has the power and the responsibility to revoke the privilege of a patron to use the Library facilities when the rules and regulations are violated, including the power

to require the patron to leave the Library premises." However, on July 25, 1989, in an attempt to assuage the ACLU-NJ's concerns, the Board modified provisions 1, 5, and 9, as well as the two unnumbered paragraphs following rule 9, so that they, along with rule 6, read as follows:

> 1. Patrons shall be engaged in activities associated with the use of a public library while in the building. Patrons not engaged in reading, studying, or using library materials shall be required to leave the building.
>
> . . . .
>
> 5. Patrons shall respect the rights of other patrons and shall not harass or annoy others through noisy or boisterous activities, by staring at another person with the intent to annoy that person, by following another person about the building with the intent to annoy that person, by playing audio equipment so that others can hear it, by singing or talking to others or in monologues, or by behaving in a manner which reasonably can be expected to disturb other persons.
>
> 6. Patrons shall not interfere with the use of the Library by other patrons, or interfere with Library employees' performance of their duties.
>
> . . . .
>
> 9. Patrons shall not be permitted to enter the building without a shirt or other covering of their upper bodies or without shoes or other footwear. Patrons whose bodily hygiene is offensive so as to constitute a nuisance to other persons shall be required to leave the building.
>
> Any patron not abiding by these or other rules and regulations of the library shall be asked to leave the library premises. Library employees shall contact the **Morristown** Police if deemed advisable.
>
> Any patron who violates the Library rules and regulations shall be denied the privilege of access to the Library by the Library Board of Trustees, on recommendation of the Library Director. Any patron whose privileges have been denied, may have the decision reviewed by the Board of Trustees.

Supp.App. at 21.

Although the ACLU-NJ to an extent approved of the Library's extensive modifications of its previous rules, it maintained that the rules still accorded the Library staff with excessive discretion to determine who may use the Library, and expressed fear that this discretion would be exercised "in a discriminatory manner against homeless people." It reiterated that "the provision concerning bodily hygiene will result in discriminatory treatment of the homeless by virtue of their status." The Library, however, elected not to modify the rules further, and expelled **Kreimer** from its premises when he did not comply.

On January 2, 1990, **Kreimer** filed a *pro se* complaint in the district court against the **Morristown** Bureau of Police, the Library, the Board, Rice, three Library employees and four police officers, seeking punitive and compensatory damages for "pain and suffering, emotional distress, humiliation, 1249 *1249 negligence, violation of ... civil rights to enter a public building, first amendment rights violations, harassment, defamation of character, and discrimination because of my homeless status" stemming from his ejection from the Library. **Kreimer** filed an amended complaint on February 16, 1990, which enlarged the named defendants to include the **Morristown** Chief of Police, the President of the Library and the **Morristown** Business Administrator. On May 7, 1990, **Kreimer** filed a second amended complaint naming as additional defendants the former and then-current mayors of **Morristown**, the then-current mayor and business administrator of Morris Township, an additional police officer, two additional Library employees and the President of the Board.

Subsequently, the district court appointed counsel for **Kreimer** who, on September 14, 1990, filed another amended complaint which we simply call the complaint, Count one of the complaint alleged that the rules "are vague and overbroad, both on their face and as applied by library employees, in violation of the plaintiffs [sic] rights under the First Amendment and plaintiff's right to due process of law guaranteed by the Fourteenth Amendment to the United States Constitution." This count additionally alleged that the rules, as written and applied, violated **Kreimer's** right to:

> equal protection of the laws guaranteed by the Fourteenth Amendment to the United States Constitution, because the subjective (and vague) standards in the policy, even if objectively definable, cannot be met by the plaintiff or others who cannot maintain the same degree of bodily hygiene because of their homeless status or because of an involuntary physical condition. The policies are not applied equally to the plaintiff and other homeless individuals as they are to other library patrons.

Supp.App. at 14.[4]

Count two of the complaint alleged violations of the New Jersey Constitution, as well as of N.J.Stat.Ann. § 2C:1-5(d) (West 1982), which provides that "the local governmental units of this State may neither enact nor enforce any ordinance or other local law or regulation conflicting with, or preempted by, any provision of this code or with any policy of this State expressed by this code." It further asserted that the defendants violated New Jersey common law construing and enforcing the statute. Accordingly, **Kreimer** sought a preliminary and permanent injunction against the enforcement of rules 1, 5, and 9,[5] and the two unnumbered paragraphs, as well as compensatory and punitive damages and attorneys fees.[6]

On October 30, 1990, the defendants answered the complaint and requested in a counterclaim that the court issue an order "restraining and enjoining **[Kreimer]** from entering ... [the Library and] ... restraining and enjoining ... **Kreimer** from harassing the patrons and employees of the Library in or about the Library premises including the sidewalks and streets abutting the Library." The defendants additionally sought attorneys fees and costs under 42 U.S.C. § 1988.[7]

The defendants then moved either to dismiss the complaint in its entirety or for a summary judgment upholding the facial validity of the rules, and **Kreimer** filed a cross-motion to dismiss the counterclaim and for a summary judgment that the rules are facially invalid under the First and Fourteenth
1250 Amendments to the United States Constitution, as well as under the *1250 New Jersey Constitution. On May 16, 1991, the court heard oral argument on the motions for summary judgment, and on May 22, 1991, it issued an order denying the defendants' motion for summary judgment and granting summary judgment for **Kreimer**. Accordingly, the court ordered that paragraphs 1, 5 and 9, as well as the two unnumbered paragraphs, were "null and void on their face and unenforceable," and enjoined the Library from enforcing those provisions.[8] The Library appeals and we have jurisdiction under 28 U.S.C. § 1292(a)(1).

II.

ANALYSIS

A. *Standard of Review*

Our review of the district court's order granting summary judgment in **Kreimer's** favor is plenary. *Maguire v. Hughes Aircraft Corp.*, 912 F.2d 67, 69 (3d Cir.1990); *IUE AFL-CIO Pension Fund v. Barker & Williamson, Inc.*, 788 F.2d 118, 122 (3d Cir.1986).[9] In determining whether summary judgment was correctly granted, we must:

> apply the same test the district court should have utilized initially. Inferences to be drawn from the underlying facts contained in the evidential sources submitted to the trial court must be viewed in the light most favorable to the party opposing the motion. The non-movant's allegations must be taken as true, and when these assertions conflict with those of the movant, the former must receive the benefit of the doubt.

Goodman v. Mead Johnson & Co., 534 F.2d 566, 573 (3d Cir.1976), *cert. denied,* 429 U.S. 1038, 97 S.Ct. 732, 50 L.Ed.2d 748 (1977).

Summary judgment may only be granted where "there is no genuine issue as to any material fact and ... the moving party is entitled to a judgment as a matter of law." Fed.R.Civ.P. 56(c). Moreover, as we reiterated in *Losch v. Borough of Parkesburg*, 736 F.2d 903 (3d Cir.1984), "[w]hile summary judgment may be based upon affidavits, conflicts of credibility should not be resolved on a hearing on the motion for summary judgment unless the opponent's evidence is `too incredible to be believed by reasonable minds.'" *Id.* at 909 (quoting 6 J. Moore, Moore's Federal Practice ¶ 56.15(4) at 56-512.3-56-530).

In most cases, an appellate court reversing a grant of summary judgment will not direct the district court to enter a summary judgment order in favor of the appellant, because a genuine issue of fact will remain. *First National Bank v. Lincoln National Life Insurance Co.*, 824 F.2d 277, 281 (3d

Cir.1987). However, when the appeal concerns only issues of law, as in this case, we are free to enter an order directing summary judgment in favor of the appellant. *Id.* at 281. *See Nazay v. Miller,* 949 F.2d 1323, 1328 (3d Cir.1991); *Beck v. Reliance Steel Products Co.,* 860 F.2d 576, 581 (3d Cir.1988).

B. *First Amendment Right to Receive Information*

The first issue to be addressed in any challenge to the constitutional validity of a rule under the First Amendment is whether a First Amendment right exists, for "if it [does] not, we need go no further."
1251 *Cornelius v. NAACP Legal Defense & Educational Fund, Inc.,* 473 U.S. *1251 788, 797, 105 S.Ct. 3439, 3446, 87 L.Ed.2d 567 (1985). **Kreimer** bases his First Amendment claim in the "right to receive information and ideas," and identifies the "vital role played by public libraries" in promoting the fullest exercise of that right. The Library denies that a First Amendment analysis is even applicable and contends instead that the right to receive information "has been found to exist only in cases involving content-based censorship." Our review of the relevant Supreme Court cases, as set forth below, leads us to conclude that a right to receive information founded under the First Amendment is implicated in this case.

The First Amendment declares in broad terms that "Congress shall make no law ... abridging the freedom of speech...." As history has confirmed, the "speech" component to this constitutional right is far-reaching and includes various methods of communication. However, it was not until *Martin v. City of Struthers,* 319 U.S. 141, 63 S.Ct. 862, 87 L.Ed. 1313 (1943), that the Supreme Court decided whether it includes the freedom to receive speech as well as the freedom to speak.

In *Martin,* the appellant, a Jehovah's Witness, distributed a leaflet to people's homes advertising a meeting of her religious group. Although she "proceeded in a conventional and orderly fashion," *id.* at 142, 63 S.Ct. at 863, she was convicted and fined for violating the following ordinance:

> It is unlawful for any person distributing handbills, circulars or other advertisements to ring the door bell, sound the door knocker, or otherwise summon the inmate or inmates of any residence to the door for the purpose of receiving such handbills, circulars or other advertisements they or any person with them may be distributing.

Id.

On appeal she urged that the ordinance as applied to her violated the First and Fourteenth Amendments guaranteeing the freedom of speech, press and religion.

The Supreme Court agreed for three reasons. First, the Court observed that the framers "knew that novel and unconventional ideas might disturb the complacent, but they chose to encourage a freedom which they believed essential if vigorous enlightenment was ever to triumph over slothful ignorance. This freedom embraces the right to distribute literature ... and *necessarily protects the right to receive it.*" *Id.* at 143, 63 S.Ct. at 863 (emphasis supplied) (footnote omitted). Second, the Court recognized that there were three potentially conflicting interests in the case: the appellant's

interests in distributing information, the household dweller's interest in choosing whether to receive that information, and the interests of the community in protecting all its citizens, including those who prefer not to receive this information. In the Court's view, the ordinance improperly "substitutes the judgment of the community for the judgment of the individual householder," *id.* at 143-44, 63 S.Ct. at 863, without carefully considering the interests at stake.

Finally, the Court underscored that the distribution of pamphlets constituted an important means to disseminate ideas "in accordance with the best tradition of free discussion." *Id.* at 145, 63 S.Ct. at 864. Because the freedom to distribute and receive information was "so clearly vital to the preservation of a free society" the Court announced that it "must be fully preserved." *Id.* at 146-47, 63 S.Ct. at 865. Thus, the Court declared the ordinance unconstitutional.

Later, in *Lamont v. Postmaster General*, 381 U.S. 301, 85 S.Ct. 1493, 14 L.Ed.2d 398 (1965), the Supreme Court considered the constitutionality of a federal law requiring that certain mail be detained until the addressee is notified and requests delivery. The statute in question provided in pertinent part:

> Mail matter, except sealed letters, which originates or which is printed or otherwise prepared in a foreign country and which is determined by the Secretary of the Treasury pursuant to rules and regulations to be promulgated by him to be `communist political propaganda', shall be detained by the Postmaster General upon its arrival for delivery in
> 1252 the United *1252 States ... and the addressee shall be notified that such matter has been received and will be delivered only upon the addressee's request....

Id. at 302, 85 S.Ct. at 1494.

The Supreme Court determined that the statute was unconstitutional "because it requires an official act (viz., returning the reply card) as a limitation on the unfettered exercise of the addressee['s] First Amendment rights." *Id.* at 305, 85 S.Ct. at 1495. In the Court's view, the statutory requirement that the addressee return a reply card constituted an undue burden on the flow of ideas to the public, and stifled the "`uninhibited, robust, and wide-open' debate and discussion that are contemplated by the First Amendment." *Id.* at 307, 85 S.Ct. at 1496-97 (quoting *New York Times Co. v. Sullivan*, 376 U.S. 254, 270, 84 S.Ct. 710, 721, 11 L.Ed.2d 686 (1964)).

Justice Brennan, concurring, made explicit what the majority assumed, observing that the question posed would be more troubling "if the addressees predicated their claim for relief upon the First Amendment rights of the senders." *Id.*, 381 U.S. at 307, 85 S.Ct. at 1497. However, the addressees grounded their argument in a personal right to receive information, and "the decision[] today uphold[s] this contention. ..." *Id.* at 308, 85 S.Ct. at 1497. Justice Brennan's oft-quoted remark in *Lamont* now constitutes the hallmark of the right to receive information: "[t]he dissemination of ideas can accomplish nothing if otherwise willing addressees are not free to receive and consider them ... [for] [i]t would be a barren marketplace of ideas that had only sellers and no buyers." *Id.*

In *Griswold v. Connecticut*, 381 U.S. 479, 85 S.Ct. 1678, 14 L.Ed.2d 510 (1965), the Court, in a plurality opinion, again placed its imprimatur on the constitutional right to receive information. There,

the appellants Griswold, the Executive Director of the Planned Parenthood League of Connecticut ("the League"), and Buxton, the Medical Director of the League, gave information and instruction to married persons concerning contraception. Connecticut prosecuted them for violations of statutes which provided that "[a]ny person who uses any drug, medicinal article or instrument for the purpose of preventing conception shall be fined ... or imprisoned ... or be both fined and imprisoned" and "[a]ny person who assists, abets, counsels, causes, hires or commands another to commit any offense may be prosecuted and punished as if he were the principal offender." *Id.* at 480, 85 S.Ct. at 1679.

The Court struck down each provision as unconstitutional on a variety of grounds, including the First Amendment. The Court reasoned that:

> [T]he State may not, consistently with the spirit of the First Amendment, contract the spectrum of available knowledge. The right of freedom of speech and press includes not only the right to utter or to print, but the right to distribute, the right to receive, the right to read ... and freedom of inquiry, freedom of thought, and freedom to teach.... Without those peripheral rights the specific rights would be less secure.

Id. at 482-83, 85 S.Ct. at 1680-81.

Hence, the First Amendment, like other constitutional guarantees, encompassed the "penumbral" right to receive information to ensure its fullest exercise. *Id.* at 483, 85 S.Ct. at 1681.

In Stanley v. Georgia, 394 U.S. 557, 89 S.Ct. 1243, 22 L.Ed.2d 542 (1969), a majority of the Supreme Court agreed that the First Amendment encompasses the right to receive information and ideas. There, the Court reversed the conviction of a defendant prosecuted under a state statute proscribing the private possession of obscene matter. Although the Court agreed that the government has a valid interest in "dealing with the problem of obscenity," *id.* at 563, 89 S.Ct. at 1247, this interest did not foreclose an analysis of whether all possession of obscene material, including private possession, could be forbidden.

At the outset of its analysis, the Court observed that "[i]t is now well established that the Constitution protects the right to receive information and ideas," *id.* at 564, 89 S.Ct. at 1247, citing *Martin, Lamont* and *Griswold* as support for that proposition. *1253 The Court explained that the "right to receive information and ideas, regardless of their social worth ... is fundamental to our free society." *Id.* The Court determined that, to protect the right to receive information and ideas, as well as the right to "satisfy [one's] intellectual and emotional needs in the privacy of [one's] home," *id.* at 565, 89 S.Ct. at 1248, the state was precluded from making private possession of obscene material a crime.

Next, in Red Lion Broadcasting Co. v. Federal Communications Commission, 395 U.S. 367, 89 S.Ct. 1794, 23 L.Ed.2d 371 (1969), the Court extended the right to receive information beyond the censorship context. In *Red Lion* the Court upheld Federal Communications Commission requirements that a radio station furnish a person who was the subject of certain attacks with a tape, transcript or a summary of the broadcast and provide that person with free broadcast time for response. A clear majority of the Court found that "[i]t is the right of the viewers and listeners, not the right of the broadcasters, which is paramount." *Id.* at 390, 89 S.Ct. at 1806. The Court further declared that "*[i]t is*

the right of the public to receive suitable access to social, political, esthetic, moral, and other ideas and experiences which is crucial here. That right may not constitutionally be abridged either by Congress or by the FCC." *Id.* at 390, 89 S.Ct. at 1807 (emphasis supplied). The broadcasters did not possess an unfettered right to make broadcast time available to those who could pay most, for the benefit of producing an "informed public capable of conducting its own affairs" outweighed any burden imposed on the broadcasters by the regulations. *Id.* at 392, 89 S.Ct. at 1807.

Although the Supreme Court subsequently recognized the right to receive information in several other decisions, *see, e.g.,* First National Bank of Boston v. Bellotti, 435 U.S. 765, 783, 98 S.Ct. 1407, 1419, 55 L.Ed.2d 707 (1978) ("First Amendment ... afford[s] the public access to discussion, debate, and the dissemination of information and ideas"); Kleindienst v. Mandel, 408 U.S. 753, 762, 92 S.Ct. 2576, 2581, 33 L.Ed.2d 683 (1972) (First Amendment encompasses "right to receive information and ideas"), this issue generated vigorous debate in Board of Education v. Pico, 457 U.S. 853, 102 S.Ct. 2799, 73 L.Ed.2d 435 (1982), which includes seven separate opinions. There, the Board of Education of Island Trees Union Free School District No. 26 ordered that certain books which it characterized as "anti-American, Anti-Christian, and anti-Sem[i]tic, and just plain filthy," *id.* at 857, 102 S.Ct. at 2803, be removed from high school and junior high school libraries within the school district. Students in that district brought suit for declaratory and injunctive relief under 42 U.S.C. § 1983, alleging that the school board's actions had unlawfully infringed their First Amendment right to receive information. The district court granted summary judgment in favor of the board, but the Court of Appeals for the Second Circuit reversed and remanded, ordering a trial on the merits of the students' allegations. A plurality of the Supreme Court affirmed the court of appeals' judgment, concluding that "the First Amendment impose[s] ... limitations upon the discretion of [the School Board] to remove library books from the [schools and] ... the affidavits and other evidentiary materials before the District Court, construed most favorably to [the students], raise a genuine issue of fact whether [the School Board] might have exceeded those limitations." *Id.* at 863, 102 S.Ct. at 2806.

The plurality recognized that "local school boards have broad discretion in the management of school affairs," *id.,* but held that such discretion is not absolute and "must be exercised in a manner that comports with the transcendent imperatives of the First Amendment." *Id.* at 864, 102 S.Ct. at 2806-07. *See, e.g.,* West Virginia State Board of Education v. Barnette, 319 U.S. 624, 63 S.Ct. 1178, 87 L.Ed. 1628 (1943) (school board cannot compel a student to salute the flag in a public school); Tinker v. Des Moines Independent Community School District, 393 U.S. 503, 89 S.Ct. 733, 21 L.Ed.2d 731 (1969) (suspension of students in a public school for wearing black armbands to protest the *1254 Vietnam War violated students' First Amendment rights). Although the *Pico* plurality agreed that courts "should not `intervene in the resolution of conflicts which arise in the daily operation of school systems' unless `basic constitutional values' are `directly and sharply implicate[d],'" *id.,* 457 U.S. at 866, 102 S.Ct. at 2807-08 (quoting Epperson v. Arkansas, 393 U.S. 97, 104, 89 S.Ct. 266, 270, 21 L.Ed.2d 228 (1968)), it found that the "right to receive information" directly implicated the students' free speech rights.

The plurality observed that the First Amendment protects not only the right to self-expression, but also guarantees "`public access to discussion, debate, and the dissemination of information and

ideas.'" *Id.*, 457 U.S. at 866, 102 S.Ct. at 2808 (quoting *First National Bank of Boston v. Bellotti*, 435 U.S. at 783, 98 S.Ct. at 1419). Moreover, it indicated that the right to receive information:

> is an inherent corollary of the rights of free speech and press that are explicitly guaranteed by the Constitution, in two senses. First, the right to receive ideas follows ineluctably from the *sender's* First Amendment right to send them.... More importantly, the right to receive ideas is a necessary predicate to the *recipient's* meaningful exercise of his own rights of speech, press, and political freedom.

Id., 457 U.S. at 867, 102 S.Ct. at 2808 (emphasis in original).

In the plurality's view, this constitutional guarantee carried no less force in the public school library context because "such access prepares students for active and effective participation in the pluralistic, often contentious society in which they will soon be adult members." *Id.* at 868, 102 S.Ct. at 2808-09. Indeed, the "special characteristics of the school *library* make that environment especially appropriate for the recognition of the First Amendment rights of students," for the library, unlike the school classroom, is a place for voluntary inquiry and study. *Id.* at 868, 102 S.Ct. at 2809 (emphasis in original). The plurality then identified certain limitations on the school board's discretion to remove books, and affirmed the court of appeals' remand to assess whether those limitations had been exceeded.

The four spirited dissents prompted by *Pico* each focused on the school board's duty to "'inculcat[e] fundamental values necessary to the maintenance of a democratic political system,'" *id.* at 889, 102 S.Ct. at 2819 (quoting *Ambach v. Norwick*, 441 U.S. 68, 74, 99 S.Ct. 1589, 1595, 60 L.Ed.2d 49 (1979)), and the broad discretion needed properly to carry out that responsibility. The dissenters believed that the plurality's decision would trigger an improper arrogation of the school board's power to the courts. For example, Chief Justice Burger declared that, "[u]ltimately the federal courts will be the judge of whether the motivation for book removal was `valid' or `reasonable.' ... Discretion must be used, and the appropriate body to exercise that discretion is the local elected school board, not judges." *Id.*, 457 U.S. at 890-91, 102 S.Ct. at 2820. Justice Powell similarly noted that "[t]he plurality opinion today rejects a basic concept of public school education in our country: that the States and locally elected school boards should have the responsibility for determining the educational policy of public schools." *Id.* at 893, 102 S.Ct. at 2821-22. Justice Rehnquist likewise stated, "when [the government] acts as an educator, at least at the elementary and secondary school level, the government is engaged in inculcating social values and knowledge in relatively impressionable young people.... [A]ctions by the government as educator do not raise the same First Amendment concerns as actions by the government as sovereign." *Id.* at 909-10, 102 S.Ct. at 2829-30. Similarly, Justice O'Connor agreed that "the plurality's analysis overlooks the fact that in this case the government is acting in its special role as educator." *Id.* at 921, 102 S.Ct. at 2835.

The dissenters in *Pico* made no contention that the First Amendment did not encompass the right to receive information and ideas, but merely argued that the students could not freely exercise this right
1255 in the public school setting in light of the *1255 countervailing duties of the School Board. Justice Rehnquist's opinion highlighted the source of contention when he declared: "The libraries of [elementary and secondary] schools serve as supplements to this inculcative role. Unlike universities

or *public libraries,* elementary and secondary schools are not designed for freewheeling inquiry; they are tailored, as the public school curriculum is tailored, to the teaching of basic skills and ideas." *Id.* at 915, 102 S.Ct. at 2832 (emphasis supplied).

Our review of the Supreme Court's decisions confirms that the First Amendment does not merely prohibit the government from enacting laws that censor information, but additionally encompasses the positive right of public access to information and ideas. *Pico* signifies that, consistent with other First Amendment principles, the right to receive information is not unfettered and may give way to significant countervailing interests. At the threshold, however, this right, first recognized in *Martin* and refined in later First Amendment jurisprudence, includes the right to some level of access to a public library, the quintessential locus of the receipt of information.

C. *The Facial Validity of the Rules*

The recognition of a constitutional right protecting public access to information and ideas is simply the threshold of our analysis. Our next step is to "identify the nature of the forum, because the extent to which the Government may limit access depends on whether the forum is public or nonpublic." *Cornelius*, 473 U.S. at 797, 105 S.Ct. at 3446.

1. The *Perry* Approach

In *Perry Education Association v. Perry Local Educators' Association*, 460 U.S. 37, 103 S.Ct. 948, 74 L.Ed.2d 794 (1983), the Court adopted the "forum" analysis to determine whether a given rule or regulation violates the First Amendment. There, a school district and the duly elected exclusive bargaining representative for the school district's teachers entered into a collective bargaining agreement which granted the representative sole access to teacher mailboxes and the inter-school mail system to the exclusion of a rival union. The rival union contended that such preferential access to the mail system was unconstitutional under the First and Fourteenth Amendments.

In evaluating the rival union's First Amendment argument, the Court noted that "[t]he existence of a right of access to public property and the standard by which limitations upon such a right must be evaluated differ depending upon the character of the property at issue," *id.* at 44, 103 S.Ct. at 954, for the First Amendment requires neither equal nor unlimited access to public places. Thus, the Court identified three categories of government fora to inform an evaluation of the First Amendment's mandates.

The first class of government fora encompasses "places which by long tradition or by government flat have been devoted to assembly and debate...." *Id.* at 45, 103 S.Ct. at 954. This category includes streets and parks and public sidewalks, and other public spaces which "'have immemorially been held in trust for the use of the public, and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions.'" *Id.*, 103 S.Ct. at 954-55 (quoting *Hague v. CIO*, 307 U.S. 496, 515, 59 S.Ct. 954, 964, 83 L.Ed. 1423 (1939)). The government's right to limit First Amendment activity in these "quintessential" public fora is "sharply

circumscribed." *Id.*, 103 S.Ct. at 954. The Court held that content-based government regulations in this context are permissible only where "necessary to serve a compelling state interest and ... narrowly drawn to achieve that end." *Id.*, 103 S.Ct. at 955. Further, content-neutral time, place or manner restrictions are permissible if they are "narrowly tailored to serve a significant government interest, and leave open ample alternative channels of communication." *Id.*

The second class of government fora consists of "public property which the state has opened for use
1256 by the public as a place for expressive activity." *Id.* Although the *1256 government is not required to open or indefinitely retain the open nature of these fora, once it does so the government is bound by the same limitations as exist in the traditional public forum context. In the Court's words, "[r]easonable time, place and manner regulations are permissible, and a content-based prohibition must be narrowly drawn to effectuate a compelling state interest." *Id.*, 460 U.S. at 46, 103 S.Ct. at 955.

The third category of government property includes "nonpublic" fora which are not "by tradition or designation [fora] for public communication...." *Id.* at 46, 103 S.Ct. at 955. The Court reaffirmed that "' [t]he State, no less than a private owner of property, has power to preserve the property under its control for the use to which it is lawfully dedicated.'" *Id.* In this setting, the government may enact and enforce "time, place, and manner regulations, [to] ... reserve the forum for its intended purposes, communicative or otherwise, as long as the regulation on speech is reasonable and not an effort to suppress expression because public officials oppose the speaker's view." *Id.*

Applying its principles to the facts at issue in *Perry,* the Court concluded that the school's internal mailing system was neither a traditional public forum nor a designated public forum. It rejected the rival union's contention that the mailing system fell within the designated public forum category and observed that, "[i]f by policy or by practice the Perry School District ha[d] opened its mail system for indiscriminate use by the general public, then [the rival union] could justifiably argue a public forum has been created." *Id.* at 47, 103 S.Ct. at 956. However, the record contained:

> no indication ... that the school mailboxes and inter-school delivery system are open for use by the general public. Permission to use the system to communicate with teachers must be secured from the individual building principal. There is no court finding or evidence in the record which demonstrates that this permission has been granted as a matter of course to all who seek to distribute material. ... This type of selective access does not transform government property into a public forum.

Id.

> Moreover, the Court held that, even if the government had created some kind of designated public forum, "*the constitutional right of access would in any event extend only to other entities of similar character.*" *Id.* at 48, 103 S.Ct. at 956 (emphasis supplied). Because the union was not similar in nature to those entities that had traditionally been permitted to use the mail system, this caveat did not apply.

It is clear to us that a public library, albeit the "quintessential" locus for the exercise of the right to receive information and ideas, is sufficiently dissimilar to a public park, sidewalk or street that it

cannot reasonably be deemed to constitute a traditional public forum. Obviously, a library patron cannot be permitted to engage in most traditional First Amendment activities in the library, such as giving speeches or engaging in any other conduct that would disrupt the quiet and peaceful library environment. We thus reject the district court's conclusion that the Library constitutes a "'quintessential,' 'traditional' public forum whose accessibility affects the bedrock of our democratic system." 765 F.Supp. at 181 (quoting *Perry*, 460 U.S. at 45, 103 S.Ct. at 955). Accordingly, we must turn for guidance to the Court's decisions that focus on when government property constitutes a "designated public forum."

2. Designated Public Fora

a. *Traditional test:*

In *Southeastern Promotions, Limited v. Conrad*, 420 U.S. 546, 95 S.Ct. 1239, 43 L.Ed.2d 448 (1975),
1257 [10] the Court concluded that a municipal theater constituted a designated *1257 public forum. There, a promoter of theatrical productions applied to the directors of the Chattanooga Memorial Auditorium to present the musical "Hair" at the city-leased auditorium. The directors rejected the promoter's applications on the ground that the musical involved nudity and obscenity, and was therefore not "in the best interest of the community." *Id.* at 548, 95 S.Ct. at 1241. The promoter brought suit in the United States District Court for the Eastern District of Tennessee, which determined that the nudity and obscenity in the musical constituted criminal acts, not speech or symbolic speech, and were thus not entitled to First Amendment protection. On appeal, the United States Court of Appeals for the Sixth Circuit affirmed. The Supreme Court granted certiorari and reversed, holding that the "[directors'] rejection of [the promotor's] application to use this public forum accomplished a prior restraint under a system lacking in constitutionally required minimal procedural safeguards." *Id.* at 552, 95 S.Ct. at 1243.

In reaching its conclusion, the Court underscored the "public" nature of the theaters. It held that the theaters were "designed for and dedicated to expressive activities." *Id.* at 555, 95 S.Ct. at 1245. Next, the Court observed that the promoter "was not seeking to use a facility primarily serving a competing use." *Id.* The Court additionally noted that "[n]o rights of individuals in surrounding areas were violated by noise or any other aspect of the production." *Id.* at 555-56, 95 S.Ct. at 1245. On this basis, the Court determined that the government had opened the theater to the public, and its conduct generated a constitutional right of fair access to it.

In *Madison Joint School District v. Wisconsin Employment Relations Com.*, 429 U.S. 167, 97 S.Ct. 421, 50 L.Ed.2d 376 (1976), the Court held that a school board meeting constituted a designated public forum. There, a teachers' union commenced an action alleging that the school board had committed an improper labor practice by permitting a teacher to speak at a public school board meeting in opposition to an agency shop proposition. The state employment relations commission, which was affirmed by the state Supreme Court, ordered the board to cease permitting employees, other than union representatives, to speak at meetings on matters subject to collective bargaining. In

holding that the teacher could not constitutionally be prohibited from speaking at the meeting, the Court ultimately concluded that the order was an unlawful prior restraint based in part on the content of the speech but, as significant here, the Court emphasized that "the school board meeting ... was open to the public." *Id.* at 174-75, 97 S.Ct. at 426 (footnote omitted). In the Court's view, "[w]here the State has opened a forum for direct citizen involvement, it is difficult to find justification for excluding teachers who make up the overwhelming proportion of school employees and who are most vitally concerned with the proceedings." *Id.* at 175, 97 S.Ct. at 426 (footnote omitted).

In *Widmar v. Vincent*, 454 U.S. 263, 102 S.Ct. 269, 70 L.Ed.2d 440 (1981), the Court found that public university meeting places constitute designated public fora. In that case, a registered student religious group at the University of Missouri at Kansas City, a state university, sought to use university facilities to conduct its meetings, but the university informed the group that it could not due to a university regulation prohibiting the use of university buildings or grounds "for purposes of religious worship or religious teaching." *Id.* at 265 n. 3, 102 S.Ct. at 272 n. 3. The student group challenged the university's actions as violative of its First Amendment rights and the Supreme Court agreed, determining that:

> Through its policy of accommodating their meetings, the University has created a forum generally open for use by student groups. Having done so, the University has assumed an obligation to justify its discriminations and exclusions under applicable constitutional norms. The Constitution forbids a State to enforce certain exclusions from a forum generally open to the public, even if it was not required to create the forum in the first place.

1258 *1258 *Id.* at 267-68, 102 S.Ct. at 273 (footnote omitted). *See also* *Police Dept. of Chicago v. Mosley*, 408 U.S. 92, 92 S.Ct. 2286, 33 L.Ed.2d 212 (1972); *Healy v. James*, 408 U.S. 169, 92 S.Ct. 2338, 33 L.Ed.2d 266 (1972); *Cox v. Louisiana*, 379 U.S. 536, 85 S.Ct. 453, 13 L.Ed.2d 471 (1965).

The Court concluded that the university could not prohibit a religious student group from using the facilities when it permitted non-religious groups to do so. However, the Court recognized that the university's actions did not transform it into a full-fledged traditional public forum, noting "[a] university differs in significant respects from public forums such as streets or parks or even municipal theaters. A university's mission is education, and decisions of this Court have never denied a university's authority to impose reasonable regulations compatible with that mission. ..." *Id.*, 454 U.S. at 267 n. 5, 102 S.Ct. at 273 n. 5. *Accord*, *Tinker v. Des Moines Independent Community School District*, 393 U.S. at 506, 89 S.Ct. at 736 (First Amendment rights must be construed in "in light of the special characteristics of the school environment.")

b. *Modern developments:*

The Supreme Court's recent opinions on the characteristics of designated public fora, *Cornelius*, 473 U.S. 788, 105 S.Ct. 3439, and *United States v. Kokinda*, 497 U.S. 720, 110 S.Ct. 3115, 111 L.Ed.2d 571 (1990), seem to have slightly modified the Court's previous definition, but in our view should not be read as signaling a departure from the Court's established principles. In *Cornelius*, "Legal Defense

Funds" brought suit in federal court challenging the constitutionality of an executive order which barred them from participating in the Combined Federal Campaign ("CFC"), a charity drive aimed at federal employees and military personnel. Although the Court reaffirmed that charitable solicitation constituted speech and was protected by the First Amendment, it deemed the executive order to be proper, relying on the "nonpublic" nature of the CFC[11] to support its analysis. In the *Cornelius* Court's words:

> The government does not create a public forum by inaction or by permitting limited discourse, but only by intentionally opening a nontraditional forum for public discourse.... Accordingly, the Court has looked to the policy and practice of the government to ascertain whether it intended to designate a place not traditionally open to assembly and debate as a public forum.... The Court has also examined the nature of the property and its compatibility with expressive activity to discern the government's intent.

Id., 473 U.S. at 802, 105 S.Ct. at 3449.

There, the Court found that neither the practice nor the policy of the CFC was consistent with an intent to designate the CFC as a public forum, nor did the history of the CFC indicate that the government "was motivated by an affirmative desire to provide an open forum for charitable solicitation in the federal workplace when it began the Campaign." *Id.* at 804-05, 105 S.Ct. at 3450.[12] Finally, the nature of the CFC bolstered the Court's conclusion that it was not a public forum, for "the Government has the right to exercise control over access to the federal workplace in order to avoid interruptions to the performance of the duties of its employees." *Id.* at 805-06, 105 S.Ct. at 3451. Because the CFC was not a public forum, the Court merely reviewed the order to ensure that it was "reasonable in light of the purpose served by the forum and [was] viewpoint neutral." *Id.* at 806, 105 S.Ct. at 3451.

In *Kokinda*, the defendants were convicted of soliciting contributions on a sidewalk entirely on Postal
1259 Service property in *1259 front of a post office in violation of a Postal Service regulation. The defendants contended that the sidewalk was a public forum, and that the regulations were not narrowly tailored to further a significant government interest. A sharply divided Court disagreed. A four-justice plurality concluded that the sidewalk in front of the Post Office constituted neither a traditional nor a designated public forum. In rejecting the defendants' contention that the sidewalk was a designated public forum, the plurality observed, "[t]he Postal Service has not expressly dedicated its sidewalks to any expressive activity. Indeed, postal property is expressly dedicated to only one means of communication: the posting of public notices on designated bulletin boards.... No postal service regulation opens postal sidewalks to any First Amendment activity." 110 S.Ct. at 3121. In addition, the postal regulation specifically prohibiting disruption evinced the government's desire to retain control over the forum. Finally, heeding *Cornelius'* directive that government intent is of primary significance in the analysis, the Court repeated that "'[t]he government does not create a public forum by ... *permitting* limited discourse, but only by intentionally opening a non-traditional forum for public discourse.'" *Id.* at 3121 (quoting *Cornelius*, 473 U.S. at 802, 105 S.Ct. at 3449 (emphasis in original)). [13]

3. Limited Public Fora

In our view, an application of the Supreme Court's declarations concerning this issue, as well as an examination of the factual similarities and dissimilarities among the cases discussed above and the present one, confirm that the Library constitutes a limited public forum, a type of designated public fora.[14]

a. *Government intent:*

Our first step in this analysis which leads us to reach this conclusion is to determine whether the government, here **Morristown** and Morris Township, intended to open a non-traditional forum[15] for expressive activity.[16] It is of great significance that **Morristown** and Morris Township were not obliged to open a public library; rather, they did so by choice. Moreover, the New Jersey statute governing the establishment of public libraries provides that "[n]o such library shall be established in any municipality unless assented to by a majority of the legal voters of the municipality, at an election, general or special, at which the question of the adoption of this article shall be submitted to vote by direction of the governing body." N.J.Stat.Ann. § 40:54-2. Further, the stated purpose of the rules at issue here is to "allow all patrons of the Joint Free Public Library of **Morristown** and Morris Township to use its facilities to the maximum extent possible during its regularly scheduled hours." These facts establish a governmental intent to open the Library to the public for specific purposes.[17] In this case, the government intentionally opened the Library to the public *for expressive activity,* namely "the communication of the written word."

1260 *1260 **b. *Extent of use:***

Our next step is to determine the extent of use granted, for if the government has retained the discretion to choose whom it will permit to enter the Library, this will undercut an assertion that the government intentionally opened the Library to the public for the exercise of specific First Amendment activities. We note in this regard that a designated public forum need not be open to the public at large, but may be opened to a specific class of people or for the discussion of certain subject matter. *See, e.g.,* *Widmar v. Vincent,* 454 U.S. at 267 n. 5, 102 S.Ct. at 273 n. 5 (although a university campus is a designated public forum, campus need not "make all of its facilities equally available to students and nonstudents alike, or ... grant free access to all of its grounds or buildings"). *See also* *Perry Education Association v. Perry Local Educators' Association,* 460 U.S. at 45 n. 7, 103 S.Ct. at 955 n. 7 ("A public forum may be created for a limited purpose such as use by certain groups ... or for the discussion of certain subjects");[18] *Brody v. Spang,* 957 F.2d 1108, 1117-18, (3d Cir.1992) ("When examining the extent of use granted, we must be mindful that a designated public forum `may be so designated for only limited uses or for a limited class of speakers.'") (Quoting *Student Coalition for Peace v. Lower Merion School Dist. Bd. of Directors,* 776 F.2d 431, 436 (3d Cir.1985)).

The limited information in the record indicates that the Library does not retain unfettered discretion governing admission. Indeed, N.J.Stat.Ann. § 40:54-29.3, provides that the Library is "for the use and benefit of the residents of [Morristown and Morris Township]." Hence, unlike *Cornelius,*[19] the facts do not suggest that the government must affirmatively grant permission to each resident who wishes to enter on each occasion.[20] Rather, the record indicates that the Library exercises its authority to exclude a patron only *after* his or her violation of the rules. However, the Library's rules make clear that the Library is open to the public only for specified purposes: reading, studying, using the Library materials. The Library has not opened its door for the exercise of all First Amendment activities.

c. *Nature of the forum:*

Our final inquiry regarding the characterization of the forum concerns its nature and its compatibility with expressive activity for, as the Court observed in *Cornelius,* "[w]e will not find that a public forum
1261 has been created ... when the nature of the *1261 property is inconsistent with expressive activity." 473 U.S. at 803, 105 S.Ct. at 3449. *Accord, United States v. Kokinda,* 110 S.Ct. at 3125 ("If our public forum jurisprudence is to retain vitality, we must recognize that certain objective characteristics of Government property and its customary use by the public may control the case.") (Kennedy, J., concurring).

A library is "a place dedicated to quiet, to knowledge, and to beauty." *Brown v. Louisiana,* 383 U.S. 131, 142, 86 S.Ct. 719, 724, 15 L.Ed.2d 637 (1966). Its very purpose is to aid in the acquisition of knowledge through reading, writing and quiet contemplation. Thus, the exercise of other oral and interactive First Amendment activities is antithetical to the nature of the Library. These arguably conflicting characteristics, at least in a First Amendment sense, support our conclusion that the Library constitutes a *limited* public forum, a sub-category of designated public fora.[21] *See Brody v. Spang,* at 1118. We thus adopt the reasoning of the United States Court of Appeals for the Second Circuit in *Travis v. Owego-Apalachin School District,* 927 F.2d 688 (2d Cir.1991), where the court held that a limited public forum "is created when government opens a nonpublic forum but limits the expressive activity to certain kinds of speakers or to the discussion of certain subjects.... In the case of a limited public forum, constitutional protection is afforded only to expressive activity *of a genre similar to those that government has admitted to the limited forum.*" *Id.* at 692 (emphasis supplied).[22]
1262 *1262 Hence, as a limited public forum, the Library is obligated only to permit the public to exercise rights that are consistent with the nature of the Library and consistent with the government's intent in designating the Library as a public forum.[23] Other activities need not be tolerated.

4. Our Judicial Review

The Supreme Court has indicated that restrictions that do not limit those First Amendment activities the government has specifically permitted in the designated public forum need only be "reasonable and `not an effort to suppress expression merely because public officials oppose the speaker's view.'" *Kokinda,* 110 S.Ct. at 3121 (quoting *Perry,* 460 U.S. at 46, 103 S.Ct. at 955). In contrast, time, place or manner regulations that limit permitted First Amendment activities within a designated public forum

are constitutional only if they are "narrowly tailored to serve a significant governmental interest, and ... leave open ample alternative channels for communication of information." *Ward v. Rock Against Racism*, 491 U.S. 781, 791, 109 S.Ct. 2746, 2753, 105 L.Ed.2d 661 (1989) (quoting *Clark v. Community for Creative Non-Violence*, 468 U.S. 288, 293, 104 S.Ct. 3065, 3069, 82 L.Ed.2d 221 (1984)). *See also* *Brody v. Spang*, at 1121. Significantly, the parties do not contend that any of the challenged regulations purport to restrict First Amendment activities on the basis of content or viewpoint. We examine the challenged rules in sequence applying these standards.

Rule 1:

The district court struck down a rule that provided:

> Patrons shall be engaged in activities associated with the use of a public library while in the building. Patrons not engaged in reading, studying, or using library materials shall be required to leave the building.

By definition, the rule prohibits activities beyond the purpose for which the Library was opened. Accordingly, this rule is subject to the "reasonableness" standard of review.

The aim of the rules, as correctly identified by the district court, is "to foster[] a quiet and orderly atmosphere ... conducive to every patron's exercise of their constitutionally protected interest in receiving and reading written communications." 765 F.Supp. at 187. Requiring that its patrons make use of the Library in order to be permitted to remain there is a reasonable means to achieve that end. The Library need not be used as a lounge or a shelter. Clearly the rule is reasonable and is perfectly valid.

Rule 5:

The court also enjoined the enforcement of the following rule:

> Patrons shall respect the rights of other patrons and shall not harass or annoy others through noisy or boisterous activities, by staring at another person with the intent to annoy that person, by following another person about the building with the intent to annoy that person, by playing audio equipment so that others can hear it, by singing or talking loudly to others or in monologues, or by behaving in a manner which reasonably can be expected to disturb other patrons.

1263 *1263 This rule similarly prohibits behavior that tends to or is disruptive in a library setting. Prohibiting disruptive behavior is perhaps the clearest and most direct way to achieve maximum Library use. Accordingly, we find that this rule is fundamentally reasonable[24] and we reject the attack on it.[25]

1264 *1264 *Rule 9:*

The following portion of the rule, which was invalidated by the district court, requires a closer analysis. It provides:

> Patrons whose bodily hygiene is offensive so as to constitute a nuisance to other persons shall be required to leave the building.

App. at 139.

Because this rule would require the expulsion of a patron who might otherwise be peacefully engaged in permissible First Amendment activities within the purposes for which the Library was opened, such as reading, writing or quiet contemplation, we must determine whether the rule is narrowly tailored to serve a significant government interest and whether it leaves ample alternative channels of communication.

First, we reiterate, as the Library correctly asserts, that it has a significant interest in ensuring that "all patrons of the [Library] [can] use its facilities *to the maximum extent possible* during its regularly scheduled hours." Brief at 27 (emphasis supplied). However, we must further ascertain whether the rule governing the attire and personal hygiene of its patrons is narrowly tailored to promote that interest. We note that the "narrowly tailored" requirement does not signify that a rule must be the "least-restrictive or least-intrusive means," of furthering the government's interest. *Ward v. Rock Against Racism*, 491 U.S. at 798, 109 S.Ct. at 2757. "Rather, the requirement of narrow tailoring is satisfied `so long as the ... regulation promotes a substantial government interest that would be achieved less effectively absent the regulation.'" *Id.* at 799, 109 S.Ct. at 2758 (quoting *United States v. Albertini*, 472 U.S. 675, 689, 105 S.Ct. 2897, 2906, 86 L.Ed.2d 536 (1985)).

We find that the attacked portion of the rule is sufficiently narrow.[26] The Library's goal is served by its requirement that its patrons have non-offensive bodily hygiene, as this rule prohibits one patron from unreasonably interfering with other patrons' use and enjoyment of the Library; it further promotes the Library's interest in maintaining its facilities in a sanitary and attractive condition.[27]

Lastly, we find that this rule leaves open alternative channels for communication in the sense that, so long as a patron complies with the rules, he or she may use the Library's facilities. Furthermore, although the Library may eject a patron for violating this rule, we do not read the rule to bar permanently a patron from reentry to the Library once the patron complies with the requirements in the absence of pervasive abuse. In sum, we find that the rule is narrowly tailored to achieve a significant governmental interest, and leaves open ample alternative channels for communication.[28]

While the district court was probably correct that the rule may disproportionately affect the homeless who have limited access to bathing facilities, this fact is irrelevant to a facial challenge and further would not justify permitting a would-be patron, with hygiene so offensive that it constitutes a nuisance, to force other patrons to leave the Library, or to inhibit Library employees from performing their duties. Moreover, we do not face the more difficult scenario in which one individual possesses First
1265 Amendment rights and others do not. Here, if the First Amendment *1265 protects the right to reasonable access to a public library, as we hold it does, this is a right shared equally by all residents of **Morristown** and Morris Township. *See Northeast Women's Center, Inc. v. McMonagle*, 868 F.2d 1342, 1349 (3d Cir.1989) (anti-abortion activists' First Amendment right to express their views was not absolute; constitution also protected women's right to abortion), *cert. denied*, 493 U.S. 901, 110

S.Ct. 261, 107 L.Ed.2d 210 (1989). **Kreimer's** right has no lesser, or greater, significance than that of other residents. Accordingly, his right to reasonable access to the Library cannot be expanded to such an extent that it denies others the same guarantee.

In this vein, we also disagree with the district court's assessment that the final unnumbered paragraphs are not narrowly tailored. These two paragraphs merely implement the rule's substantive provisions, by providing that any patron who violates the rules may be expelled. This is not only a reasonable provision, but it is a necessary one to enforce compliance with the substantive provisions.

5. Overbreadth

Kreimer asserts, and the district court held, that in addition to violating the First Amendment, the rules contravene the overbreadth doctrine as expounded by the Supreme Court. The overbreadth doctrine, an exception to conventional standing requirements, provides that an individual whose own conduct may be properly prohibited, may challenge a given regulation "because it also threatens others not before the court — those who desire to engage in legally protected expression but who may refrain from doing so rather than risk prosecution or undertake to have the law declared partially invalid." *Brockett v. Spokane Arcades, Inc.*, 472 U.S. 491, 503, 105 S.Ct. 2794, 2802, 86 L.Ed.2d 394 (1985). An analysis of the relevant cases reveals that the district court's determination was in error.[29]

In *Hoffman Estates v. Flipside, Hoffman Estates, Inc.* 455 U.S. 489, 102 S.Ct. 1186, 71 L.Ed.2d 362 (1982), the Supreme Court reiterated that the doctrine of overbreadth is appropriately applied in a facial challenge only where "the enactment reaches a *substantial* amount of constitutionally protected conduct. If it does not, then the overbreadth challenge must fail." *Id.* at 494, 102 S.Ct. at 1191 (emphasis supplied) (footnote omitted). Because the overbreadth doctrine is "'strong medicine,'" *New York v. Ferber*, 458 U.S. 747, 769, 102 S.Ct. 3348, 3361, 73 L.Ed.2d 1113 (1982) (quoting *Broadrick v. Oklahoma*, 413 U.S. 601, 613, 93 S.Ct. 2908, 2916, 37 L.Ed.2d 830 (1973)), it is to be used sparingly, where the demonstrated overbreadth is considerable. *Accord, Board of Airport Commissioners v. Jews for Jesus, Inc.*, 482 U.S. 569, 574, 107 S.Ct. 2568, 2572, 96 L.Ed.2d 500 (1987) ("A statute may be invalidated on its face ... only if the overbreadth is 'substantial.'") (quoting *Houston v. Hill*, 482 U.S. 451, 458, 107 S.Ct. 2502, 2508, 96 L.Ed.2d 398 (1987)). Accordingly, "there must be a realistic danger that the statute itself will significantly compromise recognized First Amendment protections of parties not before the Court for it to be facially challenged on overbreadth grounds." *Members of Council v. Taxpayers for Vincent*, 466 U.S. 789, 801, 104 S.Ct. 2118, 2126, 80 L.Ed.2d 772 (1984). We have similarly indicated that, "[i]n order successfully to challenge a statute on the basis of overbreadth ... a litigant must establish something more than a mere possibility that a particular grant of discretion might be used unconstitutionally in some other setting." *Gannett Satellite Information Network, Inc. v. Berger*, 894 F.2d 61, 66 (3d Cir.1990).

We need not dwell long on **Kreimer's** overbreadth assertions. First, rules 1 and 5 do not reach a substantial amount of activity which would be constitutionally protected in the Library. It is conceivable that one engaged in silent protest, an activity protected under the First Amendment, could be required
1266 to cease protesting or *1266 leave the Library, but we do not believe that this hypothetical scenario

would pose a "realistic danger that the statute ... will significantly compromise First Amendment protections of parties not before the Court." *Members of City Council*, 466 U.S. at 801, 104 S.Ct. at 2126.[30] Rule 9 places some restrictions on the right to receive information, but as we discuss above, it constitutes a narrowly tailored manner restriction and does not improperly restrict patrons from exercising the constitutionally protected right to receive information.[31]

6. First Amendment Vagueness

Although the "void-for-vagueness" doctrine was originally constructed to invalidate penal statutes that do not "define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited," *Kolender v. Lawson*, 461 U.S. 352, 357, 103 S.Ct. 1855, 1858, 75 L.Ed.2d 903 (1983), courts have transplanted this due process principle into the First Amendment setting. First Amendment vagueness overlaps with, but is distinct from, an overbreadth challenge. Like the overbreadth doctrine, a meritorious First Amendment vagueness challenge will annul an unclear law that "chills" protected First Amendment activities. Hence, a vagueness challenge will succeed when a party does not have actual notice of what activity the statute prohibits. Yet the vagueness doctrine, unlike the overbreadth doctrine, additionally seeks to ensure fair and non-discriminatory application of the laws, thus reflecting its roots in the due process clause. *Id.* at 357-58, 103 S.Ct. at 1858. Accordingly, it finds repulsive laws that endow officials with undue discretion to determine whether a given activity contravenes the law's mandates. *See* Fallon, Making Sense of Overbreadth, 100 Yale L.J. 853 (1991). *See generally* P. Bator, D. Meltzer, P. Mishkin, & D. Shapiro, Hart & Wechsler's The Federal Courts And the Federal System, 184-88 (3d Ed. 1988).

The district court determined that rules 1, 5 and 9 were unconstitutionally vague. In so determining, the court rejected the Library's assertion that the doctrine was inapplicable because the rules were not criminal in nature. The court reasoned that "failure to comply with the policy results in criminal
1267 trespass [and] and the policy incorporates the imminent threat *1267 of police involvement, presumably to arrest uncooperative patrons pursuant to the criminal trespass law." 765 F.Supp. at 192-93. The difficulty with this conclusion is that a criminal trespass requires a voluntary act distinct from violation of the rules. That a person found in violation of a rule may feel inclined to remain on the property does not thereby transfer the rules into criminal provisions. Nonetheless, the vagueness doctrine is not inapplicable merely because the rules are civil in nature. Instead, as the Court explained in *Hoffman Estates*, 455 U.S. at 498-99, 102 S.Ct. at 1193:

> The degree of vagueness that the Constitution tolerates — as well as the relative importance of fair notice and fair enforcement — depends in part on the nature of the enactment.... The Court has ... expressed greater tolerance of enactments with civil rather than criminal penalties because the consequences of imprecision are qualitatively less severe.

We accordingly review the rules while keeping in mind that greater tolerance must be accorded civil enactments.

Rule 1:

Rule 1 provides patrons with actual notice that they must use the Library's facilities to remain in the Library. Although the Library officials retain discretion to determine who is making use of the Library materials, this discretion must be exercised in accordance with the criteria in the rules and is thus not unbridled, and we have no reason to suspect that it will be exercised in an unfair manner. The following colloquy which occurred during the summary judgment hearing sheds light on the Library's interpretation of its authority to expel a patron under rule 1:

> THE COURT: If we take someone who goes to the library and reads a book and closes their eyes to contemplate what they have just read and think about it, is the regulation violated?
>
> MR. STARRETT:[32] No, I would say not.
>
> THE COURT: Who makes that judgment? Does it depend how long your eyes are closed?
>
> MR. STARRETT: Obviously the judgment has to be made by a library employee. I think it depends on the totality of the circumstances in that, if one in fact has a book before him and has been reading it, yes. If one has been in the library for six hours, wandering about and only taking a book off the shelf when the library employee comes by irrespective of what that book may be, obviously not.
>
> * * * * * *
>
> MR. STARRETT: I think the regulation merely says you must be there for library-related purposes, and then I think as with all situations, whether one is there for a library-related purpose or not has to depend on the totality of the circumstances. ... If somebody is sitting there, has no book in front of him, and has been staring into space for an hour or two, and that is not a hypothetical situation, the person can go over as they do and say to that person, 'We don't think you are using the library for library purposes. If you want to read or study or do something, fine. If you are going to just sit here, you are not supposed to do that, and we will have to ask you to leave.'

App. at 149-52.

The Library's interpretation of its authority under rule 1 dispels any fear that it will act in an unfair or discriminatory manner: the Library agreed that quiet contemplation of Library material constitutes a valid use of the Library; the Library will not immediately expel a patron for violating rule 1, but will inform the patron that he or she must use the Library materials to remain; only those patrons who repeatedly fail to make use of the Library will be required to leave. In addition, we must accord some deference to the Library officials.[33]

1268 *1268 *Rule 5:*

The district court similarly struck down this rule on vagueness grounds, relying in significant part on its determination that "the `annoyance' standard is `perfectly vague.'" 765 F.Supp. at 194 (quoting Lawrence H. Tribe, American Constitutional Law § 12-29, at 720-21 (1978)). We disagree.

Rule 5 contains two references to "annoyance." The first reference is in the rule's statement that "patrons ... shall not harass or *annoy* others...." (emphasis supplied). However, the rule does not simply prohibit annoying behavior, but also lists specific behavior that is deemed annoying to others. [34] Hence, this proscription does not require a subjective determination of what might be considered annoying to other patrons.

Rule 5 also prohibits "staring at another person with the intent to annoy that person [and] ... following another person about the building with the intent to annoy that person." Again, the rule does not merely proscribe "annoying" behavior; it proscribes staring and following. Annoyance only has significance with regard to the intent *of the person staring* or *following,* not the person stared at or followed.[35] Accordingly, the traditional "annoyance" concerns do not exist in this case.

Rule 9:

The district court held that the rule which states, "[p]atrons whose bodily hygiene is offensive as to constitute a nuisance to other persons shall be required to leave the building," was also void for vagueness because "the only indication within the policy as to what constitutes a `nuisance' is hygiene that `annoys' others." Moreover, the court held that "[t]he policy neither contains nor refers to identifiable standards, thereby failing to provide adequate notice to potential library patrons." 765 F.Supp. at 194.

Although we agree that the "nuisance" standard contained in this rule is broad, in our view it is necessarily so, for it would be impossible to list all the various factual predicates of a nuisance. As Professor Tribe has noted, "in any particular area, the legislature confronts a dilemma: to draft with narrow particularity is to risk nullification by easy invasion of the legislative purpose; to draft with great generality is to risk ensnarement of the innocent in a net designed for others." Lawrence H. Tribe, American Constitutional Law § 12-31, at 1033 (2d 1988) (footnote omitted). In this case, however, the rule's broad sweep is not synonymous with vagueness. The determination of whether a given patron's hygiene constitutes a "nuisance" involves an objective reasonableness test, not an annoyance test. *See* W. Prosser, Law of Torts § 87 at 577-581 (4th ed. 1971) (defendants conduct constitutes a nuisance only where it is unreasonable under the circumstances and substantially interferes with other interests at stake). Furthermore, the term "nuisance" has long been understood in New Jersey as including "[a]nything that unduly interferes with the exercise of the common right." *Mayor & Council of Alpine v. Brewster,* 7 N.J. 42, 50, 80 A.2d 297, 300 (1951). Thus, it was appropriate for the Library to craft its rules with regard for the New Jersey law.

D. *Equal Protection/Due Process*

The district court found that rule 9 violated the Fourteenth Amendment to the United States
1269 Constitution in two respects. First, the court held that the policy improperly: *1269 makes personal

attributes such as appearance, smell, and manner of cleanliness determinative factors in the library staff's enforcement of the policy. Because the library policy's prohibition on offensive hygiene is in no way restricted to instances of actual, material disruptions which are incompatible with the library's function ... the restriction impinges upon individual liberty and sanctions that which may not be sanctioned merely on the basis of `annoyance.'

765 F.Supp. at 195.

Because in the district court's view this rule "imping[es] upon individual liberty in an arbitrary and discriminatory manner without cause, justification, or reason," 765 F.Supp. at 195, it held that the rule violated the due process clause. Second, the court determined that, since the Library enacted rules 1, 5 and 9 "with the explicit intention of restricting plaintiff's (and other homeless persons') access to the library," 765 F.Supp. at 195, such action constituted a violation of the equal protection clause.

We have already indicated that the district court's determination that the Library may only prohibit conduct that is "actually and materially" disruptive is erroneous. Furthermore, as is evident from our previous discussion, we find that the rules are not arbitrary. In addition, we find that the record is devoid of any facts that support the court's determination that the Library acted with a discriminatory intent. In contrast, the record indicates that the Library enacted these provisions to provide a fair method to expel any disruptive patron, so as to achieve optimum Library use.[36]

E. *New Jersey Law*

Kreimer's final argument is that the rules violate New Jersey constitutional law. He contends correctly that the states are free to extend more sweeping constitutional guarantees to their citizens than does federal law, as federal constitutional law constitutes the floor, not the ceiling, of constitutional protection. *Michigan v. Long*, 463 U.S. 1032, 1040, 103 S.Ct. 3469, 3476, 77 L.Ed.2d 1201 (1983). He further correctly points out that New Jersey's free speech and free assembly protections are more far-reaching than their federal counterparts. However, these contentions do not result in a finding that the rules violate the New Jersey Constitution. Although the district court agreed with **Kreimer's** contention, relying principally upon three decisions to support its analysis, we find that these decisions are readily distinguishable and we predict that the Supreme Court of New Jersey would deem the rules constitutional under state law.[37]

In *Camarco v. City of Orange*, 61 N.J. 463, 295 A.2d 353 (1972), the plaintiff was arrested and charged with loitering in a local parking lot in violation of a city ordinance and brought a declaratory judgment action alleging that the ordinance was unconstitutionally vague. The New Jersey Supreme Court rejected that contention. It held that the Appellate Division of the Superior Court had construed the statute to prohibit "such loitering conduct as clearly will cause an immediate, actual physical violent reaction from any person, which violent reaction will cause a threat to the peace and order of the public," *id.* at 466, 295 A.2d at 354, and this construction was clearly constitutional. On the basis
1270 of the foregoing, the district court determined that "New Jersey law ... requires an actual *1270 or imminent disturbance standard." 765 F.Supp. at 197. Two factors render *Camarco* inapposite. First,

the ordinance at issue there was criminal, whereas the rules at issue in this case are purely civil. We have already indicated that civil enactments are reviewed with greater leniency than criminal ones. Second, although the court held that the Appellate Division's construction of the ordinance was constitutional, the court did not intimate that any other construction would have necessarily rendered the ordinance unconstitutional. It simply does not follow that because an ordinance is constitutional as narrowly construed, it would be unconstitutional if broader in scope.

Next, in State v. Schmid, 84 N.J. 535, 423 A.2d 615 (1980), *app. dismissed,* 455 U.S. 100, 102 S.Ct. 867, 70 L.Ed.2d 855 (1982), the defendant, a member of the Labor Party, distributed pamphlets concerning the Labor Party on the campus of Princeton University although he had been forbidden to do so. When university security guards arrested the defendant for violating the university's regulations governing on-campus distribution of materials, he contended that the arrest violated his rights of freedom of speech and expression. In response, the Supreme Court of New Jersey determined that the defendant had a constitutional right to distribute political information on campus which stemmed from the New Jersey Constitution.

According to the district court, *Schmid* "clearly required that a `reasonable' regulation turn on actual, material disruption." 765 F.Supp. at 197. *Schmid* does not so hold. Rather, the court in *Schmid* recognized that persons may enter private property to exercise constitutional rights under certain conditions, provided such entry is consistent with the nature of the property, the nature and extent of the public's invitation to use the property and the purpose of the expressive activity. *Id.* at 562, 423 A.2d at 630.[38] This holding is obviously immaterial in this case in light of our determination that the Library constitutes a limited public forum. Although the court further stated that "[r]egulations ... devoid of reasonable standards designed to protect both the legitimate interests of the University as an institution of higher education and the individual exercise of expressional freedom cannot constitutionally be invoked to prohibit the otherwise noninjurious and reasonable exercise of such freedoms," *id.* at 567, 423 A.2d at 632, we have already indicated that the Library rules contain reasonable standards that adequately safeguard the competing interests at stake.

Finally, in Uston v. Resorts International Hotel, Inc., 89 N.J. 163, 445 A.2d 370 (1982), the Supreme Court of New Jersey determined that, because a casino had opened up its property to the public, it could not exclude card-counters from its premises as this exclusion is unreasonable. It stated, "when property owners open their premises to the general public in pursuit of their own property interests, they have no right to exclude people unreasonably. On the contrary, they have a duty not to act in an arbitrary or discriminatory manner toward persons who come on their premises." *Id.* at 173, 445 A.2d at 375. Inasmuch as the card-counter had not disrupted the functioning of any casino operations, and did not threaten its safety, he could not be excluded. *Uston* has nothing to do with this case, for we have already held that the rules are reasonable and that the Library did not act in an arbitrary or discriminatory manner in enacting them. Furthermore, a violation of the rules would disrupt the smooth functioning of the Library.

III.

CONCLUSION

The order of May 22, 1991, will be reversed as the rules are not invalid on their face. The case will be remanded to the district court for resolution of the remaining issues and for entry of a partial summary
1271 *1271 judgment in favor of the Library, upholding the validity of the rules.[39]

SUR PETITION FOR REHEARING

April 21, 1992.

PRESENT: SLOVITER, *Chief Judge,* and BECKER, STAPLETON, MANSMANN, GREENBERG, HUTCHINSON, SCIRICA, COWEN, NYGAARD, ALITO, ROTH, and SEITZ, *Circuit Judges.*

The petition for rehearing filed by the appellee in the above captioned matter having been submitted to the judges who participated in the decision of this court and to all the other available circuit judges of the court in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court in banc, the petition for rehearing is denied.

[1] That section provides that "[a]ny two or more municipalities may unite in the support, maintenance and control of a joint free public library for the use and benefit of the residents of such municipalities."

[2] N.J.Stat.Ann. § 40:54-9 (West 1991) provides that the Board is to be comprised of:

seven to nine members, one of whom shall be the mayor or other chief executive officer of the municipality, one of the local superintendents of schools, or in the event that there be no such official, the principal with power of supervision over the local school system, or in case such municipality shall have none of the school officials hereinbefore mentioned, then the president of the board of education, and from five to seven citizens to be appointed by the mayor or chief executive, at least four of who [sic] shall be residents of the municipality.

[3] We, of course, do not make factual findings on this appeal concerning **Kreimer's** conduct.

[4] The parties inadvertently cited to a draft version of the rules, and the district court relied on the draft version in rendering its decision. 765 F.Supp. at 184-85. Because the variations between the draft version and the final version are inconsequential, there is no need to remand the case for a re-evaluation by the district court.

[5] **Kreimer** did not challenge the constitutionality of rule 6 either before the district court or on appeal.

[6] The complaint additionally set forth a libel claim against defendant Rice only, but on May 14, 1991, the parties stipulated to a dismissal of this claim.

[7] On November 21, 1990, **Kreimer** filed another amended complaint adding the **Morristown** Police Captain as a defendant.

[8] The district court modified its original order to indicate that it was not invalidating the rules to the extent that they required the wearing of shoes or shirts or barred the playing of audio equipment or talking or singing which disrupts the Library or its occupants.

[9] Although the district court entered an order permanently enjoining the Library from enforcing various rules, it did not employ the traditional balancing test to determine the propriety of the injunction and instead based the order on its conclusion that the rules were unconstitutional. However, we note that the standard of review for injunctions, which is the "abuse of discretion" standard, *International Union, United Auto, Aerospace and Agr. Implement Workers of America, UAW v. Mack Trucks, Inc.*, 820

F.2d 91, 95 (3d Cir.1987), is the same as the one we follow here, for "[a]n abuse of discretion exists where the district court's decision rests upon a clearly erroneous finding of fact, *an errant conclusion of law,* or an improper application of law to fact." *Id.* (emphasis supplied).

[10] To place its jurisprudence within a consistent frame, the Court in its later decisions has placed its pre-*Perry* decisions within *Perry's* framework.

[11] The Court determined that the CFC itself, though intangible, constituted the "forum" for purposes of the Court's First Amendment analysis. *Id.,* 473 U.S. at 801, 105 S.Ct. at 3448. However, when analyzing the nature of the forum, the Court considered the government's right to control the "federal workplace." *Id.* at 806, 105 S.Ct. at 3451.

[12] The Court also reiterated that the mere occurrence of expressive activity in a forum does not inexorably lead to the conclusion that the forum is public. *Id.* at 805, 105 S.Ct. at 3450.

[13] *See also* *Hazelwood School District v. Kuhlmeier,* 484 U.S. 260, 267, 108 S.Ct. 562, 568, 98 L.Ed.2d 592 (1988) (the government opens a designated public forum where "'by policy or practice' [it permits] ... '*indiscriminate* use by the general public' ... or some segment of the public") (emphasis supplied) (quoting *Perry,* 460 U.S. at 47, 103 S.Ct. at 956).

The portent of *Kokinda* is unclear, as four justices dissented from the determination that the sidewalk did not constitute a public forum, 110 S.Ct. at 3126-33, and Justice Kennedy concurred only in the judgment of the four-justice plurality on the ground that, even if the sidewalk were a public forum, the regulations survived the appropriate level of judicial scrutiny. *Id.* at 3125-26.

[14] *See* footnote 21, *infra.*

[15] We read the word "traditional" in this phrase as signifying a quintessential forum such as a park, street or sidewalk.

[16] *See* *Gregoire v. Centennial School District,* 907 F.2d 1366, 1371 (3d Cir.), *cert. denied,* ____ U.S. ____, 111 S.Ct. 253, 112 L.Ed.2d 211 (1990).

[17] This factor distinguishes *Kokinda* from our case. In *Kokinda,* the government merely *permitted* limited First Amendment activities to take place on the sidewalk in front of the post office, whereas here the government intentionally opened the Library for the exercise of specific First Amendment activities.

[18] We do not construe the Court's statements in *Perry* and *Hazelwood School District v. Kuhlmeier,* 484 U.S. at 267, 108 S.Ct. at 568, that designated public fora are intentionally opened to "indiscriminate" use by the public to signify that all First Amendment activities must be permitted in any designated public forum. Indeed, the Court's own decisions would undermine this construction as it is unlikely that the Court in *Southeastern Promotions, Limited v. Conrad,* 420 U.S. 546, 95 S.Ct. 1239, would have required the government to permit speeches and leafleting in the municipal auditorium although it deemed the auditorium to constitute a designated public forum.

[19] In *Cornelius,* the school's practice was "to require permission from the individual school principal before access to the system to communicate with teachers was granted." 473 U.S. at 803, 105 S.Ct. at 3450.

[20] We could make a more definitive determination concerning the extent of use if, for example, the record included the Library's charter. However, the record is barren of this information, and we are bound to decide the case on the basis of the facts before the district court. We also point out that in its letter of July 14, 1989, to the ACLU-NJ, the Library indicated that access to it was granted "to all." Thus, this is not a case in which the excluded patron was not within the class of persons entitled to use the Library in the first instance, as might have been true in the case of a technical or specialized library. While we are dealing with a facial attack, the parties have supplied some facts and we refer to them.

In any event, a contrary determination concerning the government's retention of discretion would not alter our conclusion in this case, for if the Library is not a designated public forum but is merely a non-public forum, then the rules at issue need only be examined to ensure that they are reasonable and not an effort to suppress a certain viewpoint. *See* *Kokinda,* 110 S.Ct. at 3121. We thus do not confront a situation such as that recently before us in *Brody v. Spang,* in which the record was inadequate for a determination of the character of the forum so that a remand was required.

[21] While we find the "limited" public forum doctrine to be a useful analytical concept, we would reach the same conclusion simply following the Supreme Court's declarations regarding "designated" public fora. It is clear that the Court's decisions recognize that a government does not open a forum for the exercise of all First Amendment activities merely because it has

opened the forum to the public for the exercise of certain specified First Amendment activities. *See* Perry, 460 U.S. at 45 n. 7, 103 S.Ct. at 955 n. 7 ("A public forum may be created for a limited purpose....") Indeed, the Court itself, without focusing on the analytical distinction between "designated" and "unlimited" public fora as developed here, has used the words interchangeably.

The identification of a sub-category of designated public fora reflects the flexible approach the Supreme Court has recommended, and minimizes the risk of a wooden and mechanistic application of the public forum labels.

[22] The Library relies on the following decisions to support its contention that the Library is not a designated public forum, but they are readily distinguishable. First, in *Adderley v. Florida*, 385 U.S. 39, 41, 87 S.Ct. 242, 244, 17 L.Ed.2d 149 (1966), the Court held that the arrests and subsequent convictions of student demonstrators for trespass with malicious and mischievous intent, arising from their entry into jail grounds and obstruction of vehicular traffic to a jail entrance, did not violate the students' First Amendment rights. The Court determined that a jail did not constitute a public forum, traditional or otherwise, for "[j]ails, built for security purposes," are not open to the public. *Accord*, *Jones v. North Carolina Prisoners' Labor Union*, 433 U.S. 119, 97 S.Ct. 2532, 53 L.Ed.2d 629 (1977) (prison is not a public forum). Clearly, a jail, unlike a public library, is not opened to the public to promote the exercise of First Amendment activities.

In *Lehman v. City of Shaker Heights*, 418 U.S. 298, 94 S.Ct. 2714, 41 L.Ed.2d 770 (1974), the Court similarly determined that advertising space on vehicles of a city transit system was not a public forum for in this context "the city is engaged in commerce.... The car card space, although incidental to the provision of public transportation, is part of the commercial venture." *Id.* at 303, 94 S.Ct. at 2717. A free public library, in contrast, is not a commercial venture.

Greer v. Spock, 424 U.S. 828, 96 S.Ct. 1211, 47 L.Ed.2d 505 (1976), addressed whether military regulations that prohibit partisan political speeches and the distribution of literature without prior approval within the reservation violated the First Amendment. The Court concluded that the regulations did not, for "[a] necessary concomitant of the basic function of a military installation has been `the historically unquestioned power of [its] commanding officer summarily to exclude civilians from the area of his command ...' The notion that federal military reservations, like municipal streets and parks, have traditionally served as a place for free public assembly and communication of thoughts by private citizens is thus historically and constitutionally false." *Id.* at 838, 96 S.Ct. at 1217. Again, a public library is specifically dedicated to the exercise of certain First Amendment activities, unlike a military reservation.

The Court's decision in *United States Postal Service v. Council of Greenburgh Civic Ass'ns*, 453 U.S. 114, 101 S.Ct. 2676, 69 L.Ed.2d 517 (1981), is also consistent with our view that the Library constitutes a limited public forum. The Court there held that a letterbox should not be treated any differently for First Amendment purposes than a military base, prison or advertising space on mass transit vehicles. In the Court's view, the purpose of mailboxes was to ensure the "maintenance of a nationwide system for the safe and efficient delivery of mail," *id.* at 130, 101 S.Ct. at 2685, and uses which were incompatible with that *purpose* could be constitutionally prohibited. Here the Library's very purpose is to facilitate the receipt of information; the use of the Library for the exercise of the right to receive information is necessarily not incompatible with that purpose.

[23] We further note that our determination is consistent with *International Society for Krishna Consciousness, Inc. v. New Jersey Sports and Exposition Authority*, 691 F.2d 155, 160 (3d Cir. 1982) (indicating in dictum that a public library is a limited public forum under *Brown v. Louisiana*, 383 U.S. at 131, 86 S.Ct. at 719) and *Concerned Women for America, Inc. v. Lafayette County*, 883 F.2d 32, 34 (5th Cir.1989) (district court's injunction based on its determination that public library constituted a public forum was not abuse of discretion). We thus question the conclusion reached by the district court in *AFSCME Local 2477 v. Billington*, 740 F.Supp. 1, 7 (D.D.C.1990).

[24] While we find rules 1 and 5 valid under the reasonableness test which we employ in light of our conclusion that the restrictions are not aimed at activities which the government has specifically permitted in the Library — a limited public forum — we note as well that, to a large extent, the rules regulate non-expressive activity (*i.e.*, activity not protected under the First Amendment). *Regardless* of the nature of the forum, the First Amendment does not prohibit regulation of non-expressive activity unless the regulation "impose[s] a disproportionate burden upon those engaged in protected First Amendment activities." *Arcara v. Cloud Books, Inc.*, 478 U.S. 697, 704-05, 106 S.Ct. 3172, 3176, 92 L.Ed.2d 568 (1986). However, we need not determine the extent to which these rules regulate expressive activity or impose a disproportionate burden inasmuch as we conclude that the regulations are entirely reasonable.

[25] In addition to finding the rules valid under the reasonableness test we are applying, we disagree with the district court's statement that, under *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503, 89 S.Ct. 733, 21 L.Ed.2d 731, and *Grayned v. Rockford*, 408 U.S. 104, 92 S.Ct. 2294, 33 L.Ed.2d 222 (1972), the Library may only enact time, place and

manner restrictions on activity that "actually and materially interferes with the peaceful and orderly management of the public space." 765 F.Supp. at 188.

In *Tinker*, three students were suspended under a school ordinance that prohibited the wearing of black armbands in opposition to the Vietnam War. The Supreme Court held that this ordinance, which amounted to a "prohibition of a *particular* expression," 393 U.S. at 509, 89 S.Ct. at 738 (emphasis added), violated the students' constitutional rights to free speech, and although the Court recognized that school officials had authority to regulate behavior in the school, the Court found that there was no "reason to anticipate that the wearing of armbands would substantially interfere with the work of the school or impinge upon the rights of others." 393 U.S. at 509, 89 S.Ct. at 738. In contrast, the Library logbook contains a multitude of references detailing the alleged disruption that occurs when certain patrons choose not to use the Library materials while they remain in the Library. Thus, from its viewpoint it was reasonable for the Board to forecast that actual disruption would occur. In addition, *Tinker* involved an attempted suppression of symbolic political speech based on the content of that speech. The Supreme Court has recognized that such regulations are subjected to the strictest scrutiny. *Federal Election Commission v. National Conservative Political Action Committee*, 470 U.S. 480, 493, 105 S.Ct. 1459, 1466, 84 L.Ed.2d 455 (1985). There is no evidence to support a similar attempt on the part of the Library officials. Finally, the Court in *Tinker* recognized that "personal intercommunication among the students," *id.*, 393 U.S. at 512, 89 S.Ct. at 739, constituted an important part of a student's education. However, interactive communication is not an important part of the intended use of the Library; indeed, it is contrary to its smooth functioning. The Court's observation in *Tinker* that First Amendment activities that are "incompatible" with the nature of the public forum may be prohibited supports our conclusion.

In *Grayned v. City of Rockford*, 408 U.S. 104, 92 S.Ct. 2294, the Court upheld a criminal regulation prohibiting a person on public grounds or private grounds adjoining a school from wilfully assisting or making noise that "disturbs *or tends to disturb* the peace or good order...." *Id.* at 107-08, 92 S.Ct. at 2298 (emphasis supplied). This determination also supports our conclusion that the disturbance need not be actual. Further, inasmuch as the Court interpreted the regulation to prohibit behavior that would imminently interfere with normal school activities based on its review of state court decisions interpreting similar statutes, we note that the rules at issue in this case are civil, and do not require the same degree of precision.

Finally, we reiterate that the Library is a limited designated public forum. The Library need only permit use of its facilities which is consistent with the intent of the government when opening this forum to the public. Even within the scope of these consistent uses, it seems obvious that the Library may regulate conduct protected under the First Amendment which does not actually disrupt the Library. For example, we do not doubt that a Library may limit the number of books which a patron may borrow from it at any time, even though no request has been made by another patron for the book which the patron at his or her borrowing limit desires to withdraw. Similarly we do not doubt that the Library may limit the length of time during which a book may be borrowed. Indeed, the district court itself implicitly acknowledged this point when it modified its order so that it did not invalidate the rule requiring the wearing of shoes, since it can hardly be imagined that a person simply by being barefoot would disrupt the Library.

We further reject the district court's intimation that the rules would prohibit the wearing of an armband for political purposes. It is clear to us that, so long as the patron is engaged in the peaceful and non-disruptive use of the Library, the adornment of an armband is irrelevant.

[26] Our discussion of rule 9 with regard to the vagueness issue below is relevant here as well.

[27] *See Clark v. Community for Creative Non-Violence*, 468 U.S. at 296, 104 S.Ct. at 3070 (validating a park regulation which was intended to require users to "maintain[] the parks ... in an attractive and intact condition, readily available to the millions of people who wish to see and enjoy them by their presence").

[28] **Kreimer**, in contrast, asserts that, because the rules "are aimed at behavior that merely `annoys' other persons'[] subjective sensibilities ... [and] does not condition exclusion upon actual or imminent disruption or disturbance as a result of such behavior or hygiene," it does not reasonably effectuate its goals. We do not share his view for two reasons. First, we have already noted that the Library is not confined to prohibiting behavior that is actually disruptive. Additionally, rule 9 *does* prohibit behavior that is actually disruptive, for the offensive nature of the patron's bodily hygiene must rise to the level of a nuisance before the patron may be expelled from the Library.

[29] The district court did find that the provision prohibiting the playing of audio equipment in the Library did not violate the overbreadth doctrine. 765 F.Supp. at 192.

[30] The district court relied heavily and, in our view, improperly, on the Supreme Court's decision in *Brown v. Louisiana*, 383 U.S. 131, 86 S.Ct. 719, 15 L.Ed.2d 637 (1966), to hold that rule 1 contravenes the overbreadth doctrine. In *Brown*, five black men

were charged with violating a breach of the peace statute for refusing to leave the reading room of a public library when asked to do so. These men remained in the library to peacefully protest the library's unequal treatment of blacks. In reversing their convictions, the Court held that their behavior, which included "staring vacantly," *id.* at 140, 86 S.Ct. at 723, did not constitute a breach of the peace. However, the Court was quick to point out that "the circumstances here were such that no claim can be made that use of the library by others was disturbed by the demonstration.... Were it otherwise, a factor not present in this case would have to be considered. Here, there was no disturbance of others, no disruption of library activities, and *no violation of any library regulations.*" *Id.* at 142, 86 S.Ct. at 724 (emphasis supplied). Justice White, concurring in the result, underscored the library's authority to promulgate and enforce regulations that could, in his view, constitutionally prohibit the activities engaged in by petitioners. He wrote:

Were it clear from this record that lingering in a public library for 10 minutes after ordering a wanted book contravened some explicit statute, ordinance, or library regulation of general application, or even if it were reasonably clear that a 10-minute interlude between receiving service and departure exceeded what is generally contemplated as a normal use of a public library, I would have difficulty joining in a reversal of this case.... Nor would I deem the First Amendment to forbid a municipal regulation limiting loafing in library reading rooms.

Id. at 149, 86 S.Ct. at 728.

We are faced with a different factual situation. First, the plurality in *Brown* did not even discuss the overbreadth doctrine, let alone decide the case on that basis. Second, the Library has promulgated and attempted to enforce a rule that specifically requires that patrons use the Library materials while they remain in the Library. We agree with Justice White that the First Amendment does not prohibit this slight restriction. The same logic holds true with respect to rule 5.

[31] The district court did not discuss whether rule 9 violated the overbreadth doctrine.

[32] Mr. Starrett is the Library's counsel.

[33] We note that our interpretation is consistent with that of Justice White, who stated that a public library could properly proscribe "loafing," or other non-"normal" library activities. *Brown*, 383 U.S. at 149, 86 S.Ct. at 728 (White, J., concurring).

[34] In this respect, the rule is vastly different than the one considered by the Court in *Coates v. City of Cincinnati*, 402 U.S. 611, 91 S.Ct. 1686, 29 L.Ed.2d 214 (1971), which prohibited people from behaving "in a manner annoying to persons passing by." *Id.* at 611, 91 S.Ct. at 1687.

[35] Finally, although the district court did not specifically address this provision, we hold that the prohibition of behavior which "reasonably can be expected to disturb other persons," is not vague and does not endow Library personnel with undue discretion. In contrast to the purely subjective standard at issue in *Coates*, this rule prohibits behavior which reasonably — *i.e.*, objectively — could result in the disturbance of others.

[36] Further, in any event, as the homeless do not constitute a suspect class, the rules need only survive the lowest standard of review for equal protection purposes. Our previous discussion forecloses any serious contention that they do not pass muster under this standard.

[37] Although the Supreme Court of New Jersey has observed that "[t]he constitutional pronouncements, more sweeping in scope than the language of the First Amendment, were incorporated into the organic law of this State with the adoption of the 1844 Constitution," *State v. Schmid*, 84 N.J. 535, 557, 423 A.2d 615, 626-27 (1980) (footnote omitted), *app. dismissed*, 455 U.S. 100, 102 S.Ct. 867, 70 L.Ed.2d 855 (1982), the State's expanded free speech and assembly protection lies in its citizens' right to *entry* of *private* property that has been opened to the public. We do not think that the Supreme Court of New Jersey would reject the analysis we have made with respect to the *use* of public property.

[38] This analysis is similar to that in *Perry* and *Cornelius*. There is no reason to believe that the New Jersey Supreme Court would reach a different conclusion than ours based on the same criteria.

[39] On February 28, 1992, a stipulation of dismissal of certain of the damage claims in this action was filed in the district court and it has been forwarded to this court. We have examined the stipulation and have concluded that it does not affect the issues on this appeal. Apparently the parties are of the same view, as none has moved to dismiss the appeal or suggested that this appeal is now settled or is moot.

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925 F.Supp. 880 (1996)

David WAYFIELD, Plaintiff,

v.

TOWN OF TISBURY, et al., Defendant.

Civil A. No. 92-11461-RCL.

United States District Court, D. Massachusetts.

May 21, 1996.

881 *881 David **Wayfield**, Vineyard Haven, MA, pro se.

Regina M. Gilgun, Douglas I. Louison, Merrick and Louison, Boston, MA, for Defendant.

OPINION

LINDSAY, District Judge.

This matter is before the court on the defendants' motion for summary judgment. The plaintiff, David **Wayfield**, has one remaining claim, others having been disposed of by the Court of Appeals for the First Circuit (***Wayfield** v. **Tisbury**,* No. 93-1535, slip op., 1993 WL 487830 (1st Cir. Nov. 29, 1993)) or by an order of this court (***Wayfield** v. **Tisbury**,* No. 92-11461, slip op. (D.Mass. Sept. 8, 1995)). **Wayfield** claims that officials of the Vineyard Haven Public Library in **Tisbury**, Massachusetts failed to afford him constitutionally-required due process when they suspended his library privileges without a hearing. The defendants, Marjorie Convery, director of the library, and the library trustees, assert that **Wayfield** has no liberty or property interest in access to the Vineyard Haven Public Library and that, for that reason, his due process claim must fail.

For the following reasons, the defendants' summary judgment motion on this claim is DENIED.

I. Standard for Summary Judgment

Summary judgment is appropriate as to a claim or defense "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed.R.Civ.P. 56(c). The moving party has the burden of establishing the lack of a genuine, material factual issue. *Snow v. Harnischfeger Corp.*, 12 F.3d 1154, 1157 (1st Cir.1993), *cert. denied*, ___ U.S. ___, 115 S.Ct. 56, 130 L.Ed.2d 15 (1994) (*citing Finn v. Consolidated Rail Corp.*, 782 F.2d 13, 15 (1st Cir.1986)). It appears that there are no disputed material facts in this case. The question to be decided therefore is whether the defendants are entitled to judgment as a matter of law. The court concludes that they are not.

II. Facts

Except where otherwise noted, the following facts are not disputed in this case, and where there are disputes about the facts, those disputed facts are not material to the disposition of the present motion.

Wayfield is an adherent of a movement called "historical revisionism." He believes that the Vineyard Haven Public Library "discriminates against [white] Christians in the use of its facilities and resources [and] plays down the holocaust of some 50 million Christians in the Soviet Union in Eastern Europe under Judeo-Communism and plays up the Jewish holocaust under the Third Reich." Amended Complaint, pars. 81, 82. For some time he has waged a campaign to expose "his neighbors and especially the children of **Tisbury**" to writers who espouse the doctrines of historical revisionism. Amended Complaint, par. 13.

On December 14, 1990, **Wayfield** went to the Vineyard Haven Public Library where he spoke to Convery in an attempt to persuade her to add to the library's collection several books and periodicals on historical revisionism. *882 **Wayfield** says that sometime later that day — Convery says the next day — he was approached by Convery about a menorah that Convery thought was missing from the library. Convery questioned **Wayfield** insistently about the apparently missing menorah[1] and asked to inspect a shoulder bag **Wayfield** was carrying. **Wayfield** refused to permit his bag to be inspected. **Wayfield's** version of what happened is that Convery screamed at him, assaulted him, and tried to grab the shoulder bag. In any event, after the encounter with Convery, **Wayfield** left the library.

On December 18, 1990, **Wayfield** received a certified letter from Convery informing him that "[a]s a result of the disruptive incident that occurred on Saturday, December 15, 1990, in the Vineyard Haven Public Library and the disappearance of the menorah, your presence on the property or in the building will no longer be permitted." On December 20, 1990, **Wayfield** received another letter, this time from the library trustees, advising him that because of the "disruptive incident which occurred on Saturday afternoon, December 15, 1990," his library privileges were suspended until April 2, 1991. When **Wayfield** returned to the library in January, 1991, he was charged with trespassing. The trespassing charges were eventually dropped.

It does not appear from the record that in December, 1990 or January, 1991 the library had an established a policy for suspension of library privileges under circumstances like those presented in **Wayfield's** case.

III. Discussion

Wayfield's claim is that, in depriving him of library access without affording him a hearing, the defendants deprived him of due process of law under the Fourteenth Amendment to the Constitution. The first step in determining whether a plaintiff has a due process claim is to identify a specific liberty or property interest affected by the alleged governmental action. *Board of Regents v. Roth*, 408 U.S. 564, 569, 92 S.Ct. 2701, 2705, 33 L.Ed.2d 548 (1972). The next step, if a liberty or property interest

has been affected, is to evaluate what process was due the plaintiff, and whether he was afforded it. *Id.; see also* Mathews v. Eldridge, 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976).

In this case, **Wayfield** argues that he has a liberty or property interest in using the public library. He bases this argument on the library's public nature ("Public libraries are tax-supported institutions, municipal, public service corporations." Plaintiff's Brief on the Question of Due Process and Equal Protection ["Plaintiff's Brief"] at 1) and on his "liberty inherent in his classification of citizenship in the Commonwealth of Massachusetts." Plaintiff's Brief at 2. The defendants do not argue against this interpretation. They declare instead that "plaintiff's interest in attending the Vineyard Haven Public Library is neither recognized by state law nor is it a fundamental or natural right," Defendants' Supplemental Brief in Support of Their Motion for Summary Judgment ("Defendants' Supplemental Brief") at 3. They do not cite any cases to support that statement, and indeed they proceed upon the assumption *arguendo* that the court nevertheless has determined that a right to access to a public library exists.

A. "Rights" Protected by Due Process

1. Two Classes of "Rights"

"Rights" that merit due process protection under the Fourteenth Amendment may be either of two types. The first of these are those rights deemed "fundamental" or "natural." Medina v. Rudman, 545 F.2d 244, 249 (1st Cir.1976) (*citing* Schware v. Board of Bar Examiners, 353 U.S. 232, 77 S.Ct. 752, 1 L.Ed.2d 796 (1957)); Meyer v. Nebraska, 262 U.S. 390, 43 S.Ct. 625, 67 L.Ed. 1042 (1923). The second encompasses rights recognized by state law as being common to all citizens; being so recognized they achieve the status of "liberty" or "property" interests when they are altered or extinguished. Medina, 545 F.2d at 250 (*citing* Paul v. Davis, 424 U.S. 693, 708, 96 S.Ct. 1155, 1164, 47 L.Ed.2d 405 (1976)).

883 *883 Rights in the first class, that is, "fundamental rights," are "chiefly those having to do with marriage, procreation, contraception, family relationships and child rearing and education," and "the rights created by other provisions of the Constitution." Medina, 545 F.2d at 250, n. 7 (*citing* Paul, 424 U.S. at 712-13, 96 S.Ct. at 1166). They also include "the right to earn a living and engage in one's chosen profession." Medina, 545 F.2d at 249 (*citing* Schware, 353 U.S. 232, 77 S.Ct. 752, 1 L.Ed.2d 796 (1957)); Meyer v. Nebraska, 262 U.S. 390 (1923). **Wayfield** does not argue that his asserted liberty or property interest in using the library falls into these categories.

The second class of rights that merit due process protection comprises a much broader spectrum. Specifically, as noted above, it includes rights which have been recognized by state law and have thus become "liberty" or "property" for the purposes of the Fourteenth Amendment. The Supreme Court, in Logan v. Zimmerman Brush Co., 455 U.S. 422, 102 S.Ct. 1148, 71 L.Ed.2d 265 (1982), defined "property" as "an individual entitlement grounded in state law which cannot be removed except 'for cause.'"[2] *Id.* at 430 (*citing* Memphis Light, Gas & Water Div. v. Craft, 436 U.S. 1, 11-12, 98 S.Ct. 1554, 1561-62, 56 L.Ed.2d 30 (1978)); Goss v. Lopez, 419 U.S. 565, 573-74, 95 S.Ct. 729,

735-736, 42 L.Ed.2d 725 (1975); *Board of Regents v. Roth*, 408 U.S. 564, 576-78, 92 S.Ct. 2701, 2708-10, 33 L.Ed.2d 548 (1972). The Court went on to enunciate the breadth of possible "property" interests:

> Once that characteristic is found, the types of interests protected as "property" are varied and, as often as not, intangible, relating "to the whole domain of social and economic fact." *National Mutual Ins. Co. v. Tidewater Transfer Co.*, 337 U.S. 582, 646 [69 S.Ct. 1173, 1195, 93 L.Ed. 1556] (1949) (parallel citations omitted) (Frankfurter, J., dissenting); *Arnett v. Kennedy*, 416 U.S. 134, 207-208, [94 S.Ct. 1633, 1670-1671, 40 L.Ed.2d 15] (parallel citations omitted); *Board of Regents v. Roth*, 408 U.S. at 571-572, 576-577 [92 S.Ct. at 2706-2607, 2708-2709] (1972) (parallel citations omitted). *See, e.g., Barry v. Barchi*, 443 U.S. 55 [99 S.Ct. 2642, 61 L.Ed.2d 365] (1979) (parallel citations omitted) (horse trainer's license protected); *Memphis Light, Gas & Water Div. v. Craft*, [436 U.S. 1, 98 S.Ct. 1554, 56 L.Ed.2d 30 (1978)] (utility service); *Mathews v. Eldridge*, 424 U.S. 319, [96 S.Ct. 893, 47 L.Ed.2d 18] (1976) (parallel citations omitted) (disability benefits); *Goss v. Lopez*, [419 U.S. 565, 95 S.Ct. 729, 42 L.Ed.2d 725 (1975)] (high school education); *Connell v. Higginbotham*, 403 U.S. 207, [91 S.Ct. 1772, 29 L.Ed.2d 418 (1971)] (parallel citations omitted) (government employment); *Bell v. Burson*, 402 U.S. 535 [91 S.Ct. 1586, 29 L.Ed.2d 90] (1971) (parallel citations omitted) (driver's license); *Goldberg v. Kelly*, 397 U.S. 254, 90 S.Ct. 1011, 25 L.Ed.2d 287 (1970) (parallel citations omitted) (welfare benefits).

Logan, 455 U.S. at 430-31, 102 S.Ct. at 1154-55. To this list, the court added the right to use the Fair Employment Practices Act's adjudicatory procedures. *Logan*, 455 U.S. at 431, 102 S.Ct. at 1155.

The Court of Appeals for the First Circuit has found the following to be protected rights which cannot
884 be denied without due process: a doctor's property right in his or her medical *884 license, *Lowe v. Scott*, 959 F.2d 323 (1st Cir.1992); a previous court's finding that the plaintiff merited a license to operate a pool hall, *Roy v. City of Augusta*, 712 F.2d 1517 (1st Cir.1983); and the right to apply for a driver's license, *Raper v. Lucey*, 488 F.2d 748 (1st Cir.1973). By contrast, courts in this Circuit have found that the "right" to apply for a liquor license, *Grendel's Den, Inc. v. Goodwin*, 662 F.2d 88 (1st Cir.1981), *reh'g en banc*, 662 F.2d 102, and the "right" to be licensed to operate electronic game machines, *O'Neill v. Nantucket*, 545 F.Supp. 449 (D.Mass.1982), *aff'd*, 711 F.2d 469 (1st Cir. 1983), are not rights protected by the due process guarantee.

2. Determining Whether the Right to Access to a Public Library is Recognized by State Law as a Right Common to All Citizens

Under the analysis in *Logan*, the first inquiry is whether **Wayfield** has "an individual entitlement grounded in state law," *Logan*, 455 U.S. at 430, 102 S.Ct. at 1154. In this case, neither party has cited any state statute or local law or regulation governing the maintenance and use of the library. Nor has the court found any such state statute or local law or regulation. Recourse to an applicable

statute or local law or regulation would help to resolve the issue of whether **Wayfield** has a protected liberty or property interest, because

> [t]he more narrowly drawn the statute or "the more circumscribed is the government's discretion (under substantive state or federal law) to withhold [the] benefit, the more likely that benefit constitutes `property,' for the more reasonable is reliance upon its continued availability and the more likely it is that a hearing would illuminate the appropriateness of withholding it in an individual case."

O'Neill, 545 F.Supp. at 452 (*quoting Beitzell v. Jeffrey*, 643 F.2d 870, 874 (1st Cir.1981)). Most of the cases cited above include an analysis of a state or a local law which creates the plaintiff's alleged "right." In this case, the parties, as noted, have pointed to no such state or local law.

In the absence of a state statute or local law, the court is left to reason from governing caselaw. The First Circuit's opinion in *Medina v. Rudman*, 545 F.2d 244 (1st Cir. 1976), *cert. denied*, 434 U.S. 891, 98 S.Ct. 266, 54 L.Ed.2d 177 (1977), provides an appropriate framework for analysis. *Medina* involved an application to participate in a grey-hound-racing license. The court in that case, albeit tentatively, stated that

> A state-recognized interest might also exist if [the state] law could be said to confer upon [the plaintiff] a right, upon equal terms with others generally, to be licensed so as to engage in a common activity or pursuit.... [I]t seems likely that when a state holds out a right to citizens to engage in an activity on equal terms with others, a state-recognized status exists.

Medina, 545 F.2d at 250. This excerpt could describe the issuance of a library card and the privilege of using public libraries. Though this theory of due process rights has its genesis and finds its most frequent expression in cases construing rights affecting employment, *see, e.g., Schware v. Board of Bar Examiners*, 353 U.S. 232, 77 S.Ct. 752, 1 L.Ed.2d 796 (1957) (application for bar examination); *Lowe v. Scott*, 959 F.2d 323 (1st Cir.1992) (medical license), the cited language from *Medina* does not specifically require that the "state-recognized interest" be related to employment. Indeed, the *Medina* court posited the "common activity or pursuit" rationale as a separate, independent reason for the Supreme Court's holding in *Schware*.[3]

The court in *Medina* distinguished the plaintiff's claimed "right" from the category described in the excerpt quoted above by pointing out that "racing licenses have not been viewed by the New Hampshire courts as open to all persons who meet prescribed standards. Rather they are treated as
885 discretionary with the racing Commission." *Medina*, 545 F.2d at 250. Applying this *885 distinction to **Wayfield**, the court is again disadvantaged by the lack of a state statute or local law (or even a policy statement) regarding the library's governing mechanisms. But it seems more likely that library access is intended to be "open to all persons who meet prescribed standards" (e.g., residency and minimum age) than that it is "treated as discretionary" by a supervisory board.

One final point: **Wayfield** argues that the *suspension* of his library privileges is an occurrence important enough to warrant due process protection. He is correct. There is a distinction in the

caselaw between plaintiffs who are applying for licenses and those who seek to bar the suspension or revocation of their licenses. Plaintiffs in the latter class, the already-licensed, have a vested property interest in the license, which forecloses denial without due process. Lowe v. Scott, 959 F.2d 323 (1st Cir.1992) (medical license); Roy v. City of Augusta, 712 F.2d 1517 (1st Cir.1983) (license to operate pool hall); Medina v. Rudman, 545 F.2d at 250 ("Doubtless once a license, or the equivalent, is granted, a right or status recognized under state law would come into being, and the revocation of the license would require notice and hearing ..." *id.*): Wall v. King, 206 F.2d 878 (1st Cir.1953), *cert. denied* 346 U.S. 915, 74 S.Ct. 275, 98 L.Ed. 411 (driver's license). Cases finding that plaintiffs have a "liberty or property" interest in a previously-granted license have been the foundation for cases determining that plaintiffs have a "liberty or property" interest in *applying* for a license. See, e.g., Schware v. Board of Bar Examiners, 353 U.S. 232, 77 S.Ct. 752, 1 L.Ed.2d 796 (1957) (right to apply for bar examination); Raper v. Lucey, 488 F.2d 748 (1st Cir.1973) (right to apply for driver's license). **Wayfield** held library privileges, which were suspended. His case thus falls into the first category — cases in which the plaintiff already holds a license — a category in which, the First Circuit has recognized, due process is required.

Thus, under the analysis set forth in *Medina* and related cases, this court finds that **Wayfield** states a sufficient claim to support a finding that the suspension of his access to the library was a deprivation of a "liberty or property right." The court must next determine whether **Wayfield** was afforded pre- or postdeprivation due process sufficient to satisfy the mandate of the Fourteenth Amendment.

B. What Process is Due

Wayfield's loss of his library privileges is only actionable under § 1983 if he was deprived of his liberty or property interest *without due process of law.* Zinermon v. Burch, 494 U.S. 113, 125, 110 S.Ct. 975, 985, 108 L.Ed.2d 100 (1990) (*citing* Parratt v. Taylor, 451 U.S. 527, 537, 101 S.Ct. 1908, 1914, 68 L.Ed.2d 420 (1981)). Thus, the court must determine what process, if any, **Wayfield** was afforded, and whether that process was sufficient under the Fourteenth Amendment.

The inquiry into the nature of process due a person when his or her rights are curtailed is ordinarily governed by the familiar three-part balancing test of Mathews v. Eldridge, 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976). That test requires that the court consider:

> First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Id., at 335, 96 S.Ct. at 903.

The Court in *Mathews,* retreating from the high-water mark of Goldberg v. Kelly, 397 U.S. 254, 90 S.Ct. 1011, 25 L.Ed.2d 287 (1970),[4] found that so-called "predeprivation hearings" (hearings
886 affording the person *886 whose liberty or property interest is at stake an opportunity to respond

before any deprivation of rights is effected) are not necessary before every curtailment of a protected right. Instead, in some cases, a postdeprivation hearing affords sufficient process. Thus, the three-part test quoted above is used to determine whether the necessary safeguards were in place, and is appropriate regardless of when the "process" was afforded, or, in the words of the Supreme Court, when the plaintiff had "notice of the case ... and [the] opportunity to meet it," *Mathews*, 424 U.S. at 348, 96 S.Ct. at 909 (*quoting Joint Anti-Fascist Comm. v. McGrath*, 341 U.S. 123, 171-72, 71 S.Ct. 624, 648-49, 95 L.Ed. 817 (1951) (Frankfurter, J., concurring)).

The rule in *Mathews* has since been explained by the Supreme Court. Under later cases considering "postdeprivation" due process, it is clear that such due process is an exception, and not the rule. Specifically, it applies in cases in which the government officials who are alleged to have deprived the plaintiff of his or her rights are found not to have been acting in accordance with approved procedure. In these cases, when the "random and unauthorized acts" of a state actor result in a deprivation of property, the proper inquiry is that set forth in *Parratt v. Taylor*, 451 U.S. 527, 101 S.Ct. 1908, 68 L.Ed.2d 420 (1981). In those situations

> the loss is not a result of some established state procedure and the State cannot predict precisely when the loss will occur. It is difficult to conceive of how the State could provide a meaningful hearing before the deprivation takes place. The loss of property, although attributable to the State as action under "color of law," is in almost all cases beyond the control of the State. Indeed, in most cases it is not only impracticable, but impossible, to provide a meaningful hearing before the deprivation. That does not mean, of course, that the State can take property without providing a meaningful postdeprivation hearing.

Id., at 541, 101 S.Ct. at 1916. The *Parratt* Court went on to adopt the reasoning of Justice (then Judge) Stevens, writing for the Seventh Circuit in *Bonner v. Coughlin*, 517 F.2d 1311 (7th Cir.1975), *modified en banc*, 545 F.2d 565 (1976), *cert. denied*, 435 U.S. 932, 98 S.Ct. 1507, 55 L.Ed.2d 529 (1978) and distinguishing the actions of a state official, acting in accordance with state policies, from the actions of a renegade state official:

> ... there is an important difference between a challenge to an established state procedure as lacking in due process and a property damage claim arising out of the misconduct of state officers. In the former situation the facts satisfy the most literal reading of the Fourteenth amendment's prohibition against "State" deprivations of property; in the latter situation, however, even though there is action "under color of" state law sufficient to bring the amendment into play, the state action is not necessarily complete.

Id., at 1319.

In *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 102 S.Ct. 1148, 71 L.Ed.2d 265 (1982), for example, the Court found that the plaintiff had a property right in his ability to sue his employer under the Fair Employment Practices Act. In that case, the state, which had negligently scheduled Logan's hearing after the 120-day limitations period, thus extinguishing Logan's right to his claim, was found

to have abridged Logan's property right, in violation of the due process clause. Logan, 455 U.S. at 433, 102 S.Ct. at 1156. Despite the fact that Logan had a claim against the state Fair Employment Practices Commission under state tort law, the Court held that that postdeprivation process was not sufficient to deny Logan his constitutional claim. Such an argument, the Court said, "misses *Parratt*'s point." Logan, 455 U.S. at 435, 102 S.Ct. at 1157. In *Logan,* unlike in *Parratt,* the plaintiff was challenging the state procedure itself, not the unauthorized actions of a state official. The *Logan* Court made it clear that this distinction is critical to the evaluation of whether postdeprivation due process is sufficient, or whether predeprivation process is required.

In the case at bar, the difficulty comes in distinguishing on which side of this bright line the actions of the officials of the library fall. The defendants, in their moving papers, make no reference to any
887 written or otherwise established procedure for the suspension *887 of library privileges that existed at the time the officials of the library took action against **Wayfield.** Nor have the defendants proffered anything which shows what the library has done in other, similar situations, if indeed there have been any. On this state of the record, then, it is not clear whether the appropriate inquiry as to what process is due should take place under the more general test of *Mathews* or under the exception set forth in *Parratt.*

In evaluating which of these inquiries properly governs this case, the court is instructed by the warnings set forth in a more recent Supreme Court case, Zinermon v. Burch, 494 U.S. 113, 110 S.Ct. 975, 108 L.Ed.2d 100 (1990). As recognized by this Circuit's Court of Appeals, *Zinermon* refocused the inquiry on whether predeprivation process was feasible, and on the relative costs (both administrative/economic and costs to liberty or property rights) of having a predeprivation or a postdeprivation hearing. In that case, the plaintiff (Burch) was admitted to a mental institution as a "voluntary" patient. Burch "alleged that at the time of his admission he was in no condition to have executed forms indicating that his admission was voluntary" and should have been "afforded the protection of [the state's] involuntary admission procedure." Lowe v. Scott, 959 F.2d 323, 341 (1st Cir.1992) (*citing* Zinermon, 494 U.S. at 115, 110 S.Ct. at 977). Burch claimed the hospital officials had denied him due process by not employing the involuntary admission procedure. The hospital officials contended that the complaint "alleged that their conduct was random and unauthorized" and maintained that *Parratt* and a similar Supreme Court case, Hudson v. Palmer, 468 U.S. 517, 104 S.Ct. 3194, 82 L.Ed.2d 393 (1984), "limited the procedural due process inquiry to the question of the adequacy of [the state's] postdeprivation remedies." Lowe, 959 F.2d at 341 (*citing* Zinermon, 494 U.S. at 115, 110 S.Ct. at 977). This argument is similar to the argument made by the defendants in the case at bar.

Applying *Zinermon,* the First Circuit, in Lowe, 959 F.2d at 341, said that *Zinermon,* "requires that courts scrutinize carefully the assertion by state officials that their conduct is `random and unauthorized' within the meaning of *Parratt* and *Hudson,* where such a conclusion limits the procedural due process inquiry under § 1983 to the question of the adequacy of state postdeprivation remedies." *Id.* Accordingly, this court, under the First Circuit's mandate, must be cautious about accepting the defendants' argument that their actions are covered by *Parratt,* and not by the general analysis of *Mathews.*

The First Circuit provides guidance for determining which inquiry is appropriate. In its analysis in *Lowe,* the First Circuit noted that, in *Zinermon,* there had been "three reasons for distinguishing *Parratt* and *Hudson,"* Lowe, 959 F.2d at 341. First, in *Zinermon,* it was "hardly `unpredictable' or `unforeseeable' that hospital officials would need to examine patients' competency prior to their admission to a mental hospital." *Id.* Thus, the state could be expected to be able to anticipate the deprivation at issue. Second, "the Court found that because the deprivation experienced by Burch could have been more easily anticipated than those of the prisoners in *Parratt* and *Hudson,* there was a greater likelihood that [the state] could have provided predeprivation process that would have averted Burch's improper admission." *Id.* Third, "because [the state] had delegated the hospital officials broad authority to `effect the very deprivation complained of here,' their conduct could not be said to be `unauthorized' in the same sense as the destruction of prisoners' property [in *Parratt* and *Hudson*]." *Id.*

Applying this reasoning to the case at bar, **Wayfield** can make a colorable argument that (1) the deprivation he experienced was one that the state could be expected to anticipate (it does not require a leap of imagination to think that a patron's library privileges might be suspended); (2) the state could have provided predeprivation process (whether in the form of a warning letter and an opportunity to respond, or a hearing before the trustees, or in some other manner); and (3) that the state had delegated the library the authority to effect the deprivation, so their actions could not be said to be "unauthorized." **Wayfield** does not directly argue this point. However, because he is *pro*
888 *se,* the court has *888 a duty to read his papers liberally. *See* Estelle v. Gamble, 429 U.S. 97, 106, 97 S.Ct. 285, 292, 50 L.Ed.2d 251 (1976); Ayala v. Lebron, 909 F.2d 8, 15 (1st Cir.1990).

The defendants' argument is that the "emergency" nature of the situation required such rapid action that postdeprivation process is all that can be required. To support this proposition, they cite a case in which city officials demolished the plaintiff's building without first consulting him. In that case, Harris v. City of Akron, 20 F.3d 1396 (6th Cir.1994), *cert. denied* ___ U.S. ___, 115 S.Ct. 512, 130 L.Ed.2d 419 (1994), the plaintiff's building was observed to be "dangerously close to falling onto [the street] and a neighboring occupied home." *Id.* at 1398. The city tried to call the building's owner, who was not in, and left an urgent message with his assistant. *Id.* Then, pursuant to an emergency provision in the city building code, the inspectors destroyed the building.

Harris is not relevant to the court's decision in this case. The facts are too far removed for any useful parallel to be drawn. In that case, the defendants acted in accordance with a municipal code; in **Wayfield's** case, there was no applicable code. Perhaps most importantly, in *Harris,* there was an actual, physical, immediate emergency; here, in contrast, **Wayfield** received the letters notifying him of the suspension of his library privileges some days after the "emergency" "disturbance" in question.

The defendants' argument that their position is analogous to that of the state actors in Zar v. South Dakota Board of Examiners of Psychologists, 976 F.2d 459 (8th Cir.1992) is likewise unavailing. The defendants in *Zar,* unlike the defendants in this case, failed to follow an applicable, written procedure. In that case, the defendant members of the Board of Examiners of Psychologists ("the Board") failed to implement an established procedure that would have allowed the plaintiff, Dr. Zar, to contest the Board's recommendation that his medical license be revoked. The court found that the actions fit

within the *Parratt* framework, under the *Zinermon* test, because the state could not have known that its employees would act as they did, since the state had promulgated rules which the defendants had ignored.

In light of the defendants' failure to make a persuasive argument that the *Parratt* inquiry properly applies to this case, and in light of the First Circuit's warning in *Lowe* to "scrutinize carefully the assertion by state officials that their conduct is `random and unauthorized' within the meaning of *Parratt* and *Hudson,* where such a conclusion limits the procedural due process inquiry under § 1983 to the question of the adequacy of state postdeprivation remedies," *Lowe,* 959 F.2d at 341, the court finds that the appropriate standard for deciding what process was due **Wayfield** is the familiar *Mathews v. Eldridge* standard.

Under that standard, the court must look first at the "private interest that will be affected by the official action." *Mathews,* 424 U.S. at 322, 96 S.Ct. at 901. In this case, that interest is significant; other courts have found that the ability to use a public library implicates important First Amendment rights. *See Kreimer v. Bureau of Police,* 958 F.2d 1242 (3d Cir.1992); *Brinkmeier v. City of Freeport,* 1993 WL 248201 (N.D.Ill. 1993) (plaintiff who had allegedly harassed library staff-member denied access to library; court finds First Amendment right of access to library and notes the absence of "formal procedure whereby a person may challenge his denial of access to the library" as evidence that "the policy is less than reasonable," *id.* at *6). Thus, **Wayfield's** claim passes the first prong of the *Mathews* test.

The second inquiry is "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards." *Mathews,* 424 U.S. at 321, 96 S.Ct. at 896. The record before the court indicates that **Wayfield** was afforded no predeprivation process. This fact, combined with the lack of standards or rules governing the suspension of library privileges, leads the court to believe that the risks of erroneous deprivation are great.

Finally, the court must consider the "Government's interest, including the function involved and the
889 fiscal and administrative burdens that the additional or substitute *889 procedural requirement would entail." *Mathews,* 424 U.S. at 321, 96 S.Ct. at 896. As noted above, the officials of the library could undertake a number of not particularly onerous prophylactic measures that would protect the due process rights of its patrons without significantly burdening the library. For example, the library could send a letter to patrons who were threatened with potential suspensions, notifying them of the action pending against them and inviting them to argue their cases, in writing or in person.

The court determines that, under the three-part analysis of *Mathews v. Eldridge,* the defendants did not afford **Wayfield** adequate due process. Indeed, it appears from the record in this case that they afforded him no process at all.

IV. Conclusion

For the foregoing reasons, the defendants' motion for summary judgment is DENIED. Given the nature and extent of this ruling, it may be appropriate for the court, *sua sponte,* to render summary judgment to **Wayfield** as to the liability of the defendants on his claim. The defendants, however, are entitled, before such a ruling is made, to notice and an opportunity to present evidence and argument as to why that ruling would be inappropriate. *Preterm, Inc. v. Dukakis,* 591 F.2d 121, 134 (1st Cir.1979), *cert. denied sub nom Baird v. Pratt,* 441 U.S. 952, 99 S.Ct. 2181, 60 L.Ed.2d 1057 (1979). Accordingly, the court orders that the defendants file papers on or before June 10, 1996 setting forth their position as to the granting of summary judgment to **Wayfield** with respect to the defendants' liability on **Wayfield's** due process claim.

So ordered.

[1] As it turns out, the menorah was not missing from the library, but had been removed from its customary location and placed behind a shelf of books.

[2] As for "liberty" in this context, the First Circuit has commented that, "[i]t has long been held that ... liberty encompasses much more than the simple right to be free from unwarranted bodily restraint." *Raper v. Lucey,* 488 F.2d 748, 752 (1st Cir.1973) (*citing Board of Regents v. Roth,* 408 U.S. 564, 92 S.Ct. 2701, 33 L.Ed.2d 548 (1972)) (additional citations omitted). The court in *Raper* analogized that case (application for a driver's license) to a case in which a driver's license was suspended. The court found "the freedom to make use of one's own property, here a motor vehicle, as a means of getting about from place to place ... is a 'liberty' which under the Fourteenth Amendment cannot be denied or curtailed by a state without due process of law." *Raper,* 488 F.2d at 752 (*quoting Wall v. King,* 206 F.2d 878, 882 (1st Cir.1953), *cert. denied,* 346 U.S. 915, 74 S.Ct. 275, 98 L.Ed. 411). Like the right at issue in *Wall,* the right claimed in *Raper* deserved the protection of due process. **Wayfield** does not specify whether the right he claims is a "property" or a "liberty" right. In any case, the difference between "liberty" and "property" is of no consequence in this context; the Supreme Court has said that the same test for determining the process due is applied whether liberty or property is at stake, *Zinermon v. Burch,* 494 U.S. 113, 110 S.Ct. 975, 108 L.Ed.2d 100 (1990).

[3] "The case of *Schware v. Board of Bar Examiners,* 353 U.S. 232, 77 S.Ct. 752, 1 L.Ed.2d 796 (1957) (parallel citations omitted), finding a right of due process with respect to bar admissions, can be explained on such a ground (as well as on the ground that the right to pursue an ordinary occupation is, by itself, a fundamental liberty interest ...)." *Medina,* 545 F.2d at 250.

[4] In *Goldberg,* the Court held that recipients of welfare benefits were entitled to a hearing *before* those benefits were terminated.

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Order 86-1415
~~Tab 18 11-3-14~~
Tab 19 11-17-14

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

CITY OF PORTLAND
IN THE CITY COUNCIL

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

ORDER AMENDING AND EXPANDING THE BAYSIDE ECONOMIC REDEVELOPMENT PROGRAM AND BAYSIDE REDEVELOPMENT TAX INCREMENT FINANCING DISTRICT

ORDERED, that the Bayside Economic Redevelopment Program and the Bayside Tax Increment Financing District approved by City Council Order 172-12/13 is hereby expanded and amended in substantially the form as attached; and

BE IT FURTHER ORDERED, that the Acting City Manager is hereby authorized to execute whatever documents are necessary to effect the intent and purpose of this Order.

Portland, Maine Yes. Life's good here.

Economic Development Department
Gregory A. Mitchell, Director

MEMORANDUM

TO: Mayor and Members of the City Council

FROM: Greg Mitchell, Economic Development Director

DATE: October 23, 2014

SUBJECT: **Order Anthorizing Amendment of the Bayside TIF District to expand the TIF District Geography**

SPONSOR: Housing and Community Development Committee/Councilor Donoghue, Chair

COUNCIL MEETING DATE ACTION IS REQUESTED:

First Reading: November 3, 2014
Second Reading, Public Hearing, and Vote: November 17, 2014

Can action be taken at a later date? Yes

PRESENTATION: Greg Mitchell, Economic Development Director/5 Minutes

I. SUMMARY OF ISSUE

This matter is being presented to the City Council for authorization to amend the existing approved Bayside Tax Increment Financing (TIF) District to expand the geographic area of the TIF District to align with *Bayside Vision Plan* boundaries. Also, the expansion of the TIF District will enable TIF District revenue to be invested in public infrastructure improvements in a larger area within the District.

Background Information

The existing Bayside TIF District, originally approved by the City Council on March 31, 2003, included 11 acres. This TIF District was expanded on July 6, 2005 to include a total of 62.18 acres. See attached existing approved Bayside TIF District map.

To date, TIF District revenues have been used to invest in the following:

- Credit Enhancement Agreement for the Intermed Building
- Credit Enhancement Agreement for the Bayside Student Housing Project
- Infrastructure for Whole Foods
- HUD 108 Loan Repayment

As part of discussions to establish a new Downtown/Transit Oriented Development District, staff was directed to present amendments to expand the geographic boundaries for the existing approved Bayside TIF District geography at the same 100% TIF capture rate.

Proposed Bayside TIF District Amendments.

The primary reason to amend the existing approved Bayside TIF District is to expand the TIF District geography by adding 67 acres to align the entire Bayside TIF District boundaries with the boundaries of the *Bayside Vision Plans*. The secondary reason is to enable TIF District revenue to be invested in public infrastructure improvements in a larger area within the District. See attached Bayside Vision Plan Map. The amendment to include this additional acreage impacts the Bayside TIF District calculations through-out the TIF District documents.

Attached, in a marked revision format and in clean format, is the Amended and Restated Bayside TIF District Program documents.

It is noted that under State TIF law, there are acreage and value limitations related to establishing TIF Districts City-wide. Those TIF Limitations include:

Acreage: 5% of Total Acreage; Portland's Total Acreage is 12,386;
5% is 619.30 acres

Value: 5% of Total Aggregate Value; Portland's FY14 Total Aggregate Value is
$7,551,450,000; 5% is $377,572,500

The proposed Bayside TIF District expansion will result in all approved TIF Districts calculations as follows (with TOD TIFs and Downtown TIFs exempted from calculations):

Acreage: 253.50 acres TIF'd, which is 2% of total; leaving 365.8 acres that can be TIF'd
Value: $370,021,490 TIF'd, which is 4.9% of total; leaving $7,551,010 that can be TIF'd

While the City is near the "value" limit, it is noted that proposed TIF district terminations (Bay House TIF District, Fore India Middle Street) and proposed TIF District reductions (Riverwalk and Arts) will free up value capacity that will provide enough flexibility going forward.

II. REASON FOR SUBMISSION

This expanded Bayside TIF District is being presented to the City Council for approval.

III. INTENDED RESULT

The intended result is to invest Bayside TIF funds in the entire area of Bayside included in the *Bayside Vision* documents. The current area of the Bayside TIF District has seen investments from the Intermed Building to Walgreens to Whole Foods, to name a few. Expanding the district to include all of Bayside will open the doors to investment in infrastructure to spark further development and job creation.

IV. COUNCIL GOAL ADDRESSED

Implement TIF Program that focuses on the creation of appropriately sized and designed TIF districts and advances other Council goals in the areas of transit, economic development, public infrastructure, and municipal finance.

V. FINANCIAL IMPACT

With the expanded Bayside TIF District, the City will realize additional savings in tax sheltering benefits in an annual estimated amount at approximately $73,062 yearly; in addition to $607,245 yearly in tax sheltering savings from the original TIF District, for a combined yearly tax sheltering savings of $680,307.

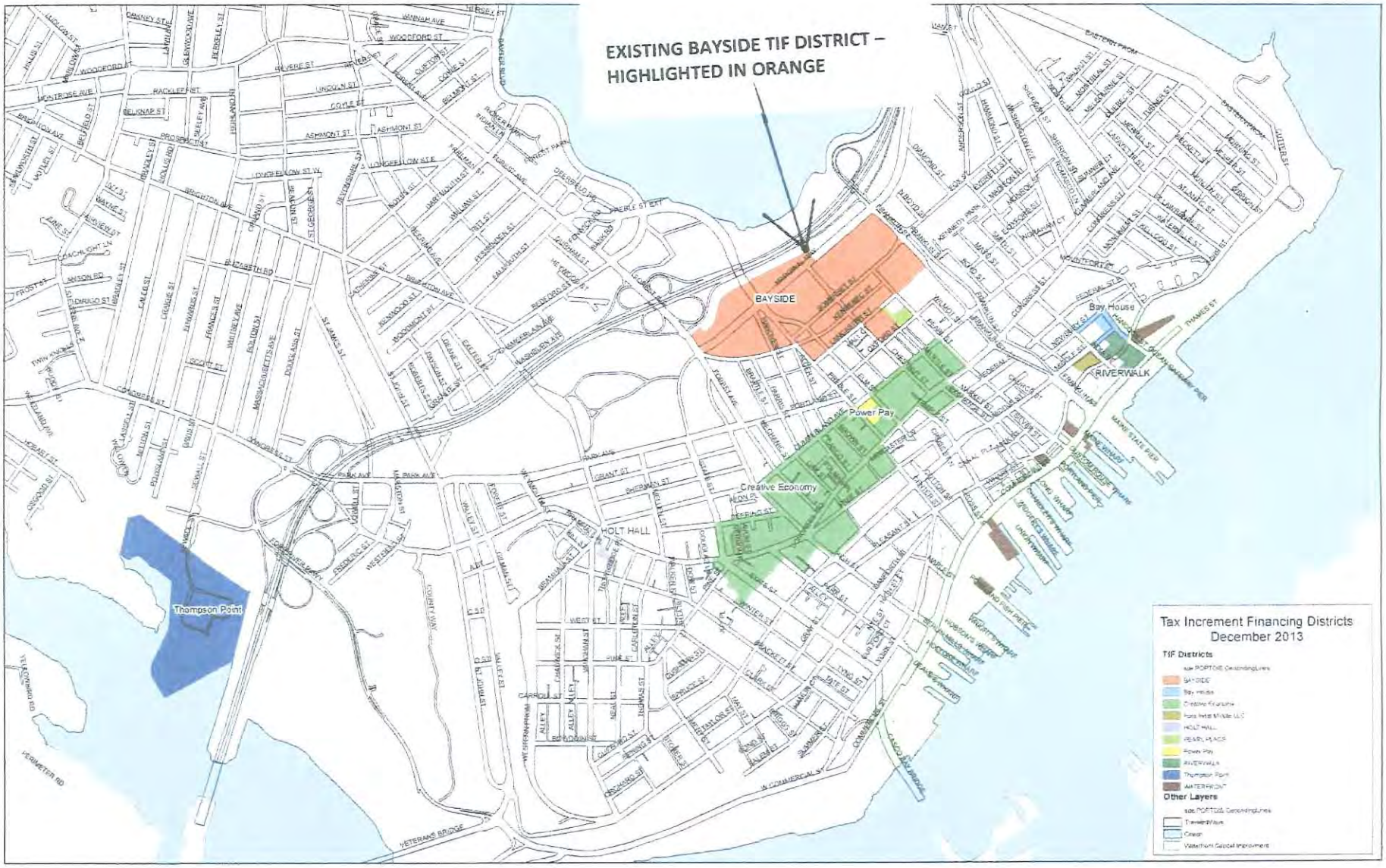
VI. STAFF RECOMMENDATION

Staff recommends that the City Council approve this amended and expanded Bayside TIF District in substantially the form as presented.

The Housing and Community Development Committee reviewed this proposed amendment to expand the Bayside TIF District at its October 22, 2014 meeting, at which time it voted unanimously to forward this to the City Council with a recommendation that it be approved in substantially in the form presented. If so approved, it will then be forwarded to the Maine Department of Economic and Community Development for its approval.

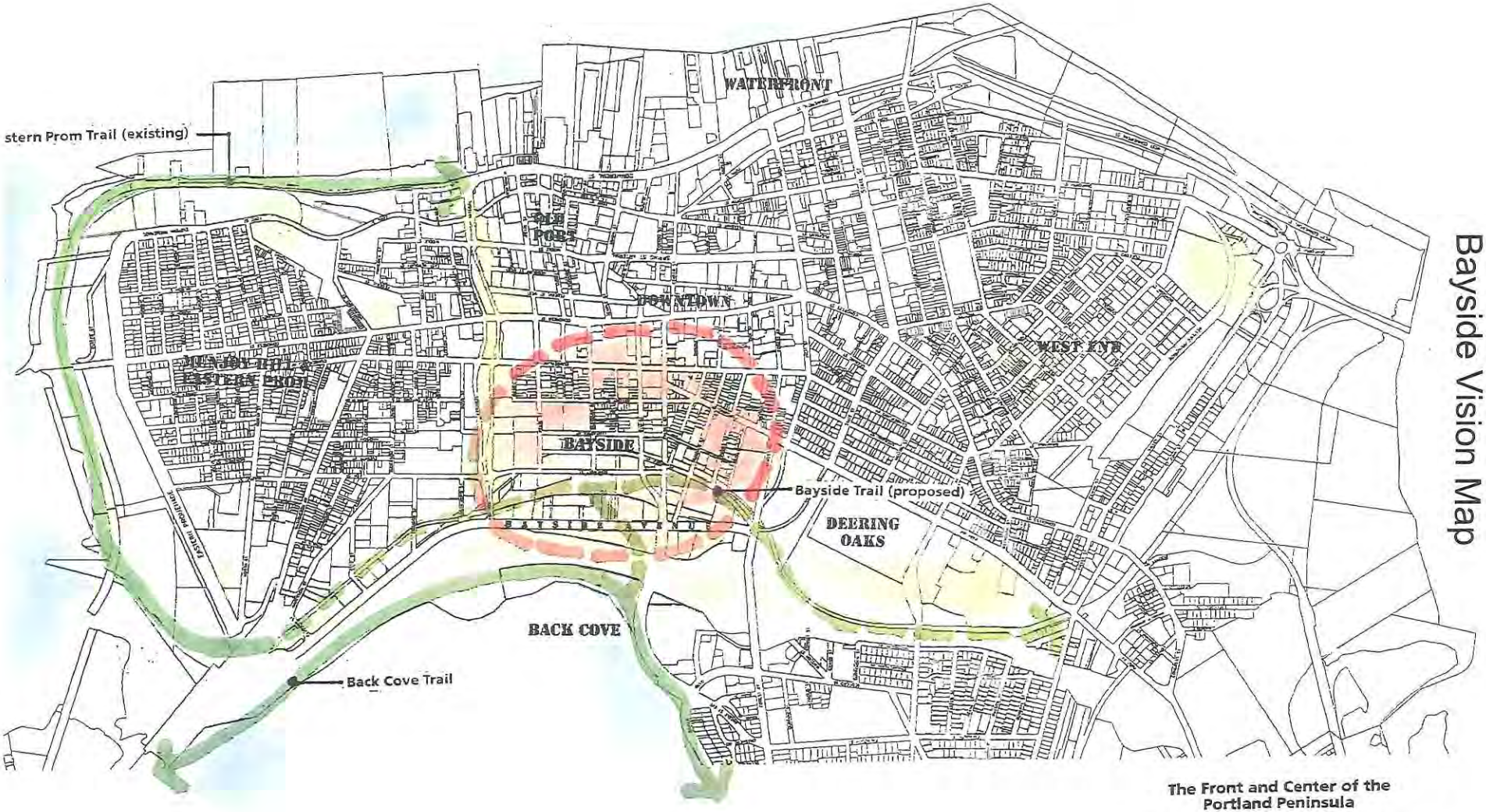
VIII. LIST ATTACHMENTS

- Existing Bayside TIF District Map – p. 4
- Existing Bayside TIF District Map and Proposed Expansion Area – p. 5
- Bayside Vision Map – p. 6
- Spreadsheets for TIF Models – pp. 7 to 12
- Amended and Restated Bayside TIF District Program in Marked Revision Format – pp. 13 to 23
- Amended and Restated Bayside TIF District Program in Clean Format – pp. 24 to 95


EXISTING BAYSIDE TIF DISTRICT – HIGHLIGHTED IN ORANGE
BAYSIDE
Bay House
RIVERWALK
Power Pay
Creative Economy
HOLT HALL
Thompson Point
Tax Increment Financing Districts
December 2013
TIF Districts
Other Layers

PROPOSED EXPANDED AREA –
HIGHLIGHTED IN PINK
Tax Increment Financing Districts
DRAFT August 13, 2014
TIF Districts
Thompson Point
IDK Cumberland Ave Affordable Housing
ARTS/Baxter LB
BAYSIDE Existing
Bay House
Bayside Proposed Expansion
Downtown TIDF/Proposed
Fore Brook Middle LLC
PEARL PLACE
Power Plan
RIVERWALK
WATERFRONT
Other Layers
Waterfront Capital Improvement
Existing Waterfront Capital Improvement Zone
Proposed Waterfront Capital Improvement Zone Expansion

Bayside Vision Map



The Front and Center of the Portland Peninsula

BAYSIDE

PORTLAND, MAINE

Exhibit A

City of Portland - TIF Values for Bayside TIF Year 1 to 3, or Tax Years 2003 to 2005

Original Area: 11 Acres

OAV a/o 3/31/2002: 1,608,190

Table Reflects:

1) Actual Percentages Captured
2) Actual Mill Rate
3) Actual Yearly Property Values

Bayside TIF - Years 1 to 3 (FY04 to FY06) - City of Portland- TIF Table (OAV ao 3/31/2002 $1,608,190)									
Various Percent Sheltered from Original Bayside TIF - Years 1 to 3									
TIF Year	Tax Year-April 1	Increased Assessed Value Real & PP Prop.	% of Value Captured	Captured Valuation	Mill Rate	Total New Taxes Captured	Captured Revenue to Business Project Account	Captured Revenue to Municipal Project Account	City Non-Captured General Fund Revenues
1	2003	$6,191,580	1.00%	$61,916	26.83	$1,661	$0	$1,661	$164,434
2	2004	$7,295,740	1.00%	$72,957	26.53	$1,936	$0	$1,936	$191,620
3	2005	$9,171,480	54.00%	$4,952,599	20.13	$99,696	$0	$99,696	$84,926
3 Year TIF Total		**$22,658,800**		**$5,087,472**		**$103,292**	**$0**	**$103,292**	**$440,981**
Average Annual						$34,431	$0	$34,431	$146,994

Exhibit A

10/17/2014

City of Portland - TIF Tax Shifts for Bayside TIF Year 1 to 3, or Tax Years 2003 to 2005

Original Area: 11 Acres

OAV a/o 3/31/2002: 1,608,190

Table Reflects:
1) 1% Capture Yr 1; 1% Capture Yr 2; 54% Capture Yr 3
2) Mill Rates: Yr 1-26.83; Yr 2-26.53; Yr 20.13

Tax Shifts-Avoided Formula Impacts from Sheltering of Valuation: City of Portland-Bayside Original TIF for Years 1 to 3 (FY04 to FY06)

Various Percent Sheltered From Original Bayside TIF - Years 1 to 3 (FY04 to FY06)

				Avoided Formula Impacts from Sheltering of Valuation			
TIF Year	Tax Year-April 1	Total Added Valuation	Sheltered Valuation	Avoided Loss of State Aid to for Education	Avoided Loss of State Municipal Revenue Sharing	Avoided Increase in County Tax	Total Avoided Impacts
1	2003	$6,191,580	$61,916	$502	$40	$33	$575
2	2004	$7,295,740	$72,957	$591	$48	$39	$677
3	2005	$9,171,480	$4,952,599	$40,116	$3,226	$2,621	$45,963
3 Year TIF Total		**$22,658,800**	**$5,087,472**	**$41,209**	**$3,314**	**$2,693**	**$47,215**
Average Annual			$1,695,824.13	$13,736	$1,105	$898	$15,738

City of Portland TIF Values for Bayside TIF

Original Area w 1st Expansion: 62.18 Acres

OAV a/o 3/31/2007: $44,066,380

Table Reflects:

1) Actual Percentages Captured Years 4 to 12
2) Projected 100% Captured Years 13 to 30
3) Actual Yearly Property Valuation Years 4 to 12
4) Projected Increase Property Valuation of 1% Years 13 to 30
5) Projected Increase of Mill Rate of 2% Years 13 to 30

Orignal Bayside TIF - Actual Years 4 to 12 (FY07 to FY15); Projections Years 13 to 30 (FY16 to FY33) - City of Portland-TIF Projection Table (OAV AO 3/31/2007 OF $44,066,380)									
Actual Various Percent Sheltered from Original Bayside TIF Years 4 to 12; 100% Sheltered Years 13 to 30)									
TIF Year	Tax Year-April 1	Increased Assessed Value Real & PP Prop.	% of Value Captured	Captured Valuation	Projected Mill Rate	Total Projected New Taxes Captured	Captured Revenue to Business Project Account	Captured Revenue to Municipal Project Account	City Non-Captured General Fund Revenues
4	2006	$11,052,960	28.00%	$3,094,829	16.31	$50,477	$0	$50,477	$129,797
5	2007	$23,657,250	1.00%	$236,573	17.10	$4,045	$0	$4,045	$400,494
6	2008	$49,496,900	100.00%	$49,496,900	17.74	$878,075	$0	$878,075	$0
7	2009	$69,217,260	78.00%	$53,989,463	17.74	$957,773	$0	$957,773	$270,141
8	2010	$68,355,920	71.00%	$48,532,703	17.92	$869,706	$478,338	$391,368	$355,232
9	2011	$62,808,110	73.00%	$45,849,920	18.28	$838,137	$427,450	$410,687	$309,996
10	2012	$66,477,790	47.00%	$31,244,561	18.82	$588,023	$441,017	$147,006	$663,089
11	2013	$65,716,350	98.00%	$64,402,023	19.41	$1,250,043	$450,016	$800,028	$25,511
12	2014	$65,131,890	83.00%	$54,059,469	20.00	$1,081,189	$443,288	$637,902	$221,448
13	2015	$66,223,873	100.00%	$66,223,873	20.40	$1,350,967	$472,838	$878,129	$0
14	2016	$67,326,775	100.00%	$67,326,775	20.81	$1,400,936	$476,318	$924,617	$0
15	2017	$68,440,707	100.00%	$68,440,707	21.22	$1,452,597	$479,357	$973,240	$0
16	2018	$69,565,778	100.00%	$69,565,778	21.65	$1,506,005	$361,441	$1,144,564	$0
17	2019	$70,702,099	100.00%	$70,702,099	22.08	$1,561,217	$359,080	$1,202,137	$0
18	2020	$71,849,784	100.00%	$71,849,784	22.52	$1,618,291	$356,024	$1,262,267	$0
19	2021	$73,008,946	100.00%	$73,008,946	22.97	$1,677,287	$352,230	$1,325,056	$0
20	2022	$74,179,699	100.00%	$74,179,699	23.43	$1,738,267	$365,036	$1,373,231	$0
21	2023	$75,362,160	100.00%	$75,362,160	23.90	$1,801,295	$0	$1,801,295	$0
22	2024	$76,556,445	100.00%	$76,556,445	24.38	$1,866,438	$0	$1,866,438	$0
23	2025	$77,762,673	100.00%	$77,762,673	24.87	$1,933,762	$0	$1,933,762	$0
24	2026	$78,980,964	100.00%	$78,980,964	25.36	$2,003,339	$0	$2,003,339	$0
25	2027	$80,211,437	100.00%	$80,211,437	25.87	$2,075,241	$0	$2,075,241	$0
26	2028	$81,454,215	100.00%	$81,454,215	26.39	$2,149,542	$0	$2,149,542	$0
27	2029	$82,709,421	100.00%	$82,709,421	26.92	$2,226,320	$0	$2,226,320	$0
28	2030	$83,977,179	100.00%	$83,977,179	27.46	$2,305,653	$0	$2,305,653	$0
29	2031	$85,257,615	100.00%	$85,257,615	28.00	$2,387,625	$0	$2,387,625	$0
30	2032	$86,550,855	100.00%	$86,550,855	28.56	$2,472,319	$0	$2,472,319	$0
27 Year TIF Total		**$481,914,430**		**$350,906,441**		**$40,044,566**	**$5,462,433**	**$34,582,134**	**$2,375,708**
Average Annual						$1,483,132	$202,312	$1,280,820	$87,989

City of Portland TIF Tax Shifts for Bayside TIF

Original Area w 1st Expansion: 62.18 Acres

OAV a/o 3/31/2007: $44,066,380

Table Reflects:

1) Actual Percentages Captured Years 4 to 12
2) Projected 100% Captured Years 13 to 30
3) Actual Yearly Property Valuation Years 4 to 12
4) Projected Increase Property Valuation of 1% Years 13 to 30
5) Projected Increase of Mill Rate of 2% Years 13 to 30

Tax Shifts-Avoided Formula Impacts from Sheltering of Valuation: City of Portland- TIF Model

Actual Percent Sheltered From Bayside TIF Years 4 to 12 (FY07 to FY15); 100% Projected Capture TIF Years 13 to 30 (FY16 to FY33)

				Avoided Formula Impacts from Sheltering of Valuation			
TIF Year	Tax Year-April 1	Total Added Valuation	Sheltered Valuation	Avoided Loss of State Aid to for Education	Avoided Loss of State Municipal Revenue Sharing	Avoided Increase in County Tax	Total Avoided Impacts
4	2006	$11,052,960	$3,094,829	$25,068	$2,016	$1,638	$28,722
5	2007	$23,657,250	$236,573	$1,916	$154	$125	$2,196
6	2008	$49,496,900	$49,496,900	$400,925	$32,240	$26,169	$459,333
7	2009	$69,217,260	$53,989,463	$437,315	$35,166	$28,541	$501,021
8	2010	$68,355,920	$48,532,703	$393,115	$31,612	$25,660	$450,386
9	2011	$62,808,110	$45,849,920	$371,384	$29,864	$24,243	$425,491
10	2012	$66,477,790	$31,244,561	$253,081	$20,351	$16,527	$289,959
11	2013	$65,716,350	$64,402,023	$521,656	$41,948	$34,036	$597,640
12	2014	$65,131,890	$54,059,469	$437,882	$35,212	$28,577	$501,671
13	2015	$66,223,873	$66,223,873	$536,413	$43,135	$34,997	$614,545
14	2016	$67,326,775	$67,326,775	$545,347	$43,853.22	$35,579	$624,779
15	2017	$68,440,707	$68,440,707	$554,370	$44,578.78	$36,166	$635,115
16	2018	$69,565,778	$69,565,778	$563,483	$45,311.60	$36,760	$645,554
17	2019	$70,702,099	$70,702,099	$572,687	$46,051.74	$37,359	$656,098
18	2020	$71,849,784	$71,849,784	$581,983	$46,799.28	$37,964	$666,747
19	2021	$73,008,946	$73,008,946	$591,372	$47,554.30	$38,576	$677,503
20	2022	$74,179,699	$74,179,699	$600,856	$48,316.87	$39,193	$688,366
21	2023	$75,362,160	$75,362,160	$610,433	$49,087.06	$39,817	$699,337
22	2024	$76,556,445	$76,556,445	$620,107	$49,864.96	$40,447	$710,419
23	2025	$77,762,673	$77,762,673	$629,878	$50,650.64	$41,083	$721,611
24	2026	$78,980,964	$78,980,964	$639,746	$51,444.17	$41,725	$732,915
25	2027	$80,211,437	$80,211,437	$649,713	$52,245.64	$42,374	$744,332
26	2028	$81,454,215	$81,454,215	$659,779	$53,055.12	$43,029	$755,863
27	2029	$82,709,421	$82,709,421	$669,946	$53,872.70	$43,690	$767,509
28	2030	$83,977,179	$83,977,179	$680,215	$54,698.45	$44,359	$779,272
29	2031	$85,257,615	$85,257,615	$690,587	$55,532.46	$45,033	$791,153
30	2032	$86,550,855	$86,550,855	$701,062	$56,375	$45,715	$803,152
27 Year TIF Total		$1,852,035,056	$1,721,027,067	$13,940,319	$1,120,989	$909,379	$15,970,688
Average Annual				$516,308	$41,518	$33,681	$591,507

Bayside TIF Model For FY07 to FY33 w OAV of $44,066,380 ao 3-31-2007

Exhibit A

10/17/2014

City of Portland - TIF Values - For Expanded Area Only of Bayside TIF for TIF remaining years of FY16 to FY33

2nd Expanded Area: 67 acres

OAV a/o 3/31/2014: $78,251,800

Model Assumes:
1) 1% Yearly Increase in Valuation;
2) 2% Yearly Increased in Tax Rate; and,
3) 100% Yearly Capture Rate

City of Portland- Expanded Bayside TIF Projection Table - For Add'l 67 Acres; OAV $78,251,800									
TIF Year	Tax Year-April 1	Increased Assessed Value Real Prop. At 1%/Yr.	% of Value Captured	Captured Valuation	Projected Mill Rate (inc. 2%/Yr)	Total Projected New Taxes Captured	Captured Revenue to Business Project Account	Captured Revenue to Municipal Project Account	City Non-Captured General Fund Revenues
13	2015	$782,518	100.00%	$782,518	20.20	$15,804	$0	$15,804	$0
14	2016	$1,572,861	100.00%	$1,572,861	20.60	$32,401	$0	$32,401	$0
15	2017	$2,371,108	100.00%	$2,371,108	21.01	$49,822	$0	$49,822	$0
16	2018	$3,177,337	100.00%	$3,177,337	21.43	$68,097	$0	$68,097	$0
17	2019	$3,991,628	100.00%	$3,991,628	21.86	$87,260	$0	$87,260	$0
18	2020	$4,814,063	100.00%	$4,814,063	22.30	$107,344	$0	$107,344	$0
19	2021	$5,644,721	100.00%	$5,644,721	22.74	$128,383	$0	$128,383	$0
20	2022	$6,483,686	100.00%	$6,483,686	23.20	$150,414	$0	$150,414	$0
21	2023	$7,331,041	100.00%	$7,331,041	23.66	$173,473	$0	$173,473	$0
22	2024	$8,186,870	100.00%	$8,186,870	24.14	$197,599	$0	$197,599	$0
23	2025	$9,051,256	100.00%	$9,051,256	24.62	$222,831	$0	$222,831	$0
24	2026	$9,924,287	100.00%	$9,924,287	25.11	$249,211	$0	$249,211	$0
25	2027	$10,806,048	100.00%	$10,806,048	25.61	$276,780	$0	$276,780	$0
26	2028	$11,696,626	100.00%	$11,696,626	26.13	$305,582	$0	$305,582	$0
27	2029	$12,596,111	100.00%	$12,596,111	26.65	$335,664	$0	$335,664	$0
28	2030	$13,504,590	100.00%	$13,504,590	27.18	$367,070	$0	$367,070	$0
29	2031	$14,422,154	100.00%	$14,422,154	27.72	$399,851	$0	$399,851	$0
30	2032	$15,348,893	100.00%	$15,348,893	28.28	$434,056	$0	$434,056	$0
18 Year TIF Total		**$141,705,797**		**$141,705,797**		**$3,601,642**	**$0**	**$3,601,642**	**$0**
18 Year Averages						$200,091.20		$200,091.20	

O:\TIF\Bayside\Expanded Bayside TIF FY2015\Bayside TIF Model For FY16 to FY33 - Expanded Area Only w OAV of $78,251,800 ao 3-31-2014

Exhibit A

10/17/2014

City of Portland - TIF Tax Shifts For Expanded Area Only of Bayside TIF for TIF remaining years of FY16 to FY33

2nd Expanded Area: 67 acres

OAV a/o 3/31/2014: $78,251,800

Model Assumes:
1) 1% Yearly Increase in Valuation;
2) 2% Yearly Increased in Tax Rate; and,
3) 100% Yearly Capture Rate

Tax Shifts-Avoided Formula Impacts from Sheltering of Valuation: City of Portland- Expanded Area Only of Bayside - TIF Projection Model

				Avoided Formula Impacts from Sheltering of Valuation			
TIF Year	Tax Year-April 1	Total Added Valuation	Sheltered Valuation	Avoided Loss of State Aid to for Education	Avoided Loss of State Municipal Revenue Sharing	Avoided Increase in County Tax	Total Avoided Impacts
13	2015	$782,518	$782,518	$6,338	$510	$414	$7,262
14	2016	$1,572,861	$1,572,861	$12,740	$1,024	$833	$14,597
15	2017	$2,371,108	$2,371,108	$19,206	$1,544	$1,255	$22,006
16	2018	$3,177,337	$3,177,337	$25,736	$2,070	$1,682	$29,488
17	2019	$3,991,628	$3,991,628	$32,332	$2,600	$2,113	$37,045
18	2020	$4,814,063	$4,814,063	$38,994	$3,136	$2,548	$44,678
19	2021	$5,644,721	$5,644,721	$45,722	$3,677	$2,988	$52,387
20	2022	$6,483,686	$6,483,686	$52,518	$4,223	$3,432	$60,173
21	2023	$7,331,041	$7,331,041	$59,381	$4,775	$3,880	$68,037
22	2024	$8,186,870	$8,186,870	$66,314	$5,333	$4,333	$75,979
23	2025	$9,051,256	$9,051,256	$73,315	$5,896	$4,790	$84,001
24	2026	$9,924,287	$9,924,287	$80,387	$6,464	$5,252	$92,103
25	2027	$10,806,048	$10,806,048	$87,529	$7,039	$5,719	$100,286
26	2028	$11,696,626	$11,696,626	$94,743	$7,619	$6,190	$108,551
27	2029	$12,596,111	$12,596,111	$102,028	$8,204	$6,666	$116,899
28	2030	$13,504,590	$13,504,590	$109,387	$8,796	$7,146	$125,330
29	2031	$14,422,154	$14,422,154	$116,819	$9,394	$7,632	$133,845
30	2032	$15,348,893	$15,348,893	$124,326	$9,997	$8,122	$142,446
18 Year TIF Total		**$141,705,797**	**$141,705,797**	**$1,147,817**	**$92,300**	**$74,995**	**$1,315,112**
18 Year TIF Averages				**$63,767.61**	**$5,127.77**	**$4,166.37**	**$73,061.75**

O:\TIF\Bayside\Expanded Bayside TIF FY2015\Bayside TIF Model For FY16 to FY33 - Expanded Area Only w OAV of $78,251,800 ao 3-31-2014

I. Introduction/Updated 2014

East and West Bayside continue to be gateways to Portland's peninsula. A lot of changes to East and West Bayside have occurred since the Bayside (West) TIF Districted was adopted by the City Council on March 17, 2003. Relocation of one scrap yard and the addition of new medical office buildings, new housing for college students, planned market rate housing and commercial space associated with the Federated Midtown Project, two new grocery stores, pharmacies, and financial institutions have transformed West Bayside's industrial heritage to a more compact urban development pattern, which extends the Central Business District to I-295. East Bayside has been experiencing its own transformation with new coffee shops, artist studios, and new housing. Continued attention to the West Bayside TIF District is needed to fulfill the *Bayside Vision*.~~, the front and center of the Portland peninsula, has long been characterized by its industrial heritage. Today, much of the commercial area of the Bayside landscape consists of vacant railroad land, large warehouses, parking lots and two operating scrap metal recycling facilities. These uses exist in the context of a city and an active Bayside Neighborhood Association that is enthusiastic about building a community where families can live, work, shop and play, enjoying the convenience of a vibrant, 24-hour urban setting. It has been long recognized that denser, more compatible development is the key to realizing the dream of a revitalized Bayside.~~

History

In 1996, the process began when the City of Portland obtained funding from the Environmental Protection Agency (EPA) to undertake a Brownfield's Pilot Project in Bayside. The City designated a ten-lot, 14-acre parcel between Oxford Street and Marginal Way as the Bayside Brownfield's Project Area and has since created a $500,000 loan fund for the express purpose of cleaning up the site to clear the way for future development. The study area was subsequently enlarged to incorporate the area from Congress Street to I-295, and from Franklin Arterial to Forest Avenue, which is approximately 129~~15~~ acres.

Since 1996, the City of Portland has been working with a team of consultants on planning for opportunities for the reuse of the Bayside land. An extensive public participation process, which involved hundreds of participants, produced a plan entitled "A New Vision for Bayside". The Bayside plan identifies the following eleven development principles and five critical actions in order to transform this area into a vital, productive and diverse urban neighborhood:

Development Principles

- Urban Gateway
- Economic and Employment Opportunities
- A Walkable District
- A Critical Mass of Dwellings
- Transit Oriented Development
- Multi-level Parking Structures
- A Neighborhood Center
- Recreation and Open Space

- A Social Service Network
- Environmental Remediation
- Scrap yard Redevelopment

Critical Actions

- Acquire the Railroad Property
- Redevelop the Scrap yard Parcels
- Build More Housing
- Create Transit Oriented Development
- Secure the Future of Portland's Social Service Network

Public participation continues to be an ongoing aspect of the Plan's implementation. The Bayside Neighborhood Association and the Bayside Community Development Corporation ~~Development Committee ("BDC")~~ includes neighborhood property owners, residents, commercial owners and tenants~~, representatives from surrounding neighborhoods and various interest groups. There are also several BDC subcommittees focused on specific plan aspects. They include Housing, Trail & Open Space, Co-Development and Transportation~~.

Since adopting the Bayside Vision Plan in December 1999 as a part of the Comprehensive Plan, the City has moved forward on several of the identified critical actions. After several years of complex negotiations with Guilford Transportation and the Maine Department of Transportation, the City purchased the Railroad property. Using Housing and Urban Development ("HUD") and Economic Development Administration ("EDA") funding, this 6+ acre parcel made the City a major property owner in the area of Bayside slated primarily for commercial redevelopment.

EDA and City Capital Improvement Funds have been used to rebuild the sewer system along Somerset Street, adjacent to the railroad parcel, as well as to extend Chestnut Street from Somerset Street to Marginal Way. These improvements were key infrastructure investments for new development in Bayside. The City ~~is~~continues to be committed to investing in Bayside as funding becomes available, but clearly a variety of financing mechanisms have been and will continue to be needed.

With these first actions completed, attention ~~is now being~~has been focused on the need for structured parking ~~and the relocation of the two operating scrap metal recycling facilities~~associated with the Federated Midtown Project. At meeting after meeting, then Bayside Development Committee (BDC) members ~~have~~ stated unequivocally that the Bayside ~~p~~Plan cannot be implemented to its fullest without structured parking; and that the entire redevelopment plan hinges upon the relocation of the scrap metal recycling facilities. Furthermore, it is clear that the private sector cannot afford to make new investments in Bayside that include the cost of creating structured parking, nor can the market alone bear the cost of relocating the scrap metal recycling facilities.

The first such private development project which included constructing garages occurred on property that was sold by the City to two private developers (Capital, LLC and Southern Maine Student Housing, LLC) who planned a then estimated $38,400,000 in

new taxable commercial investment. The project consisted of a 72,000 sq. ft. office building, perched upon a 430 space parking garage with ground floor retail, alongside a 405 bed student housing facility with a 130 space parking garage. The cost of constructing the structured parking added more costs to the project than market rents could support, so financing relief was sought through the use of Credit Enhancement Agreements (Exhibit D) so that the project moved forward with the density sought for Bayside. This entire investment occupies just over 3 acres by reducing the footprint and allowing for vertical expansion.

The purpose of this Amended TIF application is to create an increased revenue source that can meet these needs, as well as other development principles and critical actions items contained in the *Bayside Vision Report I and II,* and to expand the District to include all of the Bayside area included in the *Bayside Vision*. ~~With respect to building parking garages to facilitate high-density development, whether publicly owned and pledged as a repayment for a bond, or privately owned and financed through the use of Credit Enhancement Agreements, the TIF funds will help create the structured parking appropriate for an urban area. In addition, this TIF will provide the funds necessary to relocate the two scrap metal recycling facilities, including pledging the future tax revenue as a repayment source to HUD, who has agreed to fund the capital costs of this effort with a $3,900,000 loan. This TIF designation will add another source of revenue to the implementation of the overall plan for the redevelopment of Bayside and will exist in the context of that larger effort. The Bayside TIF District is meant to be complimentary to the efforts mentioned above and those planned for the future.~~

~~With a funding source for structured parking created through this TIF, the City's Division of Economic Development will market Bayside to prospective businesses and developers. As development within the District occurs, additional revenue will be captured in this program, which would be directed toward financing the design and construction of a public garage, and/or allocated through the use of Credit Enhancement Agreements to allow developers to finance and construct garages along with commercial building projects.~~

~~The first such project is anticipated to occur on property that is being sold by the City to two private developers (Capital, LLC and Southern Maine Student Housing, LLC) who are planning an estimated $38,400,000 in new taxable commercial investment. The project consists of a 72,000 sq. ft. office building, perched upon a 430 space parking garage with ground floor retail, alongside a 405 bed student housing facility with a 130 space parking garage. The cost of constructing the structured parking would add more costs to the project than market rents could support, so financing relief is being sought through the use of Credit Enhancement Agreements (Exhibit D) so that the project can move forward with the density sought for Bayside. This entire investment will only occupy just over 3 acres by reducing the footprint and allowing for vertical expansion.~~

This Amended TIF District will assist in accomplishing the goals of the *Bayside Vision.* The public benefits associated with an expanded Bayside TIF District include:

- Provide support for Portland's **continued economic development;**
- Help increase the **vibrancy and stability of the Bayside neighborhood;**
- Create **employment opportunities** for area residents;
- Produce **tax shift benefits** averaging an estimated savings to the City of $680,307 annually;
- Improve the general economy of Portland and the State of Maine.

II. Amended Development Program

A. *The Amended Project*

With this amended and restated Development Program, t~~T~~he City of Portland seeks to expand~~the designation of~~ the Bayside Redevelopment Tax Increment Financing District to align with the area of Bayside contained in the *Bayside Vision Plans I and II* for the purposes of:

- create~~ing a publicly owned multi-level~~ additional parking structures
- entering into Credit Enhancement Agreements with developers to facilitate the construction of new taxable commercial investment in Bayside
- relocation of the one remaining scrap metal recycling facility and acquisition of scrap metal yard site
- infrastructure (roadway and sidewalk) located in District
- pledging TIF revenue as a repayment source to HUD or any other agency or entity that finances Bayside investment~~,~~
- public infrastructure improvements for both pedestrians and transit, lighting, and open space/trails~~and~~
- supporting the E~~e~~conomic ~~d~~Development ~~division~~Department with funds to market and prepare for redevelopment land in Bayside
- cover the City's Economic Development Department staff costs~~.~~

The success of these efforts will enhance the City's ability to attract new investment to Bayside, leading to a densely developed commercial district, which will create new taxable value and provide expanded opportunities for employment. The City's ~~Division of~~ Economic Development Department will market the City's land as potential building sites to prospective businesses and developers, in addition to promoting Bayside as a whole.

B. *The Amended Development District*

Properties that are to be designated as part of the Amended~~a~~ TIF District and are the subject of this application are shown on the revised attached map (Exhibit C), containing approximately 67 acres with an original assessed value of $78,251,800 - real property value only - as of March 31, 2014. When this 67 acres is added to the existing Bayside TIF District of 62.18, the Amended District would total 129.18 acres Note: The City is now adjusting the previously submitted approved acreage of 77 to 62.18 based on current City GIS mapping. This adjustment is reflective of the

properties which make up the original assessed value for the district as of 3/31/2007 of $44,066,380 – real and personal property value.~~.~~

The Amended TIF District will apply to only new value generated within the District and will not affect the current property tax base.

C. *The Amended Development Program*

The City of Portland, by designating the Amended Bayside Redevelopment TIF District, will potentially capture all new investments made within the Amended District. The City is projecting to capture ~~on average 58~~up to 100% of the new assessed value over the original assessed value, and retain from the district the new tax revenues generated from that captured assessed value. These revenues will be allocated to the Project Cost Account for the purposes described in II.A. above. Each year, the City Council may adjust the specific amount to be captured and retained for purposes of this Amended TIF, based upon the needs of the Amended District, and the commitments made through Credit Enhancement Agreements, collateral for loan or bond repayment, and the like.

D. *Municipal Use of TIF Revenues*

The City of Portland seeks authorization to utilize the revenues generated from the Amended Bayside TIF District to support economic development in Bayside through the development of ~~a~~ multi-level parking structures, as a source of repayment ~~for~~ to~~a~~ HUD ~~loan~~or any other agency or entity that finances Bayside investment~~ to relocate the scrap metal recycling facilities~~, as well as to assist in any relocation of the remaining scrap metal recycling facility not associated with a HUD loan, or for any other City borrowing so authorized for the benefit of the District, including infrastructure improvements for both pedestrians and transit, lighting, and open space/trails, as detailed in II.A above. In addition, the City will allocate a portion of the retained revenue to the Economic Development Department~~ivision~~ to support staffing and marketing efforts to attract additional development in Bayside, and to make commercial investments in land and infrastructure deemed appropriate for the economic redevelopment of the District. The City may also, from time to time, enter into Credit Enhancement Agreements to promote additional commercial taxable investment within the District.

See Table 1 Below for Municipal Use of TIF Revenues, Statutory Citation, and Cost Estimates – Citations all refer to Title 30-A, Chapter 206, Section 5225.

Municipal Use of TIF Revenues	Statutory Citation	Cost Estimate
Create Additional Parking Structures	(1)(A)	$10,000,000
Credit Enhancement Agreements (Approved)	(1)(A)	$6,000,000 over life of TIF District
Relocate one remaining scrap metal recycling facility and acquisition of scrap metal yard site	(1)(A)	T/B/D
Infrastructure (roadway and sidewalk) located in District	(1)(A)	T/B/D
Pledging TIF revenue as a repayment source to HUD or any other agency or entity that finances Bayside investment	(1)(A)	$6,000,000 over life of TIF District
Public infrastructure improvements for both pedestrians and transit, lighting, and open space/trails	(1)(A)	T/B/D
Supporting the Economic Development Department with funds to market and prepare for redevelopment land in Bayside	(1)(A)	$500,000
Cover the City's Economic Development Department staff costs	(1)(A) and (1)(C)(1)	$250,000/annual

E. Operational Components

1. ~~1.~~ Public Facilities

The City will invest in projects to further goals of the *Bayside Vision*, as outlined in II.A above.

2. Uses of Private Property

The Amended Bayside Economic Redevelopment Program and TIF District includes both public and private property. The funds generated from this district will be used to support commercial investment on both public and private land.

3. Plans for relocation of persons displaced by development activities.

Though not contemplated at this point, any possible relocation costs of displaced persons resulted from one or more City projects funded through this Amended Development Program shall be covered by the City as required.

~~2~~4. Environmental Controls

The Amended Development Program proposes improvements that will comply with all federal, state and local rules and regulations and applicable land use requirements.

5~~3~~. Plan of Operation of Amended District

During the life of the Amended Tax Increment Financing Districts, the City of Portland, City Council, or their designee, will be responsible for the administration of the Districts.

III. Physical Description

A. Total acreage of the municipality: 12,386 taxable acres

B. Total acreage proposed for amended tax increment financing district: ~~76 acres~~
62.18 acres – Approved TIF District
67.00 acres – Proposed TIF District Expansion
129.18 total acres

C. Percent of line B of line A (line B divided by line A cannot exceed 2%):
1.0~~0.61~~4%

D. Total acreage of all existing and proposed TIF Districts in the municipality as of 6/30/2014: ~~153.9 acres~~

Existing (inc. TOD):	216.50 (Includes existing Bayside of 62.18 acres)
Less TOD Acres:	-30.00
Proposed:	67.00
Total:	253.50

E. Percent line D of line A (cannot exceed 5%): 2~~1.2~~4%

F. Not less than 25%, by area, of the real property within a development district shall meet at least one of the following criteria:

1. Blighted acres N/A. Line F1 divided by line B = _____.

2. Acreage in need of rehabilitation, redevelopment or conservation N/A. Line F2 divided by line B = _____.

3. Acreage suitable for commercial siting = 129.18~~76~~. Line F3 divided by line B = 100%.

G. Enclosed municipal maps:

1. Area map showing site location of the Amended TIF District in relation to geographic location of municipality (Exhibit B).

2. Site map showing tax map locations of the ~~and~~ Amended TIF District (Exhibit C).

IV. Financial Plan

A. Costs and Sources of Revenues

The original Bayside TIF District comprised an area of approximately 11 acres of real property with an original assessed value of $1,608,190 as of March 31, 2002. On July 6, 2005, t~~T~~he City Council authorized an expansion of the TIF District as shown on Exhibit C to a total of ~~76~~62.18 acres (see explanation in II.B above), with a revised original assessed value of $44,066,380 as of March 31, 2007 – real and personal property value. Exhibit C is the map which also highlight the Amended District encompassing the original 62.18 acres, as well as the 67 acres for this expansion. The real property value in this expanded area of 67 acres has an Original Assessed Value as of March 31, 2014, of $78,251,800. ~~The incremental development within the District is estimated to add an additional $24,425,930 of new assessed value to the City in FY 08. With additional investments planned, the increase in assessed value in FY 09 is estimated to be $52,390,930, which will rise further in FY 10 to an estimated $74,089,830.~~

The Amended Development Program provides for the new tax revenues generated by the increase in assessed value of the Districts to be captured and designated as TIF Revenues. The City will apply the retained revenues to the economic development activities described in the Amended Development Program. To date, these activities include:

- Assisting with the Financing for ~~a City~~ Parking Structures~~Garage~~ – est. $1~~07~~,000,000+
- Credit Enhancement Agreements with Capital, LLC and Southern Maine Student Housing, LLC for the construction of 550 structured parking spaces - $6,000,000 ($450,000 per year for 10 years, and $300,000 per year for an additional 5 years).
- Relocate one remaining scrap metal recycling facility and acquisition of scrap metal yard site
- Infrastructure (roadway and sidewalk) located in District
- Pledging TIF revenue as a ~~R~~repayment source for HUD or any other agency or entity that finances Bayside investment~~Loan to Relocate Scrap Metal Recycling Facilities – est. $6,300,000~~ ($400,000 per year for 15 years).
- Public infrastructure improvements for both pedestrians and transit, lighting and open space/trails;

- Economic Development Department~~ivision~~ Staffing and Land Preparation and Marketing – est. $500,000;
- Cover the City's Economic Development Department staff costs – est. $250,000/annually.

The attached Revised Exhibit A details the projections of retained revenues based upon the anticipated assessed value increases within the District. Revised Exhibit A is a projection based upon best available information and is included for demonstration purposes only. No assurances are provided as to the results reflected therein.

B. Development Program Account

This Development Program requires establishment of a Development Program Account pledged to, and charged with, the payment of the project costs in the manner outlined in 30-A M.R.S.A. §5254 (3)(A)(2).

The Bayside TIF Development Program Account is established consisting of a project cost account ("Project Cost Account") pledged to, and charged with, payment of project costs. The Project Cost Account shall consist of Company Cost Subaccounts (Company Cost Subaccount), pledged to and charged with payment to authorized companies under the terms of an approved Credit Enhancement Agreement for reimbursements for eligible project costs, and a City Cost Subaccount (the "City Cost Subaccount") pledged to, and charged with, payment to the City for the cost of approved economic development expenses.

C. Financing Plan

The original TIF District comprised an area of approximately 11 acres of real and personal property. The value of the real and personal property within the district as of March 31, 2002 was established as the original assessed value. With the subsequent expansion, the value of the additional real and personal property within the district expansion as of March 31, 2007 was established as the original assessed value, with that value being $44,066,380. With this additional expansion from 62.18 to add 67 acres to the District, for a total of 129.16 acres, the value of real property within the expanded District of 67 acres has a March 31, 2014 date established as the original assessed value, or $78,251,800 as detailed in Section IV.A. above.

The developments within the described Amended Bayside TIF District will add significant new taxable value in the City of Portland. TIF revenues will be allocated as described on Revised Exhibit A to finance the costs described in the Amended Development Program. Actual payments to the Project Cost Account will be adjusted based upon the applicable annual percentage retained, or a specific amount to be retained within the Amended District, and the actual annual assessed value within the Amended District, to be determined by the City Council on a yearly basis.

V. Amended Financial Data

A. Total 2014~~07~~ value of equalized property in the municipality: $7,551,450,000~~653,400,000~~

B. Original assessed value of all properties in all existing and proposed TIF districts:

Existing	$296,740,160~~23,655,200~~ (Includes existing Bayside TIF)
Less TOD:	-$4,970,470
Proposed	$78,251,800~~44,066,380~~
Total	$370,021,490~~67,721,580~~

Line B divided by line A = 4.9~~0.88~~% (cannot exceed 5%).

C. Estimate of increased assessed value by year after implementation of the development program: See Revised Exhibit A

D. Percentage of increased assessed value to be applied to the development program fund: See Revised Exhibit A

E. Estimated annual tax increment: $~~729,057~~1,717,654 (Average)

F. Total average annual value of development program fund: $~~629,167~~1,717,654 (Average)

G. Annual principal and interest payment of bonded indebtedness: N/A at this time

H. Financial assumptions and safeguards: The City of Portland is under no obligation to repay any bonds that would involve a pledge of the City's full faith and credit.

VI. Tax Shifts

A. Average Annual Amount:

General Purpose Aid to Education Tax Shift: $~~352,398~~593,812

Municipal Revenue Sharing Tax Shift: $~~68,360~~47,751

County Tax Shift: $~~46,137~~38,745

Total Average Annual Savings: $~~466,895~~680,307

VII. Municipal Approvals

A. Public Hearing Notice

The City of Portland did giver proper Notice of Public Hearing in accordance with the requirements of 30-A M.R.S.A. §5253. The notice was published on November 3, 2014,~~May 19, 2006~~ in a newspaper of general circulation (see Exhibit E).

B. Public Hearing

A Public Hearing at which the proposed Amended Bayside Municipal Tax Increment Financing District was discussed was held on November 17, 2014. ~~June 5, 2006~~ in the Portland City Council Chambers. A copy of the minutes of that meeting is included as Exhibit F.

C. Authorizing Votes

An attested copy of the resolution of the Portland City Council designating the Amended Municipal TIF district created for the implementation of the Bayside Redevelopment Program is included as Exhibit G.

D. Assessors Certification

An attested copy of the certification by the City of Portland Tax Assessor as to the revised Original Assessed Value of the expanded Bayside Municipal Tax Increment Financing District is included as Exhibit H.

City of Portland

Bayside Economic Redevelopment Program and Tax Increment Financing Program

Prepared by:

The City of Portland Economic Development Department

Enacted by the Portland City Council March 17, 2003
Revised by the Portland City Council July 6, 2005
Revised by the Portland City Council November 21, 2005
Revised by the Portland City Council June 5, 2006
Revised by the Portland City Council November 17, 2014

Section:

I. Introduction/Updated 2014
II. Amended Development Program
III. Physical Description
IV. Financial Plan
V. Amended Financial Data
VI. Tax Shifts
VII. Municipal Approvals

Exhibits:

A. Revised TIF Models and Tax Shifts
B. Area Map Showing Site location
C. Map of Existing and Expanded Bayside TIF District
D. Credit Enhancement Agreements (Approved as of 11/17/2014)
E. Notice of Public Hearing
F. City Council Minutes
G. City Council Order
H. Original Assessed Values/Assessor's Certificate
    1. Assessor's Certificate of OAV for Existing Bayside TIF District as of 3/31/2007
    2. Assessor's Certificate of OAV for Expanded Area of Bayside TIF District as of 3/31/2013

I. Introduction/Updated 2014

East and West Bayside continue to be gateways to Portland's peninsula. A lot of changes to East and West Bayside have occurred since the Bayside (West) TIF Districted was adopted by the City Council on March 17, 2003. Relocation of one scrap yard and the addition of new medical office buildings, new housing for college students, planned market rate housing and commercial space associated with the Federated Midtown Project, two new grocery stores, pharmacies, and financial institutions have transformed West Bayside's industrial heritage to a more compact urban development pattern, which extends the Central Business District to I-295. East Bayside has been experiencing its own transformation with new coffee shops, artist studios, and new housing. Continued attention to the West Bayside TIF District is needed to fulfill the *Bayside Vision*.

History

In 1996, the process began when the City of Portland obtained funding from the Environmental Protection Agency (EPA) to undertake a Brownfield's Pilot Project in Bayside. The City designated a ten-lot, 14-acre parcel between Oxford Street and Marginal Way as the Bayside Brownfield's Project Area and has since created a $500,000 loan fund for the express purpose of cleaning up the site to clear the way for future development. The study area was subsequently enlarged to incorporate the area from Congress Street to I-295, and from Franklin Arterial to Forest Avenue, which is approximately 129 acres.

Since 1996, the City of Portland has been working with a team of consultants on planning for opportunities for the reuse of the Bayside land. An extensive public participation process, which involved hundreds of participants, produced a plan entitled "A New Vision for Bayside". The Bayside plan identifies the following eleven development principles and five critical actions in order to transform this area into a vital, productive and diverse urban neighborhood:

Development Principles

- Urban Gateway
- Economic and Employment Opportunities
- A Walkable District
- A Critical Mass of Dwellings
- Transit Oriented Development
- Multi-level Parking Structures
- A Neighborhood Center
- Recreation and Open Space
- A Social Service Network
- Environmental Remediation
- Scrap yard Redevelopment

Critical Actions

- Acquire the Railroad Property
- Redevelop the Scrap yard Parcels
- Build More Housing
- Create Transit Oriented Development
- Secure the Future of Portland's Social Service Network

Public participation continues to be an ongoing aspect of the Plan's implementation. The Bayside Neighborhood Association and the Bayside Community Development Corporation include neighborhood property owners, residents, commercial owners and tenants.

Since adopting the Bayside Vision Plan in December 1999 as a part of the Comprehensive Plan, the City has moved forward on several of the identified critical actions. After several years of complex negotiations with Guilford Transportation and the Maine Department of Transportation, the City purchased the Railroad property. Using Housing and Urban Development ("HUD") and Economic Development Administration ("EDA") funding, this 6+ acre parcel made the City a major property owner in the area of Bayside slated primarily for commercial redevelopment.

EDA and City Capital Improvement Funds have been used to rebuild the sewer system along Somerset Street, adjacent to the railroad parcel, as well as to extend Chestnut Street from Somerset Street to Marginal Way. These improvements were key infrastructure investments for new development in Bayside. The City continues to be committed to investing in Bayside as funding becomes available, but clearly a variety of financing mechanisms have been and will continue to be needed.

With these first actions completed, attention has been focused on the need for structured parking associated with the Federated Midtown Project. At meeting after meeting, then Bayside Development Committee (BDC) members stated unequivocally that the Bayside Plan cannot be implemented to its fullest without structured parking; and that the entire redevelopment plan hinges upon the relocation of the scrap metal recycling facilities. Furthermore, it is clear that the private sector cannot afford to make new investments in Bayside that include the cost of creating structured parking, nor can the market alone bear the cost of relocating the scrap metal recycling facilities.

The first such private development project which included constructing garages occurred on property that was sold by the City to two private developers (Capital, LLC and Southern Maine Student Housing, LLC) who planned a then estimated $38,400,000 in new taxable commercial investment. The project consisted of a 72,000 sq. ft. office building, perched upon a 430 space parking garage with ground floor retail, alongside a 405 bed student housing facility with a 130 space parking garage. The cost of constructing the structured parking added more costs to the project than market rents could support, so financing relief was sought through the use of Credit Enhancement Agreements (Exhibit D) so that the project moved forward with the density sought for Bayside. This entire investment occupies just over 3 acres by reducing the footprint and allowing for vertical expansion.

The purpose of this Amended TIF application is to create an increased revenue source that can meet these needs, as well as other development principles and critical actions items contained in the *Bayside Vision Report I and II,* and to expand the District to include all of the Bayside area included in the *Bayside Vision.*

This Amended TIF District will assist in accomplishing the goals of the *Bayside Vision.* The public benefits associated with an expanded Bayside TIF District include:

- Provide support for Portland's **continued economic development;**
- Help increase the **vibrancy and stability of the Bayside neighborhood;**
- Create **employment opportunities** for area residents;
- Produce **tax shift benefits** averaging an estimated savings to the City of $680,307 annually;
- Improve the general economy of Portland and the State of Maine.

II. Amended Development Program

A. The Amended Project

With this amended and restated Development Program, the City of Portland seeks to expand the Bayside Redevelopment Tax Increment Financing District to align with the area of Bayside contained in the *Bayside Vision Plans I and II* for the purposes of:

- create additional parking structures
- entering into Credit Enhancement Agreements with developers to facilitate the construction of new taxable commercial investment in Bayside
- relocation of the one remaining scrap metal recycling facility and acquisition of scrap metal yard site
- infrastructure (roadway and sidewalk) located in District
- pledging TIF revenue as a repayment source to HUD or any other agency or entity that finances Bayside investment
- public infrastructure improvements for both pedestrians and transit, lighting, and open space/trails
- supporting the Economic Development Department with funds to market and prepare for redevelopment land in Bayside
- cover the City's Economic Development Department staff costs

The success of these efforts will enhance the City's ability to attract new investment to Bayside, leading to a densely developed commercial district, which will create new taxable value and provide expanded opportunities for employment. The City's Economic Development Department will market the City's land as potential building sites to prospective businesses and developers, in addition to promoting Bayside as a whole.

B. The Amended Development District

Properties that are to be designated as part of the Amended TIF District and are the subject of this application are shown on the revised attached map (Exhibit C), containing approximately 67 acres with an original assessed value of $78,251,800 - real property value only - as of March 31, 2014. When this 67 acres is added to the existing Bayside TIF District of 62.18, the Amended District would total 129.18 acres

Note: The City is now adjusting the previously submitted approved acreage of 77 to 62.18 based on current City GIS mapping. This adjustment is reflective of the properties which make up the original assessed value for the district as of 3/31/2007 of $44,066,380 – real and personal property value.

The Amended TIF District will apply to only new value generated within the District and will not affect the current property tax base.

C. The Amended Development Program

The City of Portland, by designating the Amended Bayside Redevelopment TIF District, will potentially capture all new investments made within the Amended District. The City is projecting to capture up to 100% of the new assessed value over the original assessed value, and retain from the district the new tax revenues generated from that captured assessed value. These revenues will be allocated to the Project Cost Account for the purposes described in II.A. above. Each year, the City Council may adjust the specific amount to be captured and retained for purposes of this Amended TIF, based upon the needs of the Amended District, and the commitments made through Credit Enhancement Agreements, collateral for loan or bond repayment, and the like.

D. Municipal Use of TIF Revenues

The City of Portland seeks authorization to utilize the revenues generated from the Amended Bayside TIF District to support economic development in Bayside through the development of multi-level parking structures, as a source of repayment to HUD or any other agency or entity that finances Bayside investment, as well as to assist in any relocation of the remaining scrap metal recycling facility not associated with a HUD loan, or for any other City borrowing so authorized for the benefit of the District, including infrastructure improvements for both pedestrians and transit, lighting, and open space/trails, as detailed in II.A above. In addition, the City will allocate a portion of the retained revenue to the Economic Development Department to support staffing and marketing efforts to attract additional development in Bayside, and to make commercial investments in land and infrastructure deemed appropriate for the economic redevelopment of the District. The City may also, from time to time, enter into Credit Enhancement Agreements to promote additional commercial taxable investment within the District.

See Table 1 Below for Municipal Use of TIF Revenues, Statutory Citation, and Cost Estimates – Citations all refer to Title 30-A, Chapter 206, Section 5225.

Municipal Use of TIF Revenues	Statutory Citation	Cost Estimate
Create Additional Parking Structures	(1)(A)	$10,000,000
Credit Enhancement Agreements (Approved)	(1)(A)	$6,000,000 over life of TIF District
Relocate one remaining scrap metal recycling facility and acquisition of scrap metal yard site	(1)(A)	T/B/D
Infrastructure (roadway and sidewalk) located in District	(1)(A)	T/B/D
Pledging TIF revenue as a repayment source to HUD or any other agency or entity that finances Bayside investment	(1)(A)	$6,000,000 over life of TIF District
Public infrastructure improvements for both pedestrians and transit, lighting, and open space/trails	(1)(A)	T/B/D
Supporting the Economic Development Department with funds to market and prepare for redevelopment land in Bayside	(1)(A)	$500,000
Cover the City's Economic Development Department staff costs	(1)(A) and (1)(C)(1)	$250,000/annual

E. Operational Components

1. Public Facilities

   The City will invest in projects to further goals of the *Bayside Vision,* as outlined in II.A above.

2. Uses of Private Property

   The Amended Bayside Economic Redevelopment Program and TIF District includes both public and private property. The funds generated from this district will be used to support commercial investment on both public and private land.

3. Plans for relocation of persons displaced by development activities.

   Though not contemplated at this point, any possible relocation costs of displaced persons resulted from one or more City projects funded through this Amended Development Program shall be covered by the City as required.

4. Environmental Controls

The Amended Development Program proposes improvements that will comply with all federal, state and local rules and regulations and applicable land use requirements.

5. Plan of Operation of Amended District

During the life of the Amended Tax Increment Financing District, the City of Portland, City Council, or their designee, will be responsible for the administration of the District.

III. Physical Description

A. Total acreage of the municipality: 12,386 taxable acres

B. Total acreage proposed for amended tax increment financing district:
62.18 acres – Approved TIF District
67.00 acres – Proposed TIF District Expansion
129.18 total acres

C. Percent of line B of line A (line B divided by line A cannot exceed 2%): 1.04%

D. Total acreage of all existing and proposed TIF Districts in the municipality as of 6/30/2014:

Existing (inc. TOD):	216.50 (Includes existing Bayside of 62.18 acres)
Less TOD Acres:	-30.00
Proposed:	67.00
Total:	253.50

E. Percent line D of line A (cannot exceed 5%): 2%

F. Not less than 25%, by area, of the real property within a development district shall meet at least one of the following criteria:

1. Blighted acres N/A. Line F1 divided by line B = _____.

2. Acreage in need of rehabilitation, redevelopment or conservation N/A. Line F2 divided by line B = _____.

3. Acreage suitable for commercial siting = 129.18. Line F3 divided by line B = 100%.

G. Enclosed municipal maps:

1. Area map showing site location of the Amended TIF District in relation to geographic location of municipality (Exhibit B).

2. Site map showing tax map locations of the Amended TIF District (Exhibit C).

IV. Financial Plan

A. Costs and Sources of Revenues

The original Bayside TIF District comprised an area of approximately 11 acres of real property with an original assessed value of $1,608,190 as of March 31, 2002. On July 6, 2005, the City Council authorized an expansion of the TIF District as shown on Exhibit C to a total of 62.18 acres (see explanation in II.B above), with a revised original assessed value of $44,066,380 as of March 31, 2007 – real and personal property value. Exhibit C is the map which also highlight the Amended District encompassing the original 62.18 acres, as well as the 67 acres for this expansion. The real property value in this expanded area of 67 acres has an Original Assessed Value as of March 31, 2014, of $78,251,800.

The Amended Development Program provides for the new tax revenues generated by the increase in assessed value of the District to be captured and designated as TIF Revenues. The City will apply the retained revenues to the economic development activities described in the Amended Development Program. To date, these activities include:

- Assisting with the Financing for Parking Structures – est. $10,000,000+
- Credit Enhancement Agreements with Capital, LLC and Southern Maine Student Housing, LLC for the construction of 550 structured parking spaces - $6,000,000 ($450,000 per year for 10 years, and $300,000 per year for an additional 5 years).
- Relocate one remaining scrap metal recycling facility and acquisition of scrap metal yard site
- Infrastructure (roadway and sidewalk) located in District
- Pledging TIF revenue as a repayment source for HUD or any other agency or entity that finances Bayside investment ($400,000 per year for 15 years).
- Public infrastructure improvements for both pedestrians and transit, lighting and open space/trails;
- Economic Development Department Staffing and Land Preparation and Marketing – est. $500,000;
- Cover the City's Economic Development Department staff costs – est. $250,000/annually.

The attached Revised Exhibit A details the projections of retained revenues based upon the anticipated assessed value increases within the District. Revised Exhibit A is a projection based upon best available information and is included for demonstration purposes only. No assurances are provided as to the results reflected therein.

B. Development Program Account

This Development Program requires establishment of a Development Program Account pledged to, and charged with, the payment of the project costs in the manner outlined in 30-A M.R.S.A. §5254 (3)(A)(2).

The Bayside TIF Development Program Account is established consisting of a project cost account ("Project Cost Account") pledged to, and charged with, payment of project costs. The Project Cost Account shall consist of Company Cost Subaccounts (Company Cost Subaccount), pledged to and charged with payment to authorized companies under the terms of an approved Credit Enhancement Agreement for reimbursements for eligible project costs, and a City Cost Subaccount (the "City Cost Subaccount") pledged to, and charged with, payment to the City for the cost of approved economic development expenses.

C. Financing Plan

The original TIF District comprised an area of approximately 11 acres of real and personal property. The value of the real and personal property within the district as of March 31, 2002 was established as the original assessed value. With the subsequent expansion, the value of the additional real and personal property within the district expansion as of March 31, 2007 was established as the original assessed value, with that value being $44,066,380. With this additional expansion from 62.18 to add 67 acres to the District, for a total of 129.16 acres, the value of real property within the expanded District of 67 acres has a March 31, 2014 date established as the original assessed value, or $78,251,800 as detailed in Section IV.A. above.

The developments within the described Amended Bayside TIF District will add significant new taxable value in the City of Portland. TIF revenues will be allocated as described on Revised Exhibit A to finance the costs described in the Amended Development Program. Actual payments to the Project Cost Account will be adjusted based upon the applicable annual percentage retained, or a specific amount to be retained within the Amended District, and the actual annual assessed value within the Amended District, to be determined by the City Council on a yearly basis.

V. Amended Financial Data

A. Total 2014 value of equalized property in the municipality: $7,551,450,000

B. Original assessed value of all properties in all existing and proposed TIF districts:

Existing	$296,740,160 (Includes existing Bayside TIF)
Less TOD:	-$4,970,470
Proposed	$78,251,800
Total	$370,021,490

Line B divided by line A = 4.9% (cannot exceed 5%).

C. Estimate of increased assessed value by year after implementation of the development program: See Revised Exhibit A

D. Percentage of increased assessed value to be applied to the development program fund: See Revised Exhibit A

E. Estimated annual tax increment: $1,717,654 (Average)

F. Total average annual value of development program fund: $1,717,654 (Average)

G. Annual principal and interest payment of bonded indebtedness: N/A at this time

H. Financial assumptions and safeguards: The City of Portland is under no obligation to repay any bonds that would involve a pledge of the City's full faith and credit.

VI. Tax Shifts

A. Average Annual Amount:

General Purpose Aid to Education Tax Shift: $593,812

Municipal Revenue Sharing Tax Shift: $47,751

County Tax Shift: $38,745

Total Average Annual Savings: $680,307

VII. Municipal Approvals

A. Public Hearing Notice

The City of Portland did giver proper Notice of Public Hearing in accordance with the requirements of 30-A M.R.S.A. §5253. The notice was published on November 3, 2014, in a newspaper of general circulation (see Exhibit E).

B. Public Hearing

A Public Hearing at which the proposed Amended Bayside Municipal Tax Increment Financing District was discussed was held on November 17, 2014, in the Portland City Council Chambers. A copy of the minutes of that meeting is included as Exhibit F.

C. Authorizing Votes

An attested copy of the resolution of the Portland City Council designating the Amended Municipal TIF district created for the implementation of the Bayside Redevelopment Program is included as Exhibit G.

D. Assessors Certification

An attested copy of the certification by the City of Portland Tax Assessor as to the revised Original Assessed Value of the expanded Bayside Municipal Tax Increment Financing District is included as Exhibit H.

Exhibit A

City of Portland - TIF Values for Bayside TIF Year 1 to 3, or Tax Years 2003 to 2005

Original Area: 11 Acres

OAV a/o 3/31/2002: 1,608,190

Table Reflects:

1) Actual Percentages Captured
2) Actual Mill Rate
3) Actual Yearly Property Values

Bayside TIF - Years 1 to 3 (FY04 to FY06) - City of Portland- TIF Table (OAV ao 3/31/2002 $1,608,190)									
Various Percent Sheltered from Original Bayside TIF - Years 1 to 3									
TIF Year	Tax Year-April 1	Increased Assessed Value Real & PP Prop.	% of Value Captured	Captured Valuation	Mill Rate	Total New Taxes Captured	Captured Revenue to Business Project Account	Captured Revenue to Municipal Project Account	City Non-Captured General Fund Revenues
1	2003	$6,191,580	1.00%	$61,916	26.83	$1,661	$0	$1,661	$164,434
2	2004	$7,295,740	1.00%	$72,957	26.53	$1,936	$0	$1,936	$191,620
3	2005	$9,171,480	54.00%	$4,952,599	20.13	$99,696	$0	$99,696	$84,926
3 Year TIF Total		**$22,658,800**		**$5,087,472**		**$103,292**	**$0**	**$103,292**	**$440,981**
Average Annual						$34,431	$0	$34,431	$146,994

City of Portland - TIF Tax Shifts for Bayside TIF Year 1 to 3, or Tax Years 2003 to 2005

Original Area: 11 Acres

OAV a/o 3/31/2002: 1,608,190

Table Reflects:
1) 1% Capture Yr 1; 1% Capture Yr 2; 54% Capture Yr 3
2) Mill Rates: Yr 1-26.83; Yr 2-26.53; Yr 20.13

Tax Shifts-Avoided Formula Impacts from Sheltering of Valuation: City of Portland-Bayside Original TIF for Years 1 to 3 (FY04 to FY06)

Various Percent Sheltered From Original Bayside TIF - Years 1 to 3 (FY04 to FY06)

				Avoided Formula Impacts from Sheltering of Valuation			
TIF Year	Tax Year-April 1	Total Added Valuation	Sheltered Valuation	Avoided Loss of State Aid to for Education	Avoided Loss of State Municipal Revenue Sharing	Avoided Increase in County Tax	Total Avoided Impacts
1	2003	$6,191,580	$61,916	$502	$40	$33	$575
2	2004	$7,295,740	$72,957	$591	$48	$39	$677
3	2005	$9,171,480	$4,952,599	$40,116	$3,226	$2,621	$45,963
3 Year TIF Total		**$22,658,800**	**$5,087,472**	**$41,209**	**$3,314**	**$2,693**	**$47,215**
Average Annual			$1,695,824.13	$13,736	$1,105	$898	$15,738

City of Portland TIF Values for Bayside TIF

Original Area w 1st Expansion: 62.18 Acres

OAV a/o 3/31/2007: $44,066,380

Table Reflects:

1) Actual Percentages Captured Years 4 to 12
2) Projected 100% Captured Years 13 to 30
3) Actual Yearly Property Valuation Years 4 to 12
4) Projected Increase Property Valuation of 1% Years 13 to 30
5) Projected Increase of Mill Rate of 2% Years 13 to 30

Orignal Bayside TIF - Actual Years 4 to 12 (FY07 to FY15); Projections Years 13 to 30 (FY16 to FY33) - City of Portland-TIF Projection Table (OAV AO 3/31/2007 OF $44,066,380)

Actual Various Percent Sheltered from Original Bayside TIF Years 4 to 12; 100% Sheltered Years 13 to 30)

TIF Year	Tax Year-April 1	Increased Assessed Value Real & PP Prop.	% of Value Captured	Captured Valuation	Projected Mill Rate	Total Projected New Taxes Captured	Captured Revenue to Business Project Account	Captured Revenue to Municipal Project Account	City Non-Captured General Fund Revenues
4	2006	$11,052,960	28.00%	$3,094,829	16.31	$50,477	$0	$50,477	$129,797
5	2007	$23,657,250	1.00%	$236,573	17.10	$4,045	$0	$4,045	$400,494
6	2008	$49,496,900	100.00%	$49,496,900	17.74	$878,075	$0	$878,075	$0
7	2009	$69,217,260	78.00%	$53,989,463	17.74	$957,773	$0	$957,773	$270,141
8	2010	$68,355,920	71.00%	$48,532,703	17.92	$869,706	$478,338	$391,368	$355,232
9	2011	$62,808,110	73.00%	$45,849,920	18.28	$838,137	$427,450	$410,687	$309,996
10	2012	$66,477,790	47.00%	$31,244,561	18.82	$588,023	$441,017	$147,006	$663,089
11	2013	$65,716,350	98.00%	$64,402,023	19.41	$1,250,043	$450,016	$800,028	$25,511
12	2014	$65,131,890	83.00%	$54,059,469	20.00	$1,081,189	$443,288	$637,902	$221,448
13	2015	$66,223,873	100.00%	$66,223,873	20.40	$1,350,967	$472,838	$878,129	$0
14	2016	$67,326,775	100.00%	$67,326,775	20.81	$1,400,936	$476,318	$924,617	$0
15	2017	$68,440,707	100.00%	$68,440,707	21.22	$1,452,597	$479,357	$973,240	$0
16	2018	$69,565,778	100.00%	$69,565,778	21.65	$1,506,005	$361,441	$1,144,564	$0
17	2019	$70,702,099	100.00%	$70,702,099	22.08	$1,561,217	$359,080	$1,202,137	$0
18	2020	$71,849,784	100.00%	$71,849,784	22.52	$1,618,291	$356,024	$1,262,267	$0
19	2021	$73,008,946	100.00%	$73,008,946	22.97	$1,677,287	$352,230	$1,325,056	$0
20	2022	$74,179,699	100.00%	$74,179,699	23.43	$1,738,267	$365,036	$1,373,231	$0
21	2023	$75,362,160	100.00%	$75,362,160	23.90	$1,801,295	$0	$1,801,295	$0
22	2024	$76,556,445	100.00%	$76,556,445	24.38	$1,866,438	$0	$1,866,438	$0
23	2025	$77,762,673	100.00%	$77,762,673	24.87	$1,933,762	$0	$1,933,762	$0
24	2026	$78,980,964	100.00%	$78,980,964	25.36	$2,003,339	$0	$2,003,339	$0
25	2027	$80,211,437	100.00%	$80,211,437	25.87	$2,075,241	$0	$2,075,241	$0
26	2028	$81,454,215	100.00%	$81,454,215	26.39	$2,149,542	$0	$2,149,542	$0
27	2029	$82,709,421	100.00%	$82,709,421	26.92	$2,226,320	$0	$2,226,320	$0
28	2030	$83,977,179	100.00%	$83,977,179	27.46	$2,305,653	$0	$2,305,653	$0
29	2031	$85,257,615	100.00%	$85,257,615	28.00	$2,387,625	$0	$2,387,625	$0
30	2032	$86,550,855	100.00%	$86,550,855	28.56	$2,472,319	$0	$2,472,319	$0
27 Year TIF Total		**$481,914,430**		**$350,906,441**		**$40,044,566**	**$5,462,433**	**$34,582,134**	**$2,375,708**
Average Annual						$1,483,132	$202,312	$1,280,820	$87,989

City of Portland TIF Tax Shifts for Bayside TIF
Original Area w 1st Expansion: 62.18 Acres
OAV a/o 3/31/2007: $44,066,380

Table Reflects:
1) Actual Percentages Captured Years 4 to 12
2) Projected 100% Captured Years 13 to 30
3) Actual Yearly Property Valuation Years 4 to 12
4) Projected Increase Property Valuation of 1% Years 13 to 30
5) Projected Increase of Mill Rate of 2% Years 13 to 30

Tax Shifts-Avoided Formula Impacts from Sheltering of Valuation: City of Portland- TIF Model

Actual Percent Sheltered From Bayside TIF Years 4 to 12 (FY07 to FY15); 100% Projected Capture TIF Years 13 to 30 (FY16 to FY33)

				Avoided Formula Impacts from Sheltering of Valuation			
TIF Year	Tax Year-April 1	Total Added Valuation	Sheltered Valuation	Avoided Loss of State Aid to for Education	Avoided Loss of State Municipal Revenue Sharing	Avoided Increase in County Tax	Total Avoided Impacts
4	2006	$11,052,960	$3,094,829	$25,068	$2,016	$1,638	$28,722
5	2007	$23,657,250	$236,573	$1,916	$154	$125	$2,196
6	2008	$49,496,900	$49,496,900	$400,925	$32,240	$26,169	$459,333
7	2009	$69,217,260	$53,989,463	$437,315	$35,166	$28,541	$501,021
8	2010	$68,355,920	$48,532,703	$393,115	$31,612	$25,660	$450,386
9	2011	$62,808,110	$45,849,920	$371,384	$29,864	$24,243	$425,491
10	2012	$66,477,790	$31,244,561	$253,081	$20,351	$16,527	$289,959
11	2013	$65,716,350	$64,402,023	$521,656	$41,948	$34,036	$597,640
12	2014	$65,131,890	$54,059,469	$437,882	$35,212	$28,577	$501,671
13	2015	$66,223,873	$66,223,873	$536,413	$43,135	$34,997	$614,545
14	2016	$67,326,775	$67,326,775	$545,347	$43,853.22	$35,579	$624,779
15	2017	$68,440,707	$68,440,707	$554,370	$44,578.78	$36,166	$635,115
16	2018	$69,565,778	$69,565,778	$563,483	$45,311.60	$36,760	$645,554
17	2019	$70,702,099	$70,702,099	$572,687	$46,051.74	$37,359	$656,098
18	2020	$71,849,784	$71,849,784	$581,983	$46,799.28	$37,964	$666,747
19	2021	$73,008,946	$73,008,946	$591,372	$47,554.30	$38,576	$677,503
20	2022	$74,179,699	$74,179,699	$600,856	$48,316.87	$39,193	$688,366
21	2023	$75,362,160	$75,362,160	$610,433	$49,087.06	$39,817	$699,337
22	2024	$76,556,445	$76,556,445	$620,107	$49,864.96	$40,447	$710,419
23	2025	$77,762,673	$77,762,673	$629,878	$50,650.64	$41,083	$721,611
24	2026	$78,980,964	$78,980,964	$639,746	$51,444.17	$41,725	$732,915
25	2027	$80,211,437	$80,211,437	$649,713	$52,245.64	$42,374	$744,332
26	2028	$81,454,215	$81,454,215	$659,779	$53,055.12	$43,029	$755,863
27	2029	$82,709,421	$82,709,421	$669,946	$53,872.70	$43,690	$767,509
28	2030	$83,977,179	$83,977,179	$680,215	$54,698.45	$44,359	$779,272
29	2031	$85,257,615	$85,257,615	$690,587	$55,532.46	$45,033	$791,153
30	2032	$86,550,855	$86,550,855	$701,062	$56,375	$45,715	$803,152
27 Year TIF Total		$1,852,035,056	$1,721,027,067	$13,940,319	$1,120,989	$909,379	$15,970,688
Average Annual				$516,308	$41,518	$33,681	$591,507

Bayside TIF Model For FY07 to FY33 w OAV of $44,066,380 ao 3-31-2007

Exhibit A

10/17/2014

City of Portland - TIF Values - For Expanded Area Only of Bayside TIF for TIF remaining years of FY16 to FY33

2nd Expanded Area: 67 acres

OAV a/o 3/31/2014: $78,251,800

Model Assumes:
1) 1% Yearly Increase in Valuation;
2) 2% Yearly Increased in Tax Rate; and,
3) 100% Yearly Capture Rate

City of Portland- Expanded Bayside TIF Projection Table - For Add'l 67 Acres; OAV $78,251,800									
TIF Year	Tax Year-April 1	Increased Assessed Value Real Prop. At 1%/Yr.	% of Value Captured	Captured Valuation	Projected Mill Rate (inc. 2%/Yr)	Total Projected New Taxes Captured	Captured Revenue to Business Project Account	Captured Revenue to Municipal Project Account	City Non-Captured General Fund Revenues
13	2015	$782,518	100.00%	$782,518	20.20	$15,804	$0	$15,804	$0
14	2016	$1,572,861	100.00%	$1,572,861	20.60	$32,401	$0	$32,401	$0
15	2017	$2,371,108	100.00%	$2,371,108	21.01	$49,822	$0	$49,822	$0
16	2018	$3,177,337	100.00%	$3,177,337	21.43	$68,097	$0	$68,097	$0
17	2019	$3,991,628	100.00%	$3,991,628	21.86	$87,260	$0	$87,260	$0
18	2020	$4,814,063	100.00%	$4,814,063	22.30	$107,344	$0	$107,344	$0
19	2021	$5,644,721	100.00%	$5,644,721	22.74	$128,383	$0	$128,383	$0
20	2022	$6,483,686	100.00%	$6,483,686	23.20	$150,414	$0	$150,414	$0
21	2023	$7,331,041	100.00%	$7,331,041	23.66	$173,473	$0	$173,473	$0
22	2024	$8,186,870	100.00%	$8,186,870	24.14	$197,599	$0	$197,599	$0
23	2025	$9,051,256	100.00%	$9,051,256	24.62	$222,831	$0	$222,831	$0
24	2026	$9,924,287	100.00%	$9,924,287	25.11	$249,211	$0	$249,211	$0
25	2027	$10,806,048	100.00%	$10,806,048	25.61	$276,780	$0	$276,780	$0
26	2028	$11,696,626	100.00%	$11,696,626	26.13	$305,582	$0	$305,582	$0
27	2029	$12,596,111	100.00%	$12,596,111	26.65	$335,664	$0	$335,664	$0
28	2030	$13,504,590	100.00%	$13,504,590	27.18	$367,070	$0	$367,070	$0
29	2031	$14,422,154	100.00%	$14,422,154	27.72	$399,851	$0	$399,851	$0
30	2032	$15,348,893	100.00%	$15,348,893	28.28	$434,056	$0	$434,056	$0
18 Year TIF Total		**$141,705,797**		**$141,705,797**		**$3,601,642**	**$0**	**$3,601,642**	**$0**
18 Year Averages						**$200,091.20**		**$200,091.20**	

O:\TIF\Bayside\Expanded Bayside TIF FY2015\Bayside TIF Model For FY16 to FY33 - Expanded Area Only w OAV of $78,251,800 ao 3-31-2014

Exhibit A

10/17/2014

City of Portland - TIF Tax Shifts For Expanded Area Only of Bayside TIF for TIF remaining years of FY16 to FY33

2nd Expanded Area: 67 acres

OAV a/o 3/31/2014: $78,251,800

Model Assumes:
1) 1% Yearly Increase in Valuation;
2) 2% Yearly Increased in Tax Rate; and,
3) 100% Yearly Capture Rate

Tax Shifts-Avoided Formula Impacts from Sheltering of Valuation: City of Portland- Expanded Area Only of Bayside - TIF Projection Model

				Avoided Formula Impacts from Sheltering of Valuation			
TIF Year	Tax Year-April 1	Total Added Valuation	Sheltered Valuation	Avoided Loss of State Aid to for Education	Avoided Loss of State Municipal Revenue Sharing	Avoided Increase in County Tax	Total Avoided Impacts
13	2015	$782,518	$782,518	$6,338	$510	$414	$7,262
14	2016	$1,572,861	$1,572,861	$12,740	$1,024	$833	$14,597
15	2017	$2,371,108	$2,371,108	$19,206	$1,544	$1,255	$22,006
16	2018	$3,177,337	$3,177,337	$25,736	$2,070	$1,682	$29,488
17	2019	$3,991,628	$3,991,628	$32,332	$2,600	$2,113	$37,045
18	2020	$4,814,063	$4,814,063	$38,994	$3,136	$2,548	$44,678
19	2021	$5,644,721	$5,644,721	$45,722	$3,677	$2,988	$52,387
20	2022	$6,483,686	$6,483,686	$52,518	$4,223	$3,432	$60,173
21	2023	$7,331,041	$7,331,041	$59,381	$4,775	$3,880	$68,037
22	2024	$8,186,870	$8,186,870	$66,314	$5,333	$4,333	$75,979
23	2025	$9,051,256	$9,051,256	$73,315	$5,896	$4,790	$84,001
24	2026	$9,924,287	$9,924,287	$80,387	$6,464	$5,252	$92,103
25	2027	$10,806,048	$10,806,048	$87,529	$7,039	$5,719	$100,286
26	2028	$11,696,626	$11,696,626	$94,743	$7,619	$6,190	$108,551
27	2029	$12,596,111	$12,596,111	$102,028	$8,204	$6,666	$116,899
28	2030	$13,504,590	$13,504,590	$109,387	$8,796	$7,146	$125,330
29	2031	$14,422,154	$14,422,154	$116,819	$9,394	$7,632	$133,845
30	2032	$15,348,893	$15,348,893	$124,326	$9,997	$8,122	$142,446
18 Year TIF Total		**$141,705,797**	**$141,705,797**	**$1,147,817**	**$92,300**	**$74,995**	**$1,315,112**
18 Year TIF Averages				**$63,767.61**	**$5,127.77**	**$4,166.37**	**$73,061.75**

O:\TIF\Bayside\Expanded Bayside TIF FY2015\Bayside TIF Model For FY16 to FY33 - Expanded Area Only w OAV of $78,251,800 ao 3-31-2014

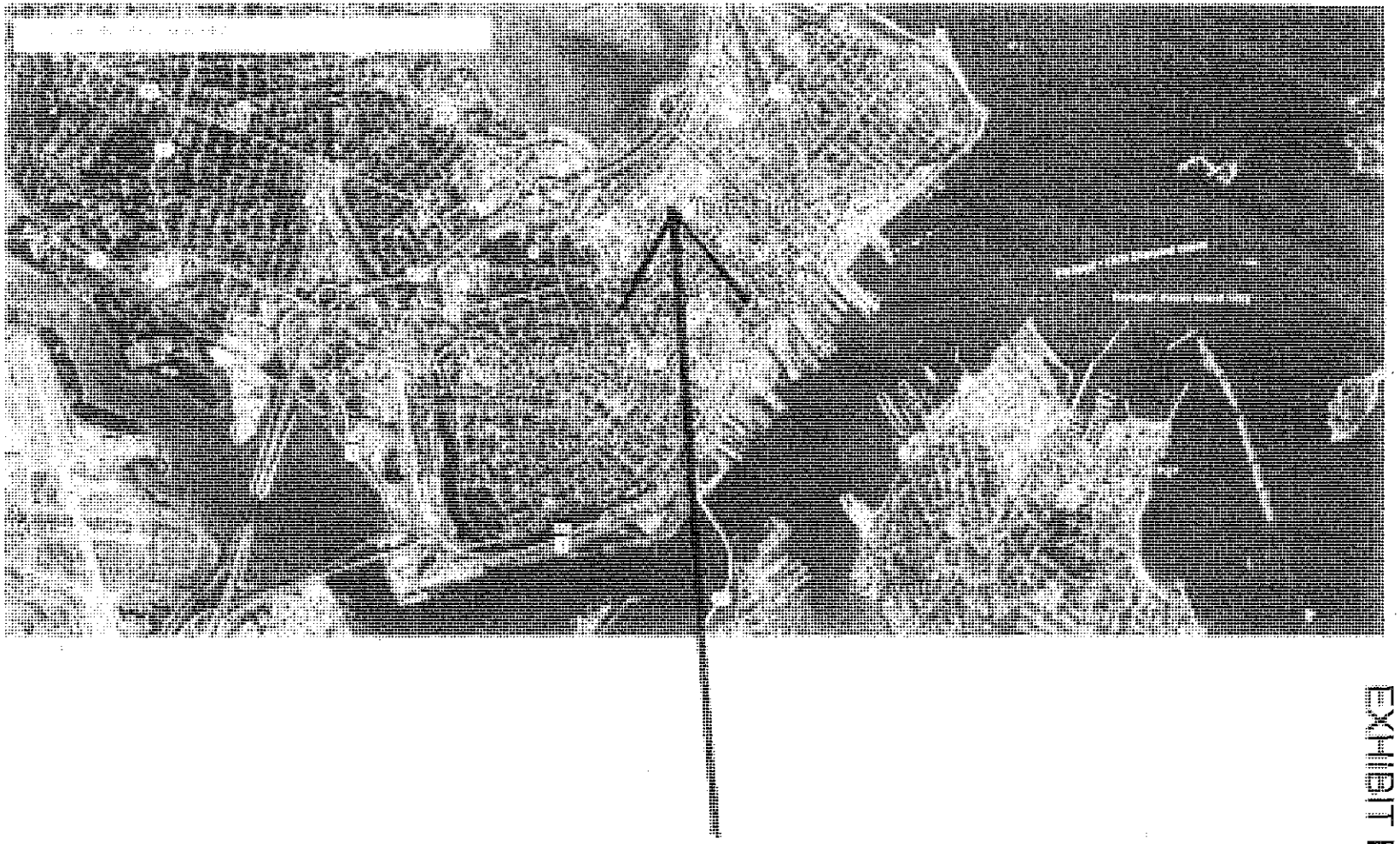


EXHIBIT B

Imagery ©2014 Google, Map data ©2014 Google

EXHIBIT C

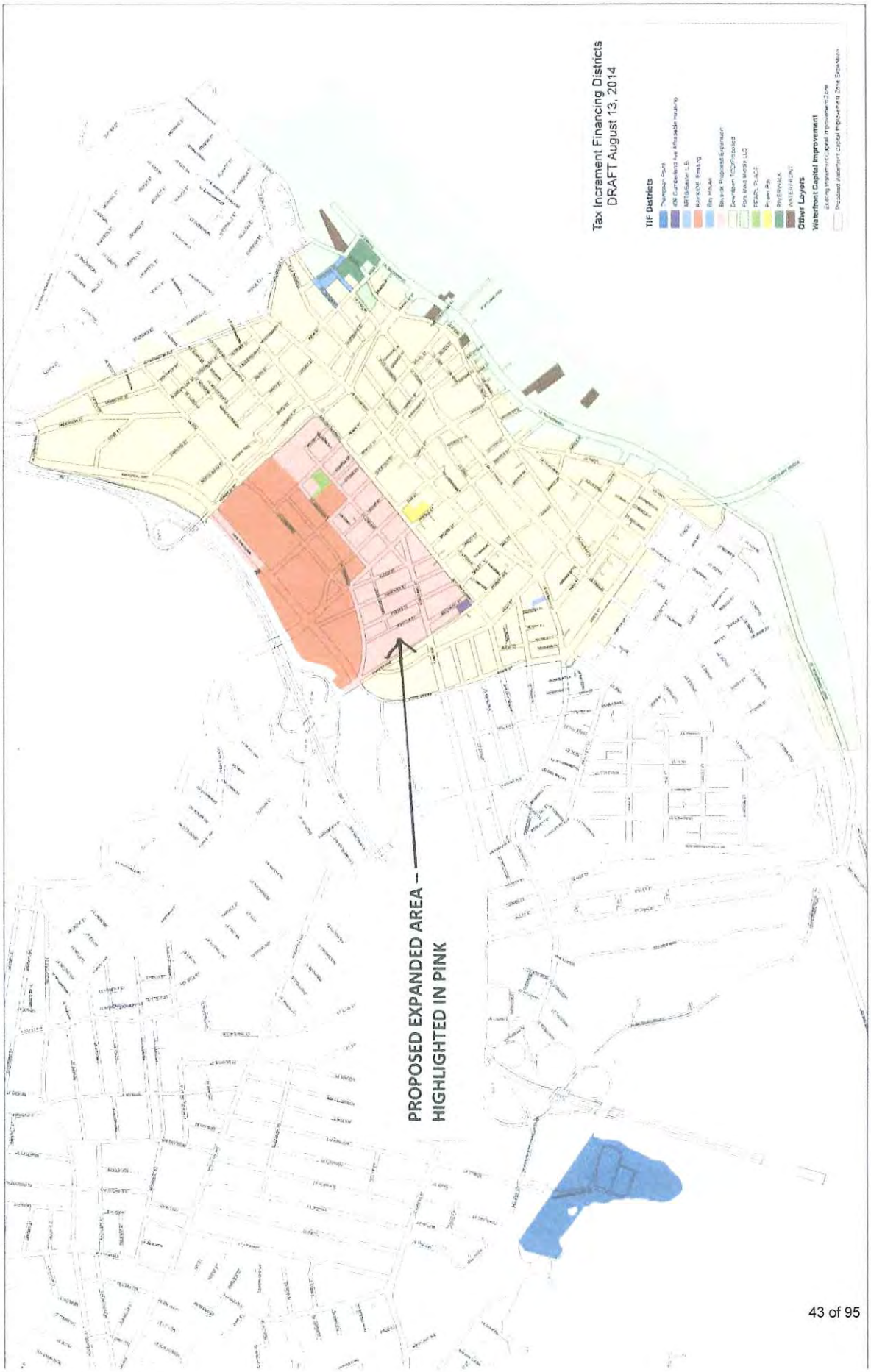

Tax Increment Financing Districts
DRAFT August 13, 2014
TIF Districts
Thompson Point
4W Cumberland Ave Affordable Housing
ARTS&Station LLC
BAYSIDE Existing
Bay House
Bayside Proposed Expansion
Downtown TOD Proposed
Fore Work Media, LLC
PEARL PLACE
Preble Park
RYERSON
WATERFRONT
Other Layers
Waterfront Capital Improvement
Existing Waterfront Capital Improvement Zone
Proposed Waterfront Capital Improvement Zone Expansion
PROPOSED EXPANDED AREA –
HIGHLIGHTED IN PINK

EXHIBIT D

Second Addendum to Credit Enhancement Agreement

This Second Addendum to the Credit Enhancement Agreement ("Second Addendum") is entered into by and between Atlantic Bayside Trust LLC (f/k/a Capital LLC) and the City of Portland on this 11th day of October, 2007.

WHEREAS, Capital LLC, now known as Atlantic Bayside Trust LLC, and the City entered into a Credit Enhancement Agreement dated January 30, 2007, for property located in the Bayside neighborhood in Portland, Maine, and the parties entered into an Addendum to said Credit Enhancement Agreement on February 7, 2007 (collectively, the "CEA");

WHEREAS, the Project, as defined in the CEA, has increased in size from 64,500 square feet to 110,000 square feet;

WHEREAS, the additional square footage and other design changes will increase the Project's cost by approximately $6.9 million and will create an additional $2,003,212 in tax revenue over the duration of the CEA;

WHEREAS, the improvements to Preble Street and Marginal Way (collectively the "Offsite Improvements") necessary to complete the Project are expected to cost no less than $632,000;

WHEREAS, the Parties seek to amend the CEA to reflect the increase in scope.

NOW THEREFORE, for consideration of the mutual promises herein, and consideration of one dollar, the receipt and sufficiency of which is acknowledged, the Parties agree as follows:

1. The definition of Project in Section 1.1 of the CEA is deleted and a new definition inserted as follows:

"The 'Project' means the minimum 110,000 square foot office building and 504 car parking garage as approved by the Planning Board on March 23, 2007."

2. The table included at the end of Section 3.1 of the Credit Enhancement Agreement labeled "Table 1 – TIF Allocation Table" is deleted and the Table attached to this Second Addendum as Attachment A is inserted in its place, to reflect that the amount of the Project Revenue shall increase by $25,000 per year over the 15 year term of the CEA.

3. Atlantic Bayside Trust shall provide documentation to support that the actual cost of the Offsite Improvements was equal to, or exceeded $632,000. In the event that the Offsite Improvements cost less than $632,000, the $25,000 incremental payment shall be decreased by a pro rata amount. For example, if the actual cost is $316,000 (50%), then these additional funds ($25,000) would be adjusted by 50%, or $12,500 per year.

4. In Section 7.1 of the Credit Enhancement Agreement, the term "2018" is deleted and the term "2023" is inserted in its place.

5. All terms and conditions of the CEA remain in full force and effect except as specifically amended by this Second Addendum.

IN WITNESS WHEREOF, Capital LLC and the City have executed this Amendment as of the date above.

WITNESS

CITY OF PORTLAND

By: Joseph E. Gray, Jr.
Its City Manager

WITNESS

CAPITAL LLC

By: Theodore V. West
Its Manager

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Attachment A

Table 1 - TIF ALLOCATION TABLE

Tax Year	Estimated Increased Real Estate Value	Estimated Mil Rate (2% Inc.)	Estimated Incremental Tax Real Estate	Project Allocation	Project Revenue	Estimated City Revenue From Real Estate
FY08	$2,000,000	16.71	$33,415	0%	$ -	$33,415
FY09	$26,332,177	17.04	$448,700	79%	$355,000	$93,700
FY10	$26,332,177	17.38	$457,653	78%	$355,000	$102,653
FY11	$26,332,177	17.73	$466,869	76%	$355,000	$111,869
FY12	$26,332,177	18.08	$476,086	75%	$355,000	$121,086
FY13	$26,332,177	18.45	$485,829	73%	$355,000	$130,829
FY14	$26,332,177	18.82	$495,572	72%	$355,000	$140,572
FY15	$26,332,177	19.19	$505,314	70%	$355,000	$150,314
FY16	$26,332,177	19.58	$515,584	69%	$355,000	$160,584
FY17	$26,332,177	19.97	$525,854	68%	$355,000	$170,854
FY18	$26,332,177	20.37	$536,386	66%	$355,000	$181,386
FY19	$26,332,177	20.77	$546,919	59%	$325,000	$221,919
FY20	$26,332,177	21.19	$557,979	58%	$325,000	$232,979
FY21	$26,332,177	21.61	$569,038	57%	$325,000	$244,038
FY22	$26,332,177	22.05	$580,625	56%	$325,000	$255,625
FY23	$26,332,177	22.49	$592,211	55%	$325,000	$267,211
			$7,794,034		**$5,175,000**	**$2,619,034**

Addendum to Credit Enhancement Agreement

This Addendum to the Credit Enhancement Agreement ("Amendment") is entered into by and between Capital LLC and the City of Portland on this 7th day of February, 2007

Whereas, the Credit Enhancement Agreement ("CEA") did not contemplate that the Project would be partially constructed on April 1, 2008;

Whereas, Section 4.1(c) was intended to govern the amount of the credit enhancement payment if the Project scope was less than 64,500 square feet and 430 parking stalls;

Whereas, the Project as currently planned is 105,000 square feet and 460 to 500 parking stalls, resulting in approximately $4 million more in assessed value than was contemplated;

Whereas, the Parties seek to clarify the calculation of the payment in Fiscal Year 2009 and to mitigate the unintended application of 4.1(c) to the partially completed Project.

Now therefore, for consideration of the mutual promises herein, and consideration of one dollar, the receipt and sufficiency of which is acknowledged, the Parties agree as follows:

1. A new sentence shall be added to the end of Section 3.3(a) as follows:

Notwithstanding the foregoing, if the Project is under construction on April 1, 2008, and has a minimum assessed value of eight million dollars, the payment under this Section 3.3(a) to Company shall be the greater of 1) the amount calculated under Section 4.1(c), or 2) the Property Tax paid in fiscal year 2009, plus one half of the difference between the Property Tax paid and the payment called for in Table 1 of Section 3.1 (i.e. $330,000).

2. All other sections of the CEA shall be in full force and effect.

In witness whereof, the undersigned have executed this Amendment on the date that first appears above.

Capital LLC	City of Portland
By: Ted West	By: Joe Gray
Its: Manager	Its: Manager

CREDIT ENHANCEMENT AGREEMENT

between

CITY OF PORTLAND, MAINE

and

CAPITAL LLC

Dated as of January 30th, 2007

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THIS CREDIT ENHANCEMENT AGREEMENT dated as of January 30, 2007, between the City of Portland, Maine (the "City"), a municipal body corporate and politic and a political subdivision of the State of Maine, CAPITAL LLC, a limited liability company duly organized and existing under the laws of the State of Maine, with a place of business in Portland, Maine (the "Company").

WITNESSETH THAT

WHEREAS, the City designated the Bayside Redevelopment Municipal Development District and Tax Increment Financing District (the "District") pursuant to Chapter 206 of Title 30-A of the Maine Revised Statutes by action of the Portland City Council on March 3, 2003 (the "Vote"), and pursuant to the same Vote adopted a development program and financial plan for the District (the "Development Program"); and

WHEREAS, the City amended the Bayside Redevelopment Municipal Development District and Tax Increment Financing District (the "Amended District") pursuant to Chapter 206 of Title 30-A of the Maine Revised Statutes by action of the Portland City Council on July 6, 2005, and pursuant to such vote adopted an amended development program and financial plan for the Amended District (the "Amended Development Program"); and

WHEREAS, upon submission of an application to DECD, the City expects DECD to review and approve the Amended Development Program; and

WHEREAS, the City adopted the Amended Development Program and entered into this Agreement in order to induce the Company to build the Project by enabling the City to contribute toward the capital cost of the Project the amounts contemplated by the Amended Development Program and this Agreement; and

WHEREAS, in connection with the Amended Development Program, and as contemplated thereby, the City and the Company have agreed to execute and deliver this Agreement; and

WHEREAS, the City and the Company desire and intend that this Agreement be and constitute the credit enhancement agreement contemplated by and described in the Amended Development Program;

NOW, THEREFORE, in consideration of the foregoing and in consideration of the mutual promises and covenants set forth herein, the parties hereby agree as follows:

ARTICLE I
DEFINITIONS

Section 1.1. Definitions.

The terms defined in this Article I shall, for all purposes of this Agreement, have the meanings herein specified, unless the context clearly requires otherwise. All other capitalized terms not otherwise defined herein shall have the meaning given such terms in the Development Program.

"Account" shall mean the Project Cost Account, also known as the Bayside Redevelopment Program Fund.

"Act" means Chapter 206 of Title 30-A of the Maine Revised Statutes, as amended.

"Agreement" shall mean this Credit Enhancement Agreement dated as of the date set forth above between the City and the Company, as such may be amended by the parties from time to time.

"Amended District" shall have the meaning given such term in the recitals hereto.

"Captured Assessed Value" means the annual percentage of Increased Assessed Value attributable to the Project, retained in the District in each tax year during the term of the District, as specified in Section 3.1 hereof.

"Cash Flow Coverage Ratio" means net income after taxes plus depreciation plus amortization plus interest expense plus or minus non-recurring items divided by annual principal and interest on all Project debt. For purposes of computing the Cash Flow Coverage Ratio, annual property management fees shall be limited to five percent (5.0%) of annual gross revenue for the Project and annual contributions to reserve accounts (e.g., debt service, tenant improvement, capital repair and replacement) shall be limited to the greater of (i) those required by Project lenders or (ii) $50,000.00. Project expenses, even if not included in the proforma expenses submitted to the City, shall be factored into the Cash Flow Coverage Ratio if such expenses are customary for projects similar to the Project or if such expenses are required by Project lenders. The Cash Flow Coverage Ratio shall be determined according to generally accepted accounting principles consistently applied and in a manner consistent with the calculation of debt service coverage ratios by Project lenders.

"City" shall have the meaning given such term in the recitals hereto.

"City Tax Increment Revenues" means in each year this Agreement is in effect, an amount of money equal to the Retained Tax Increment Revenues allocated to the City at the time and according to the schedule specified in Section 3.1 hereof.

"City TIF Account" means the account described in the Financial Plan section of the Development Program and established and maintained pursuant to the Development Program and Article II hereof.

"Company" shall have the meaning given such term in the first paragraph hereto, and shall also mean and include any assignee or successor thereof.

"Company TIF Account" means the account described in the Financial Plan section of the Development Program and established and maintained pursuant to the Development Program and Article II hereof.

"Company Tax Increment Revenues" means in each year this Agreement is in effect an amount of money equal to the Retained Tax Increment Revenues allocated to the Company at the times and according to the schedule specified in Section 3.1 hereof.

"Current Assessed Value" means the then current assessed value of the Property located within the District to be determined by the City's Assessor as of April 1 of each year that this Agreement remains in effect.

"DECD" means the State of Maine Department of Economic and Community Development.

"Development Program" means the development program and financial plan for the District adopted by the City as described in the document entitled " Bayside Redevelopment Tax Increment Financing District Application", as amended, a copy of which is attached hereto as Appendix A.

"District" shall have the meaning given such term in the recitals hereto.

"Financial Plan" means the financial plan described in the "Financial Plan" section of the Development Program.

"Fiscal Year" means the time period from July 1 through June 30 (for example, the 2008 Fiscal Year is the period from July 1, 2007 to June 30, 2008).

"Increased Assessed Value" means the valuation amount by which the Current Assessed Value exceeds the Original Assessed Value. If the Current Assessed Value is less than or equal to the Original Assessed Value in any year, there is no Increased Assessed Value in that year.

"Original Assessed Value" means $0, the assessed value of the Property located within the District as of March 31, 2006.

"Project" means the minimum 64,500 square foot office building and 430 car parking garage as depicted on a certain site plan dated March 13, 2006 prepared by Mitchell & Associates, or any subsequent revisions of that proposal as approved by City and as described in the Development Program, and located on a parcel of land depicted as the westerly portion of City tax map 34A, Block B, Lot 1.

"Project Cost Account" means the account in the Development Program Fund described in the Development Program and established and maintained pursuant to the Development Program and Article II hereof.

"Project Costs" means all costs incurred by the Company on the Project within the meaning set forth in 30-A M.R.S.A. §5222(14), as amended.

"Property" means all real property that is part of the Project, now or hereafter located within the District, whether or not the Company owns such Property or is otherwise liable for property taxes imposed and assessed thereon by the City.

"Property Taxes" means any and all ad valorem property taxes actually paid to the City with respect to the Property.

"Qualified Investments" shall mean any and all securities, obligations or accounts in which municipalities may invest their funds under applicable Maine law, and which are of the same type and tenor as the investments in which the City invests its own funds.

"Retained Tax Increment" means that portion of Property Taxes assessed and collected by the City on the Captured Assessed Value.

"SMSH CEA" means that certain Credit Enhancement Agreement by and between the City and Southern Maine Student Housing, LLC dated June 21, 2006

"SMSH TIF City Account" means the City Account, as defined in the SMSH CEA.

"Tax Payment Date" means the later of the date(s) on which Property Taxes assessed by the City with respect to the Property are due or are paid, or if any such day is not a business day, the next succeeding business day.

Section 1.2. Interpretation and Construction.

In this Agreement, unless the context otherwise requires:

a. The terms "hereby," "hereof," "hereto," "herein," "hereunder" and any similar terms, as used in this Agreement, refer to this Agreement, and the term "hereafter" means after, and the term "heretofore" means before, the date of delivery of this Agreement.

b. Words importing a particular gender mean and include correlative words of every other gender and words importing the singular number mean and include the plural number and vice versa.

c. Words importing persons mean and include firms, associations, partnerships (including limited partnerships), trusts, corporations and other legal entities, including public or governmental bodies, as well as any natural persons.

d. Any headings preceding the texts of the several Articles and Sections of this Agreement, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.

e. All notices to be given hereunder shall be given in writing and, unless a certain number of days is specified, within a reasonable time.

f. If any clause, provision or Section of this Agreement shall be ruled invalid by any court of competent jurisdiction, the invalidity of such clause, provision or Section shall not affect any of the remaining provisions hereof except as expressly provided in Section 3.4.

ARTICLE II
DEVELOPMENT PROGRAM FUND AND FUNDING REQUIREMENTS

Section 2.1. Creation of Development Program Fund.

The City hereby confirms the creation and establishment of a segregated account in the name of the City designated as the "Bayside Redevelopment Program Fund" pursuant to, and in accordance with the terms and conditions of, the Development Program and 30-A M.R.S.A. §5227(3), as amended from time to time. The Account shall consist of a Project Cost Account that is pledged to and charged with the payment of project costs as outlined in the Financial Plan of the Development Program and as provided in 30-A M.R.S.A. §5227(3)(A)(1), as amended from time to time. The Project Cost Account shall include two subaccounts designated as the "Company TIF Account" and "City TIF Account".

Section 2.2. Deposits into Account.

There shall be deposited into the Account contemporaneously with each payment of property tax by the Company an amount equal to that portion of the property tax payment constituting Retained Tax Increment for the period to which the payment relates. Any and all revenues, if any, resulting from investment of monies on deposit shall be retained by the City and withdrawn from the Account contemporaneously with payment to the Company TIF Account.

Section 2.3. Use of Monies in Account.

Monies deposited in the Account shall be used and applied exclusively to fund the City's payment obligation described in Article III hereof. Monies deposited into the Account and any earnings thereunder shall be designated and appropriated by City Council annually in the municipal budget in accordance with Chapter 206 of Title 30-A, and in accordance with the Development Program.

Section 2.4. Monies Held in Trust.

All monies required to be paid into the Company TIF Account under the provisions hereof and the provisions of the Development Program, other than investment earnings thereon, shall be held by the City, in trust, for the benefit of the Company.

Section 2.5. Investments.

Any monies in the Account shall be invested and reinvested in Qualified Investments as determined by the City. The City shall have discretion regarding the investment of such monies, provided such monies are invested in Qualified Investments. As and when any amounts thus invested may be needed for disbursements, the City shall cause a sufficient amount of such investments to be sold or otherwise converted into cash to the credit of such account. The City shall have the sole and exclusive right to designate the investments to be sold and to otherwise direct the sale or conversion to cash of investments made with monies in the Account.

Section 2.6. Tax Payments.

The Company shall pay when due all Property Taxes assessed by the City on property, both real and personal, owned by the Company unless contested by the Company by appropriate proceedings pursuant to Maine law. No payments shall be made by the City under this Agreement unless the Company has paid in full all real or personal Property Taxes assessed by the City on the Company's Property when due.

ARTICLE III
PAYMENT OBLIGATIONS

Section 3.1. Captured Assessed Value; Retained Tax Increment.

Annually, all (100%) of the Increased Assessed Value shall be retained as Captured Assessed Value and the Property Tax assessed on such Captured Assessed Value shall be retained as Retained Tax Increment each year starting with the 2008 Fiscal Year of the City and continuing for each of the next 16 Fiscal Years of the City, ending with the 2023 Fiscal Year. The company shall receive from the Company TIF Account an annual payment as calculated in Section 4.1(b), or the amount shown in the corresponding year's "Project Revenue" column as shown in Table No. 1 below, whichever is less. In the event that after the annual payment is made to the Company there remains funds in the Company TIF Account, said funds shall be transferred to the City TIF Account. For purposes of computing the amounts owed pursuant to this section, the amount of tax collected for reimbursement as Company Tax Increment Revenues shall be calculated on June 30th of each fiscal year.

Table 1 – TIF Allocation Table

Tax Year	Estimated Increased Real Estate Value	Estimated Mil Rate (2% Inc.)	Estimated Incremental Tax Real Estate	Project Allocation	Project Revenue	Estimated City Revenue From Real Estate
FY08	$ 2,000,000	16.71	$ 33,415	0%	$ -	$ 33,415
FY09	$ 19,400,000	17.04	$ 330,610	100%	$ 330,000	$ 610
FY10	$ 19,400,000	17.38	$ 337,222	98%	$ 330,000	$ 7,222
FY11	$ 19,400,000	17.73	$ 343,967	96%	$ 330,000	$ 13,967
FY12	$ 19,400,000	18.08	$ 350,846	94%	$ 330,000	$ 20,846
FY13	$ 19,400,000	18.45	$ 357,863	92%	$ 330,000	$ 27,863
FY14	$ 19,400,000	18.82	$ 365,020	90%	$ 330,000	$ 35,020
FY15	$ 19,400,000	19.19	$ 372,321	89%	$ 330,000	$ 42,321
FY16	$ 19,400,000	19.58	$ 379,767	87%	$ 330,000	$ 49,767
FY17	$ 19,400,000	19.97	$ 387,362	85%	$ 330,000	$ 57,362
FY18	$ 19,400,000	20.37	$ 395,110	84%	$ 330,000	$ 65,110
FY19	$ 19,400,000	20.77	$ 403,012	74%	$ 300,000	$ 103,012
FY20	$ 19,400,000	21.19	$ 411,072	73%	$ 300,000	$ 111,072
FY21	$ 19,400,000	21.61	$ 419,293	72%	$ 300,000	$ 119,293
FY22	$ 19,400,000	22.05	$ 427,679	70%	$ 300,000	$ 127,679
FY23	$ 19,400,000	22.49	$ 436,233	69%	$ 300,000	$ 136,233
			$ 5,750,792		**$4,800,000**	**$ 950,792**

Section 3.2. Completion of Development Program.

Under this Agreement, the Company shall complete the Project as described in the Amended Development Program.

Section 3.3. Credit Enhancement Payments.

a. Subject to Section 3.3(b), the City shall pay on August 1 of each year of this Agreement to the Company all Company Tax Increment Revenues then on deposit in the Company TIF Account. If the funds on deposit in the Company TIF Account are insufficient to make the payments required by Section 3.1 above and funds have been deposited that year in the SMSH City Account pursuant to the SMSH CEA, the City shall pay the Company from the SMSH City TIF Account any deficiency in the payment required by Section 3.1 above. For example, if the Company TIF Account contained only $300,000 and Section 3.1 required payment to the Company of $330,000 that year and the SMSH City TIF Account contained $50,000, the City would pay the Company $30,000 from the SMSH City TIF Account that year. If the SMSH City TIF Account contains insufficient funds to pay the deficiency in payment required by Section 3.1, the deficiency shall be paid to the Company from the other District funds not payable to parties other than the City ("Bayside TIF Funds"). The obligation of the City to make such payment shall be limited obligation payable solely out of monies on deposit in the Company TIF Account, the SMSH City TIF Account and the City TIF Account and shall not constitute a general debt or obligation on the part of the City or a general obligation or charge against or pledge of the faith and credit or taxing power of the City, the State of Maine or any political subdivision thereof.

b. In the event that City is subject to a claim by a third party to pay the Company Tax Increment Revenues to such third party, City shall not pay such amount to Company pursuant to Section 3.3(a) nor to the third party, but shall deposit the Company Tax Increment Revenues in an amount equal to such amount so claimed (but only to the extent available) into an interest bearing escrow account and shall file an interpleader or other comparable action with a court of competent jurisdiction requesting a ruling to determine whether such Company Tax Increment Revenues should be paid to Company or to said third party.

Section 3.4. Failure to Make Payment.

In the event the City should fail to, or be unable to, make any of the payments to the Company required under the foregoing provisions of this Article III, the item or installment so unpaid shall continue as a limited obligation of the City, under the terms and conditions hereinafter set forth, until the amount unpaid shall have been fully paid from either the SMSH City TIF Account or the Bayside TIF Funds as provided above in Section 3.3(a). The Company shall have the right to initiate and maintain an action to specifically enforce the City's obligations hereunder, including without limitation, the City's obligation to establish and maintain the Company TIF Account and to deposit Company Tax Increment Revenues into the Company TIF Account and its obligation to make required payment to the Company.

Section 3.5. Manner of Payments.

The payments provided for in this Article III shall be paid directly to the Company in the manner provided hereinabove for its own use and benefit, which use and benefit shall be consistent with the Development Program and Chapter 206 of Title 30-A of the Maine Revised Statutes. The City shall make required payments in response to requests for payment submitted

by the Company setting forth the amount of the payment and containing a certification in the form attached hereto as Exhibit A.

Section 3.6. Obligations Unconditional.

Except as otherwise expressly provided in this Agreement, the obligations of the City to make the payments described in this Agreement in accordance with the terms hereof shall be absolute and unconditional irrespective of any defense or any rights of setoff, recoupment or counterclaim it might otherwise have against the Company. Notwithstanding the above, the City reserves the right to terminate this Agreement upon receipt of a final judgment by a court of competent jurisdiction to the effect that the Agreement or Development Program adopted in connection herewith or any payment made thereunder is or would be illegal or invalid. In such event, the termination shall relate back to the original date of the Agreement which shall be deemed void ab initio, and neither party shall have any obligations or liability hereunder, under the Development Program or in respect of any of the transactions contemplated thereby, and shall be left in whatever positions, financial or otherwise, they may be in as of the date of termination. Such termination shall not, however, affect the indemnifications set forth in Section 9.10, which obligations shall survive any such termination.

Section 3.7. Limited Obligation.

The City's obligations of payment hereunder shall be limited obligations of the City payable solely from Retained Tax Increment Revenues and any earnings thereon and the SMSH City TIF Account and the Bayside TIF Funds, pledged therefore under this Agreement. The City's obligations hereunder shall not constitute a general debt or a general obligation on the part of the City or a charge against or pledge of the faith and credit or taxing power of the City, but shall be payable solely from the Retained Tax Increment received by the City and the SMSH City TIF Account, and any earnings thereon. This Agreement shall not directly or indirectly or contingently obligate the City to levy or to pledge any form of taxation whatever therefore or to make any appropriation for their payment, excepting the City's obligation to assess property taxes upon the Project and the pledge of the Retained Tax Increment established under this Agreement.

Section 3.8 Administrative Fee.

The Company shall pay to the City an annual administrative fee to the City equal to 1% of the Retained Tax Increment. Such payment shall be deducted pursuant to Section 9.9 of this Agreement contemporaneously with the payment by the City to the Company.

ARTICLE IV
COVENANTS OF THE COMPANY

Section 4.1. Project Development

a. The Company shall construct the Project.

b. In each year this Agreement is in effect, the Company agrees to provide, by each April 30, audited financial statements, which shall be used to determine the Company Tax

Increment Revenues due to Company for the following August 1 payment by City pursuant to this Agreement. The audited financial statements shall be used by City to determine the Cash Flow Coverage Ratio and shall not be used for any other purpose or disclosed to any other party by the City. In each year of this Agreement, the City shall pay Company Tax Increment Revenues to the Company pursuant to this Agreement to the extent necessary for Company to achieve a 1.2 to 1 Cash Flow Coverage Ratio, provided however such payments to the Company shall not be greater than the amount shown in the corresponding year's "Project Revenue" column as shown in Table No. 1 above in Section 3.1.

c. If in any year that this Agreement is in effect the Increased Assessed Value is less than $17,000,000, the obligation of the City to pay into the Company TIF Account per section 3.1 of this Agreement shall be calculated for that year as follows: the Increased Assessed Value divided by $17,000,000 multiplied by the corresponding scheduled fiscal year Company Project Revenue payment amount on Table 1 in section 3.1.

ARTICLE V
PLEDGE AND SECURITY INTEREST

Section 5.1. Pledge of Company TIF Account.

In consideration of this Agreement and other valuable consideration and for the purpose of securing payment of the amounts provided for hereunder to the Company by the City, according to the terms and conditions contained herein, and in order to secure the performance and observance of all of the City's covenants and agreements contained herein, the City does hereby grant a security interest in and pledge to the Company the Company TIF Account and all sums of money and other securities and investments therein.

Section 5.2. Further Instruments.

The City and the Company shall, from time to time execute and deliver such further instruments and take such further action as may be reasonable and as may be required to carry out the provisions of this Agreement, provided, however that no such instruments or agreements shall pledge the credit of the City.

Section 5.3. Liens.

Except as permitted hereunder, the City shall not sell, lease, pledge, assign or otherwise dispose, encumber or hypothecate any interest in the Company TIF Account and will promptly pay or cause to be discharged or make adequate provision to discharge any lien, charge or encumbrance on any part thereof not permitted hereby.

Section 5.4. Access to Books and Records.

All books, records and documents in the possession of the City relating to the District, the Development Program, this Agreement and the monies, revenues and receipts on deposit or required to be deposited into the Account shall at all reasonable times be open to inspection by the Company, its agents, lenders and employees.

ARTICLE VI
DEFAULTS AND REMEDIES

Section 6.1. Events of Default.

Each of the following events shall constitute and be referred to in this Agreement as an "Event of Default":

a. Any failure by the City to pay any amounts due to Company when the same shall become due and payable if such non-payment is not a result of a final determination by a court that this Agreement is illegal or invalid;

b. Any failure by the City to make deposits into the Company TIF Account as and when due;

c. Other than as provided in paragraph (a) and (b) above, any failure by the City or the Company to observe and perform in all material respects any respective covenant, condition, agreement or provision contained herein on the part of the City or the Company respectively to be observed or performed, including any failure of the Company to use payments made under this Agreement as required in Section 3.5 of this Agreement or to perform the covenant under Section 4.1(a) of this Agreement, which failure is not cured within thirty (30) days following written notice thereof or such additional time as is allowed by City to cure provided the defaulting party promptly commences and diligently pursues a cure within said thirty (30) day period; provided, however, that this subsection (c) shall not be construed to include the Company's failure to pay Property Taxes on the Property in the District for any reason as an Event of Default hereunder; and

d. If a decree or order of a court or agency or supervisory authority having jurisdiction in the premises shall appoint a conservator or receiver or liquidator for the City, or if any insolvency, readjustment of debt, marshaling of assets and liabilities or similar proceedings for the winding up or liquidation of the City's affairs shall have been entered against the City or if the City shall have consented to the appointment of a conservator or receiver or liquidator in any such proceedings of or relating to the City or of or relating to all or substantially all of its property, including without limitation the filing of a voluntary petition in bankruptcy by the City or the failure by the City to have a petition in bankruptcy dismissed within a period of 90 consecutive days following its filing or in the event an order for release has been entered under the Bankruptcy Code with respect to the City.

e. Any failure of Company to pay taxes to City when due.

f. Any failure of the Company or any agents, assigns or successors in interest to operate the Project and pay taxes on it during the term of this Agreement.

Section 6.2. Remedies on Default.

Whenever any Event of Default described in Section 6.1 hereof shall have occurred and be continuing, the non-defaulting party may take any one or more of the following remedial steps following any applicable cure period and shall have all rights and remedies available to it.

a. The non-defaulting party may take whatever action at law or in equity, including the rights and remedies available to a secured party under the laws of the State of Maine, and may take whatever action as may appear necessary or desirable to collect the amount then due and thereafter to become due, to specifically enforce the performance or observance of any obligations, agreements, or covenants benefiting the non-defaulting party under this Agreement and any documents, instruments, and agreements contemplated hereby or to enforce any rights or remedies available hereunder; and

b. In addition, in the event of a default under Section 6.1(c)(e) or (f) relating to Section 3.5 or 4.1(a), the City may suspend further payments until such default is cured. If there is any dispute as to either party's performance of any of its obligations under this Agreement, such dispute may, by agreement of the parties, be submitted to non-binding mediation and, following such mediation or in the absence of any such agreement to submit the dispute to mediation, shall be submitted to arbitration in accordance with the rules of the American Arbitration Association. Notwithstanding the foregoing, payments by the City shall not be suspended prior to a final determination in such proceeding in favor of the City.

Section 6.3. Remedies Cumulative.

No remedy herein conferred upon or reserved by any party is intended to be exclusive of any other available remedy or remedies but each and every such remedy shall be cumulative and shall be in addition to the remedy given under this Agreement or now or hereafter existing at law, in equity or by statute. Delay or omission to exercise any right or power accruing upon any Events of Default or to insist upon the strict performance of any of the covenants and agreements herein set forth or to exercise any rights or remedies upon the occurrence of an Event of Default shall not impair any such right or power or be considered or taken as a waiver or relinquishment for the future of the rights to insist upon and to enforce, from time to time and as often as may be deemed expedient, by injunction or other appropriate legal or equitable remedy, strict compliance by the parties hereto with all of the covenants and conditions hereof, or of the rights to exercise any such rights or remedies, if such Events of Default be continued or repeated.

Section 6.4. Enforcement Rights.

The City and the Company agree that each party hereto shall have the right to initiate a legal proceeding to enforce the specific performance of this Agreement, it being understood and agreed that this Agreement is a material inducement to the Company continuing its pursuit of the Project. The parties agree that in the event of any dispute or disagreement hereunder the Company and the City shall continue to make payment of all amounts due hereunder in the manner and at the times specified herein until final resolution of such dispute, whether by mutual agreement or final decision of a court, arbitrator or other dispute resolution mechanism.

ARTICLE VII
EFFECTIVE DATE, TERM AND TERMINATION

Section 7.1. Effective Date and Term.

This Agreement shall become effective upon its execution and delivery by the parties hereto and shall remain in full force from the date hereof and shall expire on the later of the end of the 2018 fiscal year of the City or upon the performance of all obligations on the part of the City and the Company hereunder, unless sooner terminated under Section 3.6 or 9.2 hereof.

Section 7.2. Cancellation and Expiration of Term.

At the termination or other expiration of this Agreement in accordance with the provisions of this Agreement, the City and the Company shall each execute and deliver such documents and take or cause to be taken such actions as may be necessary to evidence the termination of this Agreement.

ARTICLE VIII
ASSIGNMENT AND PLEDGE OF COMPANY'S INTEREST

Section 8.1. Consent to Pledge, Collateral Assignment Or Grant of a Security Interest.

The City hereby acknowledges that the Company may pledge and assign its right, title and interest in, to and under this Agreement as collateral for financing for the Project, although no obligation is hereby imposed on the Company to make such assignment or pledge. Recognizing this possibility, the City does hereby consent and agree to the pledge and assignment of all the Company's right, title and interest in, to and under this Agreement and in, and to the payments to be made to Company hereunder, to third parties as collateral or security for indebtedness related to the Project, on one or more occasions during the term hereof. The City agrees to execute and deliver any assignments, pledge agreements, consents or other confirmations required by the prospective pledgee or assignee, including without limitation recognition of the pledgee or assignee as the holder of all right, title and interest herein and as the payee of amounts due and payable hereunder and any and all such other documentation as shall confirm to such pledgee or assignee the position of such assignee or pledgee and the irrevocable and binding nature of this Agreement and provide to the pledgee or assignee such rights and/or remedies as it may deem necessary for the establishing, perfection and protection of its interest herein.

Section 8.2. Assignment.

Except as provided in Section 8.1, this Agreement and the obligations of the City hereunder are personal to the Company and may not be assigned or transferred by the Company except to a successor in title to the Project, without the consent of the City which consent shall not be unreasonably withheld or delayed for any reason or for no reason. In the event of an assignment, Company shall pay all legal fees incurred by City in conjunction with the assignment.

ARTICLE IX
MISCELLANEOUS

Section 9.1. Successors.

a. In the event the City or the Company are dissolved, merged into or consolidated with another entity, or undergo any form of corporate reorganization (other than with respect to any dissolution, merger, consolidation or corporate reorganization solely involving the Company and any other company related to or affiliated with the Company), the covenants, stipulations, promises and agreements set forth herein, by or on behalf of or for the benefit of such party shall bind or inure to the benefit of the successors and assigns thereof from time to time and any entity, officer, board, commission, agency or instrumentality to whom or to which any power or duty of such party shall be transferred, subject to approval of the City, which consent shall not be unreasonably withheld or delayed.

b. No consent from the City shall be required with respect to any dissolution, merger, consolidation or corporate reorganization solely involving the Company and any other company related to or affiliated with the Company. In such case, the covenants, stipulations, promises and agreements set forth herein, by or on behalf of or for the benefit of the Company shall bind or inure to the benefit of the successors and assigns thereof from time to time and any entity, officer, board, commission, agency or instrumentality to whom or to which any power or duty of such party shall be transferred.

Section 9.2. Parties in Interest.

Except as herein otherwise specifically provided, nothing in this Agreement expressed or implied is intended or shall be construed to confer upon any person, firm or corporation other than the City and the Company any right, remedy or claim under or by reason of this Agreement, it being intended that this Agreement shall be for the sole and exclusive benefit of the City and the Company, and their successors and assigns as allowed under this Agreement; provided, however, that if the payment obligations of the City to the Company hereunder are held by a final and binding proceeding to be illegal or invalid, this Agreement shall terminate. In such event all obligations of the parties shall terminate, and no party shall have any further liability to the other hereunder.

Section 9.3. Severability.

Except as otherwise provided herein, in case any one or more of the provisions of this Agreement shall, for any reason, be held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of this Agreement and this Agreement shall be construed and enforced as if such illegal or invalid provision had not been contained herein.

Section 9.4. No Personal Liability.

a. No covenant, stipulation, obligation or agreement of the City contained herein shall be deemed to be a covenant, stipulation or obligation of any present or future elected or appointed official, officer, agent, servant or employee of the City in his or her individual capacity and neither the members of the City Council of the City, or any official, officer, agent, servant or employee of the City shall be liable personally with respect to this Agreement or be subject to any personal liability or accountability by reason hereof.

b. No covenant, stipulation, obligation or agreement of the Company contained herein shall be deemed to be a covenant, stipulation or obligation of any present or future director, member, manager, officer, agent, servant or employee of the Company in his or her individual capacity and neither the directors, members, managers, officers, agents, servants or employees of the Company shall be liable personally with respect to this Agreement or be subject to any personal liability or accountability by reason hereof.

Section 9.5. Counterparts.

This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original, but such counterparts shall together constitute but one and the same Agreement.

Section 9.6. Governing Law.

The laws of the State of Maine shall govern the construction and enforcement of this Agreement in all respects.

Section 9.7. Notices.

All notices, certificates, requests, requisitions or other communications by the City or the Company pursuant to this Agreement shall be in writing and shall be sufficiently given and shall be deemed given when mailed by first class mail, postage prepaid, or, for any notice of an Event of Default, by registered or certified mail, return receipt requested, addressed as follows:

If to the City:
City of Portland
389 Congress Street
Portland, ME 04101
Attn: City Attorney

If to the Company:
Capital, LLC
50 Portland Pier, Suite 400
Portland, ME 04110

Either of the parties may, by notice given to the other, designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent hereunder.

Section 9.8. Amendments.

Neither this Agreement nor the Development Program may be amended without the express written consent of all of the parties hereto, which consent shall not be unreasonably withheld. Provided, however, the parties agree to amend this Agreement in order to fulfill such reasonable requirement that a lender may require in connection with financing of the Project. This Agreement may only be amended in compliance with the provisions of 30-A M.R.S.A. § 5221 et seq., as amended.

Section 9.9. Net Agreement.

It is understood that the City's payment obligations are to be satisfied solely from Retained Tax Increment Revenues actually paid in by the Company and received by the City, and earnings thereon and provided further that the City may deduct from any payment owed to the Company the administrative fee described in Section 3.8 hereof.

Section 9.10. Integration.

This Agreement completely and fully supersedes all other prior or contemporaneous understandings or agreements, both written and oral, between the City and the Company relating to the specific subject matter of this Agreement and the transactions contemplated hereby.

Section 9.11. Indemnification.

a. The Company agrees to defend, indemnify and hold harmless the City, its officers, agents and employees from any and all claims and expenses, including its attorney fees, arising out of or associated with the City's approval of the District and its preparation of and participation in this Agreement, including expenses arising from any default hereunder by the Company but excluding any such claims or expenses as may relate to actions or proceedings resulting from a default hereunder by the City. This indemnification obligation shall survive termination of this Agreement or a finding that this Agreement is void or invalid.

b. The City agrees to defend, indemnify and hold harmless the Company, its officers, members, managers, agents and employees from any and all claims and expenses, including its attorney fees, arising out of or associated with any default hereunder by the City. This indemnification obligation shall survive termination of this Agreement or a finding that this Agreement is void or invalid.

Section 9.12. Waiver of Recapture if Agreement Found Void.

In the event this Credit Enhancement Agreement is found void "ab initio" by a Court of law with final jurisdiction over this Agreement, City agrees to waive its rights to recapture all Company Tax Increment Revenues paid to Company pursuant to this Agreement.

IN WITNESS WHEREOF, the City and the Company have caused this Agreement to be executed in their respective corporate names and their respective corporate seals to be hereunto affixed and attested by the duly authorized officers or members, as the case may be, all as of the date first above written.

WITNESS

CITY OF PORTLAND, MAINE

By: _____
Its City Manager

WITNESS

CAPITAL LLC

By: _____
Its Authorized Manager

EXHIBIT A

Request for Payment

The undersigned does hereby request payment in the amount of $_____ from the Company TIF Account of the Project Cost Account within the Bayside Redevelopment Program Fund and does hereby certify that the amount requested will be used to pay Project Costs as that term is defined in Chapter 206 of Title 30-A of the Maine Revised Statutes.

CAPITAL LLC

Date:_____ By: _____

Its

CONSENT TO ASSIGNMENT OF AGREEMENT

This Agreement is entered into by and between the **CITY OF PORTLAND**, a Maine municipal corporation (the "City") and **BLUE ATLANTIC PORTLAND, LLC**, a Delaware limited liability company ("Blue Atlantic").

WHEREAS, the City approved a Credit Enhancement Agreement (as amended, "CEA") with Southern Maine Student Housing, LLC, dated June 21, 2006, related to the development of housing on certain real property conveyed by the City to Bayside Village Student Housing, LLC (the "Project"); and

WHEREAS, Section VIII of the CEA allows assignment of the CEA to a successor in title to the Project, with consent of the City; and

WHEREAS, the Project was thereafter conveyed by Bayside Village Student Housing, LLC to Legacy Park Portland One, LLC ("Legacy Park"), by a deed dated December 23, 2010, recorded in the Cumberland County Registry of Deeds in Book 28408, Page 90; and

WHEREAS, in connection with Legacy Park's acquisition of the Project and with the consent of the City, Legacy Park assumed all of the rights and obligations of the CEA; and

WHEREAS, the Project has recently been conveyed by Legacy Park to Blue Atlantic, by a deed dated February 21, 2012, and recorded in said Registry in Book 29376, Page 71; and

WHEREAS, the CEA has recently been assigned by Legacy Park to Blue Atlantic by an Assignment and Assumption of Credit Enhancement Agreement dated February 21, 2012; and

WHEREAS, Blue Atlantic will continue to operate Bayside Student Village as student housing pursuant to the terms and conditions of the Development Program; and

WHEREAS, Blue Atlantic has mortgaged the Project to Texas Capital Bank, National Association ("Lender"), by a Mortgage and Security Agreement dated February 21, 2012, and recorded in said Registry in Book 29376, Page 83; and

WHEREAS, Blue Atlantic, as the successor in title to the Project to Legacy Park, has requested the consent, under Section VIII of the CEA, to the assignment of the CEA to it, and the consent to its collateral assignment of its interest in the CEA to Lender.

NOW, THEREFORE, the City and Blue Atlantic hereby agree as follows:

1. The City acknowledges and consents to the assignment of the CEA to Blue Atlantic Portland, LLC, who assumes all right, title, interest, duties, and obligations to the CEA as successor in title to the Project.

2. Blue Atlantic agrees to accept the assignment of all right, title, interest, duties, and obligations under, and agrees to be bound by, the terms and conditions set forth in the CEA.

3. Blue Atlantic and the City agree that the CEA and the Development Program for the Bayside Redevelopment Municipal Development Tax Increment Financing District remains in full force and effect notwithstanding this Agreement.

4. Each party agrees to execute and deliver such additional instruments and documents required to confirm and assure the rights and obligations provided for herein, and render effective the consummation of the transactions contemplated thereby.

5. The parties specifically acknowledge Article VIII of the CEA, which permits the beneficiary of the CEA to pledge and assign its right, title, and interest in, to, and under the CEA as collateral for financing for the Project, and further requires the City to execute and deliver any assignments, pledge agreements, consents or other confirmations required by the prospective pledgee or assignee.

6. Pursuant to Article VIII of the CEA, the City specifically consents to the assignment of Blue Atlantic's right to the CEA to Lender as collateral for a loan to Blue Atlantic to finance the Project, and agrees to provide any necessary consents or confirmations as required by Lender.

7. The City represents that the CEA is a valid, enforceable agreement and is not in default, and that Blue Atlantic is not otherwise in default under the CEA.

8. The City agrees that, in the event of a default by Blue Atlantic under any of the loan documents between Blue Atlantic and the Lender, the City shall, at the request of Lender, continue performance of the CEA on behalf of Lender in accordance with the terms thereof, provided that there is no subsequent default under the CEA, including any obligations to pay property taxes in accordance with the CEA.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have caused this instrument to be executed by their duly authorized members, officers or agents, as of this 2 day of ~~April,~~ May 2012.

WITNESS:

CITY OF PORTLAND:

By: _____
Mark H. Rees, City Manager, duly authorized

BLUE ATLANTIC PORTLAND, LLC,

a Delaware limited liability company
By: Blue Atlantic Pool I, LLC,
a Delaware limited liability company,
its sole Member
By: Blue Atlantic Investors, Inc.,
a Delaware corporation,
its sole Member

By: _____
Name: Robert B. Ross
Title: Authorized Signer

Approved as to form:

_____

Corporation Counsel's Office

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Student Housing CreditEnhancement.Final.DMK
06.05.06

CREDIT ENHANCEMENT AGREEMENT

between

CITY OF PORTLAND, MAINE

and

SOUTHERN MAINE STUDENT HOUSING, LLC

Dated as of June 21, 2006

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THIS CREDIT ENHANCEMENT AGREEMENT dated as of June 21, 2006, between the City of Portland, Maine (the "City"), a municipal body corporate and politic and a political subdivision of the State of Maine, SOUTHERN MAINE STUDENT HOUSING, LLC, a limited liability company duly organized and existing under the laws of the State of Maine, with a place of business in Portland, Maine (the "Company").

WITNESSETH THAT

WHEREAS, the City designated the Bayside Redevelopment Municipal Development District and Tax Increment Financing District (the "District") pursuant to Chapter 206 of Title 30-A of the Maine Revised Statutes by action of the Portland City Council on March 3, 2003 (the "Vote"), and pursuant to the same Vote adopted a development program and financial plan for the District (the "Development Program"); and

WHEREAS, the City amended the Bayside Redevelopment Municipal Development District and Tax Increment Financing District (the "Amended District") pursuant to Chapter 206 of Title 30-A of the Maine Revised Statutes by action of the Portland City Council on July 6, 2005, and pursuant to such vote adopted an amended development program and financial plan for the Amended District (the "Amended Development Program"); and

WHEREAS, upon submission of an application to DECD, the City expects DECD to review and approve the Amended Development Program; and

WHEREAS, the City adopted the Amended Development Program and entered into this Agreement in order to induce the Company to build the Project by enabling the City to contribute toward the capital cost of the Project the amounts contemplated by the Amended Development Program and this Agreement; and

WHEREAS, in connection with the Amended Development Program, and as contemplated thereby, the City and the Company have agreed to execute and deliver this Agreement; and

WHEREAS, the City and the Company desire and intend that this Agreement be and constitute the credit enhancement agreement contemplated by and described in the Amended Development Program;

NOW, THEREFORE, in consideration of the foregoing and in consideration of the mutual promises and covenants set forth herein, the parties hereby agree as follows:

ARTICLE I
DEFINITIONS

Section 1.1. Definitions.

The terms defined in this Article I shall, for all purposes of this Agreement, have the meanings herein specified, unless the context clearly requires otherwise. All other capitalized

terms not otherwise defined herein shall have the meaning given such terms in the Development Program.

"Account" shall mean the Project Cost Account, also known as the Bayside Redevelopment Program Fund.

"Act" means Chapter 206 of Title 30-A of the Maine Revised Statutes, as amended.

"Agreement" shall mean this Credit Enhancement Agreement dated as of the date set forth above between the City and the Company, as such may be amended by the parties from time to time.

"Amended District" shall have the meaning given such term in the recitals hereto.

"Captured Assessed Value" means the annual percentage of Increased Assessed Value attributable to the Project, retained in the District in each tax year during the term of the District, as specified in Section 3.1 hereof.

"Cash Flow Coverage Ratio" means net income after taxes plus depreciation plus amortization plus interest expense plus or minus non-recurring items divided by annual principal and interest on all Project debt. For purposes of computing the Cash Flow Coverage Ratio, annual property management fees shall be limited to six percent (6%) of annual gross revenue for the Project and annual contributions to reserve accounts (e.g., debt service, tenant improvement, capital repair and replacement) shall be limited to the greater of (i) those required by Project lenders or (ii) $100,000.00. Project expenses, even if not included in the proforma expenses submitted to the City, shall be factored into the Cash Flow Coverage Ratio if such expenses are customary for projects similar to the Project or if such expenses are required by Project lenders. The Cash Flow Coverage Ratio shall be determined according to generally accepted accounting principles consistently applied and in a manner consistent with the calculation of debt service coverage ratios by Project lenders.

"City" shall have the meaning given such term in the recitals hereto.

"City Tax Increment Revenues" means in each year this Agreement is in effect, an amount of money equal to the Retained Tax Increment Revenues allocated to the City at the time and according to the schedule specified in Section 3.1 hereof.

"City TIF Account" means the account described in the Financial Plan section of the Development Program and established and maintained pursuant to the Development Program and Article II hereof.

"Company" shall have the meaning given such term in the first paragraph hereto, and shall also mean and include any assignee or successor thereof.

"Company TIF Account" means the account described in the Financial Plan section of the Development Program and established and maintained pursuant to the Development Program and Article II hereof.

"Company Tax Increment Revenues" means in each year this Agreement is in effect an amount of money equal to the Retained Tax Increment Revenues allocated to the Company at the times and according to the schedule specified in Section 3.1 hereof.

"Current Assessed Value" means the then current assessed value of the Property located within the District to be determined by the City's Assessor as of April 1 of each year that this Agreement remains in effect.

"DECD" means the State of Maine Department of Economic and Community Development.

"Development Program" means the development program and financial plan for the District adopted by the City as described in the document entitled " Bayside Redevelopment Tax Increment Financing District Application", as amended, a copy of which is attached hereto as Appendix A..

"District" shall have the meaning given such term in the recitals hereto.

"Financial Plan" means the financial plan described in the "Financial Plan" section of the Development Program.

"Fiscal Year" means the time period from July 1 through June 30 (for example, the 2008 Fiscal Year is the period from July 1, 2007 to June 30, 2008).

"Increased Assessed Value" means the valuation amount by which the Current Assessed Value exceeds the Original Assessed Value. If the Current Assessed Value is less than or equal to the Original Assessed Value in any year, there is no Increased Assessed Value in that year.

"Original Assessed Value" means $0, the assessed value of the Property located within the District as of March 31, 2006.

"Project" means the minimum 100 unit or 400 bed student housing and 120 car parking garage as depicted on a certain site plan dated March 13, 2006 prepared by Mitchell & Associates, or any subsequent revisions of that proposal as approved by City and as described in the Development Program, and located on a parcel of land depicted as the easterly portion of City tax map 34A, Block B, Lot 1.

"Project Cost Account" means the account in the Development Program Fund described in the Development Program and established and maintained pursuant to the Development Program and Article II hereof.

"Project Costs" means all costs incurred by the Company on the Project within the meaning set forth in 30-A M.R.S.A. §5222(14), as amended.

"Property" means all real property that is part of the Project, now or hereafter located within the District, whether or not the Company owns such Property or is otherwise liable for property taxes imposed and assessed thereon by the City.

"Property Taxes" means any and all ad valorem property taxes actually paid to the City with respect to the Property.

"Qualified Investments" shall mean any and all securities, obligations or accounts in which municipalities may invest their funds under applicable Maine law, and which are of the same type and tenor as the investments in which the City invests its own funds.

"Retained Tax Increment" means that portion of Property Taxes assessed and collected by the City on the Captured Assessed Value.

"Tax Payment Date" means the later of the date(s) on which Property Taxes assessed by the City with respect to the Property are due or are paid, or if any such day is not a business day, the next succeeding business day.

Section 1.2. Interpretation and Construction.

In this Agreement, unless the context otherwise requires:

a. The terms "hereby," "hereof," "hereto," "herein," "hereunder" and any similar terms, as used in this Agreement, refer to this Agreement, and the term "hereafter" means after, and the term "heretofore" means before, the date of delivery of this Agreement.

b. Words importing a particular gender mean and include correlative words of every other gender and words importing the singular number mean and include the plural number and vice versa.

c. Words importing persons mean and include firms, associations, partnerships (including limited partnerships), trusts, corporations and other legal entities, including public or governmental bodies, as well as any natural persons.

d. Any headings preceding the texts of the several Articles and Sections of this Agreement, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.

e. All notices to be given hereunder shall be given in writing and, unless a certain number of days is specified, within a reasonable time.

f. If any clause, provision or Section of this Agreement shall be ruled invalid by any court of competent jurisdiction, the invalidity of such clause, provision or Section shall not affect any of the remaining provisions hereof except as expressly provided in Section 3.4.

ARTICLE II
DEVELOPMENT PROGRAM FUND AND FUNDING REQUIREMENTS

Section 2.1. Creation of Development Program Fund.

The City hereby confirms the creation and establishment of a segregated account in the name of the City designated as the "Bayside Redevelopment Program Fund" pursuant to, and in accordance with the terms and conditions of, the Development Program and 30-A M.R.S.A. §5227(3), as amended from time to time. The Account shall consist of a Project Cost Account that is pledged to and charged with the payment of project costs as outlined in the Financial Plan of the Development Program and as provided in 30-A M.R.S.A. §5227(3)(A)(1), as amended from time to time. The Project Cost Account shall include two subaccounts designated as the "Company TIF Account" and "City TIF Account".

Section 2.2. Deposits into Account.

There shall be deposited into the Account contemporaneously with each payment of property tax by the Company an amount equal to that portion of the property tax payment constituting Retained Tax Increment for the period to which the payment relates. Any and all revenues, if any, resulting from investment of monies on deposit shall be retained by the City and withdrawn from the Account contemporaneously with payment to the Company TIF Account.

Section 2.3. Use of Monies in Account.

Monies deposited in the Account shall be used and applied exclusively to fund the City's payment obligation described in Article III hereof. Monies deposited into the Account and any earnings thereunder shall be designated and appropriated by City Council annually in the municipal budget in accordance with Chapter 206 of Title 30-A, and in accordance with the Development Program.

Section 2.4. Monies Held in Trust.

All monies required to be paid into the Company TIF Account under the provisions hereof and the provisions of the Development Program, other than investment earnings thereon, shall be held by the City, in trust, for the benefit of the Company.

Section 2.5. Investments.

Any monies in the Account shall be invested and reinvested in Qualified Investments as determined by the City. The City shall have discretion regarding the investment of such monies, provided such monies are invested in Qualified Investments. As and when any amounts thus invested may be needed for disbursements, the City shall cause a sufficient amount of such investments to be sold or otherwise converted into cash to the credit of such account. The City shall have the sole and exclusive right to designate the investments to be sold and to otherwise direct the sale or conversion to cash of investments made with monies in the Account.

Section 2.6. Tax Payments.

The Company shall pay when due all Property Taxes assessed by the City on property, both real and personal, owned by the Company unless contested by the Company by appropriate proceedings pursuant to Maine law. No payments shall be made by the City under this Agreement unless the Company has paid in full all real or personal Property Taxes assessed by the City on the Company's Property when due.

ARTICLE III
PAYMENT OBLIGATIONS

Section 3.1. Captured Assessed Value; Retained Tax Increment.

Annually, all (100%) of the Increased Assessed Value shall be retained as Captured Assessed Value and the Property Tax assessed on such Captured Assessed Value shall be retained as Retained Tax Increment each year starting with the 2008 Fiscal Year of the City and continuing for each of the next 11 Fiscal Years of the City, ending with the 2018 Fiscal Year. Table No. 1 below shows the foregoing allocation based on estimated figures. The company shall receive from the Company TIF Account an annual payment as calculated in Section 4.1(b), or the amount shown in the corresponding year's "Project Revenue" column as shown in Table No. 1 below, whichever is less. In the event that after the annual payment is made to the Company there remains funds in the Company TIF Account, said funds shall be transferred to the City TIF Account. For purposes of computing the amounts owed pursuant to this section, the amount of tax collected for reimbursement as Company Tax Increment Revenues shall be calculated on June 30th and December 31st of each fiscal year.

Table 1 –TIF Allocation Table

Tax Year	Estimated Increased Real Estate Value	Estimated Mill Rate (2% Inc.)	Estimated Incremental Tax Real Estate	Project Alloc.	Project Revenue	Estimated City Revenue From Real Estate
FY08	$ 2,000,000	16.71	$ 33,420	0%	$ -	$ 33,420
FY09	$ 19,000,000	17.04	$ 323,840	37%	$ 120,000	$ 203,840
FY10	$ 19,000,000	17.39	$ 330,317	36%	$ 120,000	$ 210,317
FY11	$ 19,000,000	17.73	$ 336,923	36%	$ 120,000	$ 216,923
FY12	$ 19,000,000	18.09	$ 343,661	35%	$ 120,000	$ 223,661
FY13	$ 19,000,000	18.45	$ 350,535	34%	$ 120,000	$ 230,535
FY14	$ 19,000,000	18.82	$ 357,545	34%	$ 120,000	$ 237,545
FY15	$ 19,000,000	19.19	$ 364,696	33%	$ 120,000	$ 244,696
FY16	$ 19,000,000	19.58	$ 371,990	32%	$ 120,000	$ 251,990
FY17	$ 19,000,000	19.97	$ 379,430	32%	$ 120,000	$ 259,430
FY18	$ 19,000,000	20.37	$ 387,019	31%	$ 120,000	$ 267,019
			$ 3,579,375		$ 1,200,000	$ 2,379,375

Section 3.2. Completion of Development Program.

Under this Agreement, the Company shall complete the Project as described in the Amended Development Program.

Section 3.3. Credit Enhancement Payments.

a. Subject to Section 3.3(b), the City shall pay on August 1 of each year of this Agreement to the Company all Company Tax Increment Revenues then on deposit in the Company TIF Account.. The obligation of the City to make such payment shall be limited

obligation payable solely out of monies on deposit in the Company TIF Account and shall not constitute a general debt or obligation on the part of the City or a general obligation or charge against or pledge of the faith and credit or taxing power of the City, the State of Maine or any political subdivision thereof.

b. In the event that City is subject to a claim by a third party to pay the Company Tax Increment Revenues to such third party, City shall not pay such amount to Company pursuant to Section 3.3(a) nor to the third party, but shall deposit the Company Tax Increment Revenues in an amount equal to such amount so claimed (but only to the extent available) into an interest bearing escrow account and shall file an interpleader or other comparable action with a court of competent jurisdiction requesting a ruling to determine whether such Company Tax Increment Revenues should be paid to Company or to said third party.

Section 3.4. Failure to Make Payment.

In the event the City should fail to, or be unable to, make any of the payments to the Company required under the foregoing provisions of this Article III, the item or installment so unpaid shall continue as a limited obligation of the City, under the terms and conditions hereinafter set forth, until the amount unpaid shall have been fully paid. The Company shall have the right to initiate and maintain an action to specifically enforce the City's obligations hereunder, including without limitation, the City's obligation to establish and maintain the Company TIF Account and to deposit Company Tax Increment Revenues into the Company TIF Account and its obligation to make required payment to the Company.

Section 3.5. Manner of Payments.

The payments provided for in this Article III shall be paid directly to the Company in the manner provided hereinabove for its own use and benefit, which use and benefit shall be consistent with the Development Program and Chapter 206 of Title 30-A of the Maine Revised Statutes. The City shall make required payments in response to requests for payment submitted by the Company setting forth the amount of the payment and containing a certification in the form attached hereto as Exhibit B.

Section 3.6. Obligations Unconditional.

Except as otherwise expressly provided in this Agreement, the obligations of the City to make the payments described in this Agreement in accordance with the terms hereof shall be absolute and unconditional irrespective of any defense or any rights of setoff, recoupment or counterclaim it might otherwise have against the Company. Notwithstanding the above, the City reserves the right to terminate this Agreement upon receipt of a final judgment by a court of competent jurisdiction to the effect that the Agreement or Development Program adopted in connection herewith or any payment made thereunder is or would be illegal or invalid. In such event, the termination shall relate back to the original date of the Agreement which shall be deemed void ab initio, and neither party shall have any obligations or liability hereunder, under the Development Program or in respect of any of the transactions contemplated thereby, and shall be left in whatever positions, financial or otherwise, they may be in as of the date of termination.

Such termination shall not, however, affect the indemnifications set forth in Section 9.10, which obligations shall survive any such termination.

Section 3.7. Limited Obligation.

The City's obligations of payment hereunder shall be limited obligations of the City payable solely from Retained Tax Increment Revenues and any earnings thereon, pledged therefore under this Agreement. The City's obligations hereunder shall not constitute a general debt or a general obligation on the part of the City or a charge against or pledge of the faith and credit or taxing power of the City, but shall be payable solely from the Retained Tax Increment received by the City, and any earnings thereon. This Agreement shall not directly or indirectly or contingently obligate the City to levy or to pledge any form of taxation whatever therefore or to make any appropriation for their payment, excepting the City's obligation to assess property taxes upon the Project and the pledge of the Retained Tax Increment established under this Agreement.

Section 3.8 Administrative Fee.

The Company shall pay to the City an annual administrative fee to the City equal to 1% of the Retained Tax Increment. Such payment shall be deducted pursuant to Section 9.9 of this Agreement contemporaneously with the payment by the City to the Company.

ARTICLE IV
COVENANTS OF THE COMPANY

Section 4.1. Project Development

a. The Company shall construct the Project.

b. In each year this Agreement is in effect, the Company agrees to provide, by each April 30, audited financial statements, which shall be used to determine the Company Tax Increment Revenues due to Company for the following August 1 payment by City pursuant to this Agreement. The audited financial statements shall be used by City to determine the Cash Flow Coverage Ratio and shall not be used for any other purpose or disclosed to any other party by the City. In each year of this Agreement, the City shall pay Company Tax Increment Revenues to the Company pursuant to this Agreement to the extent necessary for Company to achieve a 1.2 to 1 Cash Flow Coverage Ratio, provided however such payments to the Company shall not be greater than the amount shown in the corresponding year's "Project Revenue" column as shown in Table No. 1 in Section 3.1 above..

c. If in any year that this Agreement is in effect the Increased Assessed Value is less than $18,000,000, the obligation of the city to pay into the Company TIF Account per section 3.1 of the agreement shall be reduced. The reduction shall be calculated as follows: The increased assessed value divided by $18,000,000 multiplied by the corresponding scheduled fiscal year Company Project Revenue payment amount on Table 1.

ARTICLE V
PLEDGE AND SECURITY INTEREST

Section 5.1. Pledge of Company TIF Account.

In consideration of this Agreement and other valuable consideration and for the purpose of securing payment of the amounts provided for hereunder to the Company by the City, according to the terms and conditions contained herein, and in order to secure the performance and observance of all of the City's covenants and agreements contained herein, the City does hereby grant a security interest in and pledge to the Company the Company TIF Account and all sums of money and other securities and investments therein.

Section 5.2. Further Instruments.

The City and the Company shall, from time to time execute and deliver such further instruments and take such further action as may be reasonable and as may be required to carry out the provisions of this Agreement, provided, however that no such instruments or agreements shall pledge the credit of the City.

Section 5.3. Liens.

Except as permitted hereunder, the City shall not sell, lease, pledge, assign or otherwise dispose, encumber or hypothecate any interest in the Company TIF Account and will promptly pay or cause to be discharged or make adequate provision to discharge any lien, charge or encumbrance on any part thereof not permitted hereby.

Section 5.4. Access to Books and Records.

All books, records and documents in the possession of the City relating to the District, the Development Program, this Agreement and the monies, revenues and receipts on deposit or required to be deposited into the Account shall at all reasonable times be open to inspection by the Company, its agents, lenders and employees.

ARTICLE VI
DEFAULTS AND REMEDIES

Section 6.1. Events of Default.

Each of the following events shall constitute and be referred to in this Agreement as an "Event of Default":

a. Any failure by the City to pay any amounts due to Company when the same shall become due and payable if such non-payment is not a result of a final determination by a court that this Agreement is illegal or invalid;

b. Any failure by the City to make deposits into the Company TIF Account as and when due;

c. Other than as provided in paragraph (a) and (b) above, any failure by the City or the Company to observe and perform in all material respects any respective covenant, condition, agreement or provision contained herein on the part of the City or the Company respectively to be observed or performed, including any failure of the Company to use payments made under this Agreement as required in Section 3.5 of this Agreement or to perform the covenant under Section 4.1(a) of this Agreement, which failure is not cured within thirty (30) days following written notice thereof or such additional time as is allowed by City to cure provided the defaulting party promptly commences and diligently pursues a cure within said thirty (30) day period; provided, however, that this subsection (c) shall not be construed to include the Company's failure to pay Property Taxes on the Property in the District for any reason as an Event of Default hereunder; and

d. If a decree or order of a court or agency or supervisory authority having jurisdiction in the premises shall appoint a conservator or receiver or liquidator for the City, or if any insolvency, readjustment of debt, marshaling of assets and liabilities or similar proceedings for the winding up or liquidation of the City's affairs shall have been entered against the City or if the City shall have consented to the appointment of a conservator or receiver or liquidator in any such proceedings of or relating to the City or of or relating to all or substantially all of its property, including without limitation the filing of a voluntary petition in bankruptcy by the City or the failure by the City to have a petition in bankruptcy dismissed within a period of 90 consecutive days following its filing or in the event an order for release has been entered under the Bankruptcy Code with respect to the City.

e. Any failure of Company to pay taxes to City when due.

f. Any failure of the Company or any agents, assigns or successors in interest to operate the Project and pay taxes on it during the term of this Agreement.

Section 6.2. <u>Remedies on Default</u>.

Whenever any Event of Default described in Section 6.1 hereof shall have occurred and be continuing, the non-defaulting party may take any one or more of the following remedial steps following any applicable cure period, shall have all rights and remedies available to it.

a. The non-defaulting party may take whatever action at law or in equity, including the rights and remedies available to a secured party under the laws of the State of Maine, and may take whatever action as may appear necessary or desirable to collect the amount then due and thereafter to become due, to specifically enforce the performance or observance of any obligations, agreements, or covenants benefiting the non-defaulting party under this Agreement and any documents, instruments, and agreements contemplated hereby or to enforce any rights or remedies available hereunder; and

b. In addition, in the event of a default under Section 6.1(c)(e) or (f) relating to Section 3.5 or 4.1(a), the City may suspend further payments until such default is cured. If there is any dispute as to either party's performance of any of its obligations under this Agreement,

such dispute may, by agreement of the parties, be submitted to non-binding mediation and, following such mediation or in the absence of any such agreement to submit the dispute to mediation, shall be submitted to arbitration in accordance with the rules of the American Arbitration Association. Notwithstanding the foregoing, payments by the City shall not be suspended prior to a final determination in such proceeding in favor of the City.

Section 6.3. Remedies Cumulative.

No remedy herein conferred upon or reserved by any party is intended to be exclusive of any other available remedy or remedies but each and every such remedy shall be cumulative and shall be in addition to the remedy given under this Agreement or now or hereafter existing at law, in equity or by statute. Delay or omission to exercise any right or power accruing upon any Events of Default or to insist upon the strict performance of any of the covenants and agreements herein set forth or to exercise any rights or remedies upon the occurrence of an Event of Default shall not impair any such right or power or be considered or taken as a waiver or relinquishment for the future of the rights to insist upon and to enforce, from time to time and as often as may be deemed expedient, by injunction or other appropriate legal or equitable remedy, strict compliance by the parties hereto with all of the covenants and conditions hereof, or of the rights to exercise any such rights or remedies, if such Events of Default be continued or repeated.

Section 6.4. Enforcement Rights.

The City and the Company agree that each party hereto shall have the right to initiate a legal proceeding to enforce the specific performance of this Agreement, it being understood and agreed that this Agreement is a material inducement to the Company continuing its pursuit of the Project. The parties agree that in the event of any dispute or disagreement hereunder the Company and the City shall continue to make payment of all amounts due hereunder in the manner and at the times specified herein until final resolution of such dispute, whether by mutual agreement or final decision of a court, arbitrator or other dispute resolution mechanism.

ARTICLE VII
EFFECTIVE DATE, TERM AND TERMINATION

Section 7.1. Effective Date and Term.

This Agreement shall become effective upon its execution and delivery by the parties hereto and shall remain in full force from the date hereof and shall expire on the later of the end of the 2018 fiscal year of the City or upon the performance of all obligations on the part of the City and the Company hereunder, unless sooner terminated under Section 3.6 or 9.2 hereof.

Section 7.2. Cancellation and Expiration of Term.

At the termination or other expiration of this Agreement in accordance with the provisions of this Agreement, the City and the Company shall each execute and deliver such documents and take or cause to be taken such actions as may be necessary to evidence the termination of this Agreement.

ARTICLE VIII
ASSIGNMENT AND PLEDGE OF COMPANY'S INTEREST

Section 8.1. Consent to Pledge, Collateral Assignment Or Grant of a Security Interest.

The City hereby acknowledges that the Company may pledge and assign its right, title and interest in, to and under this Agreement as collateral for financing for the Project, although no obligation is hereby imposed on the Company to make such assignment or pledge. Recognizing this possibility, the City does hereby consent and agree to the pledge and assignment of all the Company's right, title and interest in, to and under this Agreement and in, and to the payments to be made to Company hereunder, to third parties as collateral or security for indebtedness related to the Project, on one or more occasions during the term hereof. The City agrees to execute and deliver any assignments, pledge agreements, consents or other confirmations required by the prospective pledgee or assignee, including without limitation recognition of the pledgee or assignee as the holder of all right, title and interest herein and as the payee of amounts due and payable hereunder and any and all such other documentation as shall confirm to such pledgee or assignee the position of such assignee or pledgee and the irrevocable and binding nature of this Agreement and provide to the pledgee or assignee such rights and/or remedies as it may deem necessary for the establishing, perfection and protection of its interest herein.

Section 8.2. Assignment.

Except as provided in Section 8.1, this Agreement and the obligations of the City hereunder are personal to the Company and may not be assigned or transferred by the Company except to a successor in title to the Project, without the consent of the City which consent shall not be unreasonably withheld or delayed for any reason or for no reason. In the event of an assignment, Company shall pay all legal fees incurred by City in conjunction with the assignment.

ARTICLE IX
MISCELLANEOUS

Section 9.1. Successors.

a. In the event the City or the Company are dissolved, merged into or consolidated with another entity, or undergo any form of corporate reorganization (other than with respect to any dissolution, merger, consolidation or corporate reorganization solely involving the Company and any other company related to or affiliated with the Company), the covenants, stipulations, promises and agreements set forth herein, by or on behalf of or for the benefit of such party shall bind or inure to the benefit of the successors and assigns thereof from time to time and any entity, officer, board, commission, agency or instrumentality to whom or to which any power or duty of

such party shall be transferred, subject to approval of the City, which consent shall not be unreasonably withheld or delayed.

b. No consent from the City shall be required with respect to any dissolution, merger, consolidation or corporate reorganization solely involving the Company and any other company related to or affiliated with the Company. In such case, the covenants, stipulations, promises and agreements set forth herein, by or on behalf of or for the benefit of the Company shall bind or inure to the benefit of the successors and assigns thereof from time to time and any entity, officer, board, commission, agency or instrumentality to whom or to which any power or duty of such party shall be transferred.

Section 9.2. Parties in Interest.

Except as herein otherwise specifically provided, nothing in this Agreement expressed or implied is intended or shall be construed to confer upon any person, firm or corporation other than the City and the Company any right, remedy or claim under or by reason of this Agreement, it being intended that this Agreement shall be for the sole and exclusive benefit of the City and the Company, and their successors and assigns as allowed under this Agreement; provided, however, that if the payment obligations of the City to the Company hereunder are held by a final and binding proceeding to be illegal or invalid, this Agreement shall terminate. In such event all obligations of the parties shall terminate, and no party shall have any further liability to the other hereunder.

Section 9.3. Severability.

Except as otherwise provided herein, in case any one or more of the provisions of this Agreement shall, for any reason, be held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of this Agreement and this Agreement shall be construed and enforced as if such illegal or invalid provision had not been contained herein.

Section 9.4. No Personal Liability.

a. No covenant, stipulation, obligation or agreement of the City contained herein shall be deemed to be a covenant, stipulation or obligation of any present or future elected or appointed official, officer, agent, servant or employee of the City in his or her individual capacity and neither the members of the City Council of the City, or any official, officer, agent, servant or employee of the City shall be liable personally with respect to this Agreement or be subject to any personal liability or accountability by reason hereof.

b. No covenant, stipulation, obligation or agreement of the Company contained herein shall be deemed to be a covenant, stipulation or obligation of any present or future director, member, manager, officer, agent, servant or employee of the Company in his or her individual capacity and neither the directors, members, managers, officers, agents, servants or employees of the Company shall be liable personally with respect to this Agreement or be subject to any personal liability or accountability by reason hereof.

Section 9.5. Counterparts.

This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original, but such counterparts shall together constitute but one and the same Agreement.

Section 9.6. Governing Law.

The laws of the State of Maine shall govern the construction and enforcement of this Agreement in all respects.

Section 9.7. Notices.

All notices, certificates, requests, requisitions or other communications by the City or the Company pursuant to this Agreement shall be in writing and shall be sufficiently given and shall be deemed given when mailed by first class mail, postage prepaid, or, for any notice of an Event of Default, by registered or certified mail, return receipt requested, addressed as follows:

If to the City:
City of Portland
389 Congress Street
Portland, ME 04101
Attn: City Attorney

If to the Company:
Southern Maine Student Housing, LLC
247 Commercial Street
Rockport, ME 04856

Either of the parties may, by notice given to the other, designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent hereunder.

Section 9.8. Amendments.

Neither this Agreement nor the Development Program may be amended without the express written consent of all of the parties hereto, which consent shall not be unreasonably withheld. Provided, however, the parties agree to amend this Agreement in order to fulfill such reasonable requirement that a lender may require in connection with financing of the Project. This Agreement may only be amended in compliance with the provisions of 30-A M.R.S.A. § 5221 et seq., as amended.

Section 9.9. Net Agreement.

It is understood that the City's payment obligations are to be satisfied solely from Retained Tax Increment Revenues actually paid in by the Company and received by the City, and earnings thereon and provided further that the City may deduct from any payment owed to the Company the administrative fee described in Section 3.8 hereof.

Section 9.10. Integration.

This Agreement completely and fully supersedes all other prior or contemporaneous understandings or agreements, both written and oral, between the City and the Company relating to the specific subject matter of this Agreement and the transactions contemplated hereby.

Section 9.11. Indemnification.

a. The Company agrees to defend, indemnify and hold harmless the City, its officers, agents and employees from any and all claims and expenses, including its attorney fees, arising out of or associated with the City's approval of the District and its preparation of and participation in this Agreement, including expenses arising from any default hereunder by the Company but excluding any such claims or expenses as may relate to actions or proceedings resulting from a default hereunder by the City. This indemnification obligation shall survive termination of this Agreement or a finding that this Agreement is void or invalid.

b. The City agrees to defend, indemnify and hold harmless the Company, its officers, members, managers, agents and employees from any and all claims and expenses, including its attorney fees, arising out of or associated with any default hereunder by the City. This indemnification obligation shall survive termination of this Agreement or a finding that this Agreement is void or invalid.

Section 9.12. Waiver of Recapture if Agreement Found Void.

In the event this Credit Enhancement Agreement is found void "ab initio" by a Court of law with final jurisdiction over this Agreement, City agrees to waive its rights to recapture all Company Tax Increment Revenues paid to Company pursuant to this Agreement.

IN WITNESS WHEREOF, the City and the Company have caused this Agreement to be executed in their respective corporate names and their respective corporate seals to be hereunto affixed and attested by the duly authorized officers or members, as the case may be, all as of the date first above written.

WITNESS

CITY OF PORTLAND, MAINE

By: _____
Its City Manager

WITNESS

SOUTHERN MAINE STUDENT HOUSING, LLC

By: _____
Its Authorized Manager

Student Housing CreditEnhancement.Final.DMK
06.05.06

EXHIBIT B

Request for Payment

The undersigned does hereby request payment in the amount of $_____ from the Company TIF Account of the Project Cost Account within the Bayside Redevelopment Program Fund and does hereby certify that the amount requested will be used to pay Project Costs as that term is defined in Chapter 206 of Title 30-A of the Maine Revised Statutes.

SOUTHERN MAINE STUDENT HOUSING, LLC

Date: 6-21-06

By: _____
Its

O:\OFFICE\CONTRACT\CapitalCreditEnhancement.Final.DMK.6.5.06.doc

EXHIBIT E

NOTICE OF PUBLIC HEARING

(TO BE PROVIDED WHEN IT IS ADVERTISED ON 11/3/2014)

EXHIBIT F

CITY COUNCIL MINUTES -

TO BE PROVIDED AFTER CITY COUNCIL VOTE

- ANTICIPATED 11/17/2014

EXHIBIT G

CITY COUNCIL ORDER - TO BE PROVIDED AFTER VOTE

EXHIBIT H(1)

THE CITY OF PORTLAND
TAX INCREMENT FINANCING DEVELOPMENT PROGRAM

EXHIBIT H

ASSESSOR'S CERTIFICATE

The undersigned Tax Assessor for the City of Portland, Maine, does hereby certify pursuant to the provisions of 30-A M.R.S.A. § 5254 that the assessed value of the Municipal Tax Increment Financing District as described in the Bayside Redevelopment Tax Increment Financing Program to which this certificate is included, was revised to $44,066,380 as of March 31, 2007.

IN WITNESS WHEROF, this certificate has been executed as of this 19th day of April 2007.

CITY ASSESSOR

By Richard W. Blackburn

Richard W. Blackburn

Attested true copy of the original

Mary P. Davis 4-24-07

Mary P. Davis, Notary Public
State of Maine
My Commission Expires 07/27/2010

TAX INCREMENT FINANCING DEVELOPMENT PROGRAM

EXHIBIT H(2)

ASSESSOR'S CERTIFICATE/EXPANDED AREA OF BAYSIDE TIF DISTRICT

The undersigned Tax Assessor for the City of Portland, Maine, does hereby certify pursuant to the provisions of 30-A M.R.S.A. Section 5254 that the real property assessed value of the expanded area of the Bayside Tax Increment Financing District as described in the Bayside Redevelopment Tax Increment Financing Program to which this Certificate is included is $78,251,800 as of March 31, 2014.

IN WITNESS WHEREOF, this Certificate has been executed as of this ____ day of November, 2014.

Witness: City Assessor

_____ _____

Richard Blackburn

order 87- 14/15
~~Tab 19 - 11-3-14~~
Tab 10 - 11-17-14

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

CITY OF PORTLAND
IN THE CITY COUNCIL

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

ORDER APPOINTING AND SETTING SALARY OF DAWN STILES AS HEALTH AND HUMAN SERVICES DIRECTOR

ORDERED, that Dawn Stiles is hereby appointed as Director of Health and Human Services at a salary of $105,047.00; and

BE IT FURTHER ORDERED, that this appointment shall be effective December 1, 2014.

Dawn C. Stiles, LCSW

1801 Gulf Drive N. # 287
Bradenton Beach, Florida 34217
dawn.stiles@gmail.com
941/778-1908 - Office
207/615-5876 - Mobile

Education

2012,Gestalt International Center, Wellfleet, MA – Leadership for the 21st Century
2008, Stanford University Executive Leadership Program for Nonprofit Leaders, CA
1990, Master of Social Work, University of Maine
1986, Bachelor of Science - Accounting, University of Maine

Positions Held

April 1, 2013 - Current: **Executive Director**
The Anna Maria Island Community Center
Anna Maria Island, Florida 34216
Responsible For: $ 1.1 million dollar budget; Community integration and programming across the age span – before & after school programming; sports leagues for youth, teens, adults and seniors; enrichment classes; participation in Island-wide initiatives; the "heart" of the island where three & four generations of families gather to participate in fun activities.

2006-2013: **President**
Spurwink Services, Portland, Maine
Select accomplishments from my strategic leadership of Maine's largest mental health agency include:

- Revenue growth of 14% ($55 million total budget) during significant economic downturn and rate cuts to services;
- Increased number of employees from 850 to 1000+;
- Reduction in administrative overhead from 9% to 7.5% while enhancing organizational capacity;
- Acquisition and integration of four community-based agencies;
- Creation of a research department which measures and publishes outcomes and conducts original research which appears in peer-reviewed journals, as well as presenting at national and international conferences;
- Initiation of internal leadership "bench" training program to assure organizational capacity;
- Diversification of revenue streams to reduce dependence on state & federal dollars (replaced 20% of Medicaid revenue in 4 years).

2000-2006: **Vice President/Chief Operating Officer**
Spurwink Services, (formerly The Spurwink School)
RESPONSIBLE FOR: Management functions; budget formulation; policy planning and development; development of Continuous Quality Improvement team; led visioning of multi-year agency goals/objectives and the reporting of subsequent outcome data. Problem solving around Medicaid, clinical issues, personnel matters; government liaison; communicating Spurwink's mission and vision to external stakeholders.

1995-2000: **Deputy Bureau Director**
Department of Human Services, Augusta, Maine
RESPONSIBLE FOR: Oversight and management of $140 million dollar budget; IT Department; legislative affairs; state-wide residential/foster care system; contracts; residential and foster care licensing; human resources; program development.

1993-1995: **Residential Services Manager**
Department of Human Services, Augusta, Maine
RESPONSIBLE FOR: Development and oversight of out of home resources for children in State custody and rate setting for these services.

1991-1993: **Health Policy Administrator**
Department of Human Services, Augusta, Maine
Responsible For: Research/development of State Medicaid policies and analysis of Federal Medicaid Regulations.

Boards/Committees

Governor LePages' Transition Team Member
Common Good Ventures Board, Vice Chair
Maine Health Management Coalition Board Member
Maine Behavioral Health Partnership Board Member
Child Welfare League of America – Northeast Rep. for Children's Residential Subcommittee
Social Justice Committee - Saint Matthew's
Executive Committee & Co-Chair - Administrative Oversight Committee, DHHS (previous administration)
1 - 3 Initiative Steering Committee - Maine Health Access Foundation

Presentations:

Butler,L.S. & Stiles,D.C. (2006,November). *The power of culture in creating and maintaining a therapeutic milieu in residential care and treatment.* Plenary session, American Association of Children's Residential Center's 50th Anniversary Annual Meeting, Chicago, IL.

Stiles,D.C. & Illoven,M. & Shadler,D. (2003 September). *Maine Caring Families – A Public/Private Partnership.* Child & Adolescent Residential Psychiatric Programs Conference: Real Data in Real Time – Evidence-Based Practice in Services to Children and Families, Portland, OR.

Honors/Awards:

Great Women of Maine 2011
Leadership Maine Lambda Class
Kevin Concannon Public Policy Award
Legislative Recognition for Innovative Program Development
Leadership Award - MACWIS

Licenses/Certificates

Clinical Social Work License #LC 4429
Economic Development Certificate

Interests

Running; Biking; Kayaking; Skiing; Yoga

order 88-14/15
Tab 10 11-3-14
Tab 11 11-17-14

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

CITY OF PORTLAND
IN THE CITY COUNCIL

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

ORDER RENAMING THE PORTLAND ICE ARENA THE WILLIAM B. TROUBH ICE ARENA

WHEREAS, William B. Troubh, a former Mayor and City Councilor and founder of the law firm, Troubh Heisler, was a guiding and inspirational force in the construction of the Portland Ice Arena thirty years ago; and

WHEREAS, William B. Troubh faced controversy in his work on behalf of the people of Portland, but was not deterred in his work for the City; and

WHEREAS, William B. Troubh grew up on Portland's Sherman Street, near the Ice Arena, and was later in life the first president of the Portland Middle School Hockey Association; and

WHEREAS, the Mayor and the City Council desire that William B. Troubh's contributions to the City be recognized, following his death on November 8, 2013;

NOW, THEREFORE, BE IT ORDERED, that the Portland Ice Arena on Park Avenue is hereby named the William B. Troubh Ice Arena in honor of William B. Troubh's dedication to the City and his contributions to the hockey and skating programs enjoyed by residents of City of Portland and the surrounding towns.

PORTLAND MIDDLE SCHOOL HOCKEY ASSOCIATION
P.O. BOX 10365
Portland, Maine 04104

September 25, 2014

Mayor Michael Brennan
City of Portland
389 Congress St.
Portland, ME 04101

Re: Proposal to Name the Portland Ice Arena in Honor of William B. Troubh

Dear Mayor Brennan,

As President of the Portland Middle School Hockey Association, my Board has asked that I approach the City of Portland with a request that the Portland Ice Arena be renamed in honor of William B. Troubh.

As most Portlanders know, former City Councilor William B. Troubh, who grew up on Sherman Street, was instrumental in building the Portland Ice Arena as well as bringing the Portland Sea Dogs to Portland to a refurbished Hadlock Field. A less well-known fact about Bill is that he was the first President of the Portland Middle School Hockey Association, an organization which still provides an opportunity for approximately forty (40) Portland middle school hockey players to develop their hockey skills each year at the Portland Ice Arena. This year will mark the thirtieth (30th) anniversary of the existence of the Portland Ice Arena. Our organization feels that this benchmark represents an appropriate time to spear-head an effort to raise funds to rename the Portland Ice Arena in honor of William B. Troubh.

John Menario and Joe Gray, both former City Managers, as well as close friends of Bill Troubh, have agreed to serve as Honorary Chairmen of a committee which the Portland Middle School Hockey Association will put together to promote this effort. Our intention is to raise private funds to pay for any changes necessary for signage or other memorialization of Bill Troubh at the arena.

Obviously, it is important that an initial reaction from your colleagues on the City Council be gathered before anything further is attempted. Nobody would want to embarrass the Troubh family if there is not strong support for this proposal.

My request, Mayor Brennan, is that you speak with members of the City Council about this idea and let me know how the Council feels about this proposal. If there is strong support for the idea it would be appropriate to have this announcement made in December on the 30th anniversary of the arena's opening.

The Portland Middle School Hockey Association will appear at any workshop or Council meeting to formalize this proposal.

Thank you for your anticipated support. I look forward to hearing from you.

Sincerely,

Gerard P. Conley, Jr.
President, Portland Middle School Hockey Association

GPC/af
cc: Anita LaChance, Director, Department of Recreation & Facilities Management
John Menario
Joseph Gray
Board Members of the Portland Middle School Hockey Association

Order 89-14/15
~~Tab 21 11-3-14~~
Tab 12 11-17-14

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

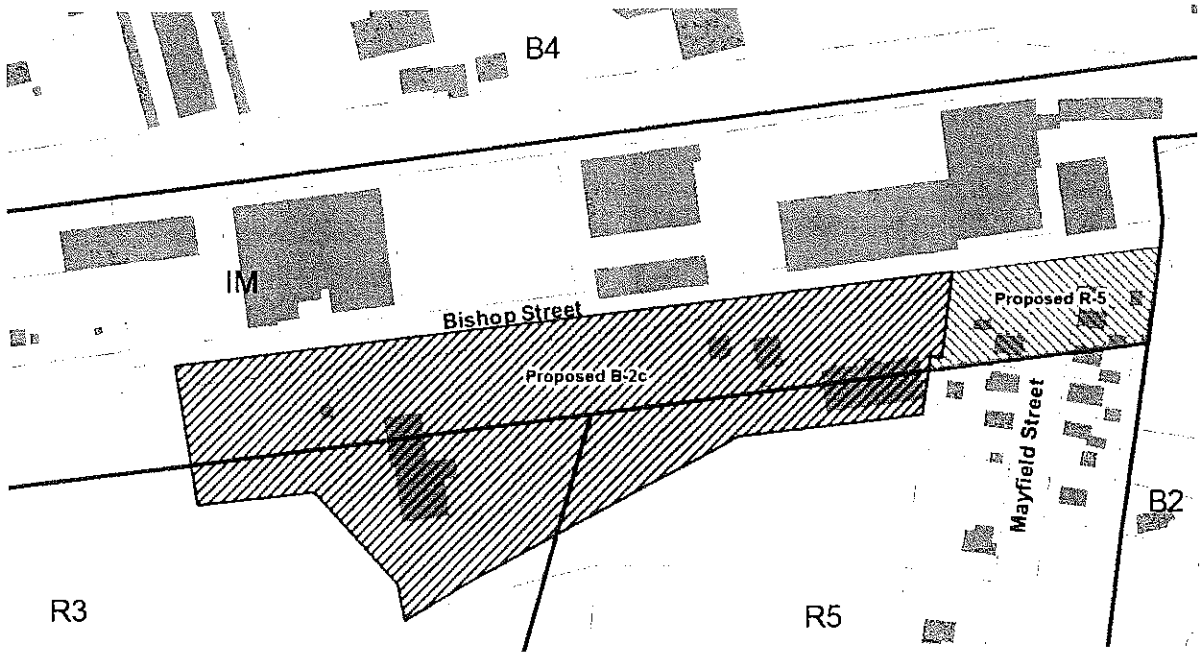
CITY OF PORTLAND
IN THE CITY COUNCIL

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

AMENDMENT TO ZONING MAP
RE: BISHOP STREET

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

That the Zoning Map of the City of Portland, dated December 2000, as amended and on file in the Department of Planning and Urban Development, and incorporated by reference into the Zoning Ordinance by §14-49, be and hereby is amended by adopting the following map change amendment as depicted in the area map below; and specifically rezoning land on the south side of Bishop Street to a B-2c Zone, with the adjacent area surrounding Mayfield Street to be rezoned R-5.



MEMORANDUM
City Council Agenda Item

TO: City Council

FROM: Alex Jaegerman, Planning Division Director

DATE: October 22, 2014

DISTRIBUTION: Mayor Michael Brennan; Sheila Hill-Christian, Acting City Manager; Danielle West-Chuhta, Corporation Counsel; Jennifer Thompson, Associate Corporation Counsel; Sonia Bean; Nancy English

SUBJECT: Zoning Map Amendment in the Vicinity of Bishop Street

SPONSOR: Stuart O'Brien, Chair, Planning Board

COUNCIL MEETING DATE ACTION IS REQUESTED:
1st reading November 3, 2014 **Final Action** November 17, 2014

Can action be taken at a later date: _____ Yes __X__ **No (If no why not?)** The applicant, Avesta Housing, would like to commence the site plan review process for a Housing First development at 72 Bishop Street as soon as reasonably possible. Public notices will appear in the newspaper and be mailed for the public hearing.

PRESENTATION: Stuart O'Brien, Planning Board Chair, and Alex Jaegerman, Planning Division Director, 5 minute oral presentation

I. SUMMARY OF ISSUE (Agenda Description)

The Planning Board recommends a rezoning for the south side of Bishop Street near Morrill's Corner. The Board considered the existing zoning scheme for the area at three separate workshops. Ultimately, a majority of the Board found that much of the existing Moderate Impact (IM) zone on the south side of Bishop Street merited rezoning to Community Business (B-2c),with a portion at the northern end of Mayfield Street warranting a rezoning to Residential (R-5).

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

In mid-June, Avesta Housing submitted a zone change request for a 1.16 acre property at 72-78 Bishop Street. The site, which actually consists of two separate lots, is currently zoned Moderate Impact Industrial (IM), Residential (R-3), and Residential (R-5), and is developed with a single family home. Avesta requested a change to Community Business (B-2), arguing that this designation would best allow them to develop 30 efficiency units for chronically homeless individuals, using the Housing First approach employed for Logan Place and Florence House, on the site.

The Board's review highlighted the fact that much of the existing IM zone along the southerly edge of Bishop Street is currently neither developed nor functioning as an industrial area. The size of lots, the fact that the lots are only partially zoned industrial, the existence of the residential neighborhood on Mayfield Street, and the presence of sensitive natural resources in the vicinity effectively limit the potential for industrial development. Thus, the Board decided to expand the area of the proposed rezoning and ultimately directed staff to advertise the B-2c and the R-5 as the proposed zoning designations. B-2c is proposed for the five properties south of Bishop Street west of Mayfield Street. R-5 is recommended at the north end of Mayfield Street where it intersects with Bishop Street.

III. INTENDED RESULT

The proposed map amendment is designed to establish a more rational zoning scheme for the south side of Bishop Street that fits the pattern of existing uses and matches the city's vision for the Morrill's Corner area. Further, the zone change will allow Avesta Housing to proceed with the development of high-density housing for the formerly homeless on their site at 72 Bishop Street.

IV. COUNCIL GOAL ADDRESSED

The proposed map amendment addresses the following Council goals:

Promote Housing Availability: Provide increased availability in all segments of the housing market while insuring that there is suitable balance of housing opportunities among those sectors.

Prevent and End Homelessness: Prevent and end homelessness in the City of Portland by continuing to implement the recommendations of the Homelessness Task Force.

Economic Development: Promote economic development in the City in a manner that provides for increased property values, diversification across industry sectors, and high paying jobs.

V. FINANCIAL IMPACT

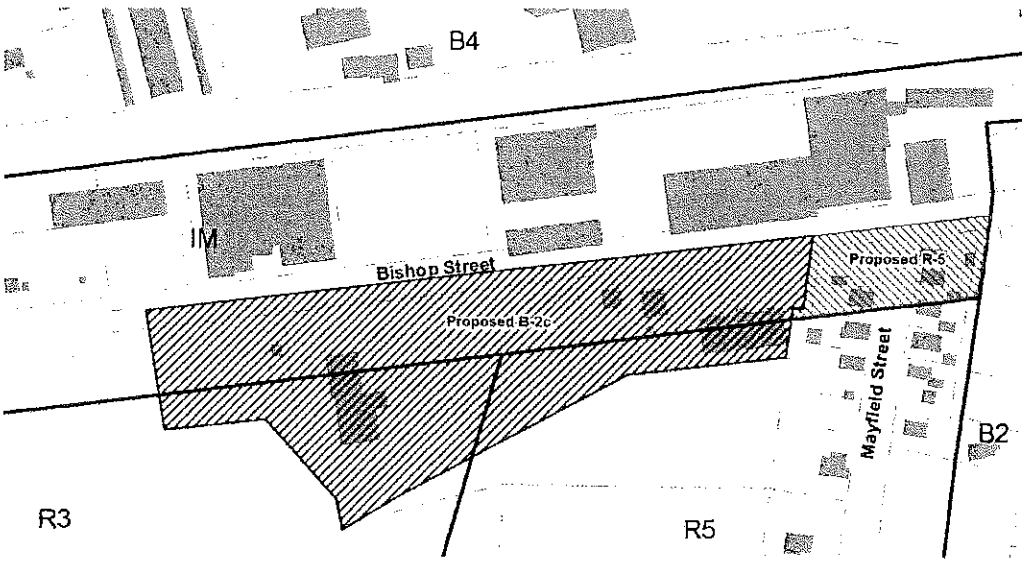
There are no known financial impacts to the City.

VI. STAFF ANALYSIS

Through the course of review, the Board engaged in substantial discussion surrounding the suitability of the existing zoning, proposed zoning designations, the area of the rezoning, and its potential traffic and environmental implications. Ultimately, a majority of the Board found the proposed rezoning consistent with the Comprehensive Plan.

VII. RECOMMENDATION

On October 14, 2014, the Planning Board voted 4-1 (Dean opposed, Soley and Dundon absent) that the proposed map amendment to change the zoning for the southern side of Bishop Street from Moderate Impact Industrial (IM), Residential R-3, and Residential R-5 to Community Business (B-2c) and Residential R-5, as shown in the map below, is consistent with the Comprehensive Plan. The Board voted 4-1 (Dean opposed, Soley and Dundon absent) to recommend adoption of the proposed amendment to the City Council. Mr. Dean expressed concerns regarding the loss of industrial land to business uses. However, he articulated his support for the R-5 rezoning at the north end of Mayfield Street.



VIII. ATTACHMENTS

1. Order
2. Planning Board Report to City Council (to be forwarded under separate cover)

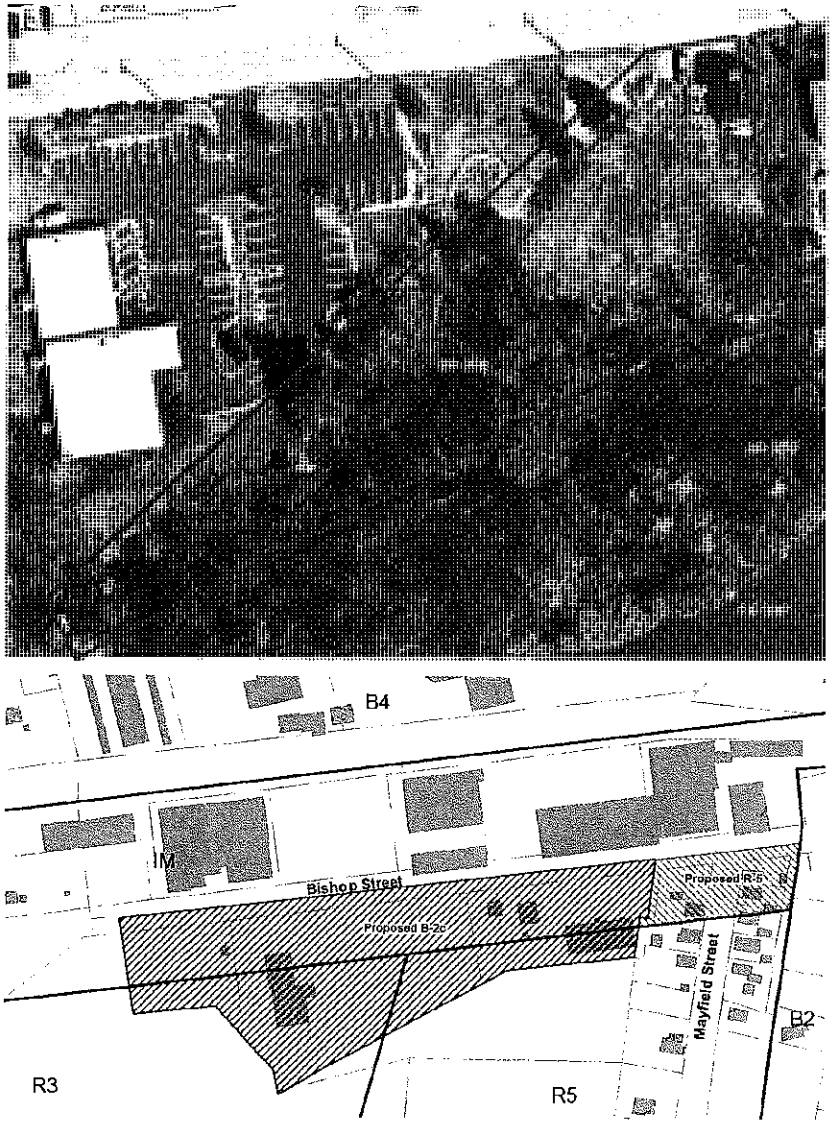
Prepared by:

_____	October 22, 2014
Signature	Date

CITY COUNCIL REPORT
from
PLANNING BOARD
PORTLAND, MAINE

Map Amendment for 72 Bishop Street, Bishop Street Apartments
Rezone from I-M, R-3, and R-5 to B-2c and R-5
Avesta Housing, Applicant

Submitted to: Portland City Council First Reading: November 3, 2014 Second Reading: November 17, 2014	Prepared by: Portland Planning Board Date: October 22, 2014



Figures 1 and 2: 72 Bishop Street, aerial view and proposed map amendment

I. INTRODUCTION

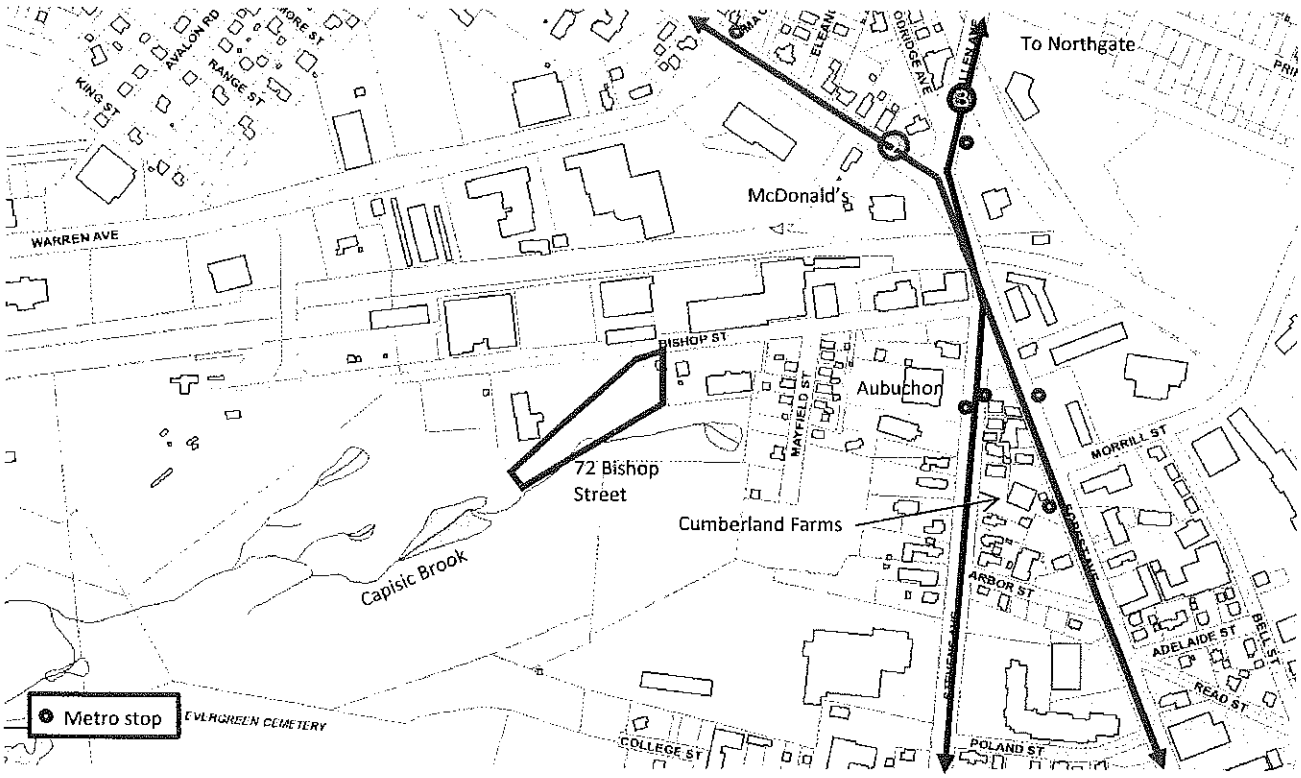
On October 14, 2014, the Planning Board voted 4-1 (Dean opposed, Dundon and Soley absent) to recommend a zoning map amendment for the southern side of Bishop Street from Moderate Impact Industrial (IM), Residential R-3, and Residential R-5 to Community Business B-2c and Residential R-5. The amendment was the result of an extensive review of the existing zoning in the area of Bishop Street, which included substantial discussion surrounding the proposed use of a site owned by Avesta Housing at 72 Bishop Street, the suitability of potential zoning designations, the area of the rezoning, and its possible traffic and environmental implications. Legal notice for the November 17 City Council hearing will be posted in the *Portland Press Herald* on November 3 and November 10. Notices will be sent to property owners within 500 feet and to the interested citizen list and posted on the city's web page.

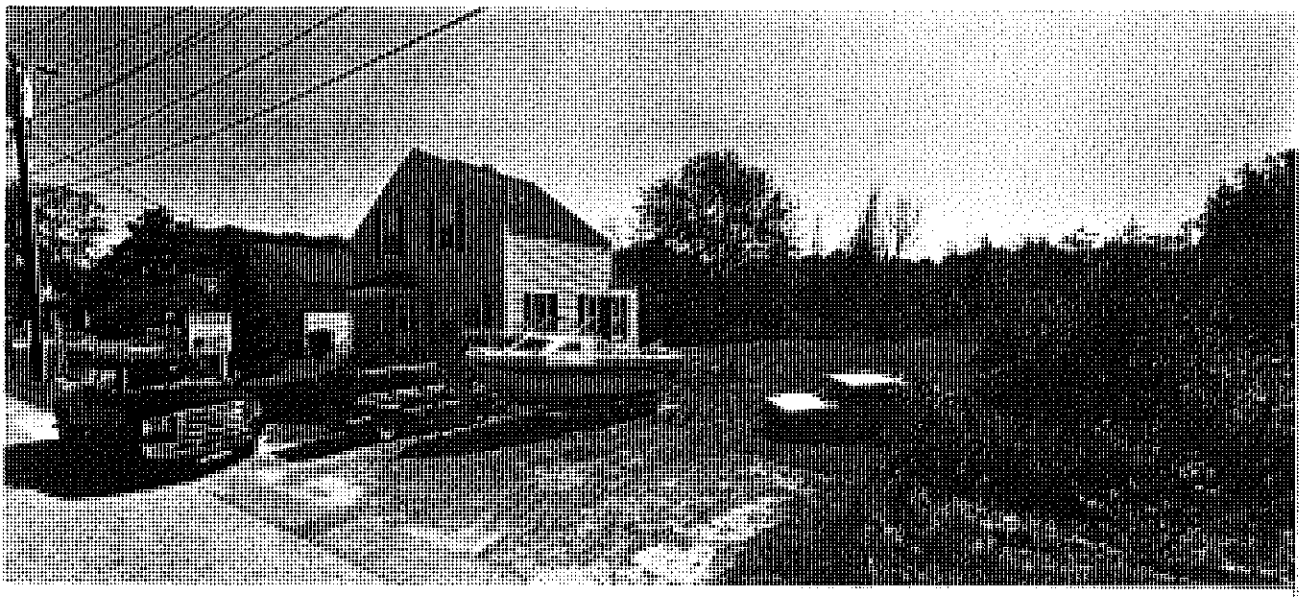
II. BACKGROUND

In mid-June, Avesta Housing submitted a zone change request

for a 1.16 acre property at 72-78 Bishop Street. The site, which actually consists of two separate lots, is currently zoned Moderate Impact Industrial (IM), Residential (R-3), and Residential (R-5), and is developed with a single family home. Avesta originally proposed a change to Community Business (B-2), arguing that this designation would best allow them to develop 30 efficiency units for chronically homeless individuals, using the Housing First approach employed for Logan Place and Florence House, on the site.

The Planning Board considered the proposal at three workshops on July 8, August 12, and September 9, and finally at a hearing on October 14. This report reviews staff findings on the proposal, summarizes the board's deliberations, and presents the board's motion for the council to consider.





Figures 2 & 3: 72 Bishop Street context (top) and site as it exists today (bottom)

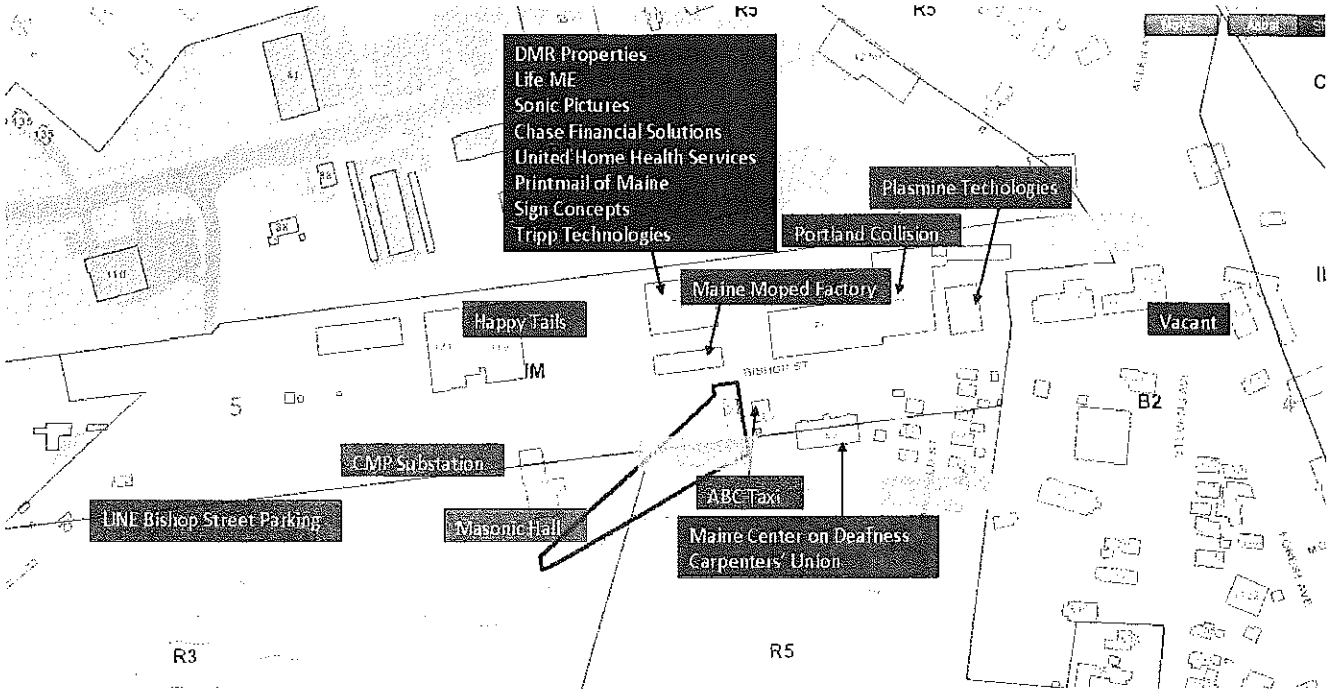


Figure 4: Existing Bishop Street uses and underlying zoning

Applicant: Avesta Housing, Greg Payne
Property Owner: Hed Way Development
Consultant: Mitchell & Associates, Bob Metcalf

III. EXISTING CONDITIONS

Bishop Street extends from Forest Avenue/Stevens Avenue at Morrill's Corner to Warren Avenue to the west *(Figure 3)*. It currently hosts a variety of uses ranging from auto body shops to a dog grooming business, an investment advisor, a Masonic Hall, and a taxi company. The majority of the street is occupied by commercial and industrial uses. The University of New England owns a parking lot at the west end of the street, as well as all of the undeveloped land south of Bishop Street. Single family homes can be found on the east end where Bishop Street intersects with Mayfield Street. 72-78 Bishop Street, the Avesta site, lies on the south side of the street near its center. The site is presently occupied by a single-family home, with forested wetlands at the rear. Existing uses along the length of Bishop Street, determined through a windshield survey, are shown in *Figure 54*, coded by assumed land use. Note that these land use determinations have not been verified with the Zoning Administrator as the legal uses based upon Inspections records.

In keeping with the mix of existing uses, Bishop Street also hosts a mix of zoning designations *(Figure 5)*. The majority of Bishop Street is zoned Industrial IM (Moderate Impact) with an Industrial IH (High Impact) zone that encompasses the former Pike Industry site at the westerly end of the street. The IM zone boundaries parallel Bishop Street, extending north to the railroad line and south approximately 100 feet from the street's centerline. Residential R-3 and R-5 zones are located to the south of the I-M zone. The majority of Mayfield Street lies within the R-5 zone, except for the residential buildings within approximately 100 feet of Bishop Street, which are zoned IM.

IV. PROPOSED MAP AMENDMENT

Current Zoning: IM (Moderate Impact Industrial), R-5 (Residential), and R-3 (Residential)
Proposed Zoning: B-2c (Community Business) and R-5 (Residential)
Current Uses: Substation, Masonic Hall, single-family residential, office
Proposed Uses: Substation, Masonic Hall, single-family and multi-family residential, office
Parcels to be Rezoned B-2c: 293-C-16, 1, 2, 3, 4
Parcels to be Rezoned R-5: 293-C-7, 8, 9 and 293-D-1, 2, 3

Table 1: Purposes

Zone	Purpose
IM (Industrial – Moderate Impact)	To provide zones in areas of the city in which light and moderate impact industries and transportation-related uses will coexist. The moderate impact industrial (I-M and I-Ma) zones are located on arterials or collectors. The I-Mb zones are similarly located on the peninsula. These locations provide for direct access onto arterials, thereby protecting residential neighborhoods from drive-through traffic. The I-M, I-Ma and I-Mb industrial zones are intended to provide for larger industrial buildings and for the limited or controlled use of areas outside of structures for storage of materials and machinery. These facilities often require large volumes of imported materials and products which result in large volumes of shipping and receiving. Often uses may be highway-oriented and transportation-related, thus relying on citywide and regional transportation infrastructure. Industrial uses in the moderate impact industrial zones may require separation from higher impact uses, which should be directed to the high impact industrial zone.
R-3	To provide for medium-density residential development characterized by single-family homes on individual lots and also to provide for planned residential unit developments on substantially sized parcels. Such development shall respond to the physical qualities of a site and complement the scale, character and style of the surrounding neighborhood.
R-5	To provide appropriate areas of the city for medium-density residential development characterized by single-family and low-intensity multifamily dwellings on individual lots; to ensure the stability of established medium-density neighborhoods by controlling residential conversions; and to provide for planned residential unit development on substantially sized parcels. Such PRUD development shall respond to the physical qualities of a site and complement the scale, character and style of the surrounding neighborhood.
B-2c (Community Business)	To provide appropriate locations for the development and operation of community centers offering a mixture of commercial uses, housing and services serving the adjoining neighborhoods and the larger community. The variety, sites and intensity of the permitted commercial uses in the B-2 zone are intended to be greater than those permitted in the B-1 neighborhood business zone. The B-2 zone will provide a broad range of goods and services and general businesses with a mixture of large and small buildings such as grocery stores, shops and services located in major shopping centers and along arterial streets. Such establishments should be readily accessible by automobile, by pedestrians and by bicycle. Development in the B-2 zone should relate to the surrounding neighborhoods by design, orientation, and circulation patterns. The B-2 and B-2b will provide locations for moderate to high density housing in urban neighborhoods along arterials. [For the B-2c] To protect and enhance the quiet enjoyment of adjoining residential neighborhoods from the impacts of businesses that serve liquor and from other uses that are incompatible with adjoining neighborhoods due to noise.

V. ZONING ANALYSIS

As noted above, Avesta originally requested a zone change to B-2 for their property at 72 Bishop Street. Avesta argued that the proposed zone change was necessary to allow them to develop high-density housing for formerly homeless individuals on the site and, further, that the change met the goals of the comprehensive plan *(Attachment A)*.

The subsequent review highlighted the fact that much of the existing IM zone along the southerly edge of Bishop Street is currently neither developed nor functioning as an industrial area. The size of lots, the fact that the lots are only partially zoned industrial, the existence of the residential neighborhood on Mayfield Street, and the presence of sensitive natural resources in the vicinity effectively limit the potential for industrial development. In contrast, the northern edge of Bishop Street has industrial uses along with other permitted uses in the IM zone.

Over the course of the review, then, both the Planning Board and the city's staff recognized the opportunity to develop a more rational zoning scheme for the area. To this end, staff's zoning analysis ultimately included a variety of potential designations, including the Residential R-3, Residential R-5, Residential R-6, Neighborhood Business B-1, and Community Business B-2/B-2b/B-2c. Staff also analyzed a variety of potential geographic areas for the zone change *(Attachment 1)*. Following

consideration of this analysis, the Board directed staff to advertise the B-2c and the R-5 as the proposed zoning designations. Ultimately, the B-2c is recommended for the five properties south of Bishop Street west of Mayfield Street. R-5 is recommended at the north end of Mayfield Street where it intersects with Bishop Street.

Existing Moderate Impact Industrial IM Zoning

Of all the city's industrial zones, the IM is the most prevalent. IM zoning can be found along many of the city's rail and highway corridors, including the vicinity of Presumpscot Street, St. John Street, outer Congress Street, Rand Road, Canco Road, and much of Riverside Street. The IM zone is designed for arterial or collector streets where moderate impact industries can access the transportation network directly without affecting residential neighborhoods. The IM is "intended to provide for larger industrial buildings...[with] large volumes of shipping and receiving" (14-246).

The permitted uses in the IM zone are, as one would expect, generally industrial in nature, and include warehousing, food processing, recycling, lumber yards, miscellaneous repair services, dairies, and tow lots, among others. The IM zone also permits general, business, and professional offices by right. Most of the existing uses south of Bishop Street west of Mayfield Street, except for the place of assembly and the single-family home at 72 Bishop Street, are technically permitted in the IM zone. However, most of these uses, including the office, are also not necessarily "industrial" in nature. The residential uses at the end of Mayfield Street are technically non-conforming.

The dimensional standards of the IM zone are geared toward uses of an industrial nature, tending toward large buildings on large lots. The minimum street frontage, 60 feet, and the maximum structure height, 75 feet, are greater than most residential and business zones. The frontage of 72 Bishop appears to be non-conforming.

While Bishop Street has been zoned industrially for a significant amount of time and was designated as an IM zone under the *Industry and Commerce Plan* of 1994, there is a case for eliminating the IM zone on the south side of Bishop Street in this area. Again, these lots are generally not functioning as industrial in nature, are small in terms of supporting industrial development, and adjoin environmentally sensitive areas. The presence of the residential community at Mayfield Street further complicates the industrial use.

Proposed Community Business B-2c Zoning

The purpose of the Community Business B-2c zone more closely fits the general pattern of existing uses on the south side of Bishop Street west of Mayfield Street. The B-2 is written to "provide appropriate locations for the development and operation of community centers offering a mixture of commercial uses, housing, and services serving the adjoining neighborhoods and the larger community" and to "provide locations for moderate to high density housing in urban neighborhoods along arterials" *(14-181)*. The B-2c, a variant of the B-2 which emerged as a viable option over the course of the review due to its increased protections for abutting residential development, is "to protect and enhance the quiet enjoyment of adjoining residential neighborhoods from the impacts of businesses that serve liquor and from other uses that are incompatible with adjoining neighborhoods due to noise."

The B-2c allows a higher degree of flexibility in terms of uses than the industrial or residential zones, permitting a wide range of residential, office, and business uses. The B-2c permits restaurants, veterinary hospitals, theaters, hotels, and dairies and bakeries but prohibits drinking establishments explicitly. The majority of the existing uses on the south side of Bishop Street, including the residential, the office uses, the place of assembly, and the utility substation, are technically permitted by right in the B-2c zone.

The business zones generally promote a more urban form than the residential or industrial zones, characterized by greater residential density, smaller setbacks (and, in fact, build-to lines), and less open space. The maximum height is 45 feet, or 50 feet if the first floor is occupied by a commercial use. This form is similar to portions of Morrill's Corner proper.

Table 2: Permitted and Conditional Uses

Uses			I-M	R-3	R-5	B-2/B-2b/B-2c
Permitted	Residential	Single-family and two-family dwellings		•	•	•
		Multi-family dwellings				•
		Handicapped family units		•	•	•
		Single-family manufactured housing		•	•	
		Combined living/working spaces				•
		Lodging houses				•
		PRUDs		•	•	
		Multiplex development			•	
	Institutional	Schools				•
		Clinics				•
		Places of assembly				•
		Long term, extended and intermediate care facilities				•
		Governmental buildings and uses/municipal uses		•	•	•
		College, university or trade schools				•
		Day care facilities	•			•
	Business	General, business, & professional offices	•			•
		Personal services				•
		Offices of building tradespeople				•
		Retail establishments				•
		Restaurants				•
		Drinking establishments				•[1]
		Billiard parlors				•
		Mortuaries or funeral homes				•
		Miscellaneous repair services	•			•[2]
		Communication studios or broadcast facilities				•
		Health clubs and gymnasiums				•
		Veterinary hospitals				•[3]
		Theaters				•
		Hotels				•[4]
		Dairies and bakeries	•			•
		Drive-throughs when accessory to a principal use				•[5]
		Registered medical marijuana dispensaries				•
		Indoor recreation and family amusement establishments	•			
		Intermodal transportation facilities	•			
	Other	Accessory uses	•	•	•	•
		Parks		•	•	
		Home occupation		•	•	
		Studios for artists and craftspeople				•
		Special needs independent living units			•	
		Bed and breakfasts				•
		Hostels				•
		Wind energy systems	•	•	•	•
		Utility substations	•			•

Table 2: Permitted and Conditional Uses

Uses			I-M	R-3	R-5	B-2/B-2b/B-2c
		Warehousing and wholesaling	•			
		Low impact industrial uses	•			
		R&D and back office uses	•			
		Building contractors and construction services	•			
		Nurseries	•			
		Lumber yards	•			
		Commercial kitchens or other food preparation	•			
		Recycling & solid waste disposal facilities	•			
		Food processing	•			
		Correctional pre-release facilities	•			
		Tow lots	•			
Conditional	Residential	Sheltered care group homes		•	•	
		Additional accessory dwelling units		•	•	
		Alteration of non-residential structure to 3+ dwellings			•	
		Conversion of multi-family structure to lodging house			•	
	Institutional	Schools		•	•	
		Long-term and extended care facilities		•	•	
		Intermediate care facility		•	•	
		Places of assembly		•	•	
		Hospitals		•	•	
		Day care facilities		•	•	
		College, university, trade schools			•	
	Business	Auto service stations existing as of 1999				•[6]
		Car washes				•
		Drive-throughs adjacent to residential uses or zones				•[7]
		Automobile dealerships				•
	Other	Utility substations		•	•	
		Off-street parking		•	•	
		Temporary wind anemometer towers	•	•	•	•
		Wind energy systems	•	•	•	•
		Printing and publishing establishments				•
		Wholesale distribution establishments				•
		Research and development and related production				•

[1] Except in B-2c
[2] Excluding motor vehicle repair
[3] Excluding outdoor kennels
[4] Of less than 150 rooms
[5] Permitted in B-2 or B-2b if not adjacent to residential use or zone
[6] Permitted in B-2, & permitted in the B-2b if in existence since 1999
[7] Permitted in B-2, & permitted in the B-2b if accessory

Ta. 3: Dimensional Standards

	I-M	R-3[1]	*R-5*[1,2]	B-2
Min. Lot Area per D.U.	N/A	6,500 SF	3,000 SF, except 3,600 – 4,800 SF for special needs independent living units	1,500 SF 435 SF in projects with active street frontages
Street Frontage	60 feet	50 feet	50 feet	25 feet
Min. Lot Width	None	None	60 feet, except 90 feet for multiplex	None
Min. Front Yard	1 foot for each foot of building height	25 feet	20 feet, except where average depth of adjacent front yards is less	None
Max. Front yard	None	None	None	10 feet, except for irregularly shaped lots or lots with < 40 feet of frontage
Min. Rear Yard	1 foot for each foot of building height up to 25 feet 35 feet when abutting residential zone	25 feet	20 feet	10 feet
Min. Side Yard	1 foot for each foot of building height up to 25 feet 35 feet when abutting residential zone	8-20 feet, depending on height/location	8-15 feet, depending on height/location	None
Structure Height	75 feet	35 feet	35 feet	45 ft., except 50 feet if first floor is occupied by a commercial use 65 feet on lots > 5 ac.
Max. Lot Coverage	None	35 %	40%	None
Max. Impervious Surface	75%	None	None	Residential: None Business and non-residential uses: 80%

[1]Additional restrictions on total number of dwelling units, setbacks, and lot coverage apply for PRUDs in the R-3 and R-5 zones
[2] Separate requirements apply for small residential lot development

Proposed Residential R-5 Zoning
The R-5 zone, likewise, more appropriately fits the north end of Mayfield Street where it intersects with Bishop Street. The R-5, which currently covers the rest of Mayfield Street, is designed for medium density residential development characterized by single- and "low intensity multi-family" dwellings. This purpose clearly fits the end of Mayfield Street, where single-family homes predominate as non-conforming uses in an IM zone.

The uses of the Residential R-5 zone are entirely residential in nature. There are no industrial or business uses permitted in the residential zones. Utility substations and places of assembly are conditional uses in the residential zones. Offices are generally not permitted.

The residential zones are generally oriented toward the smaller scale, small lot development characteristic of the city's off-peninsula neighborhoods.

VI. POTENTIAL IMPACTS

Throughout the course of the review, Planning Board members encouraged a broad look at the potential impacts of the proposed zoning designations, particularly in the case of the proposed B-2c zone. As a result, staff requested or performed several analyses of the zone change's implications.

Traffic
At the August 12 Planning Board workshop, residents and board members raised concerns regarding the potential impacts to pedestrian and vehicular traffic under a zone change, especially in light of existing capacity issues at Morrill's Corner. At the board's request, Tom Errico, the city's consulting traffic engineer, conducted a trip generation analysis designed to show how potential trip generation might generally compare under the present-day and proposed future zoning. In order to achieve this, the analysis assumed worst-case-scenario buildout based on the existing and proposed zoning designations, calculated trip generation based on these scenarios, and compared these figures.

The analysis found that, under the proposed rezoning scenario, particularly where Bishop Street west of Mayfield Street is rezoned to B-2c, there is the potential for more trip generation than under the existing zoning designation *(Attachment 2)*. This is largely a result of the retail use permitted in the B-2c, which Mr. Errico assumed would have "shopping center type trip generation characteristics." Mr. Errico estimates that up to 65 more trips could be generated in the AM peak hour and 100-200 more trips could be generated in the PM peak hour under the proposed B-2c zoning scheme than under the existing zoning, depending on how far onto the lots the rezoning extends. Mr. Errico has advised that the trip generation figures supplied in his analysis likely represent worst case scenarios. Regarding the downstream effects of the potential change in trip generation, Mr. Errico writes,

> *Any added traffic in this area has the potential to impact traffic conditions at Morrill's Corner. The intersection is currently near or over capacity and the nature of multiple streets intersecting Forest Avenue in close proximity complicates traffic mobility. In my professional opinion, both zoning options will have an impact. It is very difficult to predict the magnitude of the impact, without conducting detailed traffic analyses. My general opinion is that some mitigation will be warranted if significant traffic is added to Forest Avenue.*

Staff also requested that Mr. Errico comment on the implications of the trip generation analysis with respect to pedestrian accommodations. He writes,

> *Multi-modal transportation considerations are an important element of understanding project impacts. In the case of the zone change, it is my professional opinion that a*

sidewalk systems, without gaps, should be provided between uses on Bishop Street and Forest Avenue. Morrill's Corner currently can be a difficult environment for pedestrians. While basic pedestrians features (e.g. crosswalk, signal heads) are provided, upgrades are likely warranted to fully balance all transportation user needs. It is my professional opinion that pedestrian upgrades would be required regardless of the zoning or development. I would note that the City has required for off-site mitigation improvements or monetary contributions and these are generally related to types of land uses and how they may impact conditions, so the level of mitigation will be related to traffic and pedestrian generating levels.

It should be noted that the applicant has offered to construct a sidewalk between their site and Morrill's Corner. Some neighboring property owners have raised concerns with this potential sidewalk, citing maintenance implications. Concerns regarding possible conflicts with existing trees have also been expressed. The details of extending a sidewalk along Bishop Street would be considered under site plan review.

Natural Resources

Over the course of the review, residents and board members also cited concerns regarding possible environmental impacts, particularly to the Capisic Brook. The city has devoted considerable resources to the Capisic Brook watershed in recent years, culminating in a plan for the watershed, *Capisic Brook Watershed Management Plan*, which was published in 2012. This plan cites results of a 2003 biological monitoring program on the Capisic Brook which determined that the east tributary of the Capisic, which roughly parallels Bishop Street here, had "a healthy macroinvertebrate community, good water quality, and adequate habitat" and met Class C water quality standards. It further noted that the "[v]ariation in water quality at [the east tributary/Evergreen Cemetery monitoring station compared to downstream station] has been attributed to the differences in land use, especially the presence of impervious cover, and hence probable differences of NPS [non-point source] discharges into the brook…" (1-3).

Similarly, a peer review conducted in 2007 by Call of the Wild Consulting and Environmental Services for the Gullivers Field area immediately south of Bishop Street notes that that site provides "very significant migratory passerine (songbird) stopover habitat for both the spring and fall migrations. In fact, this area is a premier destination site for spring birding because of the large variety of bird species and numbers." The review concludes, "this area is a well-documented, important ecological area in Portland that Call of the Wild recommends permanent protection [sic]…"

In terms of potential impacts to these resources, the B-2c zone actually allows a slightly greater percentage of impervious surface and a lesser rear and rear setbacks than the existing IM zone. The B-2c also permits auto service stations and car washes as conditional uses. However, the existing IM zone allows a variety of uses which generally have the potential for more intensive environmental impacts, such as recycling and solid waste disposal facilities and building contractors and construction services.

Security

At the September 9 workshop, responding to neighborhood concerns, board members also highlighted the need to understand security and safety impacts of the proposed map amendment, particularly in the context of the Avesta project. Board members asked explicitly for police department data related to security around Avesta's existing housing developments. The applicant had previously provided a testimonial from Vernon Malloch of the Portland Police Department stating that "Logan Place has successfully served as a tested model with no significant impact on the surrounding neighborhood" (*Attachment M),* but the board stressed the importance of additional information. In response, the applicant requested a summary of police calls from the Police Department. Assistant Chief Malloch provided such a summary *(Attachment N).* It is assumed that any public safety questions would be addressed under site plan review.

VII. GEOGRAPHIC AREA OF PROPOSED AMENDMENT

The September 9 workshop included some discussion of ways to limit the potential impacts of the proposed zone change, particularly in the case of the proposed B-2c. These discussions led largely to a consideration of the geography of the proposed zone change.

Extent of Rezoning to West

The extent of the rezoning west down Bishop Street provided a source of discussion throughout the course of this review. As noted above, the University of New England owns a significant amount of land both at the west end and immediately south of Bishop Street, portions of which are currently used for parking areas and recreational open space. The board has asked for documentation regarding UNE's plans for the Bishop Street area, and whether UNE's property should be included under the proposed zone change request. The merits of a B-2 or B-2c zoning designation were discussed with UNE's Assistant Vice President for Planning, Alan Thibeault, and Mr. Thibeault has provided a letter indicating the university's intent to "complete a Master Plan of the Portland Campus and submit it for consideration of an Overlay Zone," and consequently its desire not to be included under this zone change request *(Attachment PC-3)*. It should be noted that Mr. Thibeault's letter also states explicitly that UNE does not support the rezoning request, remarking that the "proposed rezoning would actually result in a more complicated zoning situation, for UNE and the City, as it would increase the total number of zones, to 5, that UNE's contiguous land holdings fall into." The proposed map amendment before the council does not incorporate any of the land owned by UNE.

Extent of Rezoning to South

Similarly, the extent of the proposed rezoning south of Bishop Street, particularly with respect to the proposed B-2c, has been the subject of considerable discussion over the course of the review. As part of these discussions, questions have been raised regarding additional regulatory mechanisms, both in the city's zoning and beyond, which might apply.

> ***Stream Protection***
>
> The city's basic mechanism for regulating development near a stream is the Stream Protection zone, which is a component of the city's shoreland zoning. The applicability statement of the Stream Protection Zone states that "the S-P stream protection zone includes all land areas within seventy-five (75) feet, horizontal distance, of the normal high water line of a stream as shown on the City of Portland Zoning Map" (14-452). As with the stream protection zone, the shoreland zone applies to areas "within seventy-five (75) feet, horizontal distance, of the normal high water line of a stream…" (14-447). The minimum setback in both zones is 75 feet from the normal high water line.
>
> However, the Capisic Brook in this area is not technically shown in either the Stream Protection or Shoreland zones on the city's zoning map. The *Capisic Brook Watershed Management Plan* includes a recommendation to include stream segments such as this one, which were not required to be protected under the state's shoreland regulations, under the Stream Protection zone. It recommends that the city verify that mapped streams are consistent with definitions under the Natural Resources Protection Act (NRPA) and that the city "consider expanding the Stream Protection Overlay District into hydrologically connected areas of Capisic Brook." The plan also suggests that the city "consider amending the language within the overlay zone to enhance/maintain riparian vegetation and conservation of wetland/riparian area hydrologic functions" (3-28). This work has not yet been completed by the city.
>
> The Maine DEP has found that the Capisic Brook in this area qualifies as a stream under the NRPA and is thus subject to DEP permitting requirements. Per the DEP, if a project is proposed within 25 feet of a defined stream, an individual permit is required. If a project is proposed between 25 and 75 feet of a stream, a permit-by-rule is required. While there is technically no required setback from a stream under the DEP regulations, Robert Green, a Project Manager under the DEP's Division of

Land Resource Regulation has written, "[t]he expectation is that any disturbance will be minimized to the greatest extent practicable. The PBR or permit application must include a statement outlining the need to infringe on the 75-foot setback and how the proposed project has been designed to minimize this infringement" *(Attachment 3).*

Dimensional Standards, Intensity of Use, and 30' Rule
It should be noted that, on lots which fall into multiple zones, dimensional standards are applied to each distinctly-zoned portion of the lot. Thus, the amount of a lot which is rezoned directly relates to the intensity of development permitted on that lot in terms of residential density, impervious surface, and lot coverage calculations. This, in turn, directly relates to potential impacts.

It should also be noted that under Section 14-51, the land use code allows that "where a zone boundary line divides a lot in single or joint ownership of record at the time such line is established, the provisions of this article for the less restricted portion of such lot shall extend not more than thirty (30) feet into the more restricted portion, provided that the lot has at least twenty (20) feet of street frontage in the less restricted zone..." Per the zoning administrator, this provision is interpreted to mean that the use in the less restrictive zone, in this case the B-2c, could extend up to 30 feet into the adjacent, more restrictive zone on the same lot.

VIII. COMPREHENSIVE PLAN ANALYSIS

With respect to the rezoning of Avesta's site in particular, there is ample policy in the Comprehensive Plan to support the change. The housing element of the Comprehensive Plan strongly supports increasing the range of housing types in the city to serve all income levels. *Housing: Sustaining Portland's Future* highlights the need for supportive housing with a goal particularly targeted towards this housing type: "ensure that a continuum of housing is available for people with special needs and circumstances ranging from emergency shelters and transitional housing to permanent housing, which offer appropriate supportive services." The housing plan recommends that the city should:

- *Increase the amount of supportive housing for persons with disabilities, the frail elderly, homeless families and individuals, and persons with other special needs that desire and need to live in an urban area where services are available*
- *Create enough beds to ensure that no one is forced to sleep outside due to a lack of beds in emergency shelters;* and
- *Encourage proposals from developers that will transition homeless families and individuals out of emergency shelters and transitional facilities into permanent housing, including single room occupancy (SRO) units*

In addition, the report of the city's Homelessness Prevention Task Force, issued in November 2012, includes recommendations designed to address the city's issues with homelessness, many of which apply here. Among these, the report recommends "a focus on providing appropriate permanent housing and support in the community for individuals, families, and youth as quickly as possible...Meeting this goal will...require constructing three new housing first units consisting of 35 units each and appropriate supports for people who are chronically homeless (4)." With respect to this action item, the Task Force set a target completion date of 2018 and charged Avesta Housing, the city, and Preble Street, among others, with the responsibility.

In terms of the Comprehensive Plau's support for rezoning this area near Morrill's Corner to a business zone, the plan includes policy designed to foster dense commercial and residential development in close proximity to transit and other infrastructure in the context of smart growth. *Housing: Sustaining Portland's Future* includes policies to "encourage sustainable development patterns and opportunities within the city by promoting efficient land use, conservation of natural resources, and easy access to public transportation, services, and public amenities." Further, the plan states that the city should "maximize development where

public infrastructure and amenities, such as schools, parks, public/alternative transportation, sewer lines, and roads exist or may be expanded at minimal cost."

It should be noted that the city's *Industry and Commerce Plan* of 1994 included policies to "preserve, protect, and strengthen neighborhoods" with compatible development and that the plan recommends revising zoning to "protect neighboring residential zones."

It should also be noted that, particularly with respect to the north end of Mayfield Street, as well as with respect to the area south of the existing IM zone, the Comprehensive Plan includes policies that seek to limit business expansion into residential zones. *Housing: Sustaining Portland's Future* notes the need to "protect the stability of Portland residential neighborhoods from excessive encroachment by inappropriately scaled and obtrusive commercial, institutional, governmental, and other non-residential uses." The plan states that the city should "discourage demolition or conversion of residential properties for non-residential uses." Lastly, it is worth noting that the Comprehensive Plan supports the protection of natural resources. The city's vision, as enumerated in the Comprehensive Plan, includes protecting the natural environment, and the *Sustainable Portland* report establishes a goal related to "environmental stewardship through effective transportation and land use decision-making."

IX. PUBLIC COMMENT

Staff sent letters through postal mail to each of the property owners subject to the proposed zone change. In response, one public comment was received via phone. This neighbor expressed significant concerns regarding a potential sidewalk on his property, including its implications for existing trees and maintenance, and the property tax implications of the proposed zone change.

All previous formal written comments on the proposal are attached (*Attachments PC-1-4*), as are the neighborhood meeting minutes *(Attachment F)*. These comments raise concerns regarding environmental impacts, traffic impacts, and the safety and scale of the Avesta proposal in particular. One of these letters also supports rezoning the end of Mayfield Street to R-5.

In addition, the Planning Board heard public comment on the proposal at all workshops and the hearing. Comments at these workshops focused largely on security, scale, and density concerns relating to the Avesta development in particular, as well as general environmental and traffic concerns regarding the zone change more broadly.

X. BOARD DELIBERATION AND RECOMMENDATION

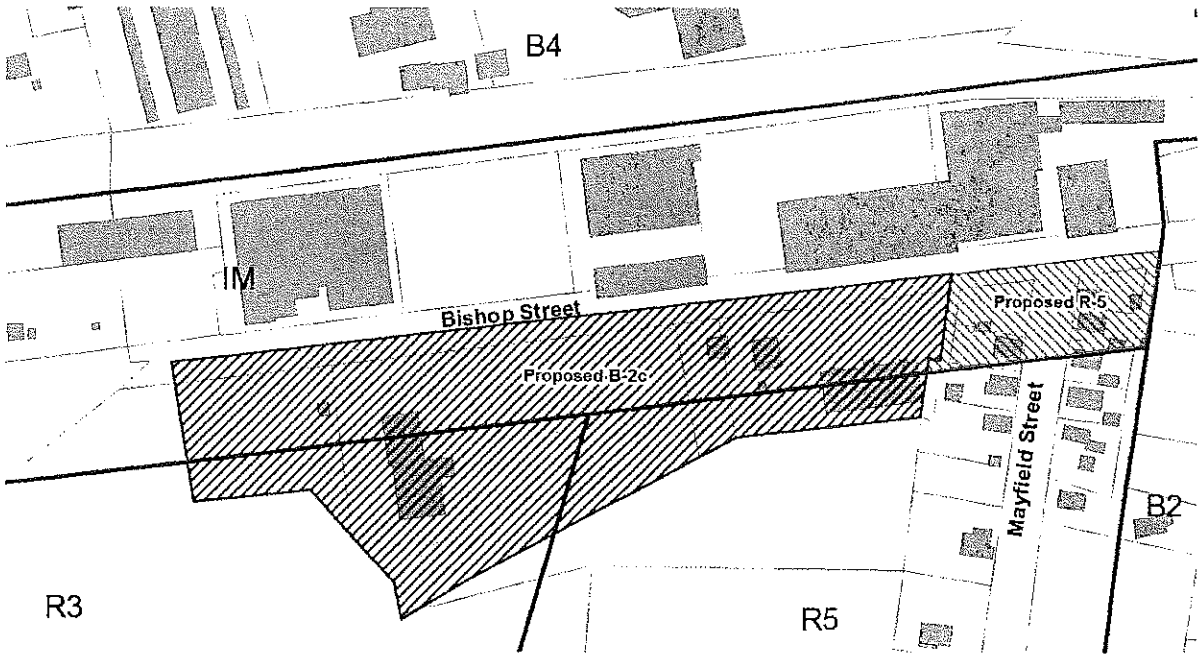
At the hearing, several geographic options for the zone change were presented. Two of these options limited the B-2c rezoning to the area which is currently zoned Moderate Impact Industrial (IM) on those five lots west of Mayfield Street (i.e. the area within the existing IM boundary 100' from the centerline of Bishop Street), as well as the contiguous southern half of Bishop Street. These options, however, included a divergence from the 100' offset line for the lot at 72 Bishop Street, which would have required more square footage under the B-2c zoning designation in order to allow Avesta's housing project at the density desired. The other option rezoned the five lots west of those on Mayfield Street, in their entirety, as well as the southern half of Bishop Street, from Moderate Impact Industrial IM, Residential R-3, and Residential R-5 to Community Business B-2c. All options rezoned the northern end of Mayfield Street to Residential R-5.

The board was unanimous in its support of the Mayfield Street rezoning to Residential R-5. However, there was some deliberation as to the merits of the B-2c rezoning. Mr. Dean in particular advocated for retaining industrially-zoned land in the city and against commercial encroachment into residential zones. In his dissent, he noted concerns regarding traffic impacts to Morrill's Corner and expressed a desire to resolve UNE's plans for this area prior to any rezoning effort.

Ultimately, the majority of the board supported a rezoning to B-2c for the parcels west of Mayfield Street in their entirety, arguing that the purpose statement, the permitted uses, and the form of the B-2c clearly connect to the existing pattern of uses on these lots as well as the city's long-term vision for Morrill's Corner, an area the city has attempted to promote as a mixed-use commercial and residential node. The rationale for rezoning the parcels to the back of the lots was simply that it makes for the most logical and consistent zoning scheme. The majority of the board also voted to recommend the R-5 for the northern end of Mayfield where it intersects with Bishop Street. The residential uses in this area are currently technically non-conforming; and R-5 rezoning would rectify this.

The Planning Board voted 4-1 (Dean opposed, Dundon and Soley absent) as follows:

> Based on the material provided in this report, public testimony, a review of applicable policies, and other information, the Planning Board finds that the proposed map amendment to change the zoning for the southern side of Bishop Street from Moderate Impact Industrial (IM), Residential R-3, and Residential R-5 to Community Business B-2c and Residential R-5, as shown in the map below, is consistent with the Comprehensive Plan and does recommend adoption of the proposed amendment to the City Council.



XI. ATTACHMENTS

Report Attachments

1. Zoning analysis
2. Traffic Engineer review (memo from Tom Errico, 9/3/14)
3. Correspondence with Maine DEP (emails from Robert Green, 10/1/14 and 10/8/14)

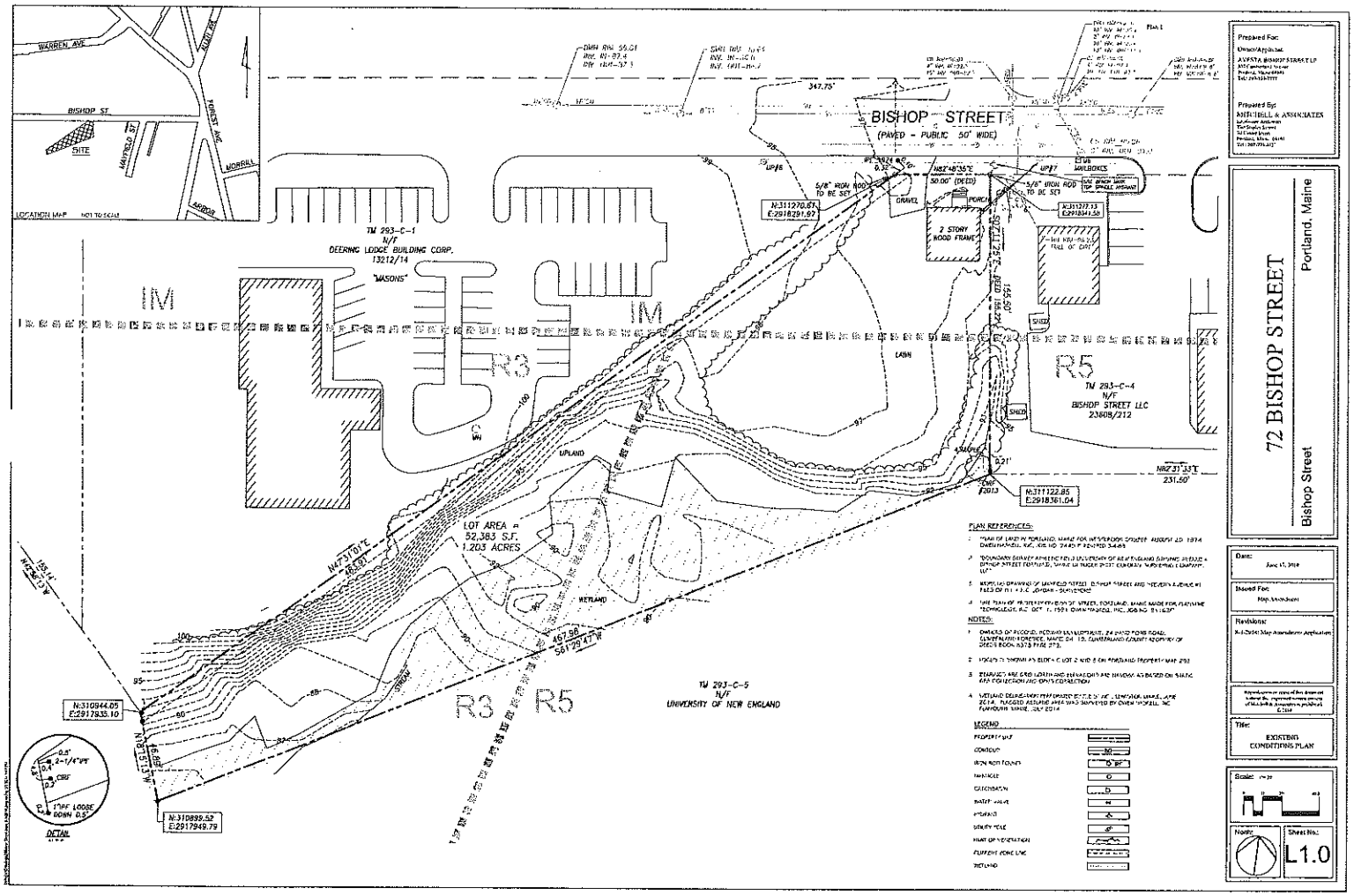
Applicant's Submittals

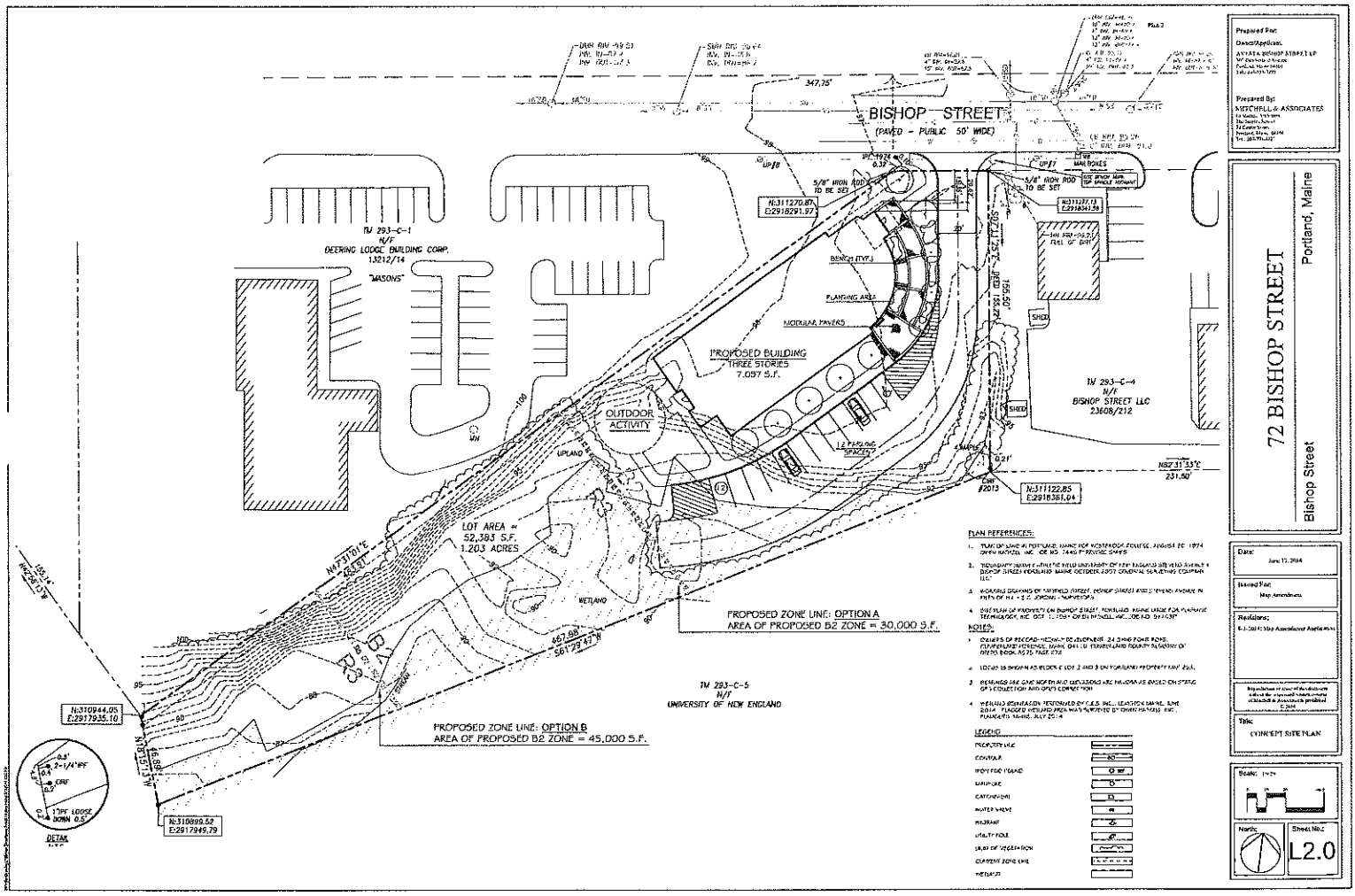
A. Cover letter (from Bob Metcalf, 6/17/14)
B. Map amendment application
C. Context map
D. Contract for sale of real estate

E. Letter of authorization
F. Neighborhood meeting minutes
G. Cover letter (from Bob Metcalf, 8/1/14)
H. Preble Street memo (from Mark Swann, 8/1/14)
I. List of neighboring businesses
J. Map of business establishments and bus stops
K. Metro routes
L. Cover letter and massing diagrams (from CWS Architects, 8/4/14)
M. Letter from Assistant Police Chief (from Vernon Malloch, 7/11/14)
N. Memo from Assistant Police Chief (10/10/14)

Plans
Plan 1 Existing Conditions
Plan 2 Site Plan

Public Comment
PC-1. Email from Janet Parker (7/15/14)
PC-2. Letter from Janet Parker (8/12/14)
PC-3. Letter from Alan Thibeault, UNE (10/8/14)
PC-4. Letter from Janet Parker (10/14/14)


BISHOP STREET
(PAVED - PUBLIC 50' WIDE)
347.75'
LOCATION MAP NOT TO SCALE
WARREN AVE
BISHOP ST
SITE
FOREST AVE
MORRILL
AIRPORT
TM 293-C-1
N/F
DEERING LODGE BUILDING CORP.
13212/14
"MASONS"
IM
R3
R5
TM 293-C-4
N/F
BISHOP STREET LLC
23608/212
2 STORY WOOD FRAME
PORCH
GRAVEL
LAWN
SHED
UPLAND
WETLAND
LOT AREA =
52,383 S.F.
1.203 ACRES
N47°31'01"E
48.00'
N82°48'35"E
50.00' (DEED)
N82°31'33"E
231.50'
N:311270.67
E:2918291.97
N:311222.85
E:2918361.04
N:310944.05
E:2917935.10
N:310899.52
E:2917949.79
TM 293-C-5
N/F
UNIVERSITY OF NEW ENGLAND
DETAIL
Prepared For:
Owner/Applicant:
AVESTA BISHOP STREET LP
Prepared By:
MITCHELL & ASSOCIATES
72 BISHOP STREET
Portland, Maine
Bishop Street
Date:
Issued For:
Revisions:
Title:
EXISTING CONDITIONS PLAN
Scale:
Name:
Sheet No.:
L1.0
PLAN REFERENCES:
NOTES:
LEGEND
PROPERTY LINE
CONTOUR
IRON ROD FOUND
MANHOLE
CATCHBASIN
WATER VALVE
HYDRANT
SIGN
UTILITY POLE
HEAD OF VEGETATION
FLOODPLAIN ZONE LINE
WETLAND


BISHOP STREET
(PAVED - PUBLIC 50' WIDE)
347.75'
TM 293-C-1
N/F
DEERING LODGE BUILDING CORP.
13212/14
"MASONS"
PROPOSED BUILDING
THREE STORIES
7,097 S.F.
OUTDOOR ACTIVITY
LOT AREA =
52,383 S.F.
1.203 ACRES
WETLAND
UPLAND
PROPOSED ZONE LINE: OPTION A
AREA OF PROPOSED B2 ZONE = 30,000 S.F.
PROPOSED ZONE LINE: OPTION B
AREA OF PROPOSED B2 ZONE = 45,000 S.F.
TM 293-C-5
N/F
UNIVERSITY OF NEW ENGLAND
TM 293-C-4
N/F
BISHOP STREET LLC
23608/212
SHED
N:311270.87
E:2918291.97
N:311122.85
E:2918381.04
N:310944.05
E:2917935.10
N:310899.52
E:2917949.79
DETAIL
PLAN REFERENCES:
NOTES:
LEGEND
PROPERTY LINE
CONTOUR
IRON ROD FOUND
GARDENS
CATCH BASIN
WATER VALVE
HYDRANT
UTILITY POLE
LIMIT OF VEGETATION
CURRENT ZONE LINE
WETLAND
Prepared For:
Prepared By:
MITCHELL & ASSOCIATES
72 BISHOP STREET
Portland, Maine
Bishop Street
Date:
Revisions:
Title:
CONCEPT SITE PLAN
Scale:
North:
Sheet No.:
L2.0

Att. A

Mitchell & Associates
LANDSCAPE ARCHITECTS

The Staples School
70 Center Street
Portland, Maine 04101
P: 207.774.4427
F: 207.874.2440
www.mitchellassociates.com

June 17, 2014

Ms. Barbara Barhydt
Development Review Services Manager
City of Portland
389 Congress Street, 4th Floor
Portland, Maine 04101

Re: Bishop Street Apartments
72 & 78 Bishop Street
Request for Zoning Map Amendment

Dear Barbara:

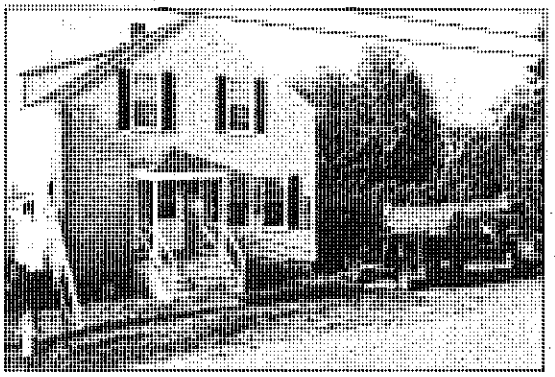
On behalf of Avesta Housing, we are pleased to submit the enclosed Zone Map Amendment application for the property located at 72 & 78 Bishop Street, Map 293, Block C Lots 2 & 3. The applicant is proposing to amend the current zoning designation (a combination of IM, R-3 and R-5) of the property to a B-2 zone with the intent to develop a 30 unit efficiency apartment building.

Housing Objective of the Project

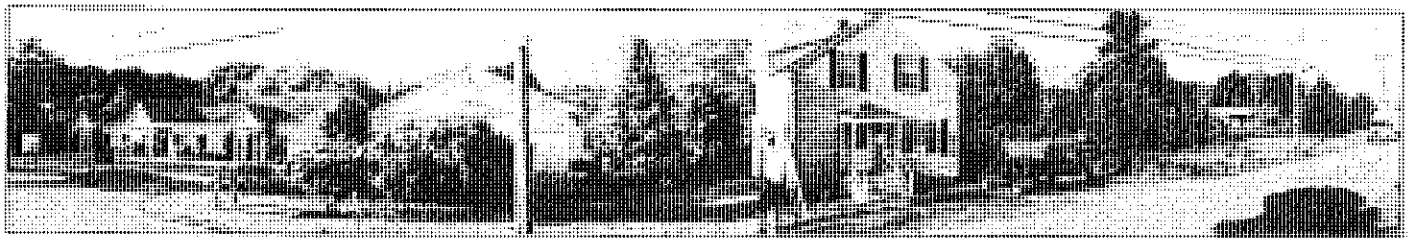
Avesta Housing proposes to develop the combined lots of 72 & 78 Bishop Street to create 30 efficiency units at 72 Bishop Street in Portland for chronically homeless individuals, using a "housing first" approach. As was the case at Logan Place and Florence House, Avesta's two prior 'housing first' projects, Avesta anticipates partnering with Preble Street for the provision of 24-hour, on-site support services and Portland Housing Authority for project-based rental assistance. In addition to the 30 apartments, the property will include common space for residents as well as office space for Avesta and Preble Street staff. Bishop Street Apartments will provide housing and support services for those chronically homeless individuals who are currently most vulnerable due to their significant medical conditions. The project will likely include a partnership with a health care provider, to both address specific health concerns and ensure that residents have access to the health and/or personal care services that medically compromised individuals typically benefit from in their homes.

The proposed facility is in close proximity to employment opportunities, public transportation services, retail and amenities, yet beyond the high paced downtown urban environment. Avesta's vision for the property is to create a high quality housing resource for the neediest population within the City of Portland that combines the best features of affordable housing and quality design.

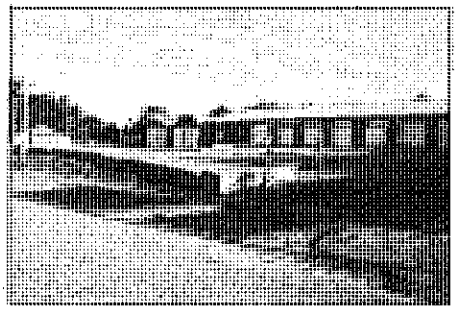
The Site

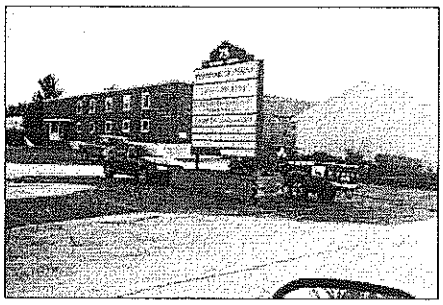


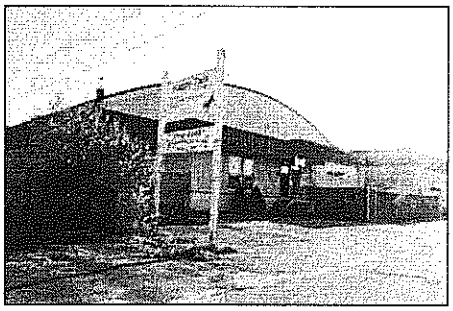
72 & 78 Bishop Street consists of a single family residence (lot 3) and a vacant lot (lot 2). Lot 3 has 50 feet of frontage on Bishop Street and is 8,125 SF; Lot 2 is a 42,419 SF vacant lot with no road frontage and lawn and mixed primary and secondary growth vegetation. The combined property is 52,383 SF (1.203 acres) and are zoned a combination of I-M (Industrial-Moderate Impact), R-3 and R-5 zones. Abutting properties include a single story 3 unit professional office building to the east at 68 Bishop Street and a Masonic Hall to the west. A car repair garage (Portland Collision) is located across the street. To the south, the parcel abuts property owned by the University of New England. Bishop Street has many large industrial, metal clad buildings with varied businesses including a dog kennel, printing services and home healthcare services.



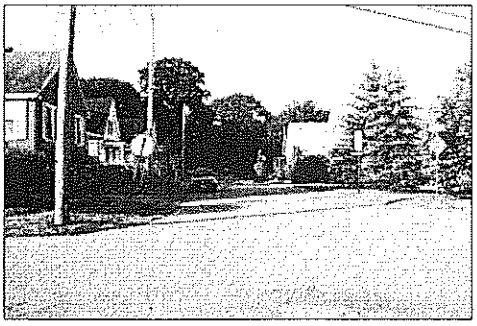
Professional Office Building **72 Bishop Street** **Masonic Hall**







Bishop Street Businesses



Residences on Mayfield Street

Bishop Street connects to Riverside Street to the west and Forest Avenue at Morrill's Corner to the east. While there are no residential properties on Bishop Street besides 72 Bishop, approximately ten single family residences are located towards the Forest Avenue end of Bishop Street on a small dead end street (Mayfield Street) that bisects Bishop Street.

Building Program

Bishop Street Apartments will consist of a single, new, 3 story building. The main entrance vestibule and reception is accessed from the first floor with building services including community rooms and offices. In addition, six efficiency units are located on the first level along with laundry, staff rooms and mechanical and electrical facilities. The remaining 24 efficiency units are located on the upper second and third levels. The complex will contain 30 total efficiency units.

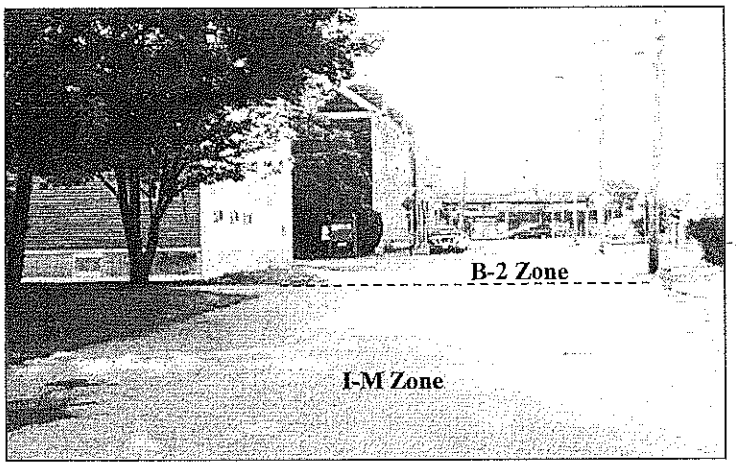
The site will accommodate a 12 space surface parking lot and dumpster pad. Outdoor recreation space will be located on the west side of the building and a landscaped seating area will be located on the eastern side of the building near the main entrance.

Zoning

The combined lots 2 and 3 (72 & 78 Bishop Street) fall within the I-M, R-3 and R-5 zones. The portion of the property along Bishop Street is defined as Industrial-Moderate Impact (IM) while the southern /rear portion of the properties are defined as Residential-3 (R-3) and Residential-5 (R-5). Avesta Housing is requesting a Zone Map Amendment to change the entire parcel created by the combined lots 2 & 3 to the B-2 Zone.

The proposed project intends to align with the city's desire to have a greater density of housing along the Forest Avenue corridor. The current zoning within the I-M zone prohibits residential uses while the R-3 and R-6 zones are primarily for medium density residential. The B-2 zone is located approximately 500 feet

from the property towards Forest Avenue. The B-2 zone supports moderate to high density residential development close to arterials.



View from 72 Bishop St towards Forest Avenue- Zoning

We believe that affording this property B-2 zoning status will provide desirable residential opportnnities and support services for a population that is in great need of assistance. The location of the facility will provide residents with easy access to public transit with numerous entry level employment opportunities within walking distance.

Implementing Portland's Vision

Bishop Street Apartments supports many of Portland's goals as stated in the Land Use Ordinance and *Housing: Sustaining Portland's Future.* The purpose of the B-2 zones (sec 14-181) states to provide moderate to high density housing in urban neighborhoods along arterials. Avesta Housing has developed numerous highly successful housing projects throughout Portland and will continue, with this project, to provide excellent housing options for our community.

Housing Replacement Ordinance

The 30 housing units proposed at Bishop Street Apartments will replace the housing units lost as a result of the demolition of the single family residence.

This submission includes the following information:

1. Zoning Map Amendment Application Fee
2. Application Booklet
3. Plan Set: Sheet L1.0 Existing Conditions
   Sheet L1.1 - Concept Site Plan

We look forward to the opportunity to meet with the Planning Board to review this request. Should you have any comments and or questions, please do not hesitate to call me.

Sincerely,
Mitchell & Associates

Robert Metcalf, Principal
Maine Licensed Landscape Architect

Enclosure

cc. Greg Payne, Avesta Housing
Ben Walter, CWS Architects

Zoning Map/Text Amendment Application
Portland, Maine

Planning and Urban Development Department
Planning Division and Planning Board

Portland's Planning and Urban Development Department coordinates the development review process for requests for zoning map amendments, zoning text amendments and contract or conditional re-zoning. The Division also coordinates site plan, subdivision and other applications under the City's Land Use Code. The **Application Process for a Zone Change** is summarized below under Section I and the associated costs for reviews are found under Section II, **Development Review Fees, Public Notices and Guarantees,** and are listed on the fee structure sheet.

I. APPLICATON SUBMITTAL

Pre-application meeting

Prior to submitting a zoning amendment application, the Planning Division recommends that the applicant or the designated representative schedule a pre-application meeting to discuss the review process and applicable standards for a proposal. Please contact Barbara Barhydt, Development Review Services Manager at 874-8699 to schedule a meeting.

Zoning Amendment Application

All plans and written application materials must be uploaded to a website for review. At the time of application, instructions for uploading the plans will be provided to the applicant. One paper set of the plans, written materials and application fee must be submitted to the Planning Division Office to start the review process.

- Submit one (1) complete paper set of the zoning amendment application with a concept plan and a written narrative. Contract and conditional rezoning applications must include 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. Applications may be submitted between 8 a.m. and 4:30 p.m. Monday through Friday at the Planning Division on the 4th floor of City Hall, 389 Congress Street, Portland.
- All applications are processed in the order in which they are received.
- In order for the Planning Division's Administrative Staff to accept and log-in an application, the application form must be complete, it shall be signed by the applicant's or the applicant's designated representative, and all applicable fees paid at the time of submittal.
- The Land Use Code is available on the City's website at www.portlandmaine.gov.
- If the application is found to be incomplete, the applicant will be informed in writing of the required plans and materials.

II. DEVELOPMENT REVIEW FEES, PUBLIC NOTICES AND GUARANTEES

Zoning Application Fees

- Each application must be submitted with the applicable fees as listed in the fee structure on page 4. The fees cover general administrative processing costs.
- Application fees may be paid in cash or by check (addressed to the City of Portland).
- An application will not be processed without the required application fees.

Fee for City Review Services

- The City of Portland charges fees for service to cover the cost of reviews by Planning and Legal staff members. The charges will be billed at an hourly rate and will be invoiced monthly for reimbursement.
- Current billing rates: Planning services, $40.00/ hour and Legal services: $75.00/hour.

Fee for Third Party Review

- Portland contracts with local engineering firms to conduct engineering reviews of development proposals. The direct cost of all engineering services or third-party consultant reviews, such as the civil engineering review of stormwater management plans, traffic impact reviews and such other reviews as required under the City's Ordinances, will be included in the monthly invoices for reimbursement.

Public Notices

- Public notices must be sent to property owners within 500 for all proposals at the time an application is received. Zoning map amendments for Industrial zones require notices to be sent to property owners within 1,000 feet.
- In advance of a Planning Board workshop or public hearing, public notices for projects must be sent to property owners and are posted in a legal ad in the Portland Press Herald and on the City's web site.
- In addition, zoning map amendments, text amendments and conditional rezoning agreements require individual notices to be posted in the Portland Press Herald.
- The Planning Division mails public notices and posts notices in the newspaper. The applicant will be billed for actual or apportioned costs for advertising and sending mailed notices.
- The applicant is required to hold a neighborhood meeting under the City's regulations for zone change requests. The mailing labels must be purchased from the Planning Division for the neighborhood meeting invitation. A request for labels requires a minimum of two business days to generate the mailing labels and a charge of $1.00 per sheet will be payable upon receipt of the labels.

Third Party Review Fees

- Engineer and Third Party Review Fees - The fees are assessed by the Consulting Engineers and Third Party Reviewers.
- Inspection Fee - This fee is 2% of the Performance Guarantee or as assessed by Planning or Public Works Engineer with $300.00 being the minimum.

Noticing/Advertisements Planning Board/City Council Review

- Legal Advertisement: Percent of total bill
- Notices: .75 cents each
  (notices are sent to neighbors upon receipt of an application, workshop and public hearing meetings for Planning Board and public hearing meeting for City Council)

Planning Division	**Office Hours**
Fourth Floor, City Hall	Monday thru Friday
389 Congress Street	8:00 a.m. – 4:30 p.m.
(207) 874-8721 or 874-8719	

PROJECT ADDRESS: 72 & 78 Bishop Street, Portland

CHART/BLOCK/LOT: 293-C-2 & 3

DESCRIPTION OF PROPOSED ZONE CHANGE AND PROJECT:

Requesting a zone map amendment reflective of attached plans. Project to construct 30 apartment units with 12 parking spaces.

CONTACT INFORMATION:	**Applicant's Contact for electronic plans** Name: Mitchell Associates e-mail Address smisner@mitchellassociates.biz work # 207.774.4427
Applicant – must be owner, Lessee or Buyer Name: Avesta 72 Bishop L.P. Business Name, if applicable: Address: 307 Cumberland Avenue City/State : Portland, ME Zip Code: 04101	**Applicant Contact Information** Work # 207.553.7780 Home# Cell # Fax# e-mail: gpayne@avestahousing.org
Owner – (if different from Applicant) Name: HED/WAY Development Address: 24 Sand Point Road City/State : Cumberland Foreside, ME Zip Code: 04110	**Owner Contact Information** Work # Home# Cell # Fax# e-mail:
Agent/ Representative Name: Bob Metcalf/ Mitchell & Assoc. Address: 70 Center Street City/State : Portland, ME Zip Code: 04101	**Agent/Representative Contact information** Work # 207.774.4427 Cell # e-mail: rmetcalf@mitchellassociates.biz
Billing Information Name: Avesta 72 Bishop L.P. Address: 307 Cumberland Avenue City/State : Portland, ME Zip Code: 04101	**Billing Information** Work # 207.553.7780 Cell # Fax# e-mail: gpayne@avestahousing.org
Engineer Name: Address: City/State : Zip Code:	**Engineer Contact Information** Work # Cell # Fax# e-mail:

Surveyor	Surveyor Contact Information
Name: Owen Haskell Surveyors, Inc. Address: 390 U.S. Rt 1,Unit 10 City/State : Falmouth, ME Zip Code: 04105	Work # 207.774.0424 Cell # Fax# e-mail: www.owenhaskell.com
Architect	**Architect Contact Information**
Name: CWS Architects/ Ben Walters Address: 434 Cumberland Ave City/State : Portland, ME Zip Code: 04101	Work # 207.774.4441 Cell # Fax# e-mail: bwalter@cwsarch.com
Attorney	**Attorney Contact Information**
Name: Cito Sellinger/Maurice Thaxter Address: 1 Canal Plaza Suite 1000 City/State : Portland Zip Code: 04101	Work # 207.774.9000 Cell # 207.233-1029 Fax# e-mail: mselinger@curticthaxter.com

Right, Title, or Interest: Please identify the status of the applicant's right, title, or interest in the subject property:

See attached Purchase & Sale Agreement.

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:

The site is currently a single family residence and vegetated vacant lot.

Current Zoning Designation(s):

Industrial-Moderate Impact (I-M), Residential (R-5) & Residential (R-3)

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.

See attached project narrative.

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.

APPLICATION FEE:

Check the type of zoning review that applies. Payment may be made in cash or check payable to the City of Portland.

Zoning Map Amendment _X_ $2,000.00 (from R6 zone to B3 zone)	**Fees Paid** (office use) ___	The City invoices separately for the following: • Notices ($.75 each) (notices are sent to neighbors upon receipt of an application, workshop and public hearing meetings for Planning Board and public hearing meeting for City Council) • Legal Ad (% of total Ad) • Planning Review ($40.00 hour) • Legal Review ($75.00 hour) Third party review is assessed separately.
Zoning Text Amendment ___ $2,000.00 (to Section 14-_____) (For a zoning text amendment, attach on a separate sheet the exact language being proposed, including existing relevant text, in which language to be deleted is depicted as crossed out (~~example~~) and language to be added is depicted as underline (example)	___	
Combination Zoning Text Amendment and Zoning Map Amendment ___ $3,000.00	___	
Conditional or Contract Zone ___ $3,000.00 (A conditional or contract rezoning map be requested by an applicant in cases where limitations, conditions, or special assurances related to the physical development and operation of the property are needed 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. Please refer to Division 1.5, Sections 14-60 to 62.)	___	

Signature of Applic	**Date:** June 17, 2014

Further Information

In the event of withdrawal of the zoning amendment application by the applicant, a refund of two-thirds of the amount of the zone change fee will be made to the applicant as long as the request is submitted to the Planning Division prior to the advertisement being submitted to the news paper.

A Guide to Holding Neighborhood Meetings
Portland, Maine

Planning and Urban Development Department
Planning Division and Planning Board

In order to improve communication between development applicants and neighbors, the City of Portland requires applicants, proposing certain types of projects, to hold a neighborhood meeting.

What type of development proposal requires a neighborhood meeting?
Neighborhood meetings, organized and hosted by the applicant, are required for the following development proposals:

- Proposed zone changes, contract zones and zoning text amendments that would result in major development;
- Subdivisions of five or more units or lots; and
- Level III site plan proposals for preliminary or final site plans:
  - Portland's new site plan ordinance went into effect in August, 2010. It now includes provisions for preliminary and final plans. Neighborhood meetings are to be held three weeks after submitting a preliminary plan or within two weeks of submitting a final plan, if a preliminary plan was not submitted.

Who must be invited to a neighborhood meeting?
Property owners within 500 feet of the proposed development (1000 feet for proposed industrial subdivisions and zone changes) as well as those people on a list of interested citizens and neighborhood groups must be invited to the planned neighborhood meeting.

The Planning Division provides the mailing labels for the neighborhood meeting invitation. We require at least 48 hours notice to generate the mailing labels and a charge of $1.00 per sheet will be payable upon receipt of the labels.

When and where must the neighborhood meeting be held?
The neighborhood meeting must be held within three weeks of submitting a preliminary site plan. If an applicant chooses only to submit a final site plan, then the neighborhood meeting must be held within two weeks of submitting the final plan and not less than seven days prior to the Planning Board public hearing.

The meeting should be held in the evening, during the week, at a convenient location within the Portland neighborhood surrounding the proposed site. Community meeting spaces at libraries, schools or other places of assembly are recommended. Neighborhood schools are usually available for evening meetings.

Meetings should not be held on the same day as scheduled Planning Board or City Council meetings. The City Council generally meets on the first and third Monday of each month and the Planning Board generally meets on the second and fourth Tuesday of each month; however additional meetings may be scheduled. An updated schedule may be found on the City's website: www.portlandmaine.gov

When must invitations be sent?
Invitations to a neighborhood meeting must be sent no less than ten days (to include weekends) prior to the neighborhood meeting. If the notice is for a final site plan, then the neighborhood meeting must be held no less than seven days (to include weekends) prior to the public hearing. Notices may be sent by regular mail and do not need to be sent by certified mail.

What information should the invitation include?
A recommended invitation format is included in this packet of material.

Sign-up Sheets and Meeting Minutes
At the meeting, the applicant must circulate a sign-up sheet for those in attendance. The applicant must also keep accurate minutes of the meeting.

After holding the neighborhood meeting, the applicant must submit the sign-up sheet and meeting minutes to the Planning Division. The meeting minutes and sign-up sheet will be attached to the Planning Board report. A public hearing will not be scheduled until the meeting minutes and sign-up sheet are submitted to the Planning Division.

Certification
Included with this packet is a Certification to be completed and signed by the applicant. The applicant is required to certify when the invitations were sent out.

Please call the Planning Division at 874-8721 or 874-8719 if you have any questions.

Attachments
1. Neighborhood Meeting Invitation Format
2. Neighborhood Meeting Certification

~Applicant/Consultant: Please include all of the information listed below in the notice sent to neighbors~

Neighborhood Meeting Invitation Format

Applicant/Consultant
Letterhead

(Date)

Dear Neighbor:

Please join us for a neighborhood meeting to discuss our plans for a (development proposal) located at (location/number and street address).

Meeting Location: _____
Meeting Date: _____
Meeting Time: _____

The City code requires that property owners within 500 feet of the proposed development and residents on an "interested parties list", be invited to participate in a neighborhood meeting. A sign-in sheet will be circulated and minutes of the meeting will be taken. Both the sign-in sheet and minutes will be submitted to the Planning Board.

If you have any questions, please call (telephone number of applicant or consultant).

Sincerely,

(Applicant)

Note:
Under Section 14-32(C) and 14-525 of the City Code of Ordinances, an applicant for a Level III development, subdivision of over five lots/units, or zone change is required to hold a neighborhood meeting within three weeks of submitting a preliminary application or two weeks of submitting a final site plan application, if a preliminary plans was not submit. The neighborhood meeting must be held at least seven days prior to the Planning Board public hearing on the proposal. Should you wish to offer additional comments on this proposed development, you may contact the Planning Division at 874-8721 or send written correspondence to the Planning and Urban Development Department, Planning Division 4th Floor, 389 Congress Street Portland, ME 04101 or by email: to bab@portlandmaine.gov

Neighborhood Meeting Certification

I, (applicant/consultant) hereby certify that a neighborhood meeting was held on (date) at (location) at (time).

I also certify that on (date at least seven days prior to the neighborhood meeting), invitations were mailed to all addresses on the mailing list provided by the Planning Division, including property owners within 500 feet of the proposed development or within 1000 feet of a proposed industrial subdivision or industrial zone change and the residents on the "interested parties" list.

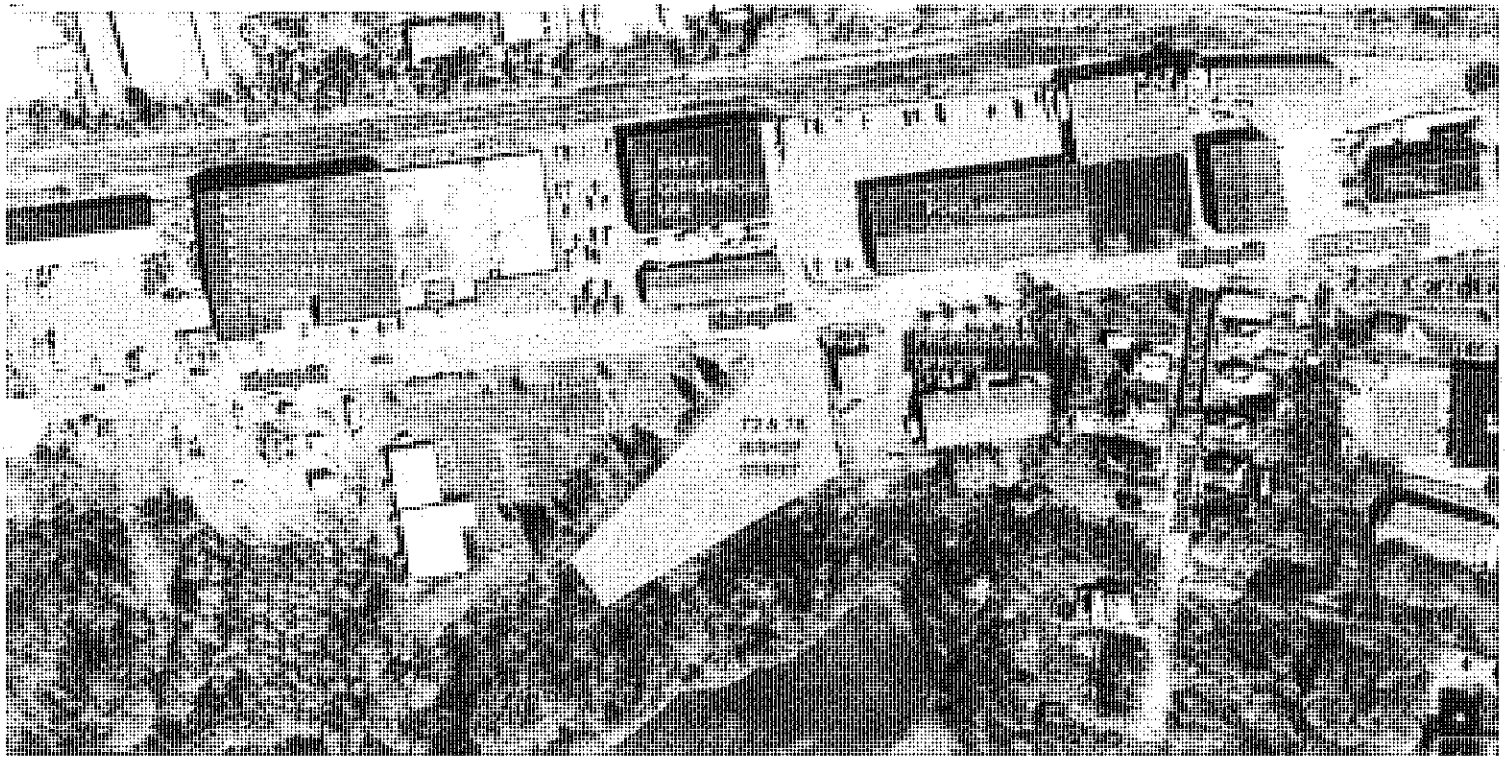
Signed,

_____ _____ (date)

Attached to this certification are:

1. Copy of the invitation sent
2. Sign-in sheet
3. Meeting minutes

Att. C



BISHOP STREET CONTEXT MAP

NOT TO SCALE

Att. D

Individual Member

CBRE | The Boulos Company

CONTRACT
FOR THE SALE OF REAL ESTATE

Date: 2.20.14

One Canal Plaza, Portland, ME 04101
(207) 772-1333

RECEIVED OF: Avesta Housing and/or assigns whose mailing address is 307 Cumberland Av, Portland, ME 04101, hereinafter called the Purchaser(s), the sum of Five Thousand Dollars ($5,000) as earnest money deposit and in part payment of the purchase price of the following described real estate, situated in the municipality of Portland, County of Cumberland, State of Maine and located at 72 Bishop Street being all the property owned by the Seller(s) at the above address, and described at said County's Registry of Deeds Book 8575, Page 272 and further described as: a 1.16+/- acre parcel improved with a 1,134+/- sf wood frame house, upon the terms and conditions indicated below:

1. PERSONAL PROPERTY: The following items of personal property are included in this sale (if applicable): appliances
2. PURCHASE PRICE: The TOTAL purchase price being One Hundred Seventy Five Thousand Dollars ($175,000) to be paid as follows: $5,000 earnest money deposit within one business day of the execution of said contract and the balance to be paid in cash or wired funds at time of closing.
3. EARNEST MONEY/ACCEPTANCE: Malone Commercial Brokers shall hold said earnest money in a non-interest bearing account and act as Escrow Agent until closing; this offer shall be valid until February 26, 2014 at 4:00 PM; and, in the event of the Seller's non-acceptance, this earnest money shall be returned promptly to the Purchaser(s).
4. TITLE: That a deed, conveying good and merchantable title in accordance with standards adopted by the Maine Bar Association shall be delivered to the Purchaser(s) and this transaction shall be closed and the Purchaser(s) shall pay the balance due and execute all necessary papers within 45 days of receipt of zone change referenced in Paragraph 10.1. If Seller(s) is unable to convey in accordance with the provisions of this paragraph, then the Seller(s) shall have a reasonable time period, not to exceed thirty (30) days, from the time the Seller(s) receives written notice of the defect, unless otherwise agreed to by both parties, to remedy the title, after which time, if such defect is not corrected so that there is merchantable title, the Purchaser(s) may, within fifteen (15) days thereafter, at Purchaser's option, declare the contract null and void and any earnest money shall be returned to the Purchaser(s) and neither party shall have any further obligation hereunder. If the Purchaser(s) does not declare the contract void within the period set forth above, the Purchaser(s) shall have waived the right to object to title. The Seller(s) hereby agrees to make a good-faith effort to cure any title defect during such period.
5. DEED: That the property shall be conveyed by a quitclaim with covenant deed, and shall be free and clear of all encumbrances except building and zoning restrictions of record, restrictive covenants and conditions of record and usual public utilities servicing the property and shall be subject to applicable land use and building laws and regulations.
6. POSSESSION /OCCUPANCY: Possession/occupancy of premises shall be given to Purchaser(s) immediately at closing, subject to any leases, unless otherwise agreed by both parties in writing.
7. LEASES/TENANT SECURITY DEPOSITS: Seller(s) agrees to transfer at closing to Purchaser(s) all Seller(s)' rights under the current leases to the property and all security deposits held by Seller(s) pursuant to said leases.
8. RISK OF LOSS: Until the transfer of title, the risk of loss or damage to said premises by fire or otherwise, is assumed by the Seller(s) unless otherwise agreed in writing. Said premises shall then be in substantially the same condition as at present, excepting reasonable use and wear.
9. PRORATIONS: The following items shall be prorated as of the date of closing:
   a. Real Estate Taxes based on the municipality's tax year. Seller is responsible for any unpaid taxes for prior years.
   b. Fuel
   c. N/A
   d. Rents
   e. Metered utilities, such as water and sewer, shall be paid by Seller(s) through the date of closing.
   f. Purchaser(s) and Seller(s) shall each pay its transfer tax as required by the State of Maine.
10. INSPECTIONS: The Purchaser(s) is encouraged to seek information from professionals regarding any specific issue of concern. Purchaser(s) acknowledges receipt of disclosure form attached hereto. The Agent makes no warranties regarding the condition, permitted use or value of the Seller's real or personal property. This Contract is subject to the following inspections, with the results being satisfactory to the Purchaser(s):

Seen and agreed to:

Rev. 3/2001

TYPE OF INSPECTION	YES (Seller(s))	NO (Purchaser(s))	RESULTS REPORTED	TYPE OF INSPECTION	YES (Seller(s))	NO (Purchaser(s))	RESULTS REPORTED
a. General Building	☒	☐	Within 21 days	g. Lead Paint	☐	☐	Within ____ days
b. Sewage Disposal	☐	☐	Within ____ days	h. Pests	☐	☐	Within ____ days
c. Water Quality	☐	☐	Within ____ days	i. ADA	☐	☐	Within ____ days
d. Radon Air Quality	☐	☐	Within ____ days	j. Wetlands	☒	☐	Within 30 days
e. Radon Water Quality	☐	☐	Within ____ days	k. Environmental Scan	☒	☐	Within 30 days
f. Asbestos Air Quality	☐	☐	Within ____ days	l. Zone Change	☒	☐	Within 90 days

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

11. FINANCING: Intentionally Deleted

12. AGENCY DISCLOSURE: The Purchaser(s) and Seller(s) acknowledge that they have been informed that the Selling Licensee is acting as a Buyer's agent in this transaction and is representing the Buyer and that the Listing Licensee is acting as a Seller's agent in this transaction and is representing the Seller.

13. DEFAULT: If Purchaser(s) fails to perform any of the terms of this Contract or is otherwise in default of any of its obligations, Seller shall have the option of either retaining the earnest money as full and complete liquidated damages or employing all available legal and equitable remedies. Notwithstanding any other provision of this agreement, Escrow Agent shall have the right to require written releases from both parties prior to releasing the earnest money to either party. If a dispute arises between Purchaser(s) and Seller as to the existence of a default hereunder and/or the release of the earnest money and said dispute is not resolved by the parties within (30) days, Escrow Agent may elect to file an action in interpleader and deposit the earnest money in the court to resolve said dispute, or otherwise disburse the earnest money pursuant to Maine Real Estate Commission regulations. Purchaser(s) and Seller, jointly and severally, shall indemnify Escrow Agent for all costs, losses, expenses, and damages, including reasonable attorneys' fees, incurred by Escrow Agent in connection with said action and/or in connection with any dispute relating to this Contract and/or the Deposit.

14. MEDIATION: Any dispute or claim arising out of or relating to this Contract or the premises addressed in this Contract shall be submitted to mediation in accordance with the Maine Residential Real Estate Mediation Rules of the American Arbitration Association. This clause shall survive the closing of this transaction.

15. PRIOR STATEMENTS: Any verbal representations, statements and agreements are not valid unless contained herein. This Contract completely expresses the obligations of the parties. This is a Maine contract and shall be construed according to the laws of Maine.

16. HEIRS/ASSIGNS: This Contract is assignable ☒ Yes ☐ No. This Contract shall extend to and be obligatory upon heirs, personal representatives, successors, and assigns (if assignment is allowed by the terms of this Contract), of the respective parties.

17. COUNTERPARTS: This Contract may be signed on any number of identical counterparts, including telefacsimile copies, with the same binding effect as if the signatures were on one instrument. Original or telefacsimilied signatures are binding.

18. BINDING CONTRACT: This Contract is a binding contract when signed by both Seller(s) and Purchaser(s) and when that fact has been communicated to all parties or to their agents. The Effective Date of the Contract is noted below. Time is of the essence of this Contract.

19. REVIEW OF LEASES AND INCOME AND EXPENSE INFORMATION: Purchaser shall have 21 days from the effective date of the Contract to review leases of the property and income and expense information regarding the property, which leases and information Seller shall make available to Purchaser at a convenient time and location. If the result of the review is unsatisfactory to Purchaser, Purchaser may declare the Contract null and void by notifying the Seller in writing within the specified number of days set forth herein, and the earnest money shall be returned to Purchaser. If Purchaser does not notify Seller that the review is unsatisfactory within the time period set forth herein, this contingency is waived by Purchaser.

20. Seller(s) and Purchaser(s) acknowledge receipt of the Maine Real Estate Commission Disclosure of Agency Relationship Form (Form #2), *if the property is, or has a component of, one to four residential dwelling units.*

21. ADDENDA: This Contract has addenda containing additional terms and conditions: YES ☐ NO ☒

22. Per the reference in Paragraph 10.l, this contract is subject to purchaser's ability to get a zone change to Residential which is satisfactory to the Purchaser for its intended use, within 90 days of the effective date of this contract.

Seen and agreed to: Seller(s) Purchaser(s)

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

Seller(s) acknowledges that the laws of the State of Maine provide that every buyer of real property located in Maine must withhold a withholding tax equal to 2 1/2% of the consideration unless the Seller(s) furnishes to the Buyer(s) a certificate by the Seller(s) stating, under penalty of perjury, that Seller(s) is/are a resident of Maine or the transfer is otherwise exempt from withholding.

Dan Potter for — 2-20-14
Purchaser — *Date*

Avesta Housing — 01-0315296
Name/Title President — *Soc. Sec. # or Tax I.D. #*

Purchaser — *Date*

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

The Seller(s) accepts the offer and agrees to deliver the above-mentioned property at the price and upon the terms and conditions set forth above and agrees to pay the Broker the commission for services herein according to the Listing Agreement or if there is no Listing Agreement the sum of: **10% of Sale Price.** The obligation to pay said commission or sum shall survive the closing of this transaction. Seller agrees that Broker may apply any deposit(s) received in connection with the sale of the Property toward commissions due and payable under this Agreement. If the earnest money is forfeited by Purchaser(s), it shall be evenly distributed between the Broker and the Seller(s), provided, however, that Broker's portion shall not exceed the full amount of the commission specified. In the event the Seller(s) defaults on its obligations hereunder, CBRE | The Boulos Company shall be entitled to costs of collection, including reasonable attorneys' fees.

Signed this _____ day of _____, _____. Effective date of Contract: _____, _____.

The Listing Licensee is **Mark Malone** of **Malone Commercial Brokers** (Company).
The Selling Licensee is **Dan Greenstein** of **CBRE/The Boulos Company** (Company).

Frank Dixon — 2/20/14
Seller — *Date*

Partner — 01-0428120
Name/Title — *Soc. Sec. # or Tax I.D. #*

Seller — *Date*

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

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

Seen and agreed to: Seller(s) — Purchaser(s)

telecopied signatures are binding.

18. BINDING CONTRACT: This Contract is a binding contract when signed by both Seller(s) and Purchaser(s) and when that fact has been communicated to all parties or to their agents. The Effective Date of the Contract is noted below. Time is of the essence of this Contract.

19. REVIEW OF LEASES AND INCOME AND EXPENSE INFORMATION: Purchaser shall have 21 days from the effective date of the Contract to review leases of the property and income and expense information regarding the property, which leases and information Seller shall make available to Purchaser at a convenient time and location. If the result of the review is unsatisfactory to Purchaser, Purchaser may declare the Contract null and void by notifying the Seller in writing within the specified number of days set forth herein, and the earnest money shall be returned to Purchaser. If Purchaser does not notify Seller that the review is unsatisfactory within the time period set forth herein, this contingency is waived by Purchaser.

20. Seller(s) and Purchaser(s) acknowledge receipt of the Maine Real Estate Commission Disclosure of Agency Relationship Form (Form 82), *if the property is, or has a component of, one to four residential dwelling units.*

21. ADDENDA: This Contract has addenda containing additional terms and conditions: YES NO

22. For the reference in Paragraph 10.1, this contract is subject to purchaser's ability to get a zone change to Residential which is satisfactory to the Purchaser for its intended use, within 60 days of the effective date of this contract.

Page 2 of 3 Seen and agreed to:

Initials
Seller(s) Purchaser(s)

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

Seller(s) acknowledges that the laws of the State of Maine provide that every buyer of real property located in Maine must withhold a withholding tax equal to 2 1/2% of the consideration unless the Seller(s) furnishes to the Buyer(s) a certificate by the Seller(s) stating, under penalty of perjury, that Seller(s) is/are a resident of Maine or the transfer is otherwise exempt from withholding.

Avesis Housing

Purchaser Date

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

The Seller(s) accepts the offer and agrees to deliver the above-mentioned property at the price and upon the terms and conditions set forth above and agrees to pay the Broker the commission for services herein according to the Listing Agreement or if there is no Listing Agreement the sum of 10% of Sale Price. The obligation to pay said commission or sum shall survive the closing of the transaction. Seller agrees that Broker may apply any deposit(s) received in connection with the sale of the Property toward commissions due and payable under this Agreement. If the earnest money is forfeited by Purchaser(s), it shall be evenly distributed between the Broker and the Seller(s), provided, however, that Broker's portion shall not exceed the full amount of the commission specified. In the event the Seller(s) defaults on its obligations hereunder, CBRE | The Boulos Company shall be entitled to costs of collection, including reasonable attorney's fees.

Signed this _____ day of _____, _____. Effective date of Contract _____, _____.

The Listing Licensee is Mark Malone of Malone Commercial Brokers (Company).
The Selling Licensee is Dan Greenstein of CBRE|The Boulos Company (Company).

Partner

Seller Date

First AMENDMENT
TO CONTRACT
For Sale of Real Estate
March 12, 2014

The Contract For Sale Of Real Estate for property located at 72 Bishop St. Portland, Maine, between William F. Dixon & Wesley Wright Jr., (Known as Seller) and Advesta Housing and/or assigns (known as Purchaser), dated 2/20/14, for valuable consideration, is amended as follows:

1. Paragraph 10 item a – General Building inspection shall be extended to expire on March 18, 2014 at 5:00 pm.

This Amendment may be signed on any number of identical counterparts, including telefax copies, with the same binding effect as if all of the signatures were on one instrument

All other terms and conditions of the Contract will remain in full force and effect.

Seen and agreed to by:

SELLER: DATE 3/12/14
BY:
ITS:

PURCHASER: DATE 3/13/14
BY:
ITS:

Amendment A
To the Purchase and Sale Agreement
For Property Located at 72 Bishop Street, Portland, Maine
Purchaser: Avesta Housing and/or assigns
Dated: February 20, 2014

1. The time frame referenced in Paragraph 10 (l.) of the Purchase and Sale Agreement is hereby extended through July 21, 2014.

2. All other terms and conditions shall remain in full force and effect.

SEEN AND AGREED TO:

Purchaser — Date: 3-7-14

Seller — Date: 5/12/2014

Att. E

AVESTA
HOUSING

LETTER OF AUTHORIZATION

June 17, 2014

To: City of Portland Planning Department

This letter authorizes Robert Metcalf, Michael King and/or Sashie Misner of Mitchell & Associates and Ben Walter of CWS Architects to act as agents on behalf of Avesta Housing Development Corporation in public meetings and the submission of any and all application materials that relate to our proposed development of Bishop Street Apartments on Bishop Street in Portland.

Sincerely,

Greg Payne

Greg Payne
Development Officer

307 Cumberland Avenue • Portland, Maine 04101
207-553-7777 • 1-800-339-6516 Voice/TTY
207-553-7778 Fax • www.avestahousing.org

Neighborhood Meeting Certification

for

72 Bishop Street

I, Greg Payne, hereby certify that a neighborhood meeting relative to the above-referenced property was held on July 14, 2014 at Deering High School at 5:30pm.

I also certify that on July 2, 2014, invitations were mailed to the following:

1. All addresses on the mailing list provided by the Planning Division which includes property owners within 500 feet of the proposed development or within 1000 feet of a proposed industrial subdivision or industrial zone change.
2. Residents on the "interested parties" list.
3. A digital copy of the notice was also provided to the Planning Division (jmy@portlandmaine.gov and ldobson@portlandmaine.gov) and the assigned planner to be forwarded to those on the interested citizen list who receive e-mail notices.

Signed,

Greg Payne July 15, 2014

Attached to this certification are:

1. Copy of the invitation sent
2. Sign-in sheet
3. Meeting minutes

AVESTA
HOUSING

July 1, 2014

Dear Neighbor:

Please join us for a neighborhood meeting to discuss our plans for the creation of 30 affordable apartments at 72 Bishop Street.

Meeting Location: Deering High School

Meeting Date: Monday, July 14th

Meeting Time: 5:30pm

The City code requires that property owners within 500 feet of the proposed development and residents on an "interested parties list", be invited to participate in a neighborhood meeting. A sign-in sheet will be circulated and minutes of the meeting will be taken. Both the sign-in sheet and minutes will be submitted to the Planning Board.

If you have any questions, please call Greg Payne, Avesta Housing 553-7780 x 211.

Sincerely,

Greg Payne, Development Officer
Avesta Housing

Note:

Under Section 14-32(C) and 14-524(a)d of the City Code of Ordinances, an applicant for a Level III development, subdivision of over five lots/units, or zone change is required to hold a neighborhood meeting within 30 days of submitting a preliminary application or 21 days of submitting a final site plan application, if a preliminary plan was not submitted. The neighborhood meeting must be held at least seven days prior to the Planning Board public hearing on the proposal. Should you wish to offer additional comments on this proposed development, you may contact the Planning Division at 874-8721 or send written correspondence to the Planning and Urban Development Department, Planning Division 4th Floor, 389 Congress Street Portland, ME 04101 or by email: to bab@portlandmaine.gov

307 Cumberland Avenue • Portland, Maine 04101
207-553-7777 • 1-800-339-6516 Voice/TTY
207-553-7778 Fax • www.avestahousing.org

Neighborhood Meeting Notes
Bishop Street Apartments
Monday, July 14, 2014

Presenters: Greg Payne, Avesta Housing
Bob Metcalf, Mitchell & Associates
Jon Bradley, Preble Street
Ben Walter, CWS Architects

Also in attendance: Mindy Woerter, Avesta Housing
Mark Swann, Preble Street
Jaime McLeod, Preble Street
Six neighbors – see sign-in sheet

Meeting overview:

1. Greg Payne gave an overview of the project as including 30 efficiency apartments for chronically homeless folks with health issues, and explained the Housing First model as demonstrated at Logan Place and Florence House. He explained the need for a zoning change to accommodate the project, and that the Planning Board would make a recommendation to the City Council on that request.
2. Bob Metcalf provided an overview of the current zoning at the site and the request to change it to a B2 zone instead of the mix of zoning that is currently in place
3. Jon Bradley explained the programming and the demographics of the people to be served at Bishop Street

Questions and concerns raised by neighbors:

1. Question: Will this be a homeless shelter, like the shelter beds at Florence House?
    a. Answer: No
2. Question: If this is a residential building, why do you need a business zone?
    a. Answer: R5 does not allow the density we want, while B2 does. B2 is a mixed-use zone that includes commercial and residential, designed to integrate small business with residential.
3. Question: Did the city request the zoning change or did Avesta?
    a. Answer: Avesta is requesting the zoning change for the parcel under our control; the Planning Board staff report suggested consideration of a larger zoning change for that area
4. Question: Will this project be for UNE students?
    a. No – full-time students are not eligible for LIHTC housing
5. Question: Is this project compatible with the businesses across the street, and does it match well (will there be complaints about noise, activity)?
    a. Answer: The immediate neighbors aren't industrial businesses and shouldn't be incompatible
6. Question: Bishop Street becomes like a one-lane road as business owners park on one side of the street. What will this project do to add traffic?

    a. Answer: At Logan Place, in nine years, only one resident has had a car and staff traffic will be quite light
7. Question: How will the existing zoning change uses in the area?
    a. Answer: The city is re-evaluating the Bishop Street zoning and identifying what existing uses would be impacted by a change from an IM to a B2 zone. We're looking at changing the zoning at just the parcel currently under our control.
8. Question: Is the city looking at the zoning because of your application?
    a. The city has been examining the zoning there since Stop & Shop left and have had discussions about zone changes, and is reconsidering that issue because of this application.
9. Question: What's stopping you from building more than what you're proposing here? Could you buy more land and add 100 more apartments?
    a. Answer: Density requirements at the site, as well as our own goal of keeping the project manageable for staff, are keeping the project to under 38-40 units. It's more efficient from a program standpoint to locate several similar projects in Greater Portland.
10. Question: How many projects like this do you already have?
    a. Answer: 2
11. Question: How is this different from public housing, and how can we be sure it won't become like public housing?
    a. Answer: Public housing authorities build public housing, and we use different funding and develop different kinds of buildings.
12. Question: Is there a possibility this building will fail and you'll have to sell it in five years? Has that already happened in your business?
    a. Answer: Any housing we sell goes to other owners who will preserve it as affordable housing. Government restrictions require this project remain affordable for 45 years. But none of our LIHTC projects have failed.
13. Statement: There aren't many services located near here. It doesn't make sense to have 30 units here for people who may have mobility issues
    a. Answer: Many services will be received on site, and Preble Street staff are responsible for arranging transportation to ensure residents access off-site services they need
14. Question: How long is the residents' lease?
    a. Answer: 1 year
15. How do they pay for their housing?
    a. The housing is subsidized, so residents pay 30% of their income, and the government covers the rest
16. Is this guaranteed to stay housing, or could you turn it into something like a teen center?
    a. No, we can't do that, as it would mean evicting residents, and we're confident that our model is successful
17. Question: How does your staff handle security?
    a. Staff are there 24 hours to monitor the building and the area, and any visitors are required to sign in

18. Do tenants have to remain sober and clean? Will there be recovering alcoholics there, or people with mental illness
    a. No, they must be good tenants. If they have problems with sobriety, it becomes a tenancy issue, and we monitor them closely. Yes, there will be people dealing with alcoholism and mental illness, but we've been doing this very successfully, and we work closely with neighbors and the police to ensure there's no impact on the neighborhood.
19. Question: What about when they're out on the street – how do you monitor them?
    a. Answer: We work with the neighbors and respond to any complaints; however, we generally do not receive complaints at our other properties from neighbors. The Police Department has written a letter stating these projects have no negative impact on the neighborhood, and we don't house people unless we feel they can be safe in the neighborhood. We also run background checks and criminal checks.
20. Question: Will there be smoking in the building, or a place to smoke outside?
    a. Answer: No smoking is allowed in the building, and there will be a place outside for smokers
21. A concern was stated about safety, whether the project would lead to drug-related incidents, and about the project's compatibility with the neighborhood in consideration of the mixed results of the Spurwink facility for teens
    a. Answer: Presenters stated we work with neighbors to ensure a safe neighborhood, and that our residents tend to stay inside and won't be out on the street to cause issues. Additionally, Spurwink's program works with a very different population from ours
22. Question: How do you monitor visitors?
    a. Answer: Everyone has to be buzzed in and sign in and out. No one who has been using or is drunk is allowed in. Residents are responsible for guests, and tend to hold their guests accountable for their actions as they are invested in their home and want to remain. We're strict with guest violations and will bar them from returning if they commit offenses. Residents are only allowed a certain number of overnight guests a month.
23. Question: Does the project require DOT accommodation for transportation, or considerations for bus routes?
    a. Answer: No, however based on previous feedback we are exploring two options: adding or moving a Metro stop, or adding a sidewalk on the street.
24. Neighbors stated they'd prefer a sidewalk over a bus stop on Bishop Street, and suggested encouraging service providers not to turn left onto Bishop because of traffic issues, but rather take Warren Avenue.
25. Question: What are your landscaping requirements?
    a. Answer: We have to include trees and shrubs, as well as lighting as required by the city.
26. Question: Are pets allowed?
    a. Answer: Avesta allows cats; however, Preble Street staff work closely with residents to determine if they can handle the responsibility.

27. Question: What happens if the zoning change is approved but your project isn't built? Does the zoning revert?
    a. Answer: No
28. Why did you choose this site?
    a. Answer: The need for this kind of housing is growing, and a task force suggested building several more projects that are scattered throughout the city. We reviewed several sites, evaluated price and location, and talked to city staff, and in the end this site rose above other options. The city sees this area as changing to become more residential and agreed with us that this site is the best option available.
29. Question: How tall will the building be?
    a. Answer: Three stories
30. A statement was made that traffic concerns are the primary problem. Presenters said if the project goes through, we'll be an ally in addressing those problems
31. Concerns were raised about lighting being too bright and additional noise on the street. Presenters said most residents will be inside and won't be causing noise problems outside.
32. Question: When will elevation drawings be available?
    a. Answer: After the zoning change is approved, if it is approved.
33. Question: What will the design be like, and how much will it change?
    a. Answer: It will be good quality design that will fit with the context of the neighborhood and will last for the long term. We'll accommodate the Planning Board suggestions on design, but the footprint will not change much.
34. Question: Is there a shared kitchen?
    a. Answer: No
35. Question: Will the project devalue my property?
    a. We have no reason to believe that the project will have a negative impact on property values.
36. Question: Will there be fencing? And can it be green/natural?
    a. There will likely be some fencing, and we're happy to provide natural fencing if it's desired
37. A concern was raised about Bishop Street being a congested street, and that people on wheelchairs could be hit by cars

72 Bishop Street Neighborhood Meeting
July 14, 2014

Name	Street Address	Email Address
Janet Parker	9 Mayfield	
Joan & John Vance	393 Warren Ave	the maple@maine.rr.com
Jeff Small	29 Mayfield	Jffsmall@yahoo.com
Hutton	24 Mayfield	MHUTTON@MECA.EDU
KATHLEEN VANCE	393 WARREN AVE	THEMAPLE@MAINE.RR.COM

Att. G

Mitchell & Associates
LANDSCAPE ARCHITECTS

The Stacks Office
70 Center Street
Portland, Maine 04101
P 207.774.4007
F 207.874.2449
www.mitchellandassociates.biz

August 1, 2014

Ms. Helen Donaldson, Planner
and Planning Board Members
City of Portland Planning Department
389 Congress Street, 4th Floor
Portland, Maine 04101

Re: Bishop Street Apartments
72 – 78 Bishop Street
Request for Zoning Map Amendment

Dear Nell and Planning Board Members:

The following responses and supporting documentation has been prepared in response to Planning Board and staff review comments and subsequent discussions with staff. A neighborhood meeting was held on July 14, 2014 at Deering High School, required documentation was submitted under separate cover. Since our last meeting with the Board, we have had the environmental assessment and topographic survey completed. This information has been added to the concept site plan. The following are points that we understood the Board wanted further understanding of in order to assess the proposed use and map amendment request.

Preble Street Resource Services

The following is a brief summary of points that address questions raised by the Board and several neighbors during the neighborhood meeting. These include how Preble Street will manage the property, type of services provided, including outside support serviees. A more detailed memo prepared by Preble Street is enclosed.

- Preble Street staffing will be provided on a 24/7 basis, shifts are 8 AM to 8 PM with a minimum of 2 staff upwards of 4 during the day, 8 PM to X AM with 2 staff.

- Outside service providers, Logan Place averages one to two per day, Bishop Street may be slightly higher due the population.

- Transportation services will be provided by case managers from several partner organizations and Preble Street.

- Services provided by Preble Street include helping individuals to transition from chronic homelessness to permanent housing; independent living skills such as cooking, budgeting, meeting vocational or school goals, begin treatment for mental illness. Coordination provided with outside service providers.

- Avesta will be the landlord and provide maintenance for the facility. Security will be will be provided around the clock by on-site staff monitoring and provide support to deal with any crisis that may occur, visitors must sign in and out at the main desk. Security cameras will be strategically located and staff will monitor activity Access by visitors and service providers will be restricted to the front entry.

Proposed B2 Zone Limits

Staff requested that we evaluate the limit of the site area of 72 & 78 Bishop Street necessary to achieve the density for 30 Apartment Units and retain the balance of the parcel as R3. As we discussed, the revised B2 Zoning Standards require a new use to have an active street frontage and have a front set *back "no more than 10 feet, except that the planning board or planning authority may approve a different amount for irregularly shaped lots or lots with frontage less than 40 feet, provided this standard is met to the maximum extent practicable."*

This is an irregular shaped lot with 50 feet of frontage. Due to the lot configuration and access 24 wide drive requirements, the original submission placed the closest point of the building to the property line at 23.45 feet. As suggested, we looked at narrowing the access drive, where there is no parking, from 24 feet to 20 feet. This allowed shifting of the building approximately 2.83 feet toward the property line or 20.62 feet.

Of concern to Avesta is the planning board's determination of meeting the standards *"to the maximum extent practicable."* If the location will satisfy this requirement the density can be based upon 435 SF/dwelling unit or 13,050 SF of lot area. If the determination is not favorable then density is based upon 1,500 SF/dwelling unit or 45,000 SF.

The determination is important to identifying where the limit of the B2 Zone is located. We have shown both options on the concept plan for discussion with the planning board. Note: The zoning line for Option 1, based on 435 SF/dwelling unit, the zone line has been located to include the area necessary for the building program, parking and circulation or 30,000 SF +/-. The remaining area to be retained as R3 would 22,383 SF +/-. Option 2, based on the 1,500 SF/dwelling unit would require 45,000 SF retaining 7,383 SF as R3.

The Building

72 Bishop Street is designed to accommodate the permanent housing needs of 30 formerly homeless elderly individuals in a modern, multi-unit apartment structure. Each apartment designed as an efficiency type single room occupancy unit where all living, dining and sleeping accommodations are provided in a single, large living space. A large "Great Room" is provided as a shared space for all residents of the program and will include multiple areas such as sitting, living, game and small kitchen area for staff and resident interaction, which is both popular and socially engaging among this population. The Great Room is designed with a tall ceiling and extensive transparency between the indoor and outdoor social patio area. Additionally the first floor will include a semi-private TV/Den area, toilet rooms, staff office and meeting spaces, laundry room, building system support spaces, a space for visiting service providers including councilors and nurses, and a respite room to accommodate residents who need short term medical assistants. A prominent and transparent access point is provided between the end of the first floor hallway and the rear outdoor social area. The facility included six residential units on the first floor and 12 units on each of the second and third floors.

Based upon the intended first floor active space and exterior public space we believe we address the active street frontage. The constraints created by the limited frontage and shape of the lot and access requirements limit the ability to place the building closer to the street frontage. The proposed outdoor open space/seating area, pedestrian and vehicular circulation support an active functional street presence.

To finalize the location of the B2 zone line is dependent upon a positive finding that the current concept plan as shown meets the setback provision *"standard is met to the maximum extent practicable."*

Public Transit

We have identified the location of Metro bus stops within a 10 +/- minute walk of the site. The Morrill's Corner area is served by the number 2 and 3 metro bus routes. The number 2 travels along Forest Avenue and the number 3 travels along Allen and Stevens Avenue. The closest bus stop locations for the number 2 are located on either side of Forest near the Subway store. There also are inbound an out bound stops at Forest Avenue and Poland Street in front of The Park Danforth. The number 3 bus has two stops within a 5 min + walk along Stevens Avenue, The first is located in front of Aubuchon Hardware and on the opposite side of the street in front of Bogusha's Polish restaurant. The next stops occur in front of The Park Danforth and the UNE School of Dentistry. All of these stops are within a 5-10 min. walk of 72 Bishop Street.

Public safety concerns were raised along Bishop Street due to lack of public sidewalk. The proposed apartments are within 500 feet of existing public sidewalk that exist along the Bishop Street side of 844 Stevens Avenue. Avesta understands the concern and will be willing to address this during the site plan review process.

Crosswalks do exist in the Morrill's Corner intersection and we concur due to the configuration of the intersection that there are safety concerns negotiating these crosswalks within the time frame allotted by the traffic signal. That said, the inbound and outbound #2 bus at Poland Streetis easily accessible and within a 5-10 minute walk and is a safer route. This bus stop location may also be accessed via Stevens Avenue and Poland Street (The Park Danforth). There is a Stevens Avenue crosswalk located at Poland Street.

Site Selection

At the workshop meeting the planning board re\quested more detail regarding the selection of this property. Avesta will be prepared to provide more in depth discussion and information with the planning board at the scheduled August 12, 2014 workshop meeting.

Environmental Assessment

CES, Inc.; Environmental Scientist completed a wetland delineation for the property, locating limits by GPS. This information was incorporated on the boundary and topographic survey completed by Owen Haskell, Inc. A short segment of stream was identified along the south westerly property line. This segment of stream does not meet the city definition of a stream. CES is in the process of coordinating a meeting with MDEP to make a determination if it meets the MDEP definition.

We understand this area, inclusive of on-site and off-site wetlands are located in the head waters of the Capisic Brook that has been classified as an impaired watershed. Based on our discussions with you and Doug Roncarati, we understand that the Citys' MS4 storm water requirements include addressing the water quality of this watershed. Storm water management will require meeting the Chapter 500 Standards address water quality treatment. These requirements will be addressed during the Site Plan permitting process.

Based upon the updated information, the concept plan has been modified to eliminate the dumpster by incorporating a trash room within the building and relocating the outdoor activity area at the rear of the building.

Enclosed for your review:

- Preble Street Memo, prepared by Mark R. Swann
- Existing businesses and aerial map exhibit
- Metro bus service schedules, bus routes #2 & #3
- Updated Existing Conditions Plan
- Revised Concept Plan
- Concept Architectural Massing prepared by CWS Architects (Under separate cover)

Should you have any questions or have additional comments, please do not hesitate to call me. We look forward to meeting with you and the Planning Board at the August 12, 2014 workshop meeting.

Sincerely,

Mitchell & Associates

BOB METCALF

Robert B. Metcalf, Principal

Maine Licensed Landscape Architect

Enclosure

Cc Greg Payne

Ben Walter

Jon Bradley

Preble Street

Turning Hunger and Homelessness into Opportunity and Hope

Anti-Trafficking Coalition
Clinical Intervention Program
First Place
Florence House
Food Programs
Joe Kreisler Teen Shelter
Logan Place
Maine Hunger Initiative & Advocacy
Resource Center
Teen Center
Veterans Housing Services

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James Sterling
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Edie White

Mark R. Swann
Executive Director

38 Preble Street
Portland, ME 04101
207.775.0026 Phone
info@preblestreet.org
www.preblestreet.org

Memo to: City of Portland Planning Board
From: Mark R. Swann
Date: August 1, 2014
Re: Zoning Changing for 72 Bishop Street

Thank you for your consideration of this important addition to the Portland community. We look forward to being a valuable and contributing neighbor on Bishop Street. We hope the information below will assist in your assessment.

We remain available to answer any questions you may have.

Staffing Requirements on site at any one time:
A minimum of two staff members will be on duty at all times, with as many as four on-site between the hours of 8 a.m. and 8 p.m. We expect to have 10 full time employees: one coordinator, one supervisor, and one team leader managing seven housing support workers. Full-time staff will be supplemented by as-needed staff to cover vacations and sick days. Management personnel will be onsite during daytime hours, and overnight shifts will have a team leader on site. Preble Street's Chief Program Officer will oversee the program, and Preble Street provides a 24-hour on-call system, staffed by a clinical manager, to address clinically challenging situations. Additional staffing will include social work, counseling, and occupational therapy interns, as well as trained volunteers.

Staff/service traffic volume:
The staff/service traffic volume at Logan Place, the first housing development of this kind in Portland, varies greatly from day to day. Service and healthcare providers make individual appointments with tenants, and there may be a dozen individuals coming to provide case management or assistance with activities of daily living or a follow up to a medical appointment in a given day. Over a two month period from May 1, 2014, through June 30, 2014, Logan Place had an average of four service workers visiting clients each day. This number is slightly inflated due to one tenant being seriously ill and requiring daily hospice visits. A typical service appointment usually lasts 60 minutes or less. These visits are spread throughout the day, sometimes into the evening. The volume at any one time of day is typically one or two, maximum. It is rare for there to be more than five cars in the Logan Place parking lot at any one time. Non-service guest visits total approximately six per day.

Potential number of outside medical providers that would visit residents, including frequency:
As noted above, the average number of outside medical visits at Logan Place, is one or two a day. At the Bishop Street facility, because the target population is individuals who are medically compromised, we anticipate this number will be slightly higher. However, we anticipate being able to mitigate this factor by engaging with a healthcare partner and having medically credentialed staff as part of the program. This will lead to increased efficiency due to coordination of visits.

Transportation options provided to residents:
Transportation is a critical part of service planning for each tenant. Case managers from several organizations including Maine Health, Catholic Charities, and Preble Street can transport individuals for shopping and assist individuals in learning to be comfortable

with available public transportation. All tenants can get bus passes. Preble Street has an account with Elite Taxi service for emergency use. Additionally, most clients in the Bishop Street building will qualify for Medicaid assistance for rides to appointments. Preble Street is working closely with Maine's new Mainecare ride contractor, Logisticare, to transport clients to scheduled medical, case management, mental health, substance abuse counseling or treatment appointments. Tenants and Preble Street staff make these arrangements, which include pick up and return after any appointment. Many tenants who are mobile will be able to walk to local convenience stores and grocers.

Services provided by Preble Street and other partners:
Preble Street provides case management services to all tenants to ensure that individuals succeed in making the transition from chronic homelessness to permanent housing. A key role of Preble Street staff is working alongside tenants to develop service plans for improving independent living skills such as cooking or budgeting, meeting vocational or school goals, or beginning treatment for mental illnesses. Preble Street staff collaborate with tenants to reach goals, and establish new ones over time, making referrals to other providers and organizations as needed to assist tenant in achieving those goals and maintaining health and stability. Outside agencies are welcome at any time to visit and work with tenants, at tenants' discretion. Many tenants routinely receive services ranging from behavioral health to personal care attendants to housekeeping assistance.

Because many long term homeless individuals need assistance with household responsibilities, such as cleaning and cooking, staff often focus on these issues, and for disabled tenants, will find resources from the community to assist with these tasks.

How the facility will be managed:
Avesta Housing provides building maintenance and is the landlord for all tenants. Preble Street staff work closely with the building manager, facilitating communication and supporting clients with maintaining stable housing.

Preble Street takes building management and security very seriously. Staff provide on-site monitoring and support to deal with any crisis that emerges and to ensure tenant safety. Each residential site has a front desk that is staffed 24 hours a day. The doors to each building are locked and visitors are required to check in at the front desk and produce identification which is copied and filed by staff. The staff member at the front desk monitors the building exterior through strategically placed cameras. The front desk is also the place where can tenants seek assistance if they have a question or concern. An intercom in each room allows tenants to contact the desk, and makes it easy for staff to check in with tenants regarding visitors.

Tenants are allowed a maximum of five overnight visits per month in accordance with public housing leases, and staff maintains a visitor log noting every guest entry and exit. Staff members do regular rounds, ensuring the security of the building and monitoring living spaces. Preble Street offers 24-hour clinical support through an on-call system staffed by managers, and staff are trained to call for medical or law enforcement support in the case of any disturbance.

Tenants at Logan Place have created a strong community, supported by staff and volunteers. Tenants at Logan Place prepare communal dinners, participate in regular house meetings to address their concerns and issues, and enjoy activities and outings such as hikes, cooking contests, and game tournaments.

BISHOP STREET APARTMENTS

72-78 Bishop Street

The following is a list of businesses located within a fifteen minute walking distance of 72 Bishop Street (see enclosed anotated aerial plan):

Stevens Avenue

- Aubuchon Hardware
- Bogusha's Polish Restaurant
- Pat's Meat Market Café
- Siano's
- The Quality Shop
- Veterans Center

Forest Avenue

- McDonald's
- Subway
- Susan's Fish & Chips
- Sunoco Food Mart
- Banadir Halal Market
- Morrill's Corner Pub
- PO Boy's & Pickles
- Starbucks Coffee
- Ginza Town
- Cumberland Farms
- Papa Johns
- African Supermarket

Allen Avenue

- Bruno's Restaurant

Warren Avenue

- Salvation Army Thrift Shop

Att. J

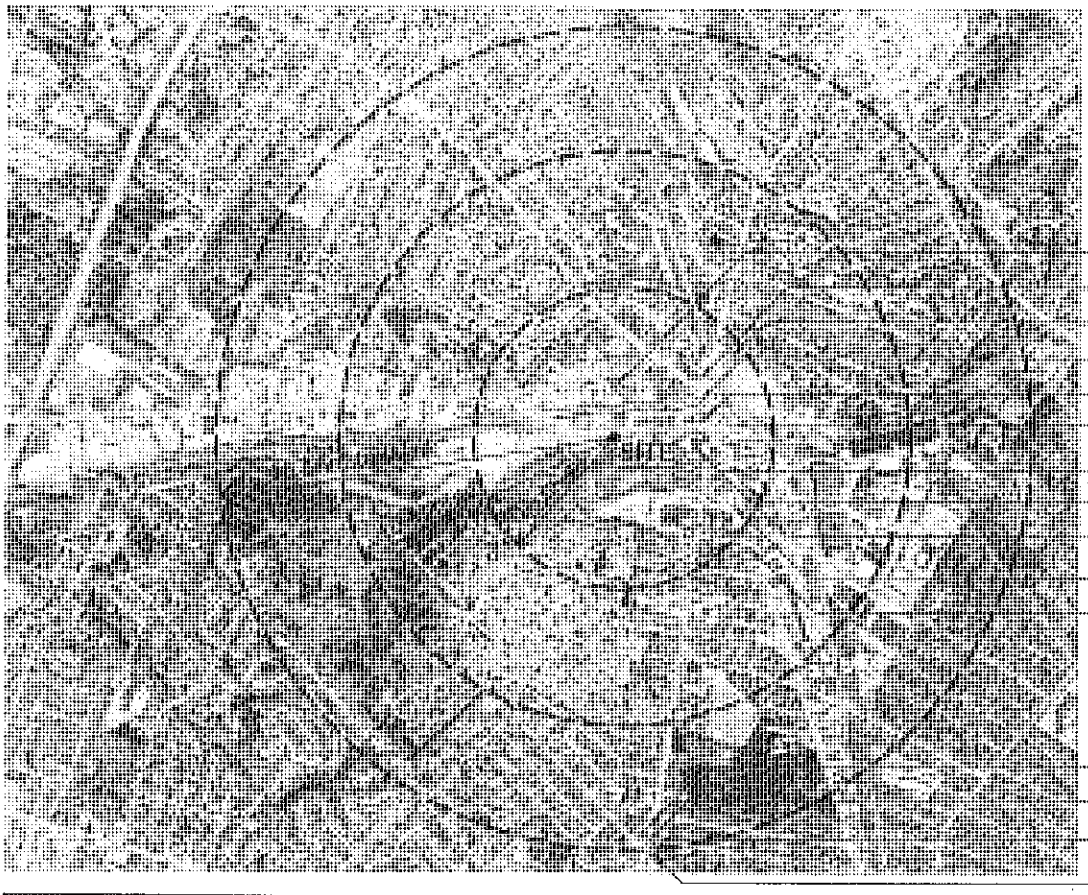
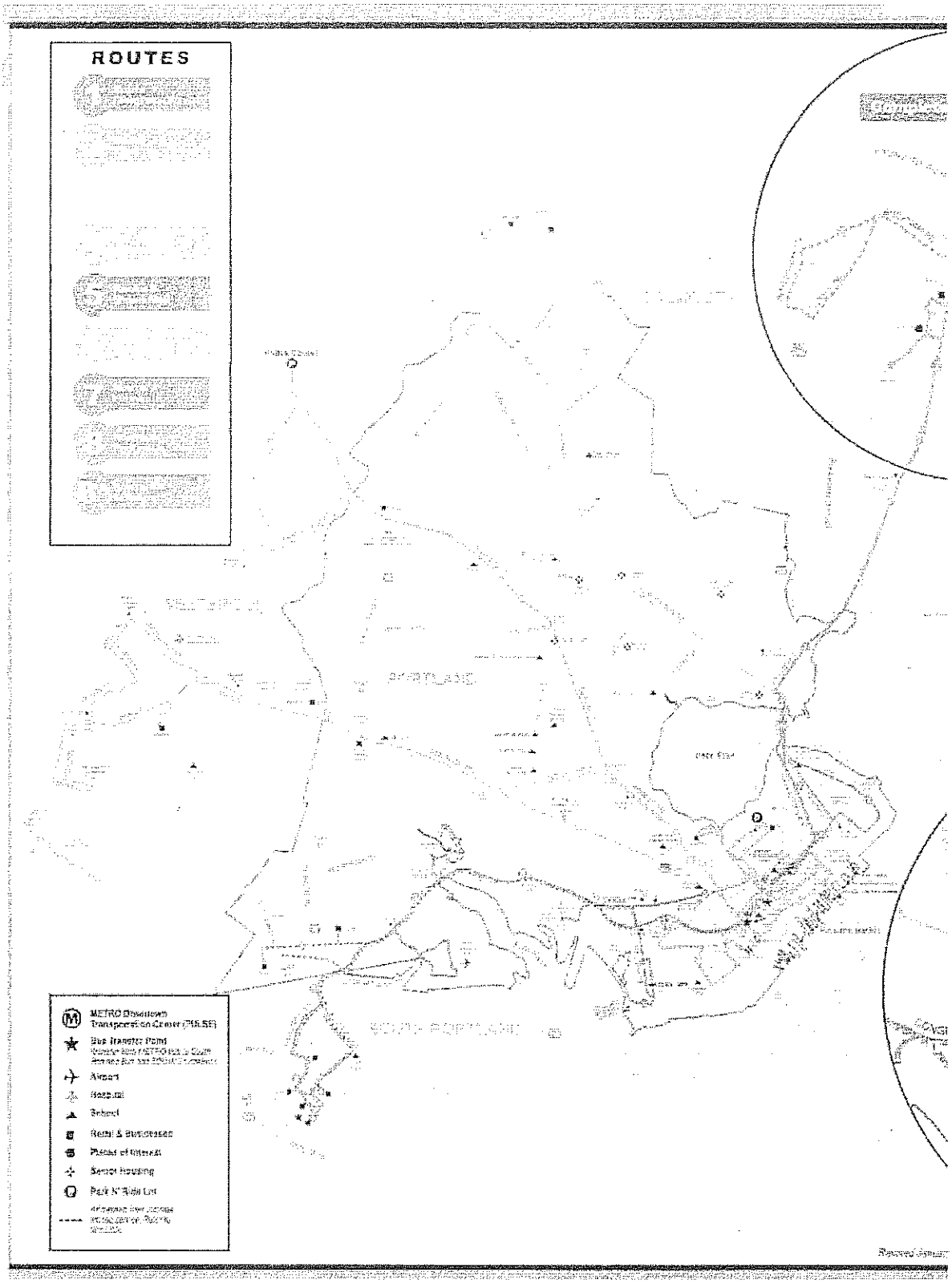


EXHIBIT A: Business Establishments and Bus Stops
July, 2014

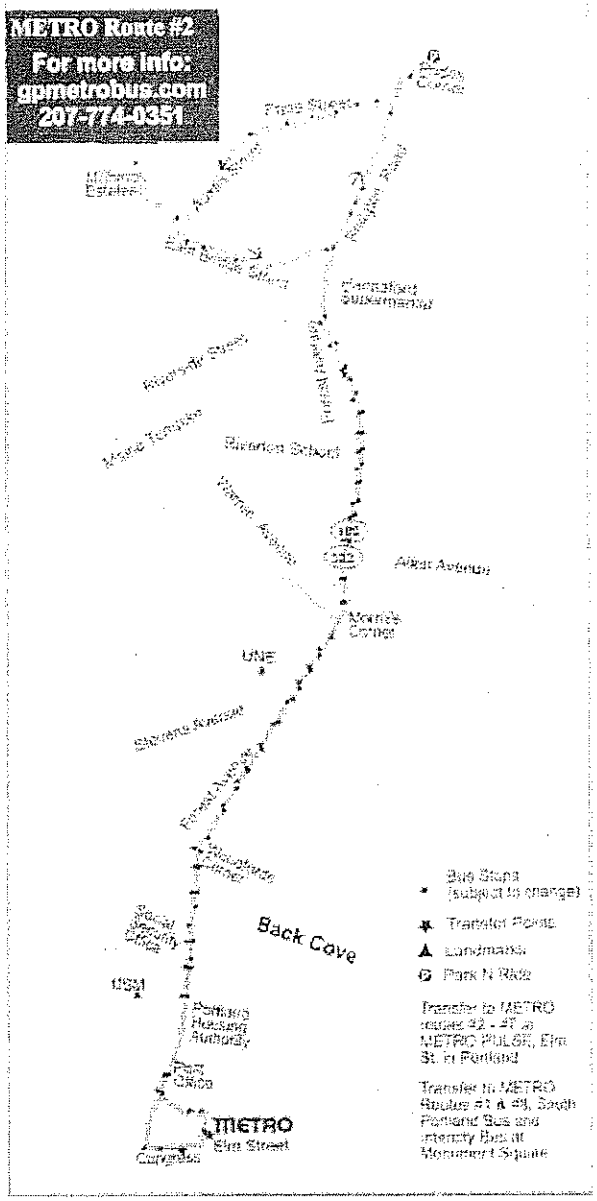
Mitchell & Associates
LANDSCAPE ARCHITECTS

Att. K


ROUTES
METRO Downtown Transportation Center
Bus Transfer Point
Airport
Hospital
School
Retail & Businesses
Places of Interest
Senior Housing
Park N' Ride Lot

METRO Bus travels throughout Portland, Westbrook, Falmouth and the Maine Mall area of South Portland.

Regional Monthly Passes & TripRide Tickets available along this route at METRO Pulse & Hannaford (Riverside). For fare information, please call 774-0351 or visit gpmetrobus.com



Outbound Route #2 departs the METRO PULSE at Elm Street and travels to Forest Avenue, via Portland Street, with stops near USM, Portland Housing Authority, the Social Security Office and Riverton School – heading toward the Park and Ride at Prides Corner.

Inbound METRO #2 leaves Pride's Corner and heads back to Forest Avenue, via Pride and East Bridge Street (service to Millbrook Estates by request) except where noted on schedule (F), and Congress and Elm Streets.

METRO

Route 2 - Riverton (New Schedule - STUB)

Greater Portland Transit District

gpmetrobus.com • 207-774-0351

Schedule Changes: Effective Beginning May 12, 2014

M2

OUTBOUND Departs METRO PLACE (5 Free)	Westbrook Street	Forest Corner	INBOUND Arrives/Departs Portland Transit Center	Forest Riverton	Mason Street	Westbrook Street Center (Stop 7)	Arrives METRO PLACE (Stop 1)
			6:35	6:40	6:45	6:50	6:40
6:20	6:25	6:30	6:40	6:50	6:55	7:00	7:00
6:40	6:45	6:50	7:00	7:10	7:15	7:20	7:40
7:00	7:05	7:10	7:20	7:30	7:35	7:40	8:00
7:20	7:25	7:30	7:40	7:50	7:55	8:00	8:20
7:40	7:45	7:50	8:00	8:10	8:15	8:20	8:40
8:00	8:05	8:10	8:20	8:30	8:35	8:40	9:00
8:20	8:25	8:30	8:40	8:50	8:55	9:00	9:20
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11:00	11:05	11:10	11:20	11:30	11:35	11:40	12:00
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12:00	12:05	12:10	12:20	12:30	12:35	12:40	1:00
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12:40	12:45	12:50	1:00	1:10	1:15	1:20	1:40
1:00	1:08	1:13	1:30	1:35	1:40	1:45	2:05
1:20	1:28	1:33	1:55	2:00	2:05	2:10	2:30
1:40	1:48	1:53	2:20	2:25	2:30	2:35	2:55
2:05	2:13	2:18	2:45	2:50	2:55	3:00	3:20
2:30	2:38	2:43	3:10	3:15	3:20	3:25	3:45
2:55	3:03	3:08	3:35	3:40	3:45	3:50	4:10
3:20	3:28	3:33	4:00	4:05	4:10	4:15	4:35
3:45	3:53	3:58	4:25	4:30	4:35	4:40	5:00
4:10	4:18	4:23	4:50	4:55	5:00	5:05	5:25
4:35	4:43	4:48	5:15	5:20	5:25	5:30	5:50
5:00	5:08	5:13	5:40	5:45	5:50	5:55	6:15
5:25	5:33	5:38	6:00	6:05	6:10	6:15	6:35
5:50	5:58	6:03	6:20	6:25	6:30	6:35	6:50
6:15	6:23	6:28	6:45	6:50	6:55	7:00	7:20
7:20	7:25	7:30	7:45	7:50	7:55	8:00	8:20
8:25	8:30	8:35R		8:45R	8:50	8:55	9:05
9:30**		10:00	10:08F	10:11	10:15*		10:40
6:15	6:20	6:25	6:40	6:45	6:50	6:55	7:15
7:15	7:20	7:25	7:40	7:45	7:50	7:55	8:15
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2:15	2:20	2:25	2:40	2:45	2:50	2:55	3:15
3:15	3:20	3:25	3:40	3:45	3:50	3:55	4:15
4:15	4:20	4:25	4:40	4:45	4:50	4:55	5:15
5:15	5:20	5:25	5:40	5:45	5:50	5:55	6:15
6:15	6:20	6:25	6:40	6:45	6:50	6:55	7:15
7:20	7:25	7:30	7:45	7:50	7:55	8:00	8:20
8:25	8:30	8:35R		8:45R	8:50	8:55	9:05
9:30**		10:00	10:08F	10:11	10:15*		10:40

NO SUNDAY SERVICE

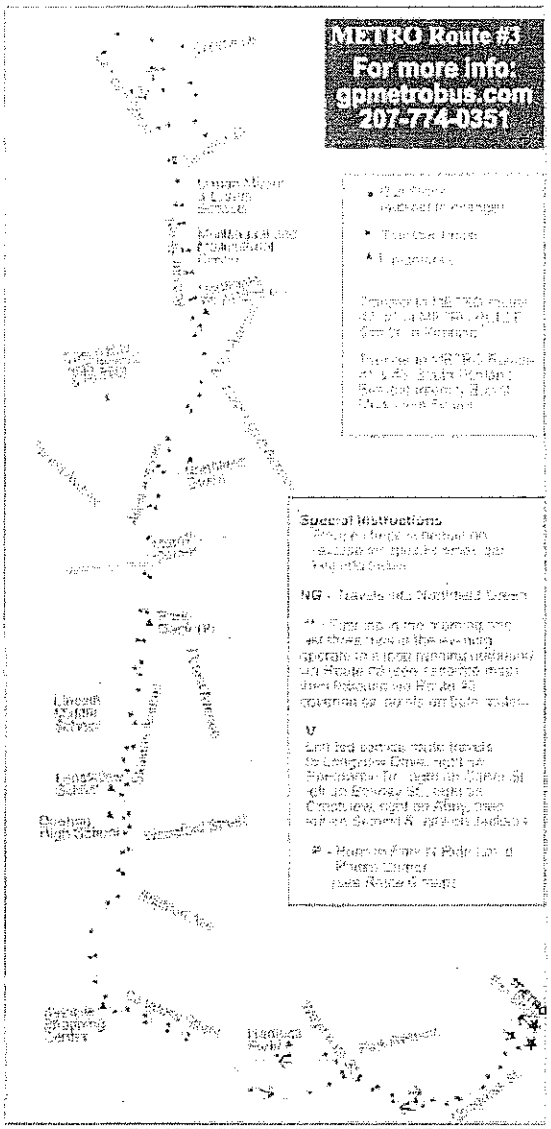
* - The 10:15 departure (Mason) does not travel on Stevens Avenue.

** - Blue Bus 6/73 North Deering

F - Return via Forest Avenue

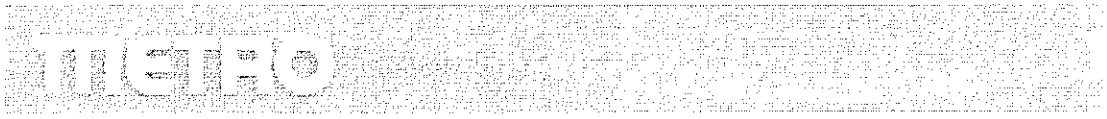
R - Route on all Riverton and Westbrook Metro Stops (Stop 7) one-way instead of route inbound. Passengers will need to board Outbound bus.

South Portland Bus Service) & TenRide Tickets available along this route at: METRO PULSE, at Elm Street in Portland, Shaw's at Westgate Shopping Center and Northgate Plaza. See reverse side for Route #3 map.



A Quick Glimpse at METRO Route #3

Outbound Route #3 departs the METRO PULSE at Elm Street and travels along Congress St. via Preble Street to Weymouth and Park Avenue and Congress to Stevens Ave. to Morrill's Corner, then bears right on Allen Ave., left on Auburn St. to Washington Ave. Ext. **Inbound** Route #3 travels back to Congress Street and the METRO Pulse via Lambert St., Auburn Street, Allen Avenue and Stevens Avenue.



Route 3 - North Deering

Greater Portland Transit District

gpmetrobus.com • 207-774-0351

Schedule Changes Effective Beginning February 12, 2014

M3

OUTBOUND			INBOUND			
5:10 **			6:15	6:25	6:30	6:45
6:20	6:35	6:40	6:55	7:00	7:10	7:00
6:50 V	7:10	7:15	7:30 V	7:35	7:45	8:00
7:30	7:45	7:50	8:05	8:10	8:20	8:45
8:10	8:25	8:30	8:45	8:50	9:00	9:30
9:45	9:10	9:25	9:30	9:35	9:50	9:00
9:20	9:35	9:40	9:55 **	10:05	10:10	10:05
9:55	10:10	10:15	10:30	10:25	10:35	10:30
10:35	10:50	10:55	11:10	11:15	11:25	11:45
11:10	11:25	11:30	11:45	11:50	12:00	12:20
12:20 V	12:35	12:40	12:55 V	1:00	1:10	1:35
1:35	1:50	1:55	2:10	2:15	2:25	2:45
2:10	2:25	2:30	2:45	2:50	3:00	3:20
2:45 **	3:00	3:05	3:20	3:25	3:35	3:55
3:20	3:35	3:40	4:00	4:05	4:15	4:35
3:55	4:10	4:15	4:35	4:40	4:50	5:10
4:35 V	4:50	4:55	5:10 V	5:20	5:30	5:50
5:10	5:25	5:30	5:45	5:50	6:00	6:25
5:50	6:05	6:10	6:25	6:30	6:40	7:00
6:15 **			6:45 **	6:50	7:00	7:20
7:30 **			7:50 **	7:55	8:05	8:25
8:25 **			8:55 **	9:00	9:10	9:30
9:30 **			9:50 **	10:00 P	10:20	
9:15 V	9:25	9:30	9:45 V	9:50	9:55	10:20
9:45	9:25	9:30	9:45	9:50	9:55	10:20
10:15	10:25	10:30	10:45 **	10:50	10:55	11:20
11:15	11:25	11:30	11:45	11:50	11:55	12:20
12:15 V	12:25	12:30	12:45 V	12:50	12:55	1:20
1:15	1:25	1:30	1:45	1:50	1:55	2:20
2:15	2:25	2:30	2:45	2:50	2:55	3:20
3:15 **	3:25	3:30	3:45	3:50	3:55	4:20
4:15 V	4:25	4:30	4:45 V	4:50	4:55	5:20
5:15	5:25	5:30	5:45	5:50	5:55	6:15
6:15 **			6:45 **	6:50	7:00	7:20
7:20 **			7:50 **	7:55	8:05	8:25
8:25 **			8:55 **	9:00	9:10	9:30
9:30 **			9:50 **	10:00 P	10:20	

NO SUNDAY SERVICE

M3 = Westbrook-Deering Express

** = Runs one trip earlier/later outbound on Four Corners route as Route 1 running off route on Cottage.

V = Runs via Deering Area

P = Runs to Park & Ride Lot at Forest Corner.

(Bus trip to Route 1)

METRO Bus travels throughout Portland, Westbrook, Falmouth and the Maine Mall area of South Portland, with connections to South Portland Bus Service, Intercity ShuttleBus (with service to Biddeford, Saco and OOB), Casco Bay Lines Ferry Terminal (METRO Route #8), PTC (Amtrack/DownEastern) and Portland Jetport (METRO Route #5).

Regional Monthly Passes (for travel on METRO and

CWS ARCHITECTS

August 4, 2014

Ms. Helen Donaldson, Planner
And Planning Board Members
City of Portland Planning Department
389 Congress Street, 4th Floor
Portland, Maine 04101

Re: Bishop Street Apartments
72-78 Bishop Street
Building Mass Study Model

Dear Nell and Planning Board Members,

Per your request, CWS Architects has prepared a preliminary massing model for consideration by the planning authority during the review of the B2 zone change request.

While the general building mass and fundamental placement of the building footprint and the relationship of major components are not expected to change much, please note that this model is NOT the proposed final design with respect to details, fenestration and character. Rather it is an earl study depicting one alternative that the design and development team will use for discussions, analysis and comments and we welcome yours.

The intent of providing this model is to illustrate the following:

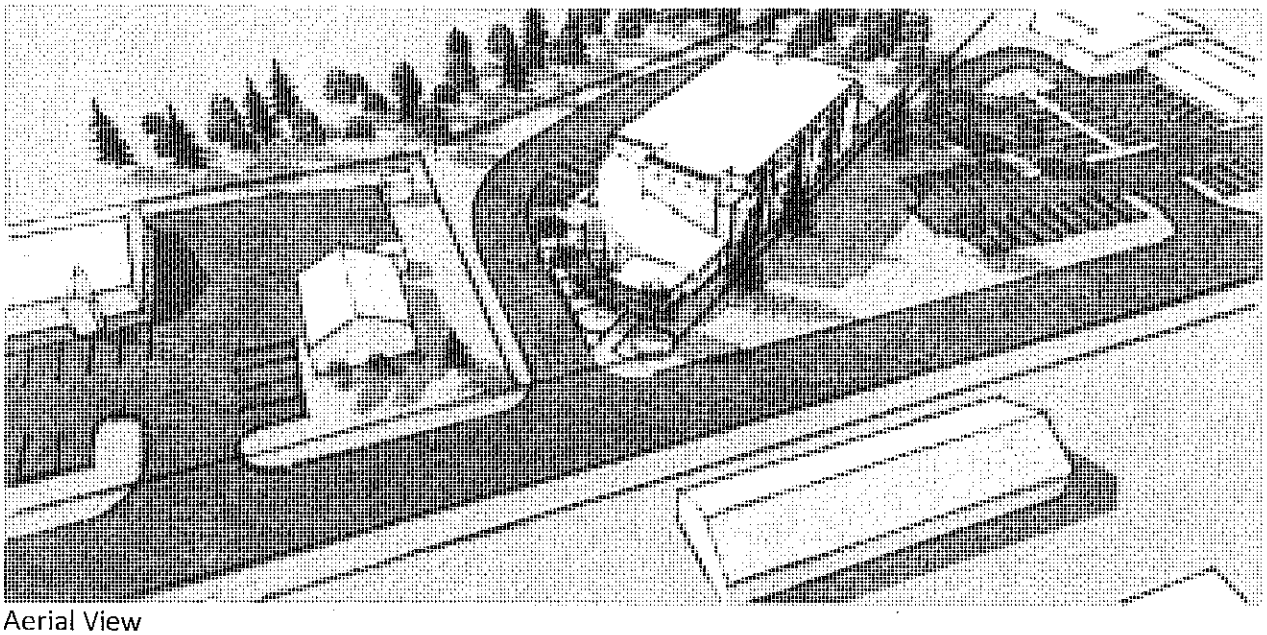
- Overall massing of the building in context of the surrounding development.
- Relationship and adjacency of the proposed entrance and common spades to the streetscape.
- Visibility and screening of the parking area from the streetscape.
- Adequacy, transparency and screening of various indoor and outdoor common spaces.

Please feel free to provide design feedback during the zone change process.

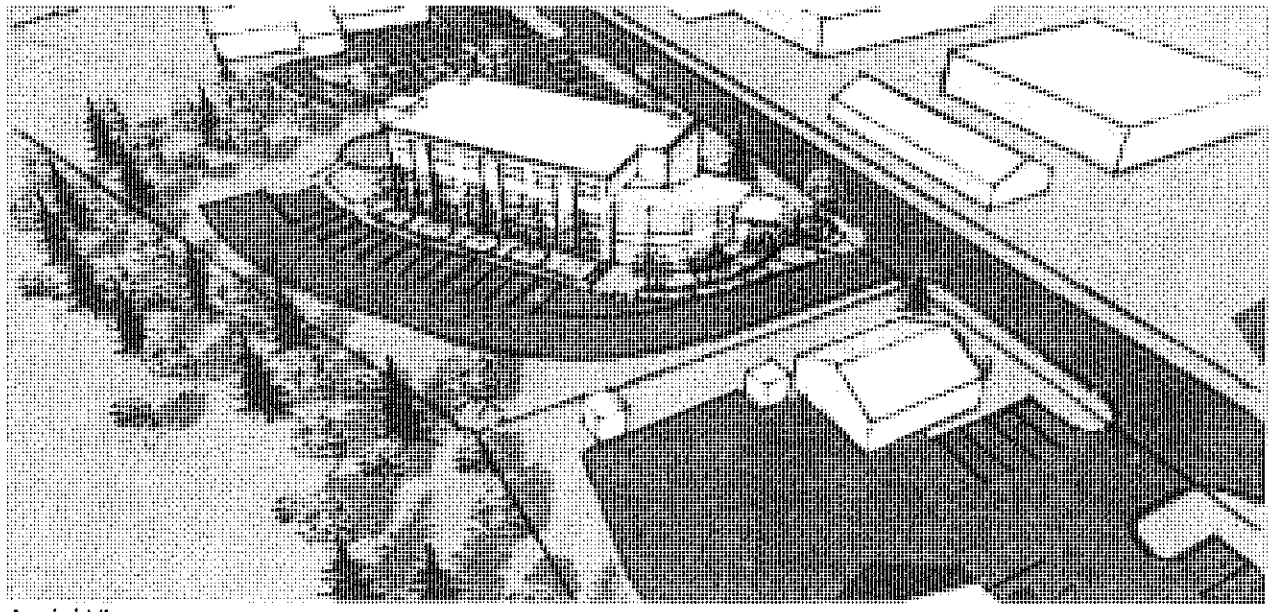
Sincerely yours,

CWS ARCHITECTS

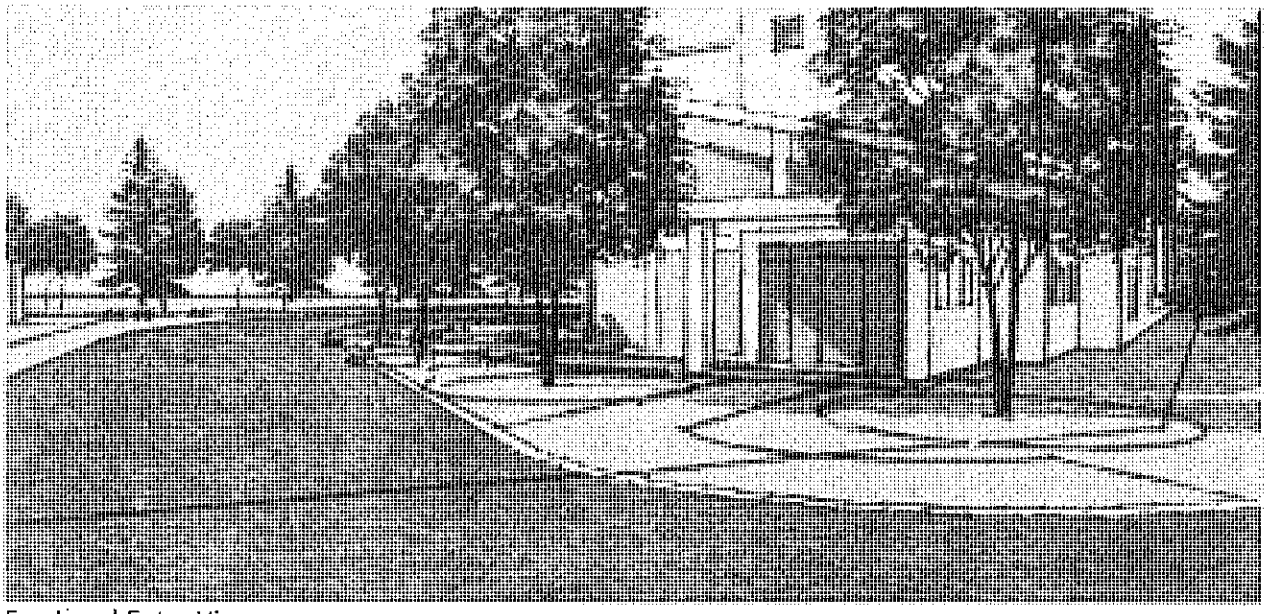
Benedict B. Walter, AIA
President
Licensed Architect ME NH GA
bwalter@cwsarch.com



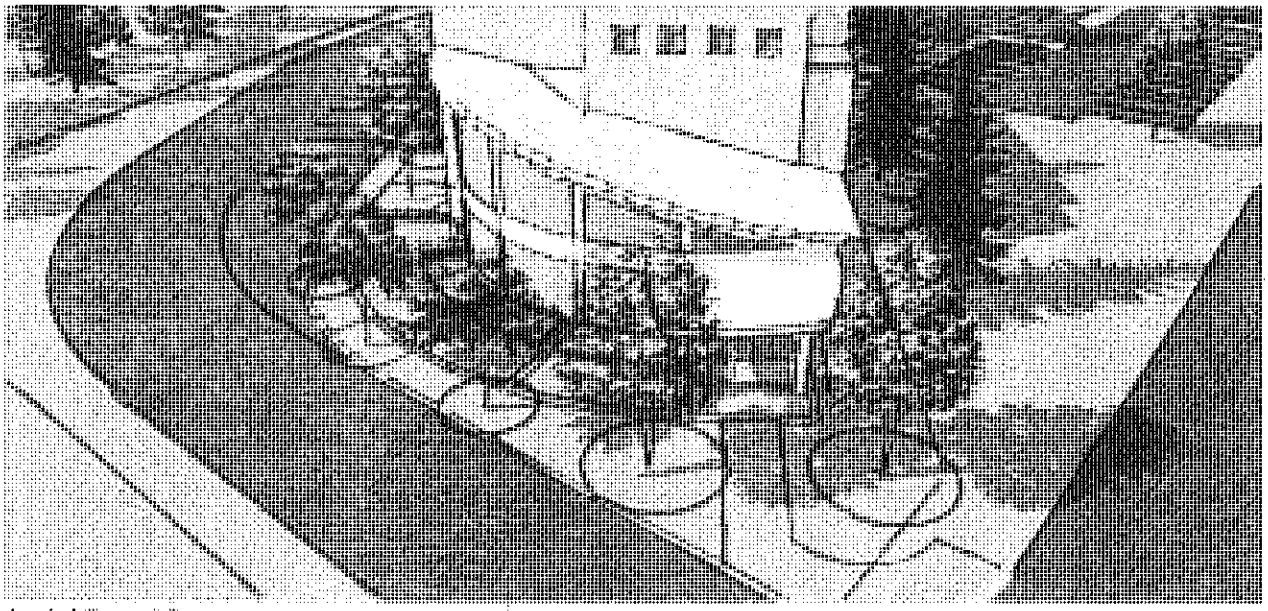
Aerial View



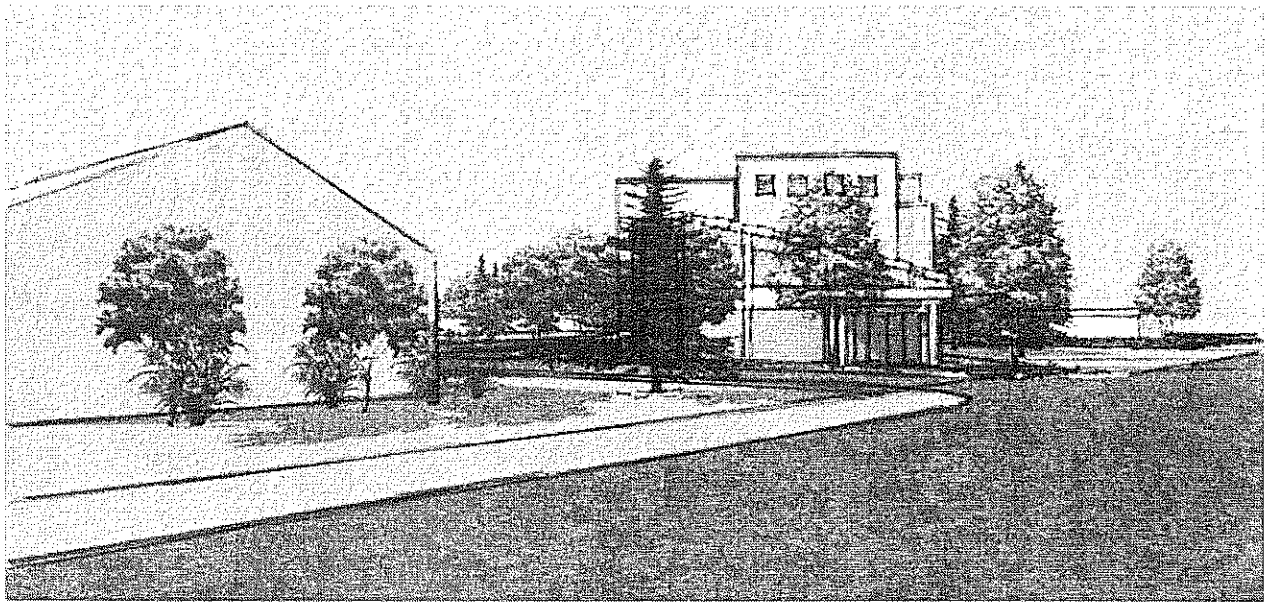
Aerial View



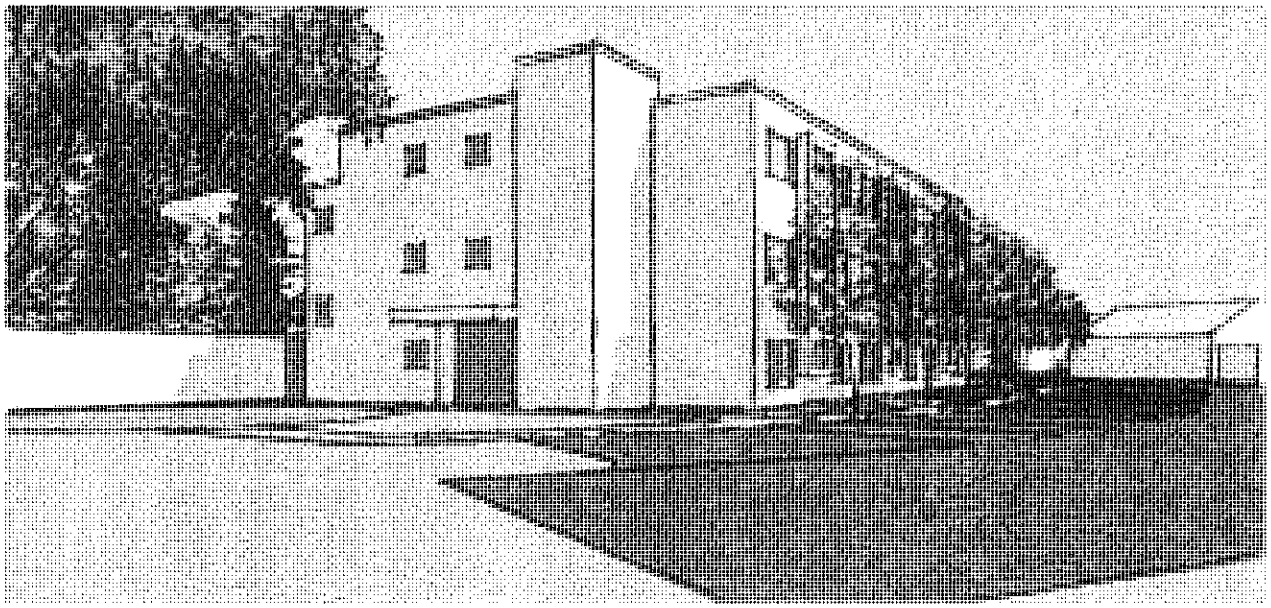
Eye Level Entry View



Aerial Entry View



Entrance from Bishop Street



Rear View

Portland, Maine Yes. Life's good here.

Portland Police Department

July 11, 2014

Jon Bradley
Associate Director
38 Preble Street
Portland, ME 04101

Sent via email to jbradley@preblestreet.org

Dear Mr. Bradley,

Today I write in support of the successful partnerships between Preble Street Resources and Avesta Housing in providing an exceptional model that offers staff and support to those in need here in Portland. I firmly believe this partnership has increased success rates and improved outcomes for our homeless population.

I understand there is a proposal forthcoming of a housing development opportunity near Morrill's Corner. In light of the process moving forward, I would like to illustrate that a similar development, Logan Place, has successfully served as a tested model with no significant impact on the surrounding neighborhood.

The Portland Police Department believes the working relationship between Preble Street Resources and Avesta Housing continues to provide a valuable service to Portland's homeless population, our visitors, families, friends and neighbors.

Sincerely,

Vernon W. Malloch
Assistant Chief of Police

Portland Police Department

Memorandum

To: Helen Donaldson

Date: October 10, 2014

From: Asst. Chief Vern Malloch

The Police Department has been asked by Planning Board staff to provide an analysis of calls for service (CFS) at Logan Place, 52 Frederick Street. We have provided raw data showing all the calls for police service from 2005 to September 22, 2014.

Annual CFS in the specified range average 72 with a high of 89 in 2013 and a low of 46 in 2008. As part of the analysis I have reviewed the type of calls and the outcome of some of the more serious call types in order to bring some context to the raw data. A spreadsheet contains the tally for certain call types by year. Not all call types were listed in the spreadsheet. I have focused on those believed to be of significance either because of number or type.

It is important to note that many of the calls fall into the behavioral health or mental health call type. During these calls the role of the police is usually to provide crisis stabilization and assist staff or emergency medical personnel. Call types such as follow ups and check the well-being are often a part of our ongoing efforts in responding to individuals with behavioral health problems.

Between 2005 and 2007 a significant number of CFS related to persons refusing to leave and persons bothering. This number reduced significantly after discussions with staff and policy changes were implemented. These call types remain relatively low in number.

Calls related to drug violations were examined for any patterns. During the period under review there were 38 of these calls. None resulted in arrests or police reports being generated. Five calls reported suspicious activity outside that might have been drug transactions. None were ever substantiated. Six of the calls were suicide attempts or accidental overdoses of prescription medication by residents. The remainder of the drug related CFS were all staff and residents reporting the smell of marijuana coming from various apartments. None of these calls resulted in any police reports or enforcement action. Enforcement of marijuana violations is difficult in residential settings like this because of the use of medical marijuana and an inability to distinguish legal uses from illegal. In 2014 there have been no calls of this nature.

In 2013 and 2014 there were 20 CFS for assaults. This is an alarmingly high number and represents a significant increase over earlier years under review. A closer examination revealed that sixteen of the calls involved the same resident acting as the aggressor toward other residents and staff. He suffers from severe dementia and in many instances he was transported to a hospital for evaluation. Six of the calls resulted in police reports. He was arrested or summonsed several times. None of the assaults resulted in serious injury and the victims never required medical attention. Most of the assaults involved pushing, slapping, or pouring beverages on someone.

In 2014 there were four weapons violations listed. In prior years there had been none. In reviewing the calls two were found to have been reported by residents and involved unknown people on a nearby walking path who were displaying knives or swords. One call was for a person hunting ducks with a firearm

along the Fore River. In the fourth incident a resident was arrested for possession of an illegal knife. This was the only weapons call related to Logan Place.

Analysis concludes that calls for service are higher than we would like. On a positive note, few calls resulted in police reports or arrests. None of the CFS were for serious crime types. The majority of CFS examined were generated by staff or residents, not neighbors.

We can anticipate an increase in police calls for service with development of any otherwise vacant parcel. Housing of the chronically homeless as takes place at Logan Place further increases the likelihood of an increase. Data review suggests there has been no negative impact on the neighborhood from a public safety standpoint. Other reports and studies have shown the population targeted for housing in this model draw significantly more police resources when they are homeless.

year	total cfs	RTL/bothe	Behavior	Asst FD	Intox Per	Drugs	Assault	Threat/har	Indecent	Theft	Fight	Weapons
2005	88	29	14	4	6	1	2	6	0	2	0	0
2006	82	23	16	2	4	0	3	3	0	3	1	0
2007	80	15	18	3	5	6	1	4	1	4	0	0
2008	46	4	11	3	2	2	4	3	0	0	0	0
2009	49	4	9	5	2	5	4	1	0	3	0	0
2010	65	5	18	6	0	6	2	3	0	2	0	0
2011	77	11	10	8	4	8	3	4	2	0	0	0
2012	71	4	4	15	1	8	6	5	0	5	1	0
2013	89	7	13	10	1	2	10	4	0	4	1	0
2014	74	6	8	5	6	0	10	1	0	0	2	4

Hello Barbara,
I attended a neighborhood meeting last evening concerning the Avesta Housing development proposed on Bishop Street. At this meeting the presenters said there has been a study of the Morrills Corner area. They stated that this study was conducted for the development on Allen Avenue behind Bruno's restaurant which did not go forward. I would like more information about this.

I am concerned that there is a study of our neighborhood area and none of the residents are aware of it. Were the Mayfield Street residents and neighborhood part of this study? I would like a copy of this study and additional information about any planning efforts in this area.

I feel like our residential neighborhood is being isolated by commercial, business and industrial uses with no concern for the history and current use as a family-friendly neighborhood. I feel that the City of Portland Planning Division and Portland Planning Board are making plans for our neighborhood without the input of and respect for those who live there. Several of us have discussed the changes on Bishop Street and the adverse effect on our residential street. My personal concerns are with the Taxi business which is very loud with unsafe driving associated with it, the Spurwink children with many concerns, and the industrial zoning applied over our residential neighborhood (Mayfield Street should be a residential zone all the way from Bishop Street to the dead end).

How do we go about assuring that our voice is heard concerning the future of our neighborhood? Do we need to create a Neighborhood Association for formal recognition? How do we go about that? Who is our City Councilor and are they the proper person to work with? I am unsure as to how to proceed with my concerns.

Please send me information about any planning efforts for our area or the surrounding areas: reports, studies, workshops, plans, etc. Also, please include us in any planning meetings, workshops, etc. Information can be sent to my home: 9 Mayfield Street, Portland, 04103, or e-mail at this address or my home e-mail of jpparker2011@gmail.com.

I appreciate the opportunity to work with the City to create a more livable environment for all residents.
Thank you very much,
Janet

Janet Parker, CFM
Maine Floodplain Management Program
Maine Department of Agriculture, Conservation and Forestry
17 Elkins Lane, Williams Building
93 State House Station
Augusta, Maine, 04333-0038
207-287-9981 office phone
janet.parker@maine.gov

Janet Parker
9 Mayfield Street, Portland

August 12, 2014

Concerns about rezoning 72 Bishop Street for Avesta Housing

- Rezone all of Mayfield Street back to the residential use that it is.
  - Zoning as Business or Industrial uses will further isolate the current residential neighborhood.
- Environmental Concern – Morrill's Corner is the headwater of Capisic Brook, an impaired watershed. Any development in this area will further degrade it, development must be low-impact.
  - Excellent opportunity for stormwater management/green infrastructure.
    - Volume and quality of stormwater from Morrill's Corner assessed.
  - Excellent opportunity for a Greenway Gateway for recreational opportunities.
- TRAFFIC
  - Morrill's Corner does not allow for a left turn from either Forest Avenue outbound or Steven's Avenue – 'can't get there from here'. How to access?
  - Service Providers to Avesta clients: how many, how often, what types of vehicles, staff vehicles, emergency responders, estimate 3 providers/client x 30 clients = 90 additional vehicles – cumulative impact.
  - Bishop Street already has on-street parking, taxi traffic, pedestrian traffic and no sidewalks, poor snowplowing/maintenance, is there a speed limit, and drag racers-add to that wheelchairs and medically-compromised individuals – Very dangerous situation.
    - Bishop Street will need to be upgraded to accommodate heavier traffic.
    - Bus service is not easily accessible from this site, especially for medically-compromised clients.
- Unsafe, based on newspaper reports when the other facilities opened: people passed out in yards, on sidewalks, trespassing, urinating, vomiting, noise, etc. These are not 'recovering' people, these are active users, and that poses a safety concern for property and personal safety, theft, etc.
- Out of scale for the surrounding neighborhood: 3 stories is too large; no/minimal setbacks from Bishop Street and taxi garage, density of 30 people is too much.
- Not consistent with the Comprehensive Plan: does not 'seek to limit business expansion into residential zones', does not 'accommodate all income levels' by offering free housing paid for by middle/low income residents.
- B-2 uses are not compatible with residential neighborhood of Mayfield Street.

Suggested uses: Greenway Gateway to Evergreen Cemetery and trails; stormwater management and green infrastructure project opportunities; low-impact, low-density residential, small offices, perhaps affiliated with UNE;

UNIVERSITY OF NEW ENGLAND

Biddeford Campus
11 Hills Beach Road
Biddeford, ME 04005
(207) 283-0171 T

Portland Campus
716 Stevens Avenue
Portland, ME 04103
(207) 797-7261 T

October 8, 2014

Nell Donaldson
City of Portland Planning Office
389 Congress St.
Portland, ME 04101

Dear Nell;

This letter is in response to the request of the Portland Planning Board Chair, that the University of New England provide a "formal comment" in regards the proposed re-zoning of a limited portion Bishop Street.

It is the University's understanding that the proposed re-zoning is to change the IM zoning designation to B2c, and that this is limited to only the south side of Bishop Street, excluding the residential lots at the intersection of Bishop and Mayfield Streets. While the B2c zone does allow for University uses, the limited extent of this zoning is not supported by UNE. The proposed re-zoning would actually result in a more complicated zoning situation, for UNE and the City, as it would increase the total number of zones, to 5, that UNE's contiguous land holdings fall into. Thus, UNE does not support this re-zoning proposal, nor does it desire to have its land holdings considered in the proposed re-zoning.

Instead the University is proceeding with the previous agreement it has made with the Planning Office, and Planning Board, to complete a Master Plan of the Portland Campus and submit it for consideration of an Overlay Zone for the University's land holdings.

Should you have any questions or concerns, please feel free to contact me. I can be reached at 207.602.2253.

Sincerely,

Alan Thibeault
Assistant Vice President for Planning

Janet Parker
9 Mayfield Street, Portland, ME

October 14, 2014

Concerns about rezoning Bishop Street

- Mayfield Street rezoned back to Residential – Yes

- Bishop Street zoning concerns
  - Protect the residential neighborhood of Mayfield Street
    - Buffers – physical to block the view
    - Noise – request 'Quiet Hours' of 10 pm – 6 am
    - Traffic – automobile, pedestrian, etc
  - Not consistent with Comprehensive Plan
    - Does not limit business expansion into residential neighborhood
    - Does not accommodate all income levels by forcing low income residents to support active drug/alcohol abusers
  - All previous concerns still outstanding
    - Traffic; upgrade of Bishop Street
    - Environmental: stormwater into Capisic Brook
    - Safety: responder services, personal safety, etc
  - No problems with current industrial zone on north side of Bishop Street
    - What other uses could be considered in the Business Zone
    - What other land area is open for development
      - Refer back to buffers, noise, trafffic

- Consider Green Infrastructure – "Use it or lose it" before the opportunity is lost
  - Green Stormwater Treatment – stormwater from Morrill's Corner goes directly into the impaired Capisic Brook
    - Initiate green-treatment with vegetative buffers, settling ponds, discharge clean water into wetlands
  - Habitat Preservation – birds, wetlands – peepers, turtles, dragonflies, fireflies,
  - Greenway Gateway – access to outdoor recreation opportunities
- Policy
  - Tax payers supporting active drug and alcohol abusers, no treatment required
    - Not a sustainable business plan
    - Not fair to low-income tax payers
    - Does not help clients, but enables them to continue self-defeating behavior
    - Brings clients to Portland from other parts of the county

Excerpts from
Memorandum
Planning and Urban Development Department
Planning Division

To:	Stuart O'Brien, Chair and Members of the Portland Planning Board
From:	Nell Donaldson, Planner, and Barbara Barhydt, Development Review Services Manager
Date:	August 8, 2014
Re:	Map Amendment for 72 Bishop Street, Bishop Street Apartments, Avesta Housing
Project #:	2014-110 CBL: 293 C002001
Meeting Date:	August 12, 2014

IV. APPLICANT'S PROPOSAL
The applicant has requested a zone change to Business B-2 in order to allow them to develop 30 efficiency units in three stories for chronically homeless individuals, using the Housing First approach, on the 72 Bishop Street site. This is the same housing approach that was employed for Logan Place on Frederick Street and Florence House on Valley Street, two similar Avesta projects, both of which are subject to conditional zoning agreements.

The original application suggested that the whole site might be rezoned as B-2. Due to the environmental constraints in the vicinity and concerns by some board members regarding extending the business zone into the residential area, the staff requested further analysis on how much land area and configuration on the lot is needed to support the project. The applicant has conducted a zoning analysis to determine the percentage of lot area which would require rezoning in order to allow the total number of desired units, assuming a rezoning to B-2 as requested.

Under the recent amendments to the B-2 zone, a density of 1 unit/1,500 SF is allowed by right. However, an increased density of 1 unit/435 SF of lot area is permitted so long as the first floor is occupied by a use with "active street frontage" per *Section 14-188*. The applicable provisions from the Land Use Code are as follows:

a) Excerpts from the B-2 Zone Sec. 14-185. Dimensional requirements
<u>Front Yard Maximum</u>: No more than 10 feet, except that the Planning Board or Planning Authority may approve a different amount for irregularly shaped lots or lots with frontage less than 40 feet provided this standard is met to the maximum extent practicable.[1]

[1] If lot has less than 40 feet of frontage and is more than 100 feet deep then no maximum setback is required. If existing structures are within 20 feet of the street or meet the front yard maximum, and remainder of lot has less than 40 feet of frontage, then no maximum setback is required. Where setbacks exceed 10 feet, a continuous, attractive, and pedestrian-scaled edge treatment shall be constructed along the street, consisting of street trees spaced at no more than 15 feet on center, approved by City arborist, and a combinations of landscaping no less than 4 feet deep, ornamental brick or stone walls or ornamental fencing.

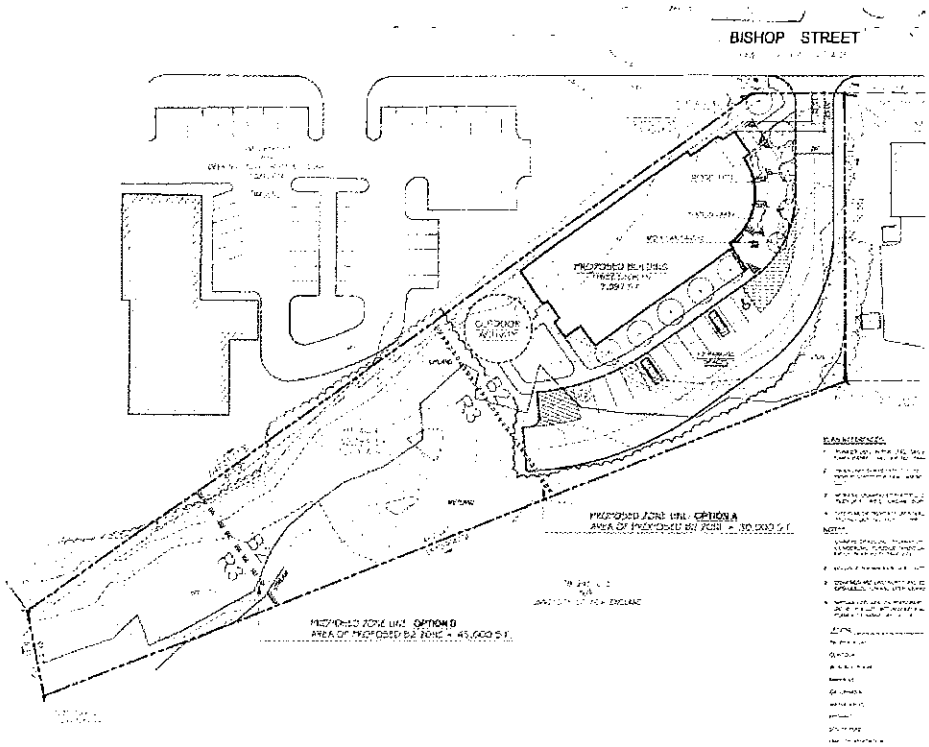
Minimum lot Area per Dwelling Unit:

a. Off-peninsula locations, as defined in Section 14-47: 1,600 square feet, except as provided for in (b) below.
b. On-peninsula locations (as per 14-47) and projects with active street frontages, as defined in section 14-188 below; 435 square feet.

b) Excerpt from B-2 Zone Section 14-188.
Active street frontages: A building will be determined to have an active street frontage upon meeting the following guidelines to the greatest extent practicable as determined by the Planning Board or Planning Authority: the primary building façade shall be within ten feet of the front street line; there shall be no parking on the lot within 35 feet of the front street line; no more than 25% of the first floor primary façade shall consist of access to garages, unutilized space, service entrances, storage or mechanicals, and the remaining minimum 75% shall have an average depth of a minimum of 20 feet for residential or commercial uses; all primary ground floor entries to multi-family buildings must orient to street, not to interior blocks or parking lots.

In the preliminary drawings, the proposed residential building is shown fronting Bishop Street, with a reception area, six units, laundry, staff rooms, and mechanical and electrical on the first floor. Conceptual plans show an outdoor terrace area in the building's front yard and 12 parking spaces behind the building. The building was shown at 23.45 feet back from the property line due to the irregular lot configuration and to accommodate a 24 foot wide driveway within the 50 feet of street frontage. The applicant has indicated their intent to design a building which qualifies as an active street frontage; however, their conceptual plans show that the building will not be within 10 feet of the street line. The applicant has stated that, given the limited frontage of the site and the need for a driveway, siting the building within 10 feet of the property line is not physically possible. The revised plan shows a reduced driveway width of 20 feet, which allows the building to be shifted forward to 20.62 feet from the property line. Avesta is seeking the Board's guidance on whether this concept meets the standard to the maximum extent practicable. In addition, the applicant is seeking the Board's guidance on whether the first floor uses (reception area (also referred to as the Great Room), six residential units, laundry room, staff rooms and mechanical rooms) meet the criteria for an active street frontage. One of the objectives of the recent B-2 amendments for active street frontage was to discourage first floor parking, which is achieved with this proposal. Staff is comfortable with the configuration as meeting the intent of the active street frontage to the extent practicable; however that determination will be made at time of site plan review. Board preliminary consideration of this is useful at this time, as it is an underlying premise of this development proposal.

Two zoning concepts from the applicant are presented for the Board's consideration, which are dependent upon how the Board interprets the B-2 maximum street setback regulations and the consideration of active street frontages for the density calculations. If this development concept appears to be consistent with the two B-2 standards, then the land area requirement of 435 square feet per unit could apply. Option Ashows the potential zone line encompassing 30,000 square feet of B-2 area on the concept site plan. If the concept for the development is not meeting the standards, then 1,500 square feet of land per dwelling unit is required. Option B depicts the zone line location to include 45,000 sf of B-2 zoned land.



Concept Site Plan with Potential B-2 Zone Lines

V. ZONING COMPARISON

Following the Board's initial workshop, staff assessed several alternatives to the B-2 zone and considered the geography of the proposed zone change, with the aim of rationalizing the existing zoning pattern both for the site, which is divided into three zones, and the neighboring parcels, which exhibit the same fragmented zoning scheme. The staff evaluated the residential zones of R-3, R-5 and R-6, the business zones of B-1 and B-2, and the current industrial I-M zone. The comparison charts of purpose statements, permitted uses and dimensional standards are below.

A. Permitted Uses

As could be expected, the uses in the I-M zone are generally industrial in nature, and the uses of the Residential R-3, R-5, and R-6 zones are entirely residential in nature. There are no residential uses permitted in the I-M zone, and there are no industrial or business uses permitted in the residential zones. The B-1 zone permits a relatively confined list of business and other uses. The B-2 allows more flexibility in terms of uses than the industrial, residential, or B-1 zones, allowing a wide range of residential, office, and business uses. The B-2 permits restaurants, drinking establishments, veterinary hospitals, theaters, hotels, and dairies and bakeries. Charts with the purpose statements and permitted uses of the zones considered for this request are below.

Most of the existing uses on the south side of Bishop Street, including the residential, the office uses, the place of assembly, and the utility substation, are technically permitted by right in the B-1 and the B-2. The zoning classification of the existing taxi service south of the site has yet to be determined, and as such, it is not immediately clear whether it would fit under a business zone designation. Utility substations and places of assembly are conditional uses in the residential zones; offices are generally not permitted. Many of the uses on the north side of Bishop Street, including the auto repair and low impact industrial uses, are not permitted in either the residential or the B-1 or B-2 zones.

Table 1: Purposes

Zone	Purpose
IM (Industrial – Moderate Impact)	To provide zones in areas of the city in which light and moderate impact industries and transportation-related uses will coexist. The moderate impact industrial (I-M and I-Ma) zones are located on arterials or collectors. The I-Mb zones are similarly located on the peninsula. These locations provide for direct access onto arterials, thereby protecting residential neighborhoods from drive-through traffic. The I-M, I-Ma and I-Mb industrial zones are intended to provide for larger industrial buildings and for the limited or controlled use of areas outside of structures for storage of materials and machinery. These facilities often require large volumes of imported materials and products which result in large volumes of shipping and receiving. Often uses may be highway-oriented and transportation-related, thus relying on citywide and regional transportation infrastructure. Industrial uses in the moderate impact industrial zones may require separation from higher impact uses, which should be directed to the high impact industrial zone.
R-3	To provide for medium-density residential development characterized by single-family homes on individual lots and also to provide for planned residential unit developments on substantially sized parcels. Such development shall respond to the physical qualities of a site and complement the scale, character and style of the surrounding neighborhood.
R-5	To provide appropriate areas of the city for medium-density residential development characterized by single-family and low-intensity multifamily dwellings on individual lots; to ensure the stability of established medium-density neighborhoods by controlling residential conversions; and to provide for planned residential unit development on substantially sized parcels. Such PRUD development shall respond to the physical qualities of a site and complement the scale, character and style of the surrounding neighborhood.
R-6	To set aside areas on the peninsula for housing characterized primarily by multifamily dwellings at a high density providing a wide range of housing for differing types of households; and to conserve the existing housing stock and residential character of neighborhoods by controlling the scale and external impacts of professional offices and other nonresidential uses. In cases of qualifying small, vacant, underutilized lots located in the urban residential and business zone, to encourage new housing development consistent with the compact lot development pattern typically found on the peninsula.
B-1 (Neighborhood Business)	The purpose of the B-1 neighborhood business zone is to provide limited areas for the location of small-scale commercial establishments intended to serve a local market. As a result, uses shall be complimentary, quiet and generally do not disturb the comfort and enjoyment of the adjoining neighborhood environment. Uses shall be designed for the pedestrian scale and will provide convenient access for nearby residents and workers to walk in to purchase goods and services. Buildings and uses shall be designed with attractive storefronts or similar features, with windows and doors convenient to a public sidewalk. Building additions are encouraged but not required to meet the maximum setbacks of 14-165(c)(3). This zone shall encourage mixed use buildings such as commercial first floor with residential uses above or combined retail/office uses in a multistory structure. The zone also provides the opportunity for mixed use and high residential density in on-peninsula locations. Suitable locations for this zone may include street intersections and arterial streets with existing or proposed traditional neighborhood retail and service uses.
B-2 (Community Business)	To provide appropriate locations for the development and operation of community centers offering a mixture of commercial uses, housing and services serving the adjoining neighborhoods and the larger community. The variety, sites and intensity of the permitted commercial uses in the B-2 zone are intended to be greater than those permitted in the B-1 neighborhood business zone. The B-2 zone will provide a broad range of goods and services and general businesses with a mixture of large and small buildings such as grocery stores, shops and services located in major shopping centers and along arterial streets. Such establishments should be readily accessible by automobile, by pedestrians and by bicycle. Development in the B-2 zone should relate to the surrounding neighborhoods by design, orientation, and circulation patterns. The B-2 and B-2b will provide locations for moderate to high density housing in urban neighborhoods along arterials.

Table 2: Permitted & Conditional Uses

Uses			I-M	R-3	R-5	R-6	B-1/B-1b[1]	B-2/B-2b/B-2c
Permitted	Residential	Single-family and two-family dwellings		•	•	•	Any use permitted in abutting (or nearest) residential zone; if commercial first floor multi-family permitted by right	•
		Multi-family dwellings				•		•
		Handicapped family units		•	•	•		•
		Single-family single- or multiple-component manufactured housing		•	•	•		
		Combined living/working spaces						•
		Lodging houses				•		•
		PRUDs		•	•			
		Multiplex development			•			
	Institutional	Schools					•	•
		Clinics					•	•
		Places of assembly					•	•
		Long term, extended and intermediate care facilities						•
		Governmental buildings and uses/municipal uses		•	•	•	•	•
		College, university or trade schools						•
		Nursery schools, kindergartens					•	
		Day care facilities	•				•	•
	Business	General, business, & professional offices	•				•	•
		Personal services					•	•
		Business services					•	
		Offices of building tradespeople					•	•
		Retail establishments					•	•
		Restaurants						•
		Drinking establishments						•[4]
		Billiard parlors						•
		Mortuaries or funeral homes						•
		Miscellaneous repair services	•					•[5]
		Communication studios or broadcast and receiving facilities						•
		Health clubs and gymnasiums						•
		Veterinary hospitals						•[6]
		Theaters						•
		Hotels						•[7]
		Dairies and bakeries	•					•
		Drive-throughs when accessory to a principal use on the same lot						•[8]
		Registered medical marijuana dispensaries						•
		Indoor recreation and family amusement establishments	•					
		Intermodal transportation facilities	•					

Permitted (continued)	Other	Accessory uses	•	•	•	•	•	•
		Cemeteries				•		
		Parks		•	•	•		
		Home occupation		•	•	•		
		Studios for artists and craftspeople					•	•
		Special needs independent living units			•	•		
		Bed and breakfasts					•	•
		Conversion into bed and breakfast				•		
		Hostels				•	•	•
		Wind energy systems	•	•	•	•	•	•
		Utility substations	•				•	•
		Warehousing and wholesaling	•					
		Low impact industrial uses	•					
		R&D and back office uses	•					
		Building contractors and construction/engineering services	•					
		Nurseries	•					
		Lumber yards	•					
		Commercial kitchens or other food preparation	•					
		Recycling & solid waste disposal facilities	•					
		Food processing	•					
		Correctional pre-release facilities	•					
		Tow lots	•					
		Beverage dealers					•	
Conditional	Residential	Sheltered care group homes		•	•	•		
		Additional accessory dwelling units		•	•			
		Alteration of non-residential structure to 3+ dwelling units			•			
		Conversion of multi-family structure to lodging house			•			
	Institutional	Schools		•	•	•		
		Long-term and extended care facilities		•	•	•		
		Intermediate care facility		•	•	•		
		Places of assembly		•	•	•		
		Hospitals		•	•	•		
		Nursery schools and kindergartens				•		
		Day care facilities		•	•	•		
		College, university, trade schools			•	•		
	Business	Major and minor auto service stations existing as of 1999						•[9]
		Car washes						•
		Drive-throughs adjacent to residential uses or zones						•[10]
		Automobile dealerships						•

		Restaurants					•[3]	
		Conversion into bed and breakfast (over 5 rooms)				•		
	Other	Utility substations		•	•	•		
		Professional offices				•		
		Chancellery				•		
		Off-street parking		•	•	•[2]		
		Temporary wind anemometer towers	•	•	•	•	•	•
		Hostels				•		
		Wind energy systems	•	•	•	•	•	•
		Printing and publishing establishments						•
		Wholesale distribution establishments						•
		Research and development and related production establishments						•

1 Permitted on ground floor of B-1b; above ground floor, residential uses of 14-162(a), bed and breakfasts, hostels permitted
2Ffor passenger cars for uses permitted in the R-6 zone.
3 Restaurants conditionally permitted, provided they have a max. floor area for use by public of 1,000 SF; hours limited to 6 am to 11 pm; food service and consumption is primary function; no drive-throughs
4 Except in B-2c
5 Excluding motor vehicle repair
6 Excluding outdoor kennels
7 Of less than 150 rooms
8 Permitted in B-2 or B-2b if not adjacent to residential use or zone
9 Permitted in B-2, & permitted in the B-2b if in existence since 1999
10 Permitted in B-2, & permitted in the B-2b if accessory

B. Dimensional Standards

The dimensional standards of the various zones under consideration here also vary broadly. The I-M is understandably geared toward large buildings on large lots; the minimum street frontage is greater than other zones and the maximum structure height is quite liberal at 75 feet. The residential zones, and particularly the R-3 and R-5, in contrast, are oriented toward the smaller scale, small lot development characteristic of the city's off-peninsula neighborhoods. The business zones promote a third, distinct development pattern, a more urban form characterized by greater building height than the residential zones, greater residential density, smaller setbacks (and, in fact, build-to lines), and less open space.

Table 3: Dimensional Standards

	I-M	R-3*	*R-5****	R-6	B-1	B-2
Min. Lot Area per D.U.	N/A	6,500 SF	3,000 SF, except 3,600 – 4,800 SF for special needs independent living units	1,000 SF; 1,200 SF after first three units	Minimum lot area of nearest zone, except 1,000 SF for multi-family dwellings above 1st floor	1,500 SF 435 SF in projects with active street frontages
Street Frontage	60 feet	50 feet	50 feet	40 ft.	50 ft., or average of lots w/in 200 ft.	25 feet
Min. Lot Width	N/A		60 feet, except 90 feet for multiplex	40 ft.	None	
Min. Front Yard	1 foot for each foot of building height	25 feet	20 feet, except where average depth of adjacent front yards is less	10 ft., except where average depth of adjacent front yards is less		N/A
Max. Front yard	N/A	N/A	N/A		10 ft., or average depth of nearest developed lots	10 feet, except for irregularly shaped lots or lots with < 40 feet of frontage
Min. Rear Yard	1 foot for each foot of building height up to 25 feet 35 feet when abutting residential zone	25 feet	20 feet	Principal > 100 SF footprint: 20 ft. Detached accessory < 144 SF footprint: 5 ft.	None, except 20 ft. if abutting residential	10 feet
Min. Side Yard	1 foot for each foot of building height up to 25 feet 35 feet when abutting residential zone	8-20 feet, depending on height/location	8-15 feet, depending on height/location	10-15 feet, depending on height/location	None, except 10 ft. if abutting residential	N/A
Structure Height	75 feet	35 feet	35 feet	45 ft.	35 ft.	45 ft., except 50 feet if first floor is occupied by a commercial use 65 feet on lots > 5 ac.
Max. Lot Coverage	N/A	35 %	40%	>20 units: 40% <20 units: 50%		N/A
Max. Impervious Surface	75%	N/A	N/A		90%	Residential: N/A Business and non-residential uses: 80%

*Additional restrictions on total number of dwelling units, setbacks, and lot coverage apply for PRUDs in the R-3 and R-5 zones
** Separate requirements apply for small residential lot development

VI. ZONING ANALYSIS

A. Industrial I-M Zone

Bishop Street was zoned industrial and in the mid-1990's after Portland's Industrial and Commerce Plan (adopted in 1994) the area was zoned as an Industrial I-M zone. At that time some of the industrial areas were rezoned for commercial use, such as the Warren Avenue corridor that was rezoned to B-4. Conversions of industrial zones to other designations has been limited; however, the I-M zone along the southerly edge of Bishop Street is not developed nor functioning as an industrial area. The size of lots, the proximity of the residential neighborhood, and the environmental factors in the vicinity limit the potential for industrial uses. On the other hand, the northerly side of Bishop Street does have established industrial uses in operation.

B. Residential Zones

Given the proposed residential use, staff considered residential zone changes for the site first and foremost. The R-5 zone, while appealing based on its proximity, does not accommodate the density nor the building height envisioned for the proposal. Staff also considered a residential zone such as the R-6, which would provide both the desired density and heights. However, the R-6 is generally located on the peninsula with only a few R-6 zones off-peninsula that are larger in scale (sites with over 4 acres). The R-6 would not be compatible with the existing office uses east of the site, so it would make those uses non-conforming or it would be a single parcel rezone if limited to the subject parcel.

Almost all of the residential homes on Mayfield Street were built between 1903 and 1930, thus the use was established prior to the City's zoning ordinance. At some point, the homes along Bishop Street were zoned industrial. As the residential use is well-established and the lots are small, the current I-M zone on Mayfield Street fails to fit. Rezoning to B-2, however, is counter to comprehensive plan policies to preserve residential areas. Instead, the Board may wish consider rezoning the lots on Mayfield to R-5. This would create a break between the existing and proposed B-2 zones, but would provide cohesive zoning along the length of Mayfield Street.

C. Business Zones

In order to achieve the housing density envisioned, staff also considered other business zones for the site. The B-1, while allowing the proposed use, is clearly designed for neighborhood-scaled mixed use buildings in corner conditions. It has a maximum building height of 35 feet and has no setbacks unless the use is next to a residential zone or use. In addition, for a completely residential building, the permitted density is based upon the nearest residential zone, which in this case would be the R-5. The R-5 density does not accommodate this development. The B-1 zone does permit residential units above first floor commercial at a density of 1,000 sf per unit. The applicant is not proposing any first floor commercial uses.

Ultimately, the B-2 emerged again as the lowest intensity business zone, which would allow both the residential density and height sought for the subject site. In many ways, the purpose of the B-2 zone fits as well, in that it should "provide locations for moderate to high density housing in urban neighborhoods along arterials." The B-2 zone encompasses Morrill's Corner and Forest Avenue. It also includes the easterly end of Bishop Street, thus the B-2 zone is in close proximity to the site. The B-2 zone has the additional benefit of accommodating the existing office uses and providing some consistency with the nearby B-2 zone on the east end of Bishop Street at Morrill's Corner. Staff notes that there is a B-2C zone along a portion of Forest Avenue near Woodford's Corner, which has all of the same requirements of the B-2 zone, except that drinking establishments are not allowed. The B-2c zone could be appropriate here as well, as we do not envision drinking establishments as an especially appropriate use in this location.

From: Tom Errico <thomas.errico@tylin.com>
To: Helen Donaldson <HCD@portlandmaine.gov>
Date: 9/3/2014 4:43 PM
Subject: 72 Bishop Street - Map Amendment

Nell - Per your request I have conducted a traffic evaluation of the implication of changing the zoning from I-M to B-2 with the primary focus on the difference in traffic generation. I have attached trip generation estimates conducted for two build-out scenarios based on assumptions provided by you. A summary of that evaluation as well as other comments are provided below.

* As noted in the attached table, the change from I-M to B-2 does have the possibility to increase traffic. Please note the following:

o The key factor in this increase is the inclusion of a retail use. My assumption for the estimate is that the retail use would have shopping center type trip generating characteristics. This is likely a worst-case scenario and there could be other retail uses that generate less traffic.

o The trip estimates noted in the attached table is the total traffic that would enter and exit the site. For retail uses (unlike office uses), not all traffic to the site is new to the area street system. Some traffic already exists on the system and is captured. According to national data, 34% of shopping center traffic may be "pass-by" type trips that are captured from existing traffic in the area. The volumes noted in the table have been reduced to reflect this adjustment.

o The magnitude of the trip generation estimate is probably a worst-case scenario given the building areas assumed.

* Any added traffic in this area has the potential to impact traffic conditions at Morrill's Corner. The intersection is currently near or over capacity and the nature of multiple streets intersecting Forest Avenue in close proximity complicates traffic mobility. In my professional opinion, both zoning options will have an impact. It is very difficult to predict the magnitude of the impact, without conducting detailed traffic analyses. My general opinion is that some mitigation will be warranted if significant traffic is added to Forest Avenue.

* Multi-modal transportation considerations are an important element of understanding project impacts. In the case of the zone change, it is my professional opinion that a sidewalk systems, without gaps, should be provided between uses on Bishop Street and Forest Avenue. Morrill's Corner currently can be a difficult environment for pedestrians. While basic pedestrians features (e.g. crosswalk, signal heads) are provided, upgrades are likely warranted to fully balance all transportation user needs. It is my professional opinion that pedestrian upgrades would be required regardless of the zoning or development. I would note that the City has required for off-site mitigation improvements or monetary contributions and these are generally related to types of land uses and how they may impact conditions, so the level of mitigation will be related to traffic and pedestrian generating levels.

If you have any questions, please let me know.

Best regards,

Thomas A. Errico, PE
Senior Associate
Traffic Engineering Director
[T.Y. Lin International]T.Y. Lin International
12 Northbrook Drive
Falmouth, ME 04105
207.781.4721 (main)
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Twitter | Facebook | LinkedIn | YouTube

"One Vision, One Company"

Please consider the environment before printing.

Traffic Generation Estimate During the AM and PM Peak Hours Based in the Trip Generation Manual, Institute of Transportation Engineers, 9th Edition (Retail Trips Reduced by 34% to reflect Pass-By Trips)					
	Existing I-M Zone	Proposed B-2 Zone (re-zone to back of lot)	Difference Compared to Existing	Proposed B-2 Zone (re-zone only I-M Zone)	Difference Compared to Existing
Office SF	86,624 SF	95,563 SF		65,534 SF	
AM Peak Hour	171 vehicles	185 vehicles	+14	137 vehicles	-34
PM Peak Hour	163 vehicles	177 vehicles	+14	131 vehicles	-32
Retail SF	0	31,854 SF		21,845 SF	
AM Peak Hour	0	51 vehicles	+51	41 vehicles	+41
PM Peak Hour	0	184 vehicles	+184	143 vehicles	+143
Total AM Peak Hour	*171 vehicles*	*236 vehicles*	*+65*	*178 vehicles*	*+7*
Totol PM Peak Hour	*163 vehicles*	*361 vehicles*	*+198*	*274 vehicles*	*+111*

From: "Green, Robert" <Robert.Green@maine.gov>
To: 'Helen Donaldson' <HCD@portlandmaine.gov>
Date: 10/8/2014 9:48 AM
Subject: RE: Bishop Street, Portland - Avesta Housing

Good morning,
If, by absolute, you mean a distance set back from the stream and within which there shall be no disturbance, then the answer is no. The statute simply states that a disturbance within 75 feet of the normal high water line requires some form of permitting. The expectation is that any disturbance will be minimized to the greatest extent practicable. The PBR or permit application must include a statement outlining the need to infringe on the 75-foot setback and how the proposed project has been designed to minimize this infringement. It is then the Department's responsibility to review this information. If we determine it results in an unreasonable impact, then approval of the PBR or NRPA permit application would not be granted. Before a project reaches this point (nearing denial), we will have contacted the applicant to work out a solution or present our case for denying the project.
I hope this helps,
Bob.

Robert L. Green, Jr., Project Manager
Division of Land Resource Regulation
Bureau of Land and Water Quality
tel: 207-615-2214
fax: 207-822-6303

From: Helen Donaldson [mailto:HCD@portlandmaine.gov]
Sent: Wednesday, October 08, 2014 8:46 AM
To: Green, Robert
Subject: RE: Bishop Street, Portland - Avesta Housing

Bob,

Just a quick follow up question to clarify. Is there an absolute required setback from watercourses defined as streams under NRPA? Or is it just that the proximity determines the stringency of the NRPA review (and the federal/state governments rely on municipalities to establish setbacks)?

Thanks again for your help on this. I appreciate it.
Nell

Nell Donaldson
City of Portland Planning Division
389 Congress Street
Portland, Maine 04101
874-8723

>>> "Green, Robert" <Robert.Green@maine.gov<mailto:Robert.Green@maine.gov>> 10/1/2014 9:21 AM >>>

Good morning,
The statute that I work under is the Natural Resources Protection Act (NRPA). It is independent of the Mandatory Shoreland Zoning Act (MSLZA), which is implemented at the local level. More often than not, a project that is subject to NRPA will also be subject MSLZA. Under the NRPA, a project that includes certain activities (i.e., soil disturbance, draining, or filling) that is in on or over a protected natural resource or adjacent to a specified list of protected natural resources, then a permit is required.
Your question deals with adjacency (defined in the Department's Wetlands and Waterbodies Protection Rules, Chapter 310). Any activity within 75 feet of the normal high water line of a great pond, river, stream, or brook, or the upland edge of a coastal wetland or certain types of freshwater wetland requires some form of permit (either a Permit-By-Rule or individual NRPA permit) from the Department. The Department has made an effort to ensure that the setback requirements of the NRPA are equivalent to the (minimum standards of) MSLZA.
The question at the Bishop Street project was whether the watercourse along the property boundary was a stream, as defined in the NRPA, and whether it would then be subject to the restriction/protection under the NRPA. At our site visit, I determined that it was a stream. So that said, the proximity of the project to the stream will dictate the level of permitting required. If it is within 25 feet, then an individual permit is required; between 25 and 75 feet, then a Permit-By-Rule.
If you have any other questions or comments, please feel free to contact me.
Bob.

Robert L. Green, Jr., Project Manager
Division of Land Resource Regulation
Bureau of Land and Water Quality
tel: 207-615-2214
fax: 207-822-6303

Order 98-14/15
Tab 22 11-3-14

MICHAEL F. BRENNAN (MAYOR)
KEVIN J. DONOGHUE (1)
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CITY OF PORTLAND
IN THE CITY COUNCIL

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JON HINCK (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

AMENDMENT TO PORTLAND CITY CODE
CHAPTER 14. LAND USE
Re: Changes to Business B-1 and Community Business B-2 Zones

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

That Chapter 14, Article III, Divisions 9 and 10, Sections 14-161, 14-162, 14-163, 14-165, 14-182, 14-183 and 14-185 of the Portland City Code are hereby amended to read as follows:

DIVISION 9. B-1 AND B-1b NEIGHBORHOOD BUSINESS ZONES

Sec. 14-161. Purpose.

(a) *B-1 Neighborhood Business Zone*

The purpose of the B-1 neighborhood business zone is to provide limited areas for the location of small-scale commercial establishments intended to serve a local market. As a result, uses shall be complimentary, quiet and generally do not disturb the comfort and enjoyment of the adjoining neighborhood environment. Uses shall be designed for the pedestrian scale and will provide convenient access for nearby residents and workers to walk in to purchase goods and services. Buildings and uses shall be designed with attractive storefronts or similar features, with windows and doors convenient to a public sidewalk. Building additions are encouraged but not required to meet the maximum setbacks of 14-165(c)(3). This zone shall encourage mixed use buildings such as commercial first floor with residential uses above or combined retail/office uses in a multistory structure. The zone also provides the opportunity for mixed use and high residential density in on-peninsula locations.

Suitable locations for this zone may include street intersections and arterial streets with existing or proposed traditional neighborhood retail and service uses.

(b) *B-1b Neighborhood Business Zone*

The purpose of the B-1b neighborhood business zone is to provide appropriate opportunities for the establishment of small-scale ground floor commercial uses to serve ~~in existing buildings, serving~~ a local market, while preserving residential uses and character above the ground floor of structures. The zone also provides the opportunity for mixed use and high residential density in on-peninsula locations. Building additions are encouraged but not required to meet the maximum setbacks of 14-165(c)(3).

Suitable locations for this zone may include street intersections, arterial streets, and sites with existing or traditional neighborhood retail and service uses.

Sec. 14-162. Permitted uses.

(a) The following uses are permitted in the B-1 zone and on the ground floor level of buildings in the B-1b zone. For permitted uses in the upper stories of buildings in the B-1b zone, refer to subsection (5) below: in existence on November 15, 1993:

1. *Residential*

   a. Any residential use permitted in the residential zone abutting the lot is permitted. If there is no abutting residential zone, any residential use permitted in the nearest residential zone to the lot is permitted. In the case of two (2) or more abutting residential zones, any residential use permitted in the most restrictive such zone is permitted.

   b. In any structure with commercial use on the first floor, multifamily dwellings are permitted above the first floor.

   c. Combined living/working spaces including, but not limited to, artist residences with studio space.

2. *Business:* Business uses listed below are permitted, provided that such use which generates in excess of a ratio of 100 peak hour vehicle trips per 2000 sq.ft.

of space, and generates in excess of 100 peak hour vehicle trips is prohibited. As set forth in the City of Portland Technical Manual, section I, the city traffic engineer shall require a traffic study when it calculates the proposed use will generate in excess of a total of 50 peak hour vehicle trips.

a. Professional, business, and general offices ~~Professional offices, as defined in section 14-47~~, but excluding veterinarians.

b. Business services, as defined in section 14-47, but excluding beverage container redemption centers.

c. Personal services, as defined in section 14-47.

d. Offices of building tradesmen, provided there is no exterior storage of building materials.

e. Retail establishments, provided such do not include drive-through sales or services and do not operate between the hours of eleven (11) p.m. and six (6) a.m. and do not accept deliveries or services between the hours of ten (10) p.m. to seven (7) a.m.

f. Beverage dealers (as defined in 32 M.R.S.A. 1862) provided they meet the following requirements:

   i. Maximum total floor area for beverage container redemptions, including the storage of spent beverage containers, shall be no greater than five hundred (500) sq. ft. or ten (10) percent of the total floor area of the facility, whichever is less;

   ii. Beverage container redemption is an accessory use to a principal retail use that includes beverage sales. Local beverage container redemption centers as defined in 32 M.R.S.A. 1867, as may be amended, are not allowed as a principal use.

   iii. Storage of all beverage containers shall be contained entirely within the building providing retail sales.

g. Studios for artists, photographers and craftspeople including but not limited to, painters, sculptors, dancers, graphic artists and musicians.

h. Restaurants are permitted in the B-1 zone and on the ground floor level of buildings in the B-1b zone provided they meet the following additional requirements in addition to the vehicle trips standards of in Sec. 14-162.a.2:

a. As set forth in the City of Portland Technical Manual, section I, the city traffic engineer shall require a traffic study when it calculates the proposed use will generate in excess of a total of 50 peak hour vehicle trips.

b. Maximum total floor area for use of the public shall be two thousand (2,000) square feet.

c. The hours of operation shall be limited to between 6:00 a.m. and 11:00 p.m. each day.

d. Food service and consumption are the primary function of the restaurant.

e. There shall be no drive-through service.

3. *Institutional*:

...

Sec. 14-163. Conditional uses.

(a) ~~The following uses are permitted in the B-1 zone and on the ground floor level of buildings in the B-1b zone, as provided in section 14-474 (conditional uses), if they meet the following requirements provided that such use which generates in excess of a ratio of 100 peak hour vehicle trips per 2000 sq. ft. of space, and generates in excess of 100 peak hour vehicle trips is prohibited. As set forth in the City of Portland Technical Manual, section I, the city traffic engineer shall require a traffic study when it calculates the proposed use will~~

~~generate in excess of a total of 50 peak hour vehicle trips:~~

~~1. Restaurants, provided they meet the following requirements:~~

~~a. Maximum total floor area for use of the public shall be one thousand (1,000) square feet;~~

~~b. The hours of operation shall be limited to between 6:00 a.m. and 11:00 p.m. each day;~~

~~c. Food service and consumption are the primary function of the restaurant; and~~

~~d. There shall be no drive-through service.~~

~~(b)~~ The following use shall be permitted only upon the issuance of a conditional use permit, subject to the provisions of section 14-474 (conditional uses) and any special provisions, standards or requirements specified below:

...

Sec. 14-165. Dimensional requirements.

In addition to the provisions of division 25 (space and bulk regulations and exceptions) of this article, residential uses in off-peninsula locations, permitted under section 14-162(a) shall meet the requirements of such abutting or nearest residential zone except ~~as noted in Sec. 14-165(h) (~~minimum lot area per dwelling unit~~)~~. Residential uses in on-peninsula locations, as defined in Section 14-47, and nonresidential uses in the B-1 and B1-b zones shall meet the following minimum requirements:

Min. Lot Size	School: 20,000 SF
	Place of Assembly: 10,000 SF
	Other Non-Res Uses: None
	Residential: None
Min. Lot Area per D.U.	On-peninsula: 435 SF
	Off-peninsula: min. lot area of nearest residential zone, except 1,000 SF for multi-family dwellings above first floor
Min. Street Frontage	20 ft.
Min. Lot Width	None
Min. Front Yard	None
Max. Front yard	10 ft., or the maximum front yard setback shall not exceed the average depth of nearest developed lots if that average depth is less than 10 ft.
Min. Rear Yard	Principal: None, except 10 ft. if abutting a residential zone.
	Accessory: None, except 5 ft. if abutting a residential zone
Min. Side Yard	Principal: None, except 5 ft. if abutting residential zone.
	Accessory: None, except 5 ft. if abutting a residential zone
Max. Side Yard on Side Street	10 ft., except that this requirement applies to only one side street in cases where a lot has more than one side street
Structure Stepbacks	Portions of a structure above 35 ft shall be no closer than 10 ft from the side property line and no closer than 15 feet from the rear property line when such property line abuts a residential zone.
Max. Structure Height[1]	Off- peninsula: 35 ft., except where abutting R-6, where max. height shall be the max. height of R-6.[2]
	On-peninsula: 45 ft. except 50 ft. along Congress Street if commercial first floor & residential upper floors.
Max. Floor Area	Total maximum first floor area for non-residential uses per structure: 10,000 SF[3]
	Total maximum floor area per retail establishment: 5,000 SF
Max. Lot Coverage	-
Open Space Ratio	-

Max. Impervious Surface	90%
1. The commercial first floor uses shall utilize at least 75 percent of the first floor frontage along Congress Street and shall have an average depth of at least 20 feet. *2. Except when B-1 properties abut an R-6A zone, the maximum height shall be 45 ft.* *3. Structures which existed prior to date of enactment of the B-1/B-1b zones are exempt.*	

~~(a) *Minimum lot size:*~~

~~1. School: Twenty thousand (20,000) square feet.~~
~~2. Places of religious assembly: Ten thousand (10,000) square feet.~~
~~3. All other nonresidential uses: None.~~
~~4. Residential uses: None.~~

~~(b) *Minimum street frontage*: Fifty (50) feet, except that if the average street frontages of all lots within two hundred (200) feet of the boundaries of the lot in question on the same side of the street and within the B-1 or B-1b zone is less than fifty (50) feet, then the minimum street frontage for the lot in question may be reduced to the average frontage of such lots.~~

~~(c) *Yard dimensions*: (Yard dimensions are required setbacks for structures from property lines and setbacks of structures from one another. No structure shall occupy the minimum yard of another structure.)~~

~~1. Maximum *front yard:*~~

~~Principal or accessory structure: The maximum front yard setback shall either be: (i) ten feet; or (ii) in cases where the average depth of the front yards of the nearest developed lots on either side of the lot in question is less than ten feet, the front yard setback of the lot in question shall not exceed such average depth. A "developed lot" means a lot on which a principal structure has been erected.~~

~~Building additions are not required to meet this maximum setback.~~

~~2. *Rear yard:*~~

~~a. Principal structures: None, except where a rear yard abuts a residential zone or first floor residential use, a minimum of twenty (20) feet is required.~~

~~b. Accessory structures (detached): None, except where the rear yard abuts a residential zone or first floor residential use, a minimum of five (5) feet is required.~~

~~3. *Side yard:*~~

~~a. Principal and accessory structures: None, except that where a side yard abuts a residential zone or a first floor residential use, a minimum of ten (10) feet is required.~~

~~b. Accessory structures (detached): None, except that where the side yard abuts a residential zone or a first floor residential use, a minimum of five (5) feet is required.~~

~~c. Side yards on side streets (corner lot): Principal or accessory structures: Ten (10) feet maximum setback, except that for any new construction on a lot abutting more than two streets, the maximum setback shall not apply beyond the two most major streets. (For purposes of this section, "major street" shall mean that street with the highest traffic volume and the greatest street width in comparison with the remaining streets). This maximum setback shall not apply to building additions.~~

~~(d) *Minimum lot width:* None.~~

~~(e) *Maximum structure height:*~~

~~1. Off-peninsula locations, as defined in Section 14-47: Thirty-five (35) feet. Where the lot abuts an R-6 residential zone, the maximum height shall be the maximum permitted height in the R-6 residential zone.~~

~~2. On-peninsula B-1 and B-1b locations, as defined in Section 14-47: Forty-five (45) feet except in the case of a building in a B-1 zone along Congress Street with commercial first floor and residential upper floors where fifty (50) feet is allowed. The commercial first floor uses shall utilize at least 75 percent of the first floor frontage along Congress Street and shall have an average depth of at least 20 feet.~~

~~(f) *Maximum impervious surface ratio:* Ninety (90) percent.~~

~~(g) *Floor area:*~~

~~1. The maximum first floor area of a single tenant building shall be no greater than five thousand (5,000) square feet.~~

~~2. The maximum first floor area of a multi-tenant building shall be no greater than ten thousand (10,000) square feet.~~

~~(h) *Minimum lot area per dwelling unit:*~~

~~1. On-peninsula locations, as defined in Section 14-47: Four hundred and thirty-five (435) square feet of land area per dwelling unit.~~

~~2. Off-peninsula locations, as defined in Section 14-47: Minimum lot area per dwelling unit requirements of the abutting or nearest residential zone shall apply. In the case of multi-family dwellings above the first floor: 1,000 square feet of land area per dwelling unit.~~

...

DIVISION 10. B-2 AND B-2b COMMUNITY BUSINESS ZONES*

...

Sec. 14-182. Permitted uses.

The following uses are permitted in the B-2, B-2b and B-2c zones except that any use involving a drive-through is

prohibited in these zones unless otherwise provided in section 14-183:

(a) *Residential*:

1. Attached single-family and two-family dwellings;

2. Multi-family dwellings;

3. Handicapped family units;

4. Combined living/working spaces including, but not limited to, artist residences with studio space; and

(b) *Business*:

1. General, business and professional offices, as defined in section 14-47;

2. Personal services, as defined in section 14-47;

3. Offices of building tradesmen;

4. Retail establishments;

5. Restaurants, except that restaurants shall close for all purposes including the service of alcohol no later than 11:00 p.m.;

6. Drinking establishments, except that drinking establishment as defined in section 14-47, and bars as defined in section 14-217.5 (a)(1), shall not be permitted in the B-2c zone;

7. Billiard parlors;

8. Mortuaries or funeral homes;

9. Miscellaneous repair services, excluding motor vehicle repair services;

10. Communication studios or broadcast and receiving facilities;

11. Health clubs and gymnasiums;

12. Veterinary hospitals, but excluding outdoor kennels;

13. Theaters and performance halls;

14. Hotels or motels of less than one hundred fifty (150) rooms;

15. Dairies in existence as of November 15, 1999;

16. Bakeries in existence as of November 15, 1999;

17. Bakeries established after November 15, 1999, provided the bakeries include retail sales within the principal structures. Bakeries in the B-2b zone shall be no greater than seven thousand (7,000) square feet in size;

18. Drive-throughs associated with a permitted use in the B-2 zone provided that such do not include drive-throughs on any lot adjacent to any residential use or zone. For purposes of this section, only, "adjacent to" shall include uses across a street if within 100 feet of the subject lot boundary;

~~19. Drive-throughs associated with a permitted use in the B-2b zone, when accessory to a principal use located on the same lot, provided that such do not include drive-throughs on any lot adjacent to any residential use or zone. For purposes of this section, only, "adjacent to" shall include uses across a street if within 100 feet of the subject lot boundary.~~

19~~20.~~ Registered medical marijuana dispensaries.

...

Sec. 14-183. Conditional uses.

The following uses are permitted in the B-2,B-2b and B-2c zone, as provided in section 14-474 (conditional uses), if they meet the following requirements:

(a) *Business.* Any of the following conditional uses, provided that, notwithstanding section 14-474(a)of

this article or any other provision of this code, the Planning Board shall be substituted for the board of appeals as the reviewing authority over conditional business uses:

1. Major and minor auto service stations in the B-2 zone, only;

2. Major or minor auto service stations in the B-2b zone in existence as of November 15, 1999;

3. Car washes;

4. Drive-throughs in the B-2 ~~or B-2b~~ zone~~s~~ which are adjacent to any residential use or zone~~, provided that, in the B-2b drive-throughs must be accessory to a principal use located on the same site~~;

5. Automobile dealerships.

...

Sec. 14-185. Dimensional requirements.

In addition to the provisions of division 25 (space and bulk regulations and exceptions) of this article, lots in the B-2, B-2b, and B-2c zones shall meet the following dimensional requirements:

Minimum Lot Size	None
Minimum Street Frontage	~~**25 ft.**~~ **20 ft.**
Front Yard Setback Minimum	None
Rear Yard Setback Minimum	10 feet, except as provided for below: a. 5 feet for accessory structures
Side Yard Setback Minimum	None required, except as provided for below: a. 5 feet for accessory structures
Side Yard on Side Street Setback Minimum	None
Front Yard Maximum[1]	No more than 10 feet, except that the Planning Board or Planning Authority may approve a different amount for irregularly shaped lots or lots with frontage less than 40 feet provided this standard is met to the maximum extent practicable.[2]

Structure Stepbacks	**-Portions of a structure above 35 ft shall be no closer than 5 ft from the side property line and no closer than 15 feet from the rear property line when such property line abuts a residential zone.**
Height Maximum	45 feet except as provided for below:
	a. 50 feet if first floor is partially or wholly occupied by a commercial use.
	b. 65 feet in B-2 and B-2c zones on lots >5 acres provided that all setbacks, except for front yard setbacks and side yard on side street setbacks, increase by 1 foot for each foot of height over 45 feet.
	c. 65 feet within 65 feet of Franklin St.
Maximum Impervious Surface Ratio	a. For residential uses: None
	b. For all other permitted uses: 80% in B-2 and B-2c
	c. For all other permitted uses: 90% in B-2b
Minimum Lot Area per Dwelling Unit	Off-peninsula locations, as defined in section 14-47: 1,500 square feet, except as provided for in (b) below.
	On-peninsula locations (as per 14-47) and projects with active street frontages, as defined in section 14-188, below: 435 square feet.

1[1] Building additions do not have ta meet this section.
1[2] If lot has less than 40 feet of frontage and is more than 100 feet deep then no maximum setback is required. If existing structures are within 20 feet of the street or meet the front yard maximum, and remainder of lot has less than 40 feet of frontage, then no maximum setback is required. Where setbacks exceed 10 feet, a cantinuous, attractive, and pedestrian-scaled edge treatment shall be constructed along the street, consisting of street trees spaced at no more than 15 feet on center, approved by City arborist, and a combinations of landscaping no less than 4 feet deep, ornamental brick or stone walls or ornamental fencing.

Order 96-14/15
~~Tab 22 11-3-14~~
Tab 13 11-17-14

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

CITY OF PORTLAND
IN THE CITY COUNCIL

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

AMENDMENT TO PORTLAND CITY CODE
CHAPTER 14. LAND USE
Re: Changes to Business B-1 and Community Business B-2 Zones

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

That Chapter 14, Article III, Divisions 9 and 10, Sections 14-161, 14-162, 14-163, 14-165, 14-182, 14-183 and 14-185 of the Portland City Code are hereby amended to read as follows:

DIVISION 9. B-1 AND B-1b NEIGHBORHOOD BUSINESS ZONES

Sec. 14-161. Purpose.

(a) *B-1 Neighborhood Business Zone*

The purpose of the B-1 neighborhood business zone is to provide limited areas for the location of small-scale commercial establishments intended to serve a local market. As a result, uses shall be complimentary, quiet and generally do not disturb the comfort and enjoyment of the adjoining neighborhood environment. Uses shall be designed for the pedestrian scale and will provide convenient access for nearby residents and workers to walk in to purchase goods and services. Buildings and uses shall be designed with attractive storefronts or similar features, with windows and doors convenient to a public sidewalk. Building additions are encouraged but not required to meet the maximum setbacks of 14-165(c)(3). This zone shall encourage mixed use buildings such as commercial first floor with residential uses above or combined retail/office uses in a multistory structure. The zone also provides the opportunity for mixed use and high residential density in on-peninsula locations.

Suitable locations for this zone may include street intersections and arterial streets with existing or proposed traditional neighborhood retail and service uses.

(b) *B-1b Neighborhood Business Zone*

The purpose of the B-1b neighborhood business zone is to provide appropriate opportunities for the establishment of small-scale ground floor commercial uses to serve ~~in existing buildings, serving~~ a local market, while preserving residential uses and character above the ground floor of structures. The zone also provides the opportunity for mixed use and high residential density in on-peninsula locations. Building additions are encouraged but not required to meet the maximum setbacks of 14-165(c)(3).

Suitable locations for this zone may include street intersections, arterial streets, and sites with existing or traditional neighborhood retail and service uses.

Sec. 14-162. Permitted uses.

(a) The following uses are permitted in the B-1 zone and on the ground floor level of buildings in the B-1b zone. For permitted uses in the upper stories of buildings in the B-1b zone, refer to subsection (5) below: in existence on November 15, 1993:

1. *Residential*

   a. Any residential use permitted in the residential zone abutting the lot is permitted. If there is no abutting residential zone, any residential use permitted in the nearest residential zone to the lot is permitted. In the case of two (2) or more abutting residential zones, any residential use permitted in the most restrictive such zone is permitted.

   b. In any structure with commercial use on the first floor, multifamily dwellings are permitted above the first floor.

   c. Combined living/working spaces including, but not limited to, artist residences with studio space.

2. *Business:* Business uses listed below are permitted, provided that such use which generates in excess of a ratio of 100 peak hour vehicle trips per 2000 sq.ft.

of space, and generates in excess of 100 peak hour vehicle trips is prohibited. As set forth in the City of Portland Technical Manual, section I, the city traffic engineer shall require a traffic study when it calculates the proposed use will generate in excess of a total of 50 peak hour vehicle trips.

a. Professional, business, and general offices ~~Professional offices, as defined in section 14-47~~, but excluding veterinarians.

b. Business services, as defined in section 14-47, but excluding beverage container redemption centers.

c. Personal services, as defined in section 14-47.

d. Offices of building tradesmen, provided there is no exterior storage of building materials.

e. Retail establishments, provided such do not include drive-through sales or services and do not operate between the hours of eleven (11) p.m. and six (6) a.m. and do not accept deliveries or services between the hours of ten (10) p.m. to seven (7) a.m.

f. Beverage dealers (as defined in 32 M.R.S.A. 1862) provided they meet the following requirements:

   i. Maximum total floor area for beverage container redemptions, including the storage of spent beverage containers, shall be no greater than five hundred (500) sq. ft. or ten (10) percent of the total floor area of the facility, whichever is less;

   ii. Beverage container redemption is an accessory use to a principal retail use that includes beverage sales. Local beverage container redemption centers as defined in 32 M.R.S.A. 1867, as may be amended, are not allowed as a principal use.

   iii. Storage of all beverage containers shall be contained entirely within the building providing retail sales.

g. Studios for artists, photographers and craftspeople including but not limited to, painters, sculptors, dancers, graphic artists and musicians.

h. Restaurants are permitted in the B-1 zone and on the ground floor level of buildings in the B-1b zone provided they meet the following additional requirements in addition to the vehicle trips standards of in Sec. 14-162.a.2:

a. As set forth in the City of Portland Technical Manual, section I, the city traffic engineer shall require a traffic study when it calculates the proposed use will generate in excess of a total of 50 peak hour vehicle trips.

b. Maximum total floor area for use of the public shall be two thousand (2,000) square feet.

c. The hours of operation shall be limited to between 6:00 a.m. and 11:00 p.m. each day.

d. Food service and consumption are the primary function of the restaurant.

e. There shall be no drive-through service.

3. *Institutional*:

...

Sec. 14-163. Conditional uses.

(a) ~~The following uses are permitted in the B-1 zone and on the ground floor level of buildings in the B-1b zone, as provided in section 14-474 (conditional uses), if they meet the following requirements provided that such use which generates in excess of a ratio of 100 peak hour vehicle trips per 2000 sq. ft. of space, and generates in excess of 100 peak hour vehicle trips is prohibited. As set forth in the City of Portland Technical Manual, section I, the city traffic engineer shall require a traffic study when it calculates the proposed use will~~

~~generate in excess of a total of 50 peak hour vehicle trips:~~

~~1. Restaurants, provided they meet the following requirements:~~

~~a. Maximum total floor area for use of the public shall be one thousand (1,000) square feet;~~

~~b. The hours of operation shall be limited to between 6:00 a.m. and 11:00 p.m. each day;~~

~~c. Food service and consumption are the primary function of the restaurant; and~~

~~d. There shall be no drive-through service.~~

~~(b)~~ The following use shall be permitted only upon the issuance of a conditional use permit, subject to the provisions of section 14-474 (conditional uses) and any special provisions, standards or requirements specified below:

...

Sec. 14-165. Dimensional requirements.

In addition to the provisions of division 25 (space and bulk regulations and exceptions) of this article, residential uses in off-peninsula locations, permitted under section 14-162(a) shall meet the requirements of such abutting or nearest residential zone except ~~as noted in Sec. 14-165(h)~~ (minimum lot area per dwelling unit). Residential uses in on-peninsula locations, as defined in Section 14-47, and nonresidential uses in the B-1 and B1-b zones shall meet the following minimum requirements:

Min. Lot Size	School: 20,000 SF
	Place of Assembly: 10,000 SF
	Other Non-Res Uses: None
	Residential: None
Min. Lot Area per D.U.	On-peninsula: 435 SF
	Off-peninsula: min. lot area of nearest residential zone, except 1,000 SF for multi-family dwellings above first floor
Min. Street Frontage	20 ft.
Min. Lot Width	None
Min. Front Yard	None
Max. Front yard	10 ft., or the maximum front yard setback shall not exceed the average depth of nearest developed lots if that average depth is less than 10 ft.
Min. Rear Yard	Principal: None, except 10 ft. if abutting a residential zone.
	Accessory: None, except 5 ft. if abutting a residential zone
Min. Side Yard	Principal: None, except 5 ft. if abutting residential zone.
	Accessory: None, except 5 ft. if abutting a residential zone
Max. Side Yard on Side Street	10 ft., except that this requirement applies to only one side street in cases where a lot has more than one side street
Structure Stepbacks	Portions of a structure above 35 ft shall be no closer than 10 ft from the side property line and no closer than 15 feet from the rear property line when such property line abuts a residential zone.
Max. Structure Height[1]	Off- peninsula: 35 ft., except where abutting R-6, where max. height shall be the max. height of R-6.[2]
	On-peninsula: 45 ft. except 50 ft. along Congress Street if commercial first floor & residential upper floors.
Max. Floor Area	Total maximum first floor area for non-residential uses per structure: 10,000 SF[3]
	Total maximum floor area per retail establishment: 5,000 SF
Max. Lot Coverage	-
Open Space Ratio	-

Max. Impervious Surface	90%
1. The commercial first floor uses shall utilize at least 75 percent of the first floor frontage along Congress Street and shall have an average depth of at least 20 feet. *2. Except when B-1 properties abut an R-6A zone, the maximum height shall be 45 ft.* *3. Structures which existed prior to date of enactment of the B-1/B-1b zones are exempt.*	

~~(a) *Minimum lot size:*~~

~~1. School: Twenty thousand (20,000) square feet.~~
~~2. Places of religious assembly: Ten thousand (10,000) square feet.~~
~~3. All other nonresidential uses: None.~~
~~4. Residential uses: None.~~

~~(b) *Minimum street frontage*: Fifty (50) feet, except that if the average street frontages of all lots within two hundred (200) feet of the boundaries of the lot in question on the same side of the street and within the B-1 or B-1b zone is less than fifty (50) feet, then the minimum street frontage for the lot in question may be reduced to the average frontage of such lots.~~

~~(c) *Yard dimensions*: (Yard dimensions are required setbacks for structures from property lines and setbacks of structures from one another. No structure shall occupy the minimum yard of another structure.)~~

~~1. Maximum *front yard*:~~

~~Principal or accessory structure: The maximum front yard setback shall either be: (i) ten feet; or (ii) in cases where the average depth of the front yards of the nearest developed lots on either side of the lot in question is less than ten feet, the front yard setback of the lot in question shall not exceed such average depth. A "developed lot" means a lot on which a principal structure has been erected.~~

~~Building additions are not required to meet this maximum setback.~~

~~2. *Rear yard*:~~

~~a. Principal structures: None, except where a rear yard abuts a residential zone or first floor residential use, a minimum of twenty (20) feet is required.~~

~~b. Accessory structures (detached): None, except where the rear yard abuts a residential zone or first floor residential use, a minimum of five (5) feet is required.~~

~~3. *Side yard:*~~

~~a. Principal and accessory structures: None, except that where a side yard abuts a residential zone or a first floor residential use, a minimum of ten (10) feet is required.~~

~~b. Accessory structures (detached): None, except that where the side yard abuts a residential zone or a first floor residential use, a minimum of five (5) feet is required.~~

~~c. Side yards on side streets (corner lot): Principal or accessory structures: Ten (10) feet maximum setback, except that for any new construction on a lot abutting more than two streets, the maximum setback shall not apply beyond the two most major streets. (For purposes of this section, "major street" shall mean that street with the highest traffic volume and the greatest street width in comparison with the remaining streets). This maximum setback shall not apply to building additions.~~

~~(d) *Minimum lot width:* None.~~

~~(e) *Maximum structure height:*~~

~~1. Off-peninsula locations, as defined in Section 14-47: Thirty-five (35) feet. Where the lot abuts an R-6 residential zone, the maximum height shall be the maximum permitted height in the R-6 residential zone.~~

~~2. On-peninsula B-1 and B-1b locations, as defined in Section 14-47: Forty-five (45) feet except in the case of a building in a B-1 zone along Congress Street with commercial first floor and residential upper floors where fifty (50) feet is allowed. The commercial first floor uses shall utilize at least 75 percent of the first floor frontage along Congress Street and shall have an average depth of at least 20 feet.~~

~~(f) *Maximum impervious surface ratio:* Ninety (90) percent.~~

~~(g) *Floor area:*~~

~~1. The maximum first floor area of a single tenant building shall be no greater than five thousand (5,000) square feet.~~

~~2. The maximum first floor area of a multi-tenant building shall be no greater than ten thousand (10,000) square feet.~~

~~(h) *Minimum lot area per dwelling unit:*~~

~~1. On-peninsula locations, as defined in Section 14-47: Four hundred and thirty-five (435) square feet of land area per dwelling unit.~~

~~2. Off-peninsula locations, as defined in Section 14-47: Minimum lot area per dwelling unit requirements of the abutting or nearest residential zone shall apply. In the case of multi-family dwellings above the first floor: 1,000 square feet of land area per dwelling unit.~~

...

DIVISION 10. B-2 AND B-2b COMMUNITY BUSINESS ZONES*

...

Sec. 14-182. Permitted uses.

The following uses are permitted in the B-2, B-2b and B-2c zones except that any use involving a drive-through is

prohibited in these zones unless otherwise provided in section 14-183:

(a) *Residential*:

1. Attached single-family and two-family dwellings;

2. Multi-family dwellings;

3. Handicapped family units;

4. Combined living/working spaces including, but not limited to, artist residences with studio space; and

(b) *Business*:

1. General, business and professional offices, as defined in section 14-47;

2. Personal services, as defined in section 14-47;

3. Offices of building tradesmen;

4. Retail establishments;

5. Restaurants, except that restaurants shall close for all purposes including the service of alcohol no later than 11:00 p.m.;

6. Drinking establishments, except that drinking establishment as defined in section 14-47, and bars as defined in section 14-217.5 (a)(1), shall not be permitted in the B-2c zone;

7. Billiard parlors;

8. Mortuaries or funeral homes;

9. Miscellaneous repair services, excluding motor vehicle repair services;

10. Communication studios or broadcast and receiving facilities;

11. Health clubs and gymnasiums;

12. Veterinary hospitals, but excluding outdoor kennels;

13. Theaters and performance halls;

14. Hotels or motels of less than one hundred fifty (150) rooms;

15. Dairies in existence as of November 15, 1999;

16. Bakeries in existence as of November 15, 1999;

17. Bakeries established after November 15, 1999, provided the bakeries include retail sales within the principal structures. Bakeries in the B-2b zone shall be no greater than seven thousand (7,000) square feet in size;

18. Drive-throughs associated with a permitted use in the B-2 zone provided that such do not include drive-throughs on any lot adjacent to any residential use or zone. For purposes of this section, only, "adjacent to" shall include uses across a street if within 100 feet of the subject lot boundary;

~~19. Drive-throughs associated with a permitted use in the B-2b zone, when accessory to a principal use located on the same lot, provided that such do not include drive-throughs on any lot adjacent to any residential use or zone. For purposes of this section, only, "adjacent to" shall include uses across a street if within 100 feet of the subject lot boundary.~~

19~~20.~~ Registered medical marijuana dispensaries.

...

Sec. 14-183. Conditional uses.

The following uses are permitted in the B-2,B-2b and B-2c zone, as provided in section 14-474 (conditional uses), if they meet the following requirements:

(a) *Business*. Any of the following conditional uses, provided that, notwithstanding section 14-474(a)of

this article or any other provision of this code, the Planning Board shall be substituted for the board of appeals as the reviewing authority over conditional business uses:

1. Major and minor auto service stations in the B-2 zone, only;

2. Major or minor auto service stations in the B-2b zone in existence as of November 15, 1999;

3. Car washes;

4. Drive-throughs in the B-2 ~~or B-2b~~ zone~~s~~ which are adjacent to any residential use or zone~~, provided that, in the B-2b drive-through must be accessory to a principal use located on the same site~~;

5. Automobile dealerships.

...

Sec. 14-185. Dimensional requirements.

In addition to the provisions of division 25 (space and bulk regulations and exceptions) of this article, lots in the B-2, B-2b, and B-2c zones shall meet the following dimensional requirements:

Minimum Lot Size	None
Minimum Street Frontage	~~25 ft.~~ 20 ft.
Front Yard Setback Minimum	None
Rear Yard Setback Minimum	10 feet, except as provided for below: a. 5 feet for accessory structures
Side Yard Setback Minimum	None required, except as provided for below: a. 5 feet for accessory structures
Side Yard on Side Street Setback Minimum	None
Front Yard Maximum[1]	No more than 10 feet, except that the Planning Board or Planning Authority may approve a different amount for irregularly shaped lots or lots with frontage less than 40 feet provided this standard is met to the maximum extent practicable.[2]

Structure Stepbacks	**-Portions of a structure above 35 ft shall be no closer than 5 ft from the side property line and no closer than 15 feet from the rear property line when such property line abuts a residential zone.**
Height Maximum	45 feet except as provided for below:
	a. 50 feet if first floor is partially or wholly occupied by a commercial use.
	b. 65 feet in B-2 and B-2c zones on lots >5 acres provided that all setbacks, except for front yard setbacks and side yard on side street setbacks, increase by 1 foot for each foot of height over 45 feet.
	c. 65 feet within 65 feet of Franklin St.
Maximum Impervious Surface Ratio	a. For residential uses: None
	b. For all other permitted uses: 80% in B-2 and B-2c
	c. For all other permitted uses: 90% in B-2b
Minimum Lot Area per Dwelling Unit	Off-peninsula locations, as defined in section 14-47: 1,500 square feet, except as provided for in (b) below.
	On-peninsula locations (as per 14-47) and projects with active street frontages, as defined in section 14-188, below: 435 square feet.

1[1] Building additions do not have to meet this section.
1[2] If lot has less than 40 feet of frontage and is more than 100 feet deep then no maximum setback is required. If existing structures are within 20 feet of the street or meet the front yard maximum, and remainder of lot has less than 40 feet of frontage, then no maximum setback is required. Where setbacks exceed 10 feet, a continuous, attractive, and pedestrian-scaled edge treatment shall be constructed along the street, consisting of street trees spaced at no more than 15 feet on center, approved by City arborist, and a combinations of landscaping no less than 4 feet deep, ornamental brick or stone walls or ornamental fencing.

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

CITY OF PORTLAND
IN THE CITY COUNCIL

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

ORDER AMENDING AND EXPANDING THE BAYSIDE ECONOMIC REDEVELOPMENT PROGRAM AND BAYSIDE REDEVELOPMENT TAX INCREMENT FINANCING DISTRICT

ORDERED, that the Bayside Economic Redevelopment Program and the Bayside Tax Increment Financing District approved by City Council Order 172-12/13 is hereby expanded and amended in substantially the form as attached; and

BE IT FURTHER ORDERED, that the Acting City Manager is hereby authorized to execute whatever documents are necessary to effect the intent and purpose of this Order.

MEMORANDUM
City Council Agenda Item

TO: City Council

FROM: Alex Jaegerman, Planning Division Director

DATE: October 22, 2014

DISTRIBUTION: Mayor Michael Brennan; Sheila Hill-Christian, Acting City Manager; Danielle West-Chuhta, Corporation Counsel; Jennifer Thompson, Associate Corporation Counsel; Sonia Bean; Nancy English

SUBJECT: B-1 and B-2 Zoning Text Amendments

SPONSOR: Stuart O'Brien, Chair, Planning Board

COUNCIL MEETING DATE ACTION IS REQUESTED:
1st reading November 3, 2014 **Final Action** November 17, 2014

Can action be taken at a later date: _____ **Yes** X **No (If no why not?)** Several pending zone change requests are contingent upon the text amendments proposed.

PRESENTATION: Stuart O'Brien, Planning Board Chair, and Alex Jaegerman, Planning Division Director, 5 minute oral presentation

I. SUMMARY OF ISSUE (Agenda Description)

The Planning Board recommends text amendments to the Neighborhood Business B-1 zone and the Community Business B-2 zone. These include changes to the existing dimensional standards and permitted uses under both zoning classifications. The amendments are designed to allow the B-1 and B-2 zones better accomplish their own purposes, particularly as they relate to form and walkable, neighborhood-scaled development.

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

In the summer of this year, city staff reviewed the B-2 zone in an effort to address concerns regarding the zone's efficacy in encouraging higher-density housing. The zone is explicitly designed to encourage "moderate to high density housing in urban neighborhoods along arterials" (14-181), and the city had made prior revisions in an effort to stimulate housing development, but that development had not occurred. The review resulted in a set of text amendments, adopted in June of 2014, which increased the permitted housing density, clarified the setback requirements, and provided for lively, urban ground floor uses. Following adoption of these amendments, it became clear to staff that additional changes to the B-2 were needed in order to resolve concerns that arose from the June 2014 modifications. These changes, proposed here, include a reduction in the minimum street frontage requirement, the introduction of a setback requirement when abutting a residential zone, and the elimination of drive-throughs as a permitted or conditional use in the B-2b zone.

In the fall of this year, city staff conducted a similar review on the existing B-1 zone, after realizing that it, in much the same vein, contained street frontage, setback and other restrictions which effectively precluded it from successfully encouraging the traditional small-scale commercial and mixed-use form so prized in the city's existing neighborhood retail nodes. As with the B-2, the existing B-1 had failed to encourage the type of development the zone exists to promote; there has been very little new retail or mixed-use development in the B-1 zone. The analysis resulted in several proposed text amendments, including a reduction in the minimum street frontage requirement, a reduction in the rear and side setbacks when abutting a residential zone, the introduction of stepbacks when abutting a residential zone,

and the addition of restaurants of less than 2,000 SF, combined living/working spaces, and professional, business, and general offices as permitted uses.

III. INTENDED RESULT

As noted above, the amendments are designed to allow the B-1 and B-2 zones better accomplish their own purposes, particularly as they relate to form and walkable, neighborhood-scaled development.

IV. COUNCIL GOAL ADDRESSED

The proposed map amendment addresses the following Council goals:

Promote Housing Availability: Complete draft rewrites of the R6, R7, and B-2 portions of the zoning ordinance to allow for greater housing opportunities and present to Planning Board and Housing and Community Development Committee for review and recommendations to City Council.

Economic Development: Promote economic development in the City in a manner that provides for increased property values, diversification across industry sectors, and high paying jobs.

V. FINANCIAL IMPACT

The amendments should foster the type of commercial and mixed-use development that successfully serves neighborhoods in the city.

VI. STAFF ANALYSIS

The review found the proposed text amendments consistent with the Comprehensive Plan.

VII. RECOMMENDATION

On October 14, 2014, the Planning Board voted 5-0 (Soley and Dundon absent) that the proposed text amendments to Division 9. B-1 and B-1b Neighborhood Business Zones and Division 10. B-2 and B-2b Community Business Zones are consistent with the Comprehensive Plan and recommended adoption of the proposed amendment to the City Council.

VIII. ATTACHMENTS

1. Order
2. Planning Board Report to City Council (to be forwarded under separate cover)

Prepared by:

_____	October 21, 2014
Signature	Date

CITY COUNCIL REPORT
from
PLANNING BOARD
PORTLAND, MAINE

B-1 AND B-2 ZONING TEXT AMENDMENTS
CITY OF PORTLAND, APPLICANT

Submitted to: Portland City Council First Reading: November 3, 2014 Second Reading: November 17, 2014	Prepared by: Portland Planning Board Date: October 22, 2014

I. INTRODUCTION

On October 14, 2014, the Planning Board voted unanimously (5-0, Dundon and Soley absent) to recommend text amendments to the B-1 and B-2 zones to the City Council. The text amendments are designed to bring the provisions of each of the zones more into line with their purpose statements, and include changes to the dimensional standards and permitted uses. Legal notice for the November 17 City Council hearing will be posted in the *Portland Press Herald* on November 3 and November 10. Notices will be sent to the interested citizen list and posted on the city's web page.

II. BACKGROUND

The B-1 and B-2 zones play a critical role in governing the form and function of much of the commercial and mixed-use development in the city. The Neighborhood Business B-1 applies to many of Portland's most successful small-scale, local commercial and mixed-use nodes, from Congress Street in Munjoy Hill and Pine Street in the West End to Rosemont and Stevens Avenue in Deering Center. The B-2 provides locations for larger scale commercial and residential development along the city's major arterials, such as Washington Avenue, Forest Avenue, and outer Congress Street. Many of the city's existing shopping centers, including Northgate, Westgate, and Hannaford's, lie in the B-2 zone.

In the summer of this year, Planning Division staff reviewed the B-2 zone in an effort to address concerns regarding the zone's efficacy in encouraging higher-density housing. The zone is explicitly designed to encourage "moderate to high density housing in urban neighborhoods along arterials" (14-181), and the city had made prior revisions in an effort to stimulate housing development, but that development had not occurred. The review resulted in a set of text amendments, adopted in June of 2014, which increased the permitted housing density, clarified the setback requirements, and provided for lively, urban ground floor uses. In the time since this review, it became clear to staff that minor but substantive text amendments to the B-2 were needed in order to resolve some outstanding concerns with the B-2 zone.

In the fall of this year, city staff conducted a similar review on the existing B-1 zone, after realizing that it, in much the same vein, contained street frontage, setback and other restrictions which effectively precluded it from successfully encouraging the traditional small-scale commercial and mixed-use form so prized in the city's existing neighborhood retail nodes. The purpose of the B-1 zone, as stated in the code, is to

> "provide limited areas for the location of small-scale commercial establishments intended to serve a local market. As a result, uses shall be complementary, quiet and generally do not disturb the comfort and enjoyment of the adjoining neighborhood environment. Uses shall be designed for

the pedestrian scale and will provide convenient access for nearby residents and workers to walk in to purchase goods and services. Buildings and uses shall be designed with attractive storefronts or similar features, with windows and doors convenient to a public sidewalk" (14-161).

As with the B-2, the existing B-1 had failed to encourage the type of development the zone exists to promote; there has been very little new retail or mixed-use development in the B-1 zone. The analysis resulted in several proposed text amendments, including changes to the dimensional requirements and use tables.

III. PROPOSED TEXT AMENDMENTS

Text amendments are proposed for both the Neighborhood Business B-1 zone and the Community Business B-2 zone. These include changes to the existing dimensional standards and permitted uses under both zoning classifications.

B-1 Neighborhood Business Zone (Attachment 1)
Dimensional Standards.

1. *Minimum street frontage.* Under the proposed amendments, the minimum street frontage requirement would be reduced from 50 ft. to 20 ft. A smaller minimum street frontage lends itself to the fine grained, small lot development pattern that constitutes so many walkable commercial areas and so much of the city's peninsula. Most lots in the existing B-1 and B-1b zones on Congress Street in Munjoy Hill, for example, have street frontages ranging from 35 ft. to 45 ft. range. The intent of lowering this standard is to allow existing smaller lots to be used or created.

2. *Rear setback.* Currently, there is no rear setback in the B-1 zone, except the sethack is 20 ft. when abutting a residential zone or a first floor residential use. Under the proposed amendments, the rear setback would change to 10 ft. when abutting a residential zone, with no reference to abutting uses. Similarly to the principal structure setback, the existing rear setback for accessory structures is none, except when abutting a residential use or zone. The only change to this standard is the elimination of the reference to the abutting use. In both of these cases, staff felt that the adjacent zone, rather than use, should dictate the setback, as uses are subject to more frequent change.

3. *Side setbacks.* In the existing B-1 zone, there are no side setbacks, except when abutting residential uses or zones, when the setback is 10 ft. for principal structures and 5 ft. for accessory structures. Under the proposed amendments, the side setbacks would continue to be zero, except 5 ft. when abutting a residential zone. Again, the references to abutting residential uses are removed for both principal and accessory structures.

4. *Side yard on side street.* Currently, the side yard on side street setback is a maximum of 10 ft., which only applies to the property lines on the two "most major" streets in the case of a lot on two corners. Staff is recommending simplifying the existing standard to state that the maximum applies to only one side street in cases where the lot has more than one.

5. *Stepbacks.* Stepbacks are proposed as a new dimensional standard for the B-1 zone. Under the stepback provision, portions of structures above 35 ft. would be required to be stepped back an additional five feet on side and rear lot lines when those lot lines abut a residential zone. In total, then, portions of structures above 35 feet would be required to be stepped back 15 ft. from a rear property line, and 10 ft. from the side property line.

6. *Maximum floor areas.* The B-1 zone currently has maximum first floor areas, which are variable by number of tenants. The intent of this existing language is to limit the overall first floor non-residential footprint in a development. Aside from a more limited list of allowed uses, this is central to how B-1 distinguishes itself as a smaller scale commercial zone. This intent is a sound one, but modification of this language is proposed. Instead of controlling for floor area by number of tenants in a building, the amendments suggest simply limiting total maximum first floor area for non-residential uses to 10,000 SF per structure. Existing structures would be exempt from this standard. In addition, the modified

language would limit the total maximum floor area per retail establishment to 5,000 SF. It should be noted that floor area for a use does not include bulk storage, kitchen areas, or vent shafts. Much of the successful existing retail in the B-1 zone, including the Hilltop Superette (former Colucci's) and Hilltop Coffee on Congress Street, Pat's Meat Market on Stevens Avenue, and Rosemont Market on Brighton Avenue, is between 2,000 and 4,000 SF in first floor area. A typical Home Depot is about 125,000 SF, and supermarkets are often in the 40,000 to 80,000 SF range. The intent of this standard is not to imply that there is not economic or aesthetic value in or need for larger commercial spaces, but only to cultivate increments of smaller non-residential development in areas where this seems most in keeping with the neighborhood context.

7. *Maximum structure height.* Where a B-1 zone abuts an R-6 zone off-peninsula, the maximum height is governed by the maximum height of the R-6, which is 45 feet. Staff has recently recommended that the City Council increase the building height in the R-6A to 65 feet. Deeming this too high for the B-1 zone, staff suggests adding a footnote which creates an exception from the cross-reference to the R-6 in the case of an adjacent R-6A zone. The footnote establishes a maximum height in this instance of 45 ft. (or the maximum allowable height of the R-6 zone).

Restaurants. Currently, restaurants are limited to 1,000 SF (not including kitchen and storage), and are allowed as a conditional use only. Under the proposed amendments, the maximum floor area for a restaurant would be increased to 2,000 SF and restaurants would be listed as a permitted use, though the conditional use criteria, such as traffic standards and limited hours of operation, would continue to apply. The intent of this change is consistent with the other B-1 changes that strive to give that zone more utility while still maintaining it as a small-scale commercial zone. According to city assessing data, there is currently no Munjoy Hill restaurant that exceeds this square footage. For example, the Blue Spoon on Congress Street has a floor area of approximately 1,100 SF (inclusive of kitchen and other non-dining areas) and the Front Room has a floor area of approximately 1,600 SF (inclusive of kitchen and non-dining areas). Other restaurants on Washington Avenue and at the base of Congress Street were sampled, as well. This new maximum would not preclude many of the city's existing local restaurants and is a suitable cap for what the B-1 zone is intended for.

Uses. Two uses are proposed to be added because it has been recently pointed out they are not included in B-1, and warrant inclusion:

1. Combined living/working spaces including, but not limited to, artist residences with studio space. The code allows living and working, but not simultaneously when in a B-1 zone. Other business and industrial zones allow this.

2. Professional, business, and general offices, excluding veterinarians. The B-1 zone currently allows professional offices, excluding veterinarians. Professional office is defined as "the office of a doctor, dentist, optometrist, psychologist, accountant, lawyer, architect, engineer or similar professional" (14-47). Professional office is highly restrictive as an office category; the B-1 can accommodate other varieties of office uses.

Format. Lastly, the dimensional standards have been converted to a table format, making them more concise and accessible. This is consistent with formatting changes made to other sections of the land use code as they have been amended.

B-2, Community Business Zone (Attachment 2)

Drive-throughs in the B-2b zone. Drive-throughs associated with a permitted use are currently allowed in the B-2b zone, so long as they are not located adjacent to a residential use or zone. In this case, they are permitted conditionally. Drive-throughs, however, are generally deemed incompatible with the purpose of the zone, as the zone is "intended to provide neighborhood and community retail, business and service establishments that are oriented to and built close to the street" and since the B-2b is written for areas "which exhibit a pedestrian scale and character." 14-181(b)). Under the proposed amendments, the references to drive-throughs as permitted or conditional uses in the B-2b would be eliminated.

Minimum street frontage. 20 ft. is being proposed as the minimum street frontage; 25 ft. is the current minimum frontage. Prior to the June amendments, the frontage requirement was 0 ft. for developments that were entirely residential, and 50 ft. for mixed-use or entirely non-residential sites. In an effort to streamline the dimensional requirements, to move away from neighboring use-based dimensional standards, and to allow for smaller lots to be created and/or built upon, a single standard of 25 ft.was adopted. In the intervening time, staff has received feedback from property owners in the B-2 zone with frontage just under 25 ft. On closer examination, this case is sufficiently common to merit a modification to this standard.

Stepbacks. Stepbacks are proposed as a new dimensional standard for the B-2 zone. As in the B-1, portions of structures above 35 ft. would be required to be stepped back an additional five feet on side and rear lot lines when those lot lines abut a residential zone, for a total distance of 15 feet from the rear property line and 5 feet from side property lines above 35 feet.

IV. COMPREHENSIVE PLAN

The proposed text amendments have been designed to allow the B-1 and B-2 zones better accomplish their own purposes, particularly as they relate to form and walkable, neighborhood-scaled development. In this, the amendments comport with the city's Comprehensive Plan.

The Comprehensive Plan, adopted in November 2002, updated in 2005, provides a policy framework for managing growth in the city, and clearly advocates dense commercial and mixed-use development that both serves and suits the neighborhood context. *Housing: Sustaining Portland's Future* includes policies to "[m]aintain and enhance the livability of Portland's neighborhoods as the city grows and evolves through careful land use regulation, design and public participation that respects neighborhood integrity" and "encourage sustainable development patterns and opportunities within the city by promoting efficient land use, conservation of natural resources, and easy access to public transportation, services, and public amenities." In order to do so, the plan suggests "encourag[ing] increased residential densities and mixed uses within bnsiness zones" and "promot[ing] through city policies a mix of housing types, retail and service businesses, community services, and open space/recreation opportunities of appropriate size, scale, and type within neighborhoods."

Similarly, the final *Sustainable Portland* report includes policies such as "support[ing] and enhanc[ing] a citywide system of neighborhood business districts that are neighborhood-oriented, provide local services within a walkable distance from neighborhood population centers, and are linked by transit."

V. PUBLIC COMMENT

Planning Division staff received no public comment on the proposed text amendments.

Table 1: B-1 and B-2 Zones, Proposed Amendments

	Existing B-1/B-1b	Proposed B-1/B-1b	Existing B-2/B-2b/B-2c	Proposed B-2/B-2b/B-2c
Min. Lot Size	School: 20,000 SF	School: 20,000 SF	None	None
	Place of Assembly: 10,000 SF	Place of Assembly: 10,000 SF		
	Other Non-Res Uses: None	Other Non-Res Uses: None		
	Residential: None	Residential: None		
Min. Lot Area per D.U.	On-peninsula: 435 SF	On-peninsula: 435 SF	On-peninsula: 435 SF	On-peninsula: 435 SF
	Off-peninsula: min. lot area of nearest residential zone, except 1,000 SF for multi-family	Off-peninsula: min. lot area of nearest residential zone, except 1,000 SF for multi-family	Off-peninsula: 1,500 SF, or 435 SF if active street frontage	Off-peninsula: 1,500 SF, or 435 SF if active street frontage

	dwellings above first floor	dwellings above first floor		
Min. Street Frontage	50 ft., or the average of lots w/in 200 ft. in same zone	20 ft.	25 ft.	20 ft.
Min. Lot Width	None	None	None	None
Min. Front Yard	None	None	None	None
Max. Front yard	10 ft., or the maximum front yard setback shall not exceed the average depth of nearest developed lots if that average depth is less than 10 ft.	10 ft., or the maximum front yard setback shall not exceed the average depth of nearest developed lots if that average depth is less than 10 ft.	10 ft., except a different amount may be approved for irregularly shaped lots or lots with frontage less than 40 ft.	10 ft., except a different amount may be approved for irregularly shaped lots or lots with frontage less than 40 ft.
Min. Rear Yard	Principal: None, except 20 ft. if abutting residential zone or first floor residential use	Principal: None, except 10 ft. if abutting a residential zone.	Principal: 10 ft.	Principal: 10 ft.
	Accessory: None, except 5 ft. if abutting a residential zone or first floor residential use	Accessory: None, except 5 ft. if abutting a residential zone	Accessory: 5 ft.	Accessory: 5 ft.
Min. Side Yard	Principal: None, except 10 ft. if abutting residential zone or first floor residential use	Principal: None, except 5 ft. if abutting residential zone.	Principal: None	Principal: None
	Accessory: None, except 5 ft. if abutting a residential zone or first floor residential use	Accessory: None, except 5 ft. if abutting a residential zone	Accessory: 5 ft.	Accessory: 5 ft.
Side Yard on Side Street	10 ft. maximum setback (if on three streets, only applies to two 'most major' streets)	10 ft. maximum setback (applies to only one side street in cases of more than one)	None	None
Structure Stepbacks		Portions of a structure above 35 ft. shall be no closer than 10 ft. from the side property line and no closer than 15 ft. from the rear property line when such property line abuts a residential zone.		Portions of a structure above 35 ft. shall be no closer than 5 ft. from the side property line and no closer than 15 ft. from the rear property line when such property line abuts a residential zone.
Max. Structure Height[1]	Off- peninsula: 35 ft., except where abutting R-6, where max. height shall be the max. height of R-6	Off- peninsula: 35 ft., except where abutting R-6, where max. height shall be the max. height of R-6.[2]	45 ft., except: a. 50 feet if first floor is commercial use b. 65 feet in B-2 and B-2c zones on lots >5 acres with increases to setbacks c. 65 ft. within 65 ft. of Franklin	45 ft., except: a. 50 feet if first floor is commercial use b. 65 feet in B-2 and B-2c zones on lots >5 acres with increases to setbacks c. 65 ft. within 65 ft. of Franklin
	On-peninsula: 45 ft., except 50 ft. along Congress Street if commercial first floor & residential upper floors	On-peninsula: 45 ft., except 50 ft. along Congress Street if commercial first floor & residential upper floors.		
Max. Floor Area	Single-tenant: 5,000 SF (first floor only)	Total maximum first floor area for non-residential uses per structure: 10,000 SF[3]		
	Multi-tenant: 10,000 SF (first floor only)	Total maximum floor area per retail establishment: 5,000 SF		
Max. Impervious Surface	90%	90%	Residential: None	Residential: None
			Other uses in B-2, B-2c: 80%	Other uses in B-2, B-2c: 80%
			Other uses in B-2b: 90%	Other uses in B-2b: 90%

1. *The commercial first floor uses shall utilize at least 75 percent of the first floor frontage along Congress Street and shall have an average depth of at least 20 feet.*
2. *Except when B-1 properties abut an R-6A zone, the maximum height shall be 45 ft.*
3. *Structures which existed prior to date of enactment of the B-1/B-1b zones are exempt.*

VI. PLANNING BOARD RECOMMENDATION

The Planning Board considered the proposed text amendments at a hearing on October 14, 2014. After a brief discussion of the street frontage and setback changes, there was generally widespread support for the proposed amendments. The Planning Board voted unanimously (5-0, Dundon and Soley absent) as follows:

> On the basis of the material provided in this report, public testimony, a review of applicable policies, and other information, the Planning Board finds that the proposed text amendments to Division 9. B-1 and B-1b Neighborhood Business Zones and Division 10. B-2 and B-2b Community Business Zones are consistent with the Comprehensive Plan and recommends adoption of the proposed amendment to the City Council.

VII. ATTACHMENTS

1. Proposed Text Amendments to Portland Land Use Code, Div. 9. B-1 and B-1b Neighborhood Business Zones
2. Proposed Text Amendments to Portland Land Use Code, Div. 10. B-2 and B-2b Community Business Zone.

DIVISION 9. B-1 AND B-1b NEIGHBORHOOD BUSINESS ZONES*

***Editor's note**--Ord. No. 292-88, adopted Apr. 4, 1988, with an effective date of July 1, 1988, repealed §§ 14-161--14-167 of Div. 9, B-1 Business Zone, of this article and enacted in lieu thereof similar new provisions as set out in §§ 14-161--14-167. Formerly, such sections derived from §§ 602.8.A--602.8.G of the city's 1968 Code and from Ord. No. 74-72, adopted Mar. 6, 1972, and Ord. No. 499-74, § 4, adopted Aug. 19, 1974.

Sec. 14-161. Purpose.

(a) *B-1 Neighborhood Business Zone*

The purpose of the B-1 neighborhood business zone is to provide limited areas for the location of small-scale commercial establishments intended to serve a local market. As a result, uses shall be complimentary, quiet and generally do not disturb the comfort and enjoyment of the adjoining neighborhood environment. Uses shall be designed for the pedestrian scale and will provide convenient access for nearby residents and workers to walk in to purchase goods and services. Buildings and uses shall be designed with attractive storefronts or similar features, with windows and doors convenient to a public sidewalk. Building additions are encouraged but not required to meet the maximum setbacks of 14-165(c)(3). This zone shall encourage mixed use buildings such as commercial first floor with residential uses above or combined retail/office uses in a multistory structure. The zone also provides the opportunity for mixed use and high residential density in on-peninsula locations.

Suitable locations for this zone may include street intersections and arterial streets with existing or proposed traditional neighborhood retail and service uses.

(b) *B-1b Neighborhood Business Zone*

The purpose of the B-1b neighborhood business zone is to provide appropriate opportunities for the establishment of small-scale ground floor commercial uses to serve ~~in existing buildings,~~ ~~serving~~ a local market, while preserving residential uses and character above the ground floor of structures. The zone also provides the opportunity for mixed use and high residential density in on-peninsula locations. Building additions are encouraged but not required to meet the maximum setbacks of 14-165(c)(3).

Suitable locations for this zone may include street intersections, arterial streets, and sites with existing or traditional neighborhood retail and service uses.
(Ord. No. 292-88, 4-4-88; Ord. No. 133-93, § 1, 11-15-93; Ord. No. 94-99, 11-15-99; Ord. No. 281-10/11, 7-18-11)

Sec. 14-162. Permitted uses.

(a) The following uses are permitted in the B-1 zone and on the ground floor level of buildings in the B-1b zone. For permitted uses in the upper stories of buildings in the B-1b zone, refer to subsection (5) below: in existence on November 15, 1993:

1. *Residential*

   a. Any residential use permitted in the residential zone abutting the lot is permitted. If there is no abutting residential zone, any residential use permitted in the nearest residential zone to the lot is permitted. In the case of two (2) or more abutting residential zones, any residential use permitted in the most restrictive such zone is permitted.

   b. In any structure with commercial use on the first floor, multifamily dwellings are permitted above the first floor.

   c. Combined living/working spaces including, but not limited to, artist residences with studio space.

2. *Business:* Business uses listed below are permitted, provided that such use which generates in excess of a ratio of 100 peak hour vehicle trips per 2000 sq.ft. of space, and generates in excess of 100 peak hour vehicle trips is prohibited. As set forth in the City of Portland Technical Manual, section I, the city traffic engineer shall require a traffic study when it calculates the proposed use will generate in excess of a total of 50 peak hour vehicle trips.

   a. Professional, business, and general offices ~~Professional offices, as defined in section 14-~~

~~47~~, but excluding veterinarians.

b. Business services, as defined in section 14-47, but excluding beverage container redemption centers.

c. Personal services, as defined in section 14-47.

d. Offices of building tradesmen, provided there is no exterior storage of building materials.

e. Retail establishments, provided such do not include drive-through sales or services and do not operate between the hours of eleven (11) p.m. and six (6) a.m. and do not accept deliveries or services between the hours of ten (10) p.m. to seven (7) a.m.

f. Beverage dealers (as defined in 32 M.R.S.A. 1862) provided they meet the following requirements:

i. Maximum total floor area for beverage container redemptions, including the storage of spent beverage containers, shall be no greater than five hundred (500) sq. ft. or ten (10) percent of the total floor area of the facility, whichever is less;

ii. Beverage container redemption is an accessory use to a principal retail use that includes beverage sales. Local beverage container redemption centers as defined in 32 M.R.S.A. 1867, as may be amended, are not allowed as a principal use.

iii. Storage of all beverage containers shall be contained entirely within the building providing retail sales.

g. Studios for artists, photographers and craftspeople including but not limited to, painters, sculptors, dancers, graphic artists and musicians.

h. Restaurants are permitted in the B-1 zone and on

the ground floor level of buildings in the B-1b zone provided they meet the following additional requirements in addition to the vehicle trips standards of in Sec. 14-162.a.2:

a. As set forth in the City of Portland Technical Manual, section I, the city traffic engineer shall require a traffic study when it calculates the proposed use will generate in excess of a total of 50 peak hour vehicle trips.

b. Maximum total floor area for use of the public shall be two thousand (2,000) square feet.

c. The hours of operation shall be limited to between 6:00 a.m. and 11:00 p.m. each day.

d. Food service and consumption are the primary function of the restaurant.

e. There shall be no drive-through service.

3. *Institutional*:

a. Places of religious assembly;

b. Municipal offices;

c. Elementary, middle and secondary schools;

d. Nursery schools and kindergarten;

e. Clinics of less than three thousand (3,000) square feet of total floor space.

4. *Other*:

a. Lodging houses;

b. Utility substations, as defined in section 14-47, subject to the standards of article V (site plan), sections 14-522 and 14-523

notwithstanding;

c. Day care facilities or babysitting services;

d. Accessory uses as provided in section 14-404;

e. Bed and breakfast, subject to the standards of article V (site plan), sections 14-522 and 14-523 notwithstanding.

f. Hostels, provided the applicant submits a site plan and operations plan demonstrating compliance with the following conditions:

i. No more than twenty (20) overnight transient guests shall be permitted in the facility at any one time.

ii. All applicable provisions of Article V of this chapter shall be met.

iii. Parking shall be provided in compliance with Division 20 of this Article.

iv. No unaccompanied minors under the age of eighteen (18) shall be permitted in the facility.

v. The length of stay for transient guests shall not exceed fifteen (15) days out of any sixty-day period.

vi. The building shall meet the applicable occupant load requirements as defined by the International Building Code and the NFPA Life Safety Code, as such codes are amended or adopted by the city.

g. Neighborhood center.

5. Uses permitted above the ground floor level of buildings in the B-1b zone:

a. Any residential use set forth in section 14-162(a);

b. Bed and breakfast, subject to the standards of article V (site plan), sections 14-522 and 14-523 notwithstanding.

c. Hostels, provided the applicant submits a site plan and operations plan demonstrating compliance with the following conditions:

i. No more than twenty (20) overnight transient guests shall be permitted in the facility at any one time.

ii. All applicable provisions of Article V of this chapter shall be met.

iii. Parking shall be provided in compliance with Division 20 of this Article.

iv. No unaccompanied minors under the age of eighteen (18) shall be permitted in the facility.

v. The length of stay for transient guests shall not exceed fifteen (15) days out of any sixty-day period.

vi. The building shall meet the applicable occupant load requirements as defined by the International Building Code and the NFPA Life Safety Code, as such codes are amended or adopted by the city.

6. Wind energy systems, as defined and allowed in Article X, Alternative Energy.

(Ord. No. 292-88, 4-4-88; Ord. No. 133-93, § 2, 11-15-93; Ord. No. 125-97, § 5, 3-3-97; Ord. No. 94-99, 11-15-99; Ord. No.74-06/07, 12-4-06; Ord. No. 127-09/10, 1-4-10 emergency passage; Ord. No. 278-09/10, 7-19-10, Ord. 10 10/11, 8-2-10; Ord. No. 279-09/10, 6-6-11; Ord. No. 33-11/12, 1-18-12; Ord. No. 162-12/13, 4-1-13)

***Editor's Note-** Pursuant to Ord. No. 74-06/07, enacted on 12-4-06 changes made in (2) *Business* are effective October 16, 2006.

Sec. 14-163. Conditional uses.

~~(a) The following uses are permitted in the B-1 zone and on the ground floor level of buildings in the B-1b zone, as provided in section 14-474 (conditional uses), if they meet the following requirements provided that such use which generates in excess of a ratio of 100 peak hour vehicle trips per 2000 sq. ft. of space, and generates in excess of 100 peak hour vehicle trips is prohibited. As set forth in the City of Portland Technical Manual, section I, the city traffic engineer shall require a traffic study when it calculates the proposed use will generate in excess of a total of 50 peak hour vehicle trips:~~

~~1. Restaurants, provided they meet the following requirements:~~

~~a. Maximum total floor area for use of the public shall be one thousand (1,000) square feet;~~

~~b. The hours of operation shall be limited to between 6:00 a.m. and 11:00 p.m. each day;~~

~~c. Food service and consumption are the primary function of the restaurant; and~~

~~d. There shall be no drive-through service.~~

(a) ~~(b)~~ The following use shall be permitted only upon the issuance of a conditional use permit, subject to the provisions of section 14-474 (conditional uses) and any special provisions, standards or requirements specified below:

1. Temporary wind anemometer towers, as defined in sec. 14-47, are permitted provided the following standards are met in addition to sec. 14-430:

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

   b. Towers shall be constructed according to plans

and specifications stamped by a licensed professional engineer, which shall be provided to the board of appeals with the application; and

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

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

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

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

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

h. A performance guarantee shall be required for the cost of removal of the tower, guy wires and anchors. This requirement may be satisfied by surety bond, letter of credit, escrow account or by evidence, acceptable to the City, or the financial and technical

ability and commitment of the applicant or its agents to remove the facility at the end of the use period.

2. Wind energy systems, as defined and allowed in Article X, Alternative Energy.

(Ord. No. 292-88, 4-4-88; Ord. No. 133-93, § 3, 11-15-93; Ord. No. 94-99, 11-15-99; Ord. No. 74-06/07, 12-4-06; Ord. No. 29-09/10, 8-3-09, emergency passage; Ord. No. 278-09/10, 7-19-10; Ord. No. 33-11/12, 1-18-12)

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*Editor's Note- Pursuant to Ord. No. 74-06/07, enacted on 12-4-06 changes made in (2) *Business* are effective October 16, 2006.

Sec. 14-164. Prohibited uses.

Uses not enumerated in sections 14-162 and 14-163 as either permitted or conditional uses are prohibited.
(Ord. No. 292-88, 4-4-88)

Sec. 14-165. Dimensional requirements.

In addition to the provisions of division 25 (space and bulk regulations and exceptions) of this article, residential uses in off-peninsula locations, permitted under section 14-162(a) shall meet the requirements of such abutting or nearest residential zone except ~~as noted in Sec. 14-165(h) (~~minimum lot area per dwelling unit~~)~~. Residential uses in on-peninsula locations, as defined in Section 14-47, and nonresidential uses in the B-1 and B1-b zones shall meet the following minimum requirements:

Min. Lot Size	School: 20,000 SF
	Place of Assembly: 10,000 SF
	Other Non-Res Uses: None
	Residential: None
Min. Lot Area per D.U.	On-peninsula: 435 SF
	Off-peninsula: min. lot area of nearest residential zone, except 1,000 SF for multi-family dwellings above first floor
Min. Street Frontage	20 ft.
Min. Lot Width	None
Min. Front Yard	None
Max. Front yard	10 ft., or the maximum front yard setback shall not exceed the average depth of nearest developed lots if that average depth is less than 10 ft.

Min. Rear Yard	Principal: None, except 10 ft. if abutting a residential zone.
	Accessory: None, except 5 ft. if abutting a residential zone
Min. Side Yard	Principal: None, except 5 ft. if abutting residential zone.
	Accessory: None, except 5 ft. if abutting a residential zone
Max. Side Yard on Side Street	10 ft., except that this requirement applies to only one side street in cases where a lot has more than one side street
Structure Stepbacks	Portions of a structure above 35 ft shall be no closer than 10 ft from the side property line and no closer than 15 feet from the rear property line when such property line abuts a residential zone.
Max. Structure Height[1]	Off- peninsula: 35 ft., except where abutting R-6, where max. height shall be the max. height of R-6.[2]
	On-peninsula: 45 ft. except 50 ft. along Congress Street if commercial first floor & residential upper floors.
Max. Floor Area	Total maximum first floor area for non-residential uses per structure: 10,000 SF[3]
	Total maximum floor area per retail establishment: 5,000 SF
Max. Lot Coverage	-
Open Space Ratio	-
Max. Impervious Surface	90%

1. The commercial first floor uses shall utilize at least 75 percent of the first floor frontage along Congress Street and shall have an average depth of at least 20 feet.

2. Except when B-1 properties abut an R-6A zone, the maximum height shall be 45 ft.

3. Structures which existed prior to date of enactment of the B-1/B-1b zones are exempt.

~~(a) *Minimum lot size:*~~

~~1. School: Twenty thousand (20,000) square feet.~~
~~2. Places of religious assembly: Ten thousand (10,000) square feet.~~
~~3. All other nonresidential uses: None.~~
~~4. Residential uses: None.~~

~~(b) *Minimum street frontage:* Fifty (50) feet, except that if the average street frontages of all lots within two hundred (200) feet of the boundaries of the lot in question on the same side of the street and within the B-1 or B-1b zone is less than fifty (50) feet, then the minimum street frontage for the lot in question may be reduced to the average frontage of such lots.~~

~~(c) *Yard dimensions:* (Yard dimensions are required setbacks for structures from property lines and setbacks of structures from one another. No structure shall occupy the minimum yard of another structure.)~~

~~1. Maximum *front yard:*~~

~~Principal or accessory structure: The maximum front yard setback shall either be: (i) ten feet; or (ii) in cases where the average depth of the front yards of the nearest developed lots on either side of the lot in question is less than ten feet, the front yard setback of the lot in question shall not exceed such average depth. A "developed lot" means a lot on which a principal structure has been erected.~~

~~Building additions are not required to meet this maximum setback.~~

~~2. *Rear yard:*~~

~~a. Principal structures: None, except where a rear yard abuts a residential zone or first floor residential use, a minimum of twenty (20) feet is required.~~

~~b. Accessory structures (detached): None, except where the rear yard abuts a residential zone or first floor residential use, a minimum of five (5) feet is required.~~

~~3. *Side yard:*~~

~~a. Principal and accessory structures: None, except that where a side yard abuts a residential zone or a first floor residential use, a minimum of ten (10) feet is required.~~

~~b. Accessory structures (detached): None, except that where the side yard abuts a residential zone or a first floor residential use, a minimum of five (5) feet~~

~~is required.~~

~~c. Side yards on side streets (corner lot): Principal or accessory structures: Ten (10) feet maximum setback, except that for any new construction on a lot abutting more than two streets, the maximum setback shall not apply beyond the two most major streets. (For purposes of this section, "major street" shall mean that street with the highest traffic volume and the greatest street width in comparison with the remaining streets). This maximum setback shall not apply to building additions.~~

~~(d) *Minimum lot width*: None.~~

~~(e) *Maximum structure height*:~~

~~1. Off peninsula locations, as defined in Section 14-47: Thirty-five (35) feet. Where the lot abuts an R-6 residential zone, the maximum height shall be the maximum permitted height in the R-6 residential zone.~~

~~2. On peninsula B-1 and B-1b locations, as defined in Section 14-47: Forty-five (45) feet except in the case of a building in a B-1 zone along Congress Street with commercial first floor and residential upper floors where fifty (50) feet is allowed. The commercial first floor uses shall utilize at least 75 percent of the first floor frontage along Congress Street and shall have an average depth of at least 20 feet.~~

~~(f) *Maximum impervious surface ratio*: Ninety (90) percent.~~

~~(g) *Floor area*:~~

~~1. The maximum first floor area of a single tenant building shall be no greater than five thousand (5,000) square feet.~~

~~2. The maximum first floor area of a multi-tenant~~

~~building shall be no greater than ten thousand (10,000) square feet.~~

~~(h) *Minimum lot area per dwelling unit:*~~

~~1. On peninsula locations, as defined in Section 14-47: Four hundred and thirty five (435) square feet of land area per dwelling unit.~~

~~2. Off peninsula locations, as defined in Section 14-47: Minimum lot area per dwelling unit requirements of the abutting or nearest residential zone shall apply. In the case of multi family dwellings above the first floor: 1,000 square feet of land area per dwelling unit.~~

(Ord. No. 292-88, 4-4-88; Ord. No. 52-96, § 1, 7-15-96; Ord. No. 94-99, 11-15-99; Ord. No. 281-10/11, 7-18-11; Ord. No. 118-13/14, §165 (e), 1-15-14)

Sec. 14-166. Other requirements.

All nonresidential uses in B-1 and B-1b zones shall meet the requirements of division 25(space and bulk regulations and exceptions) of this article in addition to the following requirements:

(a) *Landscaping and screening:* The site shall be suitably landscaped for parking, surrounding uses and accessory site elements, including storage and solid waste receptacles where required by article IV (subdivisions) and article V (site plan).

(b) *Curbs and sidewalks*: Curbs and sidewalks as specified in article VI of chapter 25.

(c) *Off-street parking and loading*: Off-street parking and loading are required as provided in division 20 and division 21 of this article.

(d) *Front yard parking*: There shall be no off street parking in the front yard between the street line and the required maximum setback line. Where an existing building setback exceeds the maximum front yard setback, a maximum of ten (10) percent of the total parking provided on the site may be located between the principal structure and the street.

(e) *Signs*: Signs shall be subject to the provisions of division 22 of this article.

(f) *Exterior storage*: There shall be no exterior storage with the exception of fully enclosed containers or receptacles for solid waste disposal. Such containers or receptacles shall be shown on the approved site plan. In no event shall vehicles, or truck trailers with or without wheels, be used for on-site storage. Truck load sales shall not be considered outside storage provided that such activity does not extend beyond three (3) consecutive days nor occur more frequently than three (3) times a calendar year.

(g) *Storage of vehicles*: Storage of vehicles is subject to the provisions of section 14-335.

(h) *Shoreland and flood plain management regulations*: If the lot is located in a shoreland zone or in a flood hazard zone, then the requirements of division 26 and/or division 26.5 apply.

(Ord. No. 292.88, 4-4-88; Ord. No. 94-99, 11-15-99)

Sec. 14-167. External effects.

Every use in a B-1 or B-1b zone shall be subject to the following requirements:

(a) *Enclosed structure*: The use shall be operated within a completely enclosed structure, except for those specific open air activities licensed by the City, including but not limited to outdoor seating, sidewalk sales, etc.

(b) *Noise:* The volume of sound, measured by a sound level meter with frequency weighting network (manufactured according to standards prescribed by the American Standards Association), generated shall not exceed fifty-five (55) decibels on the A scale, on impulse (less than one (1) second), at lot boundaries, excepting air raid sirens and similar warning devices.

(c) *Vibration and heat*: Vibration inherently and recurrently generated and heat shall be imperceptible

without instruments at lot boundaries.

(d) *Glare, radiation or fumes*: Glare, radiation or fumes shall not be emitted to an obnoxious or dangerous degree beyond lot boundaries.

(e) *Smoke*: Smoke shall not be emitted at a density in excess of twenty (20) percent opacity level as classified in Method 9 (Visible Emissions) of the Opacity Evaluation System of the U.S. Environmental Protection Agency.

(f) *Materials or wastes*: No materials or wastes shall be deposited on any lot in such form or manner that they are clearly visible from neighbors' properties or may be transferred beyond the lot boundaries by natural causes or forces. All solid waste disposal, including materials which might cause fumes or dust, or constitute a fire hazard if stored out-of-doors, shall be only in fully enclosed containers or receptacles. Areas attracting large numbers of birds, rodents or insects are prohibited.

(Ord. No. 292-88, 4-4-88; Ord. No. 94-99, 11-15-99)

Sec. 14-168 - Sec. 14-180 Reserved.

DIVISION 10. B-2 AND B-2b COMMUNITY BUSINESS ZONES*

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*Editor's note—Ord. No. 293-88, adopted Apr. 4, 1988, with an effective date of July 1, 1988, repealed §§ 14-181—14-187 of Div. 10, B-2 Business Zone, of this article and enacted in lieu thereof similar new provisions as set out in §§ 14-181—14-187. Formerly, such sections derived from §§ 602.9.A—602.9.G of the city's 1968 Code and from Ord. No. 74-72, adopted Mar. 6, 1972; Ord. No. 499-74, § 4, adopted Aug. 19, 1974; Ord. No. 334-76, § 6, adopted July 7, 1976; and Ord. No. 274-77, adopted May 16, 1977.

Sec. 14-181. Purpose.

(a) B-2 Community Business Zone

The purpose of the B-2 community business zone is:

1. To provide appropriate locations for the development and operation of community centers offering a mixture of commercial uses, housing and services serving the adjoining neighborhoods and the larger community.

2. The variety, sites and intensity of the permitted commercial uses in the B-2 zone are intended to be greater than those permitted in the B-1 neighborhood business zone.

3. The B-2 zone will provide a broad range of goods and services and general businesses with a mixture of large and small buildings such as grocery stores, shops and services located in major shopping centers and along arterial streets. Such establishments should be readily accessible by automobile, by pedestrians and by bicycle. Development in the B-2 zone should relate to the surrounding neighborhoods by design, orientation, and circulation patterns.

4. The B-2 and B-2b will provide locations for moderate to high density housing in urban neighborhoods along arterials.

(b) B-2b Community Business Zone

The B-2b zone is intended to provide neighborhood and community retail, business and service establishments that are oriented to and built close to the street. The B-2b zone is

appropriate in areas where a more compact urban development pattern exists such as on-peninsula or in areas off-peninsula where a neighborhood compatible commercial district is established which exhibits a pedestrian scale and character. Such locations may include the peninsula and other arterials and intersections with an existing urban or neighborhood oriented building pattern.

(c) B-2c Community Business Zone

To protect and enhance the quiet enjoyment of adjoining residential neighborhoods from the impacts of businesses that serve liquor and from other uses that are incompatible with adjoining neighborhoods due to noise.

(Ord. No. 293-88, 4-4-88; Ord. No. 25, 7-07-99: emergency enactment of 120-day moratorium, effective 7/07/99 thru 11/04/99; Ord. No. 94A, 11-01-99: emergency enactment of 44-day extension of moratorium enacted on 7-07-99, effective date 11/01/99 thru 12/15/99; Ord. No. 94-99, 11-15-99; Substitute Ord. No. 189-00, §2, 4-24-00; Ord. No. 151-03/04, 02/23/04; Ord. No. 244-09/10, 6-21-10)

***Editor's Note:** Order No. 25, adopted 7-07-99, enacted an emergency 120-day moratorium on drive-through facilities on lots in B-2 Zone adjacent to lots with residential uses effective 7-07-99 through 11-1-99; Ord. No. 94A, adopted 11-01-99 extended the moratorium on said drive-through facilities through December 15, 1999.

Sec. 14-182. Permitted uses.

The following uses are permitted in the B-2, B-2b and B-2c zones except that any use involving a drive-through is prohibited in these zones unless otherwise provided in section 14-183:

(a) *Residential*:

1. Attached single-family and two-family dwellings;

2. Multi-family dwellings;

3. Handicapped family units;

4. Combined living/working spaces including, but not limited to, artist residences with studio space; and

(b) *Business*:

1. General, business and professional offices, as defined in section 14-47;

2. Personal services, as defined in section 14-47;

3. Offices of building tradesmen;

4. Retail establishments;

5. Restaurants, except that restaurants shall close for all purposes including the service of alcohol no later than 11:00 p.m.;

6. Drinking establishments, except that drinking establishment as defined in section 14-47, and bars as defined in section 14-217.5 (a)(1), shall not be permitted in the B-2c zone;

7. Billiard parlors;

8. Mortuaries or funeral homes;

9. Miscellaneous repair services, excluding motor vehicle repair services;

10. Communication studios or broadcast and receiving facilities;

11. Health clubs and gymnasiums;

12. Veterinary hospitals, but excluding outdoor kennels;

13. Theaters and performance halls;

14. Hotels or motels of less than one hundred fifty (150) rooms;

15. Dairies in existence as of November 15, 1999;

16. Bakeries in existence as of November 15, 1999;

17. Bakeries established after November 15, 1999, provided the bakeries include retail sales within the principal structures. Bakeries in the B-2b

zone shall be no greater than seven thousand (7,000) square feet in size;

18. Drive-throughs associated with a permitted use in the B-2 zone provided that such do not include drive-throughs on any lot adjacent to any residential use or zone. For purposes of this section, only, "adjacent to" shall include uses across a street if within 100 feet of the subject lot boundary;

~~19. Drive-throughs associated with a permitted use in the B-2b zone, when accessory to a principal use located on the same lot, provided that such do not include drive-throughs on any lot adjacent to any residential use or zone. For purposes of this section, only, "adjacent to" shall include uses across a street if within 100 feet of the subject lot boundary.~~

19~~20.~~ Registered medical marijuana dispensaries.

(c) *Institutional*:

1. Long term, extended and intermediate care facility;

2. Clinics, as defined in section 14-47;

3. Places of assembly;

4. Kindergarten, elementary, middle and secondary schools;

5. College, university, trade schools; and

6. Municipal buildings and uses.

(d) *Other*:

1. Lodging houses;

2. Day care facilities or babysitting services;

3. Utility substations, as defined in section 14-47,

subject to the requirements of article V (site plan), sections 14-522 and 14-523 notwithstanding;

4. Accessory uses, as provided in section 14-404;

5. Bed and breakfast, subject to the standards of article V (site plan), sections 14-522 and 14-523 notwithstanding. A bed and breakfast may include a meeting facility if the facility meets the following standards:

   a. The meeting facility shall be limited to the following types of uses:

      i. Private parties.
      ii. Business meetings.
      iii. Weddings.
      iv. Receptions.
      v. Seminars.
      vi. Business and educational conferences.

   b. The building in which the bed and breakfast and the meeting facility will be located was in existence on March 3, 1997, and was greater than four thousand (4,000) square feet in floor area on that date.

6. Studios for artists and craftspeople, provided that the area of such studios does not exceed four thousand (4000) square feet for each studio space.

7. Hostels, provided the applicant submits a site plan and operations plan demonstrating compliance with the following conditions:

   a. All applicable provisions of Article V of this chapter shall be met.

   b. Parking shall be provided in compliance with Division 20 of this Article.

   c. No unaccompanied minors under the age of

eighteen (18) shall be permitted in the facility.

d. The length of stay for transient guests shall not exceed fifteen (15) days out of any sixty-day period.

e. The building shall meet the applicable occupant load requirements as defined by the International Building Code and the NFPA Life Safety Code, as such codes are amended or adopted by the city.

8. Wind energy systems, as defined and allowed in Article X, Alternative Energy.

(Ord. No. 293-88, 4-4-88; Ord. No. 39-96, § 2, 10-7-96; Ord. No. 125-97, § 6, 3-3-97; Ord. No. 164-97, § 2, 12-1-97; Ord. No. 25, 7-07-99: emergency enactment of 120-day moratorium, effective 7/07/99 thru 11/04/99; Ord. No. 94A, 11-01-99: emergency enactment of 44-day extension of moratorium enacted on 7-07-99, effective date 11/01/99 thru 12/15/99; Ord. No. 94-99, 11-15-99; Ord. No. 118-00, 11-20-00; Ord. No. 151-03/04, 02/23/04; Ord. No. 127-09/10, 1-4-10 emergency passage; Ord. No. 244-09/10, 6-21-10; Ord. No. 283-09/10, 7-19-10 emergency passage; Ord. 10 10/11, 8-2-10; Ord. No. 279-09/10, 6-6-11; Ord. No. 33-11/12, 1-18-12; Ord. No. 113-11/12, 2-22-12; Ord. No. 41-12/13, 9-5-12; Ord. No. 263-13/14, 6-16-14)

Sec. 14-183. Conditional uses.

The following uses are permitted in the B-2,B-2b and B-2c zone, as provided in section 14-474 (conditional uses), if they meet the following requirements:

(a) *Business*. Any of the following conditional uses, provided that, notwithstanding section 14-474(a)of this article or any other provision of this code, the Planning Board shall be substituted for the board of appeals as the reviewing authority over conditional business uses:

1. Major and minor auto service stations in the B-2 zone, only;

2. Major or minor auto service stations in the B-2b zone in existence as of November 15, 1999;

3. Car washes;

4. Drive-throughs in the B-2 ~~or B-2b~~ zone~~s~~ which are adjacent to any residential use or zone~~, provided that, in the B-2b drive-throughs must be accessory to a principal use located on the same site~~;

5. Automobile dealerships.

In addition to approval by the Planning Board with respect to the requirements of article V (site plan), sections 14-522 and 14-523 notwithstanding, these uses shall comply with the following conditions and standards in addition to the provisions of section 14-474:

a. Signs: Signs shall not adversely affect visibility at intersections or access drives. Such signs shall be constructed, installed and maintained so as to ensure the safety of the public. Such signs shall advertise only services or goods available on the premises.

b. Circulation: No ingress and egress driveways shall be located within thirty (30) feet from an intersection. No entrance or exit for vehicles shall be in such proximity to a playground, school, church, other places of public assembly, or any residential zone that the nearness poses a threat or potential danger to the safety of the public.

6. Drive-throughs, where permitted, shall also specifically comply with the following conditions:

a. Location of Drive-throughs: Features, such as windows, vacuum cleaners and menu/order boards, stacking lanes, must be placed, where practicable, to the side and rear of the principal building except where such placement will be detrimental to an adjacent residential zone or use, and shall be

located no nearer than forty (40) feet from any adjoining property located in a residential zone. This distance shall be measured from the outermost edge of the outside drive-through feature to such property line. In addition, drive-through features shall not extend nearer than twenty-five (25) feet to the street line. The site must have adequate stacking capacity for vehicles waiting to use these service features without impeding vehicular circulation or creating hazards to vehicular circulation on adjoining streets.

b. Noise: Any speakers, intercom systems, or other audible means of communication shall not play prerecorded messages. Any speakers, intercom systems, audible signals, computer prompts, or other noises generated by the drive-through services or fixtures shall not exceed 55 dB or shall be undetectable above the ambient noise level as measured by a noise meter at the property line, whichever is greater.

c. Lighting: Drive-through facilities shall be designed so that site and vehicular light sources shall not unreasonably spill over or be directed onto adjacent residential properties and shall otherwise conform to the lighting standards set forth in 14-526.

d. Screening and Enclosure: Where automobiles may queue, waiting for drive-through services, their impacts must be substantially mitigated to protect adjacent residential properties from headlight glare, exhaust fumes, noise, etc. As deemed necessary by the reviewing authority, mitigation measures shall consist of installation of solid fencing with landscaping along any residential property line which is exposed to the drive-through or the enclosure of the drive-through fixtures and lanes so as to buffer abutting

residential properties and to further contain all associated impacts; and

e. Pedestrian access: Drive-through lanes shall be designed and placed to minimize crossing principal pedestrian access-ways or otherwise impeding pedestrian access.

f. Hours of Operation: The Board, as part of its review, may take into consideration the impact hours of operation may have on adjoining uses.

g. Conditions specific to major or minor auto service stations, car washes and automobile dealerships:

i. A landscaped buffer, no less than five (5) feet wide, shall be located along street frontages (excluding driveways). The buffer shall consist of a variety of plantings in accordance with the City of Portland Technical Manual;

ii. Car washes shall be designed to avoid the tracking of residual waters into the street.

(b) *Other*:

1. Printing and publishing establishments except as provided in subsection b. below;

2. Printing and publishing establishments in continuous operation at their current location since April 4, 1988, or earlier and which exceeded ten thousand (10,000) square feet of aggregate gross floor area at that time;

3. Wholesale distribution establishments; and

4. Research and development and related production establishments.

Uses listed in this paragraph (b) (other) 1, 3

and 4 shall be limited to ten thousand (10,000) square feet of aggregate gross floor area, and uses listed in this paragraph (b) (other) 1, 2, 3 and 4 shall be subject to the following conditions and standards in addition to the provision of section 14-474:

a. Traffic circulation: The site shall have an adequate traffic circulation pattern designed to avoid hazards to vehicular circulation on adjoining streets. All stacking of motor vehicles shall be on site, and loading facilities shall be located to the rear of the building and shall not be visible from the street.

b. Building and site design: The exterior design of the structures, including architectural style, facade materials, roof pitch, building form, established setbacks and height, shall be of a commercial rather than industrial character. The site shall contain screening and landscaping which shall meet the requirements of section 14-526 for screening between land uses and the City of Portland Technical Manual.

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

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

b. Towers shall be constructed according to plans and specifications stamped by a licensed professional engineer, which shall be provided to the Board of

Appeals with the application; and

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

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

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

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

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

h. A performance guarantee shall be required for the cost of removal of the tower, guy wires and anchors. This requirement may be satisfied by surety bond, letter of credit, escrow account or by evidence, acceptable to the City,

or the financial and technical ability and commitment of the applicant or its agents to remove the facility at the end of the use period.

6. Wind energy systems, as defined and allowed in Article X, Alternative Energy.

(Ord. No. 293-88, 4-4-88; Ord. No. 16-92, 6-15-92; Ord. No. 39-96, § 3, 10-7-96; Ord. No. 25, 7-07-99: emergency enactment of 120-day moratorium, effective 7/07/99 thru 11/04/99; Ord. No. 94A, 11-01-99: emergency enactment of 44-day extension of moratorium enacted on 7-07-99, effective date 11/01/99 thru 12/15/99; Ord. No. 94-99, 11-15-99; Ord. No. 151-03/04, 02-23-04; Ord. No. 29-09/10, 8-3-09, emergency passage; Ord. No. 276 -09/10, 7-19-10; Ord. No. 278-09/10, 7-19-10; Ord. No. 10 10/11, 8-2-10; Ord. No. 33-11/12, 1-18-12)

Sec. 14-184. Prohibited uses.

Uses not enumerated in sections 14-182 and 14-183 as either permitted uses or conditional uses are prohibited.

(Ord. No. 293-88, 4-4-88)

Sec. 14-185. Dimensional requirements.

In addition to the provisions of division 25 (space and bulk regulations and exceptions) of this article, lots in the B-2, B-2b, and B-2c zones shall meet the following dimensional requirements:

Minimum Lot Size	None
Minimum Street Frontage	~~25 ft.~~ 20 ft.
Front Yard Setback Minimum	None
Rear Yard Setback Minimum	10 feet, except as provided for below: a. 5 feet for accessory structures
Side Yard Setback Minimum	None required, except as provided for below: a. 5 feet for accessory structures
Side Yard on Side Street Setback Minimum	None
Front Yard Maximum[1]	No more than 10 feet, except that the Planning Board or Planning Authority may approve a different amount for irregularly shaped lots or lots with frontage less than 40 feet provided this standard is met to the maximum extent practicable.[2]

Structure Stepbacks	-Portions of a structure above 35 ft shall be no closer than 5 ft from the side property line and no closer than 15 feet from the rear property line when such property line abuts a residential zone.
Height Maximum	45 feet except as provided for below:
	a. 50 feet if first floor is partially or wholly occupied by a commercial use.
	b. 65 feet in B-2 and B-2c zones on lots >5 acres provided that all setbacks, except for front yard setbacks and side yard on side street setbacks, increase by 1 foot for each foot of height over 45 feet.
	c. 65 feet within 65 feet of Franklin St.
Maximum Impervious Surface Ratio	a. For residential uses: None
	b. For all other permitted uses: 80% in B-2 and B-2c
	c. For all other permitted uses: 90% in B-2b
Minimum Lot Area per Dwelling Unit	Off-peninsula locations, as defined in section 14-47: 1,500 square feet, except as provided for in (b) below.
	On-peninsula locations (as per 14-47) and projects with active street frontages, as defined in section 14-188, below: 435 square feet.

1[1] Building additions do not have to meet this section.
1[2] If lot has less than 40 feet of frontage and is more than 100 feet deep then no maximum setback is required. If existing structures are within 20 feet of the street or meet the front yard maximum, and remainder of lot has less than 40 feet of frontage, then no maximum setback is required. Where setbacks exceed 10 feet, a continuous, attractive, and pedestrian-scaled edge treatment shall be constructed along the street, consisting of street trees spaced at no more than 15 feet on center, approved by City arborist, and a combinations of landscaping no less than 4 feet deep, ornamental brick or stone walls or ornamental fencing.

(Ord. No. 293-88, 4-4-88; Ord. No. 52-96, § 2, 7-15-96; Ord. No. 94-99, 11-15-99; Ord. No. (Substitute)189-00, §3, 4-24-00; Ord. No. 151-03/04, 02/23/04; Ord. No. 244-09/10, 6-21-10; Ord. No. 41-12/13, 9-5-12; Ord. No. 163-13/14, 6-16-14)

Sec. 14-186. Other requirements.

All nonresidential uses in the B-2 and B-2b zone shall meet the requirements of division 25 (space and bulk regulations and exceptions) of this article in addition to the following requirements:

(a) *Landscaping and screening:* The site shall be suitably landscaped for parking, surrounding uses and accessory site elements, including storage and solid waste receptacles where required by article IV (subdivisions) and article V (site plan).

(b) *Curbs and sidewalks*: Curbs and sidewalks as specified in article VI of chapter 25.

(c) *Off-street parking and loading:* Off-street parking and loading are required by division 20 and division 21 of this article;

(d) *Front yard parking*:

There shall be no off-street parking in the front yard between the street line and the required minimum setback line in the B-2, B-2b and B-2c. Where existing buildings exceed the minimum front yard setback, a maximum of ten (10) percent of the total

parking provided on the site may be located between the principal structure and the street.

(e) *Signs*: Signs shall be subject to the provisions of division 22 of this article.

(f) *Exterior storage*: There shall be no exterior storage with the exception of fully enclosed containers or receptacles for solid waste disposal. Such containers or receptacles shall be shown on the approved site plan. Vehicles or truck trailers with or without wheels shall not be used for on-site storage (1) except where such storage is located in a designated loading zone identified on an approved site plan; or (2) such storage is not visible from the street or adjacent residences during winter months and such storage area is identified on an approved site plan. Truck load sales shall not be considered outside storage provided that such activity does not extend beyond three (3) consecutive days nor occurs more frequently than three (3) times a calendar year.

(g) *Storage of vehicles*: Storage of vehicles is subject to the provisions of section 14-335.

(h) *Shoreland and flood plain management regulations*: If the lot is located in a shoreland zone or in a flood hazard zone, then the requirements of division 26 and/or division 26.5 apply.

(Ord. No. 293-88, 4-4-88; Ord. No. 51-96, 7-15-96; Ord. No. 94-99, 11-15-99; Substitute Ord. No. 189-00, §4, 4-24-00; Ord. No. 151-03/04, 02/23/04; Ord. No. 263-13/14, 6-16-14)

Sec. 14-187. External effects.

Every use in a B-2, B-2b and B-2c zone shall be subject to the following requirements:

(a) *Enclosed structure*: The use shall be operated within a completely enclosed structure except for those specific open air activities licensed by the City, including but not limited to outdoor seating, sidewalk sales, etc.

(b) Noise: Except as provided in 14-183(1)(iii)(2) (relating to Drive-throughs), the volume of sound, measured by a sound level meter with frequency weighting network (manufactured according to standards prescribed by the American Standards Association), generated shall not exceed sixty (60) decibels on the A scale between 7:00 a.m. and 9:00 p.m. and fifty-five (55) decibels on the A scale between 9:00 p.m. and 7:00 a.m., on impulse (less than one (1) second), at lot boundaries, excepting air raid sirens and similar warning devices.

(c) Vibration and heat: Vibration inherently and recurrently generated and heat shall be imperceptible without instruments at lot boundaries.

(d) Glare, radiation or fumes: Glare, radiation or fumes shall not be emitted to an obnoxious or dangerous degree beyond lot boundaries.

(e) Smoke: Smoke shall not be emitted at a density in excess of twenty (20) percent opacity level as classified in Method 9 (Visible Emissions) of the Opacity Evaluation System of the U.S. Environmental Protection Agency.

(f) Materials or wastes: No materials or wastes shall be deposited on any lot in such form or manner that they may be transferred beyond the lot boundaries by natural causes or forces. All material which might cause fumes or dust, or constitute a fire hazard if stored out-of-doors, shall be only in closed containers. Areas attracting large numbers of birds, rodents or insects are prohibited.

(Ord. No. 293-88, 4-4-88; Ord. No. 94-99, 11-15-99; Ord. No. 03/04, 02/23/04)

Sec. 14-188. Active street frontages

A building will be determined to have an active street frontage upon meeting the following guidelines to the greatest extent practicable as determined by the Planning Board or Planning Authority: the primary building façade shall be within ten feet of the front street line; there shall be no parking on the lot within 35 feet of the front street line; no more than

25% of the first floor primary façade shall consist of access to garages, unutilized spacke, service entrances, storage or mechanicals, and the remaining minimum 75% shall have an average depth of a minimum of 20 feet for residential or commercial uses; all primary ground floor entries to multi-family buildings must orient to street, not to interior blocks or parking lots.
(Ord. No. 263-13/14, 6-16-14)

Order 91-14/15
~~Tab 23 11-3-14~~
Tab 14 11-17-14

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

CITY OF PORTLAND
IN THE CITY COUNCIL

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

AMENDMENT TO PORTLAND CITY CODE
Sec. 28-51 TRAFFIC SCHEDULE
RE: REDUCING PENINSULA PARKING RESTRICTIONS

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

1. *That Chapter 28, Section 51 Traffic Schedule, is hereby amended by repealing Traffic Schedules XXX and XXXI; and*

2. *That Traffic Schedules XXXA and XXXIA are hereby enacted, and will replace Schedules XXX and XXXI, in substantially the form attached hereto; and*

3. *That this Order shall be effective on May 1, 2015.*

Amendment to Order 91-14/15 prepared for Councilor Suslovic by Corporation Counsel

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

1. *That Chapter 28, Section 51 Traffic Schedule, is hereby amended by repealing Traffic Schedules XXX and XXXI; and*

2. *That Traffic Schedules XXXA, XXXB and XXXIA are hereby enacted, and will replace Schedules XXX and XXXI, in substantially the form attached hereto; and*

3. *That this Order shall be effective on May 1, 2015.*

Schedule XXXB

Service Area - "Nathan Clifford" -- No Overnight Parking – Twice Monthly Service

No Overnight Parking – Wednesday

Parking is prohibited between the hours of 12:01 AM to 7:00 A.M. Wednesday on the 1st and 3rd Wednesday of the month for north & east side on the following streets or parts of the streets and on the 2nd and 4th Wednesday of the month for the south side & west side on the following streets or parts of streets.

Service Area " Nathan Clifford" boundaries are described as follows:

South side of Washburn Ave. – From the west side of Deering Ave. to the west side of Payson Street.

West side of Payson Street – From the south side of Washburn Ave. to the south side of Granite Street.

South side of Granite Street – From the west side of Payson Street to the east side of St, John Street,

North side of Falmouth Street – From the east side of St. John Street to the west side of Deering Ave.

West side of Deering Ave. – From the north side of Falmouth Street to the south side of Washburn Ave.

The following streets or segments of streets are included within the boundaries of the service area:

Deane Street	Deering Ave
Exeter Street*	Falmouth Street
Granite Street	Payson Street
Roberts Street	Washburn Ave.

* Streets included within the designated boundaries, but not affected by the Parking Project.

Deane Street

East side (NP 1st & 3rd Wed.) From Washburn Ave northerly to Falmouth Street

West side (NP 2nd & 4th Wed.) From Falmouth Street southerly to Washburn Ave.

Deering Avenue

West side (NP 2nd & 4th Wed.) From Falmouth Street southerly to Washburn Ave.

Falmouth Street

North side (NP 1st & 3rd Wed.) From Deering Avenue westerly to St. John Street.

South side (NP 2nd & 4th Wed.) From St. John Street easterly to Deering Avenue.

Granite Street

North Side (NP 1st & 3rd Wed.) From Deering Ave. westerly to St. John Street.

Payson Street

East Side (NP 1st & 3rd Wed.) From Washburn Avenue northerly to Falmouth Street

West side (NP 2nd & 4th Wed.) From Falmouth Street southerly to Washburn Ave.

Roberts Street

East side (NP 1st & 3rd Wed.) From Granite Street northerly to Falmouth Street

West side (NP 2nd & 4th Wed.) From Falmouth Street southerly to Granite Street

Washburn Avenue

North side (NP 1st & 3rd Wed.) From Deering Avenue westerly to Payson Street

Southside (NP 2nd & 4th Wed.) From Payson Street easterly to Deering Ave.

Editor's Note: Schedule XXX was repealed by Order 91-14/15 and Traffic Schedules XXXA and XXXB were enacted in its place.

MEMORANDUM
City Council Agenda Item

TO: Mayor Michael Brennan and City Councilors

FROM: Michael J. Bobinsky, Director of Public Services

DATE: October 26, 2014

DISTRIBUTION: (City Manager, Mayor, Corporation Counsel, Sonia Bean, Nancy)

SUBJECT: **Traffic Schedule Amendment: Peninsula Parking Restriction Amendments**

SPONSOR: **City Councilor David Marshall, Chair of the Transportation Sustainability and Energy Committee**

COUNCIL MEETING DATE ACTION IS REQUESTED:
1st reading____November 3_____ Final Action___November 17, 2014_____

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

Department staff have been working on the proposed changes for several months. Action is now needed by City Council to endorse the amended parking changes for the Peninsula. If approved, it will take staff several weeks to get delivery of the new signage reflecting the proposed changes to the parking restriction.

PRESENTATION: John Emerson, Utility Supervisor to present; use of Council action report and site maps reflecting areas of the proposed parking restriction.

I. SUMMARY OF ISSUE (Agenda Description)

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

Based on District 1 and 2 constituent input received over the recent years, the Department of Public Services and Parking Enforcement was asked to consider reducing daytime and nighttime parking restrictions by 50 percent. Following extensive review with involved Departments, staff developed a proposal that strikes a balance of service delivery needs and capabilities and resident convenience. Under the proposed changes, residents will move their vehicles two times per month per side of street as opposed to the current four times per month per side of street. The proposal recognizes that basic municipal street services must be provided and City staff will line up those services with the reduced parking restrictions. City Council needs to amend the traffic schedule relating to Peninsula parking restrictions in order to implement the proposed changes.

III. INTENDED RESULT

Program Benefits

- The proposal achieves the desired result of reducing, by 50%, the number of times vehicles must move per side of street during the month.

- Current service area boundaries will remain the same. Vehicles will now be moved on either Tuesday or Wednesday nights depending on the service area. This will enable the Department of Public Services to provide service on one side of every street in every week.

- Days on which restrictions occur precede the day that Solid Waste and Recycling collection takes place. This feature is especially beneficial in the winter months as it allows the Department of Public Services the opportunity to widen snow narrowed streets by plowing, re-plowing and removing snow prior to rubbish collection.

- Daytime restrictions will be between 10 AM and 2:00 PM. This time frame is consistent with the current Parkside restriction and provides Parking Control Officers with the opportunity to complete school crossing guard tasks before assisting with parking oriented service delivery support.

- New signage will reflect a "time of restriction" change that will run from 12:01 AM to 7:00 AM. This change should be easier to understand than the current 11:30 PM to 7:00 AM restriction.

Amended parking restrictions on both the East End and West End of the Peninsula will result in residents needing to move their vehicles 50% less. This will result in more predictable services such as street sweeping during the spring, summer and fall season. The result is improvement to quality of living within most of the Peninsula neighborhood. City wide parking bans and temporary parking bans, by street, will still be used depending on emergency conditions related to weather, special events or unforeseen incidents.

IV. COUNCIL GOAL ADDRESSED

Responsive City Services that meet basic infrastructure maintenance needs and enhanced quality of living within the Peninsula neighborhood streets.

V. FINANCIAL IMPACT

The Department of Public Services budgeted $50,000 for new replacement parking restriction signage and $35,000 in overtime costs for program implementation and to ensure minimum staffing is provided for at all times.

VI. STAFF ANALYSIS

Staff recommends approval of the proposed amendment to the traffic schedule dealing with Peninsula parking changes. Staff will be presenting the proposed parking program changes at the District Neighborhood Meetings. The proposal offers the right balance between staff needing to provide basic municipal services and reduction to the inconvenience resident's face on a daily basis.

VII. RECOMMENDATION

The Department of Public Services received endorsement of the proposed plan at the September 17, 2014 TSE Committee and the Committee recommended sending on the proposal to City Council for final adoption.

VIII. LIST ATTACHMENTS

-Amended Traffic Schedule for the Peninsula Parking Restriction Program
-Map of the streets and service areas affected by the proposed parking restriction

Prepared by: Michael J. Bobinsky, Director of Public Services

_____ _____

Signature Date

Schedule XXXA

Schedule XXX Repealed 11/2014 by City of Portland Council Order

NO OVERNIGHT PARKING – CITY SERVICE AREAS

Summary:

Service Area 1:	Twice Monthly per Side of Street Odd: 1st & 3rd Tuesday 12:01 to 7:00 AM Even: 2nd & 4th Tuesday 12:01 to 7:00 AM
Service Area 2:	Twice Monthly per Side of Street Odd: 1st & 3rd Tuesday 12:01 to 7:00 AM Even: 2nd & 4th Tuesday 12:01 to 7:00 AM
Service Area 3:	Weekly per Side of Street Odd: Sunday 11:30 PM to Mon. 7:00 AM Even: Tuesday 11:30 PM to Wed. 7:00 AM
Service Area 4:	Twice Monthly per Side of Street Odd: 1st & 3rd Tuesday 12:01 to 7:00 AM Even: 2nd & 4th Tuesday 12:01 to 7:00 AM
Service Area 5:	Twice Monthly per Side of Street Odd: 1st & 3rd Wednesday 12:01 to 7:00 AM Even: 2nd & 4th Wednesday 12:01 to 7:00 AM
Service Area 6:	Twice Monthly per Side of Street Odd: 1st & 3rd Wednesday 12:01 to 7:00 AM Even: 2nd & 4th Wednesday 12:01 to 7:00 AM
Service Area 7:	Twice Monthly per Side of Street Odd: 1st & 3rd Wednesday 12:01 to 7:00 AM Even: 2nd & 4th Wednesday 12:01 to 7:00 AM
Service Area 8:	Twice Monthly per Side of Street Odd: 1st & 3rd Tuesday 12:01 to 7:00 AM Even: 2nd & 4th Tuesday 12:01 to 7:00 AM

SCHEDULE XXXIA

SCHEDULE XXXI REPEALED BY CITY OF PORTLAND COUNCIL ORDER 11/2014

NO DAYTIME PARKING – CITY SERVICE AREAS

Summary:

Service Area 4:	Twice Monthly per Side of Street
	Odd: 1st & 3rd Tuesday 10:00 AM to 2:00 PM
	Even: 2nd & 4th Tuesday 10:00 AM to 2:00 PM
Service Area 6:	Twice Monthly per Side of Street
	Odd: 1st & 3rd Thursday 10:00 AM to 2:00 PM
	Even: 2nd & 4th Thursday 10:00 AM to 2:00 PM
Service Area 8:	Twice Monthly per Side of Street
	Odd: 1st & 3rd Tuesday 10:00 AM to 2:00 PM
	Even: 2nd & 4th Tuesday 10:00 AM to 2:00 PM

Schedule XXXA

Schedule XXX Repealed 11/2014 by City of Portland Council Order

NO OVERNIGHT PARKING – CITY SERVICE AREAS

Summary:

Service Area 1:	Twice Monthly per Side of Street Odd: 1st & 3rd Tuesday 12:01 to 7:00 AM Even: 2nd & 4th Tuesday 12:01 to 7:00 AM
Service Area 2:	Twice Monthly per Side of Street Odd: 1st & 3rd Tuesday 12:01 to 7:00 AM Even: 2nd & 4th Tuesday 12:01 to 7:00 AM
Service Area 3:	Weekly per Side of Street Odd: Sunday 11:30 PM to Mon. 7:00 AM Even: Tuesday 11:30 PM to Wed. 7:00 AM
Service Area 4:	Twice Monthly per Side of Street Odd: 1st & 3rd Tuesday 12:01 to 7:00 AM Even: 2nd & 4th Tuesday 12:01 to 7:00 AM
Service Area 5:	Twice Monthly per Side of Street Odd: 1st & 3rd Wednesday 12:01 to 7:00 AM Even: 2nd & 4th Wednesday 12:01 to 7:00 AM
Service Area 6:	Twice Monthly per Side of Street Odd: 1st & 3rd Wednesday 12:01 to 7:00 AM Even: 2nd & 4th Wednesday 12:01 to 7:00 AM
Service Area 7:	Twice Monthly per Side of Street Odd: 1st & 3rd Wednesday 12:01 to 7:00 AM Even: 2nd & 4th Wednesday 12:01 to 7:00 AM
Service Area 8:	Twice Monthly per Side of Street Odd: 1st & 3rd Tuesday 12:01 to 7:00 AM Even: 2nd & 4th Tuesday 12:01 to 7:00 AM

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DETAILS:

Service Area 1- No Overnight Parking – Twice Monthly Service

No Overnight Parking – Tuesday

Parking is prohibited between the hours of 12:01 AM to 7:00 A.M. Tuesday on the 1st and 3rd Tuesday of the month for north & east side on the following streets or parts of the streets and on the 2nd and 4th Tuesday of the month for the south side & west side on the following streets or parts of streets.

Service Area 1 boundaries are described as follows:

West side of Western Promenade, Pine Street to a point following the west side of Western Promenade extended to Commercial Street

South side of Commercial Street, Brackett Street to a point intersecting the west side of the of Western Promenade extended.

West side of Brackett Street, Pine Street to Commercial Street.

South side of Pine Street, Western Promenade to Brackett Street.

The following streets or segments of streets are included within the boundaries of Service Area 1:

Beach Street*
Bond Street*
Bowdoin Street

Brackett Street
Briggs Street
Carroll Street
Chadwick Street
Clark Street
Clifford Street
Cushman Street
Danforth Street
Dermot Court *
Emery Street
Fletcher Street
Gray Street
Lewis Street
May Street
Neal Street
Orange Street*
Orchard Street
Pine Street
Salem Street
School Street
Spring Street
Spruce Street
Storer Street
Summer Street
Taylor Street
Thomas Street
Vaughn Street
West Commercial Street
Western Promenade
York Street

* - Streets included within the designated boundaries, but not affected by the parking project.

BOWDOIN STREET

North side (NP 1st & 3rd Tues.) From Clifford Street westerly to Western Promenade

South side - (NP 2nd & 4th Tues.) From Western Promenade easterly to Clifford Street

BRACKETT STREET

West side - (NP 2nd & 4th Tues.) From Pine Street to a point southerly of Pine Street

BRIGGS STREET

East side (NP 1st & 3rd Tues.) From Salem Street northerly to Danforth Street

CARROLL STREET

North side – (NP 1st & 3rd Tues) From Thomas Street to Western Promenade

South side – (NP 2nd & 4th Tues.) From Western Promenade easterly to Thomas Street

CHADWICK STREET

East side - (NP 1st & 3rd Tues) From Bowdoin Street northerly to Pine Street

West side - (NP 2nd & 4th Tues.) From Pine Street southerly to Bowdoin Street

CLARK STREET

East side - (NP 1st & 3rd Tues) From Beach Street northerly to Spring Street

West side - (NP 2nd & 4th Tues.) From Spring Street southerly to Beach Street

CLIFFORD STREET

North side - (NP 1st & 3rd Tues) From Thomas Street westerly to Vaughan Street

South side - (NP 2nd & 4th Tues.) .From Vaughan Street easterly to Thomas Street

CUSHMAN STREET

North side (NP 1st & 3rd Tues.) From Clark Street westerly to Emery Street

DANFORTH STREET

North side (NP 1st & 3rd Tues.) From Brackett Street westerly to a Point westerly of the Western Promenade.

South side - (NP 2nd & 4th Tues.) From a point opposite Vaughan Street easterly to Brackett Street

EMERY STREET

East side (NP 1st & 3rd Tues.) From dead end northerly to Pine Street

West side - (NP 2nd & 4th Tues.) From Spring Street southerly to dead end

FLETCHER STREET

East side (NP 1st & 3rd Tues.) From Danforth Street northerly to a point opposite Orchard Street

West side - (NP 2nd & 4th Tues.) From Orchard Street southerly to Danforth Street

GRAY STREET

North side (NP 1st & 3rd Tues.) From Brackett Street westerly to Clark Street

South side - (NP 2nd & 4th Tues.) From Clark Street easterly to Brackett Street

LEWIS STREET

West side - (NP 2nd & 4th Tues.) From Pine Street southerly to Cushman Street

MAY STREET

East side (NP 1st & 3rd Tues.) From Spring Street southerly to Danforth Street

NEAL STREET

East side (NP 1st & 3rd Tues.) From Spring Street northerly to Pine Street

West side - (NP 2nd & 4th Tues.) From Pine Street southerly to Spring Street

ORCHARD STREET

South side - (NP 2nd & 4th Tues.) From Vaughan Street easterly to Fletcher Street

PINE STREET

South side - (NP 2nd & 4th Tues.) From Western Promenade easterly to Brackett Street

SALEM STREET

North side (NP 1st & 3rd Tues.) From Brackett Street westerly to dead end

South side - (NP 2nd & 4th Tues.) From dead end easterly to Clark Street

SCHOOL STREET

West side - (NP 2nd & 4th Tues.) From Danforth Street southerly to Bond Street

SPRING STREET

North side (NP 1st & 3rd Tues.) From Brackett Street westerly to Vaughan Street

South side - (NP 2nd & 4th Tues.) From Emery Street easterly to Clark Street

SPRUCE STREET

Northside – (NP 13t & 3rd Tues.) From Clark Street Westerly to Emery Street

STORER STREET

West side - (NP 2nd & 4th Tues.) From a point 164 feet southerly of Spring Street to Danforth Street

SUMMER STREET

North side (NP 1st & 3rd Tues.) From Clark Street westerly to the terminus of the street

South side - (NP 2nd & 4th Tues.) From the terminus easterly to Brackett Street

TAYLOR STREET

North side (NP 1st & 3rd Tues.) From May Street westerly to Emery Street

South side - (NP 2nd & 4th Tues.) From Emery Street easterly to May Street

THOMAS STREET

East side (NP 1st & 3rd Tues.) From Spring Street northerly to Pine Street

West side - (NP 2nd & 4th Tues.) From Pine Street southerly to Spring Street

VAUGHAN STREET

East side (NP 1st & 3rd Tues.) From Danforth Street northerly to Pine Street

West side - (NP 2nd & 4th Tues.) From Pine Street southerly to Western Promenade

WEST COMMERCIAL STREET

North side (NP 1st & 3rd Tues.) From a point south of Brackett Street westerly to Cassidy Point Drive

South side - (NP 2nd & 4th Tues.) From Cassidy Point Dr. easterly to a point south of Brackett Street.

WESTERN PROMENADE

East side – (NP 1st & 3rd Tues.) From Bowdoin Street northerly to Pine Street

West side – (NP 2nd & 4th Tues.) From the southerly curb line of Western Promenade Park southerly to a point opposite Bowdoin Street

YORK STREET

North side – (NP 1st & 3rd Wed.) from Brackett Street westerly to Clark Street

South side – (NP 2nd & 4th Tues.) From Clark Street easterly to Brackett Street

Service Area 2 – No Overnight Parking – Twice Monthly Service

No Overnight Parking – Tuesday

Parking is prohibited between the hours of 12:01 AM to 7:00 A.M. Tuesday on the 1st and 3rd Tuesday of the month for North & East sides on the following streets or parts of the streets and on the 2nd and 4th Tuesday of the month for the South & West sides on the following streets or parts of streets.

Service Area 2 boundaries are described as follows:

West side of Center Street, Congress Street to a line running 5' parallel to the northerly street line of Commercial Street.

A line running 5' parallel to the northerly street line of Commercial Street, Center Street to Brackett Street

East side of Brackett Street, from a line running 5' parallel to the northerly street line of Commercial Street to Pine Street

South side of Pine Street, Brackett Street to State Street

South side of Congress Street, State Street to Center Street

The following streets or segments of street are included within the boundaries of District #2:

Brackett Street
Brown Street
Center Street*
Congress Street
Danforth Street
Foundry Lane*
Free Street
Gray Street
Guilford Court*
High Street
Maple Street
Nye Street*
Oak Street
Park Street
Pine Street
Pleasant Street
South Street
Spring Street
State Street
Stetson Court
Stratton Place*
Tate Street*
Tyng Street
Winter Street
York Street

*** - Streets included within the designated boundaries, but not affected by the Parking Project**

BRACKETT STREET

East side - (NP 1st & 3rd Tuesday) From York Street northerly to Pine Street

BROWN STREET

East side - (NP 1st & 3rd Tues.) From Congress Street southerly to Free Street

CONGRESS STREET

South side - (NP 2nd & 4th Tues.) State Street easterly to Center Street

DANFORTH STREET

North side - (NP 1st & 3rd Tues.) From York Street westerly to

Brackett Street

South side - (NP 2nd & 4th Tues.) From Brackett Street easterly to York Street

FREE STREET

North side - (NP 1st & 3rd Tues.) From Congress Street easterly to Center Street

South side - (NP 2nd & 4th Tues.)) From Congress Street easterly to Center Street

GRAY STREET

North side - (NP 1st & 3rd Tues.) From Park Street westerly to State Street

South side - (NP 2nd & 4th Tues.) From Brackett Street easterly to Center

Street

HIGH STREET

East side - (NP 1st & 3rd Tues.) From York Street northerly to Pleasant Street

East side – (NP 1st & 3rd Tues.) From Spring Street northerly to Free Street

West side - (NP 2nd & 4th Tues.) From York Street southerly to Commercial Street

West side - (NP 2nd & 4th Tues.) From York Street northerly to Pleasant Street

West side - (NP 2nd & 4th Tues.) From Spring Street northerly to Congress Street

MAPLE STREET

East side - (NP 1st & 3rd Tues.) From Commercial Street northerly to Danforth Street

West side - (NP 2nd & 4th Tues.) From York Street southerly to Commercial Street

OAK STREET

East side - (NP 1st & 3rd Tues.) From Congress Street southerly to Free Street

West side - (NP 2nd & 4th Tues.) From Congress Street southerly to Spring Street

PARK STREET

East side - (NP 1st & 3rd Tues.) From Congress Street southerly to Spring Street

East side - (NP 1st & 3rd Tues.) From York Street southerly to Commercial Street

West side - (NP 2nd & 4th Tues.) From Congress Street southerly to Commercial Street

PINE STREET

South side - (NP 2nd & 4th Tues.) From State Street westerly to Brackett Street

PLEASANT STREET

North side - (NP 1st & 3rd Tues.) From Center Street westerly to Park Street

South side - (NP 2nd & 4th Tues.) From Park Street easterly to Center Street

SOUTH STREET

West side - (NP 2nd & 4th Tues.) From the terminus southerly to Pleasant Street

SPRING STREET

North side - (NP 1st & 3rd Tues.) From a point westerly of Center Street

to a point westerly of Center Street

North side - (NP 1st & 3rd Tues.) From a point westerly of Oak Street

to a point westerly of Oak Street

North side - (NP 1st & 3rd Tues.) From a point westerly of State Street

to a point easterly of Brackett Street

STATE STREET

East side - (NP 1st & 3rd Tues.) From Congress Street southerly to York Street

West side - (NP 2nd & 4th Tues.) From Congress Street southerly to York Street

STETSON COURT

South side - (NP 2nd & 4th Tues.) From the terminus easterly to Park Street

TYNG STREET

East side - (NP 1st & 3rd Tues.)) From York Street northerly to Danforth Street

West side - (NP 2nd & 4th Tues.) From Danforth Street southerly to York Street

WINTER STREET

East side - (NP 2nd & 4th Tues.)) From Danforth Street northerly to Pine Street

YORK STREET

North side - (NP 1st & 3rd Tues.)) From Park Street westerly to Brackett Street

South side - (NP 2nd & 4th Tues.) From Brackett Street easterly to State Street

SERVICE AREA 3 – No Overnight Parking - Weekly Service

No Overnight Parking -Sundays & Tuesdays

Parking is prohibited between the hours Sunday, 11:30 PM to 7:00 A.M. Monday on the odd side of the street and is prohibited on the even side of the street from Tuesday 11:30 PM to 7 A.M. Wednesday.

Service Area 3 boundaries are described as follows:

Up to but not including the West side of India, Congress Street to Commercial Street.

South side of Commercial Street, From a point opposite Brackett Street to India Street

A line running 5' parallel to the northerly street line of Commercial Street, Center Street to a point opposite Brackett Street

East side of Center Street, Commercial Street to Congress Street.

South side of Congress Street, Center Street to India Street

*** The following streets or segments of street are included within the boundaries of Service Area 3:**

Center Street
Church Street*
Commercial Street
Congress Street
Cotton Street
Cross Street
Custom House Street
Dana Street
Elm Street Ext.
Exchange Street
Federal Street
Fore Street
Fox Court
Franklin Street*
Free Street
Gold Street *
Hampshire Street
Market Street
Middle Street
Milk Street
Moulton Street
Newbury Street
Pearl Street
Silver Street
Spring Street
Temple Street
Union Street
Wharf Street*

* - Streets that are included within the designated boundaries, but not affected by the Parking Project

CENTER STREET

East side - (NP Sun. 11:30 PM to Mon. 7 AM) From Commercial Street northerly to Fore Street

East side - NP Sun. 11:30 PM to Mon. 7 AM) From Free Street northerly to Congress Street

COMMERCIAL STREET

North side - (NP Sun. 11:30 PM to Mon. 7 AM) From Franklin Arterial westerly to High Street

South side – (NP Tues. 11:30 PM to Wed. 7 AM) From Deakes Wharf easterly to a point opposite India Street

CONGRESS STREET

South side - (NP Tues. 11:30 PM to Wed. 7 AM) From Temple Street easterly to India Street

COTTON STREET

East side - (NP Sun. 11:30 PM to Mon. 7 AM) From Fore Street northerly to dead end

West side - (NP Tues. 11:30 PM to Wed. 7 AM) From the dead end southerly to Fore Street

CROSS STREET

East side - (NP Sun. 11:30 PM to Mon. 7 AM) From Fore Street southerly to Commercial Street

West side - (NP Tues. 11:30 PM to Wed. 7 AM) From Free Street to a point southerly of Free Street

West side - (NP Tues. 11:30 PM to Wed. 7 AM) From Fore Street southerly to Commercial Street

CUSTOM HOUSE STREET

East side - (NP Sun. 11:30 PM to Mon. 7 AM) From a point northerly of Commercial Street to Fore Street

West side – (NP Tues. 11:30 PM to Wed. 7 AM) From Fore Street to a point southerly of Fore Street

DANA STREET

East side - (NP Sun. 11:30 PM to Mon. 7 AM) From Commercial Street northerly to Wharf Street

West side - (NP Tues. 11:30 PM to Wed. 7 AM) From Wharf Street to a point southerly of Wharf Street

ELM STREET EXTENTION

West side – (NP Tues. 11:30 PM to Wed. 7 AM) From Congress Street southerly to Federal Street

EXCHANGE STREET

East side - (NP Sun. 11:30 PM to Mon. 7 AM) From Congress Street southerly to Fore

Street

West side – (NP Tues. 11:30 PM to Wed. 7 AM) From Federal Street southerly to Fore

Street

FEDERAL STREET

North side - (NP Sun. 11:30 PM to Mon. 7 AM) From India Street westerly to Hampshire

Street

North side - (NP Sun. 11:30 PM to Mon. 7 AM) From Pearl Street easterly to Franklin

Arterial

North side - (NP Sun. 11:30 PM to Mon. 7 AM) From Pearl Street westerly to Temple

Street

South side – (NP Tues. 11:30 PM to Wed. 7:00 A.M.) From Elm Street Extension easterly

to Franklin Arterial

South side - NP Tues. 11:30 PM to Wed. 7:00 A.M.)From Franklin Arterial easterly to India

Street

FORE STREET

North side - (NP Sun. 11:30 PM to Mon. 7 AM) From a point westerly of India Street to a point easterly of Franklin Arterial

North side - (NP Sun. 11:30 PM to Mon. 7 AM) From Pearl Street westerly to Exchange Street

South side – (NP Tues. 11:30 PM to Wed. 7 AM) From Union Street easterly to India Street

FOX COURT

West side – (NP Tues. 11:30 PM to Wed. 7 AM) From Fore Street northerly to dead end

FRANKLIN STREET

East side – - (NP Sun. 11:30 PM to Mon. 7 AM) from Commercial Street northerly to Fore Street

FREE STREET

North side - (NP Sun. 11:30 PM to Mon. 7 AM) From Center Street easterly to a point opposite Cross

Street

South side – (NP Tues. 11:30 PM to Wed. 7 AM) From Center Street easterly to Temple Street

HAMPSHIRE STREET

West side – (NP Tues. 11:30 PM to Wed. 7 AM) From Congress Street southerly to Middle Street

MARKET STREET

East side - (NP Sun. 11:30 PM to Mon. 7 AM) From Fore Street northerly to Federal Street

West side – (NP Tues. 11:30 PM to Wed. 7 AM) From Fore Street southerly to Commercial Street

West side – (NP Tues. 11:30 PM to Wed. 7 AM) From Fore Street northerly to Congress Street

MIDDLE STREET

North side - (NP Sun. 11:30 PM to Mon. 7 AM) From India Street westerly to Exchange Street

South side – (NP Tues. 11:30 PM to Wed. 7 AM) From Union Street easterly to India Street

MILK STREET

North side - (NP Sun. 11:30 PM to Mon. 7 AM) From Pearl Street westerly to Silver Street

North side - (NP Sun. 11:30 PM to Mon. 7 AM) From Market Street westerly to Exchange Street

South side (NP Tues. 11:30 PM to Wed. 7 AM) From Exchange Street easterly to Market Street

South side (NP Tues. 11:30 PM to Wed. 7 AM) From Silver Street easterly to Pearl Street

MOULTON STREET

East side - (NP Sun. 11:30 PM to Mon. 7 AM) From Fore Street southerly to Commercial Street

West side – (NP Tues. 11:30 PM to Wed. 7 AM) From Fore Street southerly to Commercial Street

NEWBURY STREET

North side - (NP Sun. 11:30 PM to Mon. 7 AM) From India Street westerly to Franklin Arterial

North side - (NP Sun. 11:30 PM to Mon. 7 AM) From Pearl Street westerly to Market Street

South side – (NP Tues. 11:30 PM to Wed. 7 AM) From Market Street easterly to Pearl Street

South side – (NP Tues. 11:30 PM to Wed. 7 AM) From Franklin Arterial easterly to India Street

PEARL STREET

West side – (NP Tues. 11:30 PM to Wed. 7 AM) From Federal Street southerly to Newbury St.

West side – (NP Tues. 11:30 PM to Wed. 7 AM) From Middle Street southerly to Fore Street

SILVER STREET

West side (NP Tues. 11:30 PM to Wed. 7 AM) From Milk Street southerly to Fore Street

West side (NP Tues. 11:30 PM to Wed. 7 AM) From Milk Street northerly to Middle Street

SPRING STREET

North side - (NP Sun. 11:30 PM to Mon. 7 AM) From Temple Street westerly to Cross Street

South side – (NP Tues. 11:30 PM to Wed. 7 AM) From a point easterly of Center Street to Union Street

TEMPLE STREET

East side - (NP Sun. 11:30 PM to Mon. 7 AM) From a point northerly of Middle Street to Federal Street

UNION STREET

East side - (NP Sun. 11:30 PM to Mon. 7 AM) From Wharf Street northerly to Fore Street

SERVICE AREA 4 – NO OVERNIGHT PARKING – TWICE MONTHLY SERVICE

No Overnight Parking – Tuesday

Parking is prohibited between the hours of 12:01 AM to 7:00 A.M. Tuesday on the 1st and 3rd Tuesday of the month for North & East sides on the following streets or parts of the streets and on the 2nd and 4th Tuesday of the month for the South & West sides on the following streets or parts of streets.

Service Area 4 boundaries are described as follows:

East side of Eastern Promenade, Congress Street to Atlantic Street

South side of Fore Street, Atlantic Street to India Street

West side of India Street, Commercial Street to Congress Street

South side of Congress Street, India Street to Eastern Promenade

The following streets or segments of street are included within the boundaries Service Area #4:

CONGRESS STREET	INDIA STREET
EASTERN PROMENADE	MIDDLE STREET
FEDERAL STREET	MOUNTFORT STREET
FORE STREET	NEWBURY STREET
HANCOCK STREET	THAMES STREET

CONGRESS STREET

South side - (NP 2nd & 4th Tues.) From India Street easterly to Mountfort Street and from Kellogg Street to Munjoy Street

South side – (NP 2nd & 4th Tues.) From Mountfort Street to Kellogg Street and Munjoy Street to Eastern Promenade

EASTERN PROMENADE

East side - (NP 2nd & 4th Tues.) From a point opposite Atlantic Street easterly to the exit of Fort Allen Park

FEDERAL STREET

North side (NP 1st & 3rd Tues.) From Mountfort Street westerly to India Street

South side - (NP 2nd & 4th Tues.) From India Street easterly to Mountfort Street

FORE STREET

North side (NP 1st & 3rd Tues.) From Mountfort Street westerly to India Street

HANCOCK STREET

East side (NP 1st & 3rd Tues.) From Thames Street northerly to Federal Street

West side - (NP 2nd & 4th Tues.) From Federal Street southerly to Thames Street

INDIA STREET

East side (NP 1st & 3rd Wed.) From Fore Street northerly to Congress Street

West side – (NP 2nd & 4th Tues.) From Congress Street southerly to Commercial Street

KELLOGG STREET

East side (NP 1st & 3rd Tues.) From Adams Street northerly to Congress Street

West side - (NP 2nd & 4th Tues.) From Congress Street southerly to Adams Street

MIDDLE STREET

South side – (NP 2nd & 4th Tues.) From India Street easterly to Hancock Street

MOUNTFORT STREET

West side - (NP 2nd & 4th Tues) From Congress Street southerly to Fore Street

NEWBURY STREET

North side (NP 1st & 3rd Tues.) From Mountfort Street westerly to India Street

South side - (NP 2nd & 4th Tues.) From India Street easterly to Mountfort Street

THAMES STREET

North side – (NP 1st & 3rd Tues,) From terminus westerly to India Street

South side - (NP 2nd & 4th Tues. From India Street easterly to terminus

SERVICE AREA 5 – NO OVERNIGHT PARKING – TWICE MONTHLY SERVICE

No Overnight Parking – Wednesday

Parking is prohibited between the hours of 12:01 AM to 7:00 A.M. Wednesday on the 1st and 3rd Wednesday of the month for North & East sides on the following streets or parts of the streets and on the 2nd and 4th Wednesday of the month for the South & West sides on the following streets or parts of streets.

Service Area 5 boundaries are described as follows:

North side of Pine Street, Congress Street to a point following the North side of Pine Street extended to Valley Street

East side of Valley Street, Danforth Street to a point intersecting the North side of Pine Street extended

West side of St. John Street, Veteran's Circle to Park Avenue

North side of Park Avenue, St. John Street to Deering Avenue

West side of Deering Avenue, Park Avenue to Congress Street

South side of Congress Street, Deering Avenue to Pine Street

The following streets or segments of street are included within the boundaries of Service Area 5:

A STREET
BLYTHE COURT*
BOYNTON STREET
BRACKETT STREET
BRAMHALL PLACE*
BRAMHALL STREET
C STREET
CARLETON STREET
CHADWICK STREET
CHARLES STREET*
CONGRESS STREET
CRESCENT STREET
D STREET
DEERING AVENUE
DOW STREET
ELLSWORTH STREET
FOREST STREET
GILMAN STREET
GRANT STREET
HILL STREET
HORTON PLACE*
HOULTON STREET
MACMILLEN ROAD
MARSHALL STREET*
NEAL STREET
PARK AVENUE
PINE STREET
RUSSELL STREET*
ST. JOHN STREET
TROWBRIDGE PLACE*
VALLEY STREET
VAUGHN STREET
WALKER STREET*
WEST STREET
WESCOTT STREET*
WESTERN PROMENADE
WEYMOUTH STREET

* Streets included within the designated boundaries, but not affected by the Parking Project

A STREET

North side (NP 1st & 3rd Wed.) From Gilman Street westerly to St. John Street

South side (NP 2nd & 4th Wed.) From St. John Street easterly to Gilman Street

BOYNTON STREET

South side (NP 2nd & 4th Wed.) From Forest Street easterly to Weymouth Street

BRACKETT STREET

North side (NP 1st & 3rd Wed.) From Pine Street westerly to Vaughan Street

South side (NP 2nd & 4th Wed.) From Bramhall Street easterly to Pine Street

BRAMHALL STREET

East side (NP 1st & 3rd Wed.) From Brackett Street northerly to Vaughan Street

East side (NP 1st & 3rd Wed.) From Chadwick Street southerly to West Street

West side (NP 2nd & 4th Wed.) From Bramhall Place southerly to West Street

C STREET

North side (NP 1st & 3rd Wed.) From Valley Street westerly to St. John Street

South side (NP 2nd & 4th Wed.) From St. John Street easterly to Valley Street

CARLETON STREET

East side (NP 1st & 3rd Wed.) From Pine Street northerly to Congress Street

CHADWICK STREET

East side (NP 1st & 3rd Wed.) From Bramhall Street southerly to Pine Street

West side (NP 2nd & 4th Wed.) From Bramhall Street southerly to Pine Street

CONGRESS STREET

North side (NP 1st & 3rd Wed.) From Deering Avenue westerly to St. John Street

South side (NP 2nd & 4th Wed.) From St. John Street easterly to a point opposite State Street

CRESENT STREET

North side (NP 1st & 3rd Wed.) From Charles Street easterly to Ellsworth Street

D STREET

North side (NP 1st & 3rd Wed.) From Valley Street westerly to St. John Street

South side (NP 2nd & 4th Wed.) From St. John Street easterly to Valley Street

DEERING AVENUE

West side (NP 2nd & 4th Wed.) From Grant Street southerly to a point opposite Cumberland Avenue

DOW STREET

West side (NP 2nd & 4th Wed.) From Brackett Street northerly to Congress Street

ELLSWORTH STREET

East side (NP 1st & 3rd Wed.) From Charles Street northerly to Hill Street

FOREST STREET

West side (NP 2nd & 4th Wed.) From Congress Street northerly to Park Avenue

GILMAN STREET

East side (NP 1st & 3rd Wed.) From Park Avenue southerly to Congress Street

East side (NP 1st & 3rd Wed.) From the terminus northerly to Congress Street

West side (NP 2nd & 4th Wed.) From Park Avenue southerly to the terminus

GRANT STREET

North side (NP 1st & 3rd Wed.) From Deering Avenue westerly to Weymouth Street

South side (NP 2nd & 4th Wed.) From Weymouth Street easterly to Deering Avenue

HILL STREET

North side (NP 1st & 3rd Wed.) From Bramhall Street westerly to Ellsworth Street

South side (NP 2nd & 4th Wed.) From Ellsworth Street easterly to Bramhall Street

MACMILLAN ROAD

West side (NP 2nd & 4th Wed.) From a point southerly of Congress Street (1 space)

NEAL STREET

East side (NP 1st & 3rd Wed.) From Brackett Street southerly to Pine Street

West side (NP 2nd & 4th Wed.) From Congress Street southerly to Pine Street

PARK AVENUE

North side (NP 1st & 3rd Wed.) From Deering Avenue westerly to St. John Street

South side (NP 2nd & 4th Wed.) From Gilman Street easterly to Deering Avenue

PINE STREET

North side (NP 1st & 3rd Wed.) From State Street westerly to Brackett Street

North side (NP 1st & 3rd Wed.) From Carleton Street westerly to Western Promenade

ST. JOHN STREET

East side (NP 1st & 3rd Wed.) From a point northerly the Valley Street, northerly to A Street

West side (NP 2nd & 4th Wed.) From a point northerly of Valley Street,, southerly to a point northerly of Valley Street

VALLEY STREET

East side (NP 1st & 3rd Wed.) From Danforth Street northerly to Park Avenue

West side (NP 2nd & 4th Wed.) From Congress Street southerly to St. John Street

West side (NP 2nd & 4th Wed.) From Congress Street northerly to Park Avenue

VAUGHAN STREET

East side (NP 1st & 3rd Wed.) From Pine Street northerly to Bramhall Street

West side (NP 2nd & 4th Wed.) From Bramhall Street southerly to Pine Street

WEST STREET

North side (NP 1st & 3rd Wed.) From Blyth Court westerly to Western Promenade

South side (NP 2nd & 4th Wed.) From Western Promenade easterly to Pine Street

WESTERN PROMENADE

East side (NP 1st & 3rd Wed.) From Pine Street northerly to West Street

West side - (NP Tues) From a point opposite West Street southerly to a point opposite Pine Street

WEYMOUTH STREET

East side (NP 1st & 3rd Wed.) From Congress Street northerly to Park Avenue

West side (NP 2nd & 4th Wed.) From Park Avenue southerly to Congress Street

SERVICE AREA 6 – NO OVERNIGHT PARKING – TWICE MONTHLY SERVICE

No Overnight Parking – Wednesday

Parking is prohibited between the hours of 12:01 AM Wednesday to 7:00 A.M. Wednesday on the 1st and 3rd Wednesday of the month for North & East sides on the following streets or parts of the streets and on the 2nd and 4th Wednesday of the month for the South & West sides on the following streets or parts of streets.

Service Area 6 boundaries are described as follows:

West side of Preble Street, Marginal Way to Congress Street

North side of Congress Street, Preble Street to Deering Avenue

East side of Deering Avenue, Congress Street to Park Avenue

North side of Park Avenue, Deering Avenue to State Street.

West side of State Street, Park Avenue to Forest Avenue

North side of Marginal Way, Forest Avenue to Preble Street

The following streets or segments of street are included within the boundaries of Service area 6:

ALDER STREET	**HIGH STREET**
BRATTLE STREET	**MELLEN STREET**
BROWN STREET	**OAK STREET**
CASCO STREET	**OXFORD STREET**
CONGRESS STREET	**PARK AVENUE**
CUMBERLAND AVE	**PARRIS STREET**
DEERING AVENUE	**PORTLAND STREET**
DEERING STREET PLACE	**PREBLE STREET**
DEERING STREET	**SHEPLEY STREET**
FOREST AVE	**SHERMAN STREET**
GRANT STREET	**STATE STREET**
HANOVER STREET	**VERNON PLACE***
HENRY STREET	

*** Streets included within the designated boundaries, but not affected by the parking project.**

ALDER STREET

East side - (NP 1st & 3rd Wed 12:01 - 7:00 AM) From Portland Street northerly to

Kennebec Street

West side – (NP 2nd & 4th Wed 12:01 - 7:00 AM) from Portland Street northerly to Lancaster Street (April 1st to November 30th)

West side – (NP except 1st & 3rd Wed. 12:01 -7 AM, December 1st to March 31st.)
from Portland Street northerly to Lancaster Street

BROWN STREET

West side - (NP 2nd & 4th Wed 12:01 - 7:00 AM) From Congress Street to a point northerly of Congress Street

CASCO STREET

East side - (NP 1st & 3rd Wed 12:01 - 7:00 AM) From a point northerly of Congress Street to Cumberland Avenue
West side - (NP 2nd & 4th Wed 12:01 - 7:00 AM) From Cumberland Avenue southerly to Congress Street

CONGRESS STREET

North side - (NP 1st & 3rd Wed 12:01 - 7:00 AM) From Preble Street westerly to Deering Avenue

CUMBERLAND AVENUE

North side - (NP 1st & 3rd Wed 12:01 - 7:00 AM) From Preble Street westerly to

Mechanic Street

North side - (NP 1st & 3rd Wed 12:01 - 7:00 AM) From Mellen Street westerly to

Deering Avenue

South side - (NP 2nd & 4th Wed 12:01 - 7:00 AM) From Mellen Street easterly to State

Street

South side - (NP 2nd & 4th Wed 12:01 - 7:00 AM) From High Street easterly to Forest

Avenue

South side - (NP 2nd & 4th Wed 12:01 - 7:00 AM) From Casco Street easterly to

Brown Street

DEERING AVENUE

East side - (NP 1st & 3rd Wed 12:01 - 7:00 AM) From Cumberland Avenue northerly to Grant Street

DEERING STREET PLACE

East side - (NP 1st & 3rd Wed 12:01 - 7:00 AM) From Deering Street to a point southerly of Deering Street

FOREST AVENUE

East side - (NP 1st & 3rd Wed 12:01 - 7:00 AM) From Portland Street northerly to a point opposite High Street

Extentsion

West side - (NP 2nd & 4th Wed 12:01 - 7:00 AM) From High Street Extention southerly to Park Avenue

HENRY STREET

Eastside - (NP 1st & 3rd Wed 12:01 - 7:00 AM) From the terminus northerly to Deering Street

HIGH STREET

East side - (NP 1st & 3rd Wed 12:01 - 7:00 AM) From Congress Street northerly to Park

Avenue

West side - (NP 2nd & 4th Wed 12:01 - 7:00 AM) From Congress Street northerly to

Grant Street

HIGH STREET EXTENTION

West side - (NP 2nd & 4th Wed 12:01 - 7:00 AM) From Park Avenue to Forest Avenue

MARGINAL WAY

North side - (NP 1st & 3rd Wed 12:01 - 7:00 AM) From a point westerly of Preble Street Extention to a point easterly of Forest Avenue

South side - (NP 2nd & 4th Wed 12:01 - 7:00 AM) From a point easterly of Forest Avenue to Hanover Street

MELLEN STREET

East side - (NP 1st & 3rd Wed 12:01 - 7:00 AM) From Congress Street northerly to

Park Avenue

West side - (NP 2nd & 4th Wed 12:01 - 7:00 AM) From Park Avenue southerly to

Congress Street

OAK STREET

East side - (NP 1st & 3rd Wed 12:01 - 7:00 AM) From Congress Street northerly to Cumberland Avenue

OXFORD STREET

South side - (NP 2nd & 4th Wed 12:01 - 7:00 AM) From Preble Street westerly to Portland Street

PARK AVENUE

North side - (NP 1st & 3rd Wed 12:01 - 7:00 AM) From High Street westerly to

Deering Avenue

South side - (NP 2nd & 4th Wed 12:01 - 7:00 AM) From Deering Avenue easterly to

High Street

PORTLAND STREET

North side - (NP 1st & 3rd Wed 12:01 - 7:00 AM) From Preble Street westerly to Forest Avenue

South side - (NP 2nd & 4th Wed 12:01 - 7:00 AM) From Forest Avenue easterly to Preble Street

PREBLE STREET

West side - (NP 2nd & 4th Wed 12:01 - 7:00 AM) From Kennebec Street southerly to Congress Street

SHEPLEY STREET

North side - (NP 1st & 3rd Wed 12:01 - 7:00 AM) From Casco Street westerly to Oak Street

South side - (NP 2nd & 4th Wed 12:01 - 7:00 AM) From Oak Street easterly to Casco Street

STATE STREET

East side - (NP 1st & 3rd Wed 12:01 - 7:00 AM) From Park Avenue southerly to Congress Street

West side - (NP 2nd & 4th Wed 12:01 - 7:00 AM) From Park Avenue southerly to Congress Street

STATE STREET EXTENSION

East side - (NP 1st & 3rd Wed 12:01 - 7:00 AM) From Forest Avenue southerly to Park Avenue

SERVICE AREA 7 – NO OVERNIGHT PARKING – TWICE MONTHLY SERVICE

No Overnight Parking – Wednesday

Parking is prohibited between the hours of 12:01 AM to 7:00 A.M. Wednesday on the 1st and 3rd Wednesday of the month for North & East sides on the following streets or parts of the streets and on the 2nd and 4th Wednesday of the month for the South & West sides on the following streets or parts of streets.

Service Area 7 boundaries are described as follows:

Eastside of Preble Street, Marginal Way to Congress

Northside of Congress Street, Preble Street to Smith Street

Up to but not including the Westside of Smith Street, Congress Street to Fox Street

Up to but not including the Westside of Diamond Street, Fox Street to Marginal Way

Northside of Marginal Way, Diamond Street to Preble Street

The following streets or segments of street are included within the boundaries of Service Area 7:

BOYD STREET	LOCUST STREET
CEDAR STREET	MARGINAL WAY*
CHAPEL STREET*	MAYO STREET
CHESTNUT STREET	MYRTLE STREET
CONGRESS STREET	NORTH BOYD STREET*
CUMBERLAND AVE	OXFORD STREET
ELM STREET	PEARL STREET
FOX STREET	PREBLE STREET
FRANKLIN STREET*	SOMERSET STREET
KENNEBEC STREET	STONE STREET
LANCASTER STREET	WILMOT STREET

* Streets included within the designated boundaries, but not affected by Parking Project

BOYD STREET

East side - (NP 1st & 3rd Wed 12:01 - 7:00 AM) From Cumberland Avenue northerly to end of street

West side (NP 2nd & 4th Wed 12:01 - 7:00 AM) From end of street southerly to Cumberland Avenue

CEDAR STREET

East side - (NP 1st & 3rd Wed 12:01 - 7:00 AM) From Cumberland Avenue northerly to Lancaster Street

West side – (EXCEPT 1ST & 3RD Wed. 12:01 -7 AM) From Cumberland Avenue northerly to Lancaster Street

CHESTNUT STREET

East side - (NP 1st & 3rd Wed 12:01 - 7:00 AM) From Cumberland Avenue southerly to Congress Street

East side – (NP except 1ST & 3RD Wed. 12:01 -7 AM.) From Cumberland Avenue northerly to Oxford Street

East side – (NP 1st & 3rd Wed 12:01 - 7:00 AM) From Oxford Street to Lancaster Street

West side (NP 2nd & 4th Wed 12:01 - 7:00 AM) From Somerset Street southerly to Congress Street

CONGRESS STREET

North side - (NP 1st & 3rd Wed 12:01 - 7:00 AM) From Smith Street westerly to Elm Street

CUMBERLAND AVENUE

North side - (NP 1st & 3rd Wed 12:01 - 7:00 AM) From Smith Street westerly to Elm Street

South side (NP 2nd & 4th Wed 12:01 - 7:00 AM) From Pearl Street easterly to Smith Street

ELM STREET

East side - (NP 1st & 3rd Wed 12:01 - 7:00 AM) From Cumberland Avenue northerly to Kennebec Street

West side (NP 2nd & 4th Wed 12:01 - 7:00 AM) From Congress Street northerly to Cumberland Avenue

FOX STREET

Southside (NP 2nd & 4th Wed 12:01 - 7:00 AM) From Franklin Arterial easterly to a point opposite Diamond Street

KENNEBEC STREET

North side – (NP 1st & 3rd Wed 12:01 - 7:00 AM) From Pearl Street westerly to Chestnut Street

Southside - (NP 2nd & 4th Wed 12:01 - 7:00 AM) From Chestnut street easterly to Pearl Street

LANCASTER STREET

North side - (NP 1st & 3rd Wed 12:01 - 7:00 AM)From Pearl Street westerly to Preble Street

South side (NP 2nd & 4th Wed 12:01 - 7:00 AM) From Cedar Street easterly to Pearl Street

LOCUST STREET

East side - (NP 1st & 3rd Wed 12:01 - 7:00 AM) From Congress Street northerly to Cumberland Avenue

MAYO STREET

East side - (NP 1st & 3rd Wed 12:01 - 7:00 AM) From Cumberland Avenue northerly to the terminus

West side (NP 2nd & 4th Wed 12:01 - 7:00 AM) From the terminus southerly to Cumberland Avenue

MYRTLE STREET

East side - (NP 1st & 3rd Wed 12:01 - 7:00 AM) From Congress Street northerly to Oxford Street

West side (NP 2nd & 4th Wed 12:01 - 7:00 AM) From Congress Street northerly to Cumberland Avenue

West side - (NP except 1st & 3rd Wed.12:01 – 7 AM) From Cumberland Avenue northerly to Oxford Street

OXFORD STREET

North side - (NP 1st & 3rd Wed 12:01 - 7:00 AM) From Smith Street westerly to Boyd Street

North side – (NP except 1st & 3rd Wed. 12:01 – 7 AM) from Wilmot Street westerly to Pearl Street

Southside (NP 2nd & 4th Wed 12:01 - 7:00 AM) From Preble Street easterly to Smith Street

PEARL STREET

East side-(NP 1st & 3rd Wed 12:01 - 7:00 AM) From Cumberland Avenue northerly to Oxford Street

PREBLE STREET

East side - (NP 1st & 3rd Wed 12:01 - 7:00 AM) From Lancaster Street southerly to Oxford

Street

East side (NP 1st & 3rd Wed 12:01 - 7:00 AM) From Cumberland Avenue southerly to

Congress Street

SOMERSET STREET

North side - (NP 1st & 3rd Wed 12:01 - 7:00 AM) From a point opposite Pearl Street westerly to

Elm Street

South side (NP 2nd & 4th Wed 12:01 - 7:00 AM) From Elm Street easterly to Franklin Arterial

STONE STREET

East side – (NP except 2nd & 4th Wed. 12:01- 7AM) From Oxford southerly to Cumberland

West side – (NP 2nd & 4th Wed. 12:01 – 7 AM) From oxford southerly to Cumberland

WILMOT STREET

East side - (NP 1st & 3rd Wed 12:01 - 7:00 AM) From Cumberland Avenue northerly to Oxford Street

West side - (NP 2nd & 4th Wed 12:01 - 7:00 AM) From Oxford Street southerly to Cumberland Avenue

SERVICE AREA 8– NO OVERNIGHT PARKING – TWICE MONTHLY SERVICE

No Overnight Parking – Tuesday

Parking is prohibited between the hours of 12:01 AM to 7:00 A.M. Tuesday on the 1st and 3rd Tuesday of the month for North & East sides on the following streets or parts of the streets and on the 2nd and 4th Tuesday of the month for the South & West sides on the following streets or parts of streets.

Service Area 8 boundaries are described as follows:

West side of Diamond Street, Marginal Way to Fox Street

West side of Smith Street, Fox Street to Congress Street

North side of Congress Street, Smith Street to Eastern Promenade

East side of Eastern Promenade, Congress Street to Washington Avenue

North side of Plowman Street, Washington Avenue to Marginal Way

North side of Marginal Way, Plowman Street to Diamond Street

he following streets or segments of streets are included within the boundaries of Service Area 8:

ANDERSON STREET	MARION STREET
CLEEVES STREET	MELBOURNE STREET
CONGRESS STREET	MERRILL STREET
COVE STREET	MONROE STREET
CUMBERLAND AVE	MONTGOMERY STREET*
DIAMOND STREET	MONTREAL STREET
EASTERN PROMENADE	MORNING STREET
E. LANCASTER STREET	NORTH STREET
EMERSON STREET	OXFORD STREET
EVERETT STREET	PLOWMAN STREET*
FOX STREET	QUEBEC STREET
GOULD STREET	ROMASCO LANE*
GREENLEAF STREET	SHERIDAN STREET
HAMMOND STREET	SMITH STREET

HOWARD STREET	SUMNER COURT*
LAFAYETTE STREET	TURNER STREET
MADISON STREET	WALNUT STREET
MARGINAL WAY	WASHINGTON AVE
	WILLIS STREET
	WINTHROP STREET

* Streets included within the designated boundaries, but not affected by the parking project.

CONGRESS STREET

North side (NP 1st & 3rd Tues. 12:01 - 7:00 AM) from Merrill Street to a point westerly of North Street and from Washington Avenue to Smith Street

CUMBERLAND AVENUE

North side - (NP 1st & 3rd Tues. 12:01 - 7:00 AM)from Washington Avenue westerly to Smith Street

outh side - (NP 2nd & 4th Tues. 12:01 - 7:00 AM) From Smith Street easterly to Washington Avenue

EASTERN PROMENADE

East side - (NP 1st & 3rd Tues. 12:01 - 7 AM) From a point opposite Congress Street northerly to a point opposite Walnut Street

East side – (NP 1st & 3rd Tues. 4 - 6 AM) From a point opposite Walnut Street northerly to a point opposite East End School

West side - (NP 2nd & 4th Tues. 4 - 6 AM) From North Street southerly to Walnut Street

West side - (NP 2nd & 4th Tues. 12:01 - 7:00 AM) From Walnut Street southerly to Congress Street

NORTH STREET

East side – (NP 4 a.m. to 6 a.m. Mon.) from a point northerly of Walnut Street to Eastern Prom

West side – (NP 4 a.m. to 6 a.m. Mon.) from E. Prom to a point northerly of Walnut Street

WASHINGTON AVENUE

East side (NP 1st & 3rd Tues. 12:01 - 7:00 AM) From Congress Street northerly to Eastern Promenade

Vest side - (NP 2nd & 4th Tues. 12:01 - 7:00 AM)) From a point opposite Eastern Promenade southerly to Cumberland Avenue

SCHEDULE XXXIA

SCHEDULE XXXI REPEALED BY CITY OF PORTLAND COUNCIL ORDER 11/2014

NO DAYTIME PARKING – CITY SERVICE AREAS

Summary:

Service Area 4: Twice Monthly per Side of Street

Odd: 1st & 3rd Tuesday 10:00 AM to 2:00 PM

Even: 2nd & 4th Tuesday 10:00 AM to 2:00 PM

Service Area 6: Twice Monthly per Side of Street

Odd: 1st & 3rd Thursday 10:00 AM to 2:00 PM

Even: 2nd & 4th Thursday 10:00 AM to 2:00 PM

Service Area 8: Twice Monthly per Side of Street

Odd: 1st & 3rd Tuesday 10:00 AM to 2:00 PM

Even: 2nd & 4th Tuesday 10:00 AM to 2:00 PM

Details:

Service Area 4:	Page 2
Service Area 6:	Page 5
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Service Area 4 – No Daytime Parking – Twice Monthly Service

No Daytime Parking – Tuesday

Parking is prohibited between the hours of 10:00 AM to 2:00 PM Tuesday on the 1st and 3rd Tuesday of the month for North & East sides on the following streets or parts of the streets and on the 2nd and 4th Tuesday of the month for the South & West sides on the following streets or parts of streets.

Service Area 4 boundaries are described as follows:

East side of Eastern Promenade, Congress Street to Atlantic Street

South side of Fore Street, Atlantic Street to India Street

West side of India Street, Commercial Street to Congress Street

South side of Congress Street, India Street to Eastern Promenade

The following streets or segments of street are included within the boundaries Service Area #4:

ADAMS STREET	MOODY STREET
ATLANTIC STREET	MORNING STREET
BECKETT STREET	MOUNTFORT STREET
CONGRESS STREET	MUNJOY STREET
CUTTER STREET*	
EASTERN PROMENADE	NEWBURY STREET
FEDERAL STREET	O'BRION STREET
FORE STREET	PONCE STREET
GILBERT LANE*	SHERBROOK STREET
HANCOCK STREET	SHERIDAN STREET
HOYT'S LANE*	ST. LAWRENCE STREET
	THAMES STREET
INDIA STREET	VESPER STREET
KELLOGG STREET	WATERVILLE ST.
MIDDLE STREET	WILSON STREET
MONUMENT STREET	

***Streets included within the designated boundaries, but not affected by the parking project.**

ADAMS STREET

North side (NP 1st & 3rd Tues.) From Waterville Street westerly to Sheridan Street

South side - (NP 2nd & 4th Tues.) From a point opposite Sheridan Street easterly to Waterville Street

ATLANTIC STREET

East side (NP 1st & 3rd Tues.) From Eastern Promenade northerly to Congress Street

West side - (NP 2nd & 4th Tues.) From Congress Street southerly to Fore Street

BECKETT STREET

East side (NP 1st & 3rd Tues.) From Moody Street northerly to Congress Street

West side - (NP 2nd & 4th Tues.) From Congress Street southerly to Moody Street

CONGRESS STREET

South side – (NP 2nd & 4th Tues.) From Mountfort Stree easterly to Kellogg Street and Munjoy Street easterly to Eastern Promenade

EASTERN PROMENADE

East side - (NP 2nd & 4th Tues.) From a point opposite Atlantic Street easterly to the exit of Fort Allen Park

East side – (NP 2nd & 4th Tues.) From Cutter Street to Congress Street

West side - (NP 2nd & 4th Tues.) From Congress Street southerly to a point opposite Cutter Street

West side – (NP 2nd & 4th Tues.) From Vesper Street to Atlantic Street

FORE STREET

North side (NP 1st & 3rd Tues.) From Atlantic Street to Mountfort Street

North side (NP 1st & 3rd Tues.) From Mountfort Street westerly to India Street

South side - (NP 2nd & 4th Tues.) From India Street to a point opposite Mountfort Street

South side – (NP 2nd & 4th Tues.) From a point opposite Mountfort Street to opposite Atlantic Street

KELLOGG STREET

East side (NP 1st & 3rd Tues.) From Adams Street northerly to Congress Street

West side - (NP 2nd & 4th Tues.) From Congress Street southerly to Adams Street

MONUMENT STREET

North side (NP 1st & 3rd Tues.) From Munjoy Street westerly to Ponce Street

South side - (NP 2nd & 4th Tues.) From Ponce Street easterly to Munjoy Street

MOODY STREET

North side (NP 1st & 3rd Tues.) From Eastern Promenade westerly to Munjoy Street

South side - (NP 2nd & 4th Tues.) From Munjoy Street easterly to Eastern Promenade

MORNING STREET

East side (NP 1st & 3rd Tues.) From Eastern Promenade northerly to Congress Street

West side - (NP 2nd & 4th Tues.) From Congress Street southerly to Eastern Promenade

MUNJOY STREET

East side (NP 1st & 3rd Tues.) From Eastern Promenade northerly to Congress Street

West side - (NP 2nd & 4th Tues.) From Congress Street southerly to Eastern Promenade

O'BRION STREET

East side (NP 1st & 3rd Tues.) From Eastern Promenade northerly to Wilson Street

West side - (NP 2nd & 4th Tues.) From Wilson Street southerly to Eastern Promenade

PONCE STREET

East side (NP 1st & 3rd Tues.) From Monument Street northerly to Congress Street

West side - (NP 2nd & 4th Tues.) From Congress Street southerly to Monument Street

SHERBROOK STREET

North side (NP 1st & 3rd Tues.) From St. Lawrence Street westerly to Waterville Street

SHERIDAN STREET

East side (NP 1st & 3rd Tues.) From Adams Street northerly to Congress Street

West side - (NP 2nd & 4th Tues.) From Congress Street southerly to Adams Street

ST. LAWRENCE STREET

East side (NP 1st & 3rd Tues.) From Fore Street northerly to Congress Street

West side - (NP 2nd & 4th Tues.) From Congress Street southerly to Fore Street

VESPER STREET

East side (NP 1st & 3rd Tues.) From Eastern Promenade northerly to Congress Street

West side - (NP 2nd & 4th Tues.) From Congress Street southerly to Eastern Promenade

WATERVILLE STREET

East side (NP 1st & 3rd Tues.) From Fore Street northerly to Monument Street

West side - (NP 2nd & 4th Tues.) From Monument Street southerly to Fore Street

WILSON STREET

North side (NP 1st & 3rd Tues.) From Eastern Promenade westerly to Atlantic Street

South side - (NP 2nd & 4th Tues.) From Atlantic Street easterly to Eastern Promenade

SERVICE AREA 6 – NO DAYTIME PARKING – TWICE MONTHLY SERVICE

No Daytime Parking – Thursday

Parking is prohibited between the hours of 10:00 AM to 2:00 PM on the 1st and 3rd Thursday of the month for North & East sides on the following streets or parts of the streets and on the 2nd and 4th Thursday of the month for the South & West sides on the following streets or parts of streets.

Service Area 6 boundaries are described as follows:

West side of Preble Street, Marginal Way to Congress Street

North side of Congress Street, Preble Street to Deering Avenue

East side of Deering Avenue, Congress Street to Park Avenue

North side of Park Avenue, Deering Avenue to State Street.

West side of State Street, Park Avenue to Forest Avenue

North side of Marginal Way, Forest Avenue to Preble Street

The following streets or segments of street are included within the boundaries of Service area 6:

ALDER STREET	HIGH STREET
BRATTLE STREET	MELLEN STREET
BROWN STREET	OAK STREET
CASCO STREET	OXFORD STREET
CONGRESS STREET	PARK AVENUE
CUMBERLAND AVE	PARRIS STREET
DEERING AVENUE	PORTLAND STREET
DEERING STREET PLACE	PREBLE STREET
DEERING STREET	SHEPLEY STREET
FOREST AVE	SHERMAN STREET
GRANT STREET	STATE STREET
HANOVER STREET	VERNON PLACE*
HENRY STREET	

*** Streets included within the designated boundaries, but not affected by the parking project.**

ALDER STREET

East side - (NP 1st & 3rd Thurs.) From Portland Street southerly to Cumberland Avenue

AVON PLACE

North side - (NP 1st & 3rd Thurs.) From a point westerly of the terminus to a point easterly of Avon Street

AVON STREET

East side - (NP 1st & 3rd Thurs.) From Deering Street northerly to Cumberland

Avenue

West side - (NP 2nd & 4th Thurs.) From Deering Street northerly to Cumberland Avenue

DEERING STREET

North side - (NP 1st & 3rd Thurs.) From High Street westerly to Mellen

Street

South side - (NP 2nd & 4th Thurs.) From Mellen Street easterly to High Street

GRANT STREET

North side - (NP 1st & 3rd Thurs.) From Deering Avenue easterly to High Street

South side - (NP 2nd & 4th Thurs.) From Deering Avenue easterly to High Street

HANOVER STREET

East side - (NP 1st & 3rd Thurs.) From Portland Street southerly to Cumberland Avenue (April 1st to November 30th)

East side – (NP 2nd & 4th Thurs.. December 1st to March 31st)
from Portland Street southerly to Cumberland Avenue

West side - (NP 2nd & 4th Thurs.) From a point northerly of Portland Street southerly to Cumberland Avenue

HENRY STREET

Eastside - (NP 1st & 3rd Thurs.) From the terminus northerly to Deering Street

MECHANIC STREET

East side – (NP 1st & 3rd Thurs.) From Portland Street southerly to Cumberland Avenue (April 1st to November 30th)

East side – (NP except 11:30 P.M. Tue. to 7:00 AM. Wed. December 1st to March 31st)
from Portland Street southerly to Cumberland Avenue

West side - (NP 2nd & 4th Thurs.) From Portland Street southerly to Cumberland Avenue

PARRIS STREET

East side - (NP 1st & 3rd Thurs.) From Cumberland Avenue northerly to Portland Street

West side - (NP 2nd & 4th Thurs.) From Cumberland Avenue northerly to Portland Street (April

1st to November 30th)

West side - (NP 1st & 3rd Thursday Mon. Dec. 1st to March 31st)
from Cumberland Avenue northerly to Portland Street)

SHERMAN STREET

North side - (NP 1st & 3rd Thurs.) From High Street westerly to Deering Avenue

South side - (NP 2nd & 4th Thurs.) From High Street westerly to Deering Avenue

SERVICE AREA 8– NO DAYTIME PARKING – TWICE MONTHLY SERVICE

No Daytime Parking – Tuesday

Parking is prohibited between the hours of 10:00 AM to 2:00 PM Tuesday on the 1st and 3rd Tuesday of the month for North & East sides on the following streets or parts of the streets and on the 2nd and 4th Tuesday of the month for the South & West sides on the following streets or parts of streets.

Service Area 8 boundaries are described as follows:

West side of Diamond Street, Marginal Way to Fox Street

West side of Smith Street, Fox Street to Congress Street

North side of Congress Street, Smith Street to Eastern Promenade

East side of Eastern Promenade, Congress Street to Washington Avenue

North side of Plowman Street, Washington Avenue to Marginal Way

North side of Marginal Way, Plowman Street to Diamond Street

The following streets or segments of streets are included within the boundaries of Service Area 8:

ANDERSON STREET	MARION STREET
CLEVES STREET	MELBOURNE STREET
CONGRESS STREET	MERRILL STREET
COVE STREET	MONROE STREET
CUMBERLAND AVE	MONTGOMERY STREET*
DIAMOND STREET	MONTREAL STREET
EASTERN PROMENADE	MORNING STREET
E. LANCASTER STREET	NORTH STREET
EMERSON STREET	OXFORD STREET
EVERETT STREET	PLOWMAN STREET*
FOX STREET	QUEBEC STREET
GOULD STREET	ROMASCO LANE*
GREENLEAF STREET	SHERIDAN STREET
HAMMOND STREET	SMITH STREET
HOWARD STREET	SUMNER COURT*

LAFAYETTE STREET	TURNER STREET
MADISON STREET	WALNUT STREET
MARGINAL WAY	WASHINGTON AVE
	WILLIS STREET
	WINTHROP STREET

* Streets included within the designated boundaries, but not affected by the parking project.

ANDERSON STREET

East side - (NP 1st & 3rd Tues.) From Cumberland Avenue northerly to Gould Street

East side - (NP 1st & 3rd Tues.) From Gould Street to Plowman Street

West side- (NP 2nd & 4th Tues.) from a point south of Plowman Street to a point north of Gould Street

West side - (NP 2nd & 4th Tues.)from Fox Street to Cumberland Avenue

CLEEVE STREET

East side - (NP 1st & 3rd Tues.) From Cumberland Avenue northerly to Oxford Street

West side (NP 2nd & 4th Tues.) From Oxford Street southerly to Cumberland Avenue

CONGRESS STREET

North side - (NP 1st & 3rd Tues.) From Eastern Promenade westerly to Merrill Street and from a point west of North Street to Washington Avenue

COVE STREET

East side - (NP 1st & 3rd Tues.) From Anderson Street northerly to Marginal Way

West side (NP 2nd & 4th Tues.) From Marginal Way southerly to Anderson Street

CUMBERLAND AVENUE

North side - (NP 1st & 3rd Tues.) From Merrill Street westerly to Washington Avenue

South side - (NP 2nd & 4th Tues.) from Washington Avenue easterly to Merrill Street

DIAMOND STREET

East side - NP 1st & 3rd Tues.) From Fox Street to a point northerly of Fox Street

West side (NP 2nd & 4th Tues.)from Marginal Way southerly to Fox Street

EASTERN PROMENADE

East side - (NP 1st & 3rd Tues.) From a point opposite Congress Street northerly to a point opposite

Walnut Street

West side (NP 2nd & 4th Tues.) From Walnut Street southerly to Congress Street

EAST LANCASTER STREET

North side - (NP 1st & 3rd Tues.) From Anderson Street westerly to Smith Street

South side (NP 2nd & 4th Tues..) From Smith Street easterly to Anderson Street

EMERSON STREET

East side - (NP 1st & 3rd Tues.) From Melbourne Street southerly to Congress Street

West side (NP 2nd & 4th Tues.) From Melbourne Street southerly to Congress Street

EVERETT STREET

North side - (NP 1st & 3rd Tues.) From Winthrop Street westerly to Anderson Street

South side (NP 2nd & 4th Tues.) From Anderson Street easterly to Winthrop Street

FOX STREET

North side - (NP 1st & 3rd Tues.) From Washington Avenue westerly to Anderson Street

South side (NP 2nd & 4th Tues.) From Anderson Street easterly to Washington Avenue

GOULD STREET

North side - (NP 1st & 3rd Tues.) From the terminus westerly to Anderson Street

South side (NP 2nd & 4th Tues.) From Anderson Street easterly to the terminus

GREENLEAF STREET

East side - (NP 1st & 3rd Tues.) From Oxford Street northerly to Madison Street

East side - (NP 1st & 3rd Tues.) From Everett Street northerly to Fox Street

West side (NP 2nd & 4th Tues.) From Fox Street southerly to Everett Street

West side (NP 2nd & 4th Tues.) From Madison Street southerly to Oxford Street

HAMMOND STREET

East side - (NP 1st & 3rd Tues.) From Fox Street northerly to Gould Street

West side (NP 2nd & 4th Tues.) From Gould Street southerly to Fox Street

HOWARD STREET

East side - (NP 1st & 3rd Tues.) From Congress Street northerly to Quebec Street

West side -(NP 2nd & 4th Tues.)

LAFAYETTE STREET

East side - (NP 1st & 3rd Tues.) From Congress Street northerly to Quebec Street

West side (NP 2nd & 4th Tues.) From Quebec Street southerly to Congress Street

MADISON STREET

North side - (NP 1st & 3rd Tues.) From Washington Avenue westerly to Anderson Street

South side (NP 2nd & 4th Tues.) From Anderson Street easterly to Washington Avenue

MARGINAL WAY

North side - (NP 1ST & 3RD Tues.) From a point opposite Plowman Street westerly to Diamond Street

South side (NP 2nd & 4th Tues.) From Diamond Street easterly to Plowman Street

MARION STREET

North side - (NP 1st & 3rd Tues.) From the terminus westerly to a point opposite Romasco Lane

South side – (NP 2nd & 4th Tues..) From Washington Avenue easterly to the terminus.

MELBOURNE STREET

North side - (NP 1st & 3rd Tues.) From Eastern Promenade westerly to North Street

South side (NP 2nd & 4th Tues.) From North Street easterly to Eastern Promenade

MERRILL STREET

East side - NP 1st & 3rd Tues.) From Congress Street northerly to Melbourne Street

West side (NP 2nd & 4th Tues.) From Melbourne Street southerly to Congress Street

MONROE STREET

North side - (NP 1st & 3rd Tues.) From Washington Avenue westerly to Greenleaf Street

South side (NP 2nd & 4th Tues.) From Greenleaf Street easterly to Washington Avenue

MONTREAL STREET

North side - (NP 1st & 3rd Tues.) From Eastern Promenade westerly to North Street

South side (NP 2nd & 4th Tues.) From North Street easterly to Eastern Promenade

MORNING STREET

East side - (NP 1st & 3rd Tues.) From Congress Street northerly to Turner Street

West side (NP 2nd & 4th Tues.) From Congress Street northerly to Turner Street

NORTH STREET

East side- (NP 1st & 3rd Tues.) From Congress Street northerly to a point north of Walnut Street

West side (NP 2nd & 4th Tues.) From a point northerly of Walnut Street to a point southerly of Cumberland Avenue

West side (NP 2nd & 4th Tues.) From a point southerly of Cumberland Avenue to Congress Street

QUEBEC STREET

North side - (NP 1st & 3rd Tues.) From Eastern Promenade westerly to North Street

South side (NP 2nd & 4th Tues.) From North Street easterly to Eastern Promenade

SHERIDAN STREET

West side (NP 2nd & 4th Tues.) From Walnut Street southerly to Congress Street

East side - (NP 2ND & 4TH Tues.) from Congress Street northerly to Walnut Street

SMITH STREET

East side - (NP except 10 am To 2 PM 2nd & 4th Tues.) From Congress Street northerly to Cumberland Avenue

East side - (NP 1st & 3rd Tues.) From Cumberland Avenue northerly to the terminus

West side (NP 2nd & 4th Tues.) From the terminus southerly to Congress Street

TURNER STREET

North side - (NP 1st & 3rd Tues.) From Eastern Promenade westerly to Merrill Street

South side (NP 2nd & 4th Tues.) From Merrill Street easterly to Eastern Promenade

WALNUT STREET

North side - (NP 1st & 3rd Tues.) From Eastern Promenade westerly to Washington Avenue

South side (NP 2nd & 4th Tues.) From Washington Avenue easterly to Eastern Promenade

WILLIS STREET

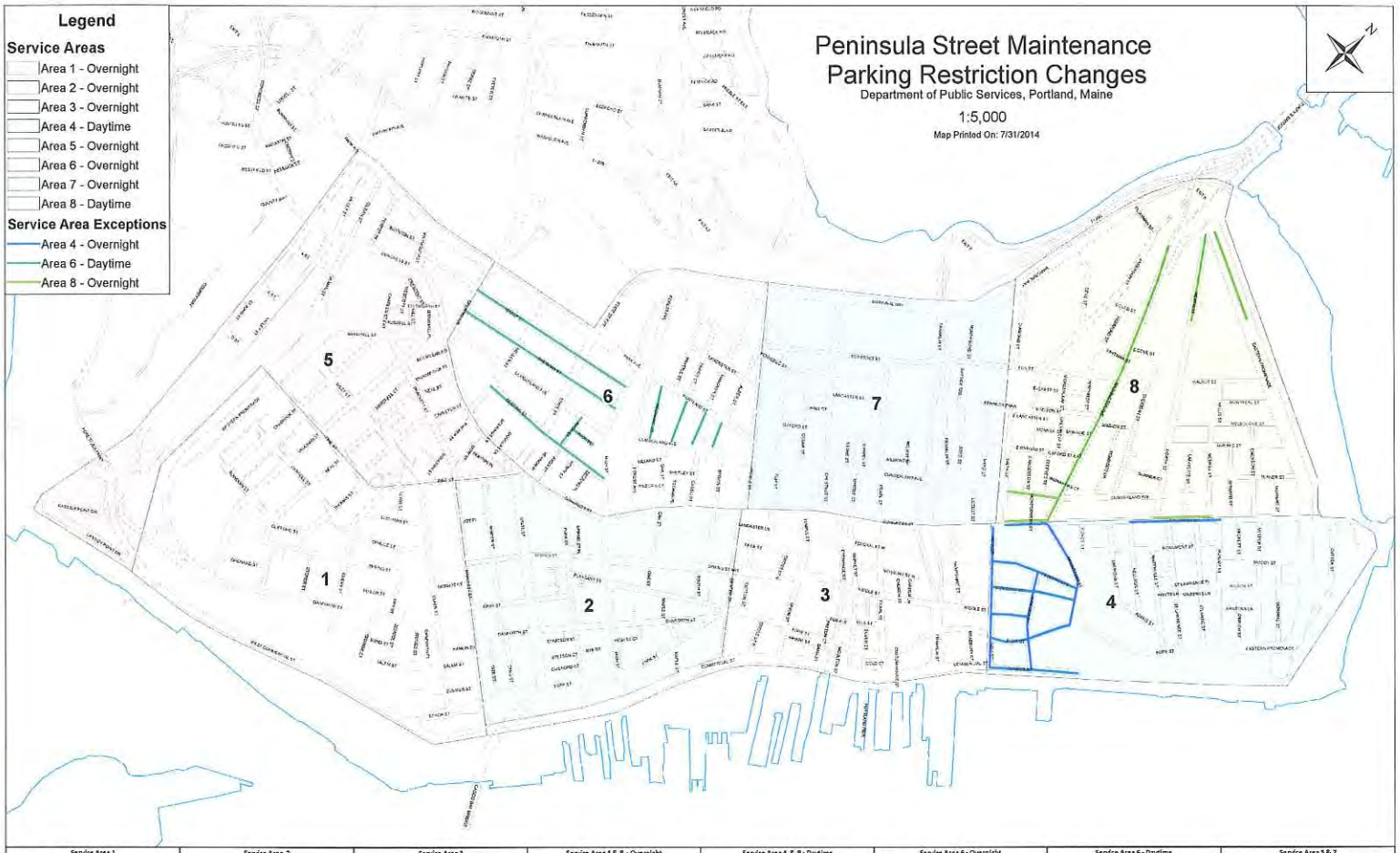
East side - (NP 1st & 3rd Tues.) From Melbourne Street northerly to Walnut Street

West side (NP 2nd & 4th Tues.) From Walnut Street southerly to Melbourne Street

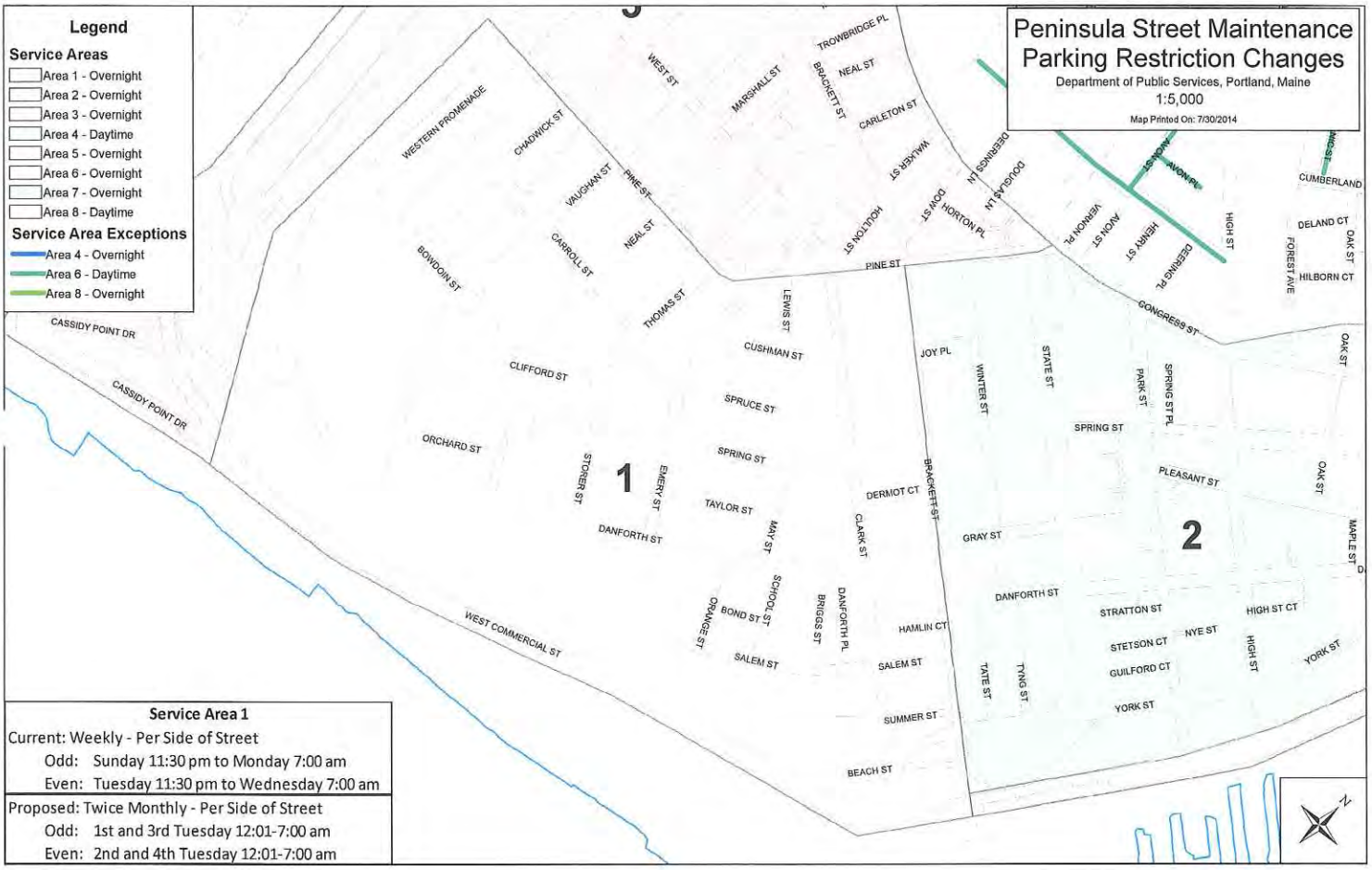
WINTHROP STREET

West side (NP 2nd & 4th Tues.) From Fox Street southerly to Madison Street

East side - (NP 2nd & 4th Tues.) - Madison Street to Fox Street



Service Area 1	Service Area 2	Service Area 3	Service Area 4 & 8 - Overnight	Service Area 4 & 8 - Daytime	Service Area 6 - Overnight	Service Area 6 - Daytime	Service Area 5 & 7
Current: Weekly - Per Side of Street Odd: Sunday 11:30 pm to Monday 7:00 am Even: Tuesday 11:30 pm to Wednesday 7:00 am	Current: Weekly - Per Side of Street Odd: Monday 11:30 pm to Tuesday 7:00 am Even: Wednesday 11:30 pm to Thursday 7:00 am	Current: Weekly - Per Side of Street Odd: Sunday 11:30 pm to Monday 7:00 am Even: Tuesday 11:30 pm to Wednesday 7:00 am	Current: Weekly - Per Side of Street Odd: Sunday 11:30 pm to Monday 7:00 am Even: Monday 11:30 pm to Tuesday 7:00 am	Current: Weekly - Per Side of Street Odd: Monday 8:00 am to 12:00 pm Even: Tuesday 8:00 am to 12:00 pm	Current: Weekly Odd: Sunday 11:30 pm to Monday 7:00 am Even: Tuesday 11:30 pm to Wednesday 7:00 am	Current: Twice Monthly - Per Side of Street Odd: 1st and 3rd Thursday 10:00 am to 2:00 pm Even: 2nd and 4th Thursday 10:00 am to 2:00 pm	Current: Weekly - Per Side of Street Odd: Monday 11:30 pm to Tuesday 7:00 am Even: Wednesday 11:30 pm to Thursday 7:00 am
Proposed: Twice Monthly - Per Side of Street Odd: 1st and 3rd Tuesday 12:01-7:00 am Even: 2nd and 4th Tuesday 12:01-7:00 am	Proposed: Twice Monthly - Per Side of Street Odd: 1st and 3rd Tuesday 12:01-7:00 am Even: 2nd and 4th Tuesday 12:01-7:00 am	Proposed: Weekly - Per Side of Street NO CHANGE FROM CURRENT RESTRICTION	Proposed: Twice Monthly - Per Side of Street Odd: 1st and 3rd Tuesday 12:01-7:00 am Even: 2nd and 4th Tuesday 12:01-7:00 am	Proposed: Twice Monthly - Per Side of Street Odd: 1st and 3rd Tuesday 10:00 am to 2:00 pm Even: 2nd and 4th Tuesday 10:00 am to 2:00 pm	Proposed: Twice Monthly Odd: 1st and 3rd Wednesday 12:01-7:00 am Even: 2nd and 4th Wednesday 12:01-7:00 am	Proposed: Twice Monthly - Per Side of Street NO CHANGE FROM CURRENT RESTRICTION	Proposed: Twice Monthly - Per Side of Street Odd: 1st and 3rd Wednesday 12:01-7:00 am Even: 2nd and 4th Wednesday 12:01-7:00 am


Peninsula Street Maintenance
Parking Restriction Changes
Department of Public Services, Portland, Maine
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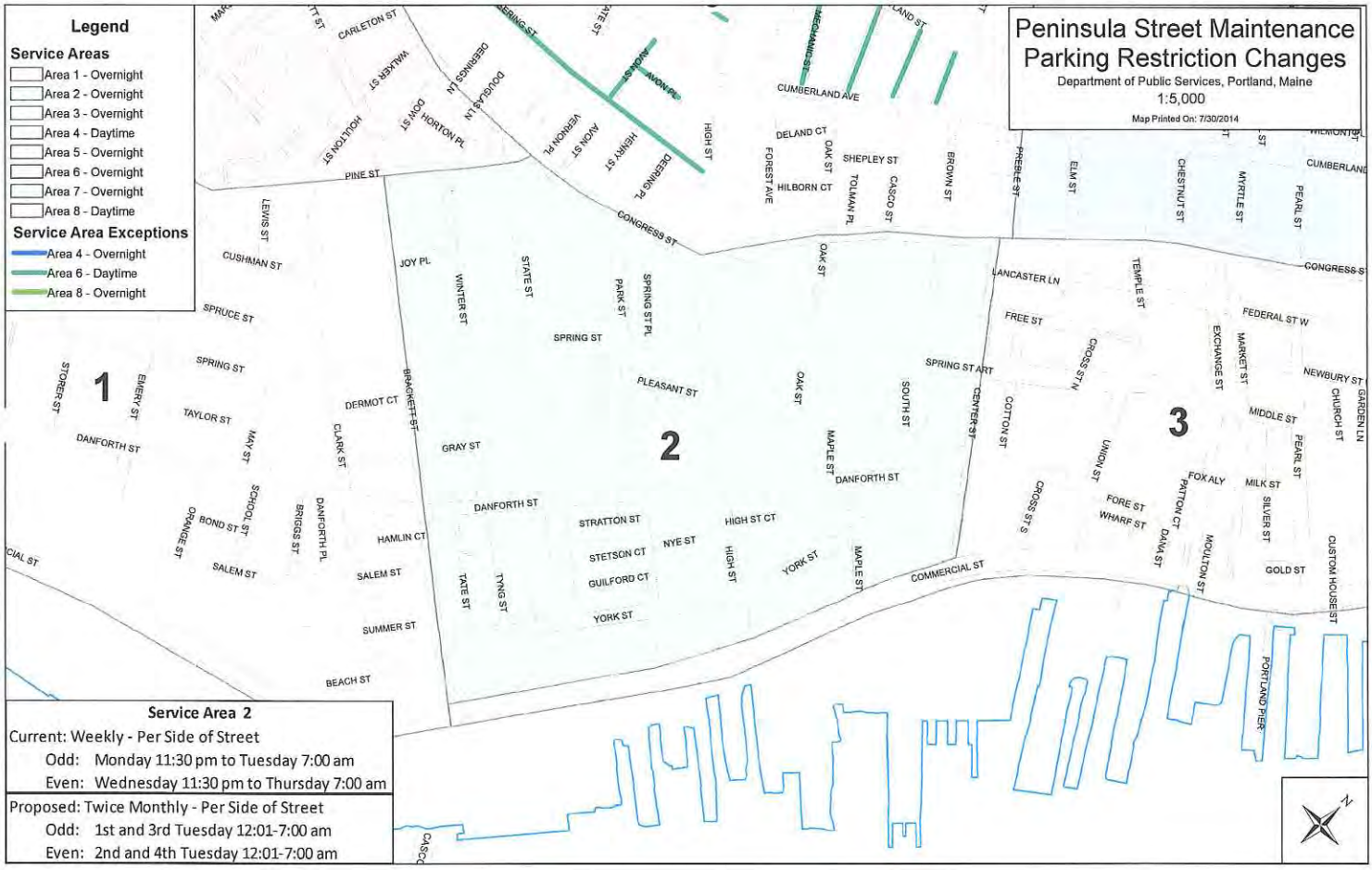
Map Printed On: 7/30/2014
Legend
Service Areas
Area 1 - Overnight
Area 2 - Overnight
Area 3 - Overnight
Area 4 - Daytime
Area 5 - Overnight
Area 6 - Overnight
Area 7 - Overnight
Area 8 - Daytime
Service Area Exceptions
Area 4 - Overnight
Area 6 - Daytime
Area 8 - Overnight
1
2
WESTERN PROMENADE
CHADWICK ST
WEST ST
MARSHALL ST
TROWBRIDGE PL
BRACKETT ST
NEAL ST
CARLETON ST
WALKER ST
DEERINGS LN
DOUGLAS LN
DOW ST
HORTON PL
HOULTON ST
VAUGHAN ST
PINE ST
NEAL ST
CARROLL ST
BOWDOIN ST
THOMAS ST
LEWIS ST
PINE ST
CUMBERLAND
DELAND CT
OAK ST
FOREST AVE
HILBORN CT
HIGH ST
DEERING PL
HENRY ST
AVON ST
VERNON PL
AVON PL
CONGRESS ST
CASSIDY POINT DR
CASSIDY POINT DR
CLIFFORD ST
CUSHMAN ST
JOY PL
WINTER ST
STATE ST
PARK ST
SPRING ST PL
OAK ST
SPRUCE ST
SPRING ST
ORCHARD ST
SPRING ST
PLEASANT ST
OAK ST
STORER ST
EMERY ST
TAYLOR ST
DERMOT CT
BRACKETT ST
DANFORTH ST
MAY ST
CLARK ST
GRAY ST
MAPLE ST
DANFORTH ST
STRATTON ST
HIGH ST CT
WEST COMMERCIAL ST
ORANGE ST
BOND ST
SCHOOL ST
BRIGGS ST
DANFORTH PL
HAMLIN CT
NYE ST
STETSON CT
HIGH ST
YORK ST
SALEM ST
SALEM ST
TATE ST
TYNG ST
GUILFORD CT
YORK ST
SUMMER ST
BEACH ST
N
Service Area 1
Current: Weekly - Per Side of Street
Odd: Sunday 11:30 pm to Monday 7:00 am
Even: Tuesday 11:30 pm to Wednesday 7:00 am
Proposed: Twice Monthly - Per Side of Street
Odd: 1st and 3rd Tuesday 12:01-7:00 am
Even: 2nd and 4th Tuesday 12:01-7:00 am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Department of Public Services, Portland, Maine
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Legend
Service Areas
Area 1 - Overnight
Area 2 - Overnight
Area 3 - Overnight
Area 4 - Daytime
Area 5 - Overnight
Area 6 - Overnight
Area 7 - Overnight
Area 8 - Daytime
Service Area Exceptions
Area 4 - Overnight
Area 6 - Daytime
Area 8 - Overnight
1
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3
CARLETON ST
WALKER ST
DOUGLAS LN
DEERINGS LN
HORTON PL
HOULTON ST
PINE ST
LEWIS ST
CUSHMAN ST
SPRUCE ST
SPRING ST
STORER ST
EMERY ST
TAYLOR ST
DANFORTH ST
MAY ST
SCHOOL ST
ORANGE ST
BOND ST
BRIGGS ST
DANFORTH PL
SALEM ST
HAMLIN CT
SUMMER ST
BEACH ST
DERMOT CT
CLARK ST
BRACKETT ST
JOY PL
WINTER ST
STATE ST
SPRING ST
PARK ST
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PLEASANT ST
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DANFORTH ST
STRATTON ST
STETSON CT
GUILFORD CT
YORK ST
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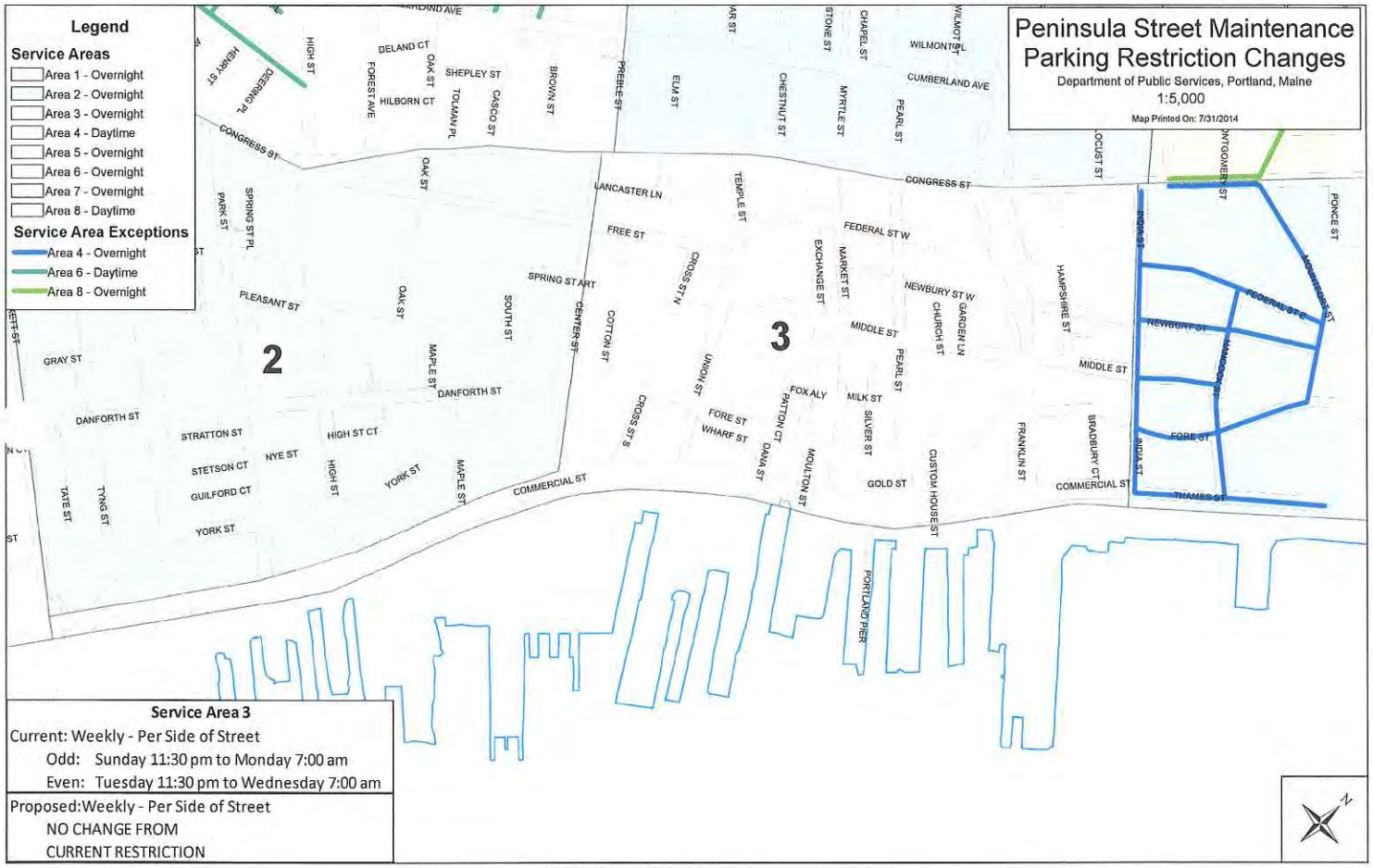
NYE ST
HIGH ST CT
HIGH ST
YORK ST
MAPLE ST
DANFORTH ST
SOUTH ST
OAK ST
CENTER ST
COMMERCIAL ST
CUMBERLAND AVE
DELAND CT
HILBORN CT
FOREST AVE
OAK ST
TOLMAN PL
SHEPLEY ST
CASCO ST
BROWN ST
PREBLE ST
ELM ST
CHESTNUT ST
MYRTLE ST
PEARL ST
CONGRESS ST
LANCASTER LN
FREE ST
SPRING ST ART
COTTON ST
CROSS ST N
CROSS ST S
UNION ST
TEMPLE ST
FEDERAL ST W
EXCHANGE ST
MARKET ST
NEWBURY ST
MIDDLE ST
CHURCH ST
GARDEN LN
PEARL ST
FOX ALY
MILK ST
SILVER ST
FORE ST
WHARF ST
PATTON CT
DAM ST
MCULTON ST
GOLD ST
CUSTOM HOUSE ST
PORTLAND PIER
Service Area 2
Current: Weekly - Per Side of Street
Odd: Monday 11:30 pm to Tuesday 7:00 am
Even: Wednesday 11:30 pm to Thursday 7:00 am
Proposed: Twice Monthly - Per Side of Street
Odd: 1st and 3rd Tuesday 12:01-7:00 am
Even: 2nd and 4th Tuesday 12:01-7:00 am
N


Peninsula Street Maintenance
Parking Restriction Changes
Department of Public Services, Portland, Maine
1:5,000
Map Printed On: 7/31/2014
Legend
Service Areas
Area 1 - Overnight
Area 2 - Overnight
Area 3 - Overnight
Area 4 - Daytime
Area 5 - Overnight
Area 6 - Overnight
Area 7 - Overnight
Area 8 - Daytime
Service Area Exceptions
Area 4 - Overnight
Area 6 - Daytime
Area 8 - Overnight
2
3
CONGRESS ST
CUMBERLAND AVE
WILMOT PL
CHAPEL ST
PEARL ST
MYRTLE ST
CHESTNUT ST
ELM ST
PREBLE ST
BROWN ST
CASCO ST
SHEPLEY ST
DELAND CT
HILBORN CT
FOREST AVE
OAK ST
TOLMAN PL
HIGH ST
DEERING PL
HENRY ST
LANCASTER LN
TEMPLE ST
FREE ST
FEDERAL ST W
EXCHANGE ST
MARKET ST
NEWBURY ST W
CHURCH ST
GARDEN LN
HAMPSHIRE ST
MIDDLE ST
PEARL ST
MILK ST
SILVER ST
GOLD ST
CUSTOM HOUSE ST
FRANKLIN ST
BRADBURY CT
COMMERCIAL ST
PORTLAND PIER
MOULTON ST
DANA ST
PATTON CT
FOX ALY
FORE ST
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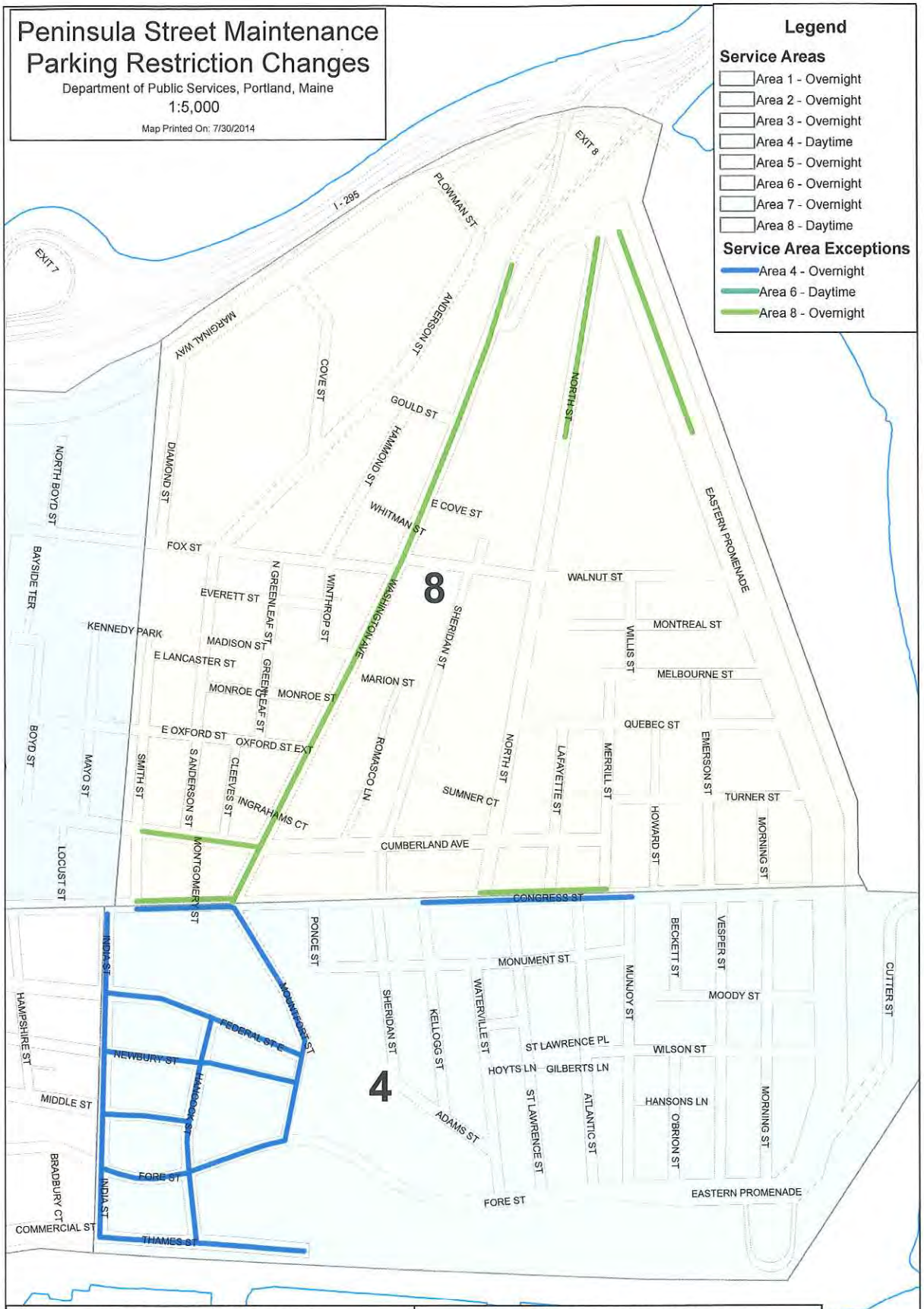
MAPLE ST
DANFORTH ST
PLEASANT ST
SPRING ST PL
PARK ST
GRAY ST
STRATTON ST
HIGH ST CT
NYE ST
STETSON CT
GUILFORD CT
YORK ST
TATE ST
TYNG ST
LOCUST ST
MONTGOMERY ST
PONCE ST
INDIA ST
FEDERAL ST E
NEWBURY ST
MIDDLE ST
FORE ST
THAMES ST
Service Area 3
Current: Weekly - Per Side of Street
Odd: Sunday 11:30 pm to Monday 7:00 am
Even: Tuesday 11:30 pm to Wednesday 7:00 am
Proposed:Weekly - Per Side of Street
NO CHANGE FROM
CURRENT RESTRICTION
N

Peninsula Street Maintenance Parking Restriction Changes

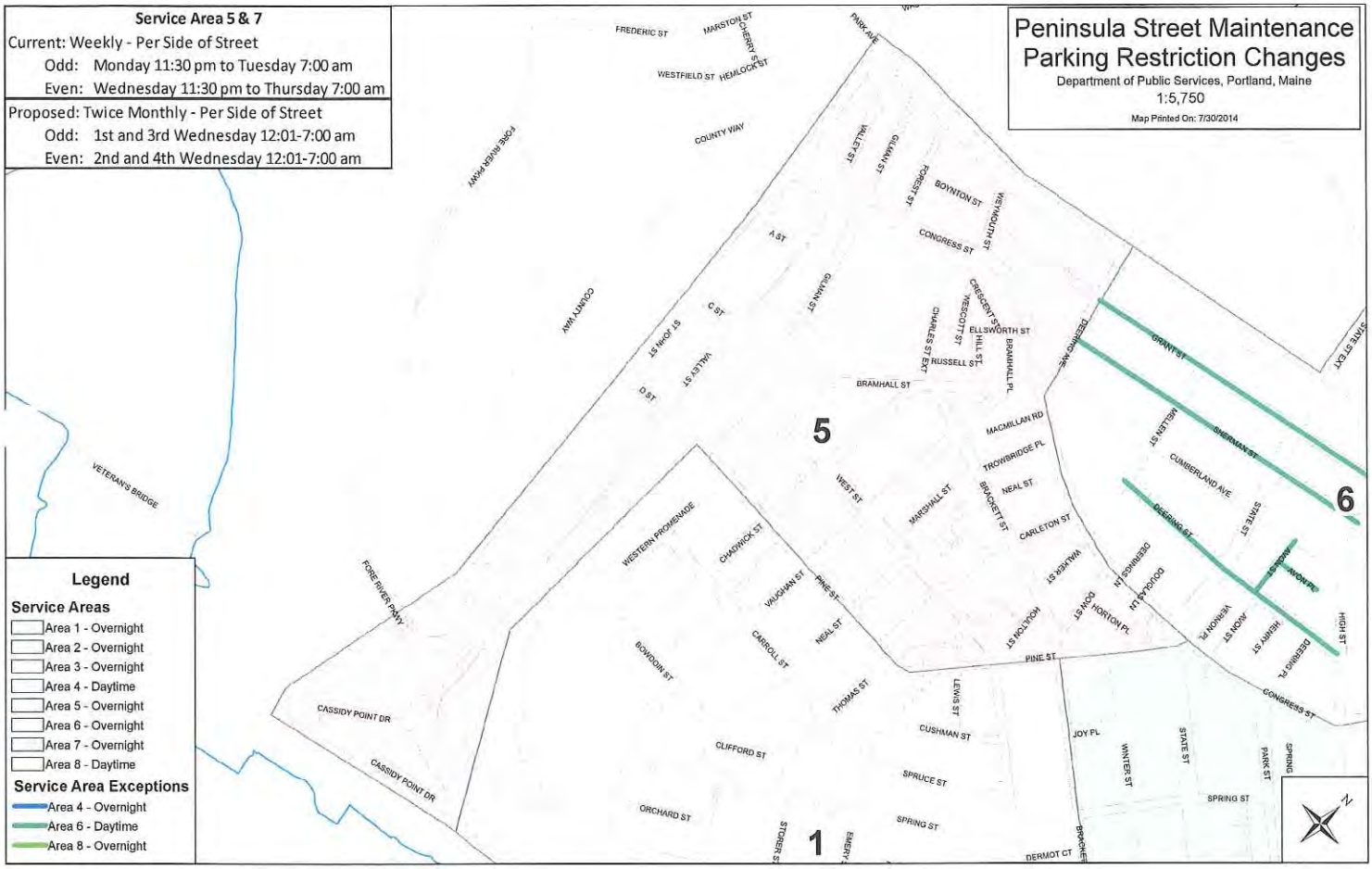
Department of Public Services, Portland, Maine

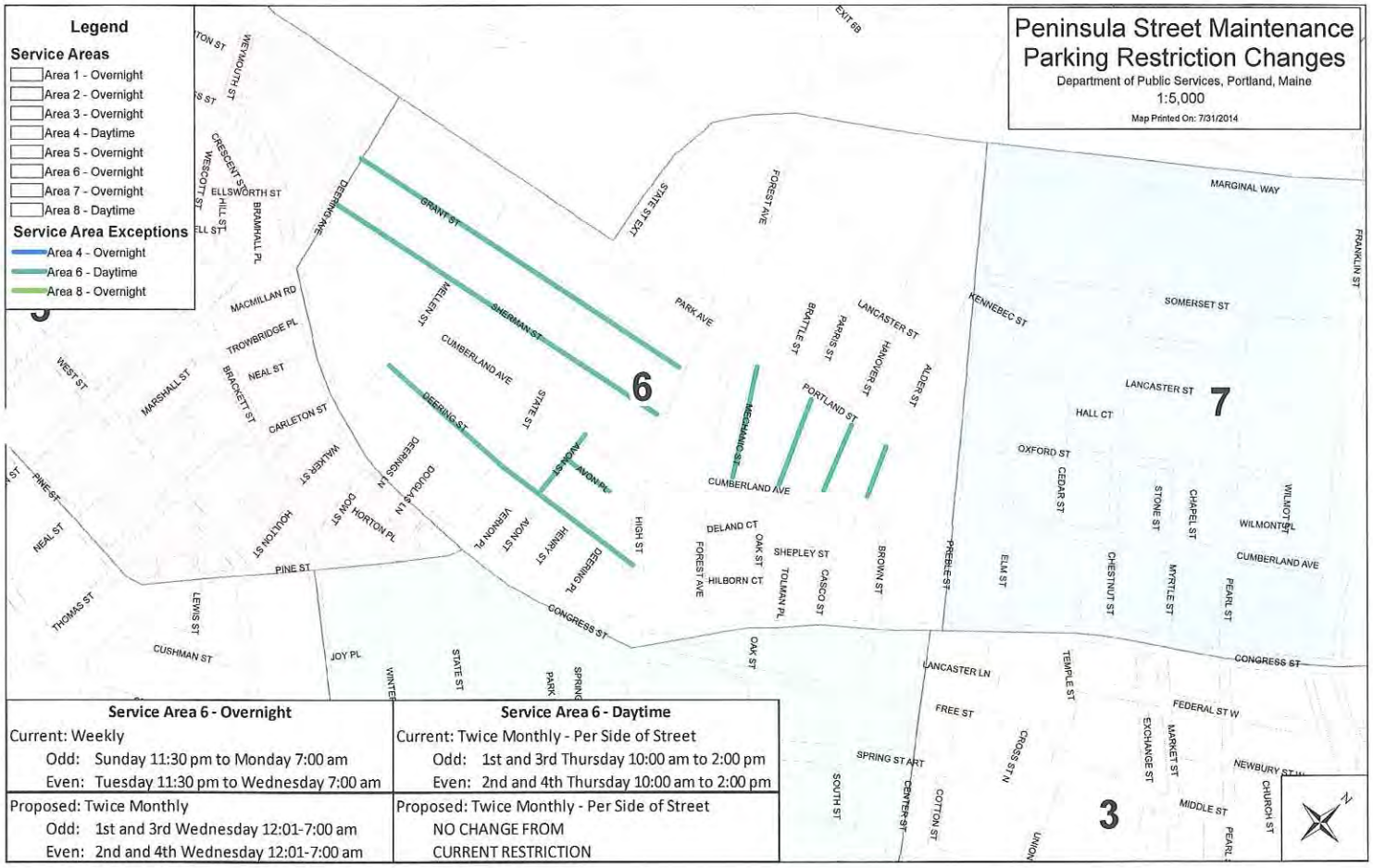
1:5,000

Map Printed On: 7/30/2014

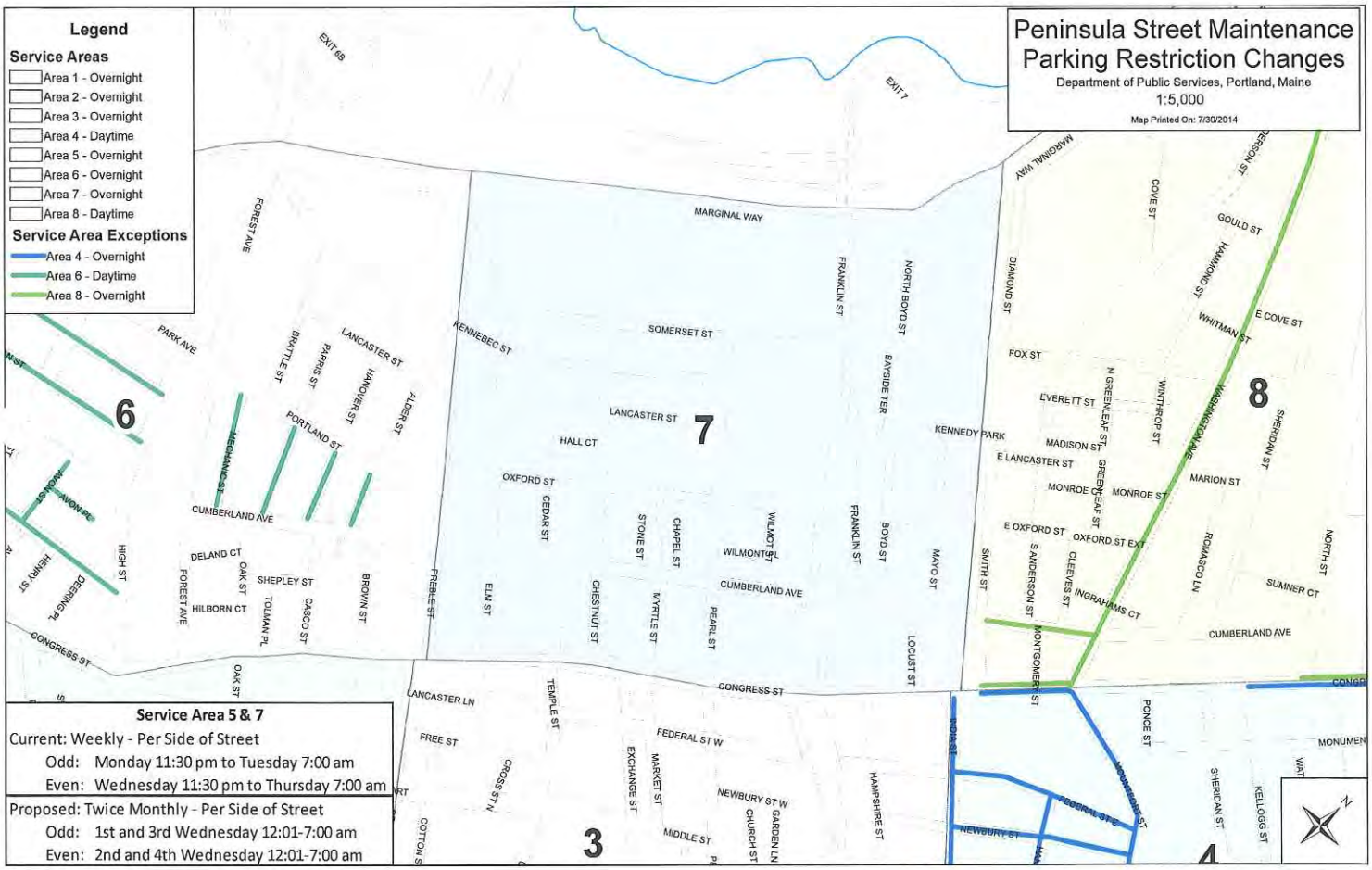


Service Area 4 & 8 - Overnight	Service Area 4 & 8 - Daytime
Current: Weekly - Per Side of Street	Current: Weekly - Per Side of Street
Odd: Sunday 11:30 pm to Monday 7:00 am	Odd: Monday 8:00 am to 12:00 pm
Even: Monday 11:30 pm to Tuesday 7:00 am	Even: Tuesday 8:00 am to 12:00 pm
Proposed: Twice Monthly - Per Side of Street	Proposed: Twice Monthly - Per Side of Street
Odd: 1st and 3rd Tuesday 12:01-7:00 am	Odd: 1st and 3rd Tuesday 10:00 am to 2:00 pm
Even: 2nd and 4th Tuesday 12:01-7:00 am	Even: 2nd and 4th Tuesday 10:00 am to 2:00 pm


Service Area 5 & 7
Current: Weekly - Per Side of Street
Odd: Monday 11:30 pm to Tuesday 7:00 am
Even: Wednesday 11:30 pm to Thursday 7:00 am
Proposed: Twice Monthly - Per Side of Street
Odd: 1st and 3rd Wednesday 12:01-7:00 am
Even: 2nd and 4th Wednesday 12:01-7:00 am
Peninsula Street Maintenance
Parking Restriction Changes
Department of Public Services, Portland, Maine
1:5,750
Map Printed On: 7/30/2014
Legend
Service Areas
Area 1 - Overnight
Area 2 - Overnight
Area 3 - Overnight
Area 4 - Daytime
Area 5 - Overnight
Area 6 - Overnight
Area 7 - Overnight
Area 8 - Daytime
Service Area Exceptions
Area 4 - Overnight
Area 6 - Daytime
Area 8 - Overnight
5
6
1
FREDERIC ST
MARSTON ST
CHERRY ST
WESTFIELD ST
HEMLOCK ST
PARK AVE
COUNTY WAY
FORE RIVER PKWY
VALLEY ST
GULMAN ST
FOREST ST
BOYNTON ST
WEYMOUTH ST
CONGRESS ST
ST V
ST C
ST D
ST JOHN ST
CRESCENT ST
WESCOTT ST
ELLSWORTH ST
HILL ST
CHARLES ST EXT
RUSSELL ST
BRAMHALL PL
BRAMHALL ST
DEERING AVE
GRANT ST
SHERMAN ST
WELLEN ST
CUMBERLAND AVE
STATE ST
DEERING ST
ST JOHN PL
JOHN ST
VERNON PL
HIGHBY ST
DEERING PL
HIGH ST
MACMILLAN RD
TROWBRIDGE PL
NEAL ST
CARLETON ST
BRACKETT ST
MARSHALL ST
WEST ST
WALDER ST
DEERING ST
DOLOFF AVE
HORTON PL
DOW ST
HOLTON ST
PINE ST
LEWIS ST
CUSHMAN ST
JOY PL
WINTER ST
STATE ST
PARK ST
SPRING
SPRING ST
DERMOT CT
BRACKETT
SPRING ST
SPRUCE ST
CLIFFORD ST
ORCHARD ST
STOREN ST
EMERY
CONGRESS ST
WESTERN PROMENADE
CHADWICK ST
VAUGHAN ST
PINE ST
NEAL ST
CARROLL ST
THOMAS ST
BOWDOIN ST
CASSIDY POINT DR
CASSIDY POINT DR
FORE RIVER PKWY
VETERAN'S BRIDGE
N



Service Area 6 - Overnight	Service Area 6 - Daytime
Current: Weekly Odd: Sunday 11:30 pm to Monday 7:00 am Even: Tuesday 11:30 pm to Wednesday 7:00 am	Current: Twice Monthly - Per Side of Street Odd: 1st and 3rd Thursday 10:00 am to 2:00 pm Even: 2nd and 4th Thursday 10:00 am to 2:00 pm
Proposed: Twice Monthly Odd: 1st and 3rd Wednesday 12:01-7:00 am Even: 2nd and 4th Wednesday 12:01-7:00 am	Proposed: Twice Monthly - Per Side of Street NO CHANGE FROM CURRENT RESTRICTION


Peninsula Street Maintenance
Parking Restriction Changes
Department of Public Services, Portland, Maine
1:5,000
Map Printed On: 7/30/2014
Legend
Service Areas
Area 1 - Overnight
Area 2 - Overnight
Area 3 - Overnight
Area 4 - Daytime
Area 5 - Overnight
Area 6 - Overnight
Area 7 - Overnight
Area 8 - Daytime
Service Area Exceptions
Area 4 - Overnight
Area 6 - Daytime
Area 8 - Overnight
Service Area 5 & 7
Current: Weekly - Per Side of Street
Odd: Monday 11:30 pm to Tuesday 7:00 am
Even: Wednesday 11:30 pm to Thursday 7:00 am
Proposed: Twice Monthly - Per Side of Street
Odd: 1st and 3rd Wednesday 12:01-7:00 am
Even: 2nd and 4th Wednesday 12:01-7:00 am
6
7
8
3
4
EXIT 6B
EXIT 7
MARGINAL WAY
FOREST AVE
PARK AVE
BRATTLE ST
PARRIS ST
LANCASTER ST
HANOVER ST
ALDER ST
KENNEBEC ST
SOMERSET ST
FRANKLIN ST
NORTH BOYD ST
BAYSIDE TER
KENNEDY PARK
HEGHAMIC ST
PORTLAND ST
HALL CT
OXFORD ST
CUMBERLAND AVE
AVON PL
HIGH ST
HENRY ST
DEERING PL
DELAND CT
OAK ST
SHEPLEY ST
FOREST AVE
HILBORN CT
TOLMAN PL
CASCO ST
BROWN ST
CONGRESS ST
PREBLE ST
ELM ST
CEDAR ST
STONE ST
CHAPEL ST
WILMOTT PL
WILMOTT ST
CHESTNUT ST
MYRTLE ST
PEARL ST
BOYD ST
MAYO ST
LOCUST ST
LANCASTER LN
TEMPLE ST
FREE ST
CROSS ST N
FEDERAL ST W
EXCHANGE ST
MARKET ST
NEWBURY ST W
CHURCH ST
GARDEN LN
MIDDLE ST
HAMPSHIRE ST
COTTON ST
DIAMOND ST
COVE ST
GOULD ST
HAMMOND ST
WHITMAN ST
E COVE ST
FOX ST
EVERETT ST
N GREENLEAF ST
WINTHROP ST
MADISON ST
E LANCASTER ST
GREENLEAF ST
MONROE ST
MARION ST
E OXFORD ST
OXFORD ST EXT
SMITH ST
S ANDERSON ST
CLEEVES ST
INGRAHAMS CT
ROMASCO LN
NORTH ST
SUMNER CT
CUMBERLAND AVE
MONTGOMERY ST
PONCE ST
SHERIDAN ST
KELLOGG ST
NEWBURY ST
FEDERAL ST E
MONUMEN
N

Order 92 - 14/15
Tab 15 - 11-17-14

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

CITY OF PORTLAND
IN THE CITY COUNCIL

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

ORDER GRANTING A LICENSE AGREEMENT TO AVESTA WASHINGTON AVE. LP

ORDERED, that a revocable license agreement from the City to Avesta Washington Ave. LP to allow footings to extend into the public right-of-way is hereby granted in substantially the form attached hereto; and

BE IT FURTHER ORDERED, that the City Council hereby authorizes the Acting City Manager to execute said document and any other related documents necessary or convenient to carry out the intent of said document and this Order.

MEMORANDUM
City Council Agenda Item

TO: City Council

FROM: Alex Jaegerman, Planning Division Director

DATE: November 3, 2014

DISTRIBUTION: Mayor Michael Brennan; Sheila Hill-Christian, Acting City Manager; Danielle West-Chuhta, Corporation Counsel; Jennifer Thompson, Associate Corporation Counsel; Sonia Bean, and Nancy English

SUBJECT: Revocable License Agreement for Avesta Housing for Footings

SPONSOR: Department of Planning and Urban Development

COUNCIL MEETING DATE ACTION IS REQUESTED:
1st reading_____ **Final Action** November 17, 2014

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

PRESENTATION: (Alexander Jaegerman, 2 minute presentation)

I. SUMMARY OF ISSUE

The Department of Planning and Urban Development is bringing forward the request to the City Council to grant a revocable license to AVESTA (owner of Washington Avenue Efficiencies) in order to allow footings to extend into the public right-of-way. On June 10, 2014 the Planning Board approved Washington Avenue Efficiencies for 18 units of affordable rental apartments in a 4-story building at 134 Washington Avenue, with the condition of approval that the applicant shall obtain permission for all work outside the boundaries of the site, including building footings, to be reviewed by Corporation Council and approved by the City Council.

The foundation footings for the Washington Ave. project are roughly 4 feet below grade, extends into Washington Avenue 2 feet, for a total area of incursion into the right of way of approximately 120 square feet. See Exhibit A, Description of the Licensed Area, and Exhibit B, Site Plan for detailed dimensions.

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

Licenses require City Council approval, unless the license is temporary and can be revoked with a notice of sixty (60) days.

III. INTENDED RESULT

The request is for the approval of the amended license agreement and authorization of the Acting City Manager to grant the license on the City's behalf for the building's footings.

IV. COUNCIL GOAL ADDRESSED

Provide increased availability in all segments of the housing segments of the housing market while insuring that there is a suitable balance of housing opportunities among those sectors.

V. FINANCIAL IMPACT

There is no financial impact on the City.

VI. STAFF ANALYSIS & RECOMMENDATION

The Corporation Counsel's office has reviewed the amended license agreement and approves it as to form.

VIII. LIST ATTACHMENTS

1. Revocable License Agreement for Avesta Housing with Exhibit A, Description of the Licensed Area, and Exhibit B, Site Plan.

Prepared by:

Signature

11-4-2014
Date

LICENSE AGREEMENT

This License Agreement ("Agreement") is entered into as of the ____ day of _____, 2014, between the **CITY OF PORTLAND**, a Maine body corporate and politic, with a mailing address of City Hall, 389 Congress Street, Portland, Maine 04101 (the "City" or "Licensor"), and **AVESTA WASHINGTON AVE. LP**, a Maine limited partnership, with a place of business in Portland, Maine and mailing address of 307 Cumberland Avenue, Portland, Maine 04101, its successors and assigns (hereinafter the "Licensee"), who hereby agree as follows:

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which is hereby acknowledged, a revocable license is hereby granted to Licensee to occupy portions of land and portions of the airspace above such land owned by the City and adjacent to property of Licensee located at 134 Washington Avenue, described in a deed to Licensee recorded in the Cumberland County Registry of Deeds in Book ____, Page ____ ("Licensee's Property"), for the purpose of permitting the encroachment of footings under the City's property ("encroachments") to be located as set forth in Exhibits A & B attached hereto and made a part hereof (collectively the "Licensed Areas"), together with the right from time to time to bring upon the Licensed Areas and areas adjacent thereto workers, materials and machinery necessary for the use and enjoyment of the License granted herein. Occupancy of the Licensed Areas is subject to the following conditions:

1. All work performed upon and use of the Licensed Areas for the purposes set forth herein shall be at Licensee's sole cost and expense (unless otherwise agreed in writing), the parties acknowledging that there may be temporary interruptions in enjoyment of the City's property adjacent to the Licensed Areas related to the conduct of any work related to this License. Licensee agrees at its sole expense to restore any portion of the Licensed Areas and adjacent City property damaged by work conducted by Licensee related to this License to substantially its condition prior to such work, or as close to that condition as is reasonably practicable. Licensee, its successors and assigns, shall defend, indemnify and hold the City, its officers, agents, and employees harmless from any and all claims, including but not limited to claims for damage to City property and reasonable attorney's fees, which arise out of Licensee's use, or the use of others, of the City's property as described above.

2. Licensee shall procure and maintain liability insurance in an amount of at least Four Hundred Thousand Dollars ($400,000) combined single limit (or the amount stated in the Maine Tort Claims Act as the same may be amended from time to time), covering claims for bodily injury, death and property damage and shall either name the City of Portland as an additional insured with respect to such coverage or shall obtain a contractual liability endorsement covering the obligations of Licensee under the terms of this license. Licensee shall provide City with evidence of such insurance coverage and shall obtain an endorsement providing City with no less than ten (10) days notice prior to non-renewal or cancellation thereof. Such notice shall be sent to City of Portland, Corporation Counsel, 389 Congress Street, Portland, ME 04101. Failure of Licensee to procure or maintain such insurance coverage shall be an Event of Revocation as set forth in Section 4 below.

3. This license is assignable to any subsequent owners of the property and/or building located on the land described on the site plan of Washington Avenue Efficiencies approved by the Portland Planning Board on June 10, 2014 located at 134 Washington Avenue, Portland, Maine, to be recorded herewith in the Cumberland County Registry of Deeds (the "Site Plan"); and the duties and obligations hereunder shall, in any event, run with the land and burden all subsequent owners holding rights to use any portion of the Licensed Areas.

4. Subject to the provisions of Sections 5 and 6 hereof, this Agreement may be revoked six (6) months after receipt by the Licensee of written notice that an Event of Revocation has occurred, identifying such Event of Revocation, provided that such Event of Revocation is not cured within six (6) months after receipt of such notice by Licensee except as set forth in clause 3 below. "Event of Revocation" shall mean: 1) the building shown on the Site Plan fails to be constructed substantially in accordance with the Site Plan or any amendments thereto; 2) the building as shown on the Site Plan is destroyed, removed or otherwise thereafter ceases to exist on Licensee's Property and construction to rebuild said building has not begun within twelve (12) months of said destruction or removal, or 3) failure to maintain insurance as required under Section 2 above, and such failure is not remedied within thirty (30) days after written notice thereof. City acknowledges that Licensee may amend this Agreement, upon the written approval of the City, for the purpose of correcting and/or revising Exhibits A or B, to more accurately show the encroachments described above that are being licensed under this Agreement.

5. Any notice of an Event of Revocation delivered pursuant to Section 4 of this Agreement must be sent by certified mail, return receipt requested to the Licensee at the address for Licensee set forth above, or at such other address as the Licensee may provide to the City in writing from time to time. Copies of any notices sent to Licensee shall also be sent by the same means to:

_____.

6. Notwithstanding any other provision herein, in the event that a notice of an Event of Revocation is delivered pursuant to Section 4 hereof, any mortgagee of Licensee's Property shall be entitled to cure the matter set forth in such notice within the time frames set forth in Section 4 hereof, and the City agrees to accept such performance by any such mortgagee of Licensee's obligations hereunder. In addition, the City agrees to accept any cure of any Event of Revocation by any of Licensee's partners.

IN WITNESS WHEREOF, the City of Portland has caused this Revocable License to be executed by Sheila Hill-Christian, its Acting City Manager thereunto duly authorized, as of the day and year first written above.

[signatures on following page]

CITY OF PORTLAND

By:_____
Sheila Hill-Christian, its Acting City
Manager thereunto duly authorized

STATE OF MAINE
CUMBERLAND, ss

October ____, 2014

PERSONALLY APPEARED the above-named Sheila Hill-Christian, Acting 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:_____

Seen and Agreed to:

BY: AVESTA WASHINGTON AVE., LP

By: Pinecone Housing Corporation,
its General Partner

By:_____

printed name:_____
Title:

EXHIBIT A

TO

LICENSE AGREEMENT

City of Portland to AVESTA WASHINGTON AVE., LP

Licensed Area

Footing easement in Washington Avenue

Beginning at a point on the westerly sideline of Washington Ave, said point being N 24°35'56" W a distance of 22.08 feet, as measured along Washington Avenue from a nail with survey disc stamped "O H Inc. 1252" said nail being located N 24°35'56" W a distance of 26.90 feet as measured along Washington Avenue from the northerly sideline of Fox Street;

Thence, N 24°35'56" W along the westerly sideline of said Washington Avenue 72.50 feet;

Thence, N 65°24'04" E into said Washington Avenue 2.00 feet;

Thence, S 24°35'56" E a distance of 55.58 feet;

Thence, S 65°24'04" W a distance of 1.50 feet;

Thence, S 24°35'56" E a distance of 16.92 feet;

Thence, S 65°24'04" W a distance of 0.50 feet to the westerly sideline of said Washington Avenue and the point of beginning containing 120 square feet more or less.

Basis of bearings: Maine State Plane Coordinate System Maine West NAD 1983

GENERAL NOTES:

1. SITE AREA: 15,096 SF OR 0.350 ACRES
2. APPLICANT: AVESTA 134 WASHINGTON LP
   307 CUMBERLAND AVENUE
   PORTLAND, MAINE 04101
3. OWNER: AVESTA HOUSING DEVELOPMENT CORP.
   307 CUMBERLAND AVENUE
   PORTLAND, MAINE 04101
4. ZONING DISTRICT: B-2-B (COMMUNITY BUSINESS) DISTRICT + R-6 (RESIDENTIAL)
5. PARCEL IS SHOWN AS LOT 6 AND LOT 14, BLOCK E ON CITY OF PORTLAND ASSESSORS MAP 12.
6. FIELD RECORDED BY THE CUMBERLAND COUNTY REGISTRY OF DEEDS IN BOOK 30658, PAGE 311
7. SPACE AND BULK STANDARDS:

	REQUIRED	PROPOSED
MINIMUM LOT SIZE:	NONE	15,096 SF
MINIMUM STREET FRONTAGE:	NONE	90+/- FEET
FRONT YARD SETBACK:	NONE	NONE
REAR YARD SETBACK (ADJ. TO RES. ZONE):	20 FEET	20 FEET
REAR YARD SETBACK (ADJ. TO BUS. ZONE):	10 FEET	10 FEET
SIDE YARD SETBACK:	5 FEET	5 FEET
MAXIMUM IMPERVIOUS SURFACE RATIO:	.90	.85
MAXIMUM HEIGHT OF STRUCTURE:	45 FEET	44 FEET
MAXIMUM RESIDENTIAL DENSITY:	435 SF/UNIT	560 SF/UNIT

8. EXISTING CONDITIONS AND BOUNDARY INFORMATION TAKEN FROM A PLAN ENTITLED "BOUNDARY + TOPOGRAPHIC SURVEY AT 134 WASHINGTON AVENUE, PORTLAND, MAINE" PREPARED BY OWEN HASWELL INC. DATED FEBRUARY 13, 2014.
9. BEARINGS ARE BASED ON MAINE STATE PLANE COORDINATE SYSTEM, MAINE WEST NAD 83. CITY POINTS USED: 1749-76-3000 N:203540.304, E 2947563.241 AND 1302-77-02 N:203302.553, E:2947867.706.
10. ELEVATIONS ARE BASED ON NAVD 1929 PER BENCHMARK SHOWN ON PLAN AND PROFILE OF WASHINGTON AVE AND FOX ST, PORTLAND, MAINE MADE FOR THE CITY OF PORTLAND BY OWEN HASWELL INC. DATED JULY 2000. THE PLATE HAS ELEVATION 13.43 CITY LEVEL. BOOK 720 PAGE 77.
11. PROPOSED DWELLING UNITS: 30 EFFICIENCY APARTMENT UNITS
12. OFF-STREET PARKING REQUIREMENTS:
    REQUIRED: 30 PARKING SPACES
    PROPOSED: 1 VEHICLE PARKING SPACES
    1 HANDICAP PARKING SPACE
13. BICYCLE PARKING:
    REQUIRED: 2 SPACES/5 DWELLING UNITS
    8 SPACES (16 NEW DWELLING UNITS)
    PROPOSED: 15 SPACES (12 INTERIOR/ 3 EXTERIOR)
    3 INTERIOR: 2804 +/- SF (2.9% OF SITE)
    (2) EXTERIOR: 2313 +/- SF (2.1% OF SITE)

AREA CALCULATIONS

BASEMENT:	1228 SF
FIRST FLOOR:	2448 SF
SECOND FLOOR:	2010 SF
THIRD FLOOR:	2010 SF
FOURTH FLOOR:	2010 SF
TOTAL	13,206 SF

14. ALL WORK WITHIN THE ROAD RIGHT-OF-WAY AND ALL UTILITIES CONNECTING TO PERMANENTLY WITHIN THE ROAD SHALL MEET CITY OF PORTLAND TECHNICAL MANUAL STANDARDS.
15. THE CONTRACTOR SHALL BE SOLELY RESPONSIBLE FOR UNDERTAKING THE WORK IN A SAFE AND EFFICIENT MANNER IN ACCORDANCE WITH LOCAL, STATE AND FEDERAL SAFETY REGULATIONS. ALL WORK AREAS SHALL BE DELINEATED CLEARLY AND FENCED AS APPROPRIATE TO PREVENT UNAUTHORIZED ACCESS. THE SITE SHALL BE LEFT IN A SAFE, ORDERLY AND TIDY MANNER AT THE END OF EACH WORK DAY.

CERTIFICATION:

OWEN HASWELL INC. HEREBY CERTIFIES THAT THIS PLAN IS BASED ON AND THE RESULT OF AN ON THE GROUND FIELD SURVEY AND THAT TO THE BEST OF OUR KNOWLEDGE, INFORMATION AND BELIEF, IT CONFORMS TO THE BOARD OF LICENSURE FOR PROFESSIONAL LAND SURVEYORS CURRENT STANDARDS OF PRACTICE.

JOHN C. SCHWANDA, PLS NO. 1252

DATE

CONDITIONS OF APPROVAL

ON JUNE 10,2014, THE PORTLAND PLANNING BOARD APPROVED 134 WASHINGTON AVENUE CONDITIONAL APPLICATION FOR MAJOR SITE PLAN AND SUBDIVISION PLAN SUBJECT TO THE CITY OF PORTLAND STANDARD CONDITIONS OF APPROVAL AND THE FOLLOWING CONDITIONS:

Approved: Portland Planning Board

Date:

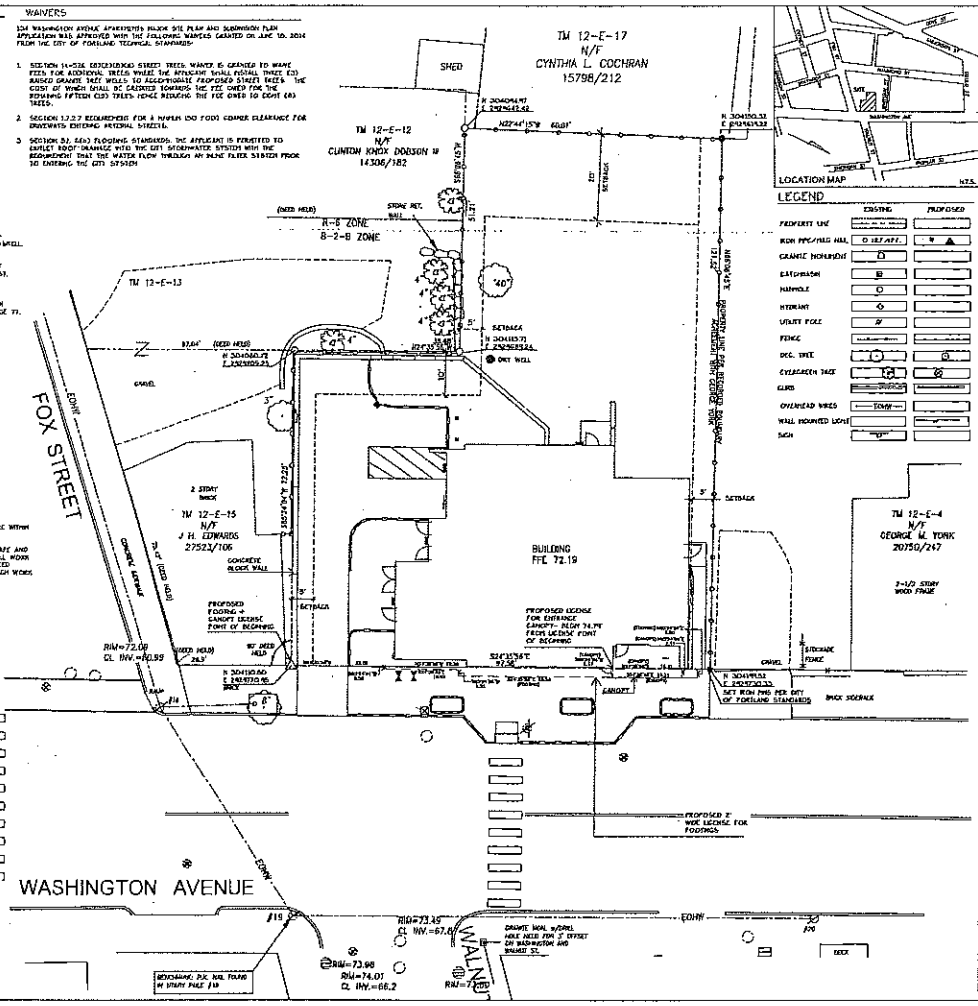
Chair

Board Members:

WAIVERS

134 WASHINGTON AVENUE APARTMENTS MAJOR SITE PLAN AND SUBDIVISION PLAN APPLICATION WAS APPROVED WITH THE FOLLOWING WAIVERS GRANTED ON JUNE 10, 2014 FROM THE CITY OF PORTLAND TECHNICAL STANDARDS:

1. SECTION 14-526 (2)(B)(3)(C)(iii) STREET TREES. WAIVER IS GRANTED TO WAIVE FEES FOR ADDITIONAL TREES WHERE THE APPLICANT SHALL INSTALL THREE (3) RAISED GRANITE TREE WELLS TO ACCOMMODATE PROPOSED STREET TREES. THE COST OF WHICH SHALL BE CREDITED TOWARDS THE FEE OWED FOR THE REMAINING FIFTEEN (15) TREES HENCE REDUCING THE FEE OWED TO COST (6) TREES.
2. SECTION 13.2.7 REQUIREMENTS FOR A MINIMUM 150 FOOT CORNER CLEARANCE FOR DRIVEWAYS ENTERING ARTERIAL STREETS.
3. SECTION 5.1, 5.6.1 FLOODING STANDARDS. THE APPLICANT IS PERMITTED TO CONVEY ROOF DRAINAGE INTO THE CITY STORMWATER SYSTEM WITH THE REQUIREMENT THAT THE WATER FLOW THROUGH AN OIL/WATER SEPARATOR PRIOR TO ENTERING THE CITY SYSTEM



Prepared For:
Applicant:
AVESTA Washington Ave. LP
307 Cumberland Avenue
Portland, Maine

Prepared By:
MITCHELL & ASSOCIATES
Landscape Architects
The Station Ground
93 Exchange Street
Portland, Maine 04101
Tel. (207) 772-4427

WASHINGTON AVENUE EFFICIENCIES
Portland, Maine
134 Washington Avenue

Date: APRIL 14, 2014

Issued For: SITE PLAN AND SUBDIVISION PLAN REVIEW

Revisions: May 27, 2014
June 23, 2014

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Title: SUBDIVISION PLAT PLAN

Scale: 1"=10'

North

Sheet No: 2

Order 93-14/15
Tab 16 11-17-14

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

CITY OF PORTLAND
IN THE CITY COUNCIL

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

ORDER APPROVING 10-YEAR EXTENSION TO FEDEX RAMP LEASE AGREEMENT AT PORTLAND INTERNATIONAL JETPORT

ORDERED, that the 10-year Extension of the FedEx Ramp Lease Agreement is hereby approved, in substantially the form attached hereto; and

BE IT FURTHER ORDERED, that the City Council hereby authorizes the Acting City Manager to execute said document and any other related documents necessary or convenient to carry out the intent of said document.

MEMORANDUM
City Council Agenda Item

TO: City Council

FROM: Paul Bradbury, Airport Director

DATE: November 5, 2014

DISTRIBUTION: Sheila Hill-Christian, Acting City Manager; Mayor Brennan; Danielle West-Chuhta, Corporation Counsel; Sonia Bean; Nancy English

SUBJECT: Portland International Jetport ten year extension of ramp lease with Federal Express, Inc.

SPONSOR: Sheila Hill-Christian, Acting City Manager

COUNCIL MEETING DATE ACTION IS REQUESTED:
1st reading: November 17, 2014 **Final Action:** November 17, 2014

Can action be taken at a later date: ___ **Yes** __X__ **No (If no why not?)**
The current ramp lease agreement with Federal Express expires on November 30, 2014.

I. SUMMARY OF ISSUE (Agenda Description)

The Portland International Jetport is requesting approval of a ten year extension to the City's Ramp Lease Agreement with Federal Express, Inc. The current agreement allows for an additional five year option, but Federal Express, Inc. through negotiations with the Airport Director has requested a longer term extension. Approval of this item would keep all terms of the existing agreement in effect with the following changes:

- **Term**: Current agreement extended 10 years from December 1, 2014 through November 30, 2024.
- **Rate**: The annual rate paid by Federal Express for continued exclusive use of the aircraft cargo ramp would be $81,300, which is a 5.7% reduction over the rate currently paid. This new rate would be increased annually by the Consumer Price Index within a range of no less than 2% and no more than 5%.

The current lease with Federal Express allows an additional option for a five year extension, but it is in the Jetport's best interest to negotiate a longer term agreement. Federal Express is an important business partner at the Jetport and to the region. The reduction in rate is appropriate since it locks in a new ten year term for the lease of the cargo ramp. Additionally the 5.7% reduction in the annual lease rate recognizes that the current agreement like the proposed extension do not allow the rate to increase less than 2% even if the CPI does so. The CPI has

been less than 2% in five of the last ten years. The proposed 5.7 % rate reduction was developed by reviewing the CPI over the past ten years and resetting the lease rate to the actual CPI over that period.

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

This lease agreement extension does not contain a termination at the convenience of the City clause, so it must be approved by the City Council.

III. INTENDED RESULT

The approval of a ten year extension to the Ramp Lease Agreement with Federal Express will allow the Portland International Jetport to continue to offer air cargo service.

IV. COUNCIL GOAL ADDRESSED

The revenues derived from air cargo at the Portland International Jetport are important to its economic well-being. These revenues, like all others generated at the Jetport, allow it to be a self-sustaining enterprise fund of the City of Portland with no reliance on local taxes. The Portland Jetport provides a robust connection to the national air transportation system which helps support the City Council's economic development goals.

V. FINANCIAL IMPACT

If approved, the Portland International Jetport will receive $81,300 from the aforementioned annual lease payment. In addition to this annual lease payment, Federal Express will also continue to pay landing fees which total approximately $155,000 annually. This results in total annual revenue to the Jetport of $236,300.

VI. STAFF ANALYSIS

Air cargo is an important part of the air service provided by the Portland International Jetport and Federal Express is a premier air cargo business partner. Federal Express has been a valued business partner over the past twenty years and I am extremely pleased to extend this agreement at the rate outlined for another ten years.

VII. RECOMMENDATION

Jetport staff highly recommends the Council approve the extension of this lease with Federal Express.

VIII. LIST ATTACHMENTS

1. Portland International Jetport Ramp Lease Agreement with Federal Express, Inc.

2. First and Second Amendments to Portland International Jetport Ramp Lease Agreement with Federal Express, Inc.

Prepared by:

_____	November 5, 2014
Signature	Date

THIRD AMENDMENT OF LEASE

PORTLAND INTERNATIONAL JETPORT

RAMP LEASE AGREEMENT

FEDERAL EXPRESS, INC.

THIS THIRD AMENDMENT OF LEASE is made as of this ____ day of _____, 2014, to the **PORTLAND INTERNATIONAL JETPORT, RAMP LEASE AGREEMENT, FEDERAL EXPRESS, INC.** dated September 1, 1994 (hereinafter, the "**LEASE**") by and between the **CITY OF PORTLAND** (hereinafter the "**CITY**"), and **FEDERAL EXPRESS CORPORATION** (hereinafter, the "**LESSEE**").

W I T N E S S E T H:

WHEREAS, pursuant to an August 29, 2014 Second Amendment of Lease, the parties hereto amended the Lease to provide that its term is effective through November 30, 2014; and

WHEREAS, the parties desire to extend the termination date of the Lease by ten (10) years; and

WHEREAS, the parties desire to amend the annual rents for the Ground Support Equipment ("GSE") space and Cargo Ramp space, which are currently calculated pursuant to section 402 of the Lease.

NOW, THEREFORE, in consideration of the mutual obligations contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. The termination date of the Lease, which is currently November 30, 2014, shall be extended to November 30, 2024.

2. Beginning December 1, 2014, the annual rent for the continued exclusive use of the Cargo Ramp shall be Sixty-Nine Thousand Three Hundred Forty-Three Dollars ($69,343.00), and the annual rent for the GSE space shall be Eleven Thousand Nine Hundred Fifty-Seven Dollars ($11,957.00), for a total annual rent for the Leased Premises of Eighty-One Thousand Three Hundred Dollars ($81,300.00), which shall be paid on the first of each month in twelve equal monthly installments.

3. Beginning December 1, 2015 and continuing on the first day of December of each year thereafter, the rent will be adjusted based on the increase in the prior year's Consumer Price Index as set forth in section 402.1 of the Lease.

4. Any and all terms of the Lease not herein amended shall remain in full force and effect for the duration of this Amendment.

IN WITNESS WHEREOF, the said **CITY OF PORTLAND** has caused this Second Amendment to Lease to be signed and sealed by Sheila Hill-Christian, its Acting City Manager, thereunto duly authorized, and **FEDERAL EXPRESS CORPORATION** has caused this Second Amendment Of Lease to be signed by _____, its _____, thereunto duly authorized, the day and year first above written.

WITNESS:

_____

CITY OF PORTLAND

By: _____
Sheila Hill-Christian
Its: Acting City Manager

WITNESS:

_____

FEDERAL EXPRESS CORPORATION

By: _____
Printed Name: _____
Its: _____

Approved as to form:

_____
Corporation Counsel's Office

95-0144

PORTLAND INTERNATIONAL JETPORT

RAMP LEASE AGREEMENT

FEDERAL EXPRESS, INC.

THIS LEASE AGREEMENT made and entered into this 1ST day of September, 1994, by and between the **CITY OF PORTLAND**, a body politic and corporate, located in the County of Cumberland, State of Maine, (hereinafter "**CITY**"), and **FEDERAL EXPRESS CORPORATION**, a Delaware corporation with a principal office located in Memphis, Tennessee, (hereinafter "**LESSEE**").

W I T N E S S E T H:

WHEREAS, CITY owns and operates the Portland International Jetport (hereafter "**AIRPORT**"); and

WHEREAS, CITY has the right to lease premises and facilities at the **AIRPORT** and to grant rights, licenses and privileges on and in connection therewith, and has full power and authority to enter into this Agreement; and

WHEREAS, LESSEE is engaged in the business of commercial air transportation of property, cargo, express document delivery as a scheduled air carrier and is certified or otherwise authorized by the United States Government to engage in such business; and

WHEREAS, LESSEE and **CITY** wish to expand and improve the air cargo facilities at the **AIRPORT** for their mutual benefit and the benefit of the public;

NOW, THEREFORE, for and in consideration of the promises and the mutual covenants, agreements and conditions contained herein, it is agreed and understood by and between the **CITY** and **LESSEE**, as follows:

That **CITY**, for and in consideration of certain Airport and use fees and the rent hereinafter to be paid by **LESSEE** and the covenants and agreements hereinafter contained, to be kept and performed by **LESSEE**, does hereby grant the right to conduct commercial flight operations ("Use Permit") and does hereby demise, lease and let unto **LESSEE**, for its use, two parcels of land at the Portland International Jetport; (i) the preferential, but non-exclusive, use of that certain parcel identified as the "Ground Support Equipment Area" ("GSE Area") and the right to preferential, but non-exclusive use, in common with others, a cargo ramp ("Ramp") to be constructed by **CITY**, in the size as follows:

GSE Area	:	31,282 SF
Ramp	:	92,250 SF

both as more particularly described on Exhibit A (hereinafter the GSE Area and the Ramp collectively referred to as the "Leased Premises"), together with the right of ingress to and egress from the Leased Premises for **LESSEE**, its employees, agents, shippers, consignees, material suppliers and service providers, its aircraft, equipment, vehicles, machinery and other property, subject to reasonable rules and regulations by the **CITY** and, except as herein otherwise provided, to have and to hold by said **LESSEE** on the terms and conditions set forth below:

SUMMARY OF BASIC LEASE PROVISIONS

1.1 BASIC DATA

Date of Lease:	September 1, 1994
Landlord: Present Mailing Address:	City of Portland 389 Congress Street Portland, Me. 04101
Tenant: Present Mailing Address:	Federal Express Corporation Properties and Facilities 2003 Corporate Avenue Box 727-1870 Memphis, TN 38194-0727
Lease Term:	Ten (10) years
Options:	Tenant shall have three (3) consecutive options to extend this Lease for three (3) additional terms of Five (5) years each.
Base Rent:	Both prior to and after beneficial occupancy of the air cargo sort building, LESSEE will pay landing fees in accordance with its Use Permit herein and will continue to pay those fees as set forth in Section 401. After beneficial occupancy, LESSEE shall additionally pay rent according to the schedule set forth at Section 402. In year 11, an annually thereafter, the rent will be adjusted in accordance with the Consumer Price Index, as provided in Section 402.1.
Commencement Date:	September 1, 1994.
Permitted Use:	General business use for the conduct of LESSEE's air transportation operations, the parking, loading and unloading of aircraft, and the storage of ground support equipment.

1.2 EXHIBITS

Exhibit A:	Plan showing the Premises.
Exhibit B:	Old "Permit".

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ARTICLE I
DEFINITIONS

Section 101. Meanings and Construction. The terms defined in this Section for all purposes of this Agreement and of any instrument supplemental hereto, or relating hereto, shall have the following meanings, except where the context or clear implication requires otherwise:

(1) "**LESSEE**" means Federal Express Corporation or any corporation with which Federal Express Corporation may merge or consolidate or which may succeed substantially to all of the business of Federal Express Corporation.

(2) "Airport Manager" means the Manager of the Portland International Jetport located on Westbrook Street, Portland, Maine.

(3) "**CITY**" means the City of Portland, a body politic and corporate, located in the County of Cumberland, State of Maine.

(4) "Council" means the legislative governing body of the **CITY**, also known as the **CITY** Council;

(5) "Date of Beneficial Occupancy" means the date on which the **CITY** issues a temporary certificate of occupancy permitting **LESSEE** to use and occupy the sort building to be constructed by **LESSEE**, pending completion of punch list items, if any. Upon the issuance of such temporary certificate of occupancy, CITY (by its Airport Manager or Director) and **LESSEE** shall enter into a written agreement confirming the Date of Beneficial Occupancy and the commencement of the Lease Term hereunder;

(6) "Department" means the **CITY**'s Department of Waterfront and Transportation Facilities or any successor agency thereto charged with the responsibility of the management, operation, maintenance and control of the **AIRPORT**.

(7) "Director" means the Director of the **CITY**'s Department of Waterfront and Transportation Facilities, or his/her successor in functions.

(8) "**Environmental Baseline**" : The description of the environmental conditions and presence of Hazardous Materials in, on and under the surface of the Leased Premises that existed as of September 6, 1994. The Environmental Baseline describes the type, concentration and extent of the Hazardous Materials in, on or under the surface of the Leased Premises

(9) "Fiscal Year" means the **CITY**'s fiscal year as established from time to time by the Charter and ordinances of the **CITY**, currently July 1 through June 30 of each year.

(10) "Jetport" means the airport owned by the **CITY** of Portland located on Westbrook Street, Portland, Maine, and known as the "Portland International Jetport."

(11) "Leased Premises" means the Ramp as identified on Exhibit A attached hereto and incorporated herein.

(12) "**Old Permit**" "Permit" means that certain use permit dated October 19, 1992 which currently allows **LESSEE** to use the Jetport and requires **LESSEE** to pay landing fees for such use.

(13) "Scheduled Air Carrier" means "certified route air carrier" officially defined as one of a class of air carriers holding certificates of public convenience and necessity, issued by the Civil Aeronautics Board (CAB), or any other public agency or entity succeeding to the CAB's duties with respect to such certifications, authorizing the performance of scheduled air transportation.

ARTICLE II
TERM

Section 201. Lease Term. This Lease Agreement and all rights herein granted to **LESSEE**, including without limitation the right to use the Airport and the Ramp in common with others and the preferential, but non-exclusive, use of the GSE Area, shall vest from and after September 1, 1994. The ten (10) year term shall be deemed to commence on the date of beneficial occupancy as defined in Section 101. The Lease shall terminate ten (10) years after the date of beneficial occupancy unless terminated earlier as hereinafter provided.

Section 202. Options to extend. Provided that the **LESSEE** is not in default under this Agreement, **LESSEE** shall have three (3) consecutive options to extend this Lease Agreement, each for a term of five (5) years (singularly "Renewal Term" and collectively the "Renewal Terms") by notifying the **CITY** in writing at least One Hundred and Eighty Days (180) days prior to expiration of the then current term. In the event such notice is given, the Lease Term shall be extended for the additional 5 years on the same terms and conditions provided herein (other than rent), provided that the following conditions are met: 1) the parties negotiate in good faith as to the rent to be paid during such extension and mutual agreement is reached on such rent; and 2) **LESSEE** is not in default under this Agreement on the last day of the then current term. Should **LESSEE** decline to exercise any interim Renewal Term, then all remaining Renewal Terms will be forfeited and this Agreement shall terminate at the end of the then current term.

Section 203. Surrender of Possession. No notice to quit possession at the expiration date of the term of this Agreement, or any extension thereof, shall be given by the **CITY**, and **LESSEE** covenants and agrees that upon expiration of the term of this Agreement or any extension hereunder, or upon earlier termination as hereinafter provided, it will peaceably surrender possession of the Leased Premises in good condition, reasonable wear and tear, acts of God, fire, public enemy, and other casualties over which **LESSEE** has no control excepted, and **CITY** shall have the right to take possession of said Leased Premises.

ARTICLE III
LEASED PREMISES; USE OF PREMISES

Section 301. Premises. Prior to the Date of Beneficial Occupancy of the Air Cargo building to be constructed by **LESSEE**, **LESSEE** shall have the right to use of the Jetport and the General Aviation Ramp on the terms as set forth in Section 302 below. After the Date of Beneficial Occupancy of the Air Cargo Building and the Ramp, **LESSEE** shall thereafter have the additional right to the use of the Leased Premises, with the preferential, but non-exclusive, right to use the GSE Area and the Ramp.

Section 302 LESSEE's Use of the Jetport and Leased Premises.

302.1 **LESSEE** is authorized to use the Jetport for the landing, takeoff, loading, unloading, routine maintenance and parking of its aircraft in its normal business operations and the use of the Leased Premises as more particularly stated in Section 304 below.

302.2 **LESSEE** covenants and agrees to observe and obey all federal, state and local laws and regulations and all reasonable lawful rules and regulations not in conflict with the regulations of the Federal Aviation Administration or with the rules and regulations which may, from time to time, during the term hereof, be promulgated by the **CITY** for the operation of the Jetport.

302.3 **LESSEE** shall not be allowed to fuel its own aircraft under this Agreement, unless otherwise agreed in writing by the Director of the Airport.

302.4. Title to the Leased Premises shall be and shall remain in the CITY throughout the term of this Lease.

302.5 Intentionally Deleted.

Section 303. Construction of Ramp. **CITY** agrees to design and construct the GSE Area and the Ramp for the use by **LESSEE** for any and all purposes in connection with and incidental to the uses permitted under Section 304 below on the Leased Premises. **CITY** shall design the GSE Area and the Ramp within one hundred-eighty (180) days and shall proceed diligently with its construction, provided, however, that in the event of force majeure causing delay in the Project, which is not the fault of **CITY**, a reasonable extension of time to complete the Ramp which may be necessary to accommodate such a delay shall not be deemed to be in default of this Agreement. After Beneficial Occupancy of the Leased Premise, **LESSEE** shall consolidate its business operations on the Leased Premises and the adjacent facility which is defined and controlled by that certain "Air Cargo Facilities Lease Agreement" of even date.

Section 304. Lessee's Use of Premises. The Leased Premises shall be used and are leased hereunder to **LESSEE** for the reception , parking, loading and unloading of aircraft. **LESSEE** shall have the preferential, but non-exclusive, use of the GSE Area for storage of its ground support equipment and the preferential, but non-exclusive use of the Ramp. In addition to the foregoing, the Runway and Taxiway complex and utility corridors in the vicinity of the Leased Premises may be used by **LESSEE** in common with others.

Section 305. CITY's Reservation of Rights. **CITY** reserves the right to itself, to permit its contractors, engineers and architects, to enter upon the Leased Premises whenever necessary (and without unreasonable interference with **LESSEE**'s use of the Leased Premises) for the purpose of constructing, installing, and/or maintaining on or under the surface of the ground any portion of the **CITY**'s electrical, mechanical or other systems which presently pass or which may hereafter pass over, under, on or through the Leased Premises.

Section 306. Intentionally Deleted.

Section 307. Intentionally Deleted.

ARTICLE IV
RENT

Section 401. Rent Prior to the Date of Beneficial Occupancy of the Leased Premises. **LESSEE** shall continue to pay landing fees to **CITY**, pursuant to Section 302.

Section 402. After the Date of Beneficial Occupancy of the Leased Premises and Ramp. In addition to the fees set forth in Section 401 above, beginning on the first day of the first full month following the month of beneficial occupancy, **LESSEE** shall pay the **CITY** the following amounts as annual rent per square foot of space leased:

Year	GSE* Rent/SF	Cargo Ramp/SF
1	$0.25	$0.50
2	0.25	0.50
3	0.25	0.50
4	0.28	0.54
5	0.28	0.54
6	0.28	0.54
7	0.30	0.59
8	0.30	0.59
9	0.30	0.59
10	0.30	0.59

[*Ground Support Equipment]

Such rent will be computed by multiplying the above figures times the final square feet of each area as determined by the parties hereto. Payment shall be made in twelve equal monthly installments equal to one-twelfth (1/12th) of the gross amount so computed on the basis of the square footages set forth above for the GSE Area and the Ramp.

402.1 Beginning on the first day of year 11, and annually thereafter, the rent will be adjusted, based on the increase in the prior year's Consumer Price Index of the U.S. Department of Labor, All Urban Consumers, all items (1982-84 = 100) for the Portland, Maine NECMA, or comparable successor index. The adjustment will provide no less than a 2% increase, but no more than a 5% increase. Said adjustment shall be made annually thereafter.

All of the above rents shall be "NET" to the CITY.

Section 403. Timely Payments and Reporting; Late Penalties.

403.1. **LESSEE** shall make prompt and timely payment of all rentals, fees, and other charges due hereunder as the same may from time to time come due. Such rentals, fees, and charges shall be due and payable on the first day of each month of the Lease Term. In the event that any such payment is not timely made, a penalty of one and one-half percent (1 1/2%) (18% per annum) shall be assessed and paid on all such amounts outstanding.

403.2 **LESSEE** shall make prompt and timely "landing reports" to the Director by the tenth (10th) day of each month of the term hereof. Such reports shall include the total number of **LESSEE**'s landings and takeoffs, the total landing weights of **LESSEE**'s Approved Maximum Landing Weights for all Airline Reserve Aircraft Arrivals, the total number of such Arrivals, and such other information as the Director may reasonably require, all for the previous month. In addition to any other remedies available hereunder, a penalty of Ten Dollars ($10) per day shall be assessed and paid for such late reports.

ARTICLE V
USE AND MAINTENANCE OF AIRPORT

Section 501. Maintenance. **CITY** shall repair and maintain the Ramp and keep it in a proper and safe operating condition. Notwithstanding the foregoing, **LESSEE** agrees that it shall be responsible for all snow and ice removal on the Leased Premises, including, but not limited to, the Ramp.

501.1 Intentionally Deleted.
501.2. Intentionally Deleted.

501.3. **LESSEE** shall provide, at its sole cost and expense, the necessary receptacles and arrangements for adequate sanitary handling and disposal, away

from the Jetport, of all trash, garbage and other refuse which results from **LESSEE**'s use of the Leased Premises. **LESSEE** shall defend, indemnify and hold the **CITY** harmless from any cost, expense, claim, fine or liability, including without limitation attorney's fees and court costs, arising out of or resulting from **LESSEE**'s storage, collection, transportation or disposal of any trash, garbage or other refuse hereunder. This obligation of indemnification shall remain in full force and effect after termination or expiration of this Lease.

501.4 Lessee's Responsibilities. In addition to being responsible for the removal of snow and ice on the Ramp, Lessee shall be responsible for striping and for any damage, which exceeds reasonable wear or tear, or which is the result of the gross negligence or the willful acts by Lessee, its officers, agents, contractors, employees or its business invitees.

Section 502. Intentionally Deleted.

Section 503. Right to Enter, Inspect and Make Repairs. The **CITY**, by its authorized officers, employees, agents, contractors, sub-contractors and other representatives, shall have the right (at such times as may be reasonable under the circumstances and with as little interruption of **LESSEE**'s operations as is reasonably practicable) to enter in and upon the Leased Premises for the following purposes:

A. Inspection. To inspect such premises to determine whether **LESSEE** has complied and is complying with the terms and conditions of this Agreement.

B. Maintenance. To perform maintenance and make repairs in any case where **LESSEE** has failed to carry out its obligation to do so, but only after the **CITY** has given **LESSEE** reasonable notice to perform its maintenance obligation. In that event, **LESSEE** shall promptly upon demand reimburse the **CITY** for the reasonable cost of the **CITY**'s performing **LESSEE**'s maintenance obligation.

Section 504. Signs. **LESSEE** agrees that no advertising signs or advertising displays shall either be painted on or erected in any manner upon the areas of the Leased Premises, but may be placed on the cargo facility in accordance with the "Air Cargo Facilities Lease Agreement" of even date hereof..

Section 505. Operation of AIRPORT. **CITY** agrees to operate the **AIRPORT**, its facilities and concessions, in a sound and prudent fashion, including, without limitation, the maintenance and repair of areas and facilities provided by **CITY** for the common use of the **LESSEE** and the public. **CITY** agrees to use reasonable efforts to keep the **AIRPORT** free from obstructions and to do all things reasonably necessary for the safe, convenient and proper use of the **AIRPORT** by those who are authorized to use the same.

Section 506. Compliance with Laws. **LESSEE** covenants and agrees to observe and obey, and to require its officers and employees to observe and obey, all applicable Federal and State laws and regulations in effect throughout the term of this Lease and all municipal laws and regulations of general applicability to the Jetport; provided, however, that such **CITY** laws and ordinances and **AIRPORT** rules and regulations are consistent with safety and the public interest and are not in conflict with the rules of any Federal agency having exclusive jurisdiction.

506.1. **LESSEE** shall procure, at its own cost and expense, from all governmental authorities having jurisdiction over its operations hereunder, all licenses, franchises, certificates, permits or other authorizations which may be necessary for the conduct of its operations.

506.2. Compliance with Environmental Laws.

(a) **LESSEE** will comply in all respects with all applicable federal, state and local laws and regulation, including, without limitation, those relating to "hazardous materials," as defined herein.

(b) The term "hazardous materials" shall mean any substance, material, or waste which is or becomes regulated by any governmental authority, including, but not limited to : (i) petroleum; (ii) friable or non-friable asbestos; (iii) polychlorinated biphenyls; (iv) those substances, materials or wastes designated as a "hazardous substance", pursuant to Section 311 of the Clean Water Act or listed pursuant to Section 307 of the Clean Water Act or any amendments or replacements to these statutes; (v) those substances, materials or wastes defined as a "hazardous waste", pursuant to Section 1004 of the Resource Conservation and Recovery Act or any amendments or replacements to that statute; (vi) those substances, materials or wastes defined as a "hazardous substance", pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, or any amendments or replacements to that statute or any other similar statute, rule, regulation or ordinance now or hereafter in effect; or (vii) any "hazardous waste," "hazardous substance" or "chemical substance or mixture" or similarly regulated substances or material as such phrases are defined in or regulated pursuant to any applicable state or local law, regulation or ordinance governing the generation, storage, discharge, transportation or disposal of the same.

(c) **LESSEE**, at its own cost and expense, will promptly take all actions which may be necessary to abate, remove, clean up, and otherwise cure any violation of environmental laws caused by any hazardous materials used, generated, released, discharged, stored, or disposed of in connection with its use of the Leased Premises.

(d) **LESSEE** will defend, indemnify and hold the **CITY** harmless from any cost, expense, claims or liability resulting from violations of any environmental laws hereunder by **LESSEE**, its officers, agents, employees, consultants, contractors, or anyone acting in connection with its use of the Leased Premises.

(e) **LESSEE** has furnished **CITY** with a true and complete copy of the Environmental Report and **CITY** acknowledges receipt of the same. The Environmental Report sets forth previous uses and conditions of the Leased Premises and describes the type, concentrations and extent of Hazardous Materials in, on or under the surface of the Leased Premises as of the Commencement Date of this Agreement. The Environmental Report constitutes the Environmental Baseline as of the beginning of the Term of this Lease or **LESSEE**'s Beneficial Occupancy of the Leased Premises, whichever comes first.

(f) In conjunction with the Environmental Baseline, **CITY** releases **LESSEE** from liability to **CITY** for contamination and/or the presence of Hazardous Materials in, on or under the surface of the Leased Premises which preexisted the Environmental Baseline as documented by the Environmental Report establishing such Environmental Baseline; provided that this release of liability does not extend to the presence, removal or release of Hazardous Materials or contamination that arises out of or is contributed to by **LESSEE** or its employees, agents, invitees, licensees or subtenants (collectively "**LESSEE**'s Agents") or by the operations of **LESSEE** or **LESSEE**'s Agents.

Section 507. Payment of Taxes and Other Assessments. **LESSEE** agrees to pay promptly when due, and not to permit to become delinquent, levies, taxes, assessments, excises, permit fees, license fees, charges, impositions or burdens of whatsoever kind and nature, whether general or special, ordinary or extraordinary, foreseen or unforeseen, or for any public improvements or utility services (hereinafter "impositions") which, at any time during the term of this

Lease Agreement, may be created, levied, assessed, imposed or charged upon or with respect to the Leased Premises or any part thereof, by any federal, state municipal or other authority, which imposition would be valid and applicable to **LESSEE** irrespective of this section. Nothing herein contained shall be construed as stopping or preventing **LESSEE** from contesting in good faith, however, the validity or applicability to its operations hereunder of any such law, ordinance, rule, regulation, tax assessment, excise fee or charge, including the exhaustion of all appeal rights, provided that the Leased Premises shall not be in danger of being forfeited nor the **CITY** exposed to any threat of fine, penalty, or violation.

Section 508. User Fees. Notwithstanding the foregoing, **LESSEE** acknowledges that **CITY** has the right from time to time to establish and impose reasonable charges and fees for users of the Jetport or its facilities, provided that such charges and fees are charged in a uniform and non-discriminatory manner; and provided, further, that **CITY** shall provide **LESSEE** with no less than thirty (30) days prior written notice prior to imposing any new fee or charge which directly or indirectly effects **LESSEE** or any subtenant (at the Leased Premises) of **LESSEE**.

Section 509. Covenant Against Liens. **LESSEE** shall not cause nor permit any lien against the Leased Premises, any portion thereof or any remainder interest therein, or any improvements thereto, to arise out of or accrue from any action or use thereof by **LESSEE**. **LESSEE** may in good faith, however, contest the validity of any alleged lien. **LESSEE** shall defend and indemnify and hold the **CITY** harmless from any cost, expense, attorney's fees or other liability arising out of or resulting from any such lien or liens, and shall promptly discharge such lien or stay or prevent its foreclosure by bond or other appropriate legal procedure which is acceptable to the **CITY**.

Section 510. Utility Services. **LESSEE** agrees that all utility services required by it during the term of this Agreement will be obtained directly from the utility company by **LESSEE**, at its cost and expense.

Section 511. Intentionally Deleted

ARTICLE VI
INSURANCE AND DAMAGE TO LEASED PROPERTIES

Section 600. Intentionally Deleted.

Section 601. Upon the Date of Beneficial Occupancy. **LESSEE**, without expense to the **CITY**, and with no lapse in coverage, shall obtain and cause to be kept in force at all times during the term of this Agreement, General Liability Insurance, under policies no more restrictive than the standard form of Comprehensive Liability policy in the following amounts:

Description	Limit of Liability
Comprehensive General liability, and Vehicle Liability, including owned, hired or non-owned.	
1) Bodily Injury	(1) $1,000,000 each person (2) $5,000,000 each occurrence
2) Property Damage	(3) $5,000,000 each occurrence

601.1. **LESSEE** and the **CITY** understand and agree that the minimum limits of the insurance herein required may become inadequate during the term of this

Agreement. **LESSEE** agrees that it will increase such minimum limits by reasonable amounts upon receipt of notice in writing from the Director. Such notices to change shall, in general, be issued no more often than every second (2) year of the lease term or renewal thereof. The Director may take note of damage awards being granted by the Courts, however, and direct a reasonable increase in the minimum limits of the insurance requirements at any time during the term hereof. In no case shall such limits be less than the amount set forth under the Maine Tort Claims Act, as amended.

601.2 The **CITY**, in operating the **AIRPORT**, will comply with the provisions of the Maine Tort Claims Act, as amended, to the extent that such provisions may be applicable to its operations at the **AIRPORT**. The **CITY** may also provide additional coverages in amounts and types which it deems appropriate.

601.3. **LESSEE** shall at all times throughout the term of this Lease and any extension thereof maintain at its own cost and expense worker's compensation and employer's liability coverage insurance in the amounts required under Maine law.

601.4. Intentionally Deleted.

Section 602. Limitation as to Policies. All policies of insurance required herein shall be in a form and in a company or companies satisfactory to the **CITY**, and approved to do insurance business in the State of Maine. Each such policy shall provide that such policy may not be materially changed, altered or canceled by the insurer during its term without first giving thirty (30) days' notice in writing to the Director.

Each liability policy shall name the **CITY** as an additional insured thereunder and shall be on an occurrence basis.

Section 603. Evidence of Insurance. Certificates or other evidence of insurance coverages required of **LESSEE** in this Article, in amounts no less than those stipulated herein or as may be in effect from time-to-time, shall be delivered to the Director. At least thirty (30) days prior to the expiration of any then-current policy of insurance, **LESSEE** shall deliver to the Director evidence showing that such insurance coverage has been renewed. Within fifteen (15) days after the date of written notice from the insurer of cancellation or reduction in coverage, **LESSEE** shall deliver to the Director evidence that the required insurance has been reinstated or provided through another insurance company or companies.

Section 604. Failure to Maintain Insurance Coverage. If at any time **LESSEE** should fail either to obtain or to maintain in force the insurance required herein, the **CITY** shall notify **LESSEE** of its intention to purchase such insurance for **LESSEE**'s account; and, if **LESSEE** has not delivered evidence of insurance to the Director prior to the date on which the current insurance expires, the **CITY** may effect such insurance by taking out policies in companies satisfactory to the **CITY**. Such insurance shall be in amounts no greater than those stipulated herein or as may be in effect from time-to-time. The amount of the premiums for such insurance obtained by the **CITY** shall be payable by **LESSEE** within thirty (30) days of receipt of the **CITY**'s invoice therefor; and, if not paid within that time, interest at the rate of eighteen percent (18%) per annum on the unpaid amount shall be charged to and paid by **LESSEE**.

Section 605. Damage to Ramp. If the Ramp leased to **LESSEE** for its common use should be partially damaged by casualty, but not rendered untenantable, the same shall be repaired with due diligence by the **CITY** at its own cost and expense. If the damage should be so extensive as to render the premises untenantable, the rent payable hereunto with respect to the **LESSEE**'s common use space shall be proportionately paid up to the time of such damage and shall thenceforth abate until such time as the Leased Premises shall again be made

tenantable by **CITY**, provided that, if the Leased Premises should be completely destroyed by casualty, this Agreement may, at the election of either the said **CITY** or the said **LESSEE** (and upon written notice thereof to be given to the other within thirty (30) days after such destruction) be terminated and ended as of the date of destruction.

Section 606. Indemnification.

606.1. Indemnification. To the fullest extent permitted by law, **LESSEE** shall at its own expense defend, indemnify, and hold harmless **CITY**, its City Council, its officers, agents, and employees from and against any and all liability, claims, damages, penalties, losses, expenses, or judgments, just and unjust, arising from injury or death to any person or property damage sustained by anyone in and about the **Leased Premises** or as a result of activities or services at the **AIRPORT**, including, without limitation, construction and other activities prior to the date of beneficial occupancy of the Leased Premises; resulting from any negligent act or omission or willful misconduct of **LESSEE**, its officers, agents, employees, consultants, contractors, or anyone acting on behalf of **LESSEE**'s use of the **Leased Premises**; or resulting from **LESSEE**'s performance of this Agreement. **LESSEE** shall, at its own cost and expense, defend any and all suits or actions, just or unjust, which may be brought against **CITY** or in which **CITY** may be impleaded with others upon any such above-mentioned matter, claim or claims, including, but not limited to, claims of contractors, employees, laborers, materialmen, and suppliers. In cases in which the **CITY** is a party, the **CITY** shall have the right to participate at its own discretion and its own expense and no such suit or action shall be settled without the prior written consent of the **CITY**. **LESSEE**'s obligation of indemnification and defense shall not be construed to negate nor abridge any other right of indemnification or contribution running to the **CITY** which would otherwise exist. The extent of this indemnity provision shall not be limited by any requirement of insurance contained herein.

606.2. To the fullest extent permitted by law, **CITY** shall at its own expense defend, indemnify, and hold harmless **LESSEE**, its officers, agents, and employees from and against any and all liability, claims, damages, penalties, losses, expenses, or judgments, just and unjust, arising from injury or death to any person or property damage sustained by anyone in and about the **Leased Premises** or as a result of activities or services at the **Leased Premises**, including, without limitation, construction and other activities prior to the date of beneficial occupancy of the Leased Premises; to the extent any such liability, claims, damages, penalties, losses, expenses, or judgments resulted from any negligent act or omission or willful misconduct of **CITY**, its officers, agents, employees, consultants, contractors, or anyone acting on behalf of **CITY**; or resulted from **CITY**'s performance of this Agreement.

606.3. Cooperation. To the extent that either party receives notice with respect to a claim or liability subject to indemnity under this section 606 (a "claim") or has the right to participate in an administrative or judicial proceeding relating to a claim, such party shall: (1) give notice of such claim or liability to the other party within a reasonable period of time following the receipt of said notice; (2) provide the other party with information relevant and material to such claim in any proceedings relating thereto; (3) consider in good faith the views of the party and its counsel in connection with the other party's exercise of rights with respect to such claim and the proceedings related thereto; (4) cooperate in all respects with the other party in good faith in order to contest such claim effectively; and (5) to the extent reasonable and practicable, upon written request from the other, implead any party which the other party believes may be ultimately responsible with respect to such claim and assert any cross-claims the other party deems appropriate where it is not possible to assert such rights itself.

Section 607. Additional Insurance. Notwithstanding any of the provisions of Article VI, **CITY** may require **LESSEE** to obtain, at **LESSEE**'s sole cost and expense, additional Public Liability Insurance in the event that the potential liability of the **CITY** is increased or expanded by any governmental authority.

Section 608. Intentionally Deleted.
608.1. Intentionally Deleted.

ARTICLE VII
CONDEMNATION

Section 701. Notice. **CITY** agrees to give prompt written notice to **LESSEE** of any eminent domain, condemnation, compulsory acquisition or like proceedings by any competent authority which might result in a partial or full taking of the Leased Premises and of which **CITY** has notice. Each party may file and prosecute their respective claims for an award, but all awards and payments on account of a taking shall be held in trust by the recipient to be distributed according to the respective interests of the parties, i.e., payments allocable to value of the Leased Land shall be paid to **CITY**, and payments allocable to **LESSEE**'s Leasehold interest shall be paid to **LESSEE**.

Section 702. In the case of a taking (other than for temporary use) of the fee of the entire Leased Premises, this Agreement shall terminate as of the date of such taking. In the case of a temporary taking, this Agreement shall be suspended during such time as **LESSEE** is unable to use the Leasehold Premises for the uses provided herein. In the case of a partial taking which does not permit **LESSEE** to use the Leased Premises as provided hereunder, **LESSEE** shall give **CITY** a sixty (60) day notice of termination of this Lease, during which time **CITY** may provide **LESSEE** with comparable leased space from which to conduct its operations; and, in such event, this Lease will be amended to cover such alternative space and shall not terminate. In the event **CITY** cannot provide such alternative space, this Lease shall terminate at the end of the sixty day notice period, with no further obligation by either party.

ARTICLE VIII
ASSIGNMENT AND SUBLETTING

Section 801. Assignment and Subletting. **LESSEE** agrees not to assign this Agreement nor any part thereof in any manner whatsoever, nor to sublet the premises or any part thereof, nor assign any of the privileges recited herein without the prior written consent of the **CITY** Manager of the **CITY** of Portland, whose consent shall not be unreasonably withheld. **LESSEE** shall have the right to assign all or any part of its rights and interests under this Agreement to any successor to its business through merger, consolidation or reorganization or voluntary sale or transfer of substantially all its assets and the consent of the **CITY** thereto shall not be required. Due notice of any such assignment or sublease shall be given to the **CITY** within sixty (60) days after such assignment or sublease is executed. In the event of any assignment or sublease hereunder, it is understood and agreed that the **CITY** does not release **LESSEE** from any of its obligations with respect to the terms hereof.

Section 802. Notwithstanding the above, should **LESSEE** decline to exercise an option pursuant to this Agreement or should **LESSEE** default in the performance of its obligations hereunder and fail to cure within the requisite time period, or to assign all its right and interest in this Lease to Cargex Portland Limited Partnership, a Delaware limited partnership, with its principal office located at 49 Atlantic Place, South Portland, Maine 04106, ("**CARGEX**") and **CARGEX** should notify **CITY** in writing of its intent to assume the obligations of **LESSEE** hereunder by either (i) exercising an option to extend this Lease Agreement on

its own behalf or (ii) promptly proceed to cure any such default as has occurred and enter into an assumption agreement with **CITY** to assume all obligations of lessee hereunder or exercise an assignment and assumption agreement to which **CITY** concurs, then **CARGEX** shall thenceforth be deemed the **LESSEE** hereunder. .From and after the effective date of such assumption or assignment, **CARGEX** shall be deemed the "**LESSEE**" hereunder for all purposes of this Agreement and Federal Express Corporation, as original **LESSEE**, shall have no further rights or obligations hereunder and shall be relieved of all liabilities except those which occurred prior to such event of assignment or termination. Upon **CARGEX** being deemed the **LESSEE** hereunder, **CARGEX** shall inure to all the rights and obligations hereunder, except that all references to use of the **AIRPORT** as an air cargo operator and the use and payment of related fees shall be deleted from this Agreement and those provisions shall thenceforth become null, void and of no further effect.

ARTICLE IX
TERMINATION OF LEASE IN ENTIRETY

Section 901. CITY's Right to Terminate. The **CITY**, in addition to any other rights to which it may be entitled by law, acting by and through its Director, may declare this Agreement terminated in its entirety, subject to and in the manner provided in Section 903 hereof, upon or after the happening of any one or more of the following events, and may exercise all rights of entry and re-entry, with or without process of law, upon the premises:

A. The filing by **LESSEE** of a voluntary petition in bankruptcy or any assignment for benefit of creditors of all or any part of **LESSEE**'s assets;

B. The adjudication of **LESSEE** as a bankrupt, pursuant to any involuntary bankruptcy proceedings;

C. The taking of jurisdiction by a court of competent jurisdiction of **LESSEE** or its assets, pursuant to proceedings brought under the provisions of any Federal reorganization act;

D. The appointment of a receiver or trustee of **LESSEE**'s assets by a court of competent jurisdiction or a voluntary agreement with **LESSEE**'s creditors;

E. The voluntary abandonment by **LESSEE** of the conduct of its air transportation business at the **AIRPORT** (and failure to pay rent or landing fees) for a period in excess of thirty (30) days or

F. The material breach by **LESSEE** of any of the covenants or agreements herein contained and the failure of **LESSEE** to remedy such breach. A material breach shall include, but not be limited to, the failure of **LESSEE** to pay any rental, fee, or charge when the same is due and payable, and the failure of **LESSEE** to file monthly "landing reports" when due.

Section 902. LESSEE's Right to Terminate. **LESSEE**, in addition to any other right given to it herein or to which it may be entitled by law, may cancel this Agreement, in whole or only insofar as it relates to any building, and terminate all or any of its obligations hereunder at any time, upon or after the happening of any one of the following events:

902.1 The issuance by any court of competent jurisdiction of an injunction in any way preventing or restraining the use of said **AIRPORT** or Leased Premises for **LESSEE**'s purposes and such injunction remaining in force for a period of at least ninety (90) days;

902.2. The material breach by **CITY** of any of the covenants or agreements herein contained and the failure of **CITY** to remedy such breach within a

reasonable time after notice from **LESSEE** to do so;

902.3 The inability of **LESSEE** to use said Leased Premises and **AIRPORT** facilities for a longer period than ninety (90) days due to war, earthquake or other casualty;

902.4 The erection of any obstacle on or in the vicinity of said **AIRPORT** which would occasion a modification of **LESSEE**'s air carrier operating certificates or similar authorizations establishing minimum safety standards for the operations of airlines;

902.5 Any action of any governmental authority, board, agency or officer having jurisdiction thereof preventing **LESSEE** from conducting its air transport business at the **AIRPORT** by a taking, directly or indirectly, in whole or a substantial part, of the Leased Premises or premises required for actual operation of **LESSEE**'s aircraft to and from **AIRPORT**;

902.6 The taking, through the process of eminent domain, of all or a substantial part of the premises and space leased by **LESSEE**; or

902.7 The termination or suspension for more than ninety (90) days by any governmental authority, board, agency or officer having jurisdiction of **LESSEE**'s certificate of public convenience and necessity authorizing it to serve Portland, Maine.

Section 903. Procedure for Termination or Repossession. No termination declared by either party under Sections 901 or 902 hereof shall be effective and the **CITY** shall not take possession of the Leased Premises until not less than thirty (30) days have elapsed after notice by either party to the other, specifying both the date upon which such termination will take effect and also the cause for which this Agreement is being terminated or for which the leased premises are being repossessed. No such termination shall be effective nor shall the **CITY** retake possession of the Leased Premises if such default by its nature cannot be cured within such thirty (30) day period, provided the party in default commences to correct such default within said thirty (30) days, and corrects the same as promptly as reasonably practicable. Notwithstanding anything herein to the contrary, however, if **LESSEE** should fail to pay any sum, including rental and Use fees, when due and payable hereunder, it shall have seven (7) days from receipt of notice of default to cure said default, and if not so cured, said termination shall take effect on the eighth day following said receipt of notice.

ARTICLE X
MISCELLANEOUS PROVISIONS

Section 1001. Quiet Enjoyment. The **CITY** agrees that on payment of the rentals and use fees, as herein required, and subject to performance and compliance by **LESSEE** of the covenants, conditions and agreement on its part to be performed and complied with herein, **LESSEE** shall peaceably have and enjoy the rights, uses and privileges of the **AIRPORT** and the Leased Premises, its appurtenances and facilities as granted herein.

Section 1002. No Personal Liability. No Councilor, director, officer, agent or employee of either party shall be charged personally or held contractually liable by or to the other party under any term or provision of this Agreement, or because of any breach thereof, or because of its or their execution or attempted execution.

Section 1003. Agreements with the Federal Government. This Agreement is subject and subordinate to the provisions of any agreements heretofore made between the **CITY** and the United States of America relative to the operation or maintenance of the **AIRPORT**, the execution of which was required as a condition

precedent to the transfer of Federal rights of property to the **CITY** for **AIRPORT** purposes, or to the expenditure of Federal funds for the extension, expansion, or development of the **AIRPORT**, including the expenditure of Federal funds for the development of the **AIRPORT** in accordance with the provisions of the Federal Aviation Act of 1958, as it has been amended from time to time. **CITY** covenants that it has no existing agreements with the United States which are in conflict with the express provisions of this Lease.

Section 1004. Governing Law. This Agreement shall be deemed to have been made in, and be construed in accordance with, the laws of the State of Maine.

Section 1005. Notices. Except as herein otherwise expressly provided, all notices required to be given to the **CITY** hereunder shall be in writing and shall be sent by United States Certified Mail, addressed to:

Robert B. Ganley
City Manager
City of Portland
Portland City Hall 389 Congress Street
Portland, Maine 04101

with copies to:
Gary C. Wood, Esquire
Corporation Counsel
Portland City Hall
389 Congress Street
Portland, Maine 04101;
and
Thomas F. Valleau
Director of Aviation and Transportation
Suite 307
Two Portland Fish Pier
Portland, Maine 04101;
and
Airport Manager
Portland International Airport
1001 Westbrook Street
Portland, Maine 04102

All notices demands and requests by the **CITY** to **LESSEE** shall be sent by Federal Express, with proof of delivery, or by United States Certified Mail, addressed to:

Vice President, Properties
Federal Express Corporation
2003 Corporate Avenue, Dept. 1882
Memphis, TN. 38132

with a copy to:
Director of Business Transactions
Federal Express Corporation
1980 Nonconnah Boulevard
Memphis, TN. 38132

The parties, or either of them, may designate in writing from time to time any changes in addresses of the persons identified above or any addresses of substitute or supplementary persons in connection with said notices. The effective date of service of any such notice shall be the date such notice is received by **LESSEE** or by the **CITY**. Any provisions herein that one party shall notify the other of some matter is to be construed as a requirement that notice is to be given in accordance with the provisions of this Section.

Section 1006. Entire Agreement. This Agreement, together with Exhibits A and B attached hereto, constitutes the entire agreement between the parties and all other representations or statements heretofore made, verbal or written, are merged herein, and this Agreement may be amended only in writing and executed by duly authorized representatives of the parties hereto.

Section 1007. Waivers. No waiver or default by either party of any of the terms, covenants, and conditions hereof to be performed kept and observed by the other party shall be construed as, or operate as, a waiver of any subsequent default of any of the terms, covenants or conditions herein contained, to be performed, kept, and observed by the other party.

Section 1008. Title to Site. Subject to condemnation by higher governmental authority, the **AIRPORT**, from the date hereof until the termination of this Agreement, shall be owned in fee simple by the **CITY**, or in such lesser estate as in the opinion of the **CITY**'s Corporation Counsel is sufficient to permit the letting and licensing thereof by the **CITY**, as herein provided for the full term provided herein. **CITY** represents that it has the right to lease said property designated herein as the **AIRPORT** and Leased Premises, together with all facilities, rights, licenses and privileges herein granted, and has full power and authority to enter into this Agreement in respect thereof.

Section 1009. Lessee's Certification of Authority to Execute Lease. **LESSEE** hereby makes the following representations as the basis for its undertakings herein contained:

(a) **LESSEE** is a corporation duly organized under the laws of the State of Delaware; it is in good standing under the laws of said State; has the power to enter into this Agreement; by proper corporate action has duly authorized the execution and delivery of this Agreement; and is in full compliance with all applicable Maine laws relating to the conduct of its business in Maine; and

(b) **LESSEE** will occupy and possess the Leased Premises subject to the control and jurisdiction of the **CITY** in accordance with the terms hereof.

Section 1010. Non-Discrimination. The **LESSEE**, for itself, its successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the premises that:

(A) no person on the grounds of race, color, sex, disability, religion, national origin or sexual orientation shall be excluded from participation in, denied the benefits of, or be otherwise subject to, discrimination in the use of said facilities;

(B) that in the construction of any improvements on, over, or under such premises and the furnishing of services thereon, no person on the grounds of race, color, sex, disability, religion, national origin, or sexual orientation shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; and

(C) that the **LESSEE** shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-Discrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended; and

(D) that **LESSEE** shall undertake an affirmative action program as required by 14 CFR Part 152, Sub E, to insure that no person shall on the grounds of race, creed, color, national origin, or sexual orientation be excluded from participating in any employment activities covered in 14 CFR Part 152, Sub E.

Section 1011. **LESSEE** agrees to furnish service on a fair, equal, and not unjustly discriminatory basis to all users thereof, and to charge fair, reasonable, and not unjustly discriminatory prices for each unit of service.

Section 1012. In the event of breach of any of the above non-discrimination covenants, the **CITY** shall have the right to terminate this Agreement and to re-enter and re-possess said premises and the facilities thereon, and hold the same as if said Agreement had never been made or issued.

Section 1013. Force Majeure. Neither the **CITY** nor **LESSEE** shall be deemed in violation of this Agreement if either should be prevented from performing any of the obligations hereunder by reason of strikes, boycotts, labor disputes, embargoes, shortage of material, acts of God, acts of the public enemy, acts of superior governmental authority, weather conditions, riots, rebellion, sabotage, or any other circumstances for which it is not responsible or which is not within its control. The party claiming force majeure shall give prompt written notice to the other party of such event or events, and shall resume performance promptly upon the conclusion of the event or events preventing its performance.

Section 1014. Partial Invalidity. If any term, covenant, condition, or provision of this Agreement or the application thereof to any person or circumstance shall at any time or to any extent, be held to be invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant, condition, and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

Section 1015. Headings. The headings of the several Articles and Sections of this Agreement are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope or intent of any provisions of this Agreement, and shall not be construed to effect in any manner either the terms and provisions hereof or the interpretation or construction thereof.

Section 1016. Exclusiveness of LESSEE's Rights. Nothing herein contained shall be deemed to grant to **LESSEE** any exclusive right or privilege within the meaning of section 308 of the Federal Aviation Act for the conduct of any activity at the **AIRPORT**.

Section 1017. Withholding Required Approvals. Whenever the approval or consent of the **CITY** (including the Airport Manager, the Director, or the **CITY** Manager) or of **LESSEE** is required herein, no such approval shall be unreasonably conditioned, delayed or withheld.

Section 1018. Inspection of Records. Each party hereto, at its own expense and upon reasonable notice, shall have the right to inspect the books, records and other data of the other party relating to the provisions and requirements hereof, provided such inspection is made during regular business hours. The **CITY** agrees to provide **LESSEE** with an annual report of the **AIRPORT**'s revenues and expenses for the Portland International Jetport.

Section 1019. Memorandum of Lease. Either party at the request of the other, shall execute, acknowledge and deliver for recording, a memorandum or short form lease prepared by the requesting party; provided, however, that the relations between **CITY** and **LESSEE** shall be governed solely by the provisions of this Agreement and not by any such memorandum or short form lease which may be executed, delivered and recorded.

Section 1020. Successors and Assigns. All of the terms, provisions, covenants, stipulations, conditions and considerations in this Agreement shall

extend to and bind the legal representatives, successors, and assigns of the respective parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused this Lease Agreement to be executed by their respective officials thereunto duly authorized, as of the day and year first above written.

Signed and Delivered
in presence of

_____

CITY OF PORTLAND

By: Robert Ganley
Robert B. Ganley
Its City Manager

APPROVED AS TO FORM:

Charles A. Lane

CORPORATION COUNSEL OFFICE

Approved: _____
Date

Signed and Delivered
in presence of

Michael Morgan

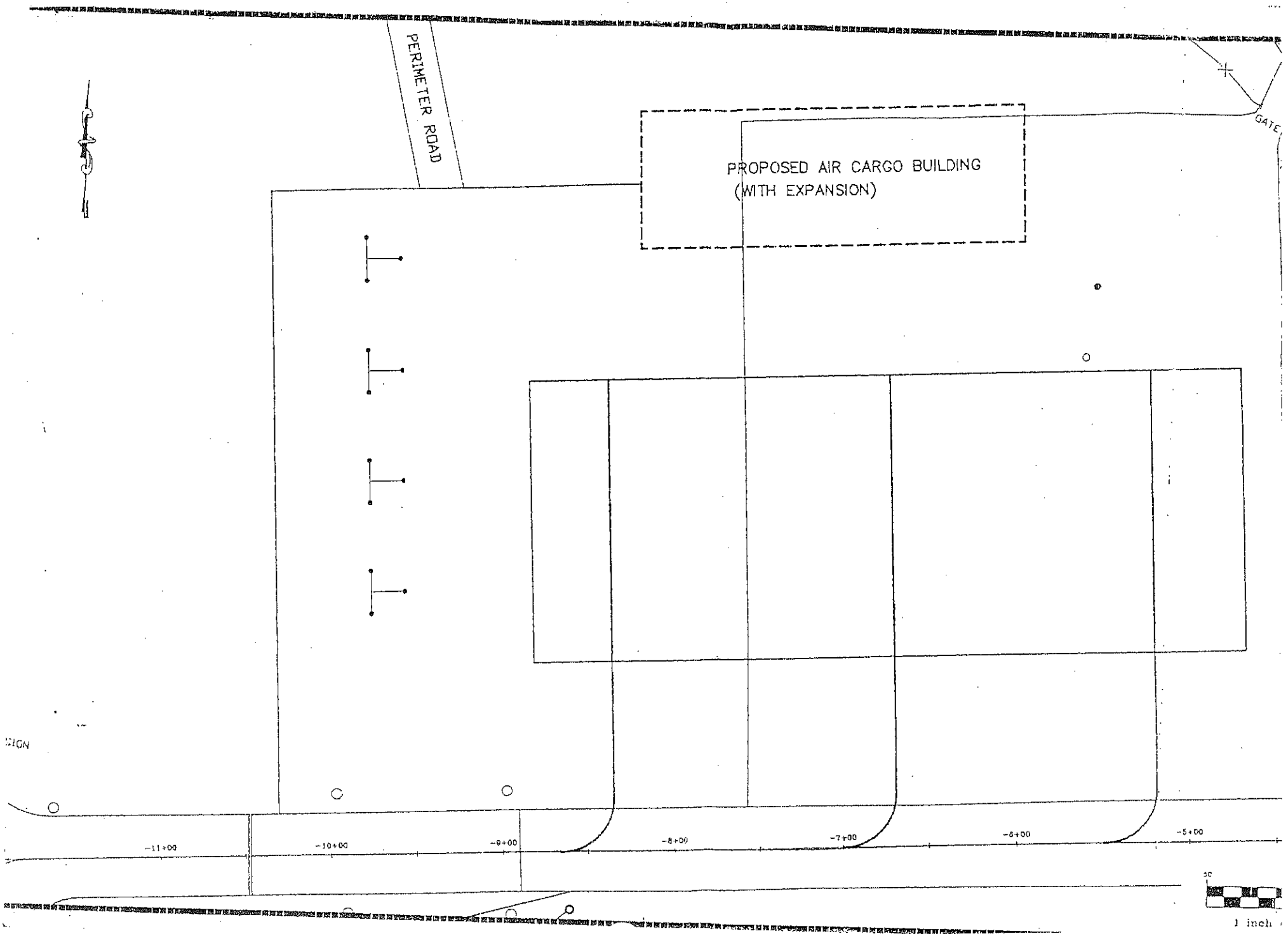
FEDERAL EXPRESS CORPORATION

By: G. D. Mook
Gilbert D. MOOK
(Print or type name)

Its V.P. PROPERTIES AND FACILITIES

Approved 10/12/94
Date

APPROVED
AS TO LEGAL FORM
10/19/94
LEGAL DEPT.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95-0144-001

PORTLAND INTERNATIONAL JETPORT

RAMP LEASE AGREEMENT

FEDERAL EXPRESS, INC
AMENDMENT #1

AMENDMENT #1 to the Lease Agreement dated September 1, 1994, (hereinafter the "Ramp Lease") by and between the CITY OF PORTLAND (hereinafter the "City") and FEDERAL EXPRESS CORPORATION (hereinafter the "Lessee")

WHEREAS, the parties entered into a Lease for Ramp facilities at the Portland International Jetport in conjunction with Lessee's cargo facility; and

WHEREAS, the parties have approved renewals of the cargo facility lease through January 31, 2015; and

WHEREAS, Lessee wishes to exercise its option to renew the Ramp Lease through August 31, 2014;

NOW THEREFORE, for the consideration herein, the parties do hereby agree to amend the Ramp Lease as follows:

1. The parties hereby ratify Lessee's election to renew the Ramp Lease for the first 5 year renewal in Section 202 of said Ramp Lease, said renewal to be effective from September 1, 2004 through August 31, 2009.

2. In addition to the foregoing, the Lessee hereby elects, and the City hereby approves, to renew the Ramp Lease for the second 5 year renewal term, to be effective September 1, 2009 through August 31, 2014.

3. Rent for the two renewal terms shall be as provided in Section 402.1 of the Ramp Lease.

4. Lessee's address for all notices as stated in Section 1005 of the Agreement is revised to include the following:

Federal Express Corporation
3680 Hacks Cross Road
Building H, 3rd Floor
Memphis, Tennessee 38125
Attn: Manager, Airport Relations

With a copy to:

Federal Express Corporation
Legal Department
3620 Hacks Cross Road
Building B, 3rd Floor
Memphis, Tennessee 38125
Attn: Managing Director, Business Transactions

5. Except as amended herein, all terms of the Ramp Lease remain in full force and effect as if fully restated herein.

In Witness Whereof, the parties have hereby executed this Amendment as of the _____ day of _____, 2005.

WITNESS

Marilyn Jones

Approved
Legal Department
10/4/05

FEDERAL EXPRESS CORPORATION

By _____

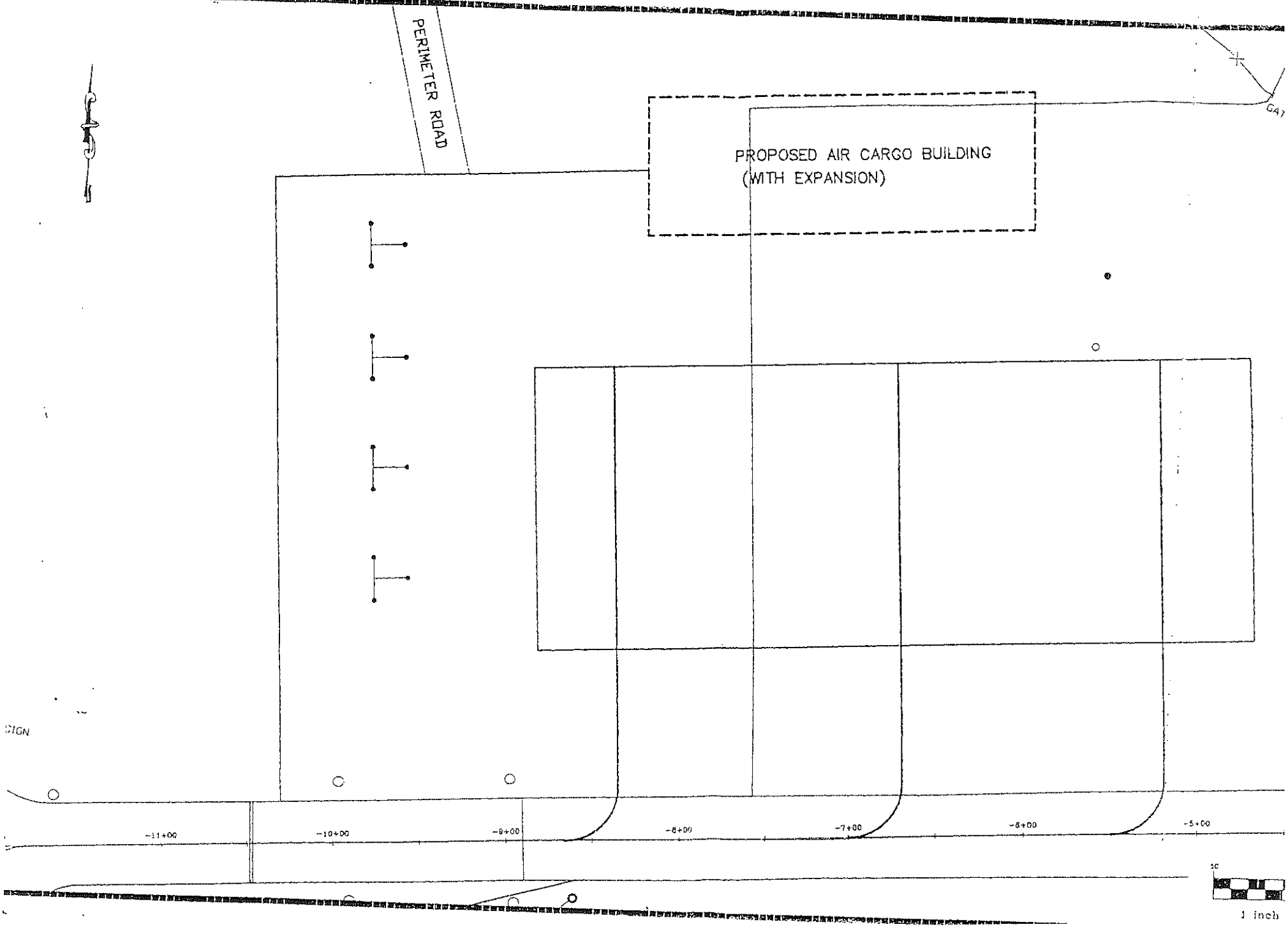
Its V.P. PROPERTIES AND FACILITIES

WITNESS

Sonia Bean

CITY OF PORTLAND

Joseph E. Gray, Jr.
City Manager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PROPOSED AIR CARGO BUILDING
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95-0144-001

PORTLAND INTERNATIONAL JETPORT

RAMP LEASE AGREEMENT

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Attn: Manager, Airport Relations

With a copy to:

Federal Express Corporation
Legal Department
3620 Hacks Cross Road
Building B, 3rd Floor
Memphis, Tennessee 38125
Attn: Managing Director, Business Transactions

5. Except as amended herein, all terms of the Ramp Lease remain in full force and effect as if fully restated herein.

In Witness Whereof, the parties have hereby executed this Amendment as of the ____ day of _____, 2005.

WITNESS

Marilyn Jones

Approved
Legal Department
10/4/05

FEDERAL EXPRESS CORPORATION

By _____

Its V.P. PROPERTIES AND FACILITIES

WITNESS

Sonia Bean

CITY OF PORTLAND

Joseph E. Gray, Jr.
City Manager

95-0144-00

SECOND AMENDMENT OF LEASE

PORTLAND INTERNATIONAL JETPORT

RAMP LEASE AGREEMENT

FEDERAL EXPRESS, INC.

THIS SECOND AMENDMENT OF LEASE is made as of this 29th day of August, 2014, to the **PORTLAND INTERNATIONAL JETPORT, RAMP LEASE AGREEMENT, FEDERAL EXPRESS, INC.** dated September 1, 1994 (hereinafter, the "**LEASE**") by and between the **CITY OF PORTLAND** (hereinafter the "**CITY**"), and **FEDERAL EXPRESS CORPORATION** (hereinafter, the "**LESSEE**").

WITNESSETH:

WHEREAS, section 201 the Lease provides that the LESSEE's rights to the leased premises vested from and after September 1, 1994 (a copy of the Lease is attached hereto as Exhibit A and made a part hereof); and

WHEREAS, section 201 of the Lease also provides for a 10-year term that was deemed to commence on the date of beneficial occupancy of the leased premises; and

WHERAS, pursuant to a certain Confirmation of Date of Beneficial Occupancy (hereinafter, the "Confirmation"), the date of beneficial occupancy of the Lease was December 1, 1994 (a copy of the Confirmation is attached hereto as Exhibit B and made a part hereof); and

WHEREAS, pursuant to section 202 of the Lease, the parties agreed that the LESSEE shall have three consecutive options to extend the Lease for three additional terms of five years each; and

WHERAS, pursuant to a 2005 Amendment #1 of the Lease (hereinafter, "Amendment #1"), the parties agreed to renew the lease for two of the optional five-year terms (a copy of Amendment #1 is attached hereto as Exhibit C and made a part hereof); and

WHEREAS, the parties inadvertently agreed in Amendment #1 that the renewal terms would be effective from September 1, 2004 through August 31, 2009 and from September 1, 2009 and August 31, 2014, respectively; and

WHEREAS, the parties had intended the renewal terms to be effective from December 1, 2004 through November 30, 2009 and from December 1, 2009 through November 30, 2014, respectively; and

WHEREAS, the parties desire to clarify that the current lease term is effective through November 30, 2014.

NOW, THEREFORE, in consideration of the mutual obligations contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. The termination date of the Lease, which, pursuant to paragraph 2 of Amendment #1, is currently August 31, 2014, shall be extended to November 30, 2014.

2. Any and all terms of the Lease not herein amended shall remain in full force and effect for the duration of this Amendment.

IN WITNESS WHEREOF, the said **CITY OF PORTLAND** has caused this Second Amendment to Lease to be signed and sealed by Mark H. Rees, its City Manager, thereunto duly authorized, and **FEDERAL EXPRESS CORPORATION** has caused this Second Amendment Of Lease to be signed by _____, its _____, thereunto duly authorized, the day and year first above written.

WITNESS:

CITY OF PORTLAND

By: _____
Mark H. Rees
Its: City Manager

WITNESS:

FEDERAL EXPRESS CORPORATION

By: _____
Printed Name: _____
Its: Managing Director, Real Estate And Airport Development

Approved as to form:

Corporation Counsel's Office

RJG 10-13-2014

Approved
Legal Department
AMG 10-2-2014

10/8/2014

CONFIRMATION OF DATE OF BENEFICIAL OCCUPANCY

Pursuant to ARTICLE II, Section 201, the undersigned hereby confirm that the date of beneficial occupancy of the air cargo ramp described in the Ramp Lease Agreement between the City of Portland and Federal Express Corporation was December 1, 1994.

Signed and Delivered in
the presence of

Beverly Ayland

CITY OF PORTLAND

By: _____
Jeff Schultes
Its: Airport Manager

Signed and Delivered in
the presence of

Leanne M. Johnson

FEDERAL EXPRESS CORPORATION

By: _____

Its: Managing Director, Real Estate
(title)

order 94-14/15
Tab 17 11-17-14

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

CITY OF PORTLAND
IN THE CITY COUNCIL

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

ORDER GRANTING A LICENSE AGREEMENT TO 638 CONGRESS STREET PARTNERS, LLC

ORDERED, that a revocable license agreement from the City to 638 Congress Street Partners, LLC to allow overhangs to extend into the public right-of-way is hereby granted in substantially the form attached hereto; and

BE IT FURTHER ORDERED, that the City Council hereby authorizes the Acting City Manager to execute said document and any other related documents necessary or convenient to carry out the intent of said document and this Order.

City of Portland, Maine
City Council Agenda Request Form

TO: Sonia Bean, Senior Administrative Assistant
Mayor and City Manager
Ann Machado, Zoning

FROM: Jennifer Thompson, Associate Corporation Counsel

DATE: **11/6/2014**

1) Council meeting at which action is requested:

1st reading: Not Required
Final action: 11/17/2014

2) Can action be taken at a later date: ____YES __X__ NO
If not, why not: Construction work scheduled.

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

This License Agreement provides 638 Congress Street Partners LLC with a license permitting "encroachments" in the right of way of the City's property; specifically, to install an overhang at least eight feet above the sidewalk as part of its work in a facade improvement. Nine permanent canopies made of wood and wrapped in metal were approved by the Portland Historic Preservation Commission.

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

The City Council must approve permanent licenses of this type.

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

The approval of the license allows the developer to augment the aesthetics of its historic building at 638 Congress Street, a building also known as Lafayette Arms, creating a uniform look to its storefronts west of its Congress Street entrance.

IV. FINANCIAL IMPACT

There is no financial impact.

V. STAFF ANALYSIS & RECOMMENDATION

Corporation Counsel recommends approval of the License. Public Services has been contacted and has approved the changes as well.

Attachments:

License

Order

Plan

EXHIBIT A

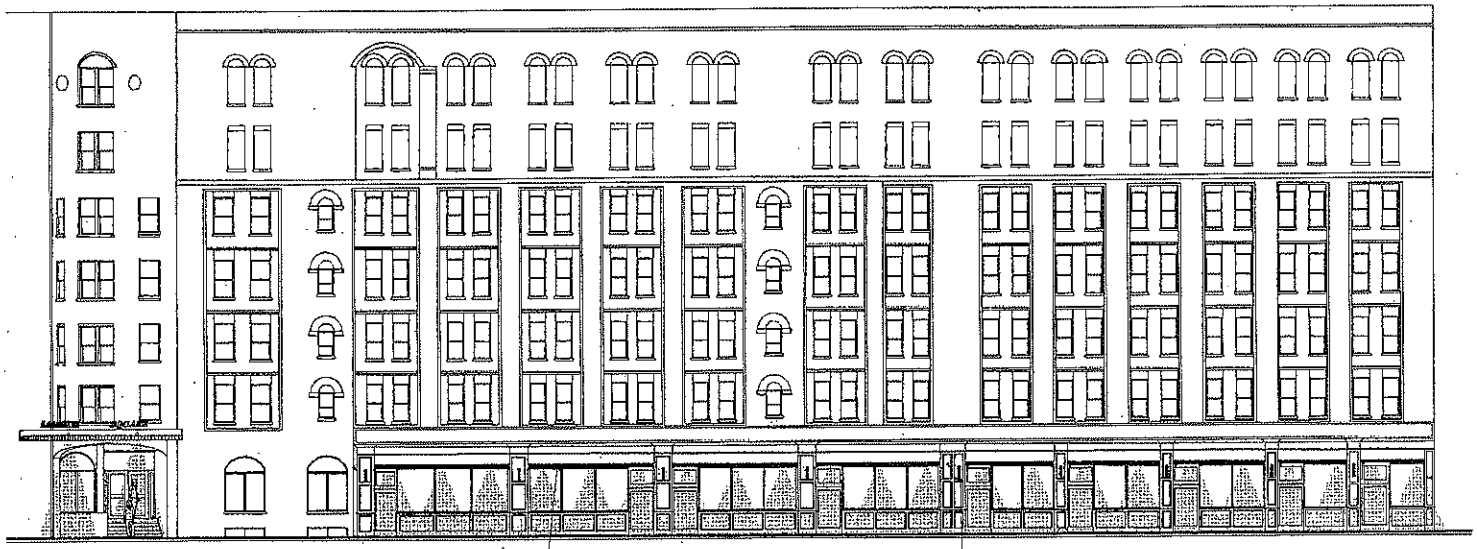
TO

LICENSE AGREEMENT

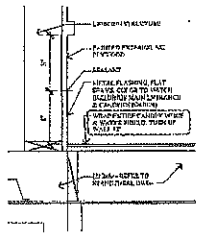
City of Portland to

Licensed Areas

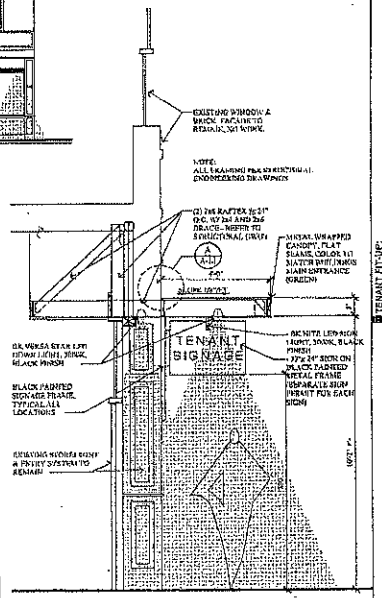
1. Architectural Sheet 'A-1.1 - Proposed Plans'



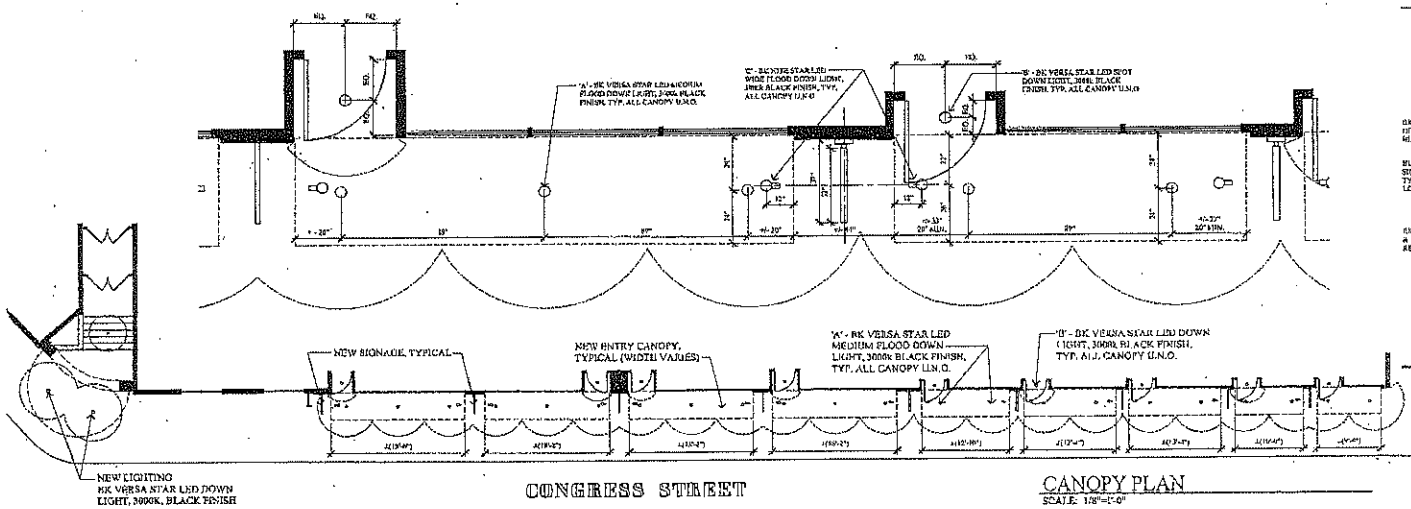
CONGRESS STREET ELEVATION
SCALE: 1/8"=1'-0"



FLASHING DETAIL "A"
SCALE: 1 1/2"=1'-0"



SECTION
SCALE: 1/2"=1'-0"



CONGRESS STREET

CANOPY PLAN
SCALE: 1/8"=1'-0"

REVISED: OCTOBER 09, 2014
PERMIT SET: SEPTEMBER 30, 2014

MARK MUELLER ARCHITECTS
A.I.A.

LAFAYETTE CANOPY RENOVATIONS
CONGRESS STREET - PORTLAND, MAINE

A-1.1

LICENSE AGREEMENT

This License Agreement ("Agreement") is entered into as of the ____ day of _____, 2014, between the **CITY OF PORTLAND**, a Maine body corporate and politic, with a mailing address of City Hall, 389 Congress Street, Portland, Maine 04101 (the "City" or "Licensor"), and **638 CONGRESS STREET PARTNERS LLC** with a place of business in Portland, Maine and mailing address of 104 Grant Street, Portland, Maine 04101 its successors and assigns (hereinafter the "Licensee"), who hereby agree as follows:

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which is hereby acknowledged, a revocable license is hereby granted to Licensee to occupy portions of land and portions of airspace above land owned by the City and adjacent to property of Licensee located at 638 Congress Street described in a deed to Licensee recorded in the Cumberland County Registry of Deeds in Book 29354, Page 304 ("Licensee's Property"), for the purpose of permitting the encroachment of overhangs over the City property ("encroachments") to be located according to, and used as described in, Exhibit A attached hereto and made a part hereof (collectively the "Licensed Areas"), together with the right from time to time to bring upon the Licensed Areas and areas adjacent thereto workers, materials and machinery necessary for the use and enjoyment of the License granted herein. Occupancy of the Licensed Areas is subject to the following conditions:

1. All work performed upon and use of the Licensed Areas for the purposes set forth herein shall be at Licensee's sole cost and expense (unless otherwise agreed in writing), the parties acknowledging that there may be temporary interruptions in enjoyment of the City's property adjacent to the Licensed Areas related to the conduct of any work related to this License. Licensee agrees at its sole expense to restore any portion of the Licensed Areas and adjacent City property damaged by work conducted by Licensee related to this License to substantially its condition prior to such work, or as close to that condition as is reasonably practicable. Licensee, its successors and assigns, shall defend, indemnify and hold the City, its officers, agents, and employees harmless from any and all claims, including but not limited to claims for damage to City property and reasonable attorney's fees, which arise out of Licensee's use, or the use of others, of the City's property as described above.

2. At all times during the Term of this License Agreement, Licensee, its agents and assigns, specifically including, but not limited to any condominium association as soon as any unit is transferred, shall exclusively be responsible for repairing, keeping and maintaining the Licensed Areas in a safe condition generally, by, among other things: ensuring prompt removal of, or otherwise eliminating snow and ice from all encroachments and in a manner that does not endanger pedestrians; preventing, by design and rules and supervision, objects stored or otherwise present on the encroachments from falling or being dropped or thrown onto the City's sidewalk; repairing, replacing or removing all encroachments as necessary for public safety; taking any and all other measures necessary to protect pedestrians in the sidewalk from injury or other harm arising out of the presence of the encroachments.

3. Licensee shall procure and maintain liability insurance in an amount of at least Four Hundred Thousand Dollars ($400,000) combined single limit (or the amount stated in the Maine Tort Claims Act as the same may be amended from time to time), covering claims for bodily injury, death and property damage and shall either name the City of Portland as an additional insured with respect to such coverage or shall obtain a contractual liability endorsement covering the obligations of Licensee under the terms of this license. Licensee shall provide City with evidence of such insurance coverage and shall obtain an endorsement providing City with no less than ten (10) days notice prior to non-renewal or cancellation thereof. Such notice shall be sent to City of Portland, Corporation Counsel, 389 Congress Street, Portland, ME 04101. Failure of Licensee to procure or maintain such insurance coverage shall be an Event of Revocation as set forth in Section 4 below.

4. This license is assignable to any subsequent owners of the property and/or building located on the land described Cumberland County Registry of Deeds in Book 29354, Page 304; and the duties and obligations hereunder shall, in any event, run with the land and burden all subsequent owners holding rights to use any portion of the Licensed Areas

5. Subject to the provisions of Sections 5 and 6 hereof, this Agreement may be revoked six (6) months after receipt by the Licensee of written notice that an Event of Revocation has occurred, identifying such Event of Revocation, provided that such Event of Revocation is not cured within six (6) months after receipt of such notice by Licensee except as set forth in clause 3 below. "Event of Revocation" shall mean: 1) the building shown on the Site Plan fails to be constructed substantially in accordance with the Site Plan or any amendments thereto; 2) the building as shown on the Site Plan is destroyed, removed or otherwise thereafter ceases to exist on Licensee's Property and construction to rebuild said building has not begun within twelve (12) months of said destruction or removal, or 3) failure to maintain insurance as required under Section 2 above, and such failure is not remedied within thirty (30) days after written notice thereof. City acknowledges that Licensee may amend this Agreement, upon the written approval of the City, for the purpose of correcting and/or revising Exhibit A, to more accurately show the encroachments described above that are being licensed under this Agreement.

6. Any notice of an Event of Revocation delivered pursuant to Section 4 of this Agreement must be sent by certified mail, return receipt requested to the Licensee at the address for Licensee set forth above, or at such other address as the Licensee may provide to the City in writing from time to time. Copies of any notices sent to Licensee shall also be sent to:

_____.

7. Notwithstanding any other provision herein, in the event that a notice of an Event of Revocation is delivered pursuant to Section 4 hereof, any mortgagee of Licensee's Property shall be entitled to cure the matter set forth in such notice within the time frames set forth in Section 4 hereof, and the City agrees to accept such performance by any such mortgagee of Licensee's obligations hereunder. In addition, the City agrees to accept any cure of any Event of Revocation by any of Licensee's members.

IN WITNESS WHEREOF, the City of Portland has caused this Revocable License to be executed by Sheila Hill-Christian, its Acting City Manager thereunto duly authorized, as of the day and year first written above.

CITY OF PORTLAND

By:_____
Sheila Hill-Christian, its Acting City Manager
thereunto duly authorized

STATE OF MAINE
CUMBERLAND, ss

_____ ____, 2014

PERSONALLY APPEARED the above-named Sheila Hill-Christian, Acting City Manager of the City of Portland as aforesaid, and 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,

_____
Notary Public/Attorney at Law

Print name:_____
My commission expires:_____

Seen and Agreed to by:
638 CONGRESS STREET PARTNERS, LLC

BY: _____
Tom Watson
its Managing Partner

Order 95-14/15
Tab 18 11-17-14

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

CITY OF PORTLAND
IN THE CITY COUNCIL

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

ORDER APPROVING THE COLLECTIVE BARGAINING AGREEMENT WITH THE CITY EMPLOYEES BENEFIT ASSOCIATION (CEBA)

ORDERED, that the attached Collective Bargaining Agreement with City Employees Benefit Association (CEBA) of the American Federation of State, County and Municipal Employees (AFSCME) Local 1373 for July 1, 2013 through June 30, 2016, is hereby approved.

CITY OF PORTLAND
MEMORANDUM

To: Mayor Michael Brennan and Members of the City Council

From: Thomas Caiazzo, Labor Relations Manager TAC

Date: November 4, 2014

RE: Order/First Reading of CEBA, AFSCME Local 1373

City staff has reached a tentative three (3) year agreement with our largest bargaining unit, CEBA AFSCME Local 1373 representing approximately 500 City employees. The CEBA contract expired on June 30, 2013; as such the parties have been negotiating a successor contract for nearly eighteen months. Terms of the three year agreement include a 1.0% general wage increase for Fiscal Year (FY) 2014 retroactive to July 7, 2013; a 1.0% general wage increase retroactive to July 6, 2014 (or minimum $.17); a 1.0% general wage increase effective January 4, 2015 (or minimum $.17) and a 3.0% general wage increase effective July 5, 2015. The general wage increases are consistent with guidance received by Council on October 6, 2014 and they are consistent with other negotiated contracts for the same period. The contract term is July 7, 2013 through June 30, 2016. The total direct cost of the general wage increase is $972,000.00. However, $485,000.00 has been appropriated and accounted for through the FY 14 and FY 15 budget approval process.

Other terms of the tentative agreement include:

Article 4 – changed the union dues collection language to conform with Maine statutes
Article 15 – agreed to Health Plan design changes.
Article 16 – changed the pension language to comply with MEPERS regulations.
Article 19 – 3% stipend for certification as a Land Surveyor in Training
Article 20 – allows the use of sick leave accruals for scheduled medical/dental appointments.
Appendix B1 – upgraded the following positions:
Administrative Assistant Grade 7 to Grade 8
Customer Service Representative Grade 7 to Grade 8
Administrative Associate Grade 11 to Grade 12.

All other provisions of the contract remain intact for the term of the agreement.

This order will require a second reading at the December 1, 2014 Council meeting.

Cc: Sheila Hill-Christian – Acting City Manager
Danielle West-Chuhta – Corporate Counsel
Jennifer Thompson– Associate Corporate Counsel
Julianne Sullivan – Acting Health & Human Services Director
Mike Bobinsky – Public Services Director
Janice Kimball – Acting Human Resources Director
Suzanne Knight – Acting Finance Director
Carlene Kessler – Principal Admin Officer
Jennifer Lodge, Asst. Budget Director
Lori Schools, Financial Specialist

CEBA Cost Summary-Tentative Agreement

Contract Cost Impact (Annualized)

ITEM	BASE COST	YEAR 1 (FY14)	% INCR	YEAR 2 1st Half (FY15)	% INCR	YEAR 2 2nd Half (FY15)	% INCR	YEAR 3 (FY16)	% INCR	NOTES:
Base Wages	$14,449,427	-		-		-		-		Based on 494 Active Employees or 426.68 FTEs (09/02/14)
COLA*	-	127,978	0.9%	147,439	1.0%	150,570	1.0%	457,587	3.1%	Based on Pay Plans
Mimimum of $0.17 COLA		-	0.0%	10,503	0.1%	8,710	0.1%	-	0.0%	FY15: $0.17 > 1.0%
Night Shift Differential	238,784	-	0.0%	-	0.0%	-	0.0%	-	0.0%	103 Employees (93.1 FTEs)
Stipends (Other Fixed)	28,386	-	0.0%	-	0.0%	-	0.0%	-	0.0%	17 Employees (16.73 FTEs)
Stipends (% of Base Salary)	2,893	29	1.0%	86	2.9%	47	1.6%	91	3.0%	1 Employee (6%): Sr. Surveyor
FY15 New Surveyor Stipends	-	-	0.0%	2,949	100.0%	29	1.0%	117	3.9%	FY15 New LSIT @ 3% (Est. 2 Surveyor FTEs)
FY15 Reclassifications**	-	-	0.0%	18,339	100.0%	183	1.0%	556	3.0%	FY15: Admin Asst, Customer Svc Rep & Admin Assoc (16 Empl)
Sub-Total Wages	*$14,719,489*	*$128,007*	*0.9%*	*179,315*	*1.2%*	*$159,540*	*1.1%*	*$458,350*	*3.0%*	
Overtime	935,354	9,354	1.0%	4,724	0.5%	4,747	0.5%	28,625	3.0%	FY14 Actual; Based on COLA Increases
Total Direct Costs	*$15,654,844*	*$137,360.20*	0.9%	*$184,039*	*1.2%*	*$164,287*	*1.0%*	*$486,976*	*3.0%*	
Health Insurance	2,508,201	250,820	10.0%	-	-	275,902	10.0%	303,492	10.0%	Inflationary Increase Only (Est. 10%)
Health Insurance - Plan Changes	-	-	0.0%	-	0.0%	-	0.0%	(182,095)	-6.0%	Projected 9% Savings Less 3% Cost of Wellness Initiative
	6.5%	*6.5%*		*7.8%*		*7.8%*		*7.8%*		FY16 Est. % (FY15)
Pension	1,017,565	8,928	0.9%	14,355	1.4%	12,814	1.2%	37,984	3.6%	Based on Increase In Total Wages
Total Indirect Costs	*$3,525,766*	*$259,749*	*7.4%*	*$14,355*	*0.4%*	*$288,716*	*7.6%*	*$159,381*	*3.9%*	
Total	$19,180,610	$397,109	2.1%	$198,394	1.0%	$453,003	2.3%	$646,357	3.2%	

***FY14 COLA:** Current Employees w/ FY14 Hours History

****Reclassification Estimates:**

(1) Admin Assist (CEBA): 9 Employees; Grade 7 to 8 Est. $10,355

(2) Customer Serv Representative): 2 Employees; Grade 7 to 8 Est. $2,189

(3) Admin Associate: Grade 11 to 12; 5 Employees Est. $5,795