

Special City Council Meeting
October 5, 2016

1. Agenda Only

Documents:

[2016-10-05 AGENDA ONLY.PDF](#)

2. Agenda With Packet

Documents:

[2016-10-05 AGENDA AND PACKET.PDF](#)

ETHAN K. STRIMLING (MAYOR)
BELINDA S. RAY (1)
SPENCER THIBODEAU (2)
EDWARD J. SUSLOVIC (3)
JUSTIN COSTA (4)

DAVID H. BRENERMAN (5)
JILL C. DUSON (A/L)
JON HINCK (A/L)
NICHOLAS M. MAVODONES, JR. (A/L)

AGENDA
SPECIAL CITY COUNCIL MEETING
OCTOBER 5, 2016

The Portland City Council will hold a Special City Council Meeting at 5:00 p.m. in City Council Chambers, City Hall. The Honorable Ethan K. Strimling, Mayor, will preside.

PLEDGE OF ALLEGIANCE:

ROLL CALL:

ANNOUNCEMENTS:

RECOGNITIONS:

“Arts in the Chamber,” Martin Steingesser, Poet; Rudy Gabrielson, Musician.

City of Portland Recognizes Katherine L. Jones for receiving the Lorraine Fluery Award from the Secretary of State.

APPROVAL OF MINUTES OF PREVIOUS MEETING:

(Tab 1) **September 19, 2016, Regular City Council Meeting Minutes**

PROCLAMATIONS:

Proc 11-16/17 Proclamation Honoring Officer Thien Duong as Police Officer of the
(Tab 2) Month for August 2016 – Sponsored by Mayor Ethan K. Strimling.

Proc 12 – 16/17 Proclamation Honoring George Johns, Jr., Public Works, as
(Tab 3) Employee of the Month for September 2016 – Sponsored by Mayor
Ethan K. Strimling.

APPOINTMENTS:

CONSENT ITEMS:

LICENSES:

Order 61 -16/17 (Tab 4) **Order Granting Municipal Officers' Approval of Dutch's d/b/a Dutch's. Application for a Class I Restaurant at 28 Preble Street -- Sponsored by Michael Russell, Director of Permitting & Inspections Department.**

Application filed on 8/30/16. Applicant holds a current Food Service Establishment License and is upgrading to include alcohol.

Five affirmative votes are required for passage after public comment.

Order 62 -16/17 (Tab 5) **Order Granting Municipal Officers' Approval of LB Kitchen, LLC d/b/a LB Kitchen. Application for a Class III & IV Malt & Vinous at 249 Congress Street - Sponsored by Michael Russell, Director of Permitting & Inspections Department.**

Application filed on 9/2/2016. New City and State Applications. Current location is unoccupied and last use was a restaurant named Figa Restaurant.

Five affirmative votes are required for passage after public comment.

BUDGET ITEMS:

COMMUNICATIONS:

Com 2-16/17 (Tab 6) **Communication Re: City Code Chapter 17, Article VIII. Recreational Use of Marijuana by Adults 21 Years of Age or Older – Sponsored by Mayor Ethan K. Strimling.**

On November 5, 2013, Portland voters supported the passage of a city ordinance which allows the possession of up to 2.5 ounces of marijuana by adults age 21 and older.

Article VIII. Section 17-113 went into effect almost three years ago on December 6, 2013. The ordinance allows for the possession of marijuana in a public place, but it prohibits the use of marijuana in public and the furnishing of or trafficking in the drug.

Sec. 17-116 requires the Mayor to report to the City Council annually as to the implementation and enforcement of the ordinance.

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

RESOLUTIONS:

UNFINISHED BUSINESS:

**Order 57-16/17
(Tab 7)**

Order Approving the Riverside Recycling Facility Agreement with CPRC Group, LLC – Sponsored by Jon P. Jennings, City Manager.

The City's contract with CPRC Group to operate the Riverside Recycling Facility expires on September 30, 2016. In June, the City issued an RFP #7516 to solicit proposals for operating the facility beginning in October, 2016. Two firms responded, Pine Tree Waste (Casella) and CPRC Group. The review committee determined that CPRC Group's proposal was most responsive and provided the best value for the City. Staff has worked with them to negotiate a contract that will allow them to continue operating at Riverside Recycling and serving City operations and residents. The City Council must authorize the City Manager to enter into and execute the agreement in order to move forward.

The Finance Committee will review this item at its meeting on September 29th and make a recommendation to the City Council.

This item must be read on two separate days. It was given a first reading on September 19, 2016. Five affirmative votes are required for passage after public comment.

**Order 58-16/17
(Tab 8)**

Order Approving Two-Party Agreement between the City of Portland and the Maine Department of Transportation Re: Forest Avenue and Dartmouth Street – Sponsored by Jon P. Jennings, City Manager.

The Maine Department of Transportation (MDOT) has selected this project for federal assistance and inclusion in its 2016-2018 Work Plan. This project implements the Transforming Forest Avenue Study recommendation at this intersection to reduce the automobile-dependent design of the street by making significant pedestrian and streetscape enhancements. The study, which was overseen and then fully endorsed by a public advisory committee in 2010-2011, was adopted by the Planning Board & City Council as part of the Comprehensive Plan for Portland.

The estimated project costs are outlined below. The existing MDOT Quality Community Program account (C14114) will be used to fund the required 20% local match.

Federal Share = \$83,044 (80%)
Local Share = \$20,761 (20%)
Upset Limit / Total Project
Estimate = \$103,805

At its June 18, 2012 meeting, the City Council unanimously endorsed (9-0) this specific project as part of the package of Portland SRTS and TE applications. (See Order #222-11/12 included in the agenda backup.)

This item must be read on two separate days. It was given a first reading on September 19, 2016. Five affirmative votes are required for passage after public comment.

**Order 59-16/17
(Tab 9)**

Order Appropriating Funds from the Sale of City-Owned Bayside Property on Somerset Street – Sponsored by Jon P. Jennings, City Manager.

In June 2016 the Federated Companies, LLC purchased parcels of property from the City in the Bayside neighborhood. This order appropriates One (1) Million Dollars towards the move of Public Works out of the Bayside neighborhood to Canco Road and One (1) Million Dollars towards the funding of RFP #5116 – Proposal for Public Administration Systems Software.

The Finance Committee will review this item at its September 29th meeting and make a recommendation to the City Council.

This item must be read on two separate days. It was given a first reading on September 19, 2016. Five affirmative votes are required for passage after public comment.

**Order 60-16/17
(Tab 10)**

Order Reappropriating Unspent Bond Proceeds Re: Moody-Wilson Storm Drain – Sponsored by Jon P. Jennings, City Manager.

The Moody-Wilson project will add a new storm drain on the two streets and also replace the existing sewer lines. The new storm drain will separate stormwater from sewage and help reduce combined sewer overflows at the India Street CSO discharge. The design of the project indicated the need for storage due to pipe size constraints downstream of the project. The initial CIP request did not factor the storage units into the estimate so extra funds are needed. The project had a bid opening on August 2nd. Staff was hoping that the price would come in under the remaining funds, however, that was not the case. An additional \$175, 000 is required.

A contractor is ready to perform the work, but an agreement cannot be signed until funds are available. If the contract is not signed soon, the work will be delayed.

This item must be read on two separate days. It was given a first reading on September 19, 2016. Staff is recommending emergency enactment in order to proceed with the work as quickly as possible during this construction season. Seven affirmative votes are required for passage following public comment.

ORDERS:

**Order 63 -16/17
(Tab 11)**

Order Amending the Sidewalk Materials Policy and Map – Sponsored by Jon Jennings, City Manager

The Planning Division, in conjunction with the city's Department of Public Works, proposes several changes to the city's sidewalk material policy. These changes include edits to the city's official sidewalk material map to require concrete sidewalks, rather than brick, on various secondary streets throughout Bayside, and to require concrete sidewalks, rather than asphalt, on portions of outer Brighton Avenue and in Morrill's Corner. The proposal also contains modifications to the language of the city's sidewalk material policy. These include edits to address partial sidewalk replacements, material upgrade requests, and the composition of driveway aprons. Last, staff has recommended eliminating language in the policy which verbally describes the sidewalk material map, which is attached to the written policy by reference.

Five affirmative votes are required for passage after public comment.

**Order 64-16/17
(Tab 12)**

Order Setting Time For Opening of Polls on November 8, 2016 RE: Presidential and General Municipal Election – Sponsored by Katherine L. Jones, City Clerk.

Pursuant to 21-A M.R.S., Section 626, the polls shall open at 7:00 a.m. and close at 8:00 p.m. on Tuesday, November 8, 2016, for the Presidential and General Municipal Election.

Five affirmative votes are required for passage after public comment.

**Order 65-16/17
(Tab 13)**

Order Approving and Allocating Cumberland County HOME Consortium Funds – Sponsored by the Housing Committee, Jill Duson, Chair.

On February 24, 2016, the Housing Committee approved application criteria for staff to identify and recommend eligible development projects to apply for 2016 HOME Funds distributed by the U.S. Department of Housing & Urban Development (HUD). The application went out to the public on May 2nd and closed on June 30th. Three proposals were received by the

City. On September 14, 2016, the Housing Committee (the Committee) voted to recommend to the City Council allocations for funding to support Portland Housing Authority's 58 Boyd Street Project in East Bayside and repairs to Developer Collaborative's St. Dominic's Apartments in the West End.

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

AMENDMENTS:

**Order 66-16/17
(Tab 14)**

Amendment to Zoning Map Re: Congress Square as Recreation Open Space (ROS) – Sponsored by the Planning Board, Elizabeth Boepple, Chair.

On September 13, 2016, the Planning Board unanimously voted (7-0) to recommend to City Council the proposed map amendment to rezone the city owned "Congress Square Park" parcel to the Recreation and Open Space (ROS) zone.

The proposed zoning map amendment would increase the area of the Congress Square ROS zone to include the entire Congress Square Park parcel held by the City of Portland that currently straddles B-3 and ROS zones. The intention is to provide consistent zoning for the Congress Square Park parcel which we now know will remain public open space as protected by the Land Bank Ordinance. This proposal requires a zoning map amendment for a portion of the parcel from B-3 to ROS.

Many on-peninsula urban open space parcels were added to the Recreation Open Space (ROS) zone in 2014 – Longfellow Square, Monument Square, Boothby Square, Bramhall Square, Bell Buoy Park, Tommy's Park, Post Office Park, Lincoln Park, and Congress Square. However, at that time, a portion of the Congress Square Park parcel was under consideration for sale to a private entity. That portion of the public parcel remained in the B-3 zone pending the sale agreement. In the summer of 2014, a citizen referendum was passed that adopted the Land Bank Ordinance, which names Congress Square as a protected park and would have required a super majority Council vote to sell the land. Currently, the City is in a partnership with the Friends of Congress Square to redevelop the park with significant private fundraising, in addition to some city funds.

The purpose of this amendment is to make the zoning boundary for Congress Square consistent with the land use boundary of the public open space currently protected by the Land Bank Ordinance.

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**Order 67-16/17
(Tab 15)**

Amendment to Portland City Code Chapter 6 Buildings and Building Regulations Re: Building Energy Use Disclosure Ordinance – Sponsored by the Energy and Sustainability Committee, Councilor Jon Hinck, Chair.

During their meeting on September 21, the Energy and Sustainability Committee voted 2-1 (Hinck and Thibodeau in favor, Suslovic opposed) to recommend the draft Building Energy Use Disclosure ordinance to the full City Council for adoption. This ordinance would require the owners of non-residential buildings with more than 20,000 square feet and residential buildings with 50 or more units to measure the amount of energy and water the buildings consume on an annual basis and report it to the City. It would also require the City to measure and report the energy and water consumption of all municipal buildings with more than 5,000 square feet. If enacted, the ordinance would provide building owners with valuable data to assist them in decision making about energy efficiency. It would provide participants in the real estate market with valuable information that will help them understand the cost of energy in a building or unit they may wish to purchase or rent. It will also help the City plan for energy conservation and climate protection.

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EXECUTIVE SESSION:

Executive Session Re: Discussion and Consideration of the City’s Legal Rights and Duties Under the State’s New General Assistance Rules and Laws and Discussion of City of Portland v. Maine Department of Health and Human Services, et al., AP-15-20 with Corporation Counsel, Pursuant to 1 M.R.S. Section 405(6)(E) – Sponsored by Jon P. Jennings, City Manager.

BREAK FOR DINNER:

7:00 P.M. PUBLIC COMMENT PERIOD ON NON-AGENDA ITEMS:

EXECUTIVE SESSION:

Executive Session Re: Performance Evaluations of the City Clerk and Corporation Counsel Pursuant to 1 M.R.S. §405(6)(A) – Sponsored by the Nominating Committee, Justin Costa, Chair.

LICENSE RENEWALS:

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EXECUTIVE SESSION:

Executive Session Re: Discussion and Consideration of the City’s Legal Rights and Duties Under the State’s New General Assistance Rules and Laws and Discussion of City of Portland v. Maine Department of Health and Human Services, et al., AP-15-20 with Corporation Counsel, Pursuant to 1 M.R.S. Section 405(6)(E) – Sponsored by Jon P. Jennings, City Manager.

BREAK FOR DINNER:

7:00 P.M. PUBLIC COMMENT PERIOD ON NON-AGENDA ITEMS:

EXECUTIVE SESSION:

Executive Session Re: Performance Evaluations of the City Clerk and Corporation Counsel Pursuant to 1 M.R.S. §405(6)(A) – Sponsored by the Nominating Committee, Justin Costa, Chair.

LICENSE RENEWALS:

IN COUNCIL REGULAR MEETING SEPTEMBER 19, 2016 VOL. 133 PAGE 18

ROLL CALL: Mayor Strimling called the meeting to order at 5:00 P.M. (All Councilors present).

ANNOUNCEMENTS:

RECOGNITIONS:

“Arts in the Chamber,” Kate Beever, Singer/Songwriter, Maine Music & Health

APPROVAL OF MINUTES OF PREVIOUS MEETING:

Motion was made by Councilor Suslovic and seconded by Councilor Thibodeau to approve the minutes of September 7, 2016 Special City Council meeting. Passage 9-0.

PROCLAMATIONS:

Proc 10-16/17 Proclamation Welcoming the Artic Council to Portland and Proclaiming the Week of October 2, 2016 Artic Council Week in Portland – Sponsored by Mayor Ethan K. Strimling.

APPOINTMENTS:

CONSENT ITEMS:

LICENSES:

Order 52-16/17 Order Granting Municipal Officers’ Approval of Mark’s Sports, LLC d/b/a Mark’s Sports. Application for Entertainment without Dance at 50 Wharf St. - Sponsored by Michael Russell, Director of Permitting & Inspections Department.

Motion was made by Mayor Strimling and seconded by Councilor Costa to amend Order 52 by inserting the word unamplified entertainment. Passage 9-0.

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

IN COUNCIL REGULAR MEETING SEPTEMBER 19, 2016 VOL. 133 PAGE 19

Order 53-16/17 Order Granting Municipal Officers' Approval of Nosh LLC d/b/a Nosh Kitchen Bar. Application to Expand Existing Alcohol Service Area for One-day Event on September 25, 2016 at 551 Congress St. – Sponsored by Michael Russell, Director of Permitting & Inspections Department.

Motion was made by Councilor Suslovic and seconded by Councilor Hinck to postpone Order 53 indefinitely. Passage 9-0.

Order 54-16/17 Order Granting Municipal Officers' Approval of The Miranda Group d/b/a Proper Charlies. Application for a Class A Lounge with Entertainment with Dance at 26 Exchange Street – Sponsored by Michael Russell, Director of Permitting and Inspections Department.

Motion was made by Councilor Thibodeau and seconded by Councilor Ray for passage. Passage 9-0.

Order 55-16/17 Order Granting Municipal Officers' Approval of Sodexo America, LLC d/b/a Sodexo America, LLC. Application for a Class I Qualified Caterer at 88 Bedford Street – Sponsored by Michael Russell, Director of Permitting and Inspections Department.

Motion was made by Councilor Ray and seconded by Councilor Thibodeau for passage. Passage 9-0.

BUDGET ITEMS:

COMMUNICATIONS:

RESOLUTIONS:

UNFINISHED BUSINESS:

Motion was made by Councilor costa and seconded by Councilor Brenerman to suspend the rules and take up an un-agenda item. Passage 9-0.

Order 61-16/17 Order referring the Tax Increment Financing policy for review by the economic development committee.

Motion was made by Mayor Strimling and seconded by Councilor Thibodeau for passage. Passage 9-0.

Councilor Thibodeau disclosed that his employer has done work with ImmuCell Corporation.

Councilor Hinck disclosed that his wife is a partner in Verrill Dana and has done work for ImmuCell Corporation.

Order 37-16/17 Order Designating ImmuCell Corporation Municipal Development and Tax Increment Financing District – Sponsored by the Economic Development Committee, Councilor David Brenerman, Chair. This item was given first reading on August 1, 2016, postponed on September 7, 2016.

Motion was made by Councilor Brenerman and seconded by Councilor Duson for passage. Passage 8-1, (Strimling).

Order 38-16/17 Order Approving Credit Enhancement Agreement with ImmuCell Corporation – Sponsored by the Economic Development Committee, Councilor David Brenerman, Chair. This item was given first reading on August 1, 2016 and postponed on September 7, 2016.

Motion was made by Councilor Brenerman and seconded by Councilor Duson for passage. Passage 8-1, (Stimling).

Order 51-16/17 Order Approving Agreements between Portland, Maine Department of Transportation and Portland Area Comprehensive Transportation System Re: Washington Avenue and Congress Street Projects - Sponsored by Jon P. Jennings, City Manager. This item was given first reading on September 7, 2016.

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

ORDERS:

Order 56-16/17 Order Authorizing The City Manager to Negotiate an Agreement with Developers Collaborative Predevelopment LLC for the Purchase of Reed School – Sponsored by Councilor David Brenerman.

Motion was made by Councilor Brenerman and seconded by Councilor Ray for passage. Passage 9-0.

Order 57-16/17 Order Approving the Riverside Recycling Facility Agreement with CPRC Group, LLC – Sponsored by Jon P. Jennings, City Manager.

IN COUNCIL REGULAR MEETING SEPTEMBER 19, 2016 VOL. 133 PAGE 21

This is its first reading.

Order 58-16/17 Order Approving Two-Party Agreement between the City of Portland and the Maine Department of Transportation Re: Forest Avenue and Dartmouth Street – Sponsored by Jon P. Jennings, City Manager.

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Order 59-16/17 Order Appropriating Funds from the Sale of City-Owned Bayside Property on Somerset Street – Sponsored by Jon P. Jennings, City Manager.

This is a first read.

Order 60-16/17 Order Reappropriating Unspent Bond Proceeds Re: Moody-Wilson Storm Drain – Sponsored by Jon P. Jennings, City Manager.

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AMENDMENTS:

7:00 P.M. PUBLIC COMMENT PERIOD ON NON-AGENDA ITEMS:

EXECUTIVE SESSION:

Executive Session Re: Bargaining Guidance for Pro Tech Pursuant to 1 M.R.S. Section 405(6)(D) - Sponsored by Jon P. Jennings, City Manager.

Motion was made by Councilor Suslovic and seconded by Councilor Ray to adjourn the Regular City Council meeting and move into Executive session pursuant to 1M.R.S. section 405(6)(D) labor union negotiations. Passage 9-0, 7:50 P.M.

Motion was made by Councilor Hinck and seconded by Councilor Ray to move out of Executive session. Passage 9-0, 8:15 P.M.

A TRUE COPY.

Katherine L. Jones, City Clerk

Proc 11-16/17
Tab 2 10-5-16

PROCLAMATION

HONORING

OFFICER THIEN DUONG

WHEREAS, **Officer Duong** joined the Portland Police Department in June 1997 as a summer cadet and shortly following that he became a process server. In August 1998 **Officer Duong** was sworn in as a police officer. Prior to his time with the Portland Police Department, **Officer Duong** served in the United States Army assigned to an infantry unit in South Korea along the Demilitarized Zone and later transferred and was assigned to the 82nd Airborne Division as a paratrooper; and

WHEREAS, **Officer Duong** is a Field Training Officer who is routinely assigned a new police officer from the Academy and will mentor the new officer until their field training period is complete; and

WHEREAS, **Officer Duong** is one of the founding officers that started a one week pre-academy class for new officers who will be attending the Maine Criminal Justice Academy. This class prepares officers from Portland as well as other agencies, for what will be expected of them during their eighteen weeks at the Academy; and

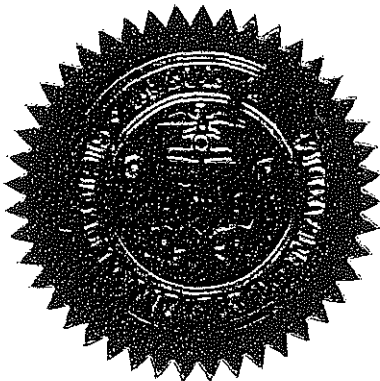
WHEREAS, **Officer Duong** has received numerous letters of appreciation from the citizens of Portland. He has also received many letters of commendation and citation commending his exemplary performance and outstanding representation of the Portland Maine Police Department.

NOW, THEREFORE, BE IT RESOLVED, THAT I, Ethan K. Strimling, Mayor of the City of Portland, Maine, and the members of the Portland City Council do hereby proclaim honor and recognition to Officer Thien Duong as Officer of the Month for August 2016.

Signed and sealed this 5th day of October 2016



Ethan K. Strimling, Mayor
City of Portland, Maine



*Proc 18-16/17
Tab 3 10.5.16*

PROCLAMATION

Honoring

George Johns, Jr.

Employee of the Month

September 2016

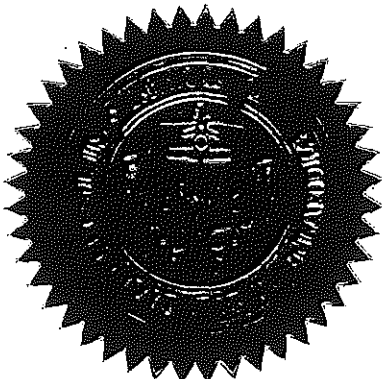
WHEREAS: **George Johns, Jr.** of the Public Works Department has been named the City of Portland Employee of the Month by a committee of his peers and selected for this distinct honor from a workforce of 1,300; and

WHEREAS: This award is presented in recognition of **George's** work as a Maintenance Worker III with over 10 years of City service. **George** is a highly valued member of the Water Resources Division. **George** is recognized for his special expertise in constructing/reconstructing manholes, catch basins, drains and pipes, setting curb/headstones and frames. This work always involves excavating in the sidewalks and streets, which requires great skill when digging and working around other utilities; and

WHEREAS: **George** is recognized by his peers and supervisors as a leader of the crew because of his skills, knowledge and ability to organize the crew's efforts to get the job done right in a timely manner. When faced with difficult situations or obstacles **George** is quick to come up with workable solutions while maintaining a calm demeanor; and

WHEREAS: **George** is versatile and well-skilled in other aspects of wastewater/stormwater functions, seamlessly able to move into tasks such as vacuuming out manholes, water-jetting sewer lines, street sweeping and also skilled in performing winter operation tasks. **George** truly is an asset to the Public Works Department and to the City.

NOW, THEREFORE, BE IT RESOLVED, THAT I, Ethan K. Strimling, Mayor of the City of Portland, Maine, and the members of the Portland City Council do hereby proclaim honor and recognition to **George Johns, Jr.** as **City Employee of the Month, September 2016.**



Signed and Sealed this 5th day of October, 2016

**Ethan K. Strimling, Mayor
City of Portland, Maine**

*Order 61-16/17
Tab 4 105-16*

ETHAN STRIMLING (MAYOR)
BELINDA RAY (1)
SPENCER THIBODEAU (2)
EDWARD J. SUSLOVIC (3)
JUSTIN COSTA (4)

**CITY OF PORTLAND
IN THE CITY COUNCIL**

DAVID BRENERMAN (5)
JILL C. DUSON (A/L)
JON HINCK (A/L)
NICHOLAS M. MAVODONES, JR. (A/L)

**ORDER
GRANTING MUNICIPAL OFFICERS'
APPROVAL OF:**

Dutch's d/b/a Dutch's. Application for a Class I Restaurant at 28 Preble Street.

Dutch's
Breakfast & Lunch
28 Preble Street
Portland, Maine
04101

Mayor Ethan Strimling
Members of the City Council
389 Congress St
Portland, Maine
04101

Re: Dutch's Liquor License Application

To the Mayor and City Council of Portland,

We are Ian and Lucy Dutch, sole owners of Dutch's Breakfast & Lunch in downtown Portland. This letter has been prepared to announce our intention to apply for a liquor license to compliment the current offerings at our restaurant. We currently serve savory breakfasts, pastries, coffee and sandwiches and would like to add beer, wine, and a few popular brunch drinks to our menu. The sale of alcohol is intended to attract a wider range of customers to our restaurant and increase our revenue.

Your generous support will allow our small family owned restaurant to become increasingly successful and self sustaining and capable of serving the people of Portland for many years to come. We look forward to speaking in more detail regarding our establishment and our plans for the future.

Sincerely, Lucy Dutch
Owner, Treasurer

Portland, Maine



Yes. Life's good here.

Office of the City Clerk • 389 Congress St. • Portland, ME 04101 • (207) 874-8557
www.portlandmaine.gov

Application for Food Service Establishment with Alcoholic Beverages License

Business Information	
Business Name (d/b/a):	Dutch's Phone: 207 761 2900
Location Address:	28 Preble St. Portland, ME Zip: 04101
If new, what was formerly at this location:	
Mailing Address:	Same ↑ Zip:
Contact Person:	Lucy Dutch Phone: 207 761 2901
Contact Person Email:	lucymdutch@gmail.com ↑
Manager of Establishment:	Lucy Dutch Date of Birth: 06/30/84 Phone: ↑
Owner of Premises (Landlord):	Port Property
Address of Premises Owner:	104 Grant St. Zip:

Sole Proprietor/Partnership Information (If Corporation, leave blank)

Name of Owner(s)	Date of Birth	Residence Address

Corporate/LLC/Non-Profit Organization Applicants (If Sole Proprietor or Partnership, leave blank)

Corporate Name		Corporate Mailing Address	
Dutch's		28 Preble St. Portland, ME Zip: 04101	
Contact Person:	Lucy Dutch	Phone:	207 761 2901
Principal Officers	Title	Date of Birth	Residence Address
Lucy Dutch	Treasurer	06/30/84	180 High St. #40 Portland
Ian Dutch	President	04/23/84	180 High St. #140 Portland

Class of Liquor License:	<u>On premise / restaurant class 1 restaurant</u>		
Type of food served:	<u>Breakfast + lunch</u>		
Please circle all that will be served:	<u>Beer</u> <u>Wine</u> <u>Liquor</u>		
Projected percentage of sales:	Generated from Food: <u>85%</u>	Generated from Alcohol: <u>15%</u>	
Hours & days of operation:	<u>Tues - Fri 7am/3pm Sat - Sun 8am/2pm</u>		

QUESTIONS

Will full-course meals, only capable of consumption with the use of tableware, be served the entire time the establishment is open?	Y/N ☒ Y ☐ N
If No, please explain:	
Is the establishment less than 300 feet from a school, dormitory, church or parish house, or similar establishment?	Y/N ☒ Y ☐ N
If yes, give the distance:	
Will you have entertainment on the premises? (If yes, a Supplemental Application for Dancing & Entertainment is required.)	Y/N ☒ Y ☐ N
Will you permit dancing on the premises?	Y/N ☒ Y ☐ N
Will you permit dancing after 1:00 a.m.?	Y/N ☒ Y ☐ N
Will you have outside dining? (If yes, an Outdoor Dining Application is required)	Y/N ☒ Y ☐ N
If yes, will the outside dining be on PUBLIC or PRIVATE property (circle one).	
Will you have any amusement devices (pinball, video games, juke box)?	Y/N ☒ Y ☐ N
If yes, please list: # of pinball machines: _____ # of amusements: _____ # of pool tables: _____	
What is your targeted opening date?	<u>Currently operating</u>
Does the issuance of this license directly or indirectly benefit any City employee(s)?	Y/N ☒ Y ☐ N
Yes, list name(s) of employee(s) and department(s):	
Have any of the applicants, including the corporation (if applicable), ever held a business license with the City of Portland?	
If Yes, please list business name(s) and location(s):	
<u>Dutch's 28 Preble St. Food Service Establishment</u>	
Is any principal officer under the age of 21?	Y/N ☒ Y ☐ N
Have applicant, partners, associates, or corporate officers ever been arrested, indicted, or convicted for any violation of law?	Y/N ☒ Y ☐ N
If Yes, please explain:	

I Lucy Dutch do hereby swear and affirm that every employee in my establishment that serves alcohol to the public has attended server training, or will attend server training within 90 days of their hire. I also understand that at any time the City license administrator can, upon request, require me to produce Server Training certificates for each employee that serves alcohol to the public in my establishment. Failure to meet the training requirement imposed by section 15-41 may result in the denial of a liquor license pursuant to 28-A M.R.S.A. § 653 (2) (G).

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

It is understood that this and any application(s) shall become public record and the applicant(s) hereby waive(s) any rights to privacy with respect thereto. I/We, hereby authorize the release of any criminal history record information to the City Clerk's Office or licensing authority. I/We, hereby waive any rights to privacy with respect thereto.

Signature Lucy M Dutch Title Treasurer Date 5/24/16

For more information about Liquor Licenses, see Portland City Code Chapter 15 at www.portlandmaine.gov and M.R.S.A. Title 28-A at www.maine.gov.

BUREAU OF ALCOHOLIC BEVERAGES
DIVISION OF LIQUOR LICENSING & ENFORCEMENT
8 STATE HOUSE STATION
AUGUSTA, ME 04333-0008



Promise by any person that he or she can
pedite a liquor license through influence
ould be completely disregarded.

To avoid possible financial loss an applicant,
prospective applicant, should consult with the
ivision before making any substantial invest-
ent in an establishment that now is, or may be,
tended by a liquor license.

DEPARTMENT USE ONLY

LICENSE NUMBER:

CLASS:

DEPOSIT DATE

AMT. DEPOSITED:

BY:

CK/MO/CASH:

PRESENT LICENSE EXPIRES

New

INDICATE TYPE OF PRIVILEGE: ☒ MALT ☒ SPIRITUOUS ☒ VINOUS

INDICATE TYPE OF LICENSE:

☒ RESTAURANT (Class I,II,III,IV)

☐ HOTEL-OPTINONAL FOOD (Class I-A)

☐ CLASS A LOUNGE (Class X)

☐ CLUB (Class V)

TAVERN (Class IV)

☐ RESTAURANT/LOUNGE (Class XI)

☐ HOTEL (Class I,II,III,IV)

☐ CLUB-ON PREMISE CATERING (Class I)

☐ GOLF CLUB (Class I,II,III,IV)

☐ OTHER:

REFER TO PAGE 3 FOR FEE SCHEDULE

ALL QUESTIONS MUST BE ANSWERED IN FULL

1. APPLICANT(S) -(Sole Proprietor, Corporation, Limited Liability Co., etc.)		2. Business Name (D/B/A)	
Dutch's S. Corp.		Dutch's	
DOB: _____		DOB: _____	
DOB: _____		DOB: _____	
Address 180 High St #40		Location (Street Address) 28 Preble St.	
City/Town Portland State ME Zip Code 04101		City/Town Portland State ME Zip Code 04101	
Mailing Address Same		Mailing Address Same	
City/Town Portland State ME Zip Code 04101		City/Town Portland State ME Zip Code 04101	
Telephone Number 603 475 2608 Fax Number		Business Telephone Number 207 761 2900 Fax Number	
Federal I.D. # 46-5567893		Seller Certificate #	

EMAIL ADDRESS: lucymdutch@gmail.com

3. If premises is a hotel, indicate number of rooms available for transient guests: _____

State amount of gross income from period of last license: ROOMS \$ _____ FOOD \$ New LIQUOR \$ New

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

If YES, complete Supplementary Questionnaire

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

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

8. If business is NEW or under new ownership, indicate starting date: 11/11/14

Requested inspection date: Oct / Tues - Sun Business hours: 7am - 3pm

9. Business records are located at: 28 Preble St - on premise

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

11. Is/are applicant(s) residents of the State of Maine? YES ☒ NO ☐

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

Name in Full (Print Clearly)	DOB	Place of Birth
Lucy Marie Dutch	6/30/84	Winchester, MA
Ian Gregory Dutch	4/23/84	Belfast, ME

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

Both together -> Boston, MA / San Francisco, CA / Nantucket, MA / Ogunquit, ME

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

Name: _____ Date of Conviction: _____

Offense: _____ Location: _____

Disposition: _____

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

Yes ☐ No ☒ If Yes, give name: _____

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

16. Does/do applicant(s) own the premises? Yes ☐ No ☒ If No give name and address of owner: Port Property
104 Grant St. Portland, ME

17. Describe in detail the premises to be licensed: (Supplemental Diagram Required) 70 seat fast casual
restaurant

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

YES ☒ NO ☐ Applied for: _____

19. What is the distance from the premises to the NEAREST school, school dormitory, church, chapel or parish house, measured from the main entrance of the premises to the main entrance of the school, school dormitory, church, chapel or parish house by the ordinary course of travel? 2 city blocks Which of the above is nearest? a pre school

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

If YES, give details: _____

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

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

Dated at: Portland, ME on 8/30/16, 2016
Town/City, State Date

Please sign in blue ink

Kay M Dutch
Signature of Applicant or Corporate Officer(s)

[Signature]
Signature of Applicant or Corporate Officer(s)

Kay M Dutch
Print Name

Ian Dutch
Print Name

NOTICE – SPECIAL ATTENTION

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

THIS APPROVAL EXPIRES IN 60 DAYS.

FEE SCHEDULE

Class I	Spirituos, Vinous and Malt	\$ 900.00
	CLASS I: Airlines; Civic Auditoriums; Class A Restaurants; Clubs with catering privileges; Dining Cars; Golf Clubs; Hotels; Indoor Ice Skating Clubs; Indoor Tennis Clubs; Vessels; Qualified Caterers; OTB.	
Class I-A	Spirituos, Vinous and Malt, Optional Food (Hotels Only)	\$1,100.00
	CLASS I-A: Hotels only that do not serve three meals a day.	
Class II	Spirituos Only	\$ 550.00
	CLASS II: Airlines; Civic Auditoriums; Class A Restaurants; Clubs with catering privileges; Dining Cars; Golf Clubs; Hotels; Indoor Ice Skating Clubs; Indoor Tennis Clubs; and Vessels.	
Class III	Vinous Only	\$ 220.00
	CLASS III: Airlines; Civic Auditoriums; Class A Restaurants; Clubs with catering privileges; Dining Cars; Golf Clubs; Hotels; Indoor Ice Skating Clubs; Indoor Tennis Clubs; Restaurants; Vessels; Pool Halls; and Bed and Breakfasts.	
Class IV	Malt Liquor Only	\$ 220.00
	CLASS IV: Airlines; Civic Auditoriums; Class A Restaurants; Clubs with catering privileges; Dining Cars; Golf Clubs; Hotels; Indoor Ice Skating Clubs; Indoor Tennis Clubs; Restaurants; Taverns; Pool Halls; and Bed and Breakfasts.	
Class V	Spirituos, Vinous and Malt (Clubs without Catering, Bed & Breakfasts)	\$ 495.00
	CLASS V: Clubs without catering privileges.	
Class X	Spirituos, Vinous and Malt – Class A Lounge	\$2,200.00
	CLASS X: Class A Lounge	
Class XI	Spirituos, Vinous and Malt – Restaurant Lounge	\$1,500.00
	CLASS XI: Restaurant/Lounge; and OTB.	

FILING FEE.....\$ 10.00

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

All fees must accompany application, made payable to the **Treasurer of Maine**. This application must be completed and mailed to Bureau of Alcoholic Beverages and Lottery Operations, Division of Liquor Licensing and Enforcement, 8 State House Station, Augusta ME 04333-0008. Payments by check subject to penalty provided by Title 28A, MRS, Section 3-B.



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

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

For Office Use Only:

License #: _____

Date Filed: _____

For information required for Questions 1 to 4, this information is on file with the Maine Secretary of State's office and must match their record information. Please clearly complete this form in its entirety.

1. Exact legal name:

Dutch's

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

Dutch's

3. Date of filing with the Secretary of State: 8/30/16

State in which you are formed: Maine

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

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

Name	Address for Previous 5 years	Date of Birth	Ownership %
Lucy Dutch	180 High St. #40 Portland, ME	6/30/81	50
Ian Dutch	180 High St. #40 Portland, ME	4/23/81	50

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

Yes ☐ No ☒

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

Name: _____ Agency: _____

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

Yes ☐ No ☒

10. If Yes to Question 9, please complete the following: (attached additional sheets as needed)

Name: _____

Date of Conviction: _____

Offense: _____

Location of Conviction: _____

Disposition: _____

Signature:

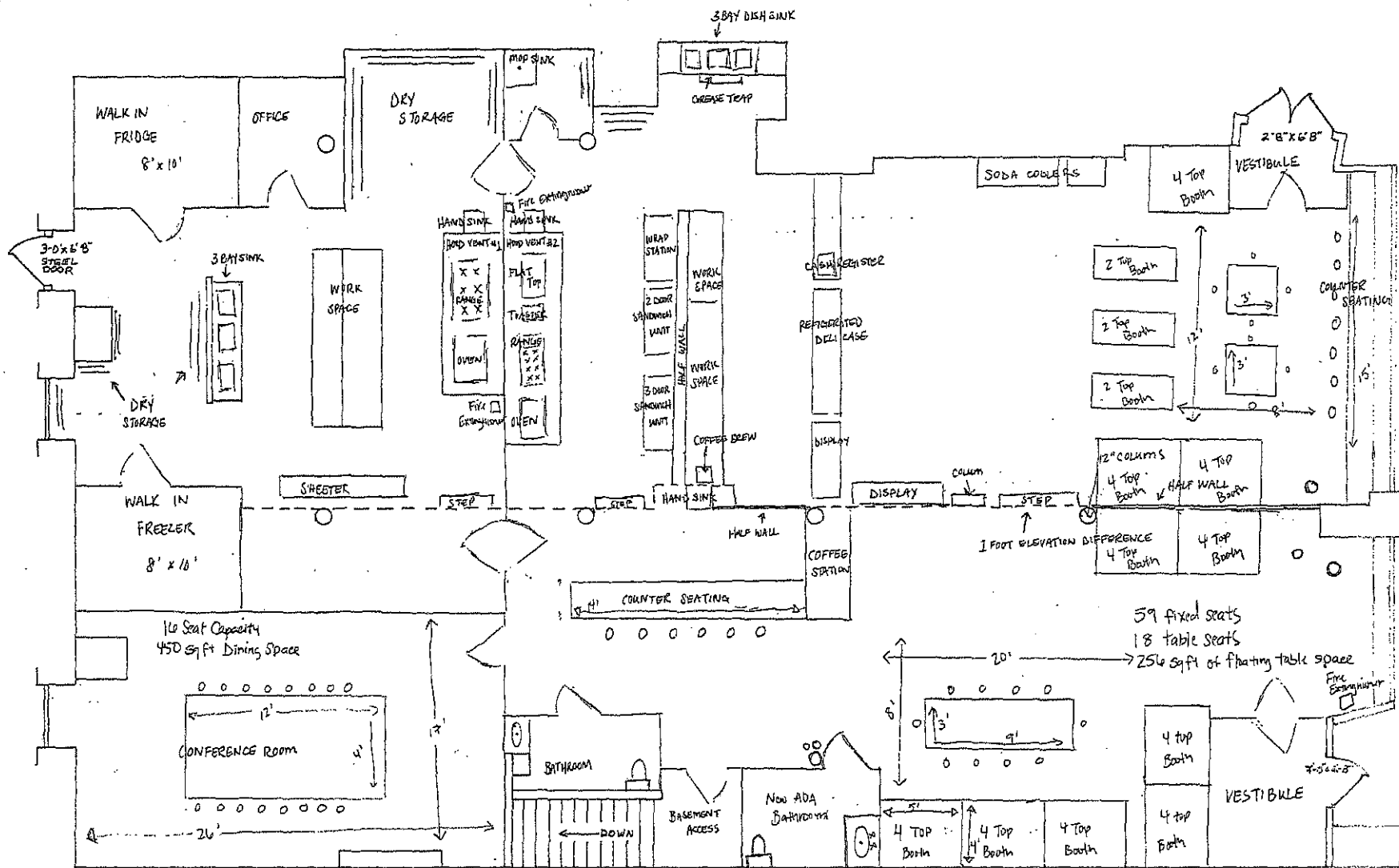
Lucy M Dutch
Signature of Duly Authorized Person

8/30/14
Date

Lucy M Dutch
Print Name of Duly Authorized Person

If you have questions regarding the legal name or assumed (DBA) name on file with the Secretary of State's office, please call (207) 624-7752. The SOS can only speak to the information on file with their office, not the filing of this supplemental information – please direct any questions about this form to our office at the number below.

Submit Completed Forms To: Bureau of Alcoholic Beverages and Lottery
Operations Division of Liquor Licensing Enforcement
8 State House Station Augusta, Me 04333-0008
Telephone Inquiries: (207) 624-7220
Fax: (207) 287-3434
Email Inquiries: MaineLiquor@Maine.gov



DUTCH'S
28-30 PREBLE ST. PORTLAND

SCALE $\frac{1}{4}" = 1'$

Existing Layout

Dutch's

BREAKFAST & LUNCH

== BREAKFAST MENU ==

SANDWICHES

Make it a COMBO! Add hash browns and a small coffee or tea for + \$4

TRADITIONAL || 4.50

Egg and cheddar cheese, choice of house maple sausage, bacon or ham. Choice of English muffin, biscuit or bagel. On croissant + \$1

NOT-SO-TRADITIONAL || 4.50 V

Egg white, avocado, cheddar cheese, chimichurri. Choice of English muffin, biscuit or bagel. On croissant + \$1

SCALLION STALLION || 4.50 V

Scallion cream cheese, fresh tomato and sprouts on a house-made pretzel bagel

SMOKED SALMON BAGEL || 7.00

Cream cheese, capers, tobiko, sliced tomato and red onion on a house-made pretzel bagel

THE DOUBLE DOWN || 7.50

Double cheese, double meat and 2 eggs on a dinner roll bun

CRISPY CHICKEN BISCUIT || 7.00

Crispy chicken thigh smothered in sausage gravy on a house-made biscuit. Add egg + \$1 Add cheddar + 50¢ Add bacon + \$1.25

THE BASICS

BREAKFAST BURRITO || 8.00 V

Scrambled eggs, crispy hash browns, refried black beans, salsa, chimichurri, cheddar cheese and sour cream wrapped in a flour tortilla. Add avocado + 75¢ Add bacon + \$1.25

HAM & CHEESY GRITS || 5.50 GF

Crispy ham and scallions over creamy grits with two cheeses

DRIED FRUIT & NUT GRANOLA, YOGURT & BERRIES || 5.50 V GF

SIDES

3.50 || BACON GF

3.50 || BAGEL & CREAM CHEESE V

4.50 || BISCUIT & SAUSAGE GRAVY

House-made biscuit smothered in creamy sausage gravy

3.50 || BISCUIT, JAM, HOUSE CULTURED BUTTER V

3.50 || CHEESY GRITS V GF

3.50 || CRISPY HASH BROWNS V GF

3.50 || HOUSE MAPLE SAUSAGE GF

3.50 || TOAST, BUTTER & JAM V

2 slices of house-made white or wheat toast served

PASTRIES

2.75 || BLUEBERRY MUFFIN V

3.50 || BRIOCHE CINNAMON BUN V

2.50 || BUTTER CROISSANT V

2.50 || CHAI SPICE COFFEE CAKE V

2.50 || SEASONAL DANISH V

3.50 || HAM & CHEESE CROISSANT

Dutch's shredded ham, Gruyère, croissant pocket

Call us at: **207.761.2900**

28 PREBLE STREET || PORTLAND, MAINE

LUNCH MENU

SANDWICHES

PULLED HAM || 8.50

Spice-rubbed ham, pimento cheese, Carolina BBQ sauce and whole grain mustard slaw on Dutch Crunch

BIG AND BEEFY || 8.50

Red wine braised beef, mashed potato, crispy onion strings, Dutch Crunch. **Side of debris for dipping + \$2**

CHICKEN PARMESAN || 8.50

Crispy chicken thigh, melted mozzarella and Parmesan, savory tomato sauce and garlic-braised kale on a dinner roll bun

CRISPY CHICKEN || 8.50

Crispy chicken thigh, bacon, cheddar cheese, red pepper jelly and romaine on a dinner roll bun

FANCY TUNA MELT || 8.50

Tuna salad, sliced tomato, romaine and broiled cheese sauce on house white bread

ITALIAN COLD CUT || 8.50

Giardiniera, garlic aioli, Genoa salami, capicola, Mortadella, provolone and romaine on Dutch Crunch

ROASTED TURKEY || 8.50

House turkey, bacon, avocado, bibb lettuce, chimichurri and mayonnaise on honey wheat bread

SHREDDED CHICKEN SALAD || 8.50

All white meat chicken, lemon, feta, celery, Asian pear, green olive tapenade and bibb lettuce on house white bread

THE GRASSHOPPER || 8.50 V

Griddled halloumi, roasted red pepper hummus, cucumber, carrot and sprouts on honey wheat bread

OLD FASHIONED GRILLED CHEESE || 5.50 V

American and cheddar cheese, toasty and gooey on house white bread

WARM PB&J || 5.50 V

Strawberry jam and peanut butter on house white bread

SOUPS & SALADS

SOUP DU JOUR || 5.50

VEGETARIAN SOUP DU JOUR || 5.50 V

Add freshly baked Dutch Crunch + 50¢

CAESAR SALAD || 7.50

Romaine, Parmesan, croutons, Caesar dressing

THE GREEN SALAD || 7.50 V GF

Romaine, bibb lettuce, shredded carrots, cucumber, tomato, sprouts, feta, lemon vinaigrette

SIDES

PICKLES || .50 sm / 4.50 8oz V GF

House-made dill and garlic pickles

POTATO CHIPS || 2.00 V GF

Freshly fried Idaho potato chips doused in house-made seasoning

ONION STRINGS || 3.50 V

Tempura fried onion strings served with fancy sauce for dipping

FOUR CHEESE MAC-N-CHEESE || 4.00

Gruyère, provolone, Parmesan, cheddar

CLASSIC POTATO SALAD || 3.50 sm / 5.00 lg GF

Red bliss potatoes, hard boiled eggs, red onion, creamy paprika

VEGAN FRIED RICE || 3.50 sm / 5.00 lg V GF

Jasmine rice, carrot, celery, scallion, sesame, chili

Check out our deli case for other seasonal vegetable and grain sides!

PASTRIES 2.50 v

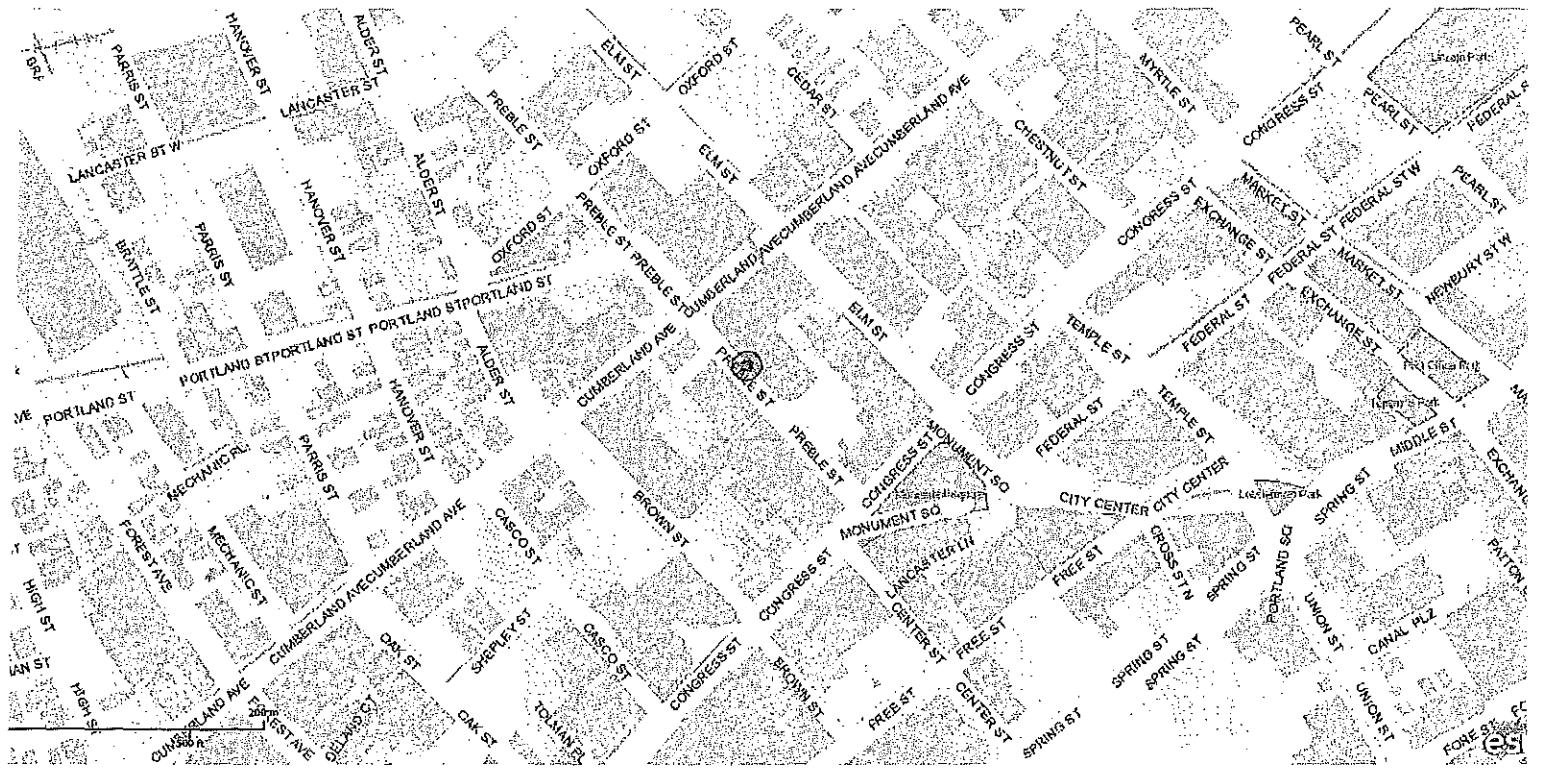
GOOEY BARS || CHOCOLATE CHIP COOKIES

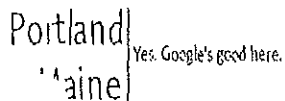
FROSTED CAKE SQUARE || MALTED BROWNIES

CARAMEL CORN & HAZELNUTS

THE DUTCH TREAT || 1.50

VISIT US ONLINE AT: *DutchsPortland.com*





Melissa Caiazzo <mcaiazzo@portlandmaine.gov>

DUTCHS Business License Approval

garyh@portlandmaine.gov <garyh@portlandmaine.gov>

Mon, Sep 19, 2016 at 2:01 PM

To: bl@portlandmaine.gov

Cc: vjb@portlandmaine.gov

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

Zone:

Comments: The police department does not oppose the request.

 **noname**
OK



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

JESSICA HANSCOMBE
389 CONGRESS ST
PORTLAND, ME 04101

Transaction Response #: MIQ99C986309

Criminal History Record

Introduction

This criminal history record was produced in response to the following request (Produced on .016-09-08) :

Inquiries Name(s) IAN DUTCH (1984-04-23)

NO MATCH WAS FOUND FOR YOUR REQUEST.



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

JESSICA HANSCOMBE
389 CONGRESS ST
PORTLAND, ME 04101

Transaction Response #: MIQ99C986306

Criminal History Record

Introduction

This criminal history record was produced in response to the following request (Produced on 016-09-08) :

Inquiries Name(s) LUCY DUTCH (1984-06-30)

NO MATCH WAS FOUND FOR YOUR REQUEST.

Portland, Maine



Yes. Life's good here.

Department of Permitting and Inspections
Michael Russell, MS.

September 19, 2016

Dutch's
Att Lucy Dutch
28 Preble Street
Portland ME 04101

Re: Dutch's d/b/a Dutch's. Application for a Class I Restaurant at 28 Preble Street.

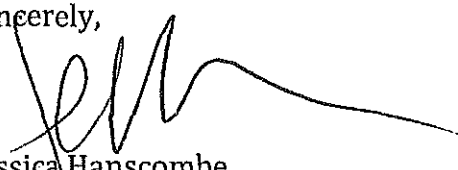
Dear Ms. Dutch,

This letter shall serve as a reminder of the Public Hearing before the Portland City Council on **Wednesday, October 5th, at 5:00 p.m.**, for the review of your application for a Class I Restaurant at 28 Preble Street. The meeting will take place in Council Chambers on the 2nd floor of City Hall, 389 Congress Street, Portland, ME 04101.

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

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

Sincerely,


Jessica Hanscombe
Business License Specialist
207-874-8783
jhanscombe@portlandmaine.gov

**Legal Advertisement
Notice of Public Hearing
City of Portland**

A Public Hearing will be held on October 5th at 5:00 P.M., in City Council Chambers, 389 Congress St., on Dutch's d/b/a Dutch's. Application for a Class I Restaurant at 28 Preble Street. Sponsored by Michael Russell, Director of Permitting and Inspections.

order 62-16/17
Tab 5 10-5-16

ETHAN STRIMLING (MAYOR)
BELINDA RAY (1)
SPENCER THIBODEAU (2)
EDWARD J. SUSLOVIC (3)
JUSTIN COSTA (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

DAVID BRENERMAN (5)
JILL C. DUSON (A/L)
JON HINCK (A/L)
NICHOLAS M. MAVODONES, JR. (A/L)

ORDER
GRANTING MUNICIPAL OFFICERS'
APPROVAL OF:

LB Kitchen, LLC d/b/a LB Kitchen. Application for a Class III & IV Malt & Vinous at 249 Congress Street

Dear Mayor Strimling and the Members of City Council,

LB KITCHEN is located at 249 Congress Street in Portland, ME and is in the former home of FIGA restaurant.

Our intent is to open and operate LB KITCHEN as a restaurant serving breakfast and lunch Monday – Saturday, 9AM – 4PM. Our backgrounds are in the Restaurant and Natural Product industries and our goal is to continue to raise the awareness toward health and wellness for the people of Portland by providing healthier food choices.

We look forward to serving you!

Thank you.

A handwritten signature in black ink, appearing to read 'Lee Farrington'.A handwritten signature in black ink, appearing to read 'Bryna Gootkind'.

Lee Farrington and Bryna Gootkind

Portland, Maine



Yes. Life's good here.

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

Application for Food Service Establishment with Alcoholic Beverages License

Business Information	
Business Name (d/b/a):	LB KITCHEN Phone: 978 270.9151
Location Address:	249 CONGRESS ST. PORTLAND ME 04101 Zip:
If new, what was formerly at this location:	FIGA RESTAURANT
Mailing Address:	2 HIGH BLUFF LANE SCARBOROUGH ME 04074 Zip:
Contact Person:	LEE FARRINGTON Phone: 207.730.2311
Contact Person Email:	LEE LBKITCHENPORTLANDME@GMAIL.COM
Manager of Establishment:	BRYNA GOOTKIND Phone: 978.270.9151
Owner of Premises (Landlord):	LEE FARRINGTON & BRYNA GOOTKIND
Address of Premises Owner:	2 HIGH BLUFF LANE SCARBOROUGH ME 04074 Zip:

Sole Proprietor/Partnership Information (If Corporation, leave blank)

Name of Owner(s)	Date of Birth	Residence Address
ELAINE LEE FARRINGTON	01/16/1969	2 HIGH BLUFF LN SCARBOROUGH ME 04074
BRYNA LYN GOOTKIND	09/02/1980	2 HIGH BLUFF LN SCARBOROUGH ME 04074

Corporate/LLC/Non-Profit Organization Applicants (If Sole Proprietor or Partnership, leave blank)

Corporate Name		Corporate Mailing Address	
LB KITCHEN, L.L.C.		249 CONGRESS ST PORTLAND ME 04101 Zip:	
Contact Person:	BRYNA L. GOOTKIND	Phone:	978.270.9151

Principal Officers	Title	Date of Birth	Residence Address
ELAINE LEE FARRINGTON	CHEF/OWNER	01/16/1969	2 HIGH BLUFF LN SCARBOROUGH ME
BRYNA L. GOOTKIND	MGR/OWNER	09/02/1980	2 HIGH BLUFF LN SCARBOROUGH ME

About Your Establishment

Class of Liquor License:	CLASS III, MALT & VINOUS	
Type of food served:	BREAKFAST & LUNCH	
Please circle all that will be served:	Beer ☒ Wine ☒ Liquor ☐	
Projected percentage of sales:	Generated from Food: 90%	Generated from Alcohol: 10%
Hours & days of operation:	M-SAT 9-4pm	

QUESTIONS	Y/N
Will full-course meals, only capable of consumption with the use of tableware, be served the entire time the establishment is open?	Y/N
If No, please explain:	
Is the establishment less than 300 feet from a school, dormitory, church or parish house, or similar establishment?	☒ N
If yes, give the distance:	
Will you have entertainment on the premises? (If yes, a Supplemental Application for Dancing & Entertainment is required.)	☒ N
Will you permit dancing on the premises?	☒ N
Will you permit dancing after 1:00 a.m.?	☒ N
Will you have outside dining? (If yes, an Outdoor Dining Application is required)	☒ N
If yes, will the outside dining be on PUBLIC or PRIVATE property (circle one). BOTH	
Will you have any amusement devices (pinball, video games, juke box)?	☒ N
If yes, please list: # of pinball machines: _____ # of amusements: _____ # of pool tables: _____	
What is your targeted opening date? OCTOBER 2016	
Does the issuance of this license directly or indirectly benefit any City employee(s)?	☒ N
If yes, list name(s) of employee(s) and department(s):	
Have any of the applicants, including the corporation (if applicable), ever held a business license with the City of Portland?	☒ N
If Yes, please list business name(s) and location(s): FIGA RESTAURANT, 249 CONGRESS ST PORTLAND ME	
Is any principal officer under the age of 21?	☒ N
Have applicant, partners, associates, or corporate officers ever been arrested, indicted, or convicted for any violation of law?	☒ N
If Yes, please explain:	

I, ELIANE LEE FARINGTON do hereby swear and affirm that every employee in my establishment that serves alcohol to the public has attended server training, or will attend server training within 90 days of their hire. I also understand that at any time the City license administrator can, upon request, require me to produce Server Training certificates for each employee that serves alcohol to the public in my establishment. Failure to meet the training requirement imposed by section 15-41 may result in the denial of a liquor license pursuant to 28-A M.R.S.A. § 653 (2) (G).

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

It is understood that this and any application(s) shall become public record and the applicant(s) hereby waive(s) any rights to privacy with respect thereto. I/We, hereby authorize the release of any criminal history record information to the City Clerk's Office or licensing authority. I/We, hereby waive any rights to privacy with respect thereto.

Signature [Signature] Title CHIEF/OWNER Date 31 AUG 2016

For more information about Liquor Licenses, see Portland City Code Chapter 15 at www.portlandmaine.gov and M.R.S.A. Title 28-A at www.maine.gov

**BUREAU OF ALCOHOLIC BEVERAGES
DIVISION OF LIQUOR LICENSING & ENFORCEMENT
8 STATE HOUSE STATION
AUGUSTA, ME 04333-0008**



Promise by any person that he or she can expedite a liquor license through influence would be completely disregarded.

To avoid possible financial loss an applicant, or prospective applicant, should consult with the Division before making any substantial investment in an establishment that now is, or may be, attended by a liquor license.

DEPARTMENT USE ONLY

LICENSE NUMBER:

CLASS:

DEPOSIT DATE

AMT. DEPOSITED:

BY:

CK/MO/CASH:

PRESENT LICENSE EXPIRES _____

INDICATE TYPE OF PRIVILEGE: ☒ MALT ☐ SPIRITUOUS ☒ VINOUS

INDICATE TYPE OF LICENSE:

- ☒ RESTAURANT (Class I,II,III,IV)
☐ HOTEL-OPTINONAL FOOD (Class I-A)
☐ CLASS A LOUNGE (Class X)
☐ CLUB (Class V)
☐ TAVERN (Class IV)

- ☐ RESTAURANT/LOUNGE (Class XI)
☐ HOTEL (Class I,II,III,IV)
☐ CLUB-ON PREMISE CATERING (Class I)
☐ GOLF CLUB (Class I,II,III,IV)
☐ OTHER: _____

REFER TO PAGE 3 FOR FEE SCHEDULE

ALL QUESTIONS MUST BE ANSWERED IN FULL

1. APPLICANT(S) --(Sole Proprietor, Corporation, Limited Liability Co., etc.)		2. Business Name (D/B/A)	
ELAINE LEE FARRINGTON DOB: 01/16/1969		LB KITCHEN	
BRYNA LYN GOOTKIND DOB: 08/02/1980			
DOB: _____		Location (Street Address) 249 CONGRESS ST.	
Address 2 HIGH BLUFF LN		City/Town PORTLAND	State ME Zip Code 04101
SCARBOROUGH ME 04074		Mailing Address 2 HIGH BLUFF LN SCARBOROUGH ME 04074	
City/Town 207.730.2311	State ME	City/Town 978.270.9151	State ME Zip Code N/A
Telephone Number 207.730.2311	Fax Number 978.270.9151	Business Telephone Number 978.270.9151	Fax Number N/A
Federal I.D. # 81-242-5991		Seller Certificate #	

EMAIL ADDRESS: ~~CHEFLEE@~~ LBKITCHENPORTLANDME@GMAIL.COM

3. If premises is a hotel, indicate number of rooms available for transient guests: _____

State amount of gross income from period of last license: ROOMS \$ _____ FOOD \$ _____ LIQUOR \$ _____

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

If YES, complete Supplementary Questionnaire

aining to the business, for which this liquor license is requested, and also such books, records and returns during the year in which any liquor license is in effect.

NOTE: "I understand that false statements made on this form are punishable by law. Knowingly supplying false information on this form is a Class D offense under the Criminal Code, punishable by confinement of up to one year or by monetary fine of up to \$4,000 or both."

Dated at: PORTLAND, MAINE on SEPTEMBER 1, 2016
Town/City, State Date

Please sign in blue ink

Signature of Applicant or Corporate Officer(s)

ELAINE LEE FARRINGTON
Print Name

Signature of Applicant or Corporate Officer(s)

BRYNA LYN GOODKIND
Print Name

NOTICE – SPECIAL ATTENTION

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

THIS APPROVAL EXPIRES IN 60 DAYS.

FEE SCHEDULE

Class I	Spirituos, Vinous and Malt	\$ 900.00
	CLASS I: Airlines; Civic Auditoriums; Class A Restaurants; Clubs with catering privileges; Dining Cars; Golf Clubs; Hotels; Indoor Ice Skating Clubs; Indoor Tennis Clubs; Vessels; Qualified Caterers; OTB.	
Class I-A	Spirituos, Vinous and Malt, Optional Food (Hotels Only)	\$1,100.00
	CLASS I-A: Hotels only that do not serve three meals a day.	
Class II	Spirituos Only	\$ 550.00
	CLASS II: Airlines; Civic Auditoriums; Class A Restaurants; Clubs with catering privileges; Dining Cars; Golf Clubs; Hotels; Indoor Ice Skating Clubs; Indoor Tennis Clubs; and Vessels.	
Class III	Vinous Only	\$ 220.00
	CLASS III: Airlines; Civic Auditoriums; Class A Restaurants; Clubs with catering privileges; Dining Cars; Golf Clubs; Hotels; Indoor Ice Skating Clubs; Indoor Tennis Clubs; Restaurants; Vessels; Pool Halls; and Bed and Breakfasts.	
Class IV	Malt Liquor Only	\$ 220.00
	CLASS IV: Airlines; Civic Auditoriums; Class A Restaurants; Clubs with catering privileges; Dining Cars; Golf Clubs; Hotels; Indoor Ice Skating Clubs; Indoor Tennis Clubs; Restaurants; Taverns; Pool Halls; and Bed and Breakfasts.	
Class V	Spirituos, Vinous and Malt (Clubs without Catering, Bed & Breakfasts)	\$ 495.00
	CLASS V: Clubs without catering privileges.	
Class X	Spirituos, Vinous and Malt – Class A Lounge	\$2,200.00
	CLASS X: Class A Lounge	
Class XI	Spirituos, Vinous and Malt – Restaurant Lounge	\$1,500.00
	CLASS XI: Restaurant/Lounge; and OTB.	

FILING FEE.....\$ 10.00

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

All fees must accompany application, made payable to the **Treasurer of Maine**. This application must be completed and mai to Bureau of Alcoholic Beverages and Lottery Operations, Division of Liquor Licensing and Enforcement, 8 State House Stati Augusta ME 04333-0008. Payments by check subject to penalty provided by Title 28A, MRS, Section 3-B.

STATE OF MAINE

Filed at: _____, Maine _____ ss
City/Town (County)
On: _____
Date

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

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

THIS APPROVAL EXPIRES IN 60 DAYS

NOTICE – SPECIAL ATTENTION

§ 653. Hearings; bureau review; appeal

1. **Hearing.** The municipal officers or, in the case of unincorporated places, the county commissioners of the county in which the unincorporated place is located, shall hold a public hearing for the consideration of applications for new on-premise licenses and applications for transfer of location of existing on-premise licenses. The municipal officers or county commissioners may hold a public hearing for the consideration of requests for renewal of licenses, except that when an applicant has held a license for the prior 5 years and a complaint has not been filed against the applicant within that time applicant may request a waiver of the hearing.
 - A. The bureau shall prepare and supply application forms. [1993, c.730, §27(amd).]
 - B. The municipal officers or the county commissioners, as the case may be, shall provide public notice of any hearing held under this section causing a notice, at the applicant's prepaid expense, stating the name and place of hearing, to appear on at least 3 consecutive days before the date of hearing in a daily newspaper having general circulation in the municipality where the premises are located or one week before the date of the hearing in a weekly newspaper having general circulation in the municipality where the premises are located. [1995, c.140, §4 (amd).]
 - C. If the municipal officers or the county commissioners, as the case may be, fail to take final action on an application for a new on-premise license, for transfer of the location of an existing on-premise license or for renewal of an on-premise license within 60 days of the filing of an application, the application is deemed approved and ready for action by the bureau. For purposes of this paragraph, the date of filing of an application is the date the application is received by the municipal officers or county commissioners. This paragraph applies to all applications pending before municipal officers or county commissioners as of the effective date of this paragraph as well as all applications filed on or after the effective date of this paragraph. This paragraph applies to an existing on-premise license that has been extended pending renewal. The municipal officers or the county commissioners shall take final action on an on-premise license that has been extended pending renewal within 120 days of the filing of the application. [1999, c.589, §1 (amd).]
2. **Findings.** In granting or denying an application, the municipal officers or the county commissioners shall indicate the reasons for their decision and provide a copy to the applicant. A license may be denied on one or more of the following grounds:
 - A. Conviction of the applicant of any Class A, Class B or Class C crime: [1987, c.45, Pt.A§4 (new).]
 - B. Noncompliance of the licensed premises or its use with any local zoning ordinance or other land use ordinance not directly related to license control; [1987, c.45, Pt.A§4(new).]
 - C. Conditions of record such as waste disposal violations, health or safety violation or repeated parking or traffic violations on or in the vicinity of the licensed premises and caused by persons patronizing or employed by the licensed premises or other such conditions caused by persons patronizing or employed by the licensed premises that unreasonably disturb, interfere with or affect the ability of persons or businesses to use their property or located in the vicinity of the licensed premises to use their property in a reasonable manner; [1993, c.730, §27 (amd).]
 - D. Repeated incidents of record of breaches of the peace, disorderly conduct, vandalism or other violations of law on or in the vicinity of the licensed premises and caused by persons patronizing or employed by the licensed premises; [1989, c.592,§3 (amd).]
 - E. A violation of any provision of this Title; and [1989, c.592, §3 (amd).]
 - F. A determination by the municipal officers or county commissioners that the purpose of the application is to circumvent the provisions of section 601. [1989, c.592, §4 (new).]
- [1993, c.730, §27 (amd).]
3. **Appeal to bureau.** Any applicant aggrieved by the decision of the municipal officers or county commissioners under this section may appeal to the bureau within 15 days of the receipt of the written decision of the municipal officers or county commissioners. The bureau shall hold a public hearing on the appeal, the city, town or unincorporated place where the premises are situated. In acting on such an appeal, the bureau may consider all licensure requirements and findings referred to in subsection 2.
 - A. [1993, c.730, §27 (rp).]
4. **No license to person who moved to obtain a license. (REPEALED)**
5. **(TEXT EFFECTIVE 3/15/01) Appeal to District Court.** Any person or governmental entity aggrieved by a bureau decision under this section may appeal the decision to the District Court within 30 days of receipt of the written decision of the bureau.

An applicant who files an appeal or who has an appeal pending shall pay the annual license fee the applicant would otherwise pay. Upon resolution of an appeal, if an applicant's license renewal is denied, the bureau shall refund the applicant the prorated amount of the unused license fee.



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

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

For Office Use Only:

License #: _____

Date Filed: _____

For information required for Questions 1 to 4, this information is on file with the Maine Secretary of State's office and must match their record information. Please clearly complete this form in its entirety.

1. Exact legal name:

LB KITCHEN, LLC

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

LB KITCHEN

3. Date of filing with the Secretary of State: NOVEMBER 30, 2015

State in which you are formed: MAINE

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

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

Name	Address for Previous 5 years	Date of Birth	Ownership %
ELAINE LEE FARRINGTON	2 HIGH BLUFF LN SCARBOROUGH ME 38 CRANBROOK DR CAPE ELIZABETH ME	1/16/1969	50%
BRYNA LYN GOODKIND	2 HIGH BLUFF LN SCARBOROUGH ME 38 CRANBROOK DR CAPE ELIZABETH ME 83 OAK ST. B PORTLAND ME	9/2/1980	50%

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

Yes ☐ No ☒

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

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

Yes ☐

No ☒

10. If Yes to Question 9, please complete the following: (attached additional sheets as needed)

Name: _____

Date of Conviction: _____

Offense: _____

Location of Conviction: _____

Disposition: _____

Signature:



Signature of Duly Authorized Person

18 AUGUST 2016

Date

ELAINE LEE FARRINGTON

Print Name of Duly Authorized Person

If you have questions regarding the legal name or assumed (DBA) name on file with the Secretary of State's office, please call (207) 624-7752. The SOS can only speak to the information on file with their office, not the filing of this supplemental information -- please direct any questions about this form to our office at the number below.

Submit Completed Forms To:

Bureau of Alcoholic Beverages and Lottery
Operations Division of Liquor Licensing Enforcement
8 State House Station Augusta, Me 04333-0008
Telephone Inquiries: (207) 624-7220
Fax: (207) 287-3434
Email Inquiries: MaineLiquor@Maine.gov

PLUMBING CONNECTION SCHEDULE

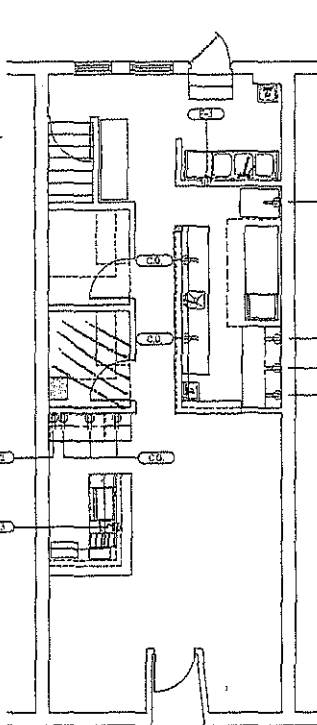
- P-1 1/2" COLD WATER, STUB OUT WALL AT 15'-AFF AND CONNECT AT ITEM 1, HAND SINK.
- P-1b 1/2" HOT WATER, STUB OUT WALL AT 18'-AFF AND CONNECT AT ITEM 1, HAND SINK.
- P-1c 1-1/2" DIRECT WASTE HUB, STUB OUT WALL AT 24'-AFF, CONNECT AT ITEM 1, HAND SINK.
- P-2 2" DIRECT WASTE HUB, STUB OUT WALL AT 8'-AFF, CONNECT AT ITEM 2, SINK, 3-COMPARTMENT, ALSO SERVES ITEMS 3.
- P-2b 1/2" COLD WATER, STUB OUT WALL AT 14'-AFF AND CONNECT AT ITEM 2, SINK, 3-COMPARTMENT.
- P-2c 1/2" HOT WATER, STUB OUT WALL AT 14'-AFF AND CONNECT AT ITEM 2, SINK, 3-COMPARTMENT.
- P-3 3/4" HOT WATER, STUB OUT WALL AT 8'-AFF AND CONNECT AT ITEM 3, DISHWASHER, UNDERCOUNTER.
- P-4 3/4" GAS SUPPLY, 20-MBTU/H, STUB OUT WALL AT 15'-AFF AND CONNECT AT ITEM 4, RANGE, MEDIUM DUTY GAS.
- P-7 3/4" GAS SUPPLY, 20-MBTU/H, STUB OUT WALL AT 15'-AFF AND CONNECT AT ITEM 7, CHAR-BROILER.
- P-10 1/2" COLD WATER, STUB OUT WALL AT 14'-AFF AND CONNECT AT ITEM 10, WORK TABLE W/SINK.
- P-10b 1/2" HOT WATER, STUB OUT WALL AT 14'-AFF AND CONNECT AT ITEM 10, WORK TABLE W/SINK.
- P-10c FLOOR SINK, HALF-CRATE, 1-1/2" INDIRECT WASTE FROM ITEM 10, WORK TABLE W/SINK.
- P-13 FLOOR SINK, HALF-CRATE, 1-1/2" INDIRECT WASTE FROM ITEM 13, UNDERBAR, ALL-IN-ONE WORKSTATION.
- P-13b 1/2" HOT WATER, STUB OUT WALL AT 14'-AFF AND CONNECT AT ITEM 13, UNDERBAR, ALL-IN-ONE WORKSTATION.
- P-13c 1/2" COLD WATER, STUB OUT WALL AT 14'-AFF AND CONNECT AT ITEM 13, UNDERBAR, ALL-IN-ONE WORKSTATION.

ELECTRICAL CONNECTION SCHEDULE

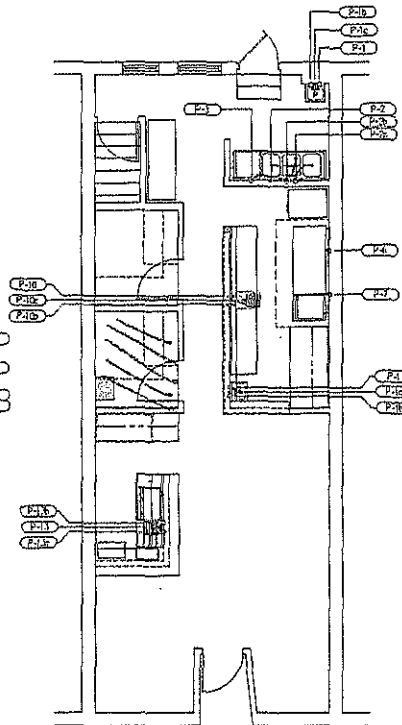
- E-3 208-V, 1-PH SERVICE, 8-KVA, 3/4-HP, 35.4 FL DUPLX, STUB OUT WALL AT 18'-AFF AND CONNECT AT ITEM 3, DISHWASHER, UNDERCOUNTER.
- E-5 120-V, 1-PH SERVICE, 1/2-HP, 7.6 FL AMPS, DUPLX, ELECTRIC OUTLET AT 20'-AFF FOR SERVICE TO ITEM 5, REFRIGERATOR, 1-SECTION.
- E-8 120-V, 1-PH SERVICE, 1/2-HP, 10.3 FL AMPS, DUPLX, ELECTRIC OUTLET AT 18'-AFF FOR SERVICE TO ITEM 8, REFRIGERATED SANDWICH UNIT.
- E-12 120-V, 1-PH SERVICE, 1/2-HP, 7.6 FL AMPS, DUPLX, ELECTRIC OUTLET AT 16'-AFF FOR SERVICE TO ITEM 12, BACK BAR COOLER.
- E-13 120-V, 1-PH SERVICE, 15 FL AMPS, STUB OUT WALL AT 12'-AFF AND CONNECT AT ITEM 13, UNDERBAR, ALL-IN-ONE WORKSTATION.
- E-13b 120-V, 1-PH SERVICE, 15 FL AMPS, DUPLX, ELECTRIC OUTLET AT 20'-AFF FOR SERVICE TO CONVENIENCE OUTLET.

LEGEND - ELECTRICAL CONNECTIONS

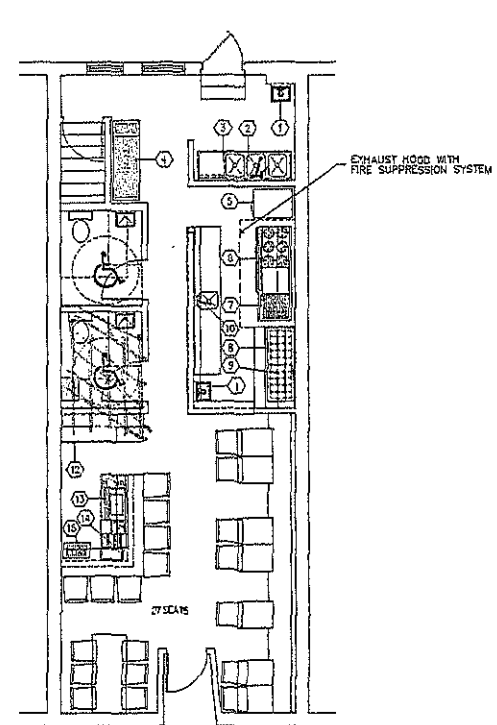
- ⊕ DUPLX RECEPT, 20-AMP, 120-VOLT, GROUND TYPE, HORIZONTAL MOUNT
- ⊖ DUPLX RECEPT, 20-AMP, 120-VOLT, GROUND TYPE, HORIZONTAL MOUNT
- ⊙ SPECIAL PURPOSE OUTLET, 120-VOLT, GROUND TYPE, HORIZONTAL MOUNT
- ⊙ SPECIAL PURPOSE OUTLET, 208/240-VOLT AS INDICATED, GROUND TYPE, HORIZONTAL MOUNT
- ⊙ JUNCTION BOX
- ⊙ ELECTRICAL CONDUIT, STUB AS INDICATED FOR DIRECT CONNECTION
- ⊙ FLOOR/CEILING RECEPTACLE AS INDICATED
- ⊙ ISOLATED GROUND - FOR POS SYSTEM
- WP WATERPROOF COVER AT RECEPTACLE
- FIELD WIRING, EXPOSED RIGID
- FIELD WIRING, CONCEALED IN WALL, FLOOR, OR CEILING



Electrical Plan
SCALE: 1/4"=1'-0"



Plumbing Plan
SCALE: 1/4"=1'-0"



Floor Plan
SCALE: 1/4"=1'-0"

FOODSERVICE EQUIPMENT SCHEDULE												
WK.	QTY	DESCRIPTION	ELECTRICAL			WATER		WASTE		GAS		REMARKS
			PLUMBS	W	W	COLD	HOT	DIRECT	INDIRECT	STE	VENT	
1	2	HAND SINK				1/2"	1/2"	1-1/2"				
2	1	SINK, 3-COMPARTMENT				1/2"	1/2"	1-1/2"				
3	1	DISHWASHER, UNDERCOUNTER	3/4"	50	3/4"			3/4"	1-1/2"			
4	1	REFRIGERATOR, 1-SECTION	6.9		1/4"							
5	1	REFRIGERATOR, 1-SECTION										
6	1	RANGE, 5-BURNER, 24"-GRIDDLE								3/4"	20"	
7	1	CHAR-BROILER								3/4"	60"	
8	1	REFRIGERATED SANDWICH UNIT	105		1/2"							
9	2	WALL SHELF				1/2"	1/2"					
10	1	WORK TABLE W/SINK										
11	—	— SPARE NUMBER —										
12	1	BACK BAR COOLER	75		1/3"							
13	1	UNDERBAR, ALL-IN-ONE WORKSTATION	15.0		1/2"	1/2"		1-1/2"				
14	1	SUM-JIM WASTE CONTAINER										
15	1	SHELVING UNIT, 34"-HIGH, 3-TIER										

Foodservice Consultant
TJM Consulting, Inc.
2000 N. 10th Street
Tulsa, Oklahoma 74103
(918) 437-3337 tjmc@tjmc.com

Owner
Lee Farthington
219 Douglas Street
Portland, Maine 04101

Project
LB KITCHEN
JTB Restaurant
200 Douglas Street
Portland, Maine 04101

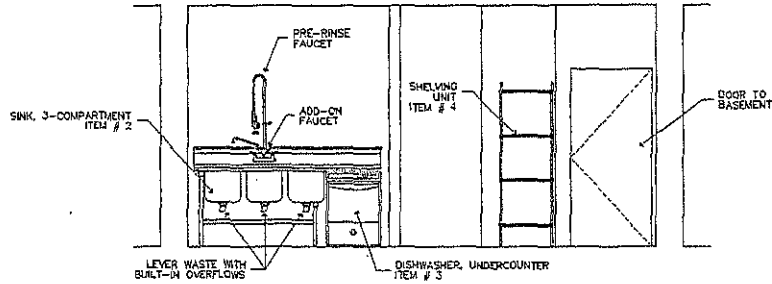
Drawn By
Foodservice Equipment
Plan and Schedule
Scale: 1/4"=1'-0"
Date: Feb. 10, 2009

Sheet
FS-1

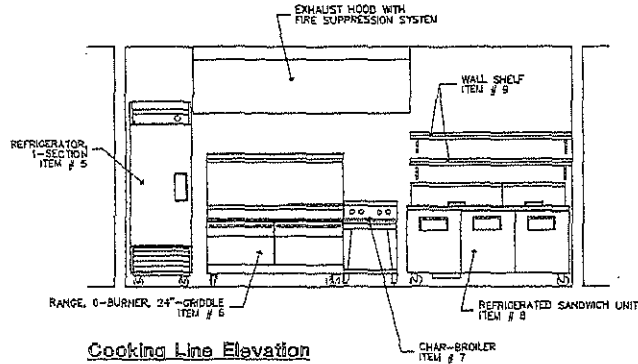
PAGE 2

LAYOUT

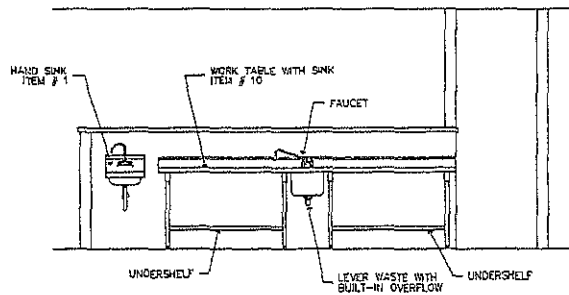
LB KITCHEN



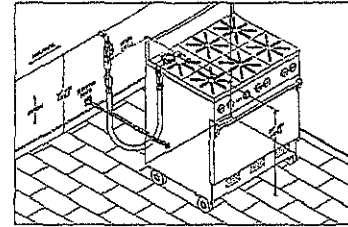
Dishwash Area Elevation
SCALE: 1/2"=1'-0"



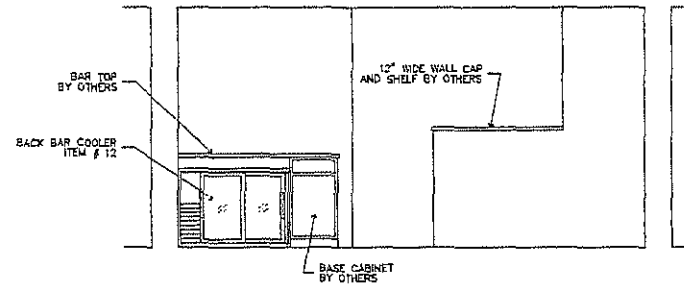
Cooking Line Elevation
SCALE: 1/2"=1'-0"



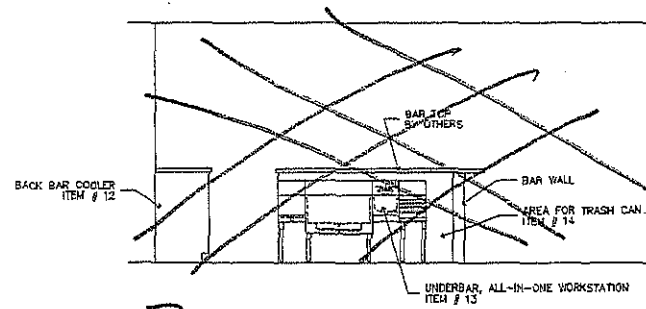
Cook's Prep Area Elevation
SCALE: 1/2"=1'-0"



FLEXIBLE GAS CONNECTION DETAIL
SCALE: NONE



Back Bar Cooler Wall Elevation
SCALE: 1/2"=1'-0"



Underbar Workstation Elevation
SCALE: 1/2"=1'-0"

~~REMOVED~~

Foodservice Consultant TJM Consulting, Inc. 270 Main Street, Box 6 Yonkers, New York 10508 (917) 617-3317 tjmconsulting@earthlink.net	Owner Leo Farthington 270 Main Street Yonkers, New York 10508 (917) 617-3317	Project LB KITCHEN Equipment Details and Elevations 270 Main Street Yonkers, New York 10508	Drawn Foodservice Equipment Details and Elevations Scale: 1/4"=1'-0" Date: Feb. 12, 2016
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FS-2

LB Kitchen WIP Menu.

MORNING. 9A to 11A**LB Bowls**

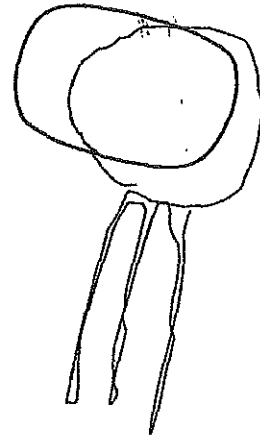
- + Sassy & Savory Oats \$10
 - // Ancient Grains // Sesame // Egg // Mouth Explosion
 - + Sweet & Salty Oats \$8
 - // Coconut // Nut Butter // Cacao
-

Toasts

- + The Avocado \$8
 - // Truffle // Baby Greens // Addictive
 - + The New Yorker \$9
 - // Gravlox // Heirloom // Schmear
 - + The Sides \$8
 - // Chia Jam // Nut Butter // Butter, Butter
-

Egg

- + Quiche-atta (Marriage of a Quiche and a Frittata) \$6
- // Daily Inspirations //

**LUNCH. 10:30A to 4P****LB Bowls \$10**

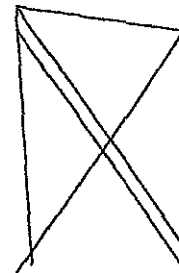
- + All The Vegetables
 - // Seasonal Stars // Pickles // Not Diet Food.
 - + The Figa
 - // Wild Boar // Coconut // Red Curry // Secrets.
 - + Aw Hail Yes Kale Caesar
 - // Cashew Crack // Chickpea Crouton // Beyonce.
-

'MIYO' Bowls – (Make. It. Your. Own.) \$7+

- + Base of Grains or Greens
- + 3 Veg Scoops
- + 1 Protein

Proteins

- + Herb Roasted Chicken \$2
- + Wild Salmon \$3
- + Charred Heiwa Tofu \$2
- + Wild Boar \$3
- + Guest Star \$MP



Rewards (Because life is short. And very sweet.)

+ Practically Famous Chocolate Cake \$4 Slice/\$2 Sliver

// Coconut Butter Ganache // Cacao // Healthy-ish.

+ Cookies \$2

+ Classy Chip // Chocolate // Almond Flour // Do it.

+ Skinny Jeans // Mulberries // Oats // Basically a Smoothie in disguise.

DRINK. All Day Long.

Juice \$8

+ The Green

// Apple // Citrus // Wheatgrass // More green things that are good for you.

+ The Red

// Beet // Ginger // Rhubarb //

+ The Yellow

// Lemon // Cayenne // Pineapple // Good Morning

Smoothies

Coffees & Teas & Elixirs

Espresso

+ Single \$1.5

+ Double \$3

Americano

+ 8oz \$3

+ Cold Brew \$3

+ Matcha Green Tea Latte \$4

+ Turmeric Gold \$5

Bone Broth \$7 Ask us why we love it and why you should too!

+ Thai Tomato Beef

+ Coconut Mint Chicken

+ Kombu Sesame Mushroom

Wines

WHITE

+ Sav Blanc

+ Grüner Vetliner

PINK

+ Rosé

RED

+ Pinot Noir

+

Beer

+

+

+

We use all the local, seasonal and organic foods that we can. We are 100% not into GMO food.

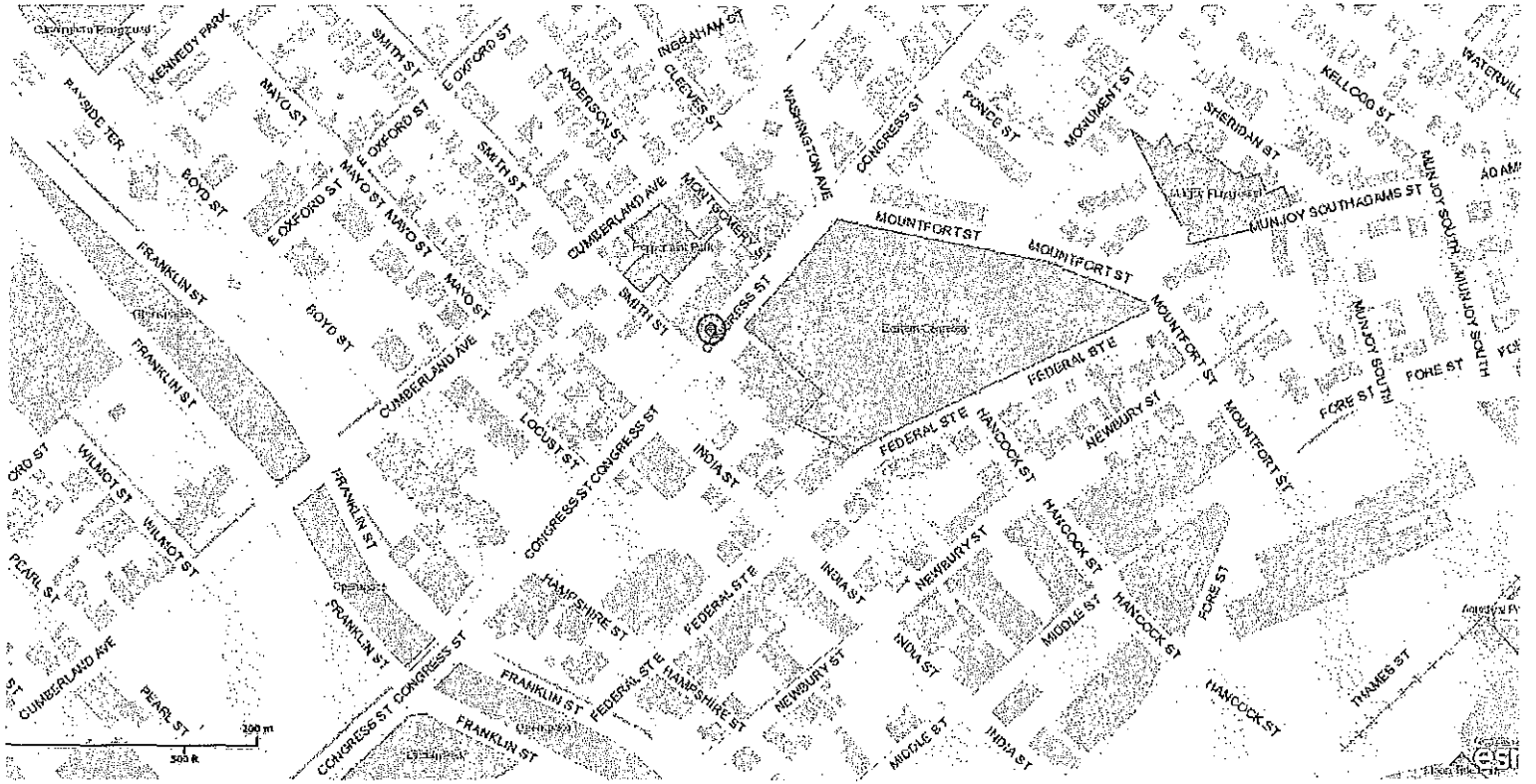
+ Add an egg! \$2

+ Add Avocado to everything! \$1.50

vo = vegan option

v = vegan

gf = gluten free





Yes. Google's good here.

Melissa Caiazzo <mcaiazzo@portlandmaine.gov>

LB KITCHEN-PENDING Business License Approval

garyh@portlandmaine.gov <garyh@portlandmaine.gov>

Mon, Sep 19, 2016 at 2:02 PM

To: bl@portlandmaine.gov

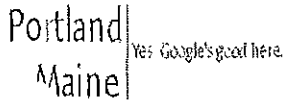
Cc: vjb@portlandmaine.gov

LB KITCHEN-PENDING is Approved for their Business License Inspection by the Police Dept.

Zone:

Comments: Police approve.

 **noname**
OK



Jessica Hanscombe <jhanscombe@portlandmaine.gov>

Re: LB Kitchen

Gary Hutcheson <garyh@portlandmaine.gov>
To: Jessica Hanscombe <jhanscombe@portlandmaine.gov>

Tue, Sep 6, 2016 at 2:10 PM

PD approves.

On Tue, Sep 6, 2016 at 8:37 AM, Jessica Hanscombe <jhanscombe@portlandmaine.gov> wrote:

Good Morning

For your approval:

LB Kitchen, LLC d/b/a LB Kitchen. Application for a Class III & IV Malt & Vinous at 249 Congress Street. They wish to go before council on 10/3/2016.

Owners:

LB Kitchen LLC

Elaine Lee Farrington 1/16/1969

Bryna Lyn Gootkind 9/2/1980

Contact:

Lee Farrington 207-730-2311 LBKITCHENPORTLANDME@gmail.com

The application is attached. Please put feedback into UI.

 **LB Kitchen.pdf**

Thank you Jess

Jessica B. Hanscombe



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

JESSICA HANSCOMBE
389 CONGRESS ST
PORTLAND, ME 04101

Transaction Response #: MIQ99C982342

Criminal History Record

Introduction

This criminal history record was produced in response to the following request (Produced on 09-06-16) :

Inquiries Name(s) ELAINE L FARRINGTON (1969-01-16)

NO MATCH WAS FOUND FOR YOUR REQUEST.



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

JESSICA HANSCOMBE
389 CONGRESS ST
PORTLAND, ME 04101

Transaction Response #: MIQ99C982350

Criminal History Record

Introduction

This criminal history record was produced in response to the following request (Produced on 09-06-2016) :

Inquiries Name(s) BRYNA GOOTKIND (1980-09-02)

NO MATCH WAS FOUND FOR YOUR REQUEST.

Portland, Maine



Yes. Life's good here.

Department of Permitting and Inspections
Michael Russell, MS.

September 19, 2016

LB Kitchen
Attn: Lee Farrington
2 High Bluff Lane
Scarborough ME 04074

Re: LB Kitchen, LLC d/b/a LB Kitchen. Application for a Class III & IV Malt & Vinous at 249 Congress Street.

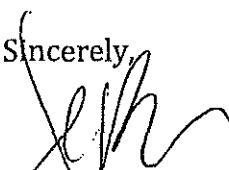
Dear Ms Farrington

This letter shall serve as a reminder of the Public Hearing before the Portland City Council on **Wednesday October 5th, at 5:00 p.m.**, for the review of your application for a Class III & IV Malt & Vinous at 249 Congress Street. The meeting will take place in Council Chambers on the 2nd floor of City Hall, 389 Congress Street, Portland, ME 04101.

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

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

Sincerely,


Jessica Hanscombe
Business License Specialist
207-874-8783
jhanscombe@portlandmaine.gov

**Legal Advertisement
Notice of Public Hearing
City of Portland**

A Public Hearing will be held on October 5th at 5:00 P.M., in City Council Chambers, 389 Congress St., on the LB Kitchen, LLC d/b/a LB Kitchen. Application for a Class III & IV Malt & Vinous at 249 Congress Street. Sponsored by Michael Russell, Director of Permitting and Inspections.

Com 2 - 16/17
Tab 6 10-5-16

MEMORANDUM
City Council Agenda Item

DISTRIBUTE TO: City Manager, Mayor, Anita LaChance, Sonia Bean, Danielle West-Chuhta, Nancy English, Julianne Sullivan

FROM: Chief Michael J. Sauschuck

DATE: Sept. 19, 2016

SUBJECT: Council Communication

SPONSOR:

(If sponsored by a Council committee, include the date the committee met, the results of the vote, and the meeting minutes.)

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st reading n/a Final Action 10/5/16

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

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

- I. **ONE SENTENCE SUMMARY** Mayor's Communication re: City Ord. 17-113
- II. **AGENDA DESCRIPTION** Communication to the City Council re: City Ord. 17-113
- III. **BACKGROUND** Sec. 17-117 requires the Mayor to send an annual report to the Council
- IV. **INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED**
- V. **FINANCIAL IMPACT** None
- VI. **STAFF ANALYSIS AND BACKGROUND THAT WILL NOT APPEAR IN THE AGENDA DESCRIPTION**
- VII. **RECOMMENDATION** The City Council receives the required Communication
- VIII. **LIST ATTACHMENTS** Mayor's report

Prepared by: Beth Poliquin

Date: 9/19/16

PORTLAND POLICE DEPARTMENT
MEMORANDUM

September 27, 2016

TO: Mayor Ethan K. Strimling
Jon Jennings, City Manager

FR: Michael J. Sauschuck, Chief of Police



RE: City Marijuana Ordinance, Article VIII

Portland City Ordinance, Article VIII, Recreational Use of Marijuana by Adults 21 years of age or older, became effective on December 6, 2013. Section 17-113 of the ordinance allows the recreational use of marijuana and possession of up to 2.5 ounces of marijuana by adults age 21 and older. The ordinance also allows for the possession of marijuana in a public place. Section 17-114 prohibits the use of marijuana in public and the furnishing of or trafficking in the drug. It also allows landlords and property owners to restrict the smoking of marijuana on their property by posting "no smoking signs." Section 17-116 of the ordinance requires the Mayor to "report to the City Council annually ... as to the implementation and enforcement" of the ordinance.

At present, the possession, use, and sale of marijuana is still illegal under State and Federal law and it continues to be the duty of the police department to enforce those laws. The decriminalization of marijuana in the State of Maine began in the 1970's and was further expanded in 2009. Maine law now makes the possession of less than 2.5 ounces of marijuana a civil infraction that is punishable by a fine only. Section 17-117 of the ordinance states that the ordinance shall not be "construed to prohibit any city officer or employee from cooperating with federal drug enforcement authorities as required by law."

From January 1, 2016 to September 26, 2016, the department has tracked the civil possession of marijuana summonses issued by officers. During that time period, the department has issued seventeen citations for the civil possession of marijuana. During the period January 1 through September 31, 2015, twenty-three citations were issued. In 2014, during the same time period, forty-four citations were issued.

The department has also tracked the gender and ethnicity of the individuals receiving marijuana citations. In 2016, of the seventeen citations issued, eleven (65%) were issued to white males, three (17.5%) were issued to black males and three (17.5%) were issued to white females. In 2015, of the twenty-three citations issued, sixteen (70%) were issued to white males, three (13%) were issued to black males and four (17%) were issued to white females. Statistics were not immediately available for 2014.

This year, the ordinance would have had no effect on the person's possession of marijuana in three cases. Those three citations were issued to individuals 18-20 years of age; one individual was stopped for a red light violation, one was arrested for criminal trespass and the other was involved in a theft. No citations were issued to juveniles.

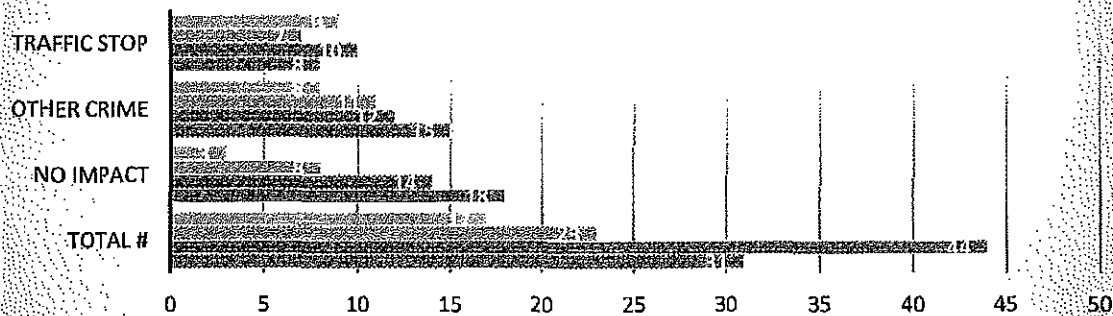
The majority of the 2016 civil citations were issued in the course of traffic stops (9 out of 17 cases). The reasons for the initial traffic stops included: erratic operation, expired registration, no headlights, a defective brake light, a red light violation, a seatbelt violation, and a stop sign violation. It is troubling that officers continue to encounter individuals impaired by or actively using marijuana while operating a motor vehicle.

Of the remaining eight citations, five were issued to adults (over the age of 21) who were also arrested on criminal charges. These charges included: assault, disorderly conduct, operating with a suspended license [habitual offender], possession of a schedule W drug [oxycodone], theft, and a violation of a condition of release [drug possession].

2015 Statistics

Calls for Service:	85,115
R.C.C. 911 Calls:	64,535
Arrests:	3,477
Motor Vehicle Stops:	9,043
Citations:	4,424

Marijuana Possession Citations



	Total #	No Impact	Other Crime	Traffic Stop
2016	17	3	8	9
2015	23	8	11	7
2014	44	14	12	10
2013	31	18	15	8

2016 2015 2014 2013

Based on my review of the marijuana citations issued in 2016 to date, I am satisfied that Portland's officers continue to be mindful of the ordinance; while still taking appropriate enforcement action when it is warranted.

Order 57-16/17
~~Tab 11 - 9-19-16~~
Tab 7 105-16

ETHAN K. STRIMLING (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
EDWARD J. SUSLOVIC (3)
JUSTIN COSTA (4)

**CITY OF PORTLAND
IN THE CITY COUNCIL**

DAVID H. BRENERMAN (5)
JILL C. DUSON (A/L)
JON HINCK (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

**ORDER APPROVING THE RIVERSIDE RECYCLING FACILITY AGREEMENT
WITH CPRC GROUP, LLC**

ORDERED, that the 10-Year Agreement between Portland and the CPRC Group, LLC for management and other services at its Riverside Recycling Facility is hereby approved in substantially the form attached hereto; and

BE IT FURTHER ORDERED, that the City Council hereby authorizes the City Manager or his or her designee to execute said document in substantially the form attached hereto and any other related documents necessary or convenient to carry out the intent of said documents and this Order.

MEMORANDUM
City Council Agenda Item

TO: Mayor and City Council

FROM: Troy Moon

DATE: 9/9/2016

DISTRIBUTION: City Manager, Mayor, Anita LaChance, Sonia Bean, Danielle West-Chuhta, Nancy English, Julie Sullivan

SUBJECT: Order ...

SPONSOR: Jon Jennings, City Manager

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st reading _____ Final Action X

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

The existing contract expires on September 30. Passage will allow the new contract to be executed before the existing one expires.

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

I. SUMMARY OF ISSUE (Agenda Description)

The City's contract with CPRC Group to operate the Riverside Recycling Facility expires on September 30, 2016. In June, the City issued an RFP #7516 to solicit proposals for operating the facility beginning in October, 2016. Two firms responded, Pine Tree Waste (Casella) and CPRC Group. The review committee determined that CPRC Group's proposal was most responsive and provided the best value for the City. Staff has worked with them to negotiate a contract that will allow them to continue operating at Riverside Recycling and serving City operations and residents. The City Council must authorize the City Manager to execute the agreement in order to move forward.

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

The City owns the Riverside Recycling Facility at 910 Riverside. It holds permits from the Maine Department of Environmental Protection Agency that allows it to operate as a transfer and processing facility for bulky waste, construction and demolition debris, and leaf and yard waste. Since 2005, CPRC Group has operated the facility under the oversight of City staff. They have received and processed acceptable waste from City operations, Portland residents, residents from other communities, small businesses, and commercial waste haulers. In June, the City issued an RFP to solicit proposals from firms that might be interested in operating the facility. Respondents were asked to offer creative, cost effective solutions for handling acceptable materials from City operations and residents. Two firms responded – Pine Tree Waste (Casella) and CPRC Group. A team of staff members reviewed the proposal and found the CPRC proposal to be the most responsive and to offer the best overall value to the City. In order to finalize the agreement the City Council must authorize the City Manager to execute the contract.

Under the terms of the proposed agreement, CPRC Group will retain the right to operate their business at Riverside Recycling. They will continue to receive and process acceptable waste from residential and commercial customers as well as from City residents and City operations. Revenues from tipping fees will continue to stay with them as they do under the current contract. As the facility owner, the contract provides the City with the following benefits:

- Disposal of up to 15,000 tons of residential (E-Card) material and material from City operations at **no charge**.
- Acceptance of residential electronic and universal waste from E-Card users at **no charge**.

If deliveries of materials by the City and E-Card holders exceed 15,000 tons, the City would be required to pay a tipping fee per ton that varies depending on the item. Fees would range from -\$20/ton for metal items to \$60/ton for non-recyclable and bulky waste. The 15,000 ton figure represents the average number of tons delivered by City crews and E-Card holders during the past 5 years.

The contract includes a provision that allows CPRC to upgrade the existing facilities at Riverside Recycling including buildings and related infrastructure in order to move elements of their existing Scarborough operation to Riverside. Any construction, site work, engineering, or other related costs for this would be at their expense. If they complete this work within seven years and relocate operations to the facility, their 10 year contract would be extended for a term to be negotiated by the City Manager but not to exceed 10 years. If they do not exercise this provision, the contract remains at 10 years. Under either scenario, the parties may negotiate a mutually agreeable extension for an additional term of not less than 5 years.

III. INTENDED RESULT

Approving the order will authorize the City Manager to enter into an agreement with CPRC Group that is substantially similar to the draft presented in the package.

IV. COUNCIL GOAL ADDRESSED

Financial savings and operational efficiencies.

V. FINANCIAL IMPACT

For the past ten years the City has paid CPRC Group approximately \$1,000,000 per year to receive and process materials generated by City operations and from the residential E-Card program. Under the terms of this agreement, the City will be able to dispose of up to 15,000 tons of material at Riverside Recycling for no charge. This represents a \$1,000,000 annual savings during the 10 year term of the contract. Should CPRC Group exercise its option to move its headquarters operation to the Riverside facility, this savings would continue for another 7 years for a total of 17 years.

VI. STAFF ANALYSIS

CPRC has run the Riverside Recycling Facility very effectively and has been a responsive partner to the City. They have maintained the facility in a neat and orderly manner, provided good customer service, and have operated within the bounds of their operation. At the beginning of their current contract they invested in significant upgrades that brought the facility to its current configuration. This includes adding the elevated residential drop off area, installing a new scale, extensive paving, and improving

facilities for composting. Their successful track record gives us confidence that they will continue to be good partners for the City into the future.

II. RECOMMENDATION

We recommend approval of the order authorizing the City Manager to execute the agreement with CPRC Group

VIII. LIST ATTACHMENTS

Draft Contract

Prepared by: Troy Moon

Date: 9/9/2016

**AGREEMENT BETWEEN THE
CITY OF PORTLAND
AND
CPRC GROUP, LLC**

(This is a sample contract only and is subject to change prior to execution)

THIS AGREEMENT is entered into this _____ day of _____, 2016, by and between the **CITY OF PORTLAND**, a body politic and corporate (hereinafter the "**CITY**"), and **COMPANY**, a Maine corporation with a mailing address of _____ (hereinafter the "**CONTRACTOR**").

W I T N E S S E T H:

WHEREAS, the CITY did advertise a Request for Proposals #7516 entitled "Management and Operation of Construction and Demolition Recycling Center and Transfer Station," (hereinafter, the "Request for Proposals"), a copy of which is attached as Exhibit A and made a part hereof; and

WHEREAS, the CONTRACTOR has the requisite knowledge and technical ability to perform the required services and has submitted a proposal for the provision of such services dated _____, (hereinafter, the "Proposal"), a copy of which is attached as Exhibit B and made a part hereof; and

WHEREAS, after due consideration of all the Proposals, the CITY did award this contract to the CONTRACTOR;

NOW, THEREFORE, in consideration of the mutual promises made by each party to the other, the parties covenant and agree as follows:

1. The CONTRACTOR will furnish the services, materials, supplies, equipment and labor (hereinafter the "Work") in accordance with the specifications contained in the Request for Proposals issued to the Contractors under date of May 26, 2016 by the Purchasing Manager of the City of Portland, and also in accordance with the CONTRACTOR's Proposal. The restatement in this document of any term of the Request for Proposals or Proposal shall not be deemed to waive any term not so restated. If any disagreement is found between Request for Proposals or the Proposal and this document, then this document shall govern; and the Request for Proposals shall govern over the Proposal, to the extent they disagree; provided, however, that this document and its attachments shall be construed to be supplemental to one

another to the extent possible. Capitalized words in this Agreement shall have the same meaning set forth in the

2. MANAGEMENT AND OPERATION OF THE FACILITY

- a. Assumption of operation. On the effective date of this Agreement, the CONTRACTOR shall begin Work at the Project Site. The CONTRACTOR shall operate and maintain the Project Site in accordance with this Agreement, all Applicable Laws, the Operations Manual and the specifications contained in the CITY's Requests for Proposal, and CONTRACTOR's PROPOSAL. The CITY shall own the Project Site
- b. Regulatory compliance. The CONTRACTOR shall perform work in strict conformance with the provisions of all permits and Applicable Law (including the applicable requirements of all regulatory agencies). The CONTRACTOR shall be responsible for obtaining, maintaining and ensuring compliance with all Permits required, and for performing its operations consistent with the Operations Manual and Applicable Laws. In addition thereto, the CONTRACTOR shall comply with all orders, if any, of any governmental entity. CITY shall receive notice and may attend, at its option, any meetings with representatives of any governmental entity regarding compliance or failure to comply with Permits or Applicable Law. CITY and CONTRACTOR shall provide each other with any information it has or receives regarding any citations, notices of violation, enforcement actions, legal suits or emergency orders. The CONTRACTOR shall respond promptly to all citations, notices of violation, enforcement actions, legal suits, and emergency orders with respect to the CONTRACTOR's operations issued by any governmental entity with jurisdiction. In addition to the CONTRACTOR's indemnity provided elsewhere in this Agreement, the CONTRACTOR shall pay all costs, including, but not limited to, attorney's fees and costs, of responding to all such citations, notices of violation, enforcement actions, legal suits, and emergency orders and shall pay all costs, including, but not limited to, attorney's fees and cost, of correcting deficiencies and achieving compliance with all such citations, notices of violation, enforcement actions, legal suits, and emergency orders and shall pay any fines or penalties assessed as a result of non-compliance.
- c. Employees, equipment and subcontractors. CONTRACTOR shall employ such employees as required to perform Work under this Agreement. CONTRACTOR shall provide all labor, including equipment operators, sorters, and incidental labor; and materials, equipment, tools, supplies and utilities required for Work performed at the Project Site and compliance with other terms and conditions of this Agreement. CONTRACTOR shall be responsible for any costs and other liabilities of its subcontractors at the Project Site.
- d. Operating responsibility. The Project Site shall be open for the receipt of Acceptable Waste during the following hours: Monday – Saturday, 7AM – 4 PM. The CONTRACTOR may reduce hours during the winter months from 7:30 AM – 3:30 PM. If emergency conditions render it impractical to dispose of the resultant volume of Acceptable Waste within the normal operating hours of the Facility, the CONTRACTOR shall open the Facility on other days and times as reasonably requested by CITY without additional charge to CITY.
- e. The CONTRACTOR shall, at its expense, perform Work at the Facility, including, but not limited to:

- i. receive all Acceptable Waste delivered to the Project Site;
 - ii. inspect all waste delivered to the Project Site;
 - iii. reject all Unacceptable Waste delivered to the Project Site;
 - iv. sort all waste delivered to the Project Site;
 - v. recycle all Acceptable Waste which is capable of being recycled;
 - vi. process all Acceptable Waste delivered at the site, either through the use of its own personnel or through the procurement of services from firms who shall process the Acceptable Waste;
 - vii. transport and legally dispose of all waste which cannot be processed or recycled.
 - viii. transport and legally dispose of all Unacceptable Waste erroneously accepted at the Project Site;
 - ix. maintain all access roads at the Project Site and provide for access during all seasonal conditions;
 - x. market and sell recycled material which is generated from Acceptable Waste delivered to the Project Site;
 - xi. maintain communications with City to provide for the operation and maintenance of the Project Site in accordance with this Agreement and Applicable Law;
- f. **CONTRACTOR REPORTS.** CONTRACTOR shall provide monthly reports to CITY no later than the tenth (10th) business day of each month. The monthly report shall contain the following information with respect to the previous month:
- i. total tonnage of all waste delivered to the Project Site;
 - ii. of material processed and/or disposed of.
 - iii. record of any hazardous or special waste, if any, that was received at the Facility and its method and place of disposal;
 - iv. all reports and correspondence which may be necessary for permit compliance;
 - v. the dates of all regulatory agency inspections with the name of agency and inspector. A copy of any concurrent or subsequently written inspection report, notice of violation, or citation shall be supplied to CITY, upon receipt. A copy of any report submitted by CONTRACTOR to any governmental entity, whether in response to such notices of violation and/or citations or not, shall be supplied to CITY contemporaneously;
 - vi. copies of all inquiries, complaints, accidents, or incidents and a description of the resolution of same;
 - vii. all financial reports provided by CONTRACTOR shall be in accordance with generally accepted accounting principles.
- g. **Signage.** CONTRACTOR shall be responsible for all signage in the Project Site. Prior to installing such signage, CONTRACTOR must receive the CITY's written consent, and all signage must comply with applicable laws, ordinances, rules and regulations.
- h. **Record keeping.** The CONTRACTOR shall maintain on-site, readily retrievable for reference and in clean and usable condition, at least one copy each of approved construction drawings, specifications, reports, permits, Operations Manual and all prior months' operations reports and correspondence with CITY and all governmental entities.

- i. Permitting; payment of operating expenses. CONTRACTOR shall be responsible for any costs or expenses associated with the permitting of the Facility subsequent to the effective date. Except as otherwise specifically provided herein, CONTRACTOR shall be solely responsible for and shall pay all costs and expenses incurred in the performance of its operating responsibilities.
 - j. Waste Deliveries. CONTRACTOR shall not accept waste deliveries of any kind at the Facility other than waste defined as Acceptable Waste in this Agreement.
 - k. The CONTRACTOR covenants and agrees that all Work performed and furnished hereunder shall be free from all defects, and that all Work shall be performed in a good workmanlike manner.
3. INSURANCE. Prior to the execution of this Agreement, the CONTRACTOR will procure and maintain insurance coverage in the following types and amounts:
- a. Comprehensive General Liability. Coverage shall be in the minimum amount of \$3,000,000 dollars combined single limit for bodily or personal injury, death and property damage. The City shall be named as additional insured.
 - b. Automobile Liability insurance in an amount of not less than one million dollars, including coverage for all owned, non-owned and hired vehicles. The City shall be named as additional insured.
 - c. Environmental or Pollution liability coverage in the minimum amount of \$3,000,000 dollars protecting the Contractor and the City against claims arising from the abatement, clean up and disposal of Hazardous Waste, naming the City as additional insured.
 - d. Workers Compensation insurance including Employers Liability coverage, in compliance with Maine law. The Workers' Compensation insurance shall include an endorsement waiving all rights of subrogation against the City of Portland, its officers or employees.
 - e. All subcontractors will also be required to carry the coverages set forth above.

With respect to the liability coverages, the CONTRACTOR will provide the CITY a certificate of insurance evidencing such coverage, in this way: certificate must say either: A) "the policy has been endorsed to name the City of Portland as an Additional Insured" and a copy of the endorsement must come to the City of Portland with the certificate, or B) "the policy already includes an endorsement, such as the General Liability Extension Endorsement, by which the City of Portland is automatically made an additional insured." A Certificate which merely has a box checked under "Addl Insr," or the like, or which merely states the City of Portland is named as an Additional Insured, will not be acceptable. The CONTRACTOR shall furnish the CITY and thereafter maintain certificates evidencing all such coverages, which certificates shall guarantee thirty (30) days' notice to the CITY of termination of insurance from insurance provider or agent. The CONTRACTOR shall provide copies of all insurance policies upon request.

Work shall not commence under the Contract until the CONTRACTOR has obtained the insurance required under this section, nor shall the CONTRACTOR permit any subcontractor to commence work until the insurance required of the subcontractor has been obtained. The insurance coverage amounts required hereunder are subject to reasonable increases that the CITY may, in its reasonable discretion, require from time to time during the term of this Agreement.

4. INDEMNIFICATION

- a. General. The CONTRACTOR shall indemnify, defend and hold harmless CITY, its officers, employees, representatives and agents, from and against any and all claims, actions, losses, damages, injuries, liabilities, costs and expenses of whatsoever kind or nature (including, but not by way of limitation, attorney's fees and court costs) arising out of injury to persons, including death, or damage to property relating to or incidental to CONTRACTOR's operation of the Facility, or CONTRACTOR's performance of any other obligations under this Agreement, whether by the CONTRACTOR or anyone directly or indirectly employed by it, its subcontractors, or anyone else for whose act it may be liable, on or after the effective date of this Agreement, but excluding any and all claims, actions, losses, damages, injuries, liabilities, costs and expenses of whatsoever kind or nature (including, but not by way of limitation, attorney's fees and court costs) arising out of injury to persons, including death, and damage to property related to CITY's operation of the Facility prior to the effective date or that result from the City's sole negligence. At its option, the indemnified party shall have the right to actively participate in the defense of any action in which damages are sought which might be its ultimate responsibility. If the indemnified party elects to exercise said right, it shall bear all of its defense costs, including attorney's fees and court costs.
- b. As used in this Agreement, "Environmental Condition" shall mean any adverse condition relating to surface water, ground water, drinking water supply, land, surface or subsurface strata or the ambient air, and includes, without limitation, air, land and water pollutants, noise, vibration, light and odors, which may result in a claim of liability under the Comprehensive Environmental Response, Compensation and Liability Act, as amended ("CERCLA"), or the Resource Conservation and Recovery Act ("RCRA"), or any claim of violation of the Clean Air Act, the Clean Water Act, the Toxic Substance Control Act ("TSCA"), or any claim of liability or of violation under any federal statute hereafter enacted dealing with the protection of the environment or with the health and safety of employees or members of the general public, or under any rule, regulation, permit or plan under any of the foregoing, or under any law, rule or regulation now or hereafter promulgated by the state in which the Premises are located, or any political subdivision thereof, relating to such matters (collectively, "Environmental Laws"). "Hazardous Materials" shall include, but shall not be limited to, substances requiring investigation, removal or remediation under any federal, state or local statute, regulation, ordinance or policy including substances defined as "hazardous substances" or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 1802; the Resource Conservation Recovery Act, 42 U.S.C. Section 6901, et. seq.; radon, asbestos and petroleum products; or those substances defined as "hazardous wastes" in applicable codes in the State and in the regulations adopted and publications promulgated to such codes. CONTRACTOR shall, at all times during the term, comply with all environmental laws applicable to the facility and CONTRACTOR's use thereof. Except to the extent caused by CITY or attributable to an environmental condition existing prior to the effective date of this Agreement, CONTRACTOR will defend, indemnify and save harmless the CITY and its directors, officers, shareholders, employees and agents from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including, without limitation, reasonable attorneys' and consultants' fees and expenses) of whatever kind or nature, contingent or otherwise, known or unknown, incurred or imposed, based upon any Environmental Laws or resulting from any Environmental Condition on or about the Premises which is caused by CONTRACTOR during the Term of this Agreement, which indemnity, in the case of an

Environmental Condition caused by Tenant shall include costs incurred by CITY to remediate such Environmental Condition to clean-up or remediation standards consistent with CONTRACTOR's use of the Premises specified in this Agreement. In case any action, suit or proceeding is brought against any of the parties indemnified herein by reason of any occurrence described in this section CONTRACTOR will, at CONTRACTOR's expense, by counsel reasonably approved by CITY, resist and defend such action, suit or proceeding, or cause the same to be resisted and defended.

- c. Patent and copyright indemnity. The CONTRACTOR shall obtain any licenses or other authorizations that may be necessary to lawfully use any process, materials or services that are subject to patent, copyright, trademark, trade secret, or other intellectual property restriction or laws. The CONTRACTOR shall indemnify, defend and hold harmless CITY, its officers, employees, representatives and agents, from and against any and all claims, actions, losses, damages, injuries, liabilities, costs and expenses of whatsoever kind or nature (including, but not by way of limitation, attorney's fees and court costs) arising out of infringement of any patent, copyrighted or uncopyrighted work, secret process, trade secret, unpatented invention, article, appliance, or otherwise.
 - d. CONTRACTOR's obligations under this Agreement shall survive termination of this Agreement and shall not be limited by the availability of insurance.
5. Prior to any payment, the CITY reserves the right to require Waivers of Lien for materials and labor from the CONTRACTOR and its subcontractors and suppliers guaranteeing One Hundred Percent (100%) performance, free and clear from all liens and encumbrances. Any mechanic's lien or any other lien which may be filed against the premises which are the subject of this Agreement by reason of the Work described herein shall be defended (by counsel reasonably acceptable to the CITY) and promptly discharged by the CONTRACTOR at its own expense. The CITY may require the CONTRACTOR to provide a bond satisfactory to the CITY to indemnify it against any lien and as a substitution in place of a lien. If the CONTRACTOR should fail either to defend the CITY against the lien or to discharge it, then the CITY may do so at the CONTRACTOR's expense. In the event of such an undertaking by the CITY, the CONTRACTOR will promptly reimburse the CITY for all its costs and expenses in so doing, including, but not limited to, reimbursement of the CITY's reasonable counsel fees, as well as costs which may be incurred by it in substituting a bond in place of a lien. CONTRACTOR's obligations under this paragraph shall survive termination of this Agreement.
 6. The CONTRACTOR shall perform the work to the satisfaction of the responsible CITY official who will have the right of inspection at all times, and whose approval and acceptance of the work will be a condition precedent to payments by the CITY under this Contract. CITY inspectors will have the authority to stop work in progress if such work is being done contrary to the plans, specifications or engineering practice.
 7. Time is of the essence in the performance of this Agreement. Upon receipt of executed contracts and insurance as required, the CITY will promptly send an executed CITY contract to the CONTRACTOR, which will commence work. CONTRACTOR shall commence work hereunder on October 1, 2016 (the "Effective Date") Unless this Agreement is sooner terminated hereunder, this Agreement shall terminate September 30, 2026. This Agreement may be extended for an additional term not to exceed 10 years on the terms set forth herein if the CONTRACTOR executes the site and building improvements at the site described in Exhibit ____, attached hereto before September 30, 2023. Site and building improvements are

subject to review and approval by the City Manager or his or her designee prior to CONTRACTOR's making of such improvements. This agreement may be renewed upon mutual agreement of the CONTRACTOR and CITY for one additional five (5) year period on the terms and conditions set forth herein.

8. In the event of any dispute as to the amount, nature or scope of the work required under this Contract, the design and judgment of the Director of Public Works (hereinafter, the "Director") will be final and binding.
9. Each year the City shall be able to deliver 15,000 tons of acceptable material generated through City operations and by residents using the E-Card program, or other program substituted by the City, at no charge. Electronic and Universal Waste generated by E-card holders and City operation may be delivered to the facility free of charge. Material in excess of 15,000 tons shall be assessed tipping fees on the following schedule:

Material	Fee/(credit)
Brush	(-\$2.00/ton)
Demo Wood	\$55.00/ton
Yard Waste	\$12.50/ton
Drywall	\$55.00/ton
Shingles	\$35.00/ton
Non-Recyclables	\$55.00/ton
Metals	(-\$20.00/ton)
Inert	\$8.50/ton
Stumps	\$40.00/ton
Catch Basin Grit	\$45.00/ton
Sweeper Sand	\$20.00/ton
Heavy Furniture	\$68.00/ton
Light Furniture	\$68.00/ton
Heavy Lawn Equipment	(-\$20.00/ton)
Light Lawn Equipment	(-\$20.00/ton)
Bicycles	(-\$20.00/ton)
Children's Equipment	\$68.00/ton
Gas Grill	(-\$20.00/ton)
Mattress or Box Spring	\$68.00/ton
Appliances (non-Freon)	(-\$20.00/ton)
Grass	\$17.50/ton
Leaves	\$15.00/ton

10. The CONTRACTOR shall keep accurate records of all services performed under this Agreement and shall submit such information to the CITY on a monthly basis. Payment for such Work shall be made to the CONTRACTOR not more than thirty (30) days after receipt of an invoice for work completed the preceding month and acceptance of the Work by the Director.

11. TERMINATION

- a. The CITY may terminate this Agreement for cause by written Notice to the CONTRACTOR. In the event of such termination, the CONTRACTOR shall not be

entitled to any further payment under this Agreement from the date of receipt of said Notice.

- b. The CITY shall have the right to terminate this Agreement at any time for its convenience on thirty (30) days' prior written Notice to the CONTRACTOR. If the Agreement is terminated by the CITY for convenience, the CITY shall pay the CONTRACTOR for all Work performed and all materials purchased pursuant to this Agreement prior to receipt of such Notice.
- c. In the event that this Agreement is terminated pursuant to this section, the CONTRACTOR shall continue operations for an interim period of up to one hundred twenty (120) calendar days if requested to do so by CITY in order to allow CITY to obtain the services of a successor contractor or to make arrangements to undertake operation of the Facility with its own forces. The CONTRACTOR shall be paid for its services during said interim period at the rates and factors set forth in the last payment schedule in effect prior to issuance of written final notice of termination.
- d. Non-Performance: CONTRACTOR agrees that upon the non-performance by it of any of the covenants, hereinbefore or hereinafter mentioned, by it to be kept and performed; upon the filing of a voluntary petition in bankruptcy; the making of any general assignment for the benefit of creditors; or upon the occurrence of any act which operates to deprive it permanently of the rights, powers, and privileges necessary for the proper conduct and operation of the exclusive rights granted herein; or upon the abandonment and discontinuance of its operations, the CITY may, at its election, cancel this Agreement and enter and take possession of said premises. CONTRACTOR hereby waives any notice of such election, notice to quit possession of the premises or any demand for payment of the amounts agreed upon as the same become due, or for the performance of any covenants herein, or any demand for the possession of said premises; provided, however, that the failure of the CITY to declare this Agreement and exclusive privilege terminated upon default of CONTRACTOR for any of the reasons above set out shall not operate to bar, abridge, or destroy the right of the CITY to declare this Agreement null and void and at end upon any subsequent violation of the terms of this Agreement.

12. Out of concern for the public, CITY employees and the CONTRACTOR's employees, all work performed by the CONTRACTOR shall be in conformance with pertinent OSHA, local, state and federal government, laws, rules, and regulations.

13. NOTICES. Notices of conditions or situations affecting the Work to be performed under this Agreement shall be given in writing between designated operating personnel of the CONTRACTOR and CITY. All other notices shall be given in writing, to be delivered by certified mail, to the parties at their respective addresses as set forth below:

If to the CONTRACTOR, at: _____

If to CITY, at: City of Portland

389 Congress Street

Portland, Maine 04101

Attn: City Manager, with a copy to

Public Works Director and Corporation Counsel

14. CONTRACTOR may not assign this contract without the written consent of the CITY. Subject to such consent, the terms and conditions of this Agreement shall be binding upon, and inure to the benefit of, the assignor's successors and assigns.
15. This Agreement may be amended only by written instrument specifically referring to this Agreement and executed with the same formalities as this Agreement.
16. In the event that one or more of the provisions contained in this Agreement shall be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
17. The CONTRACTOR hereby agrees it is an independent contractor, and that no person supplied by it in the performance of the Agreement shall be any employee of CITY and further agrees that no rights of CITY's rules accrue to any such person. The CONTRACTOR shall have the total responsibility for all salaries, wages, bonuses, retirement, withholdings, worker's compensation, other benefits and taxes and premiums appurtenant thereto of its employees in the performance of this Agreement.
18. Nothing in this document constitutes a waiver of any defense, immunity or limitation of liability that may be available to the CITY, or its officers, agents or employees under the Maine Tort Claims Act (Title 14 M.R.S.A. 8101 et. seq.), and shall not constitute a waiver of other privileges or immunities that may be available to the CITY.
19. No waiver of any breach of any one or more of the conditions of this Agreement by the CITY be deemed to imply or constitute a waiver of any succeeding or other breach hereunder.
20. This Agreement is an operating agreement for the Project Site and no provision hereof shall be construed as conveying an easement or other estate in land. CONTRACTOR acquires no other rights in and to the Project Site, except as set forth herein.
21. This Agreement shall be construed in all respects in accordance with, and governed by, the laws of the State of Maine. All parties hereto hereby consent to the exclusive jurisdiction of the Superior Court for the County of Cumberland in the State of Maine, for all actions, proceedings and litigation arising from or relating directly or indirectly to this Agreement or any of the obligations hereunder, and any dispute not otherwise resolved as provided herein shall be litigated solely in said Court.
22. This Agreement may be executed in any number of counterparts and by different parties in separate counterparts. Each counterpart when so executed shall be deemed to be an original and all of which together shall constitute one and the same agreement. A signature in a pdf or electronic document shall be considered the equivalent of an original signature.
23. CITY and CONTRACTOR each warrant and represent to the other that they have the full right and authority to enter into this Agreement, that there is no impediment that would inhibit their ability to perform their respective obligations under this Agreement, and that the person signing this Agreement on behalf of each party has the authority to do so.

IN WITNESS WHEREOF, the said CITY OF PORTLAND has caused this Agreement to be

signed and sealed by Jon P. Jennings, its City Manager, thereunto duly authorized,
_____ has caused this Agreement to be signed and sealed by _____, its
_____, thereunto duly authorized, the day and date first above written.

WITNESS:

CITY OF PORTLAND

By: _____
Jon P. Jennings
Its City Manager

WITNESS:

CONTRACTOR

By: _____

Name
Its (title)

Approved as to form:

Approved as to funds:

Corporation Counsel's Office

Finance Director

*Order 58- 16/17
Tab 12 - 919-16
Tab 8 10-5-16*

ETHAN K. STRIMLING (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
EDWARD J. SUSLOVIC (3)
JUSTIN COSTA (4)

**CITY OF PORTLAND
IN THE CITY COUNCIL**

DAVID H. BRENERMAN (5)
JILL C. DUSON (A/L)
JON HINCK (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

**ORDER APPROVING TWO-PARTY AGREEMENT
BETWEEN THE CITY OF PORTLAND AND THE MAINE DEPARTMENT OF
TRANSPORTATION RE: FOREST AVENUE AND DARTMOUTH STREET**

ORDERED, that the City Manager is authorized to enter into the two-party partnership agreement between the City of Portland and the Maine Department of Transportation, in substantially the form attached, for improvements to the intersection of Forest Avenue and Dartmouth Street; and

BE IT FURTHER ORDERED, that the City Manager or his or her designee is hereby authorized to sign the two-party agreement and any other documents necessary to effect the purpose of this order.

MEMORANDUM
City Council Agenda Item

DISTRIBUTE TO: City Manager, Mayor, Amita LaChance, Sonia Bean, Danielle West-Chuhta, Nancy English, Julianne Sullivan

FROM: Jennifer Ladd, Project Engineer
Department of Public Works - Engineering

DATE: September 2, 2016

SUBJECT: Request to authorize two-party agreement with MaineDOT for ADA Improvements at Forest Avenue and Dartmouth Street

SPONSOR: Jon Jennings

(If sponsored by a Council committee, include the date the committee met, the results of the vote, and the meeting minutes.

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st reading ___ Sept 19th, 2016 ___ **Final Action** ___ Oct 5th, 2016 ___

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

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

I. ONE SENTENCE SUMMARY –

City Council approval of this agreement is needed in order to build ADA Improvements at Forest Avenue and Dartmouth Street.

II. AGENDA DESCRIPTION -

MaineDOT has selected the project for federal assistance and inclusion in its 2016-2018 Work Plan. This project implements the Transforming Forest Avenue Study recommendation at this intersection to reduce the automobile-dependent design of the street by making significant pedestrian and streetscape enhancements. The study, which was overseen and then fully endorsed by a public advisory committee in 2010-2011, was adopted by the Planning Board & City Council as part of the Comprehensive Plan for Portland. At its June 18, 2012 meeting, the City Council unanimously endorsed (9-0) this specific project as part of the package of Portland SRTS and TE applications. (See Order #222-11/12)

III. BACKGROUND -

(See Agenda Description above)

IV. INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED -

The intended result is to initiate this agreement and begin the project by holding a joint kick-off meeting. The MaineDOT Locally Administered Project program provides key transportation outcomes by matching local dollars with three dollars of Federal and State money. This program provides us with maximum benefit at a minimum cost and provides significant improvements to our vital Transportation system.

V. FINANCIAL IMPACT -

The estimated project costs are outlined below. The existing MDOT Quality Community Program account (C14114) will be used to fund the required 20% local match.

Federal Share = \$83,044 (80%)

Local Share = \$20,761 (20%)

Upset Limit / Total Project Estimate = \$103,805

VI. STAFF ANALYSIS AND BACKGROUND THAT WILL NOT APPEAR IN THE AGENDA DESCRIPTION -

The project costs above are based on estimates prepared in 2012. The intent is to design and build the project within this budget. Current target construction year is 2017.

VII. RECOMMENDATION –

DPW recommends approval of this agreement between MaineDOT and the City of Portland.

VIII. LIST ATTACHMENTS

1. MaineDOT Agreement for a Federal-aid Locally Administered Project, “Pedestrian Safety Improvements at Forest/Dartmouth: WIN 018887.00”

Prepared by: Jennifer Ladd

Date: September 2, 2016

Order 222-11/12

Passage: 9-0 6/18/12

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

CITY OF PORTLAND
IN THE CITY COUNCIL

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

**ORDER APPROVING PROJECT APPLICATIONS
RE: MAINE DOT QUALITY COMMUNITY PROGRAM**

ORDERED, that the thirteen project applications for grants from the Maine DOT Quality Community Program as described in the attached memorandum from DPS Director Michael Bobinsky are hereby approved for submission to the Maine Department of Transportation.



<i>MaineDOT use only</i>	
AMS ID: _____	
CSN: _____	
TEDOCS _____	#:
PROGRAM: <u>Multimodal (OUC 57000)</u>	

**MAINE DEPARTMENT OF TRANSPORTATION Agreement
for a Federal-aid Locally Administered Project With the
City of Portland
Regarding
Pedestrian Safety Improvements at Forest/Dartmouth: WIN 018887.00**

<i>MaineDOT use only</i>	
Total Agreement Amount: <u>\$103,805</u>	Federal Project #: <u>TAP-1888(700)</u>
Federal Share: <u>\$83,044</u>	Federal Authorization Date: <u>05/26/15</u>
Municipal Share: <u>\$20,761</u>	City's Vendor ID: <u>VC1000073476</u>
Effective Date: _____	City's DUNS® Number: <u>07-174-7802</u>
Expiration Date: _____	CFDA #20.205: <u>Highway Planning & Construction</u>

This Agreement for a Federal-aid Project to make ADA improvements at the intersection of Forest Avenue and Dartmouth Street in Portland ("the **Project**") is between the Maine Department of Transportation, an agency of the State of Maine with headquarters at 24 Child Street in Augusta, Maine ("**MaineDOT**") and the City of Portland, a body corporate and politic with its primary offices at 389 Congress Street in Portland, Maine ("the **City**").

This Agreement contains the following attachments:

- ☒ Federal Funding Accountability and Transparency Act Form (signature required);
- ☒ Federal Title VI Assurances (signature required).

WHEREAS, **MaineDOT** selected the **Project** described herein for federal assistance through its Quality Community Program and for inclusion in its 2016-2018 Work Plan; and

WHEREAS, the **City** shall deliver the **Project** as a Locally Administered Project, subject to **MaineDOT** oversight to ensure that all federal requirements are met.

NOW, in consideration of the previous statements, **MaineDOT** and the **City** ("the **Parties**") establish and agree to the following terms and conditions:

ARTICLE 1. ROLES AND RESPONSIBILITIES

1A. **ROLE OF CITY.** The **City** shall assign a full-time qualified employee with Local Project Administration ("LPA") Certification from **MaineDOT** to manage the **Project** and carry out the **City's** responsibilities under this Agreement. This Local Project Administrator shall abide by the guidance in the latest edition of **MaineDOT's Local Project Administration Manual & Reference Guide** ("LPA Manual.") If the certified administrator leaves the **City** or ceases to oversee the **Project**, the **City** shall stop work and notify the **MaineDOT** Project Manager. **MaineDOT** will evaluate the situation and determine a course of action.

- ☐ The following municipal employee shall serve as Local Project Administrator:
Name: Jennifer Ladd, Project Engineer
Email Address: jwl@portlandmaine.gov
Phone Number: (207) 874-8894

1B. **ROLE OF MAINEDOT.** **MaineDOT** will assign a Project Manager to carry out the State's responsibilities under this Agreement. This person or designee will have the authority to request design changes to meet applicable laws and design standards; accept and reject invoices; review construction activities to ensure compliance with contract documents; and take all other action needed to ensure proper performance of this Agreement.

- ☐ **MaineDOT** has assigned the following individual to serve as Project Manager:
Name: John Rodrigue, Project Manager
Email Address: john.rodrigue@maine.gov
Phone Number: (207) 592-0428

ARTICLE 2. PROJECT FINANCES

2A. **UPSET LIMIT.** The estimated cost of all phases of the **Project** – preliminary engineering, right-of-way, construction and construction engineering – is **\$103,805** (the "Upset Limit.") **Project** costs eligible for federal financial participation shall not exceed this Upset Limit without **MaineDOT's** written approval, through an executed modification to this Agreement.

2B. **FEDERAL SHARE.** **MaineDOT**, using funding from the Federal Highway Administration ("FHWA"), will share in all costs eligible for federal participation through all phases of the **Project** at the rate of **80%**, up to a maximum contribution at this rate of **\$83,044**.

2C. **LOCAL SHARE.** The **City**, with local funding, shall share in all costs eligible for federal participation through all phases at the rate of **20%**, or an estimated **\$20,761**. The **City** shall be responsible in full for all expenditures:

1. Exceeding the Upset limit of this Agreement set forth in Article 2A above;
2. Incurred before the date of notice to proceed, as set forth in Article 3B, "Authorization";
3. Deemed ineligible for federal financial participation.

2D. **REIMBURSEMENT.** **MaineDOT** will reimburse the **City** for federally eligible costs incurred on the **Project** at the rate in Article 2B, "Federal Share." The **City** shall bill **MaineDOT** no more than monthly and no less than quarterly, subject to these conditions:

1. The **City** shall submit Invoices in the format of Communication 4 of the LPA Manual.
2. The **City** shall provide with each invoice documentation of charges incurred and proof of payment, with sufficient detail to satisfy the **MaineDOT** Project Manager.
3. Each invoice shall include a progress report for the service period of the invoice.
4. Each invoice shall show **MaineDOT's** and the **City's** portion of **Project** costs, including a running total of costs incurred to date.
5. The **City** must certify that amounts claimed are correct and not claimed previously.
6. Payment of the final invoice from the **City** shall be contingent upon a final inspection of the completed **Project** to determine the acceptability of the work.

- 2E. **MAINEDOT COSTS.** Costs that **MaineDOT** incurs for work on the **Project** shall be paid for out of the **Project**. The **City** shall share in these costs at the rate in Article 2C, "Local Share." **MaineDOT** will reconcile these costs upon completion of the **Project** and deduct the **City's** share from the final invoice payment.
- 2F. **FINAL COST.** If the final cost of the **Project** is less than the Upset Limit shown in Article 2A, **MaineDOT's** reimbursement to the **City** will be capped at the percentage of actual costs in Article 2B, "Federal Share." The **City** shall refund any overpayment to **MaineDOT**.
- 2G. **REPAYMENT.** If the **City** withdraws from the **Project**, leading to termination of this Agreement for cause, the **City** shall refund all invoice payments from **MaineDOT** and reimburse **MaineDOT** fully for costs incurred for work in the **Project**.
- 2H. **SET-OFF.** **MaineDOT** will have the option to exercise its common law, equitable and statutory rights of set-off to recover payment made to the **City** for work later deemed ineligible for federal funding. These rights will include, but will not be limited to, **MaineDOT's** option to withhold money owed to the **City** under this Agreement and any other agreement with **MaineDOT** or any other agency of the State of Maine, including any contract starting before the effective date of this Agreement.

ARTICLE 3. PROJECT DEVELOPMENT

- 3A. **SCOPE OF WORK.** This Agreement shall apply to a **Project** consisting of sidewalk improvements at the intersection of Forest Avenue and Dartmouth Street that are necessary to comply with the Americans with Disabilities Act. Any substantial change to this scope of work shall require **MaineDOT's** written approval to be eligible for financial assistance from **MaineDOT**.
- 3B. **AUTHORIZATION.** The **City** shall receive written notice to proceed from **MaineDOT** before starting any reimbursable work or executing any service contract under this Agreement. This notice shall be contingent upon **MaineDOT** receiving authorization for federal financial participation in the **Project** and executing this Agreement.
- 3C. **KICKOFF.** The **Parties** shall hold a project kickoff to go over the scope of work, estimated cost, schedule, and legal requirements before any work begins.
- 3D. **PROGRESS REPORTS.** The **City** shall provide **MaineDOT** with regular progress reports at intervals established by **MaineDOT's** Project Manager.
- 3E. **CORRESPONDENCE.** Communication 1 through Communication 20 of the LPA Manual shall be used to correspond with **MaineDOT**.
- 3F. **CONSULTANT SERVICES.** If the **City** intends to contract for consultant services under this Agreement, the **City** shall:
1. Use a qualifications-based selection method and not the lowest price. Using price as a selection factor will render consultant work on the **Project** ineligible for federal funding.
 2. Obtain the **MaineDOT** Project Manager's written approval before awarding a contract.
 3. Incorporate "Consultant General Conditions for Local Public Agencies" into contracts.

4. Obtain **MaineDOT's** written approval before modifying a contract. Work that is performed on a consultant contract outside of the original scope of work without an approved and executed modification in place shall be ineligible for reimbursement.
 5. Evaluate the performance of its consultant upon completion of the contract in accordance Section 2.10 of the LPA Manual, "Consultant Evaluations."
- 3G. DESIGN WORK. Design plans, specifications, estimates and contract documents for the **Project** shall be developed in accordance with **MaineDOT's** *Engineering Instructions*, *Highway Design Guide*, *Standard Specifications* and *Standard Details*, as applicable.
1. The **City** shall submit a preliminary design report, a set of design plan impacts, and the final plans, specifications and estimate (PS&E) to **MaineDOT** for review and approval.
 2. The **City** shall address to **MaineDOT's** satisfaction all changes requested or concerns expressed by **MaineDOT** before **MaineDOT** will authorize the **City** to advertise for construction bids. Advertising for bids or proceeding to the construction stage without **MaineDOT's** written authorization shall render the entire **Project** *ineligible* for federal funding.
 3. **MaineDOT's** acceptance of the final PS&E package shall not relieve the Engineer of Record, whether a **Municipal** employee or consultant, of responsibility for the quality of the engineering documents for the **Project**.
- 3H. PUBLIC PARTICIPATION. The **City** shall afford the public and all abutters the opportunity to learn about and comment on the **Project**, using a public participation process that is appropriate for the scope of work and acceptable to MaineDOT's Project Manager. The **City** shall provide **MaineDOT** with a public process certification, using the format shown in Communication 10 of the LPA Manual, as part of the **Project's** environmental package.
- 3I. ENVIRONMENTAL PROCESS. **MaineDOT** will prepare and submit to the FHWA all documentation required under the National Environmental Policy Act ("NEPA"). The **City** shall provide **MaineDOT** with Communication 11 of the LPA Manual and the completed NEPA Documentation Checklist to assist with this work.
- 3J. PERMITS. The **City** shall obtain all approvals, permits and licenses for the **Project**. The **City** shall provide **MaineDOT** with copies of all such documents and an environmental certification in the format shown in Communication 12 of the LPA Manual, as part of the final PS&E package for the **Project**.
- 3K. UTILITIES. The **City** shall coordinate the **Project** with any utility and railroad that may be affected. The **City** shall provide **MaineDOT** with a utility certification in the format shown in Communication 13 of the LPA Manual, as part of the final PS&E package. MaineDOT's Utility Accommodation Rules (2014) shall apply to required utility relocations.
- 3L. RIGHT OF WAY. The **Parties** will coordinate acquisition of rights-of-way as follows:
1. **MaineDOT** will carry out the right-of-way process for sections of the **Project** that are located along Forest Avenue.
 2. The **City** shall carry out the right-of-way process if the **Project** for sections of the **Project** located along Dartmouth Street. In doing so, the **City** shall:

- a. Follow the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 ("Uniform Act") and the MaineDOT "Right of Way LPA Manual."
- b. Provide a right-of-way map or similar plan meeting **MaineDOT's** standards that shows all rights obtained for the **Project**.
- c. Provide **MaineDOT** with a right-of-way certification in the format shown in Communication 14 of the LPA Manual, as part of the final PS&E package.

3. The **City** shall dedicate permanently to the **Project** for public use any municipal property needed for the **Project**.

3M. FORCE ACCOUNT. If the **City** intends to build the **Project** with municipal labor using a "Force Account" process, the **City** shall obtain written authorization from **MaineDOT** before proceeding with any work. If so authorized, the **City** shall comply with federal regulations 23 CFR, sections 635.201 to 635.205: "Force account construction."

3N. SOLICITATION OF BIDS. The **City** shall use competitive bidding to hire a construction contractor unless **MaineDOT** authorizes Force Account work. Upon written authorization from **MaineDOT**, the **City** shall advertise for bids, as follows:

1. The **City** shall follow the procedures in MaineDOT's Standard Specifications (November 2014 Edition), Section 102, "Bidding."
2. The **City** shall submit bid tabulations to **MaineDOT** for review and shall obtain MaineDOT's written approval before awarding a contract.
3. The **City** shall ensure that the following are part of the contract book for the **Project**:
 - a. "Buy America" requirements;
 - b. Davis-Bacon prevailing wage rates;
 - c. Form FHWA-1273 or other applicable federal provisions; and
 - d. Signed Title VI Assurances.

3O. CONTRACT AWARD. Upon receiving **MaineDOT's** written approval, the **City** shall award a contract for the **Project** to the lowest responsive and responsible bidder in accordance with MaineDOT's *Standard Specifications* (November 2014 Edition), Section 103, "Award and Contracting." The **City** shall administer the contract for the duration of the **Project**.

3P. CONSTRUCTION. During construction of the **Project**, the **City** shall:

1. Provide a Project Resident who is either a qualified municipal employee with LPA certification or a consultant hired through a qualifications-based selection method, in order to ensure that the **Project** is completed according to the final design plans, construction specifications, special provisions and terms of the contract.
2. Hold a pre-construction / pre-utility meeting with **MaineDOT**, the contractor, utilities and any other parties involved in the construction work before any work begins.
3. Coordinate materials testing necessary to meet the Minimum Testing Requirements that **MaineDOT** established for the **Project**.
4. Submit contract modifications to **MaineDOT** for review and comment before they are executed. *MaineDOT reserves the right not to reimburse the **City** for work under a contract modification executed without **MaineDOT's** review and approval.*

3Q. MAINEDOT OVERSIGHT. **MaineDOT** will inspect construction activities, test materials and review documentation to ensure compliance with the **Project** specifications and terms of the construction contract. **MaineDOT** may reject work or materials out of compliance and withhold reimbursement to the **City** for such work or materials.

3R. MAINTENANCE. The **City** shall maintain the completed **Project** year-round for its standard useful life or 20 years, whichever is longer. Maintenance work shall consist of upkeep and repairs needed to maintain a firm, stable and slip-resistant surface, including snow removal. Maintenance shall not be delegated to any other party without specific, written approval from **MaineDOT**, which shall be attached to this Agreement.

ARTICLE 4 – TERMINATION

4A. FOR CAUSE. **MaineDOT** will have just cause to terminate this Agreement in the event of default by the **City**, as defined in Article 4B. **MaineDOT** will afford the **City** a cure period of fourteen (14) calendar days, effective on the **City**'s receipt of Notice of Default. If the **City** fails to make a good-faith effort to address all defaults within this cure period, **MaineDOT** will terminate this Agreement for cause, with these conditions:

1. **MaineDOT** will recover from the **City** all reimbursements made and costs incurred for work on the terminated **Project**.
2. The **City** shall forfeit all federal funds remaining in the terminated **Project**.

4B. DEFAULT. **MaineDOT** shall send the **City** a Notice of Default if the **City**:

1. Withdraws its support for the **Project**; or
2. Makes inadequate progress within 18 months of execution of this Agreement; or
3. Takes any action that renders the **Project** ineligible for federal-aid funding; or
4. Uses **Project** funds for a purpose not authorized by this Agreement; or
5. Misrepresents or falsifies of any claim for reimbursement; or
6. Fails to meet standards of performance outlined in this Agreement.

4C. FOR CONVENIENCE. The **Parties** may terminate this Agreement for convenience by mutual consent for any reason not defined as "default," as follows:

1. In case of Termination for Convenience, **MaineDOT** will reimburse the **City** for federally eligible work performed under this Agreement until the effective termination date. The **City**'s share of **MaineDOT**'s costs for work on the **Project** shall be deducted from the final invoice amount owed to the **City**.
2. **MaineDOT** will reprogram for other purposes all federal funds remaining in the **Project**.

ARTICLE 5 – RECORDS & AUDIT

5A. **Project** records are printed or electronic plans, specifications, contracts, reports, notes, or other documents prepared by or for the **City**. The **City** shall retain all such records for at least **5 years** from the date either of **MaineDOT**'s acceptance of the final invoice for the **Project** or the termination of this Agreement. If any litigation, claim, negotiation or audit has begun before the end of this **5-year** period, all **Project** records shall be kept at least until all issues arising from any such action are resolved.

5B. The **City** and any consultant or contractor working on its behalf shall allow authorized representatives of the Federal Government and the State of Maine to inspect and audit **Project** records at reasonable times. Copies shall be furnished at no cost to the Federal Government or to the State of Maine.

5C. Audits shall be performed in accordance with generally accepted government auditing standards and federal regulation 2 CFR, Section 200, Subpart F - "Audit Requirements."

ARTICLE 6. GENERAL PROVISIONS

6A. GOVERNING LAW. The laws of the State of Maine shall govern this Agreement. Since this Agreement covers a **Project** using federal-aid funds, the **Parties** shall perform all activities under this document in accordance with applicable federal regulations, including but not limited to 23 CFR, "Highways"; 49 CFR, "Transportation"; and 2 CFR, Section 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards."

6B. CONFIDENTIALITY. The **City** shall protect the confidentiality of right-of-way negotiations, property appraisals, and engineering estimates of the cost to construct the **Project** in accordance with the provisions of Title 23 of the Maine Revised Statutes Annotated (MRSA), Section 63: "Confidentiality of Records."

6C. INDEMNIFICATION. To the extent allowed by law, the **City** shall indemnify, defend and hold harmless **MaineDOT**, its officers, agents and employees from all claims, suits or liabilities arising from negligent or wrongful act, error or omission by the **City**, its officers, employees, agents, consultants or contractors. Nothing in this article shall waive any defense, immunity or limitation of liability that may be available to either party under the Maine Tort Claims Act (14 M.R.S. Section 8101 et seq.) or other privileges or immunities provided by law. *Any other provision of this Agreement to the contrary notwithstanding, this provision shall survive the termination or expiration of this Agreement.*

6D. INDEPENDENT CAPACITY. The **City**, its employees, agents, representatives, consultants and contractors *shall not* act as officers, employees or agents of **MaineDOT**.

6E. FLOW DOWN. Contracts between the **City** and all third parties shall contain or incorporate by reference applicable provisions of this Agreement.

6F. BINDING EFFECT. The **Parties** shall be bound by the terms of this Agreement, which shall apply to its executors, their successors, administrators and legal representatives.

6G. EQUAL EMPLOYMENT OPPORTUNITY. The **City** and all consultants and contractors hired pursuant to this Agreement shall not discriminate against any employee or applicant for employment because of race, color, religious creed, sex, national origin, ancestry, age, sexual orientation or disability unless related to a bona fide occupational qualification. The **City** and all consultants and contractors hired pursuant to this Agreement shall take affirmative action to ensure that all such applicants are employed and that all such employees are treated regardless of their race, color, religious creed, sex, national origin, ancestry, age, sexual orientation or disability during any period of employment under this Agreement.

6H. ENTIRE AGREEMENT. This document represents the entire Agreement between the **Parties**. Neither **MaineDOT** nor the **City** shall be bound by any statement, correspondence, agreement or representation not expressly contained in this Agreement.

ARTICLE 7. DEBARMENT

- 7A. The **City** certifies to the best of its knowledge and belief that it and its officers, agents and employees associated with the **Project** are not debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this transaction by the Federal Government. If the **City** cannot certify to this statement, it shall attach an explanation to this Agreement. For the term of this Agreement, the **City** shall notify **MaineDOT** promptly if it or any officer, agent or employee associated with the **Project** is debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this transaction by the Federal Government.
- 7B. The **City** agrees that it shall not hire an outside entity that is debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by the Federal Government.

ARTICLE 8. CONFLICT OF INTEREST

- 8A. No person with a direct or indirect financial or personal interest in any contract or subcontract for the **Project** shall negotiate, make, accept or approve any such contract or subcontract.
- 8B. The **City** shall refrain from hiring any engineer, lawyer, appraiser, inspector or other professional to provide services for **Project** who has a direct or indirect financial or other personal interest in any contract or subcontract for the **Project**, other than the person's employment or retention by the **City**. No officer or employee of any such engineer, lawyer, appraiser, inspector or other professional retained by the **City** to work on the **Project** shall have a direct or indirect financial or other personal interest in any real property acquired for the **Project** unless such interest is openly disclosed to **MaineDOT** and such officer, employee or person has not participated in such acquisition for and in behalf of the **City**.
- 8C. No person or entity entering into a contract for the **Project** may have a direct or indirect financial or other interest in the **Project** or its outcome – other than the performance of the contract. This prohibition includes, without limitation: a.) any agreement with, or other interest involving, third parties having an interest in the outcome of the **Project** that is the subject to the contract; b.) any agreement providing incentives or guarantees of future work on the **Project** or related matters; and c.) any interest in real property acquired for the **Project** unless such interest is disclosed to **MaineDOT** before the person or entity entered into the contract.

ARTICLE 9. EXPIRATION

This Agreement shall expire upon **MaineDOT's** payment of the final invoice from the **City** for the **Project** or **five (5) years** from the final day of the month in which this Agreement was executed, whichever occurs first, except as follows:

1. Article 3R, "Maintenance," shall be enforced for at least twenty (20) years.
2. Article 5, "Records & Audit," shall remain in place until all activity pursuant to this provision is completed.
3. Article 6B, "Confidentiality," shall remain in effect until negated by law.
4. Article 6C, "Indemnification," shall remain in place until specifically terminated by the **Parties** or negated by law.

ARTICLE 10. AGREEMENT APPROVAL

The undersigned municipal representative assures that the **City's** legislative body has approved the **City's** entry into this Agreement, has appropriated or authorized use of required matching funds, and has authorized the representative to sign this Agreement.

IN WITNESS WHEREOF, the **Parties** have executed this Agreement effective on the date last signed below.

City of Portland

Maine Department of Transportation

By: _____
Jon Jennings, City Manager

By: _____
William A. Pulver, P.E., Director,
Bureau of Project Development

Date: _____

Date: _____

I certify that the foregoing signature is true and accurate. I further certify – pursuant to 10 M.R.S.A. §9407 and §9502 – that the signature, if electronic: (a) is intended to have the same force as my LPA Manual signature; (b) is unique to me; (c) is capable of verification; and (d) is under my control.

Federal Funding Accountability and Transparency Act

The **City of Portland, Maine** and its contractors may be subject to the provisions of the Federal Funding Accountability and Transparency Act of 2006 as amended and any regulations, policies, procedures and guidance documents adopted pursuant thereto or in connection therewith.

If the Federal portion of the **Project** exceeds \$25,000, an authorized representative from the **City** shall sign this document under (B) below and return it with the **Project** Agreement. Additionally, the **City** shall provide the following information, *if applicable*:

A) The total compensation and names of the top five officers if:

- More than 80% of the **City**'s annual gross revenues are from the U.S. Federal Government; and
- Those revenues are greater than \$25 million annually; and
- Compensation information is not already available through reporting to the U.S. Securities and Exchange Commission (SEC).

B) Legal name and DUNS® number on file with the Central Contractor Registration (CCR):

City of Portland, Maine	07-174-7802
Sign and Print Legal CCR Name	DUNS® Number

Authorized Representative: _____
Jon Jennings, City Manager

U.S. Department of Transportation (U.S. DOT)
Federal Highway Administration – Standard Title VI / Nondiscrimination Assurances

DOT Order No. 1050.2A

The **City of Portland** (the "Recipient") **AGREES THAT**, as a condition of receiving Federal financial assistance from the U.S. Department of Transportation (U.S. DOT) through the Federal Highway Administration (FHWA), it is subject to and will comply with the following:

Statutory/Regulatory Authorities

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 C.F.R. Part 21 (entitled *Nondiscrimination In Federally-Assisted Programs Of The Department Of Transportation—Effectuation Of Title VI Of The Civil Rights Act Of 1964*);
- 28 C.F.R. section 50.3 (U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964);

The preceding statutory and regulatory citations hereinafter are referred to as the "Acts" and "Regulations," respectively.

General Assurances

In accordance with the Acts, the Regulations, and other pertinent directives, circulars, policy, memoranda, and/or guidance, the Recipient hereby gives assurance that it will promptly take any measures necessary to ensure that:

No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity," for which the Recipient receives Federal financial assistance from the U.S. DOT, including the FHWA.

The Civil Rights Restoration Act of 1987 clarified the original intent of Congress, with respect to Title VI and other Nondiscrimination requirements (The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973), by restoring the broad, institutional-wide scope and coverage of these nondiscrimination statutes and requirements to include all programs and activities of the Recipient, so long as any portion of the program is Federally assisted.

Specific Assurances

More specifically, and without limiting the above general Assurance, the Recipient agrees with and gives the following Assurances with respect to its federally assisted programs:

1. The Recipient agrees that each "activity," "facility," or "program," as defined in §§ 21.23 (b) and 21.23 (e) of 49 C.F.R. § 21 will be (with regard to an "activity") facilitated, or will be (with regard to a "facility") operated, or will be (with regard to a "program") conducted in compliance with all requirements imposed by, or pursuant to the Acts and the Regulations.
2. The Recipient will insert the following notification in all solicitations for bids, Requests For Proposals for work, or material subject to the Acts and the Regulations made in connection with all Federal Highway Programs and, in adapted form, in all proposals for negotiated agreements regardless of funding source:

The City of Portland, Maine, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

- 3. The Recipient will insert the clauses of Appendix A and E of this Assurance in every contract or Agreement subject to the Acts and the Regulations.**
4. If applicable, the Recipient will insert the clauses of Appendix B of this Assurance, as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a Recipient.
5. That where the Recipient receives Federal financial assistance to construct a facility, or part of a facility, the Assurance will extend to the entire facility and facilities operated in connection therewith.
6. That where the Recipient receives Federal financial assistance in the form, or for the acquisition of real property or an interest in real property, the Assurance will extend to rights to space on, over, or under such property.
7. If applicable, the Recipient will include the clauses set forth in Appendix C and Appendix D of this Assurance, as a covenant running with the land, in any future deeds, leases, licenses, permits, or similar instruments entered into by the Recipient with other parties:
 - a. for the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and
 - b. for the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.
8. That this Assurance obligates the Recipient for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or structures or improvements thereon, in which case the Assurance obligates the Recipient, or any transferee for the longer of the following periods:
 - a. the period during which the property is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or
 - b. the period during which the Recipient retains ownership or possession of the property.
9. The Recipient will provide for such methods of administration for the program as are found by the Secretary of Transportation or the official to whom he/she delegates specific authority to give reasonable guarantee that it, other recipients, sub-recipients, sub-grantees, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the Acts, the Regulations, and this Assurance.
10. The Recipient agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the Acts, the Regulations, and this Assurance.

By signing this ASSURANCE, the Recipient also agrees to comply (and require any sub-recipients, sub-grantees, contractors, successors, transferees, and/or assignees to comply) with all applicable provisions governing the FHWA access to records, accounts, documents, information, facilities, and staff. You also recognize that you must comply with any program or compliance reviews, and/or complaint investigations conducted by the FHWA. You must keep records, reports, and submit the material for review upon request to the FHWA, or their designees in a timely, complete, and accurate way. Additionally, you must comply with all other reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance.

The Recipient gives this ASSURANCE in consideration of and for obtaining any Federal grants, loans, contracts, agreements, property, and/or discounts, or other Federal-aid and Federal financial assistance extended after the date hereof to the recipients by the U.S. Department of Transportation. This ASSURANCE is binding on the Recipient, other recipients, sub-recipients, sub-grantees, contractors, subcontractors and their subcontractors', transferees, successors in interest, and any other participants in it programs. The person signing below is authorized to sign this ASSURANCE on behalf of the Recipient.

DATED _____

By _____
Jon Jennings, City Manager
City of Portland, Maine

Encl.: Appendices A and E

APPENDIX A TO THE TITLE VI ASSURANCES

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation, **Federal Highway Administration**, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations as set forth in Appendix E, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the **Federal Highway Administration**, to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the **Federal Highway Administration**, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the **Federal Highway Administration**, may determine to be appropriate, including, but not limited to:
 - a. withholding payments to the contractor under the contract until the contractor complies; and/or
 - b. cancelling, terminating, or suspending a contract, in whole or in part.

Incorporation of Provisions: The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the **Federal Highway Administration**, may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

APPENDIX E TO THE TITLE VI ASSURANCES

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. §4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. §324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. §794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. §6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 U.S.C. §471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. Parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. §47123) (prohibits discrimination on the basis of race, color, national origin and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating of sex in education programs or activities (20 U.S.C. 1681 *et seq.*).

Order 59-16/17
~~Feb 13~~ 9-19-16
Tab 9 10-5-16

ETHAN K. STRIMLING (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
EDWARD J. SUSLOVIC (3)
JUSTIN COSTA (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

DAVID H. BRENERMAN (5)
JILL C. DUSON (A/L)
JON HINCK (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

ORDER APPROPRIATING FUNDS FROM
THE SALE OF CITY-OWNED BAYSIDE PROPERTY ON SOMERSET STREET

ORDERED, that \$1,000,000 from the sale of city-owned Bayside property on Somerset Street is hereby appropriated for use in the relocation of the Department of Public Works operations from Bayside to 212 and 250 Canco Road and any costs related and ancillary thereto; and

BE IT FURTHER ORDERED, that \$1,000,000 from the sale of city-owned Bayside property on Somerset Street is hereby appropriated for use in the City's replacement of public administration software and any costs related and ancillary thereto.

MEMORANDUM
City Council Agenda Item

DISTRIBUTE TO: City Manager, Mayor, Anita LaChance, Sonia Bean, Danielle West-Chuhta, Nancy English, Julianne Sullivan

FROM: Finance

DATE: 9/19/2016

SUBJECT: APPROPRIATION OF MIDTOWN SALE PROCEEDS

SPONSOR: Jon Jennings

(If sponsored by a Council committee, include the date the committee met, the results of the vote, and the meeting minutes.

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st reading_____9/19_____ Final Action__10/5__

Can action be taken at a later date: No

Action is required immediately as funds are needed for relocation of Public Works facilities out of the Bayside neighborhood and funds are required for RFP #5116

PRESENTATION: Brendan T O'Connell, under 5 minutes

I. ONE SENTENCE SUMMARY

Earlier this calendar year sale of property in the Bayside neighborhood occurred to the Federated Companies, LLC and the sales proceeds need to be appropriated by City Council.

II. AGENDA DESCRIPTION

In June 2016 the Federated Companies, LLC purchased parcels of property from the City in the Bayside neighborhood. This order appropriates these funds towards the move of Public Works out of the Bayside neighborhood to Canco Road and also towards the funding of RFP #5116 – Proposal for Public Administration Systems Software.

III. BACKGROUND

Same as I above.

IV. INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED

It has long been a City goal to relocate Public Works out of the Bayside neighborhood so those properties could be redeveloped for housing and businesses. The City has acquired land at 212 and 250 Canco Road and those properties will be the new home base for a variety of City operations currently housed a Bayside including Traffic Operations, Fleet Management, and more.

Several other City Council goals will be addressed if the City can successfully complete and implement the results of RFP #5116 – Proposal for Public Administration Systems Software. The last Public Administration Systems Software RFP occurred in 1996 so City staff is working with software technology that in some cases is 20 years old. Over the years piecemeal solutions have been purchased, or home grown solutions have been implemented. The goal of this RFP is to increase efficiencies within all departments by implementing public administration software which brings our systems into the 21st century.

V. FINANCIAL IMPACT

The recommended appropriation will be \$1,000,000 for relocation of Public Works to Canco Road and \$1,000,000 for RFP #5116.

VI. STAFF ANALYSIS AND BACKGROUND THAT WILL NOT APPEAR IN THE AGENDA DESCRIPTION

None

VII. RECOMMENDATION

Move passage

VIII. LIST ATTACHMENTS

None

Prepared by: Finance Department
Date: 9/8/16

Order 60-16/17
Tab 14 - 9-19-16
Tab 10 10-5-16

ETHAN K. STRIMLING (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
EDWARD J. SUSLOVIC (3)
JUSTIN COSTA (4)

**CITY OF PORTLAND
IN THE CITY COUNCIL**

DAVID H. BRENERMAN (5)
JILL C. DUSON (A/L)
JON HINCK (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

**ORDER REAPPROPRIATING UNSPENT BOND PROCEEDS
RE: MOODY-WILSON STORM DRAIN**

WHEREAS, the City of Portland previously issued its \$15,418,000 2013 General Obligation Bonds dated February 1, 2013 (the "2013 Bonds") to finance a Deering Street wastewater project approved as part of the City's 2013 Capital Improvement Program (the "2013 Wastewater Project"); and

WHEREAS, the 2013 Wastewater Project has been completed with project costs less than estimated and there remain unspent proceeds from the 2013 Bonds; and

WHEREAS, the City Council now desires to reappropriate a portion of the unspent balance in the project account for the 2013 Wastewater Project to the Moody-Wilson Storm Drain wastewater project approved as part of the City's 2009 Capital Improvement Program;

NOW, THEREFORE, by the City Council of the City of Portland, be it hereby **ORDERED**, **THAT** \$175,000.00 of unspent proceeds of the 2013 Bonds issued for the 2013 Wastewater Project be and hereby are reallocated and re-appropriated to fund a portion of the costs of the Moody Wilson Storm Drain wastewater project.

MEMORANDUM
City Council Agenda Item

DISTRIBUTE TO: City Manager, Mayor, Anita LaChance, Sonia Bean, Danielle West-Chuhta, Nancy English, Julianne Sullivan

FROM: Water Resources, Finance

DATE: 9/19/2016

SUBJECT: REALLOCATION OF SEWER CIP FUNDING

SPONSOR: Jon Jennings

(If sponsored by a Council committee, include the date the committee met, the results of the vote, and the meeting minutes.

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st reading 9/19 Final Action 10/5

Can action be taken at a later date: No

Action is required immediately as funds are needed to award a contract for the Moody Wilson project. Existing fund request was inadequate.

PRESENTATION: Brendan T O'Connell, under 5 minutes

I. ONE SENTENCE SUMMARY

The Moody-Wilson stormwater project has some additional needs which were not anticipated in original Water Resources funding request and there are existing sewer funds in a 2009 CIP which can be reallocated by City Council to complete the project.

II. AGENDA DESCRIPTION

The Moody-Wilson project is a project that will add a new storm drain on the two Streets and also replace the existing sewer lines. The new storm drain will separate stormwater from Sewage and help reduce combined sewer overflows at the India Street CSO discharge. The design of the project indicated the need for storage due to pipe size constraints down stream of the project. The initial CIP request did not factor the storage units into the estimate, thus is why the extra funds are needed. The project had a bid opening on August 2nd, and we were hoping that a price would come in under the remaining funds, however that was not the case.

We have a contractor ready to perform the work but we cannot sign until funds are available. If the contract is not signed soon the work will be delayed.

III. BACKGROUND

Same as I above.

IV. INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED

Completion of the Moody-Wilson project.

V. FINANCIAL IMPACT

Reallocation of \$175,000.00 from C13501 (Deering Street Wastewater) to C09502 (Moody-Wilson Storm Drain). There are excess funds in C09502.

VI. STAFF ANALYSIS AND BACKGROUND THAT WILL NOT APPEAR IN THE AGENDA DESCRIPTION

None

VII. RECOMMENDATION

Move passage

VIII. LIST ATTACHMENTS

None

Prepared by: Finance Department
Date: 9/8/16

*Order 63-16/17
Feb 11 10-5-16*

ETHAN K. STRIMLING (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
EDWARD J. SUSLOVIC (3)
JUSTIN COSTA (4)

**CITY OF PORTLAND
IN THE CITY COUNCIL**

DAVID H. BRENERMAN (5)
JILL C. DUSON (A/L)
JON HINCK (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

**ORDER AMENDING
THE SIDEWALK MATERIALS POLICY AND MAP**

ORDERED, that amendments to the Sidewalk Materials Policy are hereby approved in substantially the form attached hereto; and

BE IT FURTHER ORDERED, that revisions to the sidewalk materials map are hereby approved in substantially the form attached hereto.

MEMORANDUM
City Council Agenda Item

TO: Mayor and City Council

FROM: Jeff Levine, Director, Planning and Urban Development Department

DATE: 9/19/2016

DISTRIBUTION: Jon Jennings, City Manager; Mayor Ethan Strimling; Anita Lachance, Assistant City Manager; Danielle West-Chuhta, Corporation Counsel; Victoria Morales, Associate Corporation Counsel; Sonia Bean, Nancy English and Julie Sullivan

SUBJECT: Sidewalk material policy modifications

SPONSOR: Jeff Levine, Director, Planning and Urban Development Department

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st reading _____ **Final Action** 10/5/16

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

I. SUMMARY OF ISSUE (Agenda Description)

The Planning Division, in conjunction with the city's Department of Public Works, proposes several changes to the city's sidewalk material policy. These changes include edits to the city's official sidewalk material map to require concrete sidewalks, rather than brick, on various secondary streets throughout Bayside, and to require concrete sidewalks, rather than asphalt, on portions of outer Brighton Avenue and in Morrill's Corner. The proposal also contains modifications to the language of the city's sidewalk material policy. These include edits to address partial sidewalk replacements, material upgrade requests, and the composition of driveway aprons. Last, staff has recommended eliminating language in the policy which verbally describes the sidewalk material map, which is attached to the written policy by reference.

II. REASON FOR SUBMISSION

This submission is the result of the confluence of several factors:

- In recent months, the Planning Division has fielded numerous requests from property owners in Bayside and East Bayside regarding changes in sidewalk material policy for their property frontages. Bayside currently lies in a brick district. However, given the area's industrial character and the absence of a clearly legible historic fabric, property owners have suggested that concrete may be a more appropriate material. Staff is recommending changes in sidewalk material from brick to concrete on streets throughout Bayside, particularly on streets with commercial or industrial character. Residential streets with a finer grained fabric, as well as major streets which have recently been rebuilt with brick sidewalks, such as Marginal Way and Fox Street, are proposed to remain in brick (*See Figure 1 and Attachment 1*).
- The city's current and past planning work on outer Brighton Avenue, which is informed by complete streets principles and best practices in urban design, recommends a consistent streetscape treatment along the length of Brighton Avenue that highlights this major corridor as an important pedestrian space. Concrete is widely considered a more durable, higher quality material than asphalt, and a satisfactory material for sidewalks in this context. For this reason, and in advance of the conclusion of the review of the Dirigo Plaza proposal, the Planning Division is recommending a change in sidewalk material on Brighton Avenue from Woodford Street west to the city line from asphalt to concrete (*See Figure 2 and Attachment 1*).

- Similarly, staff is recommending that the sidewalk material in Morrill's Corner, which lies at the intersection of two major transportation corridors and has the potential for major future mixed-use development, be changed from asphalt to concrete. The southern portion of Morrill's Corner is currently designated for concrete sidewalks; the proposed modification will lend consistency to the entirety of this important intersection (*See Figure 2 and Attachment 1*).
- As a product of its development review process, the city's Planning Division and Department of Public Works routinely review projects which propose to replace a portion of an existing sidewalk which does not conform with the city's sidewalk material policy with the non-conforming material. DPW staff have identified the need for a "common sense rule" which would apply in these situations, such that property owners would not be required to replace entire sidewalks which are otherwise in good repair, or partially replace sidewalks with materials that are inconsistent with the immediate context. To address these issues, the Planning Division and DPW have crafted an exception to the sidewalk material requirement in the case of partial replacements (*See Attachment 2*).
- The city's Complete Streets Design Manual, which is currently under development, will emphasize sidewalk continuity across driveway aprons as a means of reinforcing the pedestrian realm. In keeping with this guideline, staff is recommending that the sidewalk material policy be revised to require the extension of the sidewalk material across driveway openings (*See Attachment 2*).
- Last, the Planning Division and Department of Public Works also routinely field questions from property owners wishing to upgrade their sidewalk, or more commonly their apron, from the material shown on the sidewalk material map. Staff has suggested a modification in apron material policy to specify consistency with the sidewalk requirement; this should preclude many future upgrade requests. However, staff has also suggested language which addresses the event of proposed upgrades, making them subject to the discretion of the Department of Public Works and, if approved, ensuring adequate protections for the city with respect the terms of repair and replacement (*Attachment 2*).

III. INTENDED RESULT

The proposed changes to the city's sidewalk material map and policy are intended to rationalize the material requirements and align these requirements with both other city policies, such as the complete streets policy, and the existing land use and transportation context. Further, the text changes are designed to provide DPW and the public with a predictable set of rules for dealing with partial replacement and upgrades.

IV. COUNCIL GOAL ADDRESSED

Transportation Initiatives: Develop a transportation system that advances healthy living, minimizes environmental impacts and promotes the local economy by advancing opportunities for mass transit, bicycle use, and walking.

V. FINANCIAL IMPACT

To support decision-making on the sidewalk material policy, DPW staff developed the following per square yard installation costs for the three materials included in the city's material policy, based on recent bid estimates:

Asphalt: \$50 per SY
 Concrete: \$115 per SY
 Brick: \$150 per SY

Thus the proposed modification from brick to concrete in Bayside will result in some cost savings to property owners at time of installation. It should be noted that concrete is not considered an inferior product to brick, and the proposed change in Bayside is not likely to bear any negative economic development impact.

With respect to the upgrades proposed on outer Brighton and in Morrill's Corner, the converse is true; modifying the city's policy from asphalt to concrete will result in an increase in installation costs in those areas. However, as concrete is considered a superior product to asphalt, the upgrade in sidewalk material in these areas will result in an improved pedestrian environment and, potentially, help to promote economic development in these areas.

It should be noted that DPW has raised some concerns about the cost of maintaining concrete sidewalks, particularly in instances where they are improperly installed or where tree roots, de-icing and anti-icing agents, and heavy loads are concerned.

VI. STAFF ANALYSIS AND RECOMMENDATION

Staff from the Department of Planning and Urban Development and the Department of Public Works developed the proposed changes in collaboration, and both departments generally support the changes as proposed here.

VII. ATTACHMENTS

1. City Sidewalk Materials Map, Proposed Edits
2. City Sidewalk Materials Policy, Proposed Edits

Prepared by: Nell Donaldson

Date: 9/19/16

Bean/agendarequestmemo/rev 11/2015



Figure 1: Proposed changes from brick to concrete sidewalk material in Bayside (shown in red)

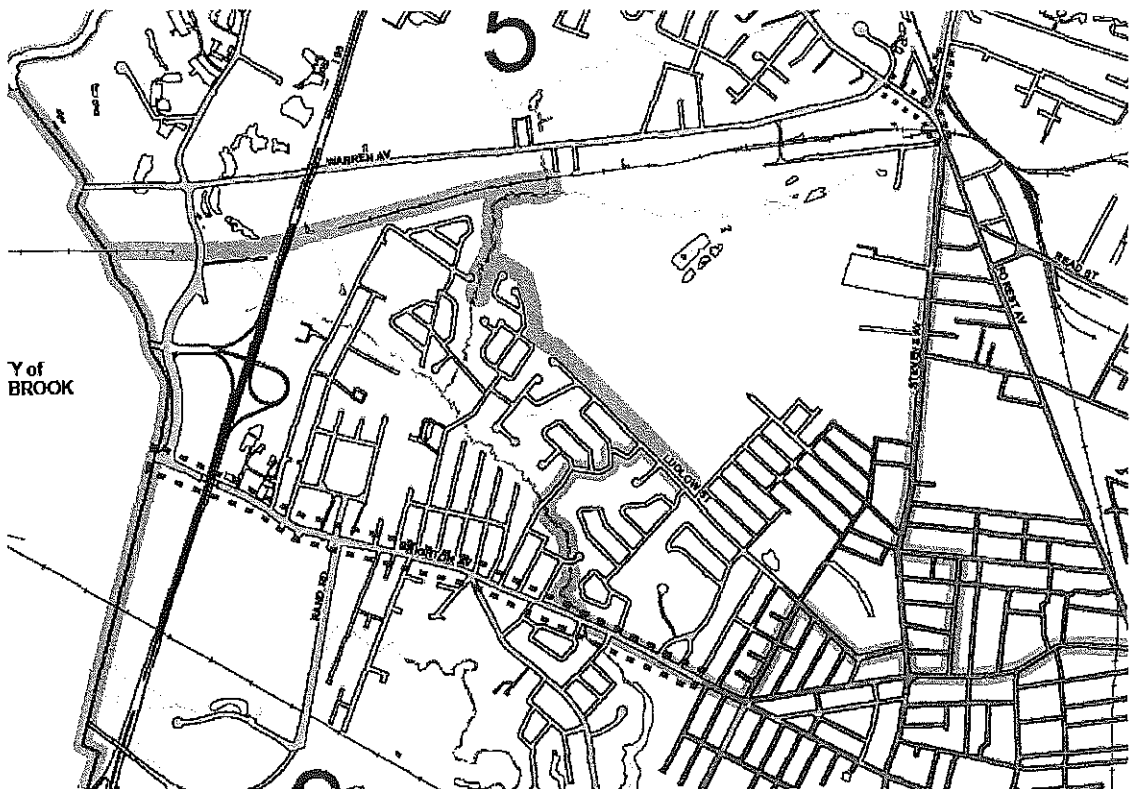
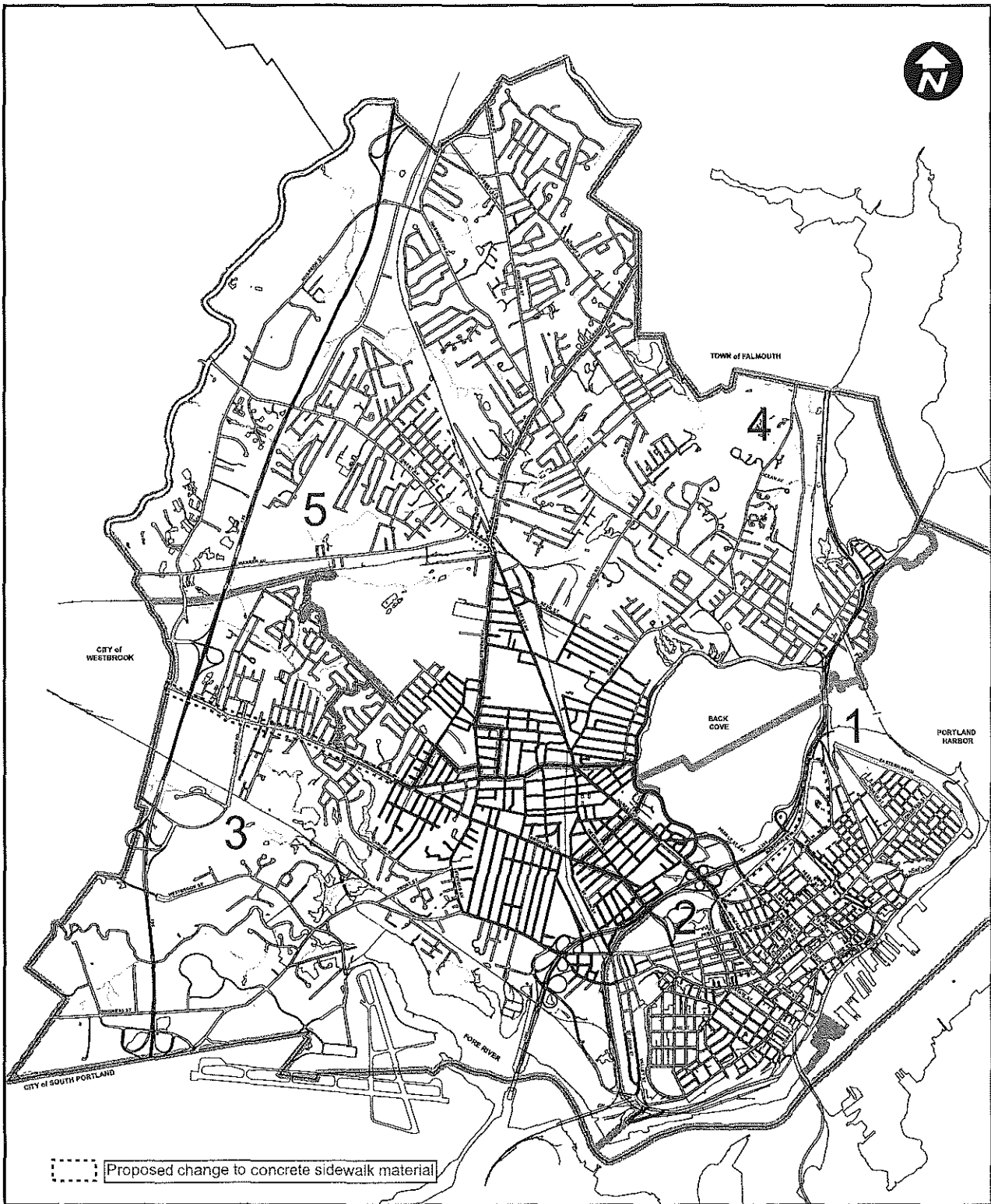


Figure 2: Proposed changes from asphalt to concrete sidewalk material on Outer Brighton and Morrill's Corner (shown in red)



To be modified to reflect amended apron material policy

SIDEWALK REPLACEMENT MATERIAL

PORTLAND, MAINE AUGUST 24, 2010

CLAY BRICK SIDEWALK with CLAY BRICK APRON
BRICK SIDEWALK with ASPHALT APRON

CONCRETE SIDEWALK
ASPHALT SIDEWALK

HISTORIC DISTRICT
COUNCIL DISTRICT

0 1,250 2,500 5,000 7,500 10,000 Feet

Map prepared by the City of Portland's Department of Public Services

SIDEWALK MATERIALS POLICY

Revised ~~September~~ August 20102016

The following policy is intended to be used as a standard for all sidewalk construction in the City of Portland, Maine, when developing improvement projects for sidewalks to be either built or rebuilt utilizing Housing and Community Development, Capital Improvement, State or Federal Financing and General Operating Budget Funding. This policy will also be employed when reviewing private-development proposals involving public infrastructure within the City of Portland.

The final approved copy of this policy will include a complete set of street maps for each District. The policy and associated maps will be incorporated as part of the ~~City's~~ Technical Manual.

Sidewalk Material

The Sidewalk Material map identifies three sidewalk materials, brick, concrete, and asphalt, specific to each city street. Within the city's historic districts, only brick shall be used.

Note that the following exceptions may apply:

Brick Sidewalks:

- ~~Within Portland's designated historic districts~~
- ~~On the Peninsula from Eastern Promenade to Western Promenade and from Marginal Way to Commercial Street (see the attached maps for District 1 & 2)~~
- ~~The entire length of Clifton Street, in District 4, has been designated for brick sidewalk replacement~~
- ~~Woodmont Street, Montrose Street, Colonial Road (Brighton Avenue to Rockland Avenue), Belfield Street, and Marlow St. shall be designated for brick sidewalk replacement.~~
- ~~Whitney Avenue, between Congress Street and Brighton Avenue (both east and west sides of the street) shall be designated for brick sidewalk replacement.~~
- ~~Forest Avenue between Bedford and Falmouth Streets; southwest side only.~~
- Exception to brick sidewalks: On sidewalks, or sections of sidewalks, where the slope exceeds 10% percent, the Director-Department of Public Services-Works may approve, based upon a recommendation from the City Engineer, the use of alternative material in lieu of brick if he or she finds that such alternative material would provide a more slip resistant surface to improve pedestrian safety. The alternative material includes concrete for sidewalks outside of the designated historic districts, and Pinehall /Pathway Lachance item # 193623 Brick Pavers, for sidewalks within all designated historic districts.
- Partial replacement: The Department of Public Works may approve a deviation from the sidewalk material policy to match existing sidewalks in cases where:

1. A substantial portion of sidewalks adjacent to and in the area surrounding the portion to be constructed or disturbed are of a material other than that designated on the Sidewalk Material map, and:
 - Existing sidewalks on the affected street frontage, other than those in the area to be disturbed, are in sound condition, and
 - Less than 50% of the existing sidewalk on the affected block is to be disturbed; or
2. Other unusual circumstances exist, subject to the approval of the City Manager.

Asphalt Sidewalks:

- ~~The areas designated for asphalt sidewalk replacement are specified by District as follows:~~
 1. ~~District 3... All streets between Machigonne Street and the Portland/ Westbrook City limits; all streets from Congress Street southerly to the Fore River; all streets westerly of Capisic Street and Stevens Avenue to the Westbrook and South Portland boundaries.~~
 2. ~~District 4... All streets easterly of Allen Ave. to Casco Bay and northerly of Read Street, Pya Street and Baxter Boulevard to the Falmouth town line.~~
 3. ~~District 5... All streets shall have asphalt sidewalk replacement designation with the following exceptions: Best, Leonard, Richardson, Brentwood, New, Crosby, Alba, Mabel, and Leland Streets, Concord Street West and Pleasant Avenue. These streets shall be designated for concrete sidewalk replacement.~~

Driveway Aprons

- All driveway aprons shall be constructed of the designated sidewalk material within the pedestrian zone. ~~replacement shall utilize asphalt throughout the Peninsula and off Peninsula streets with the following exceptions:~~
 1. ~~Those located within Portland's designated historic districts shall utilize brick driveway apron replacement, exclusively.~~
- Driveway apron material replacement shall not occur if it can be identified that the homeowner has installed the existing apron at their expense and the driveway is in good condition. Otherwise, driveway replacement shall conform to the accepted policy.

Curbing

All curb material shall be granite curb. The recycling of existing curb shall be employed in historic districts as a priority and in other districts where appropriate.

ADA: Handicap Accessible Sidewalk Ramps

Ramps shall be constructed of the same sidewalk material as designated for that respective ~~District~~street, with the exception of the required detectable surface within the ramp.

Upgrades

The Department of Public Works may approve a change in sidewalk or apron material to an alternative, higher grade material, so long as such sidewalks and aprons are built to applicable city standards and adequate protections are made on behalf of the city with respect to the terms of repair and replacement.

***Note:* Construction details for sidewalk replacement, ADA ramps, driveway aprons and curb are included as part of the City's Technical Manual.**

SIDEWALK MATERIALS POLICY

Revised September 2016

The following policy is intended to be used as a standard for all sidewalk construction in the City of Portland, Maine. This policy will be employed when reviewing development proposals involving public infrastructure within the City of Portland.

The final approved copy of this policy and associated maps will be incorporated as part of the city's Technical Manual.

Sidewalk Material

The Sidewalk Material map identifies three sidewalk materials, brick, concrete, and asphalt, specific to each city street. Within the city's historic districts, only brick shall be used.

Note that the following exceptions may apply:

- *Exception to brick sidewalks:* On sidewalks, or sections of sidewalks, where the slope exceeds 10% percent, the Department of Public Works may approve the use of alternative material in lieu of brick if such alternative material would provide a more slip resistant surface to improve pedestrian safety. The alternative material includes concrete for sidewalks outside of the designated historic districts, and Pinehall /Pathway Lachance item # 193623 Brick Pavers, for sidewalks within all designated historic districts.
- *Partial replacement:* The Department of Public Works may approve a deviation from the sidewalk material policy to match existing sidewalks in cases where:
 1. A substantial portion of sidewalks adjacent to and in the area surrounding the portion to be constructed or disturbed are of a material other than that designated on the Sidewalk Material map, and:
 - Existing sidewalks on the affected street frontage, other than those in the area to be disturbed, are in sound condition, and
 - Less than 50% of the existing sidewalk on the affected block is to be disturbed; or
 2. Other unusual circumstances exist, subject to the approval of the City Manager.

Driveway Aprons

- All driveway aprons shall be constructed of the designated sidewalk material within the pedestrian zone.
- Driveway apron material replacement shall not occur if it can be identified that the homeowner has installed the existing apron at their expense and the driveway is in good condition. Otherwise, driveway replacement shall conform to the accepted policy.

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Upgrades

The Department of Public Works may approve a change in sidewalk or apron material to an alternative, higher grade material, so long as such sidewalks and aprons are built to applicable city standards and adequate protections are made on behalf of the city with respect to the terms of repair and replacement.

Note: Construction details for sidewalk replacement, ADA ramps, driveway aprons and curb are included as part of the City's Technical Manual.

*Order 64-16/17
Tab 12 10-5-16*

ETHAN K. STRIMLING (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
EDWARD J. SUSLOVIC (3)
JUSTIN COSTA (4)

**CITY OF PORTLAND
IN THE CITY COUNCIL**

DAVID H. BRENERMAN (5)
JILL C. DUSON (A/L)
JON HINCK (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

**ORDER SETTING TIME FOR OPENING
OF POLLS ON NOVEMBER 8, 2016
RE: PRESIDENTIAL AND GENERAL MUNICIPAL ELECTION**

ORDERED, that pursuant to 21-A M.R.S. Sec. 626, the polls shall open at 7:00 a.m. and close at 8:00 p.m. on Tuesday, November 8, 2016, for the Presidential and General Municipal Election.



Office of the City Clerk
Katherine L. Jones, CMC

MEMORANDUM

TO: Mayor Strimling and Members of the
Portland City Council

FROM: Katherine L. Jones, City Clerk

DATE: September 27, 2016

RE: Setting the time for opening the polls on November 8, 2016 for the
General Municipal Election.

Pursuant to 21-A M.R.S.A. §626, the hour of poll opening must be set by the municipal officers. This is done for every election; the polls open at 7:00 A.M. and close at 8:00 P.M.

Notices are then posted in each district and at City Hall.

Political Activity

During the Forty-Five (45) days before the election, Sept. 23, 2016, no political advertising may occur on public property within Two-Hundred-Fifty feet (250') of the City Clerk's Office during normal business hours. This includes rallies, press conferences, signs, bumper stickers, etc. The City Clerk's office will extend their business hours on Thursday November 3, 2016 until 7:00 P.M. press conferences and rallies will have to be after 7:00 P.M on this day.

On election night candidates and or city staff can obtain candidate information in room 209 regarding the election returns. They cannot be in the City Clerk's office or behind the guard rail in the State of Maine Room obtaining information.

Candidates may place political signs on the right-of-way six (6) weeks prior to any election to which they pertain. With the property owner's consent, candidates may place political signs on private property at any time. Candidates may not put signs on telephone poles, bridge abutments or trees. This is in keeping with the Maine Beautification Act. Signs must be removed no later than one (1) week after the election. If a candidate's sign has same message, or is similar they cannot be placed with 30' of one another.

All signs, handouts, and other political advertising must clearly show a disclosure statement regarding who paid for and authorized the expenditure under Title 21-A §1012. Violations of this section may result in a report to the Ethics Commission and possible fines.

If you have any questions regarding political activity surrounding City Hall and or political signs please contact the City Clerk's office.

Thanks
Kathy

*Order 65-16/17
Tab 13 10-5-16*

ETHAN K. STRIMLING (MAYOR)
BELINDA S. RAY (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)

**ORDER APPROVING AND ALLOCATING
CUMBERLAND COUNTY HOME CONSORTIUM FUNDS**

ORDERED, that funding from the Cumberland County HOME Consortium distributed by the United States Department of Housing and Urban Development is hereby approved and allocated for the following two projects:

- 58 Boyd Street, LP for new construction at 58 Boyd Street, Portland, Maine; and
- St. Dom's Housing Associates Limited Partnership for renovations at St. Dominic's Apartments, 42 Gray Street, Portland, Maine; and

BE IT FURTHER ORDERED, that the City Council hereby authorizes the City Manager or his or her designee to execute any and all documents necessary or convenient to carry out the intent of this Order.

MEMORANDUM
City Council Agenda Item

TO: Mayor and City Council

FROM: Planning and Urban Development Department
Housing and Community Development Division

DATE: September 19, 2016

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

SUBJECT: Order Authorizing Financial Assistance in HOME Program Funds to the
Portland Housing Authority: Mixed-income Rental Housing at 58 Boyd
Street, East Bayside; and to Developers Collaborative: St. Dominic's
Apartments at 42 Gray Street, West End.

SPONSOR: Jill Duson, Chair
Housing Committee

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st reading October 5, 2016 **Final Action** October 17, 2016

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

The approval of the HOME Funds is needed within this time frame for the 58 Boyd Street project. To be eligible for state low income housing tax credits (LIHTC) applicants must submit a completed Qualified Allocation Plan (QAP) by October 27, 2016. The allocation of Home Funds will be part of their QAP and will help the project be more competitive for limited state funding.

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

Jeff Levine, Planning & Urban Development Director will be available to provide information as requested.

I. SUMMARY OF ISSUE (Agenda Description)

On February 24, 2016, the Housing Committee approved application criteria for staff to identify and recommend eligible development projects to apply for 2016 HOME Funds distributed by the U.S. Department of Housing & Urban Development (HUD). The application went out to the public on May 2nd and closed on June 30th. Three proposals were received by the City. On September 14, 2016, the Housing Committee (the Committee) voted to recommend to the City Council allocations for funding to support Portland Housing Authority's 58 Boyd Street Project in East Bayside and repairs to Developer Collaborative's St. Dominic's Apartments in the West End.

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

The City Council must authorize the use of HOME Fund loans for housing development applications.

III. INTENDED RESULT

For the City to allocate funding to two of the three applicants. One allocation would be a loan of \$191,000 in HOME Funds to Developers Collaborative make necessary repairs to the St. Dominic's Apartments. As a condition of the funding the applicant will set aside 25% of the units for individuals or households residing in a Portland shelter.

The second allocation would be a loan of \$64,000 to support Portland Housing Authority's development of 48 units of mixed income rental housing at 58 Boyd Street.

IV. COUNCIL GOAL ADDRESSED

Promote housing production by removing regulatory barriers, providing or expanding financing programs and investigating the use of City owned land for housing purposes.

Portland's future development should enhance and balance the city's needs for adequate and affordable housing, a diversified tax base by promoting commercial and industrial development and being the home for a large array of educational, recreational, cultural and artistic institutions.

V. FINANCIAL IMPACT

58 Boyd Street

2016 HOME funds request: \$64,000, 0% interest rate loan, deferred for 30 years or until the sale or transfer of the property.

In 2015, this project requested \$360,000 in HOME Funds but was only allocated \$136,000. Since their initial application in 2015, Portland Housing Authority has been able to secure other funding subsidies allowing them to reduce their total request to \$200,000. After accounting for the \$136,000 allocated in 2015, Portland Housing Authority is only requesting \$64,000 in 2016 HOME Funds.

2016 City investment/unit = \$1,333.33 Total City investment/unit (\$200,000) = \$4,166.67

St. Dominic's Apartments

HOME funds request: \$191,000, 0% interest rate loan, deferred for 30 years or until the sale or transfer of the property.

City Investment/unit \$15,916.67

VI. STAFF ANALYSIS

As part of the RFP process the City received three applications for housing projects. All three proposals are quality projects that are in line with the City's goals for housing. Listed below is a brief analysis of each applicant's proposal. Due to the length of each application, only overviews of each application are attached to this memo.

St. Dominic's Apartments:

The applicant, Developers Collaborative, purchased St. Dominic's Apartments in June of this year. The property consists of a three story historic structure located at 42 Gray Street in the West End. Originally built in 1865, the building was redeveloped into 12 units of low income housing in 2003 utilizing State Low Income Tax Credits (LIHTC).

Due to issues from the 2003 construction, lack of professional active management, and deferred maintenance on the property while under past ownership the Developers Collaborative submitted a request for \$254,485 in HOME funds to help make the necessary repairs to the building. Because the building is still in its LIHTC compliance period it is not feasible to utilize tax credits for the necessary repairs.

In addition to making the necessary maintenance improvements for providing decent, safe, and affordable housing for its residents, Developers Collaborative have proposed setting aside 25% of the units for individuals or families residing in a Portland shelter.

One of the benefits of this proposal highlighted in staff's review, is that this project does not need to wait for awards of other public funding sources, such as LIHTC, in order to be utilized. Most new affordable development projects need additional time to layer other subsidy sources to complete a project after the City has awarded HOME Funds. By comparison, the application of funds for the St. Dominic's project would be almost immediate.

Although Developers Collaborative has requested approximately \$254,000 in HOME Funds, due to requests from other applicants the Committee is recommending that the City provide \$191,000 instead so that additional funds may be distributed to other project(s).

58 Boyd Street:

The Portland Housing Authority (PHA) is proposing to construct approximately 48 units of mixed-income rental housing. The project will offer 4 efficiency units, 24 one-bedroom units, 8 two-bedroom units, and 12 three-bedroom units. 45% of the units will be available to households earning at or below 50% of the area median income, 40% of the units will be available to households earning at or below 60% of the area median income, and 15% of the units will be market rate. The owner/developer is the Portland Housing Development Corporation (PHDC), a subsidiary of PHA.

The review committee supports the positive impact this development will have on the surrounding neighborhood. The project has the potential to be part of a larger multi-phased project that could include up to approximately 90 units of housing. The viability of this larger project will likely depend on the realignment of Franklin Street and its effect on the size of the land immediately adjacent to 58 Boyd Street. The project has been designed in a way to allow for future development should the realignment of Franklin make such a project feasible.

The 58 Boyd Street project was granted to approximately \$136,000 in funding through last year's HOME application process. In 2015, PHDC requested \$360,000 and was granted \$136,000. Since that time PHDC was able to obtain additional subsidies from the Federal Home Loan Bank and now only needs a total of \$200,000. Because \$136,000 in HOME Funds were already committed to this project last year, PHDC is only requesting \$64,000 from the 2016 HOME Fund pool. Allocating this additional \$64,000 from the 2016 grant would leave \$191,000 non-CHDO funds for other applicants.

This project does not require a zoning amendment to move forward. However, the PHDC is likely to seek an amendment to the height permitted on this site in order to allow for additional housing development in the future, should a Franklin Street realignment take place.

977 Brighton Ave:

Avesta Housing Development Corporation submitted an application requesting \$326,743 in 2016 HOME Funds to support the development of 25 units of affordable senior housing at 977 Brighton Ave. Fifteen units will be reserved for seniors earning up to 50% of Area Median Income (AMI) and ten units would be reserved at 60% AMI. The project is located in close proximity to public transportation, banking, medical services, and retail operations making it a good fit for senior housing.

The project is designed to help alleviate the growing need for affordable housing for Maine's aging population. Maine currently ranks second in the nation for the number of people over 65 and has the highest median age of all states. Both the Committee and staff do not recommend funding this project at this time but hope that Avesta will reapply for next year's funding round.

This project will require a zoning amendment, either a map change or a text change, to move forward. The applicant is discussing possible approaches to a rezoning request with staff at this time, but there is no set timeframe for Planning Board and Council review.

Scoring and Funding Recommendations:

Jeff Levine, Planning & Urban Development Director and Tyler Norod, Housing Planner met on August 25th to review and score the proposals. The proposals were reviewed according to the selection criteria stated in the Application. The selection criteria and the average scoring results are listed below.

SELECTION CRITERIA/ MAXIMUM VALUE	Developers Collaborative (St. Dominic's)	Portland Housing (58 Boyd St)	Avesta (977 Brighton Ave)
PROPOSED USE OF FUNDS (Assigned weight: 30)	27.5	29	29
FINANCIAL FEASIBILITY (Assigned weight: 25)	23.5	22	20
APPLICANT'S ABILITY TO COMPLETE PROJECT (Assigned weight: 25)	25	20	18
IMPACT ON SURROUNDING NEIGHBORHOOD (Assigned weight: 20)	20	16.5	16.5
TOTALS	96	87.5	83.5

All three proposals are quality projects in line with the City's goals for housing. Unfortunately, all three proposals cannot be funded at 100% of their request. St. Dominic's Apartments received the most points and therefore the bulk of the recommended funding in part because they were considered to be more ready to immediately use the funds making the project more financially feasible and more ready to be completed. Although staff is not recommending that the City fully fund their request for \$254,485, the \$191,000 in funding would allow for a majority of the necessary repairs to be completed while simultaneously allowing the HOME Funds to be used to support another project.

Portland Housing Authority's proposal for 58 Boyd Street also scored well once again according to the City's application criteria. Points were not maximized because the project did not appear to be as ready to proceed as St. Dominic's and because they are providing affordable housing in an area that already offers similar housing stock. Because the PHDC was already awarded \$136,000 in HOME Funds in 2015, staff recommends awarding \$64,000 in funding from the 2016 HOME Funds allocation to complete their total request for \$200,000.

At this time staff does not recommend funding Avesta's project at 977 Brighton Ave due in part to its higher cost per unit compared to the 58 Boyd Street project and its project readiness compared to St. Dominic's Apartments project. That said, staff hopes that that, should the zoning amendment process go well, Avesta would consider reapplying next year once additional HOME Funds have been allocated by the federal government.

As part of the Maine State Housing Authority's (MSHA) Qualified Allocation Plan (QAP) application due in October, the developers are requesting letters of commitment of support for their projects prior to the October QAP submission deadline. If the Council agrees with the Committee and staff recommendation, this letter would be conditioned on the completion of all standard commitment requirements, and the following additional recommendations:

1. The commitment will be subject to compliance with all HOME Program regulations including, but not limited to, cost allocation, designation of HOME units and compliance with the new HOME Final Rule (effective August 23, 2013) and the Consolidated and Further Continuing Appropriations Acts of 2012 and 2013.

2. The commitment will include the requirement that the environmental review process be satisfactorily completed. The City's agreement to provide funds will be conditioned on the determination to proceed with, modify or cancel the project based on the results of the environmental review.
3. Commitment of funds to be stated as "an amount up to the funding request based on maximization of LIHTC equity raise", to ensure that the City's contribution is leveraged to the maximum extent possible.
4. Documentation acceptable to the City that the acquisition cost is reasonably related to market value. This is a HOME Program requirement.
5. Commitment should be subject to the projections and assumptions noted in the project budgets and pro-forma submitted and the City reserves the right to reconsider and adjust their commitment if any significant alterations occur in the budget. A final commitment will be subject to a final budget.
6. Any substantial changes to the composition of the project, or the financial investment required, will be brought back to the committee and the council for review and approval.

An allocation of HOME funding from the Council is not the same as approval of the overall project. After carefully weighing the potential benefits and impacts on the City and surrounding neighborhood against the standards in the Land Use Ordinance, the Planning Board will ultimately determine if a project meets those standards. Any funding awarded will be contingent on the project's final approval by the Planning Board.

VII. RECOMMENDATION

Staff is recommending approval of this request.

It is requested that the City Council set the Public Hearing on this item for the City Council meeting scheduled on October 17, 2015 at 7:00 p.m.

VIII. LIST ATTACHMENTS

The attachment contains a summary of the 58 Boyd Street, St. Dominic's Apartments, and 977 Brighton Avenue HOME funds applications.

Prepared by:

Tyler Norod, Housing Planner
Housing and Community Development Division

Date: September 19, 2016



June 8, 2016

City of Portland: Housing and Community Development Division
Attention: Mary Davis
389 Congress Street, Room 312
Portland, ME 04101

Re: 2016-2017 AHD HOME Funds Application for St. Dominic's Apartments

Dear Mary:

I am writing to submit the attached HOME Funds Application for St. Dominic's Apartments. We are currently in the process of purchasing the ownership interest of St. Dominic's Apartments, with a scheduled closing date of June 30. With this transfer of ownership, the building will also be under new management by Avesta Housing.

The HOME Funds are the only feasible source for correcting the years of deferred maintenance and mismanagement of the building. As the project is still in its LIHTC compliance period, it is not feasible to utilize tax credits nor will MaineHousing allow raising some of the rents from 50% AMI to 60% AMI. Thus there is no source of either capital or operating funds that will allow needed repairs. HOME Funds would allow us to make some necessary repairs and improvements for the existing tenants, and in return we would set aside a full 25% of units for individuals or families residing in a Portland shelter.

We hope you will find our supporting materials informative and comprehensive. We look forward to the prospect of working with the City to improve St. Dominic's Apartments.

Sincerely,

Kevin Bunker
Developers Collaborative

III. APPLICATION REQUIREMENTS

A. *Project Summary*

St. Dominic's School Apartments is currently a twelve unit affordable apartment building located at 42 Gray Street in Portland, Maine (see Exhibit C: Site Location). It is a three-story brick structure that was first constructed as a Catholic grammar school in 1865, and is listed on the National Historic Register and subject to historic preservation guidelines. In 2003, an adaptive reuse financed by LIHTC converted the building to apartments, with twelve units added in the former classroom spaces and preservation of the main hallways and circulation spaces. The building was added upon with a new egress stair tower and the roof was penetrated such that certain third floor units rise up into an effective fourth-level mezzanine with small rooftop decks. A Capital Needs Assessment was completed in 2014 and will serve as the basis for renovations that we hope to complete with HOME funds (see Exhibit H: Capital Needs Assessment and Exhibit I: Cost Estimate). Many of the necessary renovations are due to issues from the 2003 construction, lack of professional active management, and deferred maintenance on the property since then.

HOME funds are especially critical to this project in order to preserve the deeper subsidy 50% units, which are becoming more rare as MaineHousing incentivizes as many 60% units as possible. Since the project is still within its 15 year LIHTC compliance period, it is not financially feasible to re-syndicate (as was possible with Rosa True), nor will MaineHousing contemplate loosening income restrictions to increase project cash flow and provide a source for making even modest repairs over time.

The project has consistently lost money over the years due to its condition, and a downward spiral of disinvestment in the building has been accelerating for several years now. While it is never projected to cash flow significantly, some stability in the capital improvements will allow for more active maintenance and professional management that should prevent such problems in the future.

Concurrent with this application, the Project is in the process of transferring ownership control to Kevin Bunker of Developers Collaborative (see Exhibit A: Purchase and Sale Agreement) and will then be managed by Avesta Housing. Affordability restrictions set four units at 60% AMI and eight units at 50% AMI, and the term of affordability is 91 years, secured by a land use restriction covenant in the deed. However, with this funding, St. Dominic's would set aside 25% of the units in the Project for individuals or families residing in a Portland shelter (see section 14 below).

St. Dominic's Apartments is located in the R-6 district, which permits multifamily dwellings and has a purpose "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."

St. Dominic's has an occupancy policy that prohibits smoking in the units and the interior common areas of the project, includes a non-smoking clause in the lease for every household, and makes educational materials on tobacco treatment programs available to residents through

the resident service coordinator, occupancy specialist, or property manager, such as the phone number for the statewide Maine Tobacco HelpLine.

St. Dominic's meets the accessibility requirements of the Fair Housing Act and Section 504 of the Rehabilitation Act of 1973. The building provides visual and acoustical privacy between units while maximizing natural light and ventilation within units. No environmental issues have been identified and the building will meet the requirements of the City of Portland's Green Building Code.

B. All Applications Must Provide the Following:

1) Evidence of site control (see Exhibit A: Purchase and Sale Agreement, dated May 27, 2016)

2) Conceptual architectural and site plans (see Exhibit B: Architectural and Site Plans)

3) A project schedule showing critical path events and their timeframe for completion:

Transfer of Ownership Closing: June 30, 2016

Construction Closing: January 2017 (can be sooner depending on timing of funds)

Construction Complete: May 2017

4) Map showing location of site (see Exhibit C: Site Location)

5) Corporation/partnership articles and by-laws (see Exhibit D: GP Articles and By-laws).

6) St Dom's Family Housing Inc.'s DUNS Number is 007049742.

7) Most recent audit or federal tax returns for the last three years and financial statements for the last two years (see Exhibit E: Financial Statements).

8) We are not seeking CHDO funds so have not provided documentation demonstrating certification or eligibility to obtain certification as a CHDO.

9) A brief development team summary:

- St. Dom's Housing Associates Limited Partnership owns the project and will be composed of 99.99% St. Dom's Housing LLC and 0.01% owned and controlled by St. Dom's Family Housing Inc. All shares of stock in the GP will be held by Kevin Bunker. Developers Collaborative Predevelopment LLC ("DC") will be the developer of the project and will operate through a development services agreement with St. Dom's Housing Associates Limited Partnership. DC is controlled and solely owned by Kevin Bunker..

- Kevin Bunker is the sole member of the General Partnership and manager of the developer LLC. He has developed over 300 units of Low Income Housing Tax Credit (LIHTC) projects since 2007.
- Brief description of similar projects completed:
 - Rosa True, Portland: renovation of existing affordable housing, 10 affordable family apartments, completed 2016
 - St. Andre's, Biddeford: renovation of existing affordable housing, 35 units of affordable elderly apartments, completed 2015
 - Mission Hill, Biddeford: historic preservation/adaptive re-use, 15 units of affordable elderly apartments, completed 2015
 - River Landing, Topsham: new construction, 36 units of affordable elderly apartments, completed 2015
 - Osprey Circle, South Portland: new construction, 48 units of affordable elderly apartments, completed 2014
 - Hyacinth Place, Westbrook: historic preservation/adaptive re-use, 37 units of affordable family apartments, completed 2013
 - Emery School, Biddeford: historic preservation/adaptive re-use, 24 units of affordable elderly apartments, completed 2012
 - Healy Terrace, Lewiston: historic preservation/adaptive re-use, 32 units of affordable elderly apartments, completed 2011
 - Gilman Place, Waterville: historic preservation/adaptive re-use, 35 units of affordable family apartments, completed 2010
 - Birch Hill Apartments, Lewiston: new construction, 20 affordable elderly apartments, completed 2010
- A list of all projects currently in development with status and projected timeframe:
 - Motherhouse, Portland: historic preservation/adaptive re-use, 88 affordable and market-rate elderly apartments, scheduled to be completed in Spring 2018
 - Hodgkins School, Augusta: historic preservation/adaptive re-use, 47 affordable elderly apartments, scheduled to be completed in Fall 2016
 - St. Ignatius, Sanford: adaptive re-use, 66 affordable elderly apartments, scheduled to be completed in Fall 2017

10) A sources and uses funding statement (see Exhibit F: Sources & Uses, Exhibit G: Capital Needs Assessment, and Exhibit H: Cost Estimate)

11) Preliminary operating budget identifying rents and expenses for the first year (see Exhibit I: Rents and Expenses)

12) A 15-year operating pro forma for the project (see Exhibit J: 15-year Operating Pro Forma)

13) The applicant has sufficient financial capacity for and experience in raising the type of capital needed to finance projects of this size and type and larger. As previously mentioned, Kevin Bunker has developed ten other LIHTC projects since 2007 and is currently developing three other LIHTC projects (see section B(9) for a list of these projects).

14) With this funding, St. Dominic's would set aside 25% of the units in the project for individuals or families residing in a Portland shelter. The City's Health and Human Services Department would be responsible for providing referrals, providing or coordinating supportive services and financial resources to assist with monthly rent payments. A Memorandum of Understanding between the City and St. Dominic's will document the services and expectations prior to disbursement of the City's funding.

15) St. Dominic's will be managed by Avesta Housing, located in Portland, Maine. Avesta has assets of \$180 million, an annual operating budget of \$26 million and a staff of approximately 100 employees. Avesta owns or manages more than 1,900 apartments and has staff certified as National Center for Housing Management Tax Credit Specialists and Certified Occupancy Specialists.

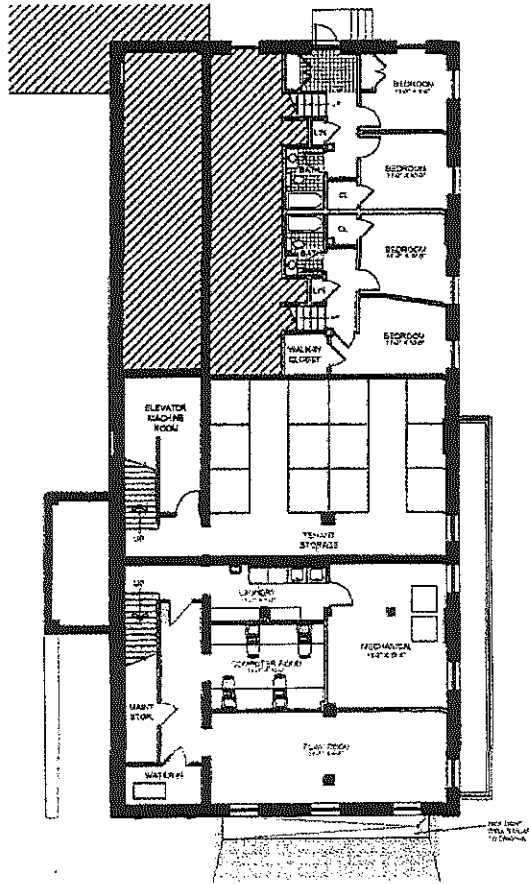
16) An analysis and discussion of market demand justifying the need for the proposed project:

St. Dominic's is currently operating with ten out of twelve occupied units but has been unsatisfactorily managed. With the transfer of ownership, Kevin Bunker will hire Avesta Housing as the property manager, and we do not anticipate any difficulty leasing St. Dominic's units at 95-100% occupancy. In the same neighborhood, Rosa True, another DC Project, has had eight units at 100% occupancy with a waiting list. In addition, based on the 2014 American Community Survey (ACS) 1-Year Estimates, the median household income for Portland is estimated at \$50,691. 11,139 households (37% of all households) make 69% or less of the median household income, most of whom would qualify to live at St. Dominic's.

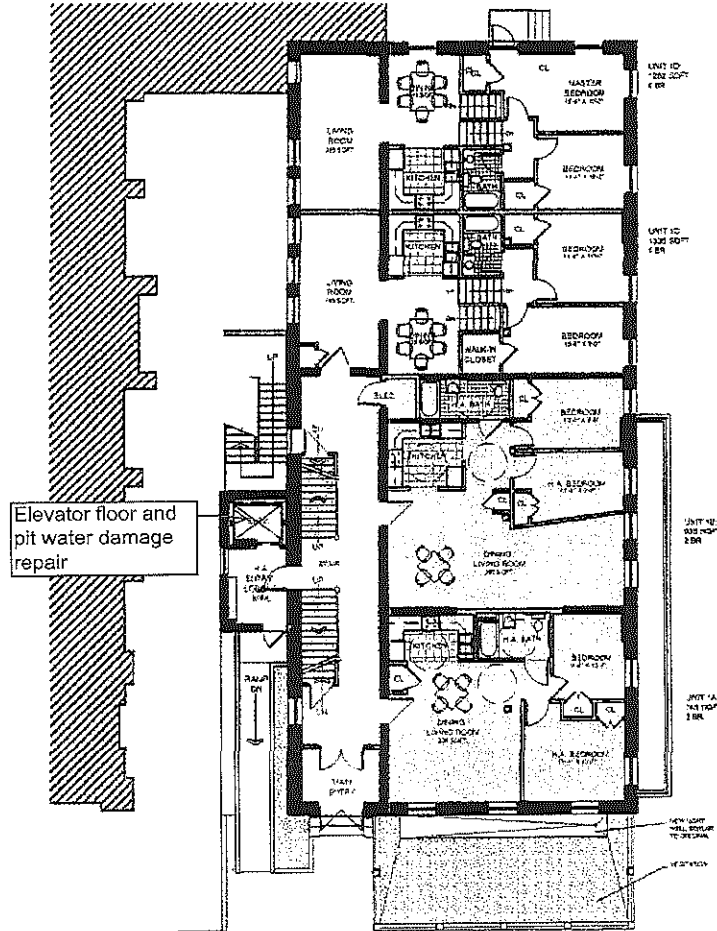
Portland's vitality depends on the availability of a diverse array of housing options, particularly apartments, which are often the first and only choice for working professionals, immigrants, and families. Over the last five years, a number of trends have solidified:

- 62% of Portland households earn less than the county's median income, including 38% of homeowners and 81% of renters.
- Over the last decade, the number of households earning less than median income has increased 10%.

As a result of these trends, the Portland Press Herald recently published a series called "No Vacancy," the work of a team of journalists who documented "Portland's unforgiving housing market. What they found was a city in harsh transition as wealthy newcomers displace less affluent residents." The need for quality, low income housing is clearly growing. Under new ownership and management, these proposed renovations will provide necessary improvements at St. Dominic's Apartments for families in need. And, these renovations can be done at a fraction of the cost of developing new apartments but will have much the same effect: adding new safe, decent, permanently affordable units to the housing stock. Finally, we are committing to help the most vulnerable homeless population, above and beyond the City requirement.

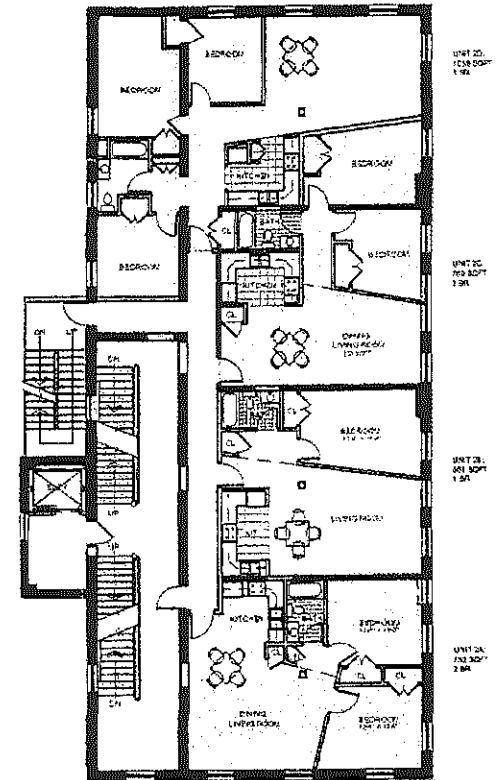


BASEMENT / LOWER LEVEL
SCALE: 1/8" = 1'-0"



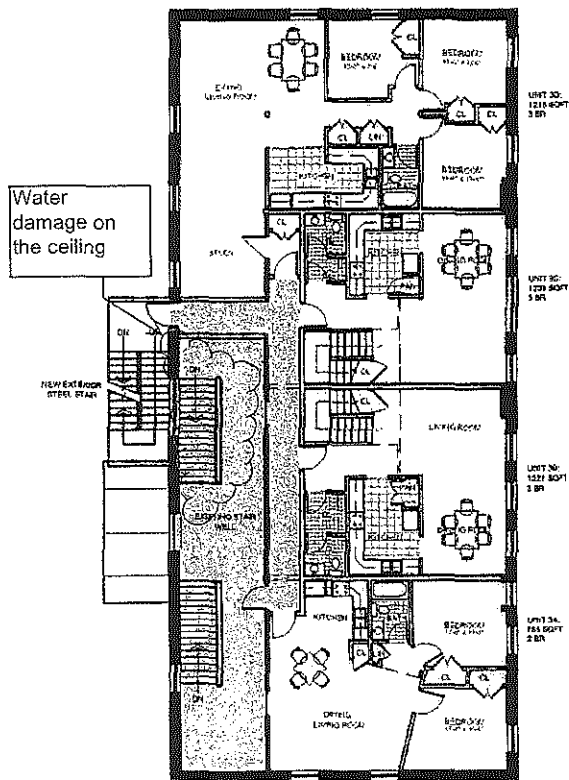
FIRST FLOOR
SCALE: 1/8" = 1'-0"

FIRST FLOOR SUMMARY
UNIT TOTAL: 4312 SQFT
PUBLIC: 678 SQFT
NOTE: UNIT TOTALS DO NOT INCLUDE THE
MECHANICAL ROOMS OR STAIRS AND ELEVATOR
SHAFTS.



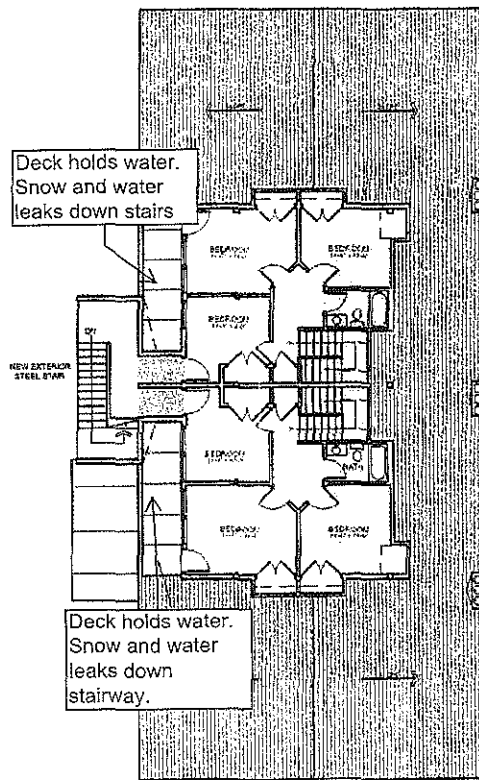
SECOND FLOOR
SCALE: 1/8" = 1'-0"

SECOND FLOOR SUMMARY
UNIT TOTAL: 3254 SQFT
PUBLIC: 1195 SQFT
NOTE: UNIT TOTALS DO NOT INCLUDE THE
MECHANICAL ROOMS OR STAIRS AND ELEVATOR
SHAFTS.

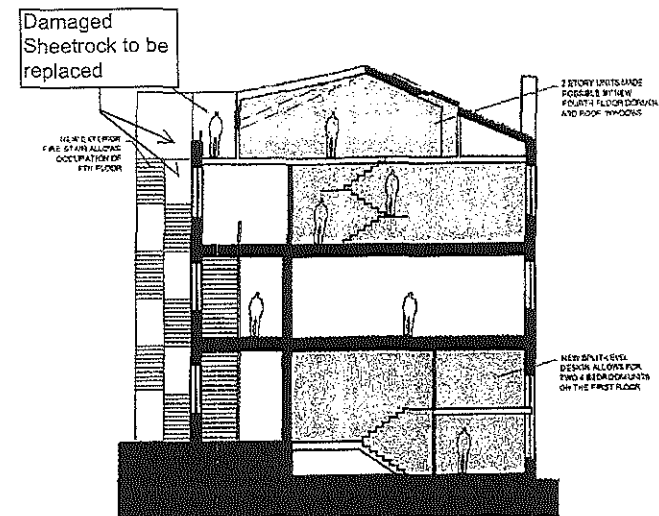


THIRD FLOOR
SCALE: 1/16" = 1'-0"

SECOND FLOOR SUMMARY
UNIT TOTAL: 4830 SQFT
PUBLIC: 1271 SQFT
NOTES: UNIT 3000 HALL MULTICOLOR TO
MATCH UNIT 3000 HALL MULTICOLOR TO
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FOURTH FLOOR
SCALE: 1/16" = 1'-0"

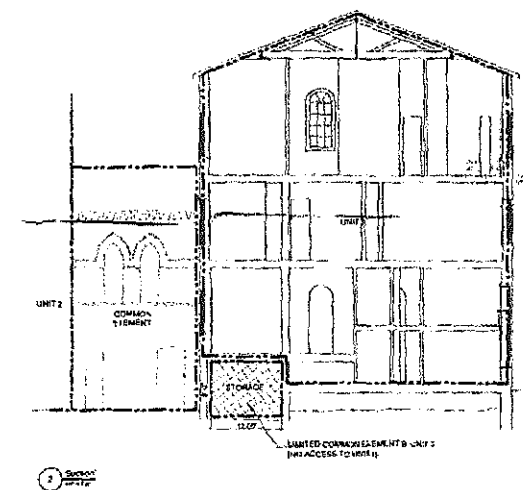
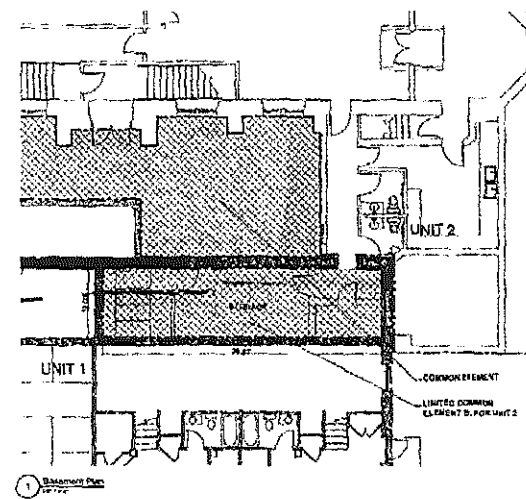


SCHEMATIC SECTION
SCALE: 1/16" = 1'-0"

SUMMARY OF UNITS				
	1 BDRM UNITS	2 BDRM UNITS	3 BDRM UNITS	4 BDRM UNITS
3RD & 4TH FLOOR		1 750 SQFT	3 1215 SQFT 1230 SQFT 1230 SQFT	
SECOND FLOOR	1 560 SQFT	2 740 SQFT 740 SQFT	1 1315 SQFT	
FIRST FLOOR		2 740 SQFT 740 SQFT		2 1282 SQFT 1282 SQFT
TOTAL	1 841 SQFT	5 2215 SQFT	4 4835 SQFT	2 2612 SQFT
TOTAL OF 12 UNITS				

TOTAL UNIT SQUARE FOOTAGE: 14,877 SQFT - INCLUDES 10' PARTY WALL, EXCLUDES EXTERIOR WALL
TOTAL COMMON CIRCULATION STAIRS FOOTAGE: 3,144 SQFT - INCLUDES EXTERIOR WALL, PLANT ROOM, JAN CIRCULATION
TOTAL COMMON SPACES SQUARE FOOTAGE: 2,711 SQFT - INCLUDES LAUNDRY, COMBINATION PLANT ROOM
MEDICAL, PROJECT MAINTENANCE AND STORAGE
TOTAL PROJECT SQUARE FOOTAGE: 15,098 SQFT

STATE OF MAINE PLANNING & DESIGN
 1000 BROAD ST. 3RD FLOOR
 PORTLAND, ME 04102
 PHONE: 581-1234 FAX: 581-1234
 E-MAIL: info@plandesign.com
 www.plandesign.com



CONDOMINIUM PLAT ST. DOMINIC'S CONDOMINIUM
 Declarant: St. Dominic's Housing Association Limited Partnership
 And Jack Higgins, Owner
 PORTLAND, MAINE

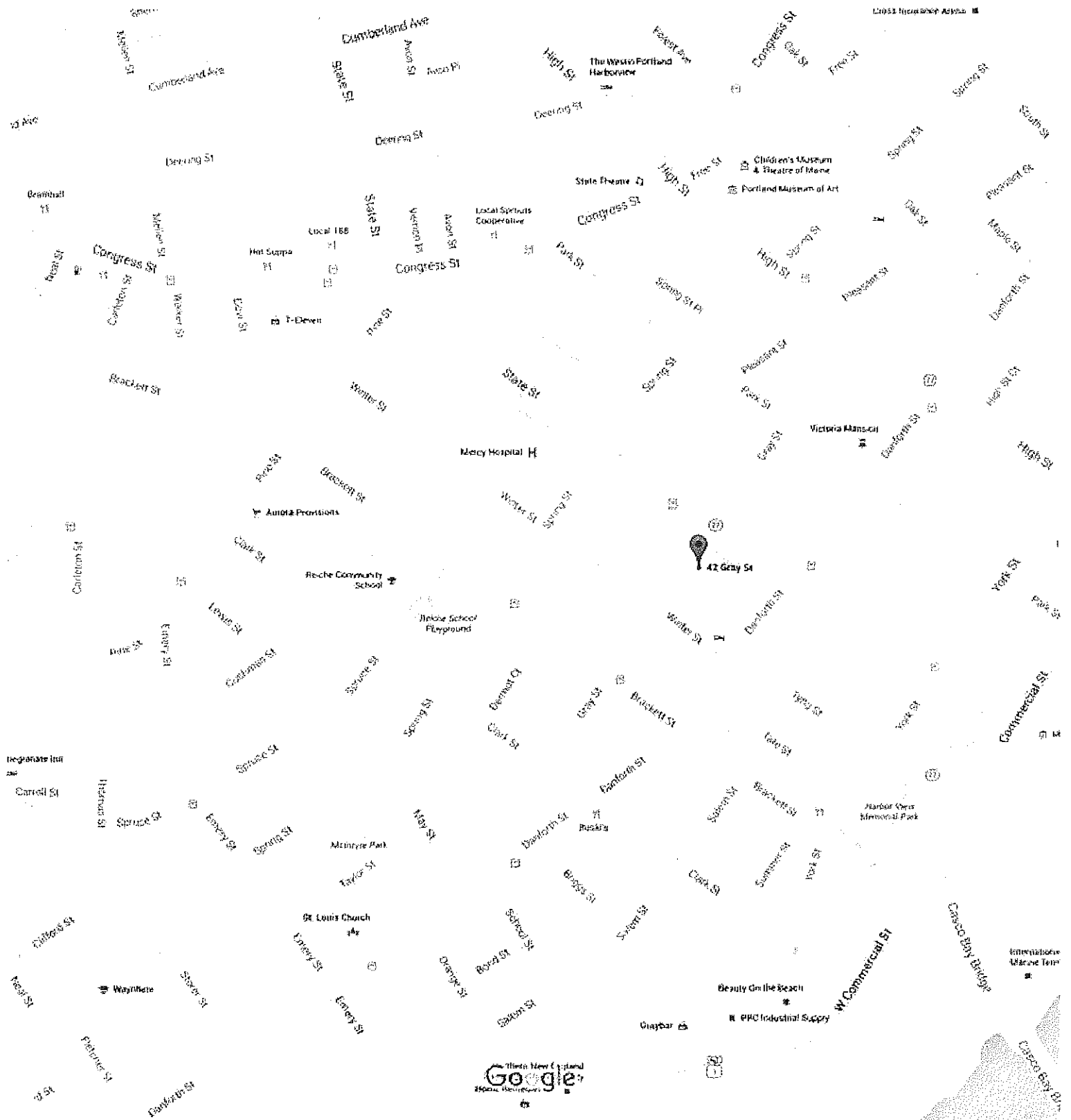
THIS DOCUMENT IS FOR THE CONDOMINIUM PLAT ONLY. IT IS NOT TO BE USED FOR ANY OTHER PURPOSE. ANY REUSE OF THIS DOCUMENT WITHOUT THE WRITTEN PERMISSION OF THE ARCHITECT IS PROHIBITED.

REVISED
 BY: J. HIGGINS
 DATE: 12/15/01

DATE: December 12, 2001
 PROJECT NO.: 010
 DRAWN BY: J. HIGGINS
 CHECKED BY: J. HIGGINS
 SCALE: 1/8" = 1'-0"

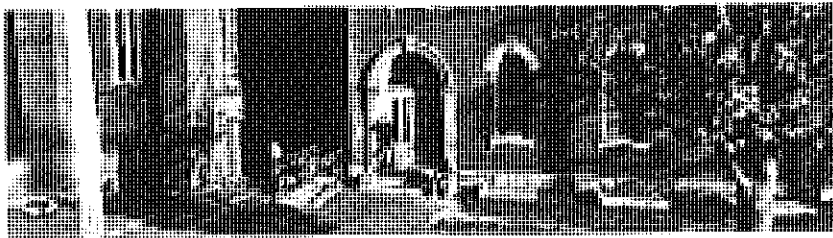
SHEET 11-
 Condominium
 Detailed Plan
 Section

CON 2





42 Gray St
Portland, ME 04102



Google Maps



Estimate of Renovation Items

St. Dominic's

Affordable Apartments

42 Gray Street, Portland, Maine 04101

ESTIMATED BY HEATHER LUMB

	DESCRIPTION	TOTAL
1	Roof top deck does not drain and currently has standing water causing damage to EPDM and possibly substrate. Once water becomes deep enough it leaks through the stairwell doorway damaging 2 floors of sheetrock on the stairwell wall. Remove decking and reinstall EPDM, allowing for draining of roof. Correct drywall damage. \$4500.	\$26,000
2	Correct drain gutters for flow of water, install new down spout.	\$4,000
3	Historic windows require new storm/screens for energy saving improvement	\$37,000
4	Elevator Floor needs repair. New base flooring to be installed. Monitor and ensure pump is maintained. Seal base.	\$8,000
5	Change out energy efficient low flow faucets. Also Change fixtures in apt #4 bathroom	\$7,000
6	Lighting change out to energy efficient LED fixtures inside and outside the building.	\$13,500
7	Dumpster enclosure needs new siding enclosing all four sides with an ADA access.	\$4,850
8	Masonry work to the chimney that is pulling away from the building. Partial rebuild.	\$12,000
9	Unit #1, lower counters \$1,600 and replace lower cabinets. \$2400.	\$4,000
10	Cosmetic improvements in the common areas are needed. Refinish wood floors \$8,800 and painting all wall surfaces in accordance with historic agreement. \$7,400	\$16,200
11	Common Area ceiling repairs Approx. 200sqft. Drywall and paint.	\$5,400
12	Landscaping, Trim trees and appropriate signage. 10 trees, ADA signs, Apt sign.	\$7,600
13	Asphalt, overlay existing parking lot area. Approx. 12000 sqft	\$72,000
14	Change reinstall catch basin when improving parking lot.	\$3,000
15	Install master controlled thermostats in the units with limiters.	\$2,800
16	Paint ADA ramp Iron fencing. \$2000 Repair/install railing around lower level egress. \$6000	\$8,000
17	10% Contingency	\$23,135
18		\$0
TOTAL		\$ 254,485

PORTLAND HOUSING DEVELOPMENT CORPORATION

**City of Portland, Maine
Affordable Housing Development
HOME Funds Application
2016-2017**

58 Boyd Street Apartments

June 10, 2016

**Contact:
Jay Waterman
Development Director
Portland Housing Authority
14 Baxter Boulevard
Portland, Maine 04101**

PORTLAND HOUSING DEVELOPMENT CORPORATION
14 Baxter Boulevard
Portland, Maine 04101

June 10, 2016

Mary Davis
City of Portland - Housing and Community Development Division
389 Congress Street
Portland, Maine 04101

Subject: 58 Boyd Street Apartments Affordable Housing Development
Response to RFP – HOME Funds 2016-2017

Dear Mary,

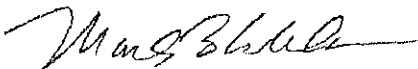
Portland Housing Development Corporation is pleased to submit this response to the City of Portland's Affordable Housing Development HOME Funds 2016-2017 Application. 58 Boyd Street Apartments is a 48 unit multi-family development in the heart of the East Bayside neighborhood that will compliment our Bayside Anchor project nearby.

This project is one of the first steps in Portland Housing Authority's master planning process looking at the renovation and redevelopment of up to 1000 units of housing throughout Portland and the creation of new affordable housing on under-utilized parcels of land within PHA's portfolio. PHA's East Bayside campus is at the forefront of planning efforts in the area that include a recently awarded Brownfields study grant, the Franklin Street redevelopment study, a Bayside transportation planning study and the East Bayside neighborhood plan.

Portland Housing Development Corporation and the PHA are excited that 58 Boyd Street Apartment will potentially be a part of the growth of this wonderful part of Portland.

Thank you for your consideration.

Sincerely,



Mark B. Adelson, President

Portland Housing Development Corporation 58 Boyd Street Apartments – Project Summary

Overview of Development Proposal

Portland Housing Development Corporation is initiating the next phase of development in the East Bayside neighborhood to continue to strive for one of our strategic planning goals of increasing the supply of affordable housing in the City of Portland.

Unit Mix

We are proposing to develop a 48 unit multi-family apartment building for families with the following tentative unit mix: Efficiency – 8 units; 1 bedroom – 20 units; 2 bedroom – 12 units; 3 bedroom – 8 units; TOTAL - 48 units

Affordability

- 65% of the units will be for households making at or below 50% of the Area Median Income (about \$38,550 for a family of 4).
- Of the 65%, half of the units (24) will have Project Based Rental Assistance.
- 15% of the units would be for households earning up to 60% AMI.
- 20% of the units would be market rate.
- 10% of the units will have a set-aside for homeless households
- Another 10% of the units will have a preference for homeless or disabled households

Response to Selection Criteria

Criterion 1 - Achieving City Goals and Addressing Demonstrated Need

Market demand – Please see our market demand analysis in Section B.16 that demonstrates the inadequacy of the existing supply of apartments to meet demand.

Economic diversity - Our program includes 10 market rate units (20%) in a census tract that had 54% of its residents living below the poverty line as of the 2010 Census. We have also discounted our market rate rents by 10%-15% below what a recent market study showed for market-rate rents. By doing this, we are trying to reach the “workforce housing” households that the City is targeting in their recent housing needs study. Remaining units are targeted to households earning below 50% and 60% of area median income allowing for additional income diversity.

No smoking - 58 Boyd Street Apartments will prohibit smoking in units and interior common areas as well as having a non-smoking clause in tenant leases. Additional information on management’s smoking policy can be found in Section B.14-15 regarding the management agreement and supportive services.

Criterion 2 - Financial Feasibility

The financial projections included herein have been developed directly with our architectural design team and looking at current development and operating budgets of active projects. Hard and soft costs of development are based on both the specifics of the conceptual plans as well as experience with comparable developments in Portland. Operating expenses are consistent with area developer experience and using data from partners on the Bayside Anchor project. Rents are 11% to 64% below market (ensuring a strong competitive position within the market). Finally, the financial projections - including prefunded replacement and operating reserves - conform to MSHA underwriting standards and the project characteristics should yield an extremely competitive application in the upcoming LIHTC round at MSHA. Please see attached Section B11, 12 Financial Analysis.

Criterion 3 - Applicant Ability and Project Readiness

The development team assembled for 58 Boyd Street Apartments features many of the most experienced and capable players in affordable housing in Portland and Maine.

Owner/Developer **PHDC** is the development subsidiary of Portland Housing Authority (PHA) PHA is the largest landlord in Portland and also manages the largest Section 8 program in Maine. **Jay Waterman**, PHDC's Director of Development, brings 6 years of experience as Avesta Housing's Director of Development and another 6 years as a leader in green building construction while at Thornton Tomasetti, an international engineering and green building consulting firm based in New York. Jay developed one of the recent affordable multi-family communities in the Bayside neighborhood, Pearl Place Phase I.

The project's Management Agent, **Avesta Housing Management Corporation** manages properties and reviews operating budgets for over 2,000 units in Maine including several hundred in Portland. PHDC will work closely with Avesta to ensure a financially viable project for the long-term.

CWS Architects is the premier architectural firm in the Portland area working on the design of multi-family buildings. They are designing the first ever multi-family *Passive House* project in the State of Maine and will use this knowledge to design 58 Boyd Street Apartments to the same standard. Sub-consultants to CWS include **Carroll Associates Landscape Architects, Becker Structural Engineering, Bennett Engineering and Ransom Civil Engineering.**

58 Boyd Street Apartments is well positioned to move from planning and design into production upon receipt of City and LIHTC funding. HUD approval for the transfer of the site will be received in advance of the LIHTC award, which will allow for unimpeded progress through the local development review process. The team plans to work through the planning board process during the course of late-Summer and Fall 2016 and will be ready for construction in the summer of 2017.

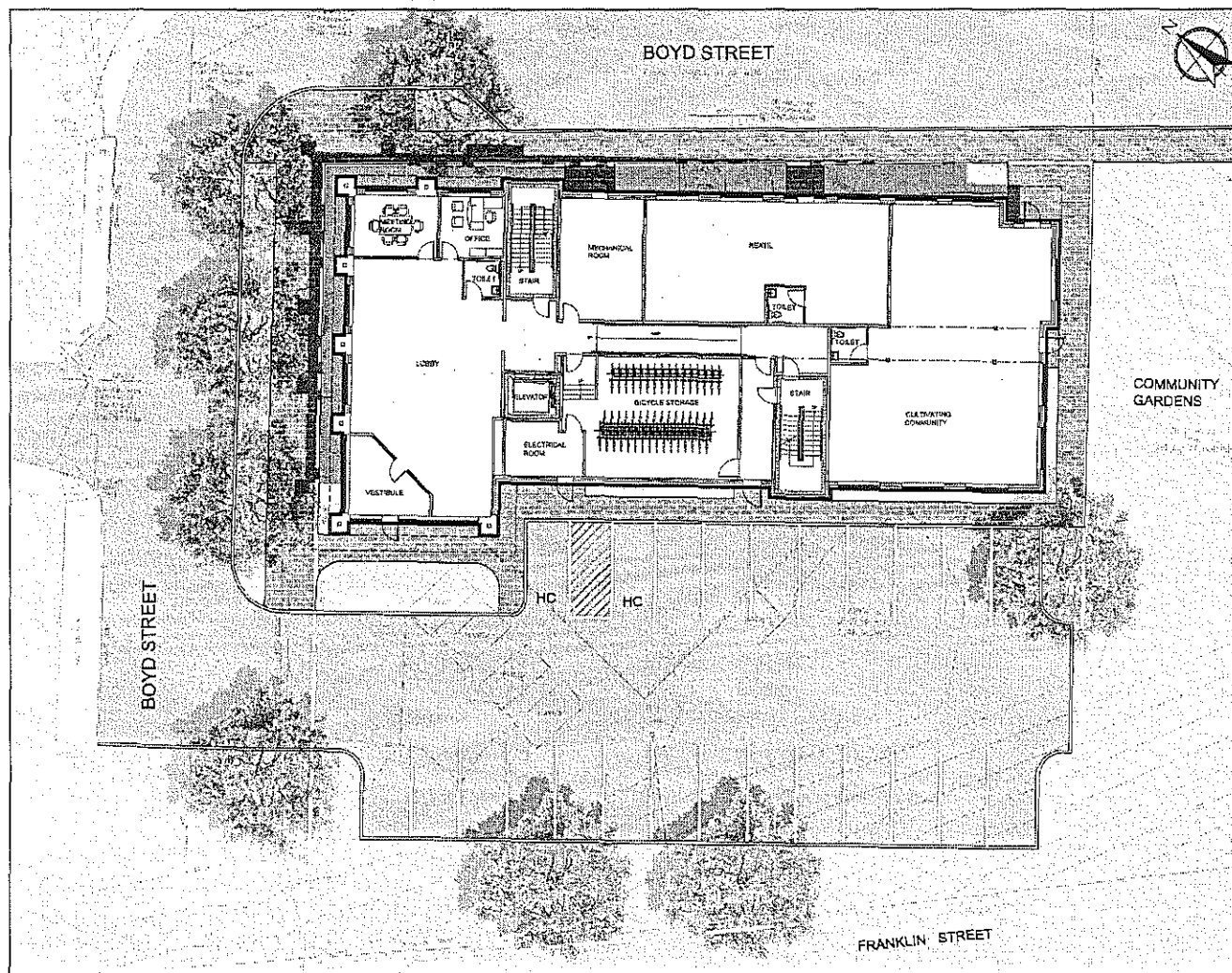
Criterion 4 - Impact on Surrounding Neighborhood, Design Compatibility and Environmental Issues

The site is located in an existing residential neighborhood with a mix of owner-occupied and rental housing. Multifamily rental is appropriate for and compatible with the site.

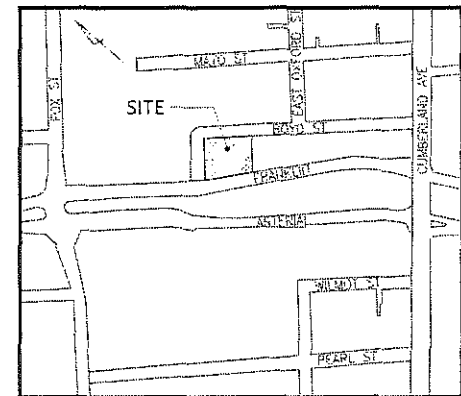
58 Boyd Street Apartments' design is consistent with the style and type of construction historically found in East Bayside and other residential neighborhoods on the Peninsula. We are currently in discussions with City planning staff regarding our request for a taller building than is allowed in the R-7 zone. Given other projects along the same Franklin Street corridor (Illuminato Condos) increasing to 77 feet in height and the West Bayside Height Overlay anywhere from 85 feet to 125 feet in height, we feel our building should enhance the higher density areas such as the Franklin transportation corridor with a building that is at least 70 feet tall.

Replacing a relocating office building and Head Start School with a high performance, human-scaled apartment building that will have an active connection to the adjacent gardens represents a significant step in the process of restoring the neighborhood fabric that existed in East Bayside before Urban Renewal. Units are designed to serve the needs of residents with a focus on comfortable temperatures and excellent indoor air quality. Amenities include community facilities, common laundry room and community/event space.

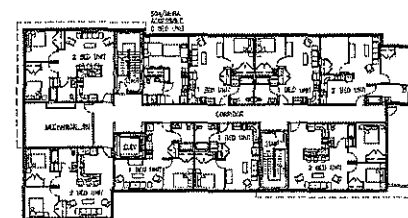
58 Boyd Street Apartments' design will meet and significantly exceed the City's Green Building Code. The team's design professionals (CWS Architects) are leaders in the *Passive House* ultra-low-energy building movement including Community Housing of Maine's first Passive House building in the State of Maine, scheduled to open in 2016. 58 Boyd Street Apartments employs the *Passive House* principles of plentiful fresh air, passive solar design, superinsulation and airtightness, used in conjunction with highly efficient energy recovery ventilation, to dramatically reduce energy demand and simplify overly complex and expensive multifamily mechanical systems.



SITE PLAN
SCALE: 1"=10'-0"



LOCATION MAP
SCALE: NTS



FLOOR PLAN LEVEL 6
SCALE: 1"=20'-0"

OWNER:

58 BOYD STREET, LP
14 BAXTER BLVD.
PORTLAND, ME 04101

ARCHITECT:

CWS ARCHITECTS
434 CUMBERLAND AVE
PORTLAND, ME 04101

58 BOYD ST APARTMENTS Portland, ME

MARCH 14, 2016



CWS ARCHITECTS
CUMBERLAND ASSOCIATES
1000 BAXTER BLVD. 2ND FLOOR
PORTLAND, ME 04101
503.774.1111



58 Boyd St, Portland, ME

 Search nearby: hotels, restaurants

58 Boyd St

Portland, ME 04101

 Directions

 Save



Explore this area

Search nearby

Add a missing place

At this location

Traffic, Shopping, Terrain

(Marginal Way), ME

Wireless
r Sales

Coffee By Design

World Gym

Rising Tide
Brewing Company

Kennedy Park

58 Boyd St
10 min drive - Home

Elz Chaim Synagogue /
Maine Jewish Museum

The Cathedral of the
Immaculate Conception

Congress Plaza

58 Boyd Street Apartments

Financing – Sources and Uses

PHDC is requesting \$200,000 from the City of Portland Fed HOME RFP as gap financing for this project. The funds would be in the form of a 0%, deferred loan with a 30-year term.

A year ago we had requested \$360,000 of HOME funds and received approximately \$136,000 of CHDO HOME funds. We are looking to replace the CHDO funds with non-CHDO funds but decrease our overall request to \$200,000. With the award of Federal Home Loan Bank funds, we have reduced our needed gap funding. PHDC may become a CHDO in future years, but this project needs to move faster than the time it would take to convert PHDC to a CHDO, so we are looking to convert to non-CHDO funds.

PHDC plans to submit this project to MaineHousing for their Fall 2016 Low Income Housing Tax Credit round. LIHTC equity and associated MaineHousing Federal HOME funds, FHLB AHP funds and subsidized debt will make up the bulk of the financing with City HOME funds filling the gap.

We are requesting funds as of the June 10 deadline in the hopes that our project would have a commitment letter from the City to use as leveraged funds in our tax credit application.

Preliminary Source and Uses

Sources		
MH Interest Only Mortgage	0	
MH Subsidy	460,000	
City FedHOME	200,000	
AHP Loan	2,267,565	
FHLB Subsidy	500,000	
Net Syndication	6,190,219	711,591 Credit Allocation
Sponsor Loan	184,799	
Total	9,802,583	
Uses		
Construction	7,527,450	\$149.94 /sf Construction
Soft Costs	828,559	
Finance Costs	98,125	
Miscellaneous	161,143	
Acquisition	0	
Reserves	437,307	
Developer Fee	750,000	
Total	9,802,583	204,220 Gross TDC / Unit
		197,837 Adj. TDC / unit

City of Portland

Affordable Housing Development

HOME Funds Application

Project:

977 Brighton Avenue
Portland, ME 04102

Submitted by:



307 Cumberland Avenue
Portland ME 04101

June 9, 2016



977 Brighton Avenue Senior Housing Project Summary

Avesta Housing Development Corporation requests \$326,743 under the City of Portland's Development of Affordable Housing HOME Funds Application RFP to provide critical financing for the development of 977 Brighton Avenue Apartments.

The proposed development will include 25 one- and two-bedroom apartments for people ages 55 and over with incomes at 50% and 60% of the Area Median Income with a term of affordability for a minimum of 90 years. Fifteen apartments will be reserved for seniors at 50% AMI, and 10 apartments will be reserved for seniors at 60% AMI. Projected rents for are estimated to be 42% lower than comparable market-rate apartments. 977 Brighton Avenue is strategically located within close proximity to public transportation, banking, medical services and retail operations, making it an ideal location for a senior community. Residents will not only enjoy the close proximity to these services but the businesses and civic institutions will continue to derive benefit from the patronage and participation of the senior community.

977 Brighton Avenue would help address Maine's growing need for senior housing. Maine ranks second in the nation for the number of people over age 65 and has the highest median age of all states. Currently more than 9,000 new units of senior housing are needed statewide to meet demand. Additionally, far too many seniors face severe housing affordability problems. Of the 86,000 low-income households in Maine paying more than 50% of their income toward housing, close to 40% (34,000) are over age 55.

This project would provide quality affordable housing for the growing number of seniors who call Portland home. Portland's senior population will grow by nearly 11% between 2014 and 2019. Many of these people have lived in this community their entire lives but face the stark reality of no longer being able to afford or maintain their current home.

Avesta knows senior housing in Portland is in high demand, as there are currently 312 households waiting for 76 apartments at Avesta's two existing senior communities in Portland. A market study for a previously planned senior project nearby concluded the project is well-located in a market that has strong demand for housing for low-income households, and would therefore lease up quickly, in five months (see attached market study for additional information).

977 Brighton Avenue will also bring economic diversity to the neighborhood by serving senior households with incomes between \$27,000-\$37,000 a year. The Area Median Income as defined by HUD, by comparison, is \$77,300.

The property will be non-smoking (see attached non-smoking policy for more information). In addition the project commits to set-aside 10% of the units for individuals or households residing in a Portland shelter. The City's Health and Human Services Department would be responsible for providing referrals, providing or coordinating supportive services and financial resources to assist with monthly rent payments. A Memorandum of Understanding between the City and the Developer would document the services and expectations.

In addition to the City FedHOME funds sought through this application, the project will be financed through an AHP grant and AHP subsidized loan, an affordable housing TIF, and federal Low Income Housing Tax Credits. Since the project will use tax credits as a primary funding source, the ownership



977 Brighton Avenue Senior Housing Project Summary

entity will be a limited partnership. A Maine limited partnership named Avesta 977 Brighton LP will own the project. The General Partner of the LP entity will be Pinecone Housing Corporation, of which Avesta Housing Development Corporation is the sole member.

Avesta has a distinguished track record of developing and operating housing for the extended benefit of the community. Avesta currently owns or manages over 2,000 residential apartments. With over 40 years of developing and managing housing projects, Avesta has the experience and expertise to ensure long-term compliance, maintenance and affordability. The current 15-year operating budget assumes a graduated annual increase in rents (2% in years 1-5, 2.5% in years 6-10, and 3% in years 11-15; and a 3% annual increase for operating expenses. This budget includes a pre-funded operating reserve (required by Maine State Housing) with additional annual reserve deposits (see attached Pro-Forma and 15 Year Operating Budget for more detail).

977 Brighton Avenue Apartments will build upon Avesta Housing's commitment to construct and subsequently manage buildings that are long-term community assets. It will be designed to maximize energy performance, minimize adverse environmental impacts, provide healthy living spaces, conserve natural resources and promote sustainable development. The project will comply with the City of Portland's Green Building Code, Maine State Housing's Green Building Standards, and Avesta's own green design guidelines. In addition, the project will meet ADA accessibility requirements and provide handicap units, as well as meet all fair and equal housing regulations as required.

977 Brighton Avenue is located in the RP – Residential Professional Zone, which currently does not allow multi-family housing. Avesta's proposed development will require zoning relief which we are currently working on with the City's Planning Staff. The form of zoning relief requested will not require contract zone or conditional zoning and would be consistent with the City's Comprehensive Plan. We anticipate that the zoning relief would involve either a text amendment to the RP zone allowing multi-family housing of the density we require or a map change for the property or area to a zone consistent with the requirements of the project, likely B2B. We anticipate Planning Board approval by January 2017. The project will utilize 8 lots on the corner of Brighton Avenue and Wessex Street to build a single structure that complements the existing neighborhood, which is comprised of commercial, mixed-use, multi-family and single-family residential buildings. These lots are zoned for a mix of residential and commercial uses. This proposal will help preserve the quiet, residential character of the neighborhood better than commercial developments that are permitted for the zoning.

CWS Architects will be the architect for the project and a general contractor will be selected through competitive bid at the time of construction commencement. Avesta Housing has worked on numerous successful projects in Portland with CWS Architects including such recent projects as 409 Cumberland Avenue and Bishop Street. The three-story, flat-roofed building will be designed as a contemporary take on New England architecture. Parking behind the building will preserve the neighborhood feel, and visual buffers and landscaping will also positively contribute to the project's compatibility with the neighborhood. Finally, the civil design of the project provides the opportunity to improve site drainage and manage storm water, to the benefit of adjacent sites and nearby watersheds.

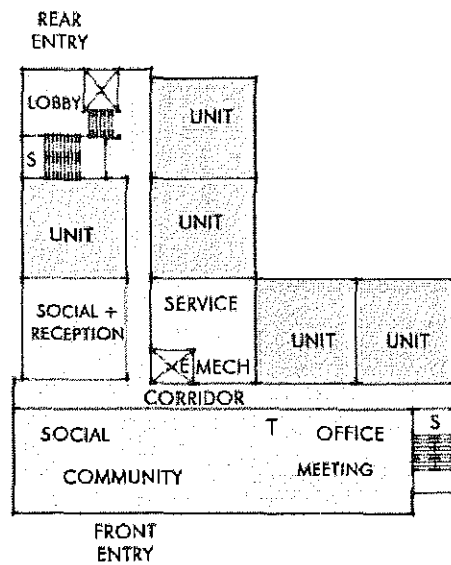
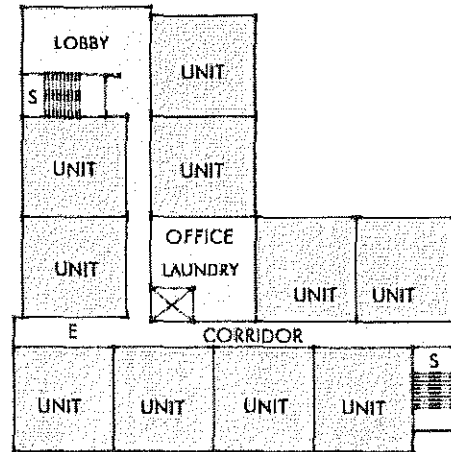
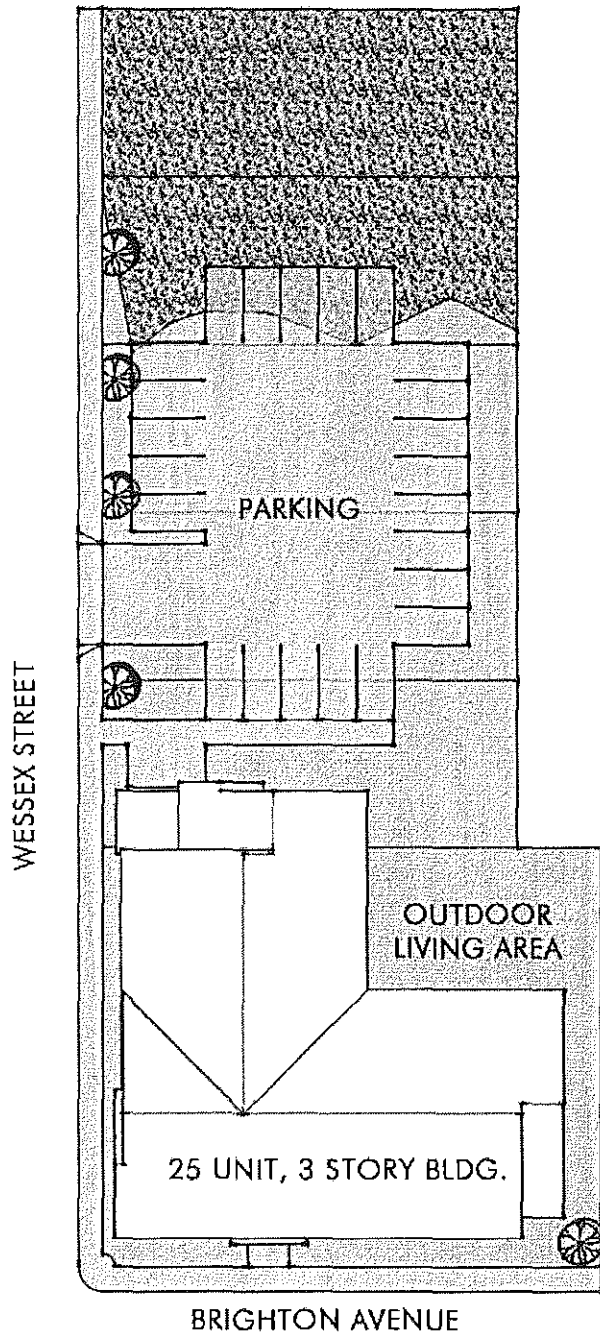
CONCEPT PROJECT SCOPE DEFINITION

977 Brighton Avenue Apartments
Portland, Maine

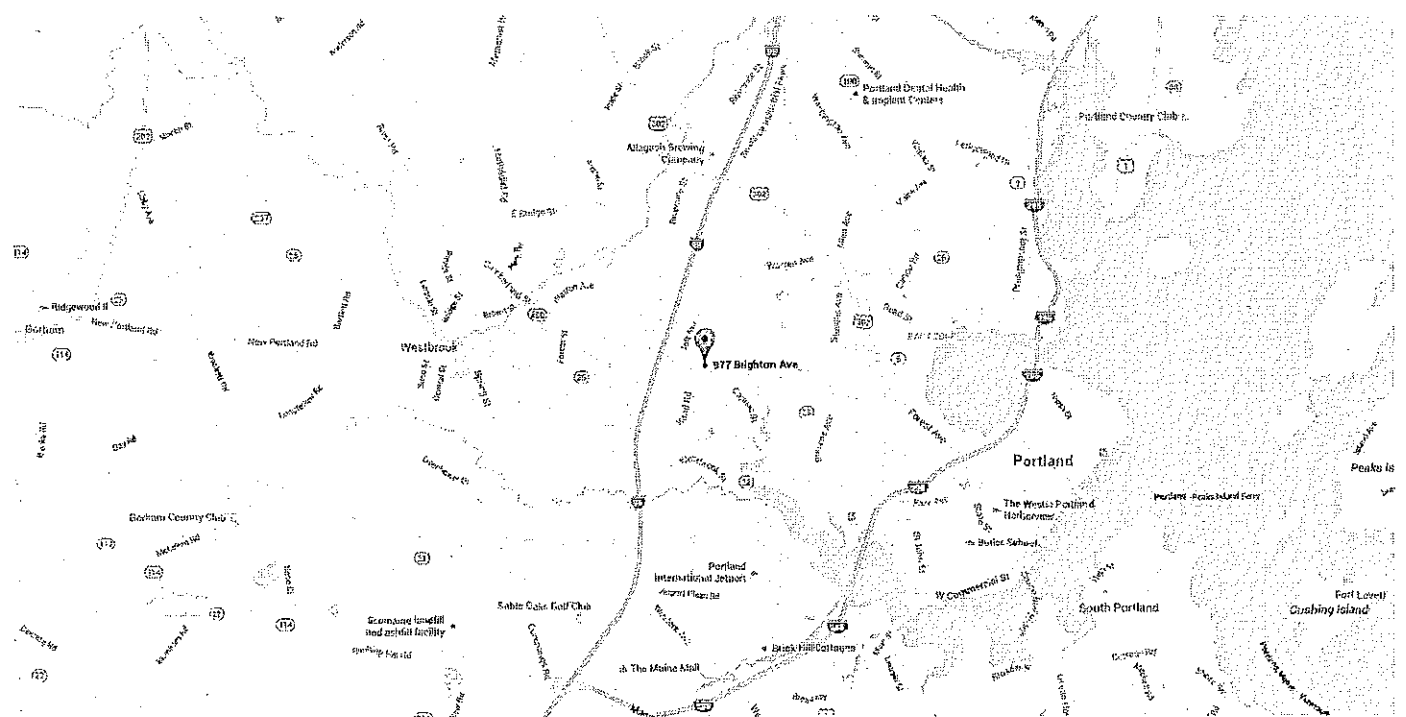


Scope Summary: New construction at 977 Brighton Avenue is a three story Type 5A protected wood frame construction residential use that will serve as a Senior Housing facility that will provide 25 one-bedroom housing units located on the corner of Brighton Avenue and Wessex Street in Portland, Maine. The vertical circulation systems consist of two stairs and one elevator in CMU shafts. Mechanical systems will primarily consist of gas fired condensing boilers supplying radiant baseboard heat, recirculating loop domestic hot water and rooftop ERV's with hot-water pre-heat and dehumidification. In addition to the residential units, the common areas will consist primarily of normal residential, service and building support spaces including social, community, meeting, service, office, laundry and mechanical spaces.

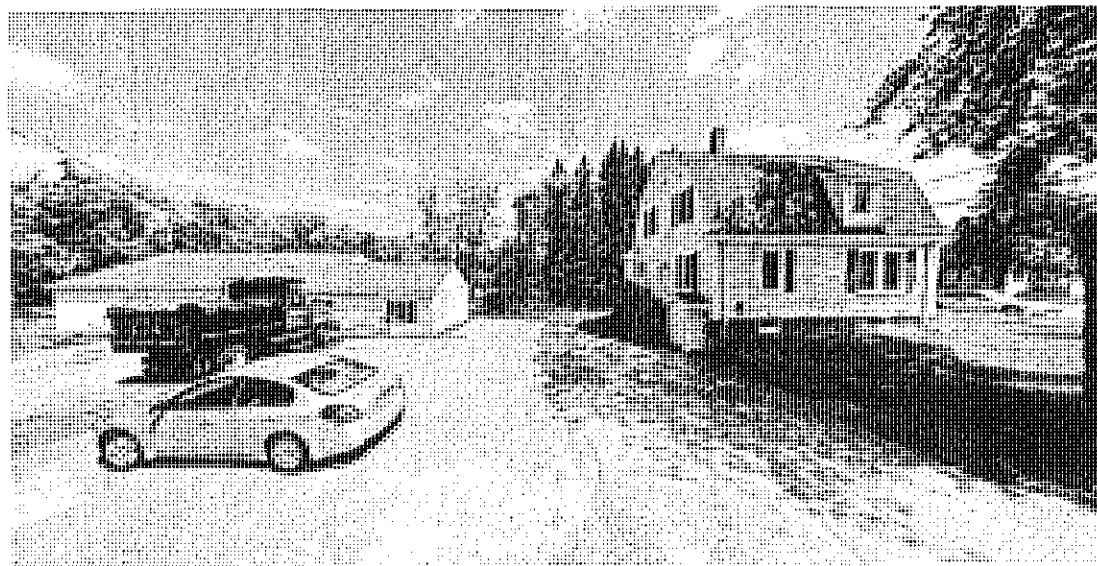
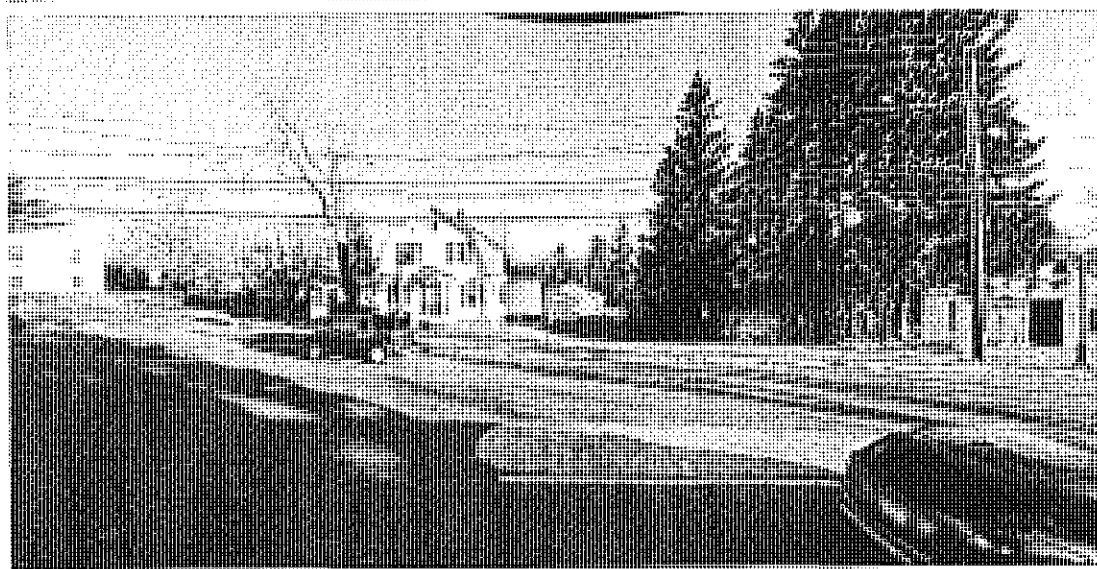
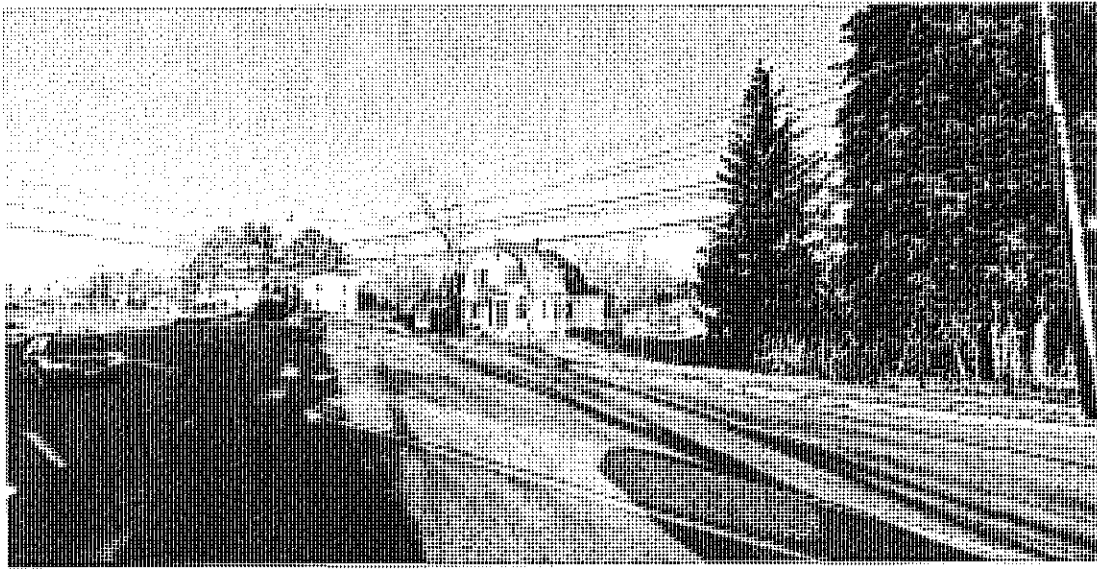
The concept site configuration indicates approximately 27 on-grade parking spaces set back from the structure, though from past experience it is likely less parking will be required and could be approved by the City. The development team has met with City staff about the use at the location. It is likely that some zone change or waivers will be required and would be supported by City staff as it is clearly meets the objectives of the City's Comprehensive plan. Some fine tuning of the building program is expected prior to submission of final development scope.



977 Brighton Avenue, Portland, Maine



977 Brighton Ave., Portland, ME



FLOW OF FUNDS									
Sources	CLC Oct-16	Dec-16	During Construction			PLC Nov-17	Jan-17	Jun-17	Total
			Mar-17	Jun-17	Sep-17				
Beginning Cash	0	0	0	0	0	0	0	0	0
Capital Contribution	125,964		125,964			795,210	162,500	50,000	1,259,638
Construction Loan	395,995	19,476	595,255	721,219	721,219				2,453,163
GP Bridge Loan									0
MSHA Subsidy	681,854					681,854			1,363,709
MSHA Amortizing Mortgage						0			0
AHP Grant	0	375,000				375,000			750,000
AHP Loan						866,858			866,858
City HOME		326,743							326,743
Other	0	0							0
Other	0								0
Other									0
Development Fee Loan						100,000			100,000
TOTAL SOURCES	1,203,813	721,219	721,219	721,219	721,219	2,818,922	162,500	50,000	7,120,111
Uses									
Acquisition	293,000								293,000
Construction		721,219	721,219	721,219	721,219				2,884,875
Soft Costs	586,885								586,885
Financing Costs	96,750								96,750
Miscellaneous	87,178					30,000			117,178
Dev Fee	140,000					172,500	162,500	50,000	525,000
Reserves						163,259			163,259
TOTAL DEV. COSTS	1,203,813	721,219	721,219	721,219	721,219	365,759	162,500	50,000	4,666,947
Repay GP Bridge Loan						0			0
Repay Construction Loan						2,453,163			2,453,163
SUBTOTAL OTHER ITEMS	0	0	0	0	0	2,453,163	0	0	2,453,163
TOTAL USES OF FUNDS	1,203,813	721,219	721,219	721,219	721,219	2,818,922	162,500	50,000	7,120,111
Ending Cash	0	0	0	0	0	0	0	0	0

PROJECT FINANCING								
Source	Amount	Rate	Term	Lien	Annual D/S			
					Yr. 1-5	Yr. 6-15	Yr. 16-30	
Source 1: MSHA Subsidy	1,363,709	0.00%	30	First	0	0	0	
Source 2: MSHA Interest Only Mortgage	0	6.00%	30	First	0	0	0	
Source 3: AHP Grant	750,000	0.00%	30	Co-First	0	0	0	
Source 4: AHP Loan	866,858	2.50%	30	Second	41,102	41,102	41,102	
Source 5: City HOME	326,743					Grant		
Source 6: Other	0					Cash Flow		
Source 7: Development Fee Loan	100,000					Cash Flow		
Source 8: Net Syndication	1,259,638	\$0.95						
Capitalization Gap (Surplus)	0							
Total	4,666,947							

COLLATERAL COVERAGE		
	Total	Per Unit
Projected Mortgage	0	0
Appraised Market Value	446,680	17,867
Market Rent Differential	0	0
Supportable Mort.: Unrestricted	#VALUE!	#VALUE!
Subsidy per Unit		54,548
Subsidy per Low Income Unit		54,548

Order 66-16/17
Tab 14 10-5-16

ETHAN K. STRIMLING (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
EDWARD J. SUSLOVIC (3)
JUSTIN COSTA (4)

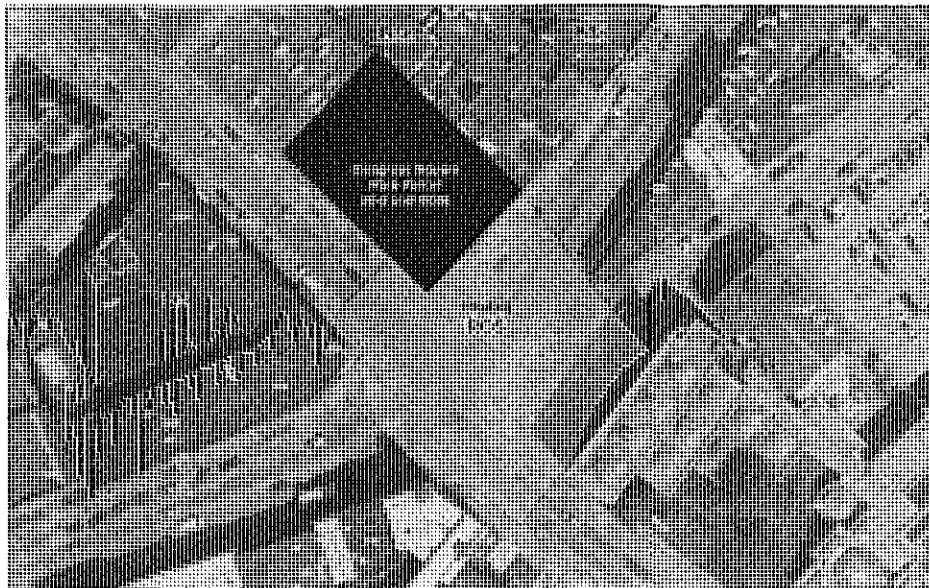
**CITY OF PORTLAND
IN THE CITY COUNCIL**

DAVID H. BRENERMAN (5)
JILL C. DUSON (A/L)
JON HINCK (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

**AMENDMENT TO ZONING MAP
RE: CONGRESS SQUARE AS RECREATION OPEN SPACE**

**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 and specifically rezoning the entire area of Congress Square Park as Recreation Open Space (ROS), shown as the "Congress Square Park Parcel" in the figure attached hereto.



MEMORANDUM
City Council Agenda Item

TO: Mayor and City Council

FROM: Caitlin Cameron, Urban Designer, Planning and Urban Development Department

DATE: 9/19/2016

DISTRIBUTION: Jon Jennings, City Manager; Mayor Ethan Strimling; Anita Lachance, Assistant City Manager; Danielle West-Chuhta, Corporation Counsel; Victoria Morales, Associate Corporation Counsel; Sonia Bean, Nancy English, and Julie Sullivan

SUBJECT: Zoning Map Amendment to Recreation Open Space (ROS) Zone for Congress Square Park

SPONSOR: Elizabeth Boepple, Portland Planning Board

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st reading 10/05/16 Final Action 10/17/16

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

I. SUMMARY OF ISSUE (Agenda Description)

On September 13, 2016, the Planning Board unanimously voted (7-0) to recommend to City Council the proposed map amendment to rezone the city-owned "Congress Square Park" parcel to the Recreation and Open Space (ROS) zone.

II. REASON FOR SUBMISSION

The proposed zoning map amendment would increase the area of the Congress Square R-OS zone to include the entire Congress Square Park parcel held by the City of Portland that currently straddles B-3 and ROS zones. The intention is to provide consistent zoning for the Congress Square Park parcel which we now know will remain public open space as protected by the Land Bank Ordinance. This proposal requires a zoning map amendment for a portion of the parcel from B-3 to ROS.

Many on-peninsula urban open space parcels were added to the Recreation Open Space (ROS) zone in 2014 – Longfellow Square, Monument Square, Boothby Square, Bramhall Square, Bell Buoy Park, Tommy's Park, Post Office Park, Lincoln Park, and Congress Square. However, at that time, a portion of the Congress Square Park parcel was under consideration for sale to a private entity. That portion of the public parcel remained in the B-3 zone pending the sale agreement. In the summer of 2014, a citizen referendum was passed that adopted the Land Bank Ordinance which names Congress Square as a protected park and would have required a super majority Council vote to sell the land. Currently, the City is in a partnership with the Friends of Congress Square to redevelop the park through significant private fundraising, in addition to some city funds.

III. INTENDED RESULT

The purpose of this amendment is to make the zoning boundary for Congress Square consistent with the land use boundary of the public open space currently protected by the Land Bank Ordinance.

IV. COUNCIL GOAL ADDRESSED

N/A

V. FINANCIAL IMPACT

No financial impact is anticipated.

VI. STAFF ANALYSIS AND RECOMMENDATION

Staff from the Department of Planning and Urban Development developed the proposed change and support the recommendation to rezone the parcel from B-3 to ROS. The recommendation comes in advance of the Congress Square Redesign concepts.

VII. LIST ATTACHMENTS

1. Planning Board Report 9/13/16

Prepared by: Caitlin Cameron

Date: 9/16/16

Bean/agendarequestmemo/rev 11/2015



PLANNING BOARD REPORT PORTLAND, MAINE

Proposed Zoning Map Amendment
Congress Square from B-3 to ROS zoning
City of Portland, Applicant

Submitted to: Portland Planning Board Public Hearing Date: Sept. 13, 2016	Prepared by: Caitlin Cameron, Urban Designer Report Prepared: September 7, 2016
--	--

I. INTRODUCTION

A public hearing has been scheduled to consider a proposal by the City of Portland to amend the map of the Recreation Open Space (R-OS) zone to include all of the Congress Square Park parcel. A copy of the proposed zoning map is shown as Figure 2. The applicant is the City of Portland Planning & Urban Development Department.

Notice of the public hearing consisted of newspaper advertisements in the *Portland Press Herald* and 226 notices sent to area property owners in the vicinity of Congress Square.

II. BACKGROUND

The proposed map amendment relates to the R-OS zone on-peninsula. The proposal would make the whole city-owned parcel called "Congress Square Park" one consistent zone (ROS). This requires a zoning map amendment for a portion of the parcel from B-3 to ROS.

Many on-peninsula urban open space parcels were added to the Recreation Open Space (ROS) zone in 2014 – Longfellow Square, Monument Square, Boothby Square, Bramhall Square, Bell Buoy Park, Tommy's Park, Post Office Park, Lincoln Park, and Congress Square. However, at that time, a portion of the Congress Square Park parcel was under consideration for sale to a private entity. That portion of the public parcel remained in the B-3 zone pending the sale agreement. In the summer of 2014, a citizen referendum was passed that adopted the Land Bank Ordinance which names Congress Square as a protected park and would have required a super majority Council vote to sell the land; the City has since stopped pursuing the sale of the parcel.

III. PROPOSED AMENDMENTS

The proposed zoning map amendment would increase the area of the Congress Square R-OS zone to include the entire Congress Square Park parcel held by the City of Portland that currently straddles B-3 and ROS zones. The intention is to provide consistent zoning for the Congress Square Park parcel which we now know will remain public open space.

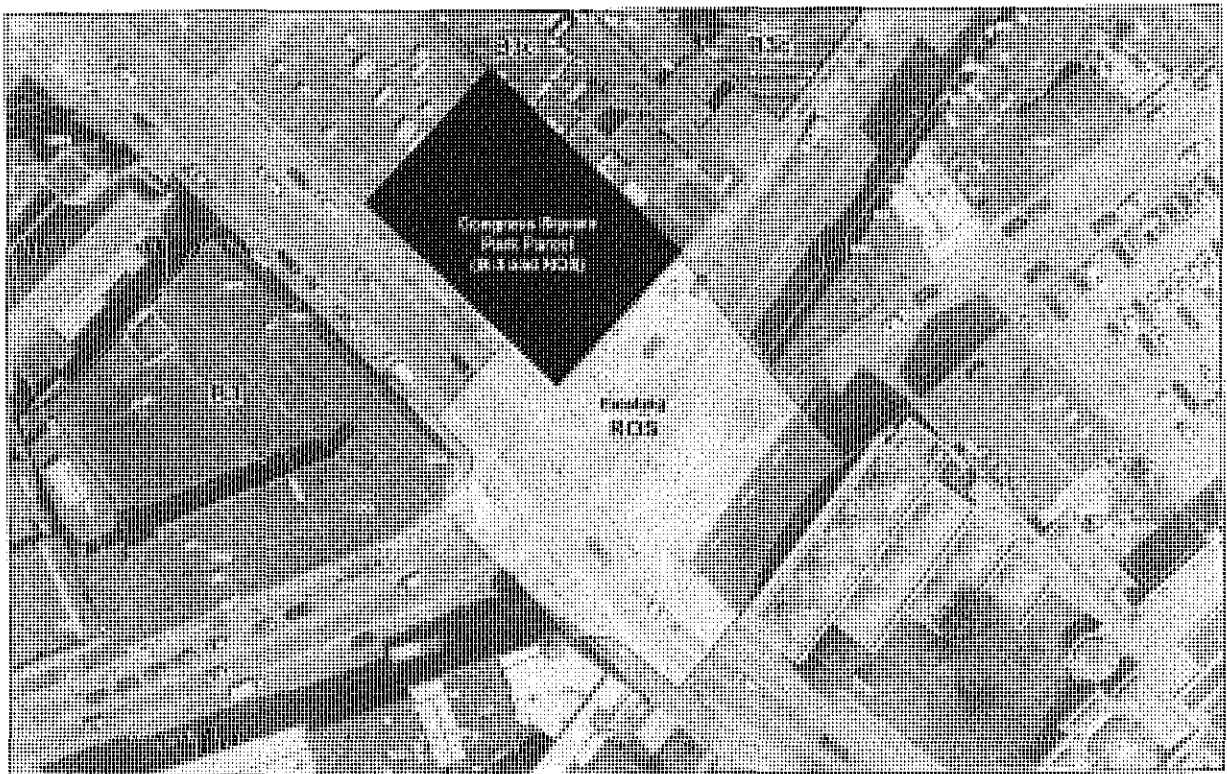


Figure 1: Existing Zoning

Proposed Congress Square ROS Map Amendment

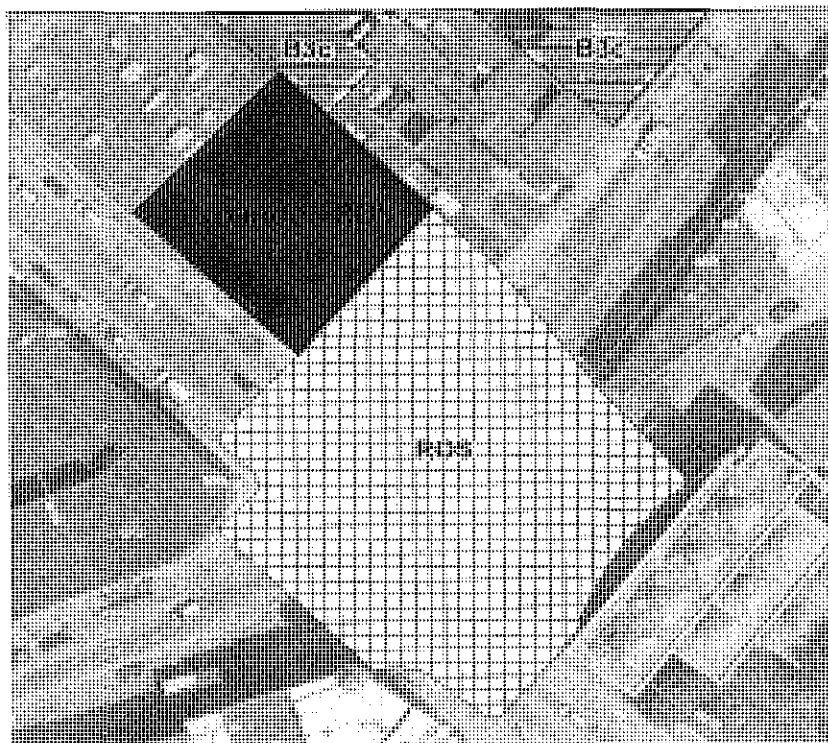


Figure 2: Proposed Zoning

IV. LAND USE POLICY

The purpose of this amendment is to make the zoning boundary for Congress Square consistent with the land use boundary of the public open space currently protected by the Land Bank Ordinance. In light of the 2014 Land Bank Ordinance protections placed on the parcel and the decision to not pursue the sale, the parcel will remain public open space and the section reserved as B-3 is no longer applicable to the land use. Therefore, ROS is an appropriate zoning designation for the entire parcel.

The map amendment would bring the Congress Square Park parcel in compliance with the following documents and initiatives:

2010 Open Space Map: The Congress Square Park parcel is listed on the City's 2010 Open Space Map as a city park.

2014 ROS Map Amendments: ROS map amendments proposed and adopted in 2014 clearly show there is an intent for all downtown public open spaces to be designated as ROS spaces.

2014 Land Bank Ordinance: This new ordinance names Congress Square, including Congress Square Park, as protected public park space.

Comprehensive Plan: The Comprehensive Plan documents referenced below address the importance of public open space in dense urban settings. Congress Square Park serves as the neighborhood open space for many surrounding residents, especially those with limited mobility. *Green Spaces Blue Edges* and the *Downtown Vision* plans specifically placed high priority on the reassessment of Congress Square Plaza, indicating the importance to the city and peninsula of this particular urban open space to remain a viable public park amenity.

Green Spaces Blue Edges (2001-2006)

Goals and Objectives:

- *Provide a wide range of recreation and open space opportunities to address the athletic, recreation, leisure, ecological, and scenic needs of Portland's diverse population.*
- *Identify, conserve, protect and enhance recreation and open space resources in the City.*
- *Foster balance in our natural and built environment that will enhance the quality of life of Portland's residents.*
- *Extend the public's range of open space opportunities and the ability to pursue its choice of use without social or economic constraint, elaborate planning, or community intervention.*

Citywide and Neighborhood Recommendations:

- *Downtown High Priority: Reassess Congress Square Plaza*

Downtown Vision (1991) – Open Space and Pedestrian Environment

- *Goal 3: Develop an open space system throughout the Downtown which provides the highest quality parks, plazas and pedestrian environment. . . .*
- *Policy OS2 Specific park improvement plans: a) Congress Square Plaza – The original plan for Congress Square, which included an outdoor café and additional amenities, was only partially executed. Since its development, this plaza has suffered from a lack of carefully-programmed activity and maintenance. Congress Square Plaza demands a careful re-assessment of what role the Plaza can and does play in the life of Upper*

Congress Street, what design alterations are needed to attain that role, and what on-going maintenance and programming will assure the Plaza's continued use.

Portland Downtown Traffic & Streetscape Study (1999)

The quality of the pedestrian environment is determined by a complex combination of numerous attributes. These attributes include:

- *The continuity of the pedestrian network;*
- *The quality of construction and maintenance;*
- *Presence of amenities such as benches and trash receptacles;*
- *Safety and convenience of street crossings;*
- *Urban design characteristics such as the presence of street trees, places to linger for social interaction and visual interest and building placement and design.*

V. MOTIONS FOR THE BOARD TO CONSIDER

On the basis of plans and materials submitted by the applicant, the policies of the comprehensive plan, and the information provided in the Planning Board Report, the Board finds that:

1. The proposed zone change (is or is not) consistent with policies of the Comprehensive Plan.

The Planning Board therefore (recommends or does not recommend) to the City Council approval of the proposed zoning map amendment from B-3 to ROS as shown in Figure 2.

Order 67-16/17
Tab 15 10-5-16

ETHAN K. STRIMLING (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
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**CITY OF PORTLAND
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**AMENDMENT TO PORTLAND CITY CODE
CHAPTER 6 BUILDINGS AND BUILDING REGULATIONS
RE: BUILDING ENERGY USE DISCLOSURE ORDINANCE**

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

WHEREAS, the City seeks to embed sustainability best practices into City operations, the City Code and across the community; and

WHEREAS, the City has an interest in reducing energy consumption citywide by increasing the energy efficiency of existing buildings located within its city limits and wishes to lead area economic development and environmental protection; and

WHEREAS, the City finds it to be in the interest of the public to adopt a standard policy regarding the efficient use of energy and water in buildings that supports economic development, improves the economic standing of the community, produces better public health outcomes and reduces emissions of greenhouse gases; and

WHEREAS, the use of fossil fuels to heat and cool buildings is a significant cause of CO2 emissions that cause global climate change; and

WHEREAS, the City is vulnerable to sea level rise and other effects of global climate change that may threaten public safety and property; and,

WHEREAS, the City wishes take action via among other things the energy efficiency best practices contained in this ordinance to mitigate the negative impacts of global climate change by reducing emissions of CO2;

NOW, THEREFORE, BE IT ORDERED, that, pursuant to 30-A M.R.S. §3001, the Code of Ordinances, City of Portland, Maine, is hereby amended by adding the following section, to be numbered City of Portland General Provisions Code of Ordinances Chapter 6 Article X, which said section shall read as follows:

ARTICLE X.

6-205. General.

The energy and water use of municipal and covered buildings shall be benchmarked in accordance with this article.

6-206. Purpose.

To encourage efficient use of energy and water and to reduce the emission of greenhouse gases, this ordinance requires owners of Covered Properties and Municipal Properties to annually measure and disclose energy usage to the Department. Furthermore, this Ordinance will authorize the Department to collect energy and water usage data to enable more effective energy and climate protection planning by the City and others and to provide information to the real estate marketplace to enable its members to make decisions that foster better energy performance.

6-207. Applicability.

This Ordinance shall be applicable to all Municipal and Covered Properties as defined in this Ordinance.

6-208. Definitions.

Benchmarking information shall mean information generated by the Benchmarking Tool, as herein defined including descriptive information about physical property and its operational characteristics. The information shall include, but need not be limited to:

- (a) Property address;
- (b) Primary use type;
- (c) Gross floor area;

(d) Site Energy Use Intensity (EUI) as defined in this section;

(e) Weather normalized source EUI;

(f) Annual greenhouse gas emissions;

(g) Water use;

(h) The energy performance score that compares the energy use of the building to that of similar buildings, where available; and

(i) Compliance or noncompliance with this Ordinance.

Benchmarking Tool shall mean the Internet-based tool developed and maintained by the United States Environmental Protection Agency to track and assess the relative energy performance and water usage of buildings nationwide.

Covered Property shall mean a parcel, as described in public records or as determined by the Department, containing any of the following:

(a) One or more non-residential building(s) where such building(s) singly or together contain more than 20,000 square feet ("Non-Residential Covered Property"); and

(b) One or more residential building(s) that singly or together contain 50 or more residential Dwelling Units whether they are rental Dwelling Units or Dwelling Units owned as condominiums, cooperatives or otherwise ("Residential Covered Property").

Department means the City of Portland Energy and Sustainability Coordinator and his or her department or office.

Dwelling Unit shall mean a single residential unit consisting of one or more habitable rooms, occupied or arranged to be occupied as a residential unit separate from all other residential units within a building, and used primarily for residential purposes and not primarily for professional or commercial purposes.

Energy shall mean electricity, natural gas, steam, hot or chilled water, heating oil, or other product for use in a building, or renewable on-site electricity generation, for purposes of providing heating, cooling, lighting, water heating, or for powering or fueling other end-uses in the building and related facilities.

Energy Performance Score shall mean the numeric rating generated by the ENERGY STAR Portfolio Manager tool or equivalent tool adopted by the department that compares the energy usage of the building to that of similar buildings.

ENERGY STAR shall mean the U.S. Environmental Protection Agency program related to improving energy efficiency in buildings and products.

ENERGY STAR Portfolio Manager shall mean the tool developed and maintained by the U.S. Environmental Protection Agency to track and assess the relative energy performance of buildings nationwide.

Energy Use Intensity (EUI) shall mean the kBTUs (1,000 British Thermal Units) used per square foot of gross floor area.

Gross Square Feet shall mean the gross floor area of the property.

Municipal Property shall mean a property with one or more buildings that is 5,000 gross square feet or more that is owned by the City of Portland.

Owner shall mean:

(a) An individual or entity having title to a Covered Property;

(b) An agent authorized to act on behalf of the owner of a Covered Property;

(c) The net lessee in the case of a property subject to a net lease with a term of at least forty-nine years, inclusive of all renewal options;

(d) The board of managers or trustees in the case of a condominium; and/or

(e) The board of directors or trustees in the case of a cooperative apartment corporation.

Qualified Benchmark is an entity that meets the Department's qualifications for inputting Benchmarking Information into the Benchmarking Tool.

Residential Property shall mean a property containing one or more Dwelling Units.

Site Energy shall mean the amount of heat and electricity consumed by a Covered Property or Municipal Property as reflected in utility bills or other documentation of actual energy use.

Source Energy shall mean all the energy used in delivering energy to a Covered Property, including power generation and transmission and distribution losses, to perform a specific function, such as but not limited to space conditioning, lighting, or water heating.

Tenant shall mean a person or entity leasing, occupying or holding possession of a Covered Property or Municipal Property.

Utility shall mean an entity that distributes and sells Energy for Covered Properties or Municipal Properties.

6-209. Benchmarking for Municipal and Covered Properties.

(a) No later than one (1) year after the effective date of this Ordinance, and no later than May 1 every year thereafter, the total Energy and Water consumed by each Municipal Property, along with all other descriptive information required by the Benchmarking Tool, shall be entered into the Benchmarking Tool for the previous calendar year.

(b) Owners of Covered Property shall annually input the total Energy and Water consumed by each Covered Property, along with all other descriptive information required by the Benchmarking Tool, into the Benchmarking Tool for the previous calendar year. The Owner shall input this information according to the following schedule:

- (1) A Residential Covered Property no later than two (2) years after the effective date of this Ordinance and by every May 1 thereafter;
- (2) A Non-residential Covered Property by no later than two (2) years after the effective date of this Ordinance and by every May 1 thereafter; and
- (3) A new Covered Property that has not accumulated twelve (12) months of energy and water use data by the first applicable date following occupancy for inputting Energy and Water use into the Benchmarking Tool shall comply with this Ordinance in the following year.

6-210. Notification Of Covered Properties.

Between September 1 and December 1 of each year, the City shall notify Owners of Covered Properties of their obligation to input Energy and Water use into the Benchmarking Tool. By January 15 of each year, the City shall post the list of the addresses of Covered Properties on a public website.

6-211. Qualifications of Benchmarkers.

The City Manager or his or her designee, including but not limited to the Department, may establish certification and/or licensing requirements for the users of Benchmarking Tools.

6-212. Disclosure And Publication Of Benchmarking Information.

(a) Owners shall annually provide Benchmarking information to the Department, in such form as established by the Department, by the date provided by the schedule in Section V.

(b) An exemption from this reporting requirement for any current reporting period may be granted if:

- (1). The Owner demonstrates to the Department that he or she has been unable to obtain tenant authorization to obtain tenant utility data, despite a good faith effort to obtain such consent; or

- (2). The Owner or Tenant demonstrates to the Department that such disclosure may result in the release of proprietary information which can be characterized as a trade secret.

(c) The Department shall make available to the public on the internet Benchmarking Information for the previous calendar year:

- (1) No later than a year and a half after the effective date of this Ordinance and by September 1 of each year thereafter for Municipal Properties; and
- (2) No later than two and a half years after the effective date of this Ordinance and by September 1 of each year thereafter for Covered Properties. Benchmarking Information received by the Department for the first year a Covered Property is required to input the total Energy and Water consumed and other descriptive information as required by the Benchmarking Tool into the Benchmarking Tool will be not be published except to disclose whether or not the Covered Property is in compliance with this Ordinance.

(d) The Department shall make available to the public and update at least annually, the following information:

- (1) Summary statistics on energy and water consumption for Municipal Properties and Covered Properties derived from aggregation of Benchmarking information for both;

- (2) Summary statistics on overall compliance with this Ordinance including an assessment of accuracy;

- (3) For each Municipal Property and Covered Property:

- (i) The status of compliance with the requirements of this Ordinance;
- (ii) Annual summary statistics for the Municipal Property or Covered Property, including EUI, annual greenhouse gas emissions, and an energy performance score where available; and

- (iii) A comparison of Benchmarking Information across calendar years for any years such Municipal Property or Covered Property has input the total Energy consumed and other descriptive information for such Properties as required by the Benchmarking Tool into the Benchmarking Tool.

6-213. Provision of Benchmarking Information by Tenants.

(a) Each Tenant located in a Covered Property shall, within thirty (30) days of a request by the Owner and in a form to be determined by the Department, provide all information that cannot otherwise be acquired by the Owner and that is needed to comply with the requirements of this Ordinance. Failure to provide information to an Owner may result in penalties as provided in the City Code and this Ordinance.

(b) Where the Owner is unable to input the total energy consumed by the Covered Property as well as all other descriptive information for such Covered Property as required by the Benchmarking Tool into the Benchmarking Tool due to the failure of any or all Tenants to report the information required by this Ordinance, the Owner shall input alternate values as established by the Department prior to the implementation of this Ordinance, into the Benchmarking Tool.

6-214. Assessing Results and Annual Report to City Council.

(a) By December 31, 2020, the Department shall review the effect of this Ordinance on improving energy and water performance for Covered Buildings. If energy and water performance for Covered Buildings has not improved significantly, the Department shall make recommendations to the City Manager as to whether amendments to this Ordinance or other measures are necessary to improve building energy and water performance for Covered Buildings.

(b) In December of each calendar year, the Department shall prepare and submit an annual report to the City Council, which evaluates the administration and enforcement of the Ordinance and contains a summary of the benchmarking data provided to the City as required by this Ordinance, as

well as any other necessary data or recommendations on the Ordinance could be improved.

6-215. Maintenance of Records.

(a) Owners shall preserve and maintain records as the Department determines is necessary for carrying out the purposes of this Ordinance, including but not limited to energy and water bills and any and all other documents received from Tenants and/or Utilities. Such records shall be preserved by Owners for a period of three (3) years. At the request of the Department, such records shall be made available for inspection and audit by the Department.

(b) At the time any occupied Covered Building is transferred, the buyer and seller shall arrange for the seller to provide to the buyer all information necessary for the buyer to report Benchmarking information for the entire year in a timely manner. It shall be a violation of this Ordinance for any seller to fail to so provide any such information.

6-216. Violations.

It shall be unlawful for any entity or person including, but not limited to, Owners or Tenants to fail to comply with the requirements of this Ordinance or misrepresent any material fact in a document required to be prepared or disclosed by this Ordinance.

6-217. ENFORCEMENT AND ADMINISTRATION.

(a) The City Manager, the Department or their designee shall enforce the provisions of this Ordinance.

(b) The City Manager, the Department or their designee may promulgate regulations relative to the administration of the requirements of this Ordinance, as necessary.

(c) If any person or entity including, but not limited to, Owners or Tenants violate any provision of this Ordinance, the following enforcement measures may be taken:

- (1) For the first violation, a written warning may be issued; and

- (2) Any subsequent or ongoing violation will be subject to a fine of up to \$20.00 per day pursuant to the provisions of Chapter 1, Section 1-15 herein.

6-218. SEVERABILITY.

If any provision of this Ordinance shall be held to be invalid by a court of competent jurisdiction, then such provision shall be considered separately and apart from the remaining provisions, which shall remain in full force and effect.

MEMORANDUM
City Council Agenda Item

TO: Mayor and City Council

FROM: Troy Moon

DATE: 7/23/2016

DISTRIBUTION: City Manager, Mayor, Anita LaChance, Sonia Bean, Danielle West-Chuhta, Nancy English, Julie Sullivan

SUBJECT: Order ...

SPONSOR: Jon Hinck, Chair, Energy and Sustainability Committee

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st reading X Final Action

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)

SUMMARY OF ISSUE (Agenda Description)

During their meeting on September 21, the Energy and Sustainability Committee voted 2-1 (Hinck and Thibodeau in favor, Suslovic opposed) to recommend the draft Building Energy Use Disclosure ordinance to the full City Council for adoption. This ordinance would require the owners of non-residential buildings with more than 20,000 square feet and residential buildings with 50 or more units to measure the amount of energy and water they consume on an annual basis and report it to the City. It would also require the City to measure and report the energy and water consumption of all municipal buildings with more than 5,000 square feet. If enacted, the ordinance would provide building owners with valuable data to assist them in decision making about energy efficiency. It would provide participants in the real estate market with valuable information that will help them understand the cost of energy in a building or unit they may wish to purchase or rent. It will also help the City plan for energy conservation and climate protection.

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

Operating buildings accounts for about 40% of the nation's energy use. More than 20 cities across the United States including Boston, Cambridge, New York, Atlanta, San Francisco, Chicago, and Seattle have adopted mandatory benchmarking and disclosure ordinances. Such ordinances require effected properties to measure the total energy use for each covered building based on their usage of oil, electricity, natural gas, steam, hot water, or other fuel sources used for building operations. Many ordinances also require measurement and reporting of water consumption. The United States Environmental Protection Agency provides a free online tool call Energy Star Portfolio Manager that allows property owners to enter their building data and create reports that show how each building's energy performance compares to similar buildings across the country. This tool has become the standard energy reporting platform in the US.

Data from other cities indicates that buildings covered by benchmarking ordinances use less energy over time. According to a recent report, New York City found that benchmarked buildings realized 5.7 percent energy savings, while buildings in San Francisco reduced energy use by almost 8%. (Zachary Hart, "The Benefits of Building Benchmarking", Institute for Market Transformation, December, 2015)

III. INTENDED RESULT

IV. COUNCIL GOAL ADDRESSED

The City Council has a stated goal of promoting energy efficiency in the City of Portland.

V. FINANCIAL IMPACT

Enacting the ordinance would require staff to

VI. STAFF ANALYSIS

VII. RECOMMENDATION

We recommend approval of the order authorizing the City Manager to negotiate and execute the agreements necessary to implement the Ocean Avenue Solar Project within the parameters of the term sheet offered by Revision Energy.

VIII. LIST ATTACHMENTS

Project Term Sheet

Prepared by: Troy Moon

Date: 7/22/2016