

REGULAR CITY COUNCIL MEETING

OCTOBER 17, 2016

1. Agenda Only 10-17-2016

Documents:

[AGENDA ONLY 10-17-16.PDF](#)

2. Agenda And Packet 10-17-2016

Documents:

[AGENDA AND PACKET 10-17-2016 .PDF](#)

3. Addendum For Tab 1 - Meeting Minutes For 10-5-16

Documents:

[MINUTES.PDF](#)

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

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

AGENDA
REGULAR CITY COUNCIL MEETING
OCTOBER 17, 2016

The Portland City Council will hold a regular 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:

PRESENTATIONS:

**State of the Schools Address – Marnie Morrione, Portland School
Committee, Chair**

APPROVAL OF MINUTES OF PREVIOUS MEETING:

(Tab 1) **October 5, 2016, Special City Council Meeting Minutes**

PROCLAMATIONS:

**Proc-13-16/17 Proclamation Honoring Timothy Welch, Aviation & Transportation
(Tab 2) Department as Employee of the Month for October – Sponsored by
Mayor Ethan K. Strimling.**

APPOINTMENTS:

**Order 68-16/17 Order Appointing Dylan Matthews As Constable for 2016 Re: Ordinance
(Tab 3) Enforcement Officer for the Police Department – Sponsored by Jon P.
Jennings, City Manager.**

Dylan Matthews is the Police Department's new Ordinance Enforcement Officer. He will perform work in the area of investigation and enforcement of city code violations. In order for Mr. Matthews to fulfill his duties the Police Department is requesting that he be appointed as a constable.

This order appoints Dylan Matthews as a constable for the remaining calendar year 2016. This appointment shall be effective until 12:00 midnight, December 31, 2016.

Pursuant to Sections 20-19 and 20-19.5, Portland City Code, none are allowed to carry a firearm, concealed or unconcealed, in the performance of duties, or to make arrests, or issue parking tickets.

In order for Mr. Matthews to assume his duties as soon as possible, staff is requesting that this order be passed as an emergency.

Seven votes are required for passage after public comment.

**Order 69-16/17
(Tab 4)**

**Order Appointing Members to Various Boards and Committees –
Sponsored by Katherine L. Jones, City Clerk.**

Name	Board and Committee	Expiration
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Five affirmative votes are required for passage after public comment.

**Order 70-16/17
(Tab 5)**

**Order Appointing the Directors of The Portland Widows' Wood Society –
for the 2016-2017 Term - Sponsored by Jon P. Jennings, City Manager.**

The Portland Widows' Wood Society provides assistance to needy Portland residents who are referred to the Society by various charitable organizations and the City of Portland. This order appoints the following persons as Directors to the Portland Widows' Wood Society for the 2016-2017 term:

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Cheryl Hallett, Treasurer	22 Pride Farm Road, Falmouth
Everett Ingalls	45 Eastern Promenade
John C. Knox, President	44 Bramblewood Drive

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CONSENT ITEMS:

LICENSES:

**Order 71-16/17
(Tab 6)** **Order Granting Municipal Officer's Approval of Tomaso's Canteen d/b/a Tomaso's Canteen. Application for a Class A Lounge at 18 Hampshire Street – Sponsored by Michael Russell, Director of Permitting and Inspections Department.**

Application filed on 9/16/2016. New City and State Applications. Current location is Tomaso's Canteen. There is a Corporate structure change of more than 10%, which requires City Council review and approval.

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COMMUNICATIONS:

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(Tab 7)** **Communication Re: Revisions to Rules and Regulations for Use of the Sewer System – Sponsored by Jon P. Jennings, City Manager.**

The Rules and Regulations for Use of the Sewer System are updated and revised as needed. The revisions being made are meant to update the Rules in regards to an agreement made with Westbrook regarding the Brighton Avenue area within Portland that discharges sewage to Westbrook. Other revisions are of existing rules, which have been updated for clarification. As required, public notice of a public hearing regarding the changes was published in the Press Herald on September 25th and 28th. A letter was also sent to industries permitted under the Industrial Pretreatment Program detailing the revisions. A public hearing was held on these rule changes on October 5th, 2016.

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

RESOLUTIONS:

**Resolve 2-16/17
(Tab 8)** **Resolution Condemning Violence and Hate Speech, Expressing Solidarity with Muslims and All Those Targeted for Their Ethnicity, Race or Religion – Sponsored by Councilor Hinck and Co-Sponsored by Mayor Ethan K. Strimling, and Councilor Justin Costa.**

The Portland City Council, as elected representatives of the people, have a special responsibility not to stay silent in the face of hate, violence, and discrimination against any of our constituents or countrymen; therefore, they

- (1) Condemn all hateful speech and violent action directed at Muslims, those perceived to be Muslims, immigrants and people of color;
- (2) Categorically reject political tactics that use fear to manipulate voters or to gain power or influence;
- (3) Commit to pursuing a policy agenda that affirms civil and human rights, and ensures that those targeted on the basis of race, religion or immigration status can turn to government without fear of recrimination; and
- (4) Reaffirm the value of a pluralistic society, the beauty of a culture composed of multiple cultures, and the inalienable right of every person to live and practice their faith without fear.

Five affirmative votes are required for passage after public comment.

UNFINISHED BUSINESS:

**Order 58-16/17
(Tab 9)**

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 part of the Transforming Forest Avenue study recommendation at this intersection to improve pedestrian safety and accessibility and make streetscape enhancements. No reduction in vehicle capacity through this intersection is planned. 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%)

Limit / Total Project Estimate = \$103,805

At its June 18, 2012 meeting, the City Council unanimously previously 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. At the October 5, 2016, this item was postponed to this meeting. Five affirmative votes are required for passage after public comment.

**Order 65-16/17
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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.

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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 12)**

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.

This item must be read on two separate days. It was given a first reading on October 5, 2016. Staff is asking that this item be postponed to the November 7, 2016 Council meeting.

ORDERS:

**Order 72-16/17
(Tab 13)**

Order Approving a License to Portland Norwich Group LLC - Sponsored by Jon P. Jennings, City Manager.

On May 24, 2016, the Planning Board approved a Level III site plan for a hotel on the eastern half of the block bounded by Thames Street, Hancock Street, and Fore Street, the AC Hotel.

The site plan includes awnings and canopies proposed to encroach on the Hancock Street right-of-way and an underground electrical vault proposed to encroach on the Fore Street right-of-way. In addition, as the applicant has developed their final building plans, they have proposed footings to encroach in the Hancock Street right-of-way. At the time of approval, the Planning Board required a license for such encroachments as a condition of approval.

Five affirmative votes are required for passage after public comment.

**Order 73-16/17
(Tab 14)**

Moratorium Re: City Parks and Public Grounds in the R-6 Zone on the Portland Peninsula – Sponsored by Councilor Belinda Ray.

All parks have elements which contribute to their essential character, such as views and sightlines, landscape features, historic associations, trails, athletic fields, meadowlands, and wildlife habitat. Development that occurs adjacent to public parks can affect one or more of these defining elements, thereby compromising the essential character of a park and decreasing the quality and availability of open space in the City. Councilor Belinda Ray has proposed that the City Council consider a 90-day moratorium on the approval of site plans and subdivisions from October 5, 2016 until January 4, 2017, in order to allow time to draft ordinances that could guard against such infringement on the essential character and open space of city parks.

The moratorium would affect only projects on properties that directly abut city parks, and not any on properties across a city street. It would only apply to such properties in the R-6 Zone in the 1st Council District on the Portland Peninsula. According to the Planning and Urban Development Department, this moratorium would affect now under consideration.

Should the City Council approve the moratorium, staff would follow up by developing language designed to limit the potential for damage caused by development projects to the essential character and primary assets of the city's parks in the defined area. That language would likely return to the City Council for review and approval prior to the expiration of the moratorium.

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

AMENDMENTS:

**Order 74-16/17
(Tab 14)**

**Amendment to Portland City Code Chapter 14 Land Use, Article V.
Site Plan Re: Street Trees – Sponsored by the Planning Board,
Elizabeth Boepple, Chair.**

The Planning Board met on September 13, 2016, voted 7-0 to forward this item to the City Council with a recommendation for passage.

The proposed text amendment would allow applicants to meet the site plan street tree requirements through a number of alternatives where planting street trees along the frontage of the development site is not feasible.

Alternatives include planting trees on public land in the neighborhood; provision of measures to enhance street tree survival; preservation/planting of trees on the site near the ROW; green features; and a contribution to the Tree Fund. The amendment also includes provisions to encourage the preservation of mature existing street trees.

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

**Order 75-16/17
(Tab 15)**

**Amendment to Portland City Code Chapter 14 Land Use, Article X.
Alternative Energy Re: Solar Energy Generation – Sponsored by the Planning Board, Elizabeth Boepple, Chair.**

On September 26, 2016, the Planning Board voted 7-0 to forward this item to the City Council with a recommendation for approval.

The proposed new ordinance introduces a streamlined permitting framework to allow: a) installation of smaller solar energy systems with just a building permit and minimal limitations; and b) installation of larger systems (including community solar farms and City initiatives) subject to site plan review to ensure that performance standards are addressed.

The size of the solar energy system would be measured in terms of the physical land area over which the system projects. The ordinance is relatively permissive and also takes account of any potential impacts.

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

**Order 76-16/17
(Tab 16)**

Amendment to Portland City Code Chapter 6, Building & Building Regulations Re: Tenant Housing Rights Sponsored by the Housing Committee, Councilor Jill C. Duson Chair and Councilor David Brenerman, Vice Chair.

On September 28, 2016, the Housing Committee voted unanimously (5-0) to recommend a package of five (5) housing insecurity policy items to the Council for their consideration and incorporation into the City Code. The package includes the following items:

1. Increase notification for residential rent increases from 45 days to 75 days for all tenants-at-will and prior to the end of an existing lease.
2. Landlords and tenants must sign a document to be drafted by the City explaining tenancy-at-will.
3. Creation of a leaflet outlining tenant/landlord rights and responsibilities that must be distributed to all tenants.
4. Establish a tenant/landlord commission comprised of 7 members and co-chaired by one landlord and one tenant representative

5. Incorporation of Maine Human Rights Act prohibition against income discrimination into City ordinance.

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BREAK FOR DINNER:

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

ETHAN K. STRIMLING (MAYOR)
BELINDA S. RAY (1)
SPENCER THIBODEAU (2)
EDWARD J. SUSLOVIC (3)
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Elizabeth Boepple, Chair.**

The Planning Board met on September 13, 2016, voted 7-0 to forward this item to the City Council with a recommendation for passage.

The proposed text amendment would allow applicants to meet the site plan street tree requirements through a number of alternatives where planting street trees along the frontage of the development site is not feasible.

Alternatives include planting trees on public land in the neighborhood; provision of measures to enhance street tree survival; preservation/planting of trees on the site near the ROW; green features; and a contribution to the Tree Fund. The amendment also includes provisions to encourage the preservation of mature existing street trees.

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

**Order 75-16/17
(Tab 15)**

**Amendment to Portland City Code Chapter 14 Land Use, Article X.
Alternative Energy Re: Solar Energy Generation – Sponsored by the Planning
Board, Elizabeth Boepple, Chair.**

On September 26, 2016, the Planning Board voted 7-0 to forward this item to the City Council with a recommendation for approval.

The proposed new ordinance introduces a streamlined permitting framework to allow: a) installation of smaller solar energy systems with just a building permit and minimal limitations; and b) installation of larger systems (including community solar farms and City initiatives) subject to site plan review to ensure that performance standards are addressed.

The size of the solar energy system would be measured in terms of the physical land area over which the system projects. The ordinance is relatively permissive and also takes account of any potential impacts.

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

**Order 76-16/17
(Tab 16)**

**Amendment to Portland City Code Chapter 6, Building & Building
Regulations Re: Tenant Housing Rights Sponsored by the Housing
Committee, Councilor Jill C. Duson Chair and Councilor David Brenerman,
Vice Chair.**

On September 28, 2016, the Housing Committee voted unanimously (5-0) to recommend a package of five (5) housing insecurity policy items to the Council for their consideration and incorporation into the City Code. The package includes the following items:

1. Increase notification for residential rent increases from 45 days to 75 days for all tenants-at-will and prior to the end of an existing lease.
2. Landlords and tenants must sign a document to be drafted by the City explaining tenancy-at-will.
3. Creation of a leaflet outlining tenant/landlord rights and responsibilities that must be distributed to all tenants.
4. Establish a tenant/landlord commission comprised of 7 members and co-chaired by one landlord and one tenant representative

5. Incorporation of Maine Human Rights Act prohibition against income discrimination into City ordinance.

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

BREAK FOR DINNER:

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

*Dec 13-16/14
Tab 2 10-17-16*

PROCLAMATION

Honoring

Timothy Welch

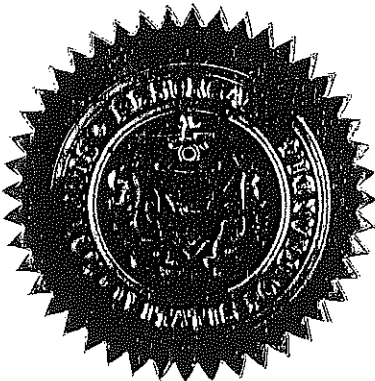
Employee of the Month

October 2016

- WHEREAS:** **Timothy Welch** of the Aviation & Transportation Department has been named the City of Portland Employee of the Month by a committee of his peers and selected for this distinct honor from a workforce of 1,300; and
- WHEREAS:** This award is presented in recognition of **Timothy's** work as a Facilities Technical Coordinator with nineteen years of City service. **Timothy** has been instrumental in maintaining uninterrupted power flow and very responsive during an incident where the FIDS (Flight Information Display) and AirIT systems went down. Both of these systems are key in maintaining the airlines' ability to operate, as well as to communicate effectively with passengers; and
- WHEREAS:** **Timothy** was able to get everything up and running while simultaneously determining the work that had to be performed on the UPS (uninterrupted power supply). He was also key in resolving an issue with the baggage handling system conveyor that ties into the EDS (explosives detection system) scanners, which is essential in maintaining security at the Portland International Jetport. **Timothy** tackled and solved a difficult and time consuming problem; and
- WHEREAS:** **Timothy's** specialized skill set and ability to recognize the urgency when situations arise make him an essential member of the Portland International Jetport team. **Timothy** consistently exceeds expectations, while leading by example with his positive attitude. **Timothy** truly is an asset to the Aviation & Transportation 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 **Timothy Welch** as **City Employee of the Month, October 2016.**

Signed and Sealed this 17th day of October, 2016



A handwritten signature in black ink, appearing to read 'Ethan K. Strimling', is written over a horizontal line.

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

*Order 68-16/17
Tab 3 10-17-16*

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 APPOINTING DYLAN MATTHEWS AS CONSTABLE FOR 2016
RE: ORDINANCE ENFORCEMENT OFFICER FOR
THE POLICE DEPARTMENT**

ORDERED, that Dylan Matthews, Ordinance Enforcement Officer, is hereby appointed as constable for the remaining calendar year 2016; and

BE IT FURTHER ORDERED, that this appointment shall be effective from the effective date of this order until 12:00 midnight, December 31, 2016; and

BE IT FURTHER ORDERED, that this appointment is made pursuant to Sections 20-19 and 20-19.5, Portland City Code, and Dylan Matthews is not allowed to carry a firearm, concealed or unconcealed, in the performance of duties, or to make arrests or issue parking tickets; and

BE IT FURTHER ORDERED, that this appointment is enacted as an Emergency, pursuant to Article II, Section 11 of the Portland City Charter, in order to allow Dylan Matthews to begin work as constable immediately.

MEMORANDUM
City Council Agenda Item

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

FROM: Chief Michael Sauschuck

DATE: September 28, 2016

SUBJECT: Appointment of Ordinance Enforcement Officer as Constable

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- Next Available Final Action _____

Can action be taken at a later date: ____ Yes ____ X No (If no why not?) This employee has started employment.

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

I. This new position will perform work in the area of investigation and enforcement of city code violations. This new Ordinance Enforcement Officer is Dylan Matthews. Due to the nature of the work, and in order for this enforcement to take effect as soon as possible, we are requesting that this order be passed as an emergency.

II. SUMMARY The police department is requesting that Dylan Matthews be appointed as constable in order to fulfill his duties as the City's new Ordinance Enforcement Officer. This employee will perform work in the area of investigation and enforcement of city code violations.

III. BACKGROUND

IV. INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED

V. FINANCIAL IMPACT

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

VII. RECOMMENDATION- Emergency appointment of Dylan Matthews as constable effective immediately.

VIII. LIST ATTACHMENTS

Prepared by: C. Clarkson Woodward

Date: 9/28/2016

*Order 69-16/17
Tab 4 10-17-16*

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 APPOINTING MEMBERS TO VARIOUS BOARDS AND COMMITTEES

ORDERED, that the following are hereby appointed to the Boards and Committees indicated for the stated term:

Name	Committee	Term Expires
Brandon Mazer	Board of Appeals	12/31/2019
Kent Avery	Board of Appeals	12/31/2019
Kenneth Lewis	CDBG Allocation Committee	09/30/2019
Eugenia O' Brien	Creative Portland Board	11/30/2019
Arthur Fink	Creative Portland Board	11/30/2019
Gerard Salvo	Creative Portland Board	11/30/2019
Kimberly Cook	Creative Portland Board	11/30/2019
Jed Harris	Portland Downtown Corporation	09/30/2019
Stephen Bither	Board of Assessment Review	09/30/2019
Penny Pollard	Historic Preservation Board	11/30/2019
John Turk	Historic Preservation Board	11/30/2019
Bruce Wood	Historic Preservation Board	11/30/2019
Robert O' Brien	Historic Preservation Board	11/30/2019
Thomas Valleau	Fish Exchange Board	10/31/2018
Avis Leavitt	Fish Exchange Board	10/31/2018



Office of the City Clerk
Katherine L. Jones, CMC

MEMORANDUM

TO: Mayor Ethan Strimling, and Members of City Council
FROM: Katherine L. Jones
DATE: October 3, 2016
RE: Appointments

The Nominating Committee is making the following recommendations to the Various Boards and Committees.

Name	Board and Committee	Expiration
Brandon Mazer	Board of Appeals	12/31/2019
Kent Avery	Board of Appeals	12/31/2019
Kenneth Lewis	CDBG Allocation Committee	09/30/2019
Eugenia O' Brien	Creative Portland Board	11/30/2019
Arthur Fink	Creative Portland Board	11/30/2019
Gerard Salvo	Creative Portland Board	11/30/2019
Kimberly Cook	Creative Portland Board	11/30/2019
Jed Harris	Portland Downtown Corporation	09/30/2019
Stephen Bither	Board of Assessment Review	09/30/2019
Penny Pollard	Historic Preservation Board	11/30/2019
John Turk	Historic Preservation Board	11/30/2019
Bruce Wood	Historic Preservation Board	11/30/2019
Robert O' Brien	Historic Preservation Board	11/30/2019
Thomas Valteau	Fish Exchange Board	10/31/2018
Avis Leavitt	Fish Exchange Board	10/31/2018

August 18, 2016

Katherine Jones
City Clerk
City of Portland
389 Congress Street
Portland, Maine 04101

Via e-mail to: klj@portlandmaine.gov

Dear Sir or Madam:

I am writing to express my interest in continued service on the Portland Zoning Board of Appeals and respectfully request reappointment as a member of the board.

I have served on the Zoning Board of Appeals since 2013 and have found my service personally and professionally fulfilling as well as an essential contribution to the Portland community where I've been a resident since 2008. Since joining the board, I have served as a member, Secretary and currently as Chairman and have enjoyed all three roles.

As my attached resume reflects, I am currently working as an Assistant Attorney General. Before working for the Maine Attorney General's Office, I served as an Assistant District Attorney in the York County District Attorney's Office, specifically in Alfred Superior Court. I have also worked in all of York County's District Courts in Biddeford, Springvale and York. Before working for the York County District Attorney's Office, I was a solo-practitioner in Hartford, Connecticut where I focused primarily on criminal defense work in state and federal courts, but also had significant experience in a variety of civil matters.

In addition to a general interest in public service, my interest in a position on the Zoning Board of Appeals comes in part from my business and professional experience in real estate. I currently own several multi-family homes in both Maine and Connecticut and have been involved in real estate transactions both as an owner and as an attorney for both landlords and tenants. I have been involved in the real estate business since 1998. As an attorney, most of my practice has been litigation related, so not only am I familiar with legal concepts involving zoning and land use law, I am also highly familiar with hearing procedures, findings of fact and law.

In closing, I feel both my professional and personal experience as well as my past service on the board has prepared me well for a continuing position on the Zoning Board of Appeals.

Thank you for considering my application and I look forward to the opportunity to discuss this position in greater detail in the near future.

Sincerely,

Kent Avery
188 Spring Street
Portland, Maine 04102

Kent Avery

188 Spring Street, Portland, Maine 04102

(207) 899-3013 E-mail: kentcavery@yahoo.com

EDUCATION

University of Connecticut School of Law
Juris Doctor, May, 2002

Hartford, Connecticut

Rensselaer Polytechnic Institute
Master of Business Administration, May, 1997

Hartford, Connecticut

University of Connecticut
Bachelor of Arts, Economics, May, 1987

Storrs, Connecticut

BAR ADMISSIONS

Maine

Connecticut

District of Columbia

United States District Court, District of Connecticut

United States District Court, District of Maine

Mashantucket Pequot Tribal Court, Mashantucket, Connecticut (Inactive Status)

PROFESSIONAL ASSOCIATIONS

Maine State Bar Association, Member

Maine Prosecutors Association, Member

Portland, Maine Zoning Board of Appeals, Chairman (12/2015-Present); Secretary (2015); Member (2013-2015)

PROFESSIONAL EXPERIENCE

State of Maine, Office of the Attorney General
Assistant Attorney General

10/2015 – Present

Description:

- Represent and advise the Maine State Police regarding the Maine Sex Offender Registry and various sex offender registration acts; respond to inquiries from statewide District Attorney's offices, law enforcement, legislators, defense attorneys, or other interested parties regarding the Maine Sex Offender Registry and sex offender registration acts; review registrant files to ensure that the registry is in compliance with judicial rulings; serve on the Management and Risk Assessment Advisory Commission; coordinate with the Civil Litigation Division on any legal actions regarding the Maine Sex Offender Registry.

State of Maine, York County District Attorney's Office
Assistant District Attorney

8/2007 – 10/2015

Description:

- Responsible for criminal prosecution of defendants in all York County District Courts, including case evaluation, charging decisions, plea negotiations, trial and sentencing. Also responsible for police relations, training and advice, and evaluation of requests for search and arrest warrants.

- In February, 2011, promoted to Superior Court to handle felony cases and misdemeanor cases transferred from District Courts for jury trial.

Law Office of Kent Avery, LLC – Hartford, Connecticut

Owner and Principal

5/2004 – 8/2007

Description:

- Solo law firm primarily limited to DUI and criminal defense work in state and federal courts. Represented defendants in misdemeanor and felony criminal cases, child protection cases and civil matters.

State of Connecticut, Judicial Department – New Britain Superior Court

Temporary Assistant Clerk

4/2003 – 5/2004

Description:

- Reported to Chief civil clerk for New Britain Judicial District. Reviewed, accepted and recorded pleadings for civil cases. Assisted in coordinating weekly motion calendars. Participated in civil and family trials and hearings, working closely with presiding judge and involved attorneys.

Mashantucket Pequot Tribal Nation - Tribal Prosecutor's Office

Law Clerk / Assistant Prosecutor

5/2001 – 1/2003

Description:

- Involved in all facets of criminal prosecution of Native American tribal members including charging decisions, plea negotiations, factual investigation, motion practice, preparation of complaints, trial preparation and court appearances. Researched statutory and case law (tribal, state and federal) relative to criminal law and procedure. Represented tribe in child protection cases in tribal and state courts.

University of Connecticut School of Law Legal Clinic – Criminal Trial Division

Student Attorney – Certified Legal Intern

9/2000 – 5/2001

Description:

- Participated in clinical program which included both intensive classroom study and actual representation of indigent criminal defendants in Connecticut trial courts; classroom curriculum consisted primarily of Connecticut and federal criminal procedure. Handled all facets of representation including initial screening of clients, case investigation, plea negotiations, motion practice, court appearances and, if necessary, trial preparation and practice. Participated in representation of defendants from misdemeanors to major felonies.

Aetna, Inc. – Purchasing Legal Department

Legal Intern

Hartford, Connecticut

4/2000 – 4/2001

Description:

- Reviewed contract templates used by Purchasing Department for corporate-wide procurement. Assessed contracts for legal sufficiency, consistency and overall coherence. Suggested changes based on legal and business needs.

- Provided legal support for major sale of business units. Analyzed language in existing contracts to determine assignability of rights to new corporate entity. Prepared appropriate correspondence to suppliers regarding assignment of contracts.

United Technologies Corporation, Pratt & Whitney
Business Consultant / Financial Analyst
Industrial Engineering / Financial Analyst

East Hartford, Connecticut
4/1998 – 4/2000
5/1990 – 12/1993

Description:

- Oversaw a manufacturing overhead budget of \$20 million to ensure that operating expenses were held at or below budgeted levels. During a three year period, successfully maintained expenditures at or below budgeted levels. Identified and implemented cost reductions amounting to \$600,000 in support of Pratt & Whitney's reorganization.
- Participated in systems development teams consisting of programmers, systems analysts and end-users to create a machine capacity planning system for use by manufacturing forecasting analysts.
- Prepared reports and recommendations for senior management outlining current financial performance as well as year-end forecasts. Formulated upcoming years' budget plans based on anticipated projects and priorities. Coordinated various special projects as required by management.

PRO BONO ACTIVITIES

Lawyers for Children America **5/2004 – 8/2007**

- Represented and acted as guardian ad litem for children in child protection cases involving abuse, neglect and termination of parental rights.

Greater Hartford Legal Aid **5/2004 – 8/2007**

- Represented indigent tenants in landlord/tenant disputes.

TECHNICAL SKILLS

- Microsoft Word, Outlook, Excel, Access, Powerpoint, Word Perfect, Lexis-Nexis and Westlaw.

REFERENCES

Available upon request.

Brandon J. Mazer, Esq.
45 Eastern Promenade Unit 3F
Portland, Maine 04101

August 17, 2016

Appointments Committee Chairman
c/o City Clerk
389 Congress Street
Portland, Maine 04101

Dear Mr. Chairman,

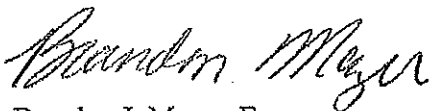
My name is Brandon Mazer and I am applying for the vacant position on the Portland Development Corporation. As General Counsel for Shipyard Brewing Company and an active member in our community, I think I would make an excellent addition to the Portland Development Corporation.

It is an exciting time to both live and work in Portland, and I would like to use my skills to help make Portland even better. Last Summer as I campaigned for City Council, I came to realize that one of the greatest challenges that the City faces in the years ahead is finding the balance between keeping the Portland charm that we all have come to love while allowing the needed growth and development to occur. We must also recognize that Portland is attractive to a wide range of income levels, a fact I saw firsthand in District 1, and ensure that future development fulfills the needs of all residents. I believe finding that right balance is achievable if there is an open dialogue between all interested parties including residents, businesses, the City Council and Planning Board. This open dialogue will be even more important as the City moves forward with updating its Comprehensive Plan.

Being a young professional who both lives and works in the City would allow me to bring a unique perspective to the Portland Development Corporation, one that it currently does not have. I attended the University of Maine School of Law and have been active in the Portland Regional Chamber's young professional group, PROPEL. Through many conversations with my peers in the City, I have come to keenly understand the need to allow growth and development while at the same time want to keep Portland livable.

I have attached my resume for your reference. Please do not hesitate to get in touch with me if I can answer any questions in more detail for you.

Kind Regards,



Brandon J. Mazer, Esq.

Brandon Mazer, Esq.

brandonmazer@gmail.com
Cell 515-491-5757

45 Eastern Promenade, Unit 3F
Portland, Maine 04101

EDUCATION

University of Maine School of Law, Portland, Maine
J.D., May 2011
Admitted to Practice in the State of Maine

Bowdoin College, Brunswick, Maine
A.B., *Government and Legal Studies with a minor in History*, May 2008

WORK EXPERIENCE

Shipyard Brewing Company, Portland, Maine
General Counsel

2011-Present

- Maintains all licensing and government relations
- Gives general day to day legal advice to the business
- Represents company and associated businesses on real estate transactions
- Represents company and associated businesses in front of municipal governments
- Aids in human resources at the business
- Helps advise the other associated companies

PROFESSIONAL MEMBERSHIPS and COMMUNITY ENGAGEMENT

Member of the Maine State Bar Association

Member of the Munjoy Hill Neighborhood Organization

Member of the Friends of the Eastern Promenade

Member of PROPEL

Brewers' Association Government Affairs Committee (2013-Present)

Board of Directors—Special Olympics Maine

Board of Directors—Maine Brewers' Guild (2011-2014) (July 2016-Present)

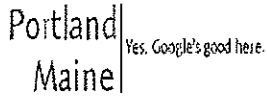
Executive Leadership Team—March of Dimes Maine (2015-2016)

India Street Neighborhood Advisory Committee (2013-2015)

Candidate Portland City Council (2015)

Panelist "Taking your craft brewery, distillery, or winery to the next level" at Nixon Peabody Boston (January 15, 2015)

Panelist "Panel Discussion on Maine's Craft Beer and Spirit Industry" at University of Maine School of Law (September 29, 2015)



Katherine Jones <klj@portlandmaine.gov>

Kenneth Lewis Resume

1 message

Kenneth Lewis <revkilewis@gmail.com>
To: Katherine Jones <klj@portlandmaine.gov>

Wed, Aug 17, 2016 at 9:07 AM

Katherine Jones, City Clerk, CCM, CMC, Registrar
City of Portland

Ms. Jones,

As per your instruction, I am expressing my interest in an appointment to the following boards & commissions of the City of Portland.

1. Civil Service Commission *no stat*
2. Community Development Block Grant

Attached is my resume which outlines my diverse professional and community experience.

I am a former board member of the United Way, the Center for Cultural Exchange, NAACP Portland Chapter, and current member of Maine Boys to Men.

The combination of my professional, community, and pastoral experience makes me uniquely qualified, well suited, and well grounded to be a formal contributor to these important City functions.

I look forward to hearing about the process and prospects of my participation. If you have any questions or concerns, please do not hesitate to contact me.

Regards,

Kenneth I. Lewis, Jr.

Sent from my iPhone

 Kenneth Lewis Resume.pdf
20K

**Kenneth I. Lewis
18 Belmont Street
Portland, ME 04101
207-773-1628**

QUALIFICATIONS SUMMARY:

Seventeen years of ministerial experience to include Pastoral, Christian Education, and Lay Ministries. An Ordained Elder of the African Methodist Episcopal Zion Church of America, Inc., one of the oldest African American Denomination in the United States. Over thirteen years of ordained and lay ministerial service in both urban and rural parish settings. I am a member in good standing of the Eastern District, New England Annual Conference of the African Methodist Episcopal Zion Church.

MINISTERIAL EXPERIENCE:

**May 2003 - Present Senior Pastor
Green Memorial AME Zion Church, Portland, ME**

**May 1998 - May 2003 Senior Pastor
Goodwin Memorial AME Zion Church, Amherst, MA**

The oldest African American institution in the greater Amherst area. Provides pastoral oversight for over 150 congregates to include; weekly worship services, bible studies, church school, and missionary activities. Developed and implemented "My Brother's Keeper" Men's fellowship to promote mentoring and support for issues of parenting, relationships and anger management. Voted 1999 Pastor of the Year by the clergy of the Boston District A.M.E. Zion Church.

**September 2000 - May 2003 Adjunct Protestant Religious Advisor
Amherst College, Amherst, MA**

Provide counsel and support for a diverse student population for this liberal arts institution. Provides religious instruction and resources for all students as required. Serves on advisory boards as required and participates in campus religious exercises.

**September 1992 - May 1998 Associate Pastor
Rush Memorial AME Zion Church, Cambridge, MA**

As the Associate Pastor of the Rush Memorial AME Zion Church, I served as the Director of Christian Education with full responsibility for program development and implementation. Additionally, I held the position of Director of Evangelism with responsibilities for community outreach. During my tenure I also held positions of Worship Leader, Adult Teacher, and Trustee.

ORDINATIONS & LICENSES:

September 2000	Ordained as an Elder in the AME Zion Church
October 1998	Ordained as a Deacon in the AME Zion Church
May 1994	Licensed as a Conference Evangelist in the AME Zion Church
August 1992	Licensed as a Local Preacher in the AME Zion Church

QUALIFICATIONS SUMMARY:

Over twenty years of client-focused customer service and support management experience in business process improvement, strategy, design, and implementation within the Mutual Fund, Insurance, and Health Care industries. Strong management and development skills, a focused team player and consensus builder with operations planning and analytical skills in call center and transaction based operations.

PROFESSIONAL EXPERIENCE:

2003 – Present **MaineHealth Center for Tobacco Independence**
Portland, Maine
Executive Director

Directs the statewide system of tobacco dependence treatment as primary contractor of Maine CDC, Department of Health and Human Services. The Executive Director coordinates multiple program components to ensure access to effective treatment including project planning, management and evaluation of its core components: Statewide toll-free quit line, Statewide tobacco dependence treatment training, and tobacco treatment medication program. The Director also develops and implements MaineHealth corporate tobacco treatment initiatives. The Executive Director is supported by a Medical Director who provide clinical supervision to all program components.

2001 - 2003 **Health New England, Springfield, Massachusetts**
Director, Member Services and Enrollment

Directs the provision of customer services for members in the HMO, PPO, POS, and ASO product lines. Responsible for development, revision and implementation of standards for customer service based on industry best practices and internally developed objectives. Ensures continuous improvement of actual results that meet the standards developed.

Fully participates in plan-wide service improvement efforts. Oversees service data collection and analysis. Directs service improvement initiatives and integrates them into corporate QI efforts. Provides leadership in the NCQA preparation process. Provides Member Services expertise to senior management and consults on business activities with respect to Member Services delivery and member growth and retention.

1996 - 2000 **Blue Cross and Blue Shield of Massachusetts**
Senior Consultant, Business Consulting Group
Director, Clinical Care Call Center

Design, develop, and implement process improvement, technology, and call center redesign programs throughout the corporation. Redesigned the service operation to include initiatives span of control, operation management processes, performance metrics, and capacity planning.

Developed an implemented corporate redesign for member service, provider service, and medical operations call centers to include; metrics, standards, quality, and management training. Current responsibilities include the management of 60 person Clinical Care Call Center within the Health Affairs Division. Met or exceeded all operational and budgetary goals. Annual operating budget \$2 million.

**Prudential Insurance Company of America, Inc. Plymouth, MN
Vice President & General Manager
Prudential Preferred Client Service Center**

1994 - 1996

Putnam Investments **Boston, MA**
Vice President, Client Services -- Shareholder Services Division

1998 - 1994

Allmerica Financial, Inc. Worcester, MA
Director, Operations Support Services

Evaluated, recommended, and installed state-of-the-art telephone systems for inbound, outbound, and automated client servicing calls. Successfully engineered systems that supported 2 million calls per month.

1988 - 1990

Boston Financial Data Services Quincy, MA
Manager, Call Management Operations and Analysis

Performed operations analysis and process engineering for all telephone servicing functions including staff requirements, capacity planning, and service level management for the largest mutual fund transfer agent in the United States. Participated in work management group that identified and implemented process improvements for all BFDS client divisions. Worked with Rolm and AT&T ACD Systems.

1985 - 1988

Fidelity Investments **Boston, MA**
Director, Client Support Services - Retail Client Services

Provided operations analysis and support to nationwide call center. Worked with Rockwell and Rolm Systems. Principle architect of the 800 number services network that controlled routing of 200,000 sales, service, and brokerage calls per day for 60 branches and four regional centers. Manager of Master Console Operations providing real-time call center network and routing administration.



Katherine Jones <klj@portlandmaine.gov>

Creative Portland Board continuance

1 message

Eugenia O'Brien <genieme80@gmail.com>
To: klj@portlandmaine.gov

Thu, Aug 18, 2016 at 6:08 PM

Dear Ms. Jones,

I, Eugenia L. O'Brien, wish to extend my term as a current Board member of the Creative Portland Corporation.

At this point in time, there is a shift to a new Executive Director at Creative Portland and I feel that my community commitments and sense of history with both the arts and CP add relevance to my staying involved with this organization's growth.

Since my last interview period, I was honored to receive the 2012 Distinguished Alumni Award from the Boston Conservatory. I spoke at the Graduation Ceremony that spring to a standing ovation for my entrepreneurial finesse defining the arts as good business.

I also was selected as one of Maine. 50 PEOPLE - The Bold Visionaries Defining Our State in the 2015 Maine Magazine. Recognized for my contribution to both the arts (through my ability to employ professional dancers in Maine) and for developing innovative educational programming (establishing a pre-professional program receiving high school credit), I was considered one who gets things accomplished and upheld an artistic legacy at Portland Ballet for 35 years. This was an unexpected honor, and I remain involved with ideas which go beyond the norm.

Currently, I am involved with developing another organization which I think exemplifies what emerging entrepreneurial enterprises and the workforce they employ can contribute to our robust city. It is the very reason why Creative Portland needs to remain a strong and vital voice advocating for Portland's creative solutions and I wish to stay involved.

Thank you for considering my request to continue on the CP Board,

Eugenia L. O'Brien
1376 Westbrook Street
Portland, ME 04102
(207) 232-0717

Arthur Fink

10 New Island Ave Peaks Island Maine 04108
207. 615. 5722
arthur@arthurfink.com

Goal

Management or senior consulting position involving inspirational leadership, careful listening, strategic planning, and public communication – ideally in a values-based organization with a consultative work environment. Glad to utilize my technology background, but not that skill set alone.

Experience Summary

Board management and facilitation, non-profit program work, design and usability review of information systems, managing organizational change, meeting and workshop facilitation, public speaking, commercial and fine art photography (visual story telling), and business consulting on such areas as quality improvement, work flow design, remote staff management, product and marketing strategy,

Formal education

Harvard University 1971

M.S. in Computer Science (mostly cognitive psychology) , course work for PhD

Swarthmore College 1968

A.B. in Physics, sociology minor (with honors)

Institute for Civic Leadership 2012

Leadership Intensive Program

Non-profit consulting / coaching

Conducted "Skillbuilder" training programs for Maine Association of Nonprofits on

- "Finding and telling our stories: Bringing our mission and method to life"
- "Mastering Your Elevator Pitch"
- "Asking Great Questions"

Coached CEO of multi-million dollar social service agency on facilitating change and communication.

Worked with Chaplaincy Institute of Maine as formal student "mentor"

Working with other nonprofits regarding mission, governance, communications, and conflict.

Non-profit experience

- As board president of the Merriconeag Waldorf School, created the school's first major capital campaign and million dollar building project.
- As leader of the capital campaign for Woolman Hill (Quaker study center), raised funds and volunteer support to rebuild historic meeting house.
- Now serving on board of Creative Portland Corporation, working to stimulate the local creative economy in Portland Maine.
- Have also served on boards of Cambridge Friends School, Citizens for Participation in Political Action (CPPAX), Portland Art Directors Club, and on City of Portland Historic Preservation Review Board.
- Was recording clerk (Co-presiding officer) for New England Yearly Meeting of Friends (NEYM), and for Portland Friends Meeting, and currently serve on the NEYM Faith and Practice Revision Committee, on Portland Friends Meeting's Committee on Ministry and Counsel, and on the Publications Committee of Pendle Hill.. Served on AFSC National Board, on Executive Committee of AFSC New England Region, and on AFSC Corporation, as well as on other AFSC program and admin committees.

Non-profit employment (6/72 - 4/77)

Program and administrative work with the American Friends Service Committee

- Public relations / information services (press outreach, production and host of weekly radio interview show, management of speaking tours).
- Coordinator for building renovation and office move.
- Developed programs on nonviolence, youth engagement and action, community response to military economy, social responsibility for economic action.

Consulting experience (7/82 - present)

In addition to work with non-profit boards (primarily on mission, focus, governance, and conflict) I am also working in these areas

- Coaching managers on communication skills, and helping artists and others with "creative block" and other issues.
- Reviewing technology systems, and involving users to improve usability.
- Helping organizations with process, facilitation, strategic planning.

Project list below is just a sample.

- Worked with hi-tech startup investigating information needs and integration methodology for architects (looking at their "architectural program" practice, which has to do with building function and social organization – not computer programming at all)
- Working on the design of hospital communication system, investigating how staff and administrators manage coverage, on-call, celebrity anonymity, crisis accountability, etc.
- Designed and developed information systems for retailers, insurance companies, hospitals, restaurants, manufacturers, church groups, and other organizations, with focus on the organizational impact of system introduction.
- Taught listening skills and interface design principles, and have been sought after as a speaker on these topics in Holland, Norway, Sweden, Ireland, Canada and US.
- Served as expert witness on software projects where vendor did not perform (but turned many of these projects away from lawsuits and into constructive re-work of needed tools).
- Developed workshop series on computer usage and personal / religious values, and founded Center for Appropriate Computing to continue these programs. Taught introductory computer courses at a private high school, with emphasis on social choices regarding technology/. Organized a national conference on Computers and the Waldorf high school curriculum.
- Co-authored multi-client study on telecommuting, and consulted to major companies on staff management, and manager training, for work in a telecommuting environment.

Business employment (7/77 - 7/82)

Mitrol, Inc, which was acquired by General Electric Information Services Company (GEISCO). I left shortly after that acquisition.

Manager International Product Support Managed a staff of eight professionals in Europe and the United States, Responsible for all international accounts, generating approximately \$4 million in annual revenue. Supervised consulting and support activities, participated in product planning, provided advanced consulting and sales support to clients and GEISCO distributors in Europe and Japan. Developed cost reduction and system review procedures. Designed product enhancements needed for Japanese market introduction.

Manager International Product Consulting Started and managed a consulting group of four professional staff. Responsible for support to all foreign affiliates and for all foreign consulting. Developed project control tracking system, and system review methodology.

International Product Consultant Responsible for major contract with Philips/Holland, including sales and technical support, application design, and consulting to client management.. Designed multi-plant Material Requirements Planning system, which became our key worldwide reference account.

Director Technical and Marketing Communications Started documentation group, hired staff, developed concept and style guide. Hired advertising agency, and directed production of marketing materials. Taught first courses on our products, then began training department and hired director of training.

Systems Analyst Specified and implemented custom Material Requirements Planning (MRP) systems. Developed standard specification methodology.

May 29, 2014

August 5, 2016

Nominating Committee
C/O City Clerk
389 Congress Street
Portland, Maine 04101

Dear Nominating Committee:

Please accept my resume for the Board Vacancy with Creative Portland Corporation. I believe my skills and competencies complement the vision, goals and activities of the Corporation.

My work experience at Coastal Enterprises Inc. embraced economic development initiatives and strategies throughout the State of Maine. As Director of the Workforce Development Program I helped establish industry sector partnerships, training and development programs, and workforce development and community development initiatives.

I am a long time resident of Portland and served as a Civil Service Commissioner for six years. I am very interested in giving back to the great City of Portland and know that I would add value in this role. I am currently the Human Resources Manager for a local Marketing Agency so understand the need for a strong and evolving creative economy in Portland.

I look forward to meeting with you and can be reached at 207-939-9623.

Thank you.

Sincerely,

Gerard Salvo

Gerard R. Salvo
45 Phipps Road
Portland, ME 04102
207-939-9623
E-mail: salvog@tidesmart.com

EXECUTIVE SUMMARY

Highly skilled generalist and strategic human resources professional with well-rounded background in Staffing/Talent Management, Employee Relations, Benefits, Compensation and HR Administration. SPHR Certified with experience in a variety of corporate, retail, warehousing and manufacturing environments.

PROFESSIONAL EXPERIENCE

TideSmart Global- Experiential Marketing Company

Senior Manager-Human Resources January 2015-Present

- Responsible for the overall administration, coordination and evaluation of the human resource function at TideSmart Global.
- Carry out responsibilities in the following functional areas: benefits administration, employee relations, training, performance management, onboarding, policy implementation, recruitment/employment, affirmative action and employment law compliance.
- Develop HR policies and procedures with senior management, participate in corporate strategic planning. Work directly with department managers to assist them in carrying out their responsibilities on personnel matters.

Coastal Enterprises Inc. (CEI) 2004-2015

Human Resources Manager/Director of Workforce Development 2009-2015

- Direct all Human Resource generalist functions for CEI to include talent acquisition, on boarding, employee relations, training and development and benefits and payroll administration.
- Member of the CEI Management Team, providing HR strategic direction and implementing human resource programs for complex Community Development Finance Institute.
- Oversee all workforce programs for CEI. Acts as Workforce Intermediary and contracts for training and other services with state and regional service providers for CEI financed businesses.

Managing Director- CEI Staffing Services Inc. 2004-2009

- Provided human resource consultation and technical assistance to CEI financed businesses. This included recruitment and staffing, talent management, human resource audits, HR webinars and securing state and federal funding for job training.
- Oversaw temporary staffing business and marketed workforce services to businesses and community organizations. Acted as workforce intermediary with community organizations, educational institutions and businesses.

The Foreside Company 1996-2004

Manager, Human Resources

- Managed human resource functions in startup international wholesale/retail Giftware Company. During my tenure, Foreside was listed as the 48th fastest growing privately held corporation in the U.S.(Inc.500)
- Developed HR policies and procedures, participated in corporate strategic planning, oversaw legal compliance and developed and implemented benefit and compensation programs.

G.H.Bass & Co. 1989-1996

Manager, Recruitment and Employee Relations 1990-1996

- Teamed with Senior Management to develop strategy and implement national and international recruitment at G. H. Bass. Included advertising, recruitment, interviewing, testing, selection and relocation.
- Handled employee relations issues, grievances, responses to legal issues, training and exit interviews

Human Resources Coordinator 1989 – 1990

- Performed HR generalist functions for G.H. Bass Catalog Division totaling 150 associates in warehousing and office operations.
- Provided leadership in training, compensation and employee relations.

University of Southern Maine 1979 - 1989

Employment Specialist

- Administered the employment program at U.S.M. for over 350 staff positions. Developed recruitment strategies, implemented selection procedures and initiated compensation programs.
- Provided oversight in the development and design of a multi-site childcare service program through the U.S.M. Department of Human Resources.

EDUCATION/CERTIFICATIONS

M.S. Human Resource Development, 1989 University of Southern Maine

B.A. Social Welfare, 1977 University of Southern Maine

ADP Workforce Now –Payroll & Human Capital Management, 2014

Zenger-Miller Frontline Management Trainer

Certified as Senior Professional in Human Resource Management (SPHR) by the Society of Human Resource Management, since 1992

COMMUNITY SERVICE

Member SHRM & Human Resources Association of Southern Maine

The Center For Grieving Children-Board Member

Guest Lecturer, University of Southern Maine School of Business

Civil Service Commissioner-City of Portland (2001-2007)

Portland – Shinagawa, Japan Sports Exchange Program Volunteer

Appointed Member of Maine State Workforce Board

Excellent references available upon request.

August 18, 2016

Kimberly Cook
70 Alba St.
Portland, ME 04103

Justin Costa, Appointments Committee Chair
c/o City Clerk
389 Congress Street
Portland, ME 04101

RE: Application for Creative Portland Corporation Board position

Dear Councilor Costa:

Please accept this cover letter and resume for consideration for appointment to the Creative Portland Corporation Board. I previously had the privilege of serving on the Zoning Board of Appeals and the Land Bank Commission. I enjoy serving my community by serving on city boards and was excited to learn that appointments are being considered for the Creative Portland Corporation Board.

I have a deep commitment to Portland and to seeing us continue to enhance our economic prosperity and overall quality of life. I'm proud to be a resident of our increasingly vibrant small city. The mission and work of Creative Portland is critical to our growing prosperity and quality of life. I would bring this commitment as well as my professional skills and experience to the Board.

I would welcome the opportunity to meet with you to discuss my background and skills.

Sincerely,

A handwritten signature in black ink, appearing to read "K Cook", with a stylized flourish at the end.

Kimberly Cook, Esq.

RESUME FOR KIMBERLY COOK

Education

Juris Doctor, 2004

- University of Maine School of Law, *magna cum laude*
- Class Rank: 2 out of 82
- Recipient, Faculty Significant Achievement Award
- Maine Law Review, Business Editor

Master of Science, Environmental Science and Policy, 1997

- University of Wisconsin—Green Bay, 3.95 GPA

Bachelor of Arts, Environmental Studies, 1993

- Unity College, 3.85 GPA
- Recipient of two awards for academic excellence

Experience

Principal, Government Strategies, Portland, ME, 2006 – present

Provide government affairs counsel and strategic communications consulting to nonprofit and business organizations with Maine interests. Services include legislative, executive branch and regulatory agency relations and advocacy, strategic communications, business and political networking, policy and issue monitoring, and coalition building.

Attorney, Curtis Thaxter, Portland, ME, 2004 – 2006

Represented clients seeking environmental and land use permits, represented clients before the state legislature, represented clients during regulatory and rulemaking proceedings, and counseled clients regarding compliance and business matters.

Law Clerk, Curtis Thaxter, 2002 through 2004

Researched various legal issues and drafted memoranda.

Research Associate, to Professor Alison Rieser, University of Maine School of Law, 2002

Researched and wrote a report for Hawaii Audubon Society in collaboration with Professor Alison Rieser.

Research Associate, Earthjustice, Denver, CO, 2000-2001

Reviewed and analyzed government documents, commented on a variety of agency proposals, prepared fact sheets for distribution to Congress, and utilized Geographic Information Systems to analyze information and create maps that were used in pleadings and as exhibits in court.

Campaign Manager, Friends of Jennifer Veiga, 2000

Developed and implemented the overall campaign strategy and message of Colorado State Representative (Assistant Minority Leader) Jennifer Veiga's reelection campaign, organized the campaign's steering committee and a large pool of volunteers, coordinated with other campaigns, drafted campaign literature, developed and maintained a database of voters, donors and volunteers, and managed all vendors.

Aide, Denver City Councilwoman Kathleen MacKenzie, 1999

Advised the Councilwoman on various issues, prepared and distributed press releases, organized public meetings, addressed constituent concerns and complaints, worked with city agencies to resolve matters of concern, assisted with the design of a database to track constituent information, designed and updated the website, and managed office affairs.

Legislative Aide, Colorado State Senate, 1999 Legislative Session

Researched policy issues, analyzed legislation, tracked interest group positions on bills, assisted with the preparation of press releases and the organization of media events, attended and summarized committee meetings, and responded to constituent concerns.

Planner, HNTB Corporation, 1998-1999

Facilitated the NEPA process for infrastructure projects, coordinated public forums, researched environmental regulatory programs, conducted survey research and analysis, prepared and edited reports, assisted with traffic modeling, and manipulated data.

Graduate Research and Teaching Assistant, University of Wisconsin-Green Bay, 1994 -1996

Conducted research on a variety of environmental policy topics, co-authored a paper entitled "Underground and Out of View: The Politics and Process of Implementing the Wellhead Protection Program in the Great Lakes States" that was delivered at the annual meeting of the Midwest Political Science Association, and assisted professors with the teaching of American Government and Politics.

Contract Researcher, with Prof. Denise Scheberle for the International Joint Commission, 1994

Performed documentary and interview research regarding toxic substances reduction programs in the Great Lakes states, analyzed qualitative data and co-authored a report detailing the research and findings entitled "Survey of U.S. and Great Lakes States Toxic Reduction Programs, Law and Database Inventory."

Conservation Aide, Maine Department of Environmental Protection, summer 1992 and 1993

Reviewed technical documents for compliance with applicable regulations, provided outreach and information to the regulated community, established and maintained databases tracking compliance and payment of certain fees due to the Department.



RESUME FOR KIMBERLY COOK

Education

Juris Doctor, 2004

- University of Maine School of Law, *magna cum laude*
- Class Rank: 2 out of 82
- Recipient, Faculty Significant Achievement Award
- Maine Law Review, Business Editor

Master of Science, Environmental Science and Policy, 1997

- University of Wisconsin—Green Bay, 3.95 GPA

Bachelor of Arts, Environmental Studies, 1993

- Unity College, 3.85 GPA
- Recipient of two awards for academic excellence

Experience

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Conservation Aide, Maine Department of Environmental Protection, summer 1992 and 1993

Reviewed technical documents for compliance with applicable regulations, provided outreach and information to the regulated community, established and maintained databases tracking compliance and payment of certain fees due to the Department.

City of Portland
Appointments Committee Chairman
c/o City Clerk
389 Congress Street
Portland ME 04101
VIA EMAIL

August 10, 2016

Dear Ms. Jones,

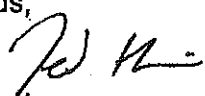
I am writing to apply for the open position on the Portland Development Corporation. I have been an active real estate investor and developer in Portland for the past 13 years and would like to get involved with what I see as a powerful tool for continued positive change. There's an entrepreneurial spirit in the air in Portland right now and as I've seen from firsthand experience PDC is often the critical piece of bridge financing that can make or break someone's ability to launch a business.

The PDC first came to my attention approximately two years ago when several prospective tenants applied for and received loans. The PDC loans filled a necessary gap and helped these young entrepreneurs get off the ground. Their presence on Washington Avenue anchored the renaissance of this neighborhood.

I have a varied background in commercial real estate and finance that would be directly applicable to reviewing loan proposals. Moreover, I have worked with numerous prospective tenants as a property owner and can help applicants identify potential areas for refinement in their business plans.

I look forward to hearing from you and discussing the position further.

Regards,


Jed Harris

Enclosure: Resume

JED HARRIS
197 Woodville Rd
Falmouth, ME 04105
(207) 653-8262
jed@n-aprop.com

North Atlantic Properties, LLC

Portland, ME

Managing Partner, July 2003-Present

Opportunistic real estate investment fund focused on acquiring commercial real estate and utilizing active management to create value with a plan to sell and/or long term hold.

Current Project

- 75 Washington Avenue Portland, ME. 135,000 square foot office, retail, and warehouse building in Portland's rapidly changing Munjoy Hill/E. Bayside. Successfully converted large portions of the warehouse to active retail and increased property occupancy from 70% to 100%. Over a 2.5 year holding period have increased rents 41%. Have completed two add on acquisitions of neighboring properties with a third property under contract and slated to close in January 2017. Will result in a ~2.5 acre developable parcel on Munjoy Hill.
- Non-controlling investment interests in projects in Austin, TX, Old Saybrook, CT, Somerville, MA, and 1 & 2 Portland Square.

Past Projects

- 136 Commercial Street Portland, ME. 20,000 square foot office and retail building in Portland's Old Port. Redeveloped and retenanted. Increased average rent by 40% over a four year period.
- 505 Fore Street Portland, ME. Acquired in a distressed sale and ultimately sold in two parts realizing a 3.5X return to investors.
- 170 Anderson St Portland, ME. 32,000 square foot warehouse. Negotiated new long term lease with existing tenant. Coordinated Maine DEP VRAP for legacy environmental issues. Sold after a 3 year holding period for a 3x return to investors.

iFormation Group

New York, NY

Associate, April 2001-July 2003

Venture capital firm formed by Goldman Sachs, General Atlantic Partners, and Boston Consulting Group to partner with Fortune 500 companies to develop new businesses based on partner's underutilized assets.

J.P. Morgan Chase & Co

New York, NY

July 1999- April 2001

Investment Banking Analyst, Technology, Media, Telecommunications Group

LabMorgan Venture Capital

Worked on several merger and acquisition assignments and was promoted to J.P. Morgan's internal venture capital fund.

Responsibilities included meeting with entrepreneurs, due diligence, structuring and negotiating investments, and assisting portfolio companies with their business strategies and market positioning.

EDUCATION

1999 Middlebury College

Middlebury, VT

International Politics and Economics, Cum Laude, GPA 3.5

BOARD MEMBERSHIPS & INTERESTS

- Falmouth Land Trust- past president, MEREDA, Rippleffect
- Skiing, boating, travel, and cycling

Penny Pollard

29 Deering St. Portland, ME 04101 | 207-233-4661 | ppollar1@maine.rr.com

August 9, 2016

Katherine Jones
City Clerk
389 Congress St.
Portland, ME 04101

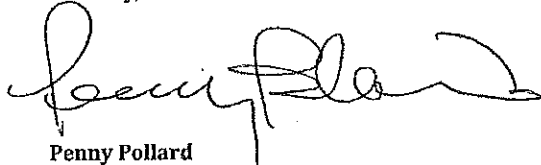
Dear Katherine,

I am currently a member of the Historic Preservation Board. I would like to be considered for re-nomination to the Board. I have not reached the term limit for my position.

In my participation on the Board I refer to my former occupation as a builder and contractor in the greater Portland area, during which time I participated in the restoration and rehabilitation of many homes and businesses located in Historic Districts in Portland. Currently I live at 29 Deering St. in the Deering St. Historic District, and I take very seriously the value of Historic Preservation in our City.

I would appreciate the opportunity to continue to serve on the Board of Historic Preservation.

Sincerely,

A handwritten signature in black ink, appearing to read 'Penny Pollard', with a stylized flourish at the end.

Penny Pollard

John Turk
63 Washburn Avenue
Portland, ME 04102

26 July 2016

Ms. Katherine Jones
City Clerk, City of Portland
389 Congress Street, Room 205
Portland, ME 04101

Dear Ms. Jones,

Please find enclosed my resume for the vacancy on the City of Portland's Historic Preservation Board. As a small business owner in Portland, a homeowner in the historic Oakdale neighborhood, and as an architect who works within historic contexts, I bring a genuine interest in preserving the historic fabric of our city.

My training and work experience have provided me with direct hands on experience with preservation practice and I have a working knowledge of the *Secretary of the Interior's Standards for the Treatment of Historic Properties*. Also, my time serving on the Board has provided me with a familiarity of the Preservation Board's procedures and preservation standards. I believe serving once again would provide the Board with beneficial institutional memory.

In addition to my interest and experience with preservation I bring a considerable affection for modern design. It is my belief that any construction within historic settings is an exciting opportunity for design excellence rather than any sort of hindrance. This passion has sparked my long term participation in the design lecture series Architalx, which brings world-renowned architects, landscape architects and designers to speak at the Portland Museum of Art.

Being a member of Portland's Historic Preservation Board is exciting to me and I wish to continue my service.

Sincerely,

John Turk, AIA

John Turk, AIA

Mr. Turk has twenty-five years experience designing new buildings and rehabilitating older structures. Prior to establishing ttl-architects in January 1998, Mr. Turk worked for small design oriented firms in Portland, Maine. His work has garnered awards from the Maine Chapter of the American Institute of Architects, the National Trust for Historic Preservation, Maine Preservation and Greater Portland Landmarks.

Portland City Hall Restoration. Portland, Maine.

Ongoing restoration work to this historic Beaux Arts building designed by Carrere & Hastings of New York City. Work includes historic wood window and door reconstruction, masonry restoration, structural steel repair including seismic improvements, copper roof and flashing replacement, plaster work, historic clock restoration, restoration of the monumental plaza and entry stair and new metal gates at alleyways and window grilles at basement windows. Future phases include stone façade restoration and structural upgrades.

Fort Popham Restoration. Phippsburg, Maine.

Civil War era coastal defense land battery at the mouth of the Kennebec River. New work entailed restoration of masonry casemates, granite piers and installation of a new guardrail system at second floor casemates and tower. The building is listed on the National Register of Historic Places.

Liberty Hall. Machiasport, Maine.

Conditions assessment, exterior restoration, belvedere reconstruction based on historic photos, timber repair and structural upgrades to a high style Italianate town hall. Interior rehabilitation includes ADA access, life safety upgrades, and new mechanical, plumbing and electrical systems. The building is listed on the National Register of Historic Places and prior to restoration was on Maine Preservations list of most endangered structures.

Stony Brook Grist Mill & Museum. Brewster, Massachusetts.

Reconstruction of key elements including a new historically appropriate water wheel and sluice way, new gears to run the millstone, a new stone crane to hoist the runnerstone, new meal hopper and supplemental structural interventions. This 1751 grist mill is listed on the National Register of Historic Places.

Greater Portland Landmarks. Portland, Maine

Eave, roof and chimney restoration of this Charles Alexander designed house built c. 1860. Work entailed removal of an upper tier roof, restoration of original eave profiles, structural repair, new roof membrane and flashings, ornamental woodwork restoration, rebuilding five chimneys to original profile, and copper gutter and downspout work.

ttl-architects

John Turk, AIA

West Quoddy Head Light Keeper's House. Lubec, Maine.

Current light house and keeper's house were completed in 1858. Work includes the exterior restoration of the wood framed keeper's house for the Maine Historic Preservation Commission along with the Maine Department of Parks and Lands.

Spurwink Church. Cape Elizabeth, Maine.

1834 c. church is the oldest public building in Cape Elizabeth and is listed on the National Registry of Historic Places. New work entailed wood restoration, window restoration, plaster repair, new foundation, structural upgrades and systems improvements.

St. Mary's by-the-Sea. Northeast Harbor, Maine.

Exterior restoration of a Henry Vaughn designed church listed on the National Register of Historic Places. Work included wood and masonry restoration, new slate and copper roof and stained glass window restoration. Future work includes interior addition of new kitchen, coat room and Sunday school room.

Kennebec Arsenal Rehabilitation. Portland, Maine.

This National Historic Landmark was built by the United States Army between 1828 and 1838. New work will entail exterior restoration of seven slate roofed, granite structures and rehabilitation into a mixed use facility including housing, office, restaurant and retail space. The project is being designed to meet the Federal Historic Rehabilitation Tax Credit Program and construction is pending funding.

Maine State Inland Fisheries and Wildlife Building. Bangor, Maine.

Rehabilitation of a 24,000 SF, 1935 era nurses' dormitory built by the WPA and located at the historic Dorothea Dix Psychiatric Center Campus. Work included the conversion of the dormitory into a regional headquarters for the Maine Department of Inland Fisheries and Wildlife and the Atlantic Salmon Commission.

Portland Observatory. Portland, Maine.

Complete restoration of 1807 maritime signal tower listed on the National Register of Historic Places. Two-phased construction required dismantling, repair and/or replacement and of decayed components and re-assembly. The project included the discrete installation of the first sidewalk lift in the U.S. Project received an Honor Award from the National Trust for Historic Preservation.

Maine Irish Heritage Center. Portland, Maine.

The former St. Dominic's Church built in 1893 in the neo-Gothic style was the first Catholic Church in Portland and was built to serve the local Irish population. Work included masonry and plaster repair after the Patriot's Day storm of 2007. Subsequent work included new flooring, entry stair, signage design, ADA and life safety upgrades at the ground floor community hall level and installation of a new elevator.

Maine Veterans' Cemetery. Augusta, Maine

Master Plan and design of a new memorial cemetery. Design features include a new chapel to seat 100 mourners, a visitors' center/museum and maintenance garage. Construction was complete in the spring of 2002 and was recognized for design excellence by the Maine Chapter of the American Institute of Architects in 2003.

The logo for ttl-architects features a dark rectangular background. On the right side, the text "ttl-architects" is written in a white, lowercase, sans-serif font. To the left of the text, there is a thin, white, curved line that starts near the top right and curves downwards and to the left, ending near the bottom left of the logo area.

ttl-architects

ttl-architects, llc
30 Danforth Street, Suite 213
Portland, ME 04101

John Turk, AIA

Endicott Estate. Dedham, Massachusetts.

Rehabilitation of a classical revival mansion listed on the National Register. Exterior restoration and rehabilitation into an assembly occupancy with the addition of a new elevator, exterior ramps and new concealed fire detection and suppression system.

Lakeside Cemetery. Wakefield, Massachusetts.

Programming for and Condition Assessment of a 1931 Gothic Revival Chapel and Winter Mausoleum at a non-sectarian private cemetery. Master planning and schematic designs for re-use of buildings as columbaria and function space.

Chateau Clare. Woonsocket, Rhode Island.

Exterior restoration of a 100,000 SF Victorian era convent. The structure is listed on the National Register and work included slate & metal roof repair and replacement, storm window replacement and masonry restoration. Work was complete spring 2001.

The Danforth Inn. Portland, Maine.

Work includes master planning for the division of the Danforth mansion into two condominiums and the design of two separate structures on this urban property. One structure is a carriage house/apartment the other is a 1,000 SF cottage.

Loring Residence. Portland, Maine.

Expansion and rehabilitation of an Italianate residence in Portland's historic Deering neighborhood.

Golden Residence. Cumberland-Forside, Maine.

New separate garage/family room addition with access bridge to 1920's era bungalow.

Knoll Residence. Portland, Maine.

New garage/exterior deck addition to this John Calvin Stevens designed house located within Portland's Historic West End neighborhood.

REGISTRATION

Licensed Architect, State of Maine #2059

Licensed Architect, Commonwealth of Massachusetts #30414

EDUCATION

Pennsylvania State University,

Bachelor of Architecture, minor in Architectural History

University of Florence, Italy, PSU foreign study year abroad

Harvard Graduate School of Design, Rehabilitation of Buildings

OSHA Ten Hour Training

AFFILIATIONS

American Institute of Architects

Maine Chapter of the American Institute of Architects

Portland Society of Architects, Founding Member 2006-2013

Portland Society of Architects, Treasurer 2009-2011

Architalx Lecture Committee, Member 1995-2005

Architalx Lecture Committee, President 1997-2001

Architalx 25th Anniversary Exhibition Committee 2011-2013

Portland Historic Preservation Commission, 2001-2014

Portland Historic Preservation Commission, Vice Chair 2004-2006

Portland Historic Preservation Commission, Chair 2006-2011

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ttl-architects, llc
30 Danforth Street, Suite 213
Portland, ME 04101

BRUCE W. WOOD

**607 Chandler's Wharf
Portland, ME 04101**

Home: (207) 633-0634

e-mail: brucesar@toast.net

Summary of Volunteer Experience:

- City of Portland (Maine) Historic Preservation Board member since May 2013, Vice-Chairman since January 2015
- OLLI/USM instructor – Portland (Maine) history through walking tours
- Docent – Victoria Mansion, Portland, Maine
- Docent – Portland Observatory, Portland, Maine
- Guide – Maine Historical Society Old Port Walking Tours, Portland, Maine
- Guide – Maine Historical Society walking tours commemorating the 150th anniversary of the Portland, Maine fire of July 4, 1866.
- Volunteer – Portland (Maine) Public Library, downtown and annex
- Photography, laboratory work, Gulf of Maine research cruise – Bigelow Laboratory, East Boothbay, Maine
- Website support – Southport Historical Society, Southport, Maine
- Website support – Boothbay Region Historical Society, Boothbay Harbor, Maine
- Rebuilding Together – Lincoln County, Maine and Montgomery County, Maryland
- Researcher – Smithsonian Institution American History Museum
- Presenter and researcher – Smithsonian Institution Air and Space Museum
- Gardener – U.S. Botanical Garden, Washington, D.C.
- Gardener – Brookside Garden, Wheaton, Maryland

Summary of Professional Experience:

- More than four years' experience managing disaster relief funds.
- More than ten years' experience budgeting and developing computer programs to report various financial statistics on personal and mainframe computers.
- More than ten years' experience conducting computer system training courses.
- Strong intrapersonal skills and the ability to assist others in the use of computers.
- Experienced with the Microsoft Office suite of programs and FrontPage.
- Supervisory experience with management and union employees.

Foreign Languages:

Spanish, French

Experience:

Federal Emergency Management Agency (FEMA); Disaster Assistance Employee, Comptroller

Assured funding was available as needed, prepare expenditure estimates, supervised financial employees at the site of declared national disasters.

Marriott; Manager, Hyperion Support

Supported Hyperion Enterprise, LedgerLink, Retrieve Hyperion, Hyperion Analyst. Trained users in the use of these Hyperion products. Dealt with and support administrative sites in Germany and Hong Kong, users throughout the world.

Amtrak; Business Support Analyst

Supported Amtrak's client server database, Hyperion Enterprise, Brio Technology data warehousing, and related products. Supported Amtrak's mainframe Financial Information System, which uses Walker Interactive software, by writing program code, training users, responding to Help Desk queries, maintaining the FIS User Procedures Manual, and monitoring system activity. Use Hyperion, Excel, Word, Attachmate Extra, and Walker on a daily basis, other software frequently. Developed the PC-based financial support and inquiry programs necessary to facilitate Amtrak's contract commuter service. Wrote and maintained reports for all Hyperion database applications. Assisted with the implementation of SQL Financials Accounts Receivable software. Worked daily with the full Microsoft Office 97 suite of software: Word, Excel, Access, and PowerPoint and with FrontPage 98. Published the financial systems user manual on Amtrak's Intranet site.

Amtrak; Senior Budget Analyst I

Developed budgets in the hundreds of millions of dollars for railroad operations and analyzed the expenses against them. Beginning in 1985, spent most of the time writing mainframe and personal computer programs to help others analyze financial data. Used COBOL, Boeing Executive Information Service (EIS), FOCUS, Microsoft Word, WordPerfect, Lotus 1-2-3, Freelance, and dBase. Trained others in the use of computer software.

Amtrak, Legislative Correspondent

Researched and replied to Congressional inquiries relating to all aspects of Amtrak service, including budget, passenger service, operations, and maintenance. Dealt directly with Members of Congress, Congressional committees, and their staffs.

U.S. House of Representatives, Legislative Assistant for Congressman Gilbert Gude (Maryland)

U.S. Agency for International Development, Project Support Officer

U.S. Peace Corps, Volunteer

Education:

Audited a wide variety of courses at the University of Maryland, Bowdoin College, University of Southern Maine, Southern Maine Community College.

Numerous Walker, Hyperion, EIS, and Brio courses

COBOL, Fortran, and PASCAL courses, University of Maryland, College Park, Maryland

Bachelor of Science, Accounting and Economics, University of Chattanooga, Chattanooga, Tennessee

References upon request.

Robert J. O'Brien

95 West Street • Portland, ME 04102
Phone: 207-939-7703 • E-Mail: rjobrien@mail.com

August 19, 2016

Appointments Committee
City of Portland
389 Congress Street
Portland, ME 04101

Dear Appointments Committee Chair:

Please accept this letter as an indication of my interest in the open volunteer position on the City of Portland's Historic Preservation Board.

For eight years, I worked for Maine Preservation, the state-wide historic preservation nonprofit organization, most recently as Assistant Director. Maine Preservation was one of the leading champions of Maine's matching historic tax credit program for commercial development. As a result, I am very attuned to the benefits of the historic tax credit program and the requirements to qualify. Many developers have sought (or ought to seek) the advantages of this development tool to rehabilitate Portland's historic commercial buildings. On Portland's Historic Preservation Board, I can provide guidance to applicants on how their building might qualify for the credit (for themselves or a future owner) if they maintain the landmark's historic integrity.

Also as a result of working for Maine Preservation, I am very familiar with the U.S. Secretary of the Interior's Standards for the Treatment of Historic Properties. I understand the difference between Renovation, Restoration, and Rehabilitation. I also know the major architectural styles and dates for Georgian, Federal, Greek, Gothic, Italianate, Queen Anne, Shingle Style, Colonial Revival, Arts & Crafts, Art Deco, and Post-War Modern. For eight years, I was completely engrossed in Historic Preservation and I think I would be a valuable member of this important board.

In my personal life, my children are the 7th generation of my family in Portland. We have been here since the 1850s, through boom times and bust, and we have a stake in the preservation of our city's architectural heritage. In 2009, my wife and I purchased our first house — an 1890 shingle-style in Portland's Western Prom historic district, designed by John Calvin Stevens. I have filed for a Certificate of Appropriateness (at the staff level) before and I understand the process and regulations of the Historic Preservation department. Many neighbors often approach me for consultation before applying to the Historic Preservation board, and I provide them feedback on what is likely to pass muster.

I would be honored to serve my city on this board. I hope you will consider me for an interview.

Sincerely,



Robert J. O'Brien

ROBERT J. O'BRIEN

95 West Street • Portland, ME 04102 • (207) 939-7703 • rjobrien@mail.com

Operations Manager with Political and Public Policy Experience

PROFESSIONAL SUMMARY

- Capable of synthesizing market landscape and proposing policies that reflect new needs
- Ability to form trusting, personable relationships with clients, vendors, colleagues and allies
- Maintains strong professional demeanor, even under long-term, stressful conditions
- Takes ownership of workload, project goals, and the organization's mission
- Excellent public-speaking, presentation, and public-relations skills

RELEVANT EXPERIENCE

Town of Freeport, Maine | Planning Assistant | 2016-present

- Assist property owners, developers and real estate agents with permitting process
- Draft staff recommendations for Project Review Board

Maine Downtown Center at Maine Development Foundation | Program Coordinator | 2016-present

- Tour "Grants to Green" program participants' facilities to ensure compliance, address obstacles and encourage advancements
- orchestrate event to celebrate projects and share successful strategies
- compose white papers on best practices demonstrated by grant recipients

Maine Preservation, Yarmouth | Assistant Director | 2008-2016

Statewide historic preservation nonprofit organization, founded in 1972

- Developed annual budgets
- Maintained financial books in QuickBooks and produced monthly reports for board
- Built company's current financial Chart of Accounts from scratch
- Project managed construction of company's WordPress website, including custom features
- Serviced all of company's IT needs and coordinated outside IT contractors when necessary
- Collaborated with volunteer consultant to build custom database for 4,000 entities
- Produced company's graphic design in Adobe InDesign
- Composed communications pieces for Constant Contact and annual magazine
- Headed all Development campaigns, up to 8 per year, with up to 2,000 target clientele each
- Drafted, assembled and submitted all grant applications, up to 5 per year
- Staffed up to 3 major events per year, providing orchestration, logistical and marketing support
 - Flagship event had 375 guests with gross income of \$45,000
- Managed internship program, including recruitment, interviewing, accommodations, overseeing workflow, exit interviews, college valuations, and employment references

Board of Public Education, Portland | Elected Member | 2006-2009

Maine's largest and most diverse school system with 7,500 students, 1,200 staff and \$100M budget

- Managed my campaign in competitive race against incumbent; won all districts
- Nominated by peers as Policy Committee Chair, a rare appointment for a new member
 - Inherited a highly contested policy change banning weighted GPA at high schools

- o Led full-year vetting process of policy change including extensive research and public hearings
- o Ultimately permitted the practice to be voluntarily adopted at each high school
- Participated in accepting superintendent's resignation, installing interim and hiring replacement
- School board was heavily involved in school system's management during period of transition; at peak, school board met 4 nights a week for 6 hour meetings
- In 2nd year, served on Finance Committee, developing \$100M budget for board and voters
- In 3rd year, served on Facilities Committee, auditing needs for school system's 17 facilities
- Nominated by peers to serve as Chair of school board twice

COMMUNITY LEADERSHIP EXPERIENCE

Portland Charter Commission | Elected member | 2009-2010

Specially appointed commission to examine and recommend changes to Portland's Charter

- Managed successful campaign in highly competitive race
- Worked collaboratively to draft language around a new elected mayor position in Portland
- Portland voters ratified all of the Commission's suggested policy changes

Irish American Club of Maine, Portland | Board of Directors / President | 2002-2008 / 2004-2006

Non-profit social club founded in 1973 with several hundred members

- Negotiated \$50,000 debt forgiveness deal for Maine Irish Heritage Center in exchange for life-long lease
- Organized Portland's first modern Saint Patrick's Parade in 2006, closing down Commercial Street in the Old Port for a half hour, now in its 10th year with major participation
- Modernized Club's infrastructure, including moving its newsletter from MS Word to a publishing software, overseeing the development of a new website, and revamping membership program

West End Neighborhood Association, Portland | President | 2006

- Moderated monthly meetings and non-partisan public forums
- Hosted a Community Design Workshop on the future of the Reiche Community Center

SPECIAL RECOGNITION

Maine Today Media, Statewide | Forty Under Forty | 2011

- Selected as one of Maine's "Forty Under Forty" honorees in the first class lauded by the *Portland Press Herald/Maine Sunday Telegram*

EDUCATION

Muskie School of Public Service at USM, Portland | Master of Public Policy & Management | 2007

- Capstone project: *Building a Logistics Infrastructure in Maine* with economist Charlie Colgan

Bates College, Lewiston | *Bachelor of Arts* | 2002

- Senator George J. Mitchell Scholar, 1998-2002

THOMAS VALLEAU
65 ROCKLAND AVENUE
PORTLAND, MAINE

August 1, 2016

Dear Kathy:

I would like to volunteer once again to serve on the Board of Directors of the Portland Fish Exchange. I have been a member of this Board for quite a few years, and hope that my experience with the issues that are now faced by both the Exchange and the industry itself can be useful.

Sincerely,

Thomas Valteau

RESUME

THOMAS F. VALLEAU
65 ROCKLAND AVENUE
PORTLAND, ME 04102
772 6868
tvalleau@maine.rr.com

Born: Elizabeth, NJ, 1936

Education: BA, University of Colorado, 1964

Married: Two adult daughters

Occupation: Executive Director, North Atlantic Ports Association

Employment: US Department of Housing and Urban Development
1965 - 1969

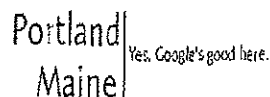
Executive Director, Portland Urban Renewal Authority
1970 - 1977

Deputy City Manager, Portland, Maine
1977 - 1980

Director of Transportation and Waterfront, Portland
Maine 1980 - 1998

Current civic:

Board of Directors: Portland Housing Authority
Board of Directors: Portland Fish Exchange



Katherine Jones <klj@portlandmaine.gov>

Portland Fish Exchange BOD appointment

1 message

Avisleavit@aol.com <Avisleavit@aol.com>

Thu, Aug 18, 2016 at 5:21 PM

To: klj@portlandmaine.gov

Avis C. Leavitt
2 Cranberry Pines Road
Scarborough, ME 04074
207-885-9888
AvisLeavit@aol.com

August 18, 2016

RE: Class A, Portland Fish Exchange, Board of Directors appointment

Dear Ms. Jones,

I would like to be considered for reappointment to the Portland Fish Exchange board of directors. I have represented boats on the exchange for almost 30 years now. I have served on the Board since 2009. I represent over 90 % of the boats that land here and as a former boat owner and seller at PFE, I feel I have a lot of valuable input.

Thank you for your consideration.

Sincerely,

Avis C. Leavitt

Order 70-16/17
Tab 5 10-17-16

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 APPOINTING DIRECTORS OF
THE PORTLAND WIDOWS' WOOD SOCIETY FOR THE 2016-2017 TERM**

ORDERED, that the following persons are hereby appointed as Directors of the Widows' Wood Society for the City of Portland for a term to end November 1, 2017:

Name	Address
Henry L. Donovan	15 Clifford Street
Nancy English	40 Park Avenue
Michael Francouer	33 Autumn Lane
Cyrus Hagge	45 Turner Street
Cheryl Hallett, Treasurer	22 Pride Farm Road, Falmouth
Everett Ingalls	45 Eastern Promenade
John C. Knox, President	44 Bramblewood Drive
Thomas M. Pierce	52 Foreside Common Drive, Falmouth

MEMORANDUM
City Council Agenda Item

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

FROM: Nancy English

DATE: 10/6/2016

SUBJECT: Order Appointing Directors of the Portland Widows' Wood Society for the 2016-2017 Term

SPONSOR: Mayor Ethan K. Strimling

(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 _____ Final Action 10/17/2016

Can action be taken at a later date: ____ Yes ____ X No (If no why not?) The directors' terms expire Nov. 1.

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

I. ONE SENTENCE SUMMARY

This action approves the 2016-2017 terms of the directors of the Portland Windows' Wood Society.

II. AGENDA DESCRIPTION

The Portland Widows' Wood Society provides assistance to needy Portland residents who are referred to the Society by various charitable organizations and the City of Portland. This order appoints the following persons as Directors to the Portland Widows' Wood Society for the 2016-2017 term:

Henry L. Donovan	15 Clifford Street
Nancy English	40 Park Avenue
Michael Francouer	33 Autumn Lane
Cyrus Hagge	45 Turner Street
Cheryl Hallett, Treasurer	22 Pride Farm Road, Falmouth
Everett Ingalls	45 Eastern Promenade
John C. Knox, President	44 Bramblewood Drive

III. BACKGROUND

The Portland Widows' Wood Society was organized on October 23, 1850, by a Charter approved by the Maine Legislature on May 30, 1850, for the purpose of "furnishing fuel, gratuitously, to destitute women and orphans" of Portland.

The Charter was amended in 1879, 1903 and 1971. The distribution of fuel – or in today's version, reimbursement for the cost of fuel deliveries – "shall be made without regard to sect." The funds distributed are made up of donations and income from the original and subsequent bequests. The organization's finances are audited annually. The total of fuel reimbursements fluctuates depending on the price of fuel and the winter weather. In the winter of 2014-2015, more than \$18,000 was distributed to assist the poor with heating bills.

IV. INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED

These directors enable this organization to fulfill its purpose, which is assistance for the poor, a goal the City Council has supported through many different actions it has taken over the years.

V. FINANCIAL IMPACT

None.

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

VII. RECOMMENDATION

VIII. LIST ATTACHMENTS

Order

Prepared by: Nancy English

Date: 10/17/2016

October 7, 2016

The Honorable Ethan Strimling
Mayor
City of Portland
389 Congress Street
Portland, ME 04104

RE: The Portland Widows Wood Society

Dear Mayor Strimling:

I am writing to submit for consideration by the Portland City Council the following nominees for appointment as Directors of the Portland Widows Wood Society for the 2016-2017 term:

Henry L. Donovan	15 Clifford Street
Nancy English	40 Park Avenue
Michael Francoeur	33 Autumn Lane
Cyrus Hagge	45 Turner Street
Cheryl Hallett, Treasurer	22 Pride Farm Road, Falmouth
Everett Ingalls	45 Eastern Promenade
John C. Knox, President	44 Bramblewood Drive
Thomas M. Pierce	52 Foreside Common Dr., Falmouth

In accordance with the bylaws of the Society and if the council is willing, the appointments should be made prior to November 6, 2015. As you know, the Society provides heating assistance to needy Portland residents many of whom are referred to us by the City or various charitable organizations. I would be happy to provide any additional information you or the council might require. I thank you and the council for your consideration of this request.

Sincerely,

John C. Knox
President
Portland Widows Wood Society
207-797-2486

Cc: Katharine L. Jones, City Clerk

*Order 71-16/17
Tab 6 10-17-16*

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:**

**Tomaso's Canteen Inc. d/b/a Tomaso's Canteen. Application for a Class A Lounge at 18
Hampshire Street.**

Dear Mayor Strimling and Members of the City Council,

I am seeking to add corporate officers to Tomaso's Canteen, Inc., which requires a new liquor license application for the business. The additional officers are Margaret Minervino, Robert Minervino and Thomas Minervino, all of whom have played a significant role in the business since it began. The four of us will each have a 25% share.

Thank you kindly for your consideration.

Sincerely,

A handwritten signature in cursive script, appearing to read 'S. Minervino', written in dark ink.

Sam Minervino



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):	Tomaso's Canteen Inc. Phone: 207 536-1285
Location Address:	18 Hampshire St. Portland ME 04103 Zip:
If new, what was formerly at this location:	
Mailing Address:	18 Hampshire St. Portland 04103 Zip:
Contact Person:	Samuel T. Minervino Phone: 207 776 1015
Contact Person Email:	tomasos.canteen@gmail.com
Manager of Establishment:	Margaret Minervino 3-11-1986 Date of Birth: 207 749-8199 Phone:
Owner of Premises (Landlord):	Nicolino Ciccimancini
Address of Premises Owner:	43 Walton St. Portland ME 04103 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	
Tomaso's Canteen Inc.		Zip:	
Contact Person:	Samuel T. Minervino	Phone:	207 776 1015
Principal Officers	Title	Date of Birth	Residence Address
✓ Samuel T. Minervino	Pres.	7-3-57	31 Oakley St. Portland ME.
✓ Margaret Minervino	Vice Pres.	3-11-86	19 Longwood Drive Portland ME
Thomas S. Minervino	Treas.	1-18-82	60 Starbird Rd. Portland ME
Robert M. Minervino	Sec.	2-14-62	29 Walton St. Portland ME

Class of Liquor License:	Class X / Class A Lounge	
Type of food served:	Pub Food	
Please circle all that will be served:	☒ Beer ☒ Wine ☒ Liquor	
Projected percentage of sales:	Generated from Food: 35%	Generated from Alcohol: 65%
Hours & days of operation:	Mon thru Fri 11AM to 1AM, weekends 8AM to 1AM	

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?	☒ 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
Will you permit dancing on the premises?	☒ Y ☐ N
Will you permit dancing after 1:00 a.m.?	☒ Y ☐ N
Will you have outside dining? (If yes, an Outdoor Dining Application is required)	☒ 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
If yes, please list: # of pinball machines: _____ # of amusements: 1 juke # of pool tables: _____	
What is your targeted opening date? Already open adding corporate officers	
Does the Issuance of this license directly or indirectly benefit any City employee(s)?	☒ Y ☐ 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?	☒ Y ☐ N
If Yes, please list business name(s) and location(s):	
Samuel's Bar & Grill, Tomaso's Canteen	
Is any principal officer under the age of 21?	☒ Y ☐ N
Have applicant, partners, associates, or corporate officers ever been arrested, indicted, or convicted for any violation of law?	☒ Y ☐ N
If Yes, please explain:	

I Samuel Minervino 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 Samuel Minervino Title President Date 9-14-16

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 expedite a liquor license through influence should be completely disregarded.

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



DEPARTMENT USE ONLY

LICENSE NUMBER:

CLASS:

DEPOSIT DATE

AMT. DEPOSITED:

BY:

CK/MO/CASH:

PRESENT LICENSE EXPIRES 11-23-16

INDICATE TYPE OF PRIVILEGE: ☒ MALT ☒ SPIRITUOUS ☒ VINOUS

INDICATE TYPE OF LICENSE:

☐ RESTAURANT/LOUNGE (Class XI ☐

☐ RESTAURANT (Class I,II,III,IV ☐

☐ HOTEL (Class I,II,III,IV ☐

☐ HOTEL-OPTINONAL FOOD (Class I-A ☐

☐ CLUB-ON PREMISE CATERING (Class I ☐

☒ CLASS A LOUNGE (Class X ☐

☐ GOLF CLUB (Class I,II,III,IV ☐

☐ CLUB (Class V ☐

☐ OTHER ☐

☐ TAVERN (Class IV ☐

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)			
Tomaso's canteen Inc				Tomaso's Canteen			
DOB:				DOB:			
DOB:				DOB:			
Address 18 Hampshire St.				Location (Street Address) 18 Hampshire St.			
City/Town Portland State ME Zip Code 04103				City/Town Portland State ME Zip Code 04103			
Mailing Address 18 Hampshire St.				Mailing Address 18 Hampshire St.			
City/Town Portland State ME Zip Code 04103				City/Town Portland State ME Zip Code 04103			
Telephone Number 207 536 1285 Fax Number				Business Telephone Number 207 536 1285 Fax Number			
Federal I.D. # 47 425 2297				Seller Certificate # 1175597			

EMAIL ADDRESS: _____

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

4. State amount of gross income from period of last license: ROOMS \$ _____

FOOD \$ 250,000.00

LIQUOR \$ 450,000.00

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: Margaret C. Minervino

8. If business is NEW or under new ownership, indicate starting date: _____

- Requested inspection date: ASAP Business hours: 11AM to 1AM, 8AM to 1AM weekends
9. Business records are located at: 938 Forest Ave. Portland ME 04103
10. Is/are applicant(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

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

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

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: Nicolina Ciccomancini 43 Walton St. Portland ME 04103

17. Describe in detail the premises to be licensed: (Supplemental Diagram Required) The One story brick building located at 18 Hampshire St. Portland ME

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? 200 yds Which of the above is nearest? Church

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

If YES, give details: _____

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

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

Dated at: Portland, ME on 9/16, 20 16
Town/City, State Date

Samuel T. Minervino
Signature of Applicant or Corporate Officer(s)

Please sign in blue ink

Signature of Applicant or Corporate Officer(s)

Samuel T. Minervino
Print Name

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

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

On: _____
Date

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

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

THIS APPROVAL EXPIRES IN 60 DAYS

NOTICE - SPECIAL ATTENTION

§ 653. Hearings; bureau review; appeal

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



State of Maine
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:

Tomaso's Canteen Inc.

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

Tomaso's Canteen

3. Date of filing with the Secretary of State: 4-12-2015

4. State in which you are formed: Maine

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

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

Name	Address for Previous 5 years	Date of Birth	Ownership %
Samuel T. Minerina	Portland ME	7-3-57	25
Margaret C. Minerina	Portland ME	3-11-86	25
Thomas S. Minerina	Portland ME	1-18-82	25
Robert M. Minerina	Portland ME	2-14-62	25

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: _____

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

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

9-13-16
Date

Samuel T. Minervino
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

MOP SINK
(WALL MOUNTED HOT WATER
"ATER ABOVE)

EXISTING BATHROOM
FIXTURES TO REMAIN

EXISTING HOT WATER HEATER
TO BE REMOVED

EXISTING BATHROOM
FIXTURES TO REMAIN

EXISTING SERVICE CLOSET
TO REMAIN

REPLACE EXISTING WINDOWS
WITH UNITS WITHIN EXISTING
OPENINGS (TYPICAL ALL
WINDOWS)

REMOVE EXISTING DOOR AND
REPLACE WITH DOOR IN NEW
LOCATION

REPLACE EXISTING WINDOWS
WITH UNITS WITHIN EXISTING
OPENINGS (TYPICAL ALL
WINDOWS)

EXISTING NON-STRUCTURAL
WALL TO BE REMOVED

INFILL WALL W/ 2X FRAMING
AND GWB ON EACH SIDE

EXISTING NON-STRUCTURAL
WALL TO BE REMOVED

INFILL WALL W/ 2X FRAMING
AND GWB ON EACH SIDE

3-BAY POT SINK

EXISTING NON-STRUCTURAL
WALL TO BE REMOVED

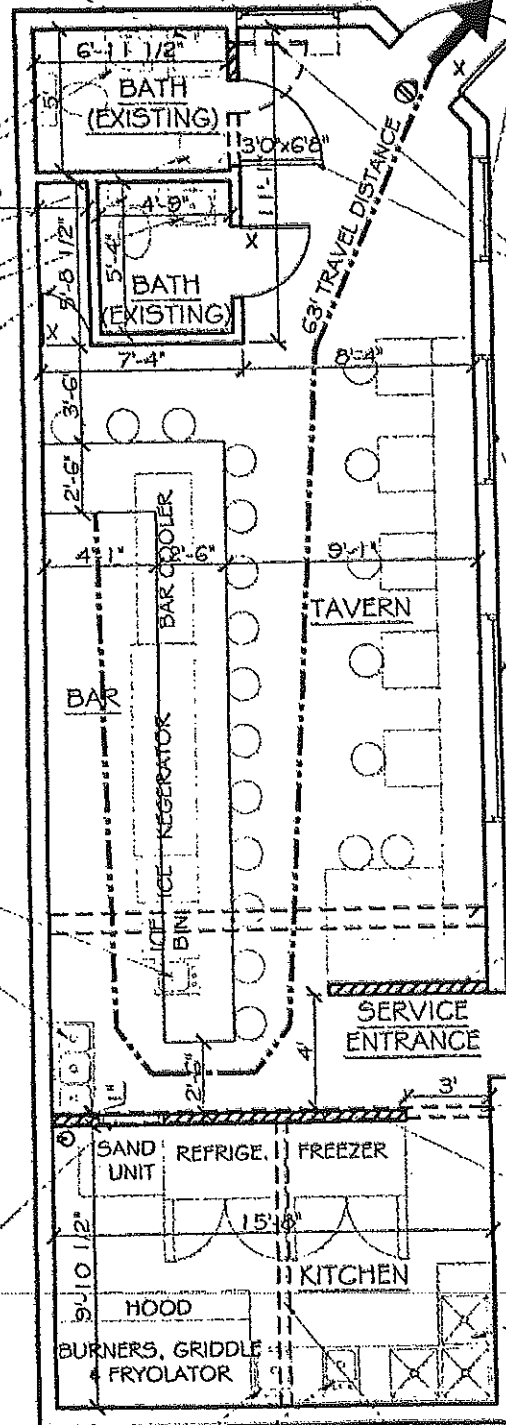
HAND SINK

3-BAY GLASS SINK

FOOD PASS-THROUGH
WINDOW

FOOD SINK

HAND SINK



GENERAL NOTES:

- EXISTING BUILDING
ENVELOPE WALLS AND
DOOR TO REMAIN



PROPOSED PLAN

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

BAR SNACKS

Half order of wings 7
Chicken parm eggrolls 5
French fries 4
Cheese fries 5
w/crumbled bacon 7
Buffalo shrimp 8
Pig in a poncho 4
Sausage calzonadilla 8
Haddock tips 9
Fried mozz balls 6
Onion rings w/Ponderosa sauce 6
Mac & cheese 5
w/crumbled bacon 7

WINGS

(bones or no bones)

Choose:

Buffalo, Thai chili, jerk, dirt, POOH, garlic parm or BBQ 12

PLATES

Fish and chips 13
House salad 6
w/chicken 11
w/haddock or shrimp 14
(blackened or Buffalo on request)

FLAT-TOP BURGERS*

(1/3 lb. fresh ground chuck)

Single 6
Double 8
Triple 10

Add: cheese 1
grilled onions, peppers or jalapeños 1
bacon 2

SANDWICHES

Hot or sweet Italian sausage w/peppers & onions 8
Fried, buffalo or blackened haddock 10
Haddock wrap 10
Fried or buffalo chicken 7
Chicken bomb 8
Steak bomb 9
(bomb = peppers, onions, cheese sauce)
Red hotdog 3

+2 to add a side to any burger or sandwich:
fries, onion rings, green salad or mac & cheese

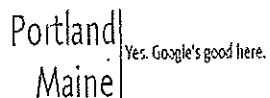
ASK ABOUT OUR DAILY SPECIALS

* Consuming raw or undercooked meats may increase your risk of foodborne illness



9/19/2016

City of Portland Mail - TOMASOS CANTEEN INC Business License Approval



Melissa Caiazzo <mcaiazzo@portlandmaine.gov>

TOMASOS CANTEEN INC Business License Approval

garyh@portlandmaine.gov <garyh@portlandmaine.gov>
To: bl@portlandmaine.gov
Cc: vjb@portlandmaine.gov

Mon, Sep 19, 2016 at 2:02 PM

TOMASOS CANTEEN INC is Approved for their Business License Inspection by the Police Dept.

Zone:

Comments: Change of license.

 noname
OK



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

JANICE GARDNER
389 CONGRESS STREET
ROOM 203
PORTLAND, ME 04101

Transaction Response #: MIQ99C536343

Criminal History Record

Introduction

This criminal history record was produced in response to the following request (Produced on 2015-06-24) :
Inquiries Name(s) MARGARET MINERVINO (1986-03-11)

NO MATCH WAS FOUND FOR YOUR REQUEST.



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

JANICE GARDNER
389 CONGRESS STREET
ROOM 203
PORTLAND, ME 04101

Transaction Response #: MIQ99C536342

Criminal History Record

Introduction

This criminal history record was produced in response to the following request (Produced on 2015-06-24) :

Inquiries Name(s) SAMUEL MINERVINO (1957-07-03)

NO MATCH WAS FOUND FOR YOUR REQUEST.



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

JESSICA HANSCOMBE
389 CONGRESS ST
PORTLAND, ME 04101

Transaction Response #: MIQ99C999418

Criminal History Record

Introduction

This criminal history record was produced in response to the following request (Produced on 2016-09-16) :

Inquiries Name(s) THOMAS MINERVINO (1982-01-18)

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 #: MIQ99C999422

Criminal History Record

Introduction

This criminal history record was produced in response to the following request (Produced on 2016-09-16) :

Inquiries Name(s) ROBERT MINERVINO (1962-02-14)

NO MATCH WAS FOUND FOR YOUR REQUEST.

Portland, Maine



Yes. Life's good here.

Department of Permitting and Inspections
Michael Russell, MS.

September 16, 2016

Tomaso's Canteen Inc.
Samuel Minervino
18 Hampshire Street
Portland ME 04103

Re: Tomaso's Canteen Inc. d/b/a Tomaso's Canteen. Application for a Class A Lounge at 18 Hampshire Street.

Dear Mr. Minervino,

This letter shall serve as a reminder of the Public Hearing before the Portland City Council on **Monday, October 17th at 5:00 p.m.**, for the review of your application for a Class A Lounge at 18 Hampshire 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 17th at 5:00 P.M., in City Council Chambers, 389 Congress St., on Tomaso's Canteen Inc. d/b/a Tomaso's Canteen. Application for a Class A Lounge at 18 Hampshire Street. Sponsored by Michael Russell, Director of Permitting and Inspections.

Com 3-16/17
Tab 7 10-7-16

MEMORANDUM
City Council Agenda Item

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

FROM: Benjamin Pearson, P.E., Compliance Coordinator, Water Resources Division, Department of Public Works

DATE: October 3, 2016

SUBJECT: Revisions to the Rules and Regulations for Use of the Sewer System

SPONSOR: City Manager

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st reading _____ Final Action _____

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

PRESENTATION: (List the presenter(s), type and length of presentation)
None

I. ONE SENTENCE SUMMARY

This communication is to inform the City Council of revisions made to the Rules and Regulations for Use of the Sewer System.

II. AGENDA DESCRIPTION

The Rules and Regulations for Use of the Sewer System are updated and revised as needed. The revisions being made are meant to update the Rules in regards to an agreement made with Westbrook regarding the Brighton Avenue area within Portland that discharges sewage to Westbrook. Other revisions are of existing rules, which have been updated for clarification. As required, public notice of a public hearing regarding the changes was published in the Press Herald on September 25th and 28th. A letter was also sent to industries permitted under the Industrial Pretreatment Program detailing the revisions. The public hearing will be held on October 5th, 2016.

III. BACKGROUND

The Rules and Regulations for Use of the Sewer System are comprised of seven sections.

Section 1 – General Provisions

Section 2 – Regulations of Wastewater Discharges

Section 3 – Control Mechanism
Section 4 – Reporting Requirements, Monitoring and Inspections
Section 5 – Enforcement
Section 6 – Sub-Meter Program
Section 7 – Fats, Oils, and Grease Program
Schedule A
Intermunicipal Agreement Exhibits

The first five sections pertain to the types of wastewater discharges allowed into the sanitary sewer system. These sections also detail the Industrial Pretreatment Program, a federally mandated program for any Publicly Owned Treatment Plant, and other limitations that are based on the East End Treatment Facility's ability to treat wastewater.

Section 6 codifies the sub-meter Program. A sub-meter allows sewer users to pay charges for water and not sewer for certain water uses that will not end up in the sewer. The most common use of a sub-meter in a residential setting is for outside water use. For commercial settings, utilizing water in product and large scale irrigation is most common.

Section 7 details the Fats, Oils, and Grease Program, passed in July 2015 as required by the Environmental Protection Agency's Consent Decree.

Schedule A lists the concentration limits of wastewater pollutant parameters that are allowed to be discharged into the sewer system.

Intermunicipal Agreement Exhibits show the areas under agreement with the Portland Water District and City of Westbrook.

City Council is not required to take any action for revisions to the Rules and Regulations for Use of the Sewer System unless there are any objections, in which a stay may be requested within 5 days of this meeting. If there is no stay requested, the revisions are considered in effect.

IV. INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED

The intended result is to update the Rules and Regulations to reflect the additional Intermunicipal Agreement for the Brighton Avenue area and to further clarify existing items within the Rules and Regulations.

V. FINANCIAL IMPACT

None.

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

These revisions are not substantial in nature and will not have a profound impact on sewer users.

VII. RECOMMENDATION

It is recommended that City Council allow these changes to be made without requesting a stay, unless further explanation would be helpful.

VIII. LIST ATTACHMENTS

Communication: Revision of the Rules and Regulations for Use of the Sewer System
Rules and Regulations for Use of the Sewer System

Prepared by: Benjamin Pearson

Date: September 30th, 2016

Bean/agendarequestmemo/rev 11/2015

***CITY OF PORTLAND, MAINE
DEPARTMENT OF PUBLIC SERVICES
WATER RESOURCES DIVISION
COMMUNICATION***

TO: Honorable Mayor Ethan Strimling and City Councilors

FROM: Benjamin N. Pearson, P.E., Compliance Coordinator

CC: Christopher Branch, Public Works Director
Nancy Gallinaro, Water Resources Division Manager
Danielle West-Chuhta, Corporation Counsel
Scott Firmin, Portland Water District Plant and Systems Operator

DATE: October 6, 2016

SUBJECT: Revision of the Rules and Regulations for Use of the Sewer System

The Department of Public Works, Water Resources Division is revising the Rules and Regulations for Use of the Sewer System. The following items are being revised:

- Addition of the Three Party Intermunicipal Agreement for the Brighton Avenue Area
- Update of Prohibited Discharges for the areas of Portland under intermunicipal agreement
- Upper limit for pH added
- Added language to temperature section of prohibited discharge
- Corrected UPC section referenced in Section 7.6 (e)
- Updated Schedule A to correct caustic alkalinity requirements
- Added EPA recommended testing and analysis methods

As required, a public hearing was held on October 5th at 1 P.M. in room 209 at City Hall. 10 people attended the meeting. The following companies were represented: Wright-Pierce, Ecolab, H.P. Hood, Inland Group, Oakhurst Dairy, Allagash Brewing Company.

The items being revised are explained in further detail below. The revisions are being made to include the recently signed three party Intermunicipal Agreement and the most up to date discharge prohibitions related to the areas of Portland that send sewage to Westbrook. The remaining revisions are meant to clarify sections of the Rules and Regulations to the Industrial Pretreatment Program and the Fats, Oils, and Grease Program.

Intermunicipal Agreement and Prohibited Discharges in the Agreement Service Area

Two sections of Portland are not served by the East End Treatment Facility but have their sewage treated by the Westbrook Treatment Facility. One of the sections, located along Riverside Street, Forest Avenue, and Warren Avenue already had an intermunicipal agreement. Recently, a second agreement

was agreed upon for a small area on Brighton Avenue. The basic details of this agreement have been added to the Rules. Also, the prohibited discharges for areas served by Westbrook have been updated.

Upper limit for pH added (Section 2.2 (b))

Previously, there was no upper limit to pH. Wastewater with a pH equal or above 12.5 is considered hazardous waste. In addition to an upper limit, the requirement to test for caustic alkalinity specified in the prohibited discharge section (2.2 b) for any pH above 10.3 is now reflected in Schedule A, which previously erroneously required caustic alkalinity analysis for any pH above 8.3.

Temperature language added (Section 2.2 (i))

The following language in bold was added or changed:

Wastewater having a temperature **greater than 140 degrees F (60 degrees C)**, or which may inhibit biological activity **or cause damage** in the Facility resulting in interference, but in no case wastewater **which causes the** temperature at the introduction into the **treatment plant** to exceed 40 degrees Centigrade (104 degrees Fahrenheit).

The additional language was included to differentiate between the Facility, which includes pipes, and the wastewater treatment plant. Sewer infrastructure can be damaged due to high temperature discharge and can cause pipes to sag or cracks to occur. Treatment plant performance can be impacted if wastewater being treated is above 104 degrees Fahrenheit. An upper limit was added based on Federal Pretreatment Guidance requiring such.

Updated Schedule A

Schedule A was updated to include the following:

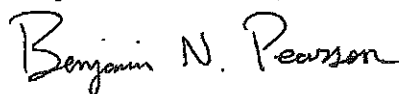
- Westbrook's BOD Local Limit
- Language regarding caustic alkalinity as found in section 2.2 requiring analysis if pH is above 10.3 S.U.
- Language prohibiting pH above 12.5 as it is considered hazardous waste

Also added is a partial list of methods for analysis from the Code of Federal Regulations Part 136.

Corrected UPC section referenced in Section 7.6 (e)

This section previously referenced UPC Section 1012 regarding venting erroneously. The reference has been changed to UPC Section 1014.

Benjamin N. Pearson, P.E.



Compliance Coordinator



Strengthening a Remarkable City, Building a Community for Life www.portlandmaine.gov

**PUBLIC ~~SERVICES~~ WORKS
DEPARTMENT**

**RULES AND REGULATIONS
FOR USE OF THE SEWER SYSTEM**

EFFECTIVE OCTOBER 22, 2016

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CITY OF PORTLAND
DEPARTMENT OF PUBLIC SERVICES
RULES AND REGULATIONS FOR THE USE OF THE SEWER SYSTEM

1. GENERAL PROVISIONS

1.1 Purpose and Scope

- a. It is the purpose of these Rules & Regulations to set forth uniform requirements for Users of the City of Portland Wastewater Collection & Treatment System (System). It is intended that these Rules & Regulations conform with and supplement the City of Portland Sewer Use Ordinance, the Federal Water Pollution Control Act Amendments of 1972 (PL 92-500) and its amendments, State of Maine Statutes, and Section 16 of the Portland Water District Charter.
- b. It is the intent of these Rules & Regulations to establish requirements for compliance with the City of Portland's Industrial Pretreatment Program. These rules set forth uniform requirements for Users of the System and enables the City to comply with all applicable State and Federal laws, including the Clean Water Act (33 United States Code [U.S.C.] section 1251 et seq.) and the General Pretreatment Regulations (Title 40 of the *Code of Federal Regulations* [CFR] Part 403 and 06-096 CMR Chapter 528). The objectives of these rules are:
 1. Prevent the introduction of pollutants to the System which would interfere with its operation;
 2. Prevent the introduction of pollutants to the System that will pass through, inadequately treated, into the receiving waters, or be otherwise incompatible with the System;
 3. Protect both the System personnel who may be affected by wastewater and sludge in the course of their employment, and the general public;
 4. Promote reuse and recycling of industrial wastewater and sludge from the System;
 5. Provide for fees for the equitable distribution of the cost of operation, maintenance, and improvement of the System; and
 6. Enable the Portland Water District to comply with its National Pollutant Discharge Elimination System permit conditions, sludge use and disposal, and any other Federal or State laws to which the System is subject.
- c. These rules shall apply to all Users of the System. The rules authorize the issuance of individual wastewater discharge permits; provides for monitoring, compliance, and enforcement activities; establishes administrative review procedures; requires User reporting; and provides for the setting of fees for the equitable distribution of costs resulting from the program established herein.
- d. The provisions of these Rules and Regulations shall apply to all Users of the System and govern the types of wastes and wastewaters prohibited from the System, the strength and pollutant concentrations of wastewaters allowed in the System, and control the quantity and characteristics of wastes and wastewaters received by the System.

1.2 Definitions

Unless the context specifically indicates otherwise, the following terms and phrases, as used in these Rules and Regulations, shall have the meanings hereinafter designated:

Act - The Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U S C @1251 et seq., 86 Stat. 816, PL 92-500 and the regulations promulgated thereunder, as amended from time to time.

Approval Authority - State of Maine Department of Environmental Protection.

Authorized Representative --

(1) If the User is a corporation:

- a. The president, secretary, treasurer, or a vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or
- b. The manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions that govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiate and direct other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; can ensure that the necessary systems are established or actions taken to gather complete and accurate information for individual wastewater discharge permit requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(2) If the User is a partnership or sole proprietorship: a general partner or proprietor, respectively.

(3) If the User is a Federal, State, or local governmental facility: a director or highest official appointed or designated to oversee the operation and performance of the activities of the government facility, or their designee.

(4) The individuals described in paragraphs 1 through 3 above, may designate a Duly Authorized Representative if the authorization is in writing, the authorization specifies the individual or position responsible for the overall operation of the facility from which the discharge originates or having overall responsibility for environmental matters for the company, and the written authorization is submitted to the City.

Best Management Practices or BMPs - Schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to implement the prohibitions listed in §403.5(a)(1) and (b). BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage.

Biochemical Oxygen Demand ("BOD") - The quantity of oxygen utilized in the biochemical oxidation of organic matter, under standard laboratory procedures in five (5) days at 20@ (twenty degrees) centigrade, expressed in terms of milligrams per liter (mg/l).

Bypass - The diversion of wastewater from any portion of an Industrial User's treatment facility.

Categorical Industrial User - An Industrial User subject to National Categorical Pretreatment Standards.

Caustic Alkalinity (Hydroxide alkalinity) - A measure of the capacity of wastewater, which exhibits a pH of greater than or equal to 8.3, to neutralize acids.

Categorical standards - Any regulation containing pollutant discharge limits promulgated by EPA in accordance with sections 307(b) and (c) of the Act (33 U.S.C. section 1317) that apply to a specific category of Users and that appear in 40 CFR Chapter I, Subchapter N, Parts 405-471.

Chemical Oxygen Demand (COD) - A measure of the oxygen required to oxidize all compounds, both organic and inorganic, in water.

City - City of Portland, Maine.

Collector Sewer - A sewer which transmits wastewater from one or more individual service lines to a trunk or interceptor sewer and has no other common sewers tributary to it.

Cooling Water - The water discharged from any use, such as air conditioning, cooling, or refrigeration

D E P - The Maine Department of Environmental Protection.

Department - The City of Portland Department of Public ~~Services~~ Works.

Daily Maximum - The arithmetic average of all effluent samples for a pollutant collected during a calendar day.

Daily Maximum Limit - The maximum allowable discharge limit of a pollutant during a calendar day. Where Daily Maximum Limits are expressed in units of mass, the daily discharge is the total mass discharged over the course of the day. Where Daily Maximum Limits are expressed in terms of a concentration, the daily discharge is the arithmetic average measurement of the pollutant concentration derived from all measurements taken that day.

Direct Discharge - The discharge of treated or untreated wastewater directly to the Waters of the State.

District - The Portland Water District, a quasi-municipal corporation organized under Maine law, and located at 225 Douglass Street, Portland, Maine 04104. Whenever approval of or correspondence with the District is referred to, it shall mean the General Manager of the District, or a duly designated representative, unless otherwise specified.

District Charter - Chapter 84 of the Private and Special Laws of the State of Maine of 1975, an "Act to Codify the Charter of the Portland Water District," as from time to time amended.

Domestic Source - Any residence, building, structure, facility, or installation from which only sanitary sewage will normally be discharged to the Facility.

Enforcing Officer - The Department or the Portland Water District as agent for the City and at the request of the Department shall administer and enforce the provisions of this article.

EPA - United States Environmental Protection Agency.

Existing Source - Any source of discharge that is not a "New Source."

Facility - See POTW - Publicly Owned Treatment Works.

Garbage - Solid wastes from the domestic and commercial preparation, cooking, and dispensing of food and produce, and from the handling, storage and sale of food and produce.

Grab Sample - A sample which is taken from a waste stream without regard to the flow in the waste stream and over a period of time not to exceed fifteen (15) minutes.

Hauler - Persons, firms, or corporations transporting wastewater, septage, holding water, or Industrial Waste to the Facility POTW for disposal.

Holding Tank Waste - Any waste derived from the temporary storage of sanitary waste including those derived from sinks and sanitary plumbing fixtures. Holding Tank Wastes are expected to exhibit pollutant concentrations similar to that of typical domestic wastewater.

Incompatible Pollutant - Any pollutant other than biochemical oxygen demand, suspended solids, pH, and fecal coliform bacteria or additional pollutants identified in the POTW's NPDES permit to discharge, which the wastewater treatment facility was not designed to treat, does not remove to a substantial degree, or may be toxic to the POTW or receiving waters.

Indirect Discharge or "Discharge" - The discharge or the introduction into the Facility of pollutants from any source, other than a Domestic Source, regulated under section 307(b), (c) or (d) of the Act.

Industrial User - A source of Indirect Discharge or any source which discharges Industrial Waste to the Facility.

Industrial Waste - Any liquid, gaseous, or solid waste substance, or a combination thereof, results from any process of industry, manufacturing, trade, or business or from the development or recovery of any natural resources.

Interference - A discharge which, alone or in conjunction with discharges from other sources, inhibits or disrupts the Facility, its treatment processes or operations, or its sludge processes, use or disposal; and therefore, is a cause of a violation of the District's MPDES Permit(s) or of the prevention of sewage sludge use or disposal

in compliance with any of the following statutory/regulatory provisions or permits issued thereunder, or any more stringent State or local regulations: section 405 of the Act; the Solid Waste Disposal Act, including Title II commonly referred to as the Resource Conservation and Recovery Act (RCRA); any State regulations contained in any State sludge management plan prepared pursuant to Subtitle D of the Solid Waste Disposal Act; the Clean Air Act; the Toxic Substances Control Act; and the Marine Protection, Research, and Sanctuaries Act.

Local Limit - Specific discharge limits developed and enforced by City upon industrial or commercial facilities to implement the general and specific discharge prohibitions listed in 40 CFR 403.5(a)(1) and (b).

MEPDES - Maine Pollution Discharge Elimination System or permit issued by the State of Maine for discharges from a wastewater treatment facility.

Medical Waste - Isolation wastes, infections agents, human blood and blood products, pathological wastes, sharps, body parts, contaminated bedding, surgical wastes, potentially contaminated laboratory wastes, and dialysis wastes.

mg/l - milligrams per liter.

Monthly Average - The sum of all "daily discharges" measured during a calendar month divided by the number of "daily discharges" measured during that month.

Monthly Average Limit - The highest allowable average of "daily discharges" over a calendar month, calculated as the sum of all "daily discharges" measured during a calendar month divided by the number of "daily discharges" measured during that month.

Municipal Sewer or Collector System - A sewer or system of sewers directly controlled by or which is the responsibility of the Municipality.

NAICS - The North American Industry Classification System. A system of classifying industries by the nature of their process. Replaced the Standard Industrial Classification system.

(National) Categorical Pretreatment Standard - Any regulation containing pollutant discharge limits promulgated by EPA in accordance with Section 307 (b) and (c) of the Act (33 U.S.C. section 1317), that apply to a specific category of Users and that appear in 40 CFR Chapter I, Subchapter N, Parts 405 through 471.

New Source - Any building, structure, facility, or installation from which there is (or may be) a discharge of pollutants, the construction of which commenced after the publication of proposed Pretreatment Standards under section 307(c) of the Act which will be applicable to such source if such Standards are thereafter promulgated in accordance with that section, provided that:

- a. The building, structure, facility, or installation is constructed at a site at which no other source is located; or
- b. The building, structure, facility, or installation totally replaces the process or production equipment that causes the discharge of pollutants at an Existing Source; or
- c. The production or wastewater generating processes of the building, structure, facility, or installation are substantially independent of an Existing Source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the Existing Source, should be considered.
- d. Construction on a site at which an Existing Source is located results in a modification rather than a New Source if the construction does not create a new building, structure, facility, or installation meeting the criteria of (b) or (c) above but otherwise alters, replaces, or adds to existing process or production equipment.
- e. Construction of a New Source as defined under this paragraph has commenced if the owner or operator has begun, or caused to begin, as part of a continuous onsite construction program:
 - i. any placement, assembly, or installation of facilities or equipment; or

- ii. significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or
- iii. Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this paragraph.

Noncontact Cooling Water - Water used for cooling that does not come into direct contact with any raw material, intermediate product, waste product, or finished product.

Non-Categorical Significant Industry - An industry which meets the definition of a Significant Industrial User, but is not a categorical industry.

Non-Significant Industry - An industry which does not meet the definition of a Significant Industrial User, but may be permitted by the City because it has a possibility of discharging incompatible pollutants in excess of local discharge limits or is required to have a spill control plan.

Pass Through - The discharge of pollutants through the Facility into Waters of the State in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of violation of any requirement of the District's NPDES Permit (including an increase in the magnitude or duration of a violation).

Person - Any individual, firm, company, association, corporation, trust or government authority, partnership, public or private corporation or authority, trust, estate, governmental entity, agency or political subdivision of a municipality, the State of Maine, or the United States, or any other legal entity, or their legal representative, agent, or assign. The masculine gender shall include the feminine, and the singular shall include the plural where indicated by the context.

pH - The logarithm (base 10) of the reciprocal of the concentration of hydrogen ions in a solution expressed as standard units.

Pollutant - Any element or property of sewage, agricultural, industrial or commercial waste, runoff, leachate, heated effluent, or other matter, in whatever form and whether originating at a point or non-point source, which is or may be discharged, drained, or otherwise introduced into the Facility, or Waters of the State.

These may be but are not limited to: Dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, medical wastes, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, municipal, agricultural and industrial wastes, and certain characteristics of wastewater (e.g., pH, temperature, TSS, turbidity, color, BOD, COD, toxicity, or odor).

Pollution - The man-made or man induced alteration of the chemical, physical, biological and radiological integrity of water.

POTW (Publicly Owned Treatment Works) ("Facility") - The treatment works, as defined by Section 212 of the Act, operated by the District. This definition includes any devices and systems used in the storage, treatment, recycling, disposal, and reclamation of wastewater and sewage consisting of domestic, commercial, municipal, and industrial wastes of a liquid nature. It also includes those sewers, pipes, pump stations, and other conveyances which convey wastewater to the Facility. For the purposes of these Rules and Regulations, POTW shall also include any sewers that convey wastewaters to the treatment works from Persons who are, by permit, contract, or agreement with the City, Users of the Facility.

POTW Treatment Plant - That portion of the Facility designed to provide treatment (including recycling and reclamation) of wastewater, municipal sewage, industrial waste, septage and holding water.

Pretreatment - The reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater to a less harmful state prior to or in lieu of discharging or otherwise

introducing such pollutants into the Facility. The reduction or alteration can be obtained by physical, chemical or biological processes, process changes, or other means, except as prohibited by 40 CFR @403.6(d).

Pretreatment Requirements - Any substantive or procedural requirement related to pretreatment, other than a National Categorical Pretreatment Standard, imposed on a User by the City through its permit process as defined in Section 3 of these Rules and Regulations.

Pretreatment Standards or (Standards) - Pretreatment Standards shall mean prohibited discharge standards, categorical pretreatment standards, and local limits.

RCRA - Resource Conservation and Recovery Act.

Sanitary Sewage - Liquid and water-carried human and domestic wastes from residences, commercial buildings, industrial plants and institutions, exclusive of ground, storm and surface water and exclusive of industrial wastes.

Sanitary Sewer - A sewer that carries liquid and water-carried wastes from residences, commercial buildings, industrial plants and institutions together with minor quantities of ground, storm, and surface waters that are not admitted intentionally.

Septage - Any waste, refuse, effluent, sludge or other material derived from a septic tank, cesspool, vault privy, or similar source which concentrates wastes or to which chemical have been added. Per this definition, portables are considered to be septage.

Septic Tank Pumpage "Septage" - Any solid or liquid wastes removed from septic tanks, cesspools, seepage pits, grease traps or privies.

Service Agreement - A contract between the City and a Person, as defined above for the handling and treatment of wastewater from such Person.

Sewage - Human excrement and gray water (household showers, dishwashing operations, etc.).

Sewer - A pipe or conduit that carries wastewater.

Sewerage system - Any device, equipment, or works used in the transportation, pumping, storage, treatment recycling, reclamation, and disposal of sewage and industrial wastes.

Shall is mandatory; May is permissive.

Significant Industrial User - Except as provided in paragraph (3) below, a Significant Industrial User is:

1. An Industrial User subject to categorical Pretreatment Standards; or
2. An Industrial User that:
 - (a) Discharges an average of twenty-five thousand (25,000) gallon per day (gpd) or more of process wastewater to the POTW (excluding sanitary, noncontact cooling and boiler blowdown wastewater);
 - (b) Contributes a process wastestream which makes up five (5) percent or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or
 - (c) Is designated as such by the City on the basis that it has a reasonable potential for adversely affecting the POTW's operation or for violating any Pretreatment Standard or Requirement.
3. Upon finding that a User meeting the criteria in paragraph (2) above has no reasonable potential for adversely affecting the POTW's operation or for violating any Pretreatment Standard or Requirement, the City may at any time, on its own initiative or in response to a petition received from an Industrial User, and in accordance with procedures in 40 CFR 403.8(f)(6), determine that such User should not be considered a Significant Industrial User,

Significant Noncompliance - A violation which meets one or more of the following criteria:

- (1) Chronic violations of wastewater discharge limits, defined here as those in which sixty-six percent (66%) or more of all of the measurements taken for the same pollutant parameter taken during a six-month period exceed (by any magnitude) a numeric Pretreatment Standard or Requirement, including Instantaneous Limits;
- (2) Technical Review Criteria (TRC) violations, defined here as those in which thirty-three percent (33%) or more of wastewater measurements for each pollutant parameter taken during a six-month period equal or exceed the product of the numeric Pretreatment Standard or Requirement, including Instantaneous Limits, multiplied by the applicable criteria (1.4 for BOD, TSS, fats, oils and grease, and 1.2 for all other pollutants except pH);
- (3) Any other violation of a Pretreatment Standard or Requirement, Daily Maximum, long-term average, Instantaneous Limit, or narrative standard that the City determines has caused, alone or in combination with other discharges, Interference or Pass Through including endangering the health of POTW personnel or the general public;
- (4) Any discharge of a pollutant that has caused imminent endangerment to the public or to the environment, or has resulted in the City or District's exercise of its emergency authority to halt or prevent such a discharge;(5) Failure to meet, within 90 days after the schedule date, a compliance schedule milestone contained in an individual wastewater discharge permit or enforcement order for starting construction, completing construction, or attaining final compliance;(6) Failure to provide, within 45 days after the due date, any required reports, including baseline monitoring reports, reports on compliance with Categorical Pretreatment Standard deadlines, periodic self-monitoring reports, and reports on compliance with compliance schedules;
- (7) Failure to accurately report noncompliance;
- (8) Any other violation(s) which may include a violation of Best Management Practices, which the City determines will adversely affect the operation or implementation of the pretreatment program.

Sludge (Biosolids) - Waste containing varying amounts of solid contaminants removed from water, sanitary sewage, wastewater or industrial wastes by physical, chemical and biological treatment.

Slug Load or Slug Discharge - Any discharge at a flow rate or concentration, which could cause a violation of the prohibited discharge standards of these rules. A Slug Discharge is any Discharge of a non-routine, episodic nature, including, but not limited to, an accidental spill, non-customary batch discharge, which has a reasonable potential to cause Interference or Pass Through, or in any other way violate the POTW's regulations, Local Limits or Permit conditions.

Solids Disposal Operations - The method or methods the District employs to utilize or dispose of the by-product solids sludge resulting from the treatment of wastewater.

Staff or City Staff - The staff of the Department.

Storm Water - Any flow occurring during or following any form of natural precipitation, including snowmelt, and resulting therefrom.

Suspended Solids - The total suspended matter that floats on the surface of, or is suspended in, water, wastewater or other liquids, and which is removable by laboratory filtration.

Toxic Pollutant - Any pollutant or combination of pollutants listed as toxic in regulations promulgated by the Administrator of the Environmental Protection Agency under section 307(a)(1) of the Act, or other statutes, regulations or ordinances.

User - Any Domestic Source, or Industrial User which discharges wastewater to the Facility.

Vehicle Registration - Document issued by the City or the District to Haulers for a specified vehicle. A certificate of liability insurance must be submitted and payment of fee made prior to issuance or approval of registration.

Wastewater - Liquid and water-carried industrial wastes and sewage from residential dwellings, commercial buildings, industrial and manufacturing facilities, and institutions, whether treated or untreated, which are contributed to the POTW.

Wastewater Discharge Permit or Permit - The document issued by the City as set forth in Section 3 of these Rules and Regulations.

Wastewater Treatment Plant or Treatment Plant - That portion of the POTW which is designed to provide treatment of municipal sewage and industrial waste.

Waters of the State - All streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, reservoirs, aquifers, irrigation systems, drainage system;; and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, which are contained within, flow through, border upon or are within the jurisdiction of the State of Maine.

Westbrook Intermunicipal Sewer Service Area - The domestic and sanitary sewage and waste water from the Service Area as defined on the plan attached as Exhibit A. The service area includes the Riverside Street/Warren Avenue/Forest Avenue vicinity of Portland as defined on the plan attached as Exhibit AB, and the Brighton Avenue vicinity of Portland as defined on the plan attached as Exhibit C. The Riverside Street/Warren Avenue/Forest Avenue area is intercepted by the District and delivered to the existing Westbrook Gorham Regional Treatment Plant for treatment. Reference: Council Order 54-02/03 @ An Order Authorizing Three-Party Sewer Service Agreement with Portland Water District and City of Westbrook. The Brighton Avenue Area is intercepted by Westbrook and delivered to the existing Westbrook Gorham Regional Treatment Plant for treatment. Reference Council Order 50-16/17 @ An Order Authorizing Three-Party Sewer Service Agreement with Portland Water District and City of Westbrook.

Other Waste - Any waste delivered by truck that does not satisfy the definition of Septage or Holding Tank Wastes. Other Wastes may include commercial wastes that include materials other than sanitary waste.

2. REGULATION OF WASTEWATER DISCHARGES

2.1 General Discharge Prohibitions

No Person may introduce into a POTW any pollutant(s) which may cause Pass Through or Interference. These general prohibitions and the specific prohibitions in Section 2.2 of these Rules and Regulations apply to each Person introducing pollutants into the Facility whether or not the Person is subject to other National Pretreatment Standards or any national, state, or local Pretreatment Requirements.

2.2 Specific Discharge Prohibitions

In addition to the Prohibitions described in Section 2.1 above, the following discharges to the Facility are specifically prohibited:

- (a) Any gasoline, benzene, naphtha, fuel, oil, or other flammable or explosive liquid, solid, or gas, or any other pollutants which create a fire or explosive hazard in the POTW, including, but not limited to, waste streams with a closed-cup flashpoint of less than 140 degrees F (60 degrees C) using the test methods specified in 40 CFR 261.21;

- (b) Any wastewater containing toxic objectionable pollutants in sufficient quantity or concentration, either singly or by interaction with other pollutants, to injure or interfere with any wastewater treatment process, to constitute a hazard to humans or animals, to create a toxic effect in the receiving waters of the Facility, or to exceed the limitations set forth in a National Categorical Pretreatment Standard found in 40 CFR Chapter I, Subchapter N, Parts 405-471, the Local Discharge Limitations prescribed herein in Section 2.5, or an Industrial Discharge Permit issued pursuant to these Rules and Regulations. A toxic pollutant shall include, but not be limited to, any pollutant identified pursuant to Section 307(a) of the Act and as listed at 40 C.F.R. Part 403, Appendix B.

Also prohibited are any wastewaters which may cause corrosive structural damage to the Facility including, but not limited to the following characteristics:

All wastewaters with a pH lower than 5.0 or greater than 10.3.**

** The City may authorize discharge of wastes with a pH greater than 10.3 provided that the caustic (hydroxide) alkalinity of the sample does not exceed 1000 mg/l. No wastewater with a pH equal to or greater than 12.5 will be authorized for discharge as it is considered hazardous waste.

- (c) Any wastes or wastewaters having solid or viscous material which could cause an obstruction to flow in the Facility or in any way could interfere with the treatment process, including as examples of such materials, but without limiting the generality of the foregoing, significant proportions of ashes, wax, paraffin, cinders, sand, mud, straw, shavings, metal, glass, rags, lint, feathers, tars, plastics, wood and sawdust, hair and fleshings, entrails, lime slurries, beer and distillery slops, grain processing wastes, grinding compounds, acetylene generation sludge, chemical residues, acid residues, food processing bulk solids, snow, ice, and whole or ground seafood shells, whole blood, unground garbage, paper dishes, cups, whole or ground milk containers, and all other solid objects, material, refuse, and debris not normally contained in sanitary sewage.
- (d) Any waste which, either singly or by interaction with other wastes may result in the presence of noxious or malodorous liquids, gases, vapors, fumes or solids, or other wastewater which, either singly or by interaction with other wastes, are sufficient to create a public nuisance or a hazard to life, or to prevent entry into the sewers for maintenance or repair.
- (e) Any substance which may cause the Facility's effluent or any other product of the Facility such as biosolids, sludges, or scums, to be unsuitable for disposal in a permitted landfill or for reclamation and reuse, or to interfere with the reclamation and reuse process. In no case shall a substance discharged to the Facility cause the Facility to be in noncompliance with sludge use or disposal criteria, guidelines, or regulations developed under Section 405 of the Act; or with any criteria, guidelines, or regulations affecting sludge use or disposal developed pursuant to the Solid Waste Disposal Act, the Clean Air Act, or Maine DEP "Rules for Land Application of Sludge and Residuals" - MRSA Title 38, Section 1304, Chapter 419.
- (f) Any pollutants, including oxygen demanding pollutants (BOD, etc.) released in a discharge at a flow rate and/or pollutant concentration which, either singly or by interaction with other pollutants, will cause interference to the Facility or Pass Through to the Waters of the State.
- (g) Any wastewater load (slug) having a flow rate or containing concentrations or quantities of pollutants that exceed for any time period longer than fifteen (15) minutes more than five (5) times the average twenty-four (24) hour concentration, quantities, or flow during normal operation.
- (h) Any wastewaters with objectionable color not removed in the treatment process, such as, but not limited to, dye wastes and vegetable tanning solutions.
- (i) Any wastewater having a temperature which may ~~Wastewater having a temperature greater than 140 degrees F (60 degrees C), or which inhibit~~ will inhibit biological activity or cause damage in the Facility resulting in interference, but in no case wastewater with which causes the ~~temperature at the introduction into the Facility treatment plant which exceeds 40 degrees Centigrade (104 degrees Fahrenheit).~~

- (j) Any wastewater containing any radioactive wastes or isotopes with such half-life or concentration as may exceed limits necessary to comply with applicable state or federal regulation.
- (k) Any sludges or deposited solids resulting from an industrial pretreatment process.
- (l) Any petroleum oil, non-biodegradable cutting oil or products of mineral oil origin in amounts that will cause Interference or Pass Through.
- (m) Any pollutants which result in the presence of toxic gases, vapors, or fumes within the POTW in a quantity that may cause acute worker health and safety problems.
- (n) Any medical wastes, except as specifically authorized by the City in an individual wastewater discharge permit.
- (o) Any wastewater causing, alone or in conjunction with other sources, the treatment plant's effluent to fail toxicity test.
- (p) Any detergents, surface-active agents, or other substances which that might cause excessive foaming in the POTW.
- (q) Any trucked or hauled pollutants, except at discharge points designated by the District in accordance with District rules.
- (r) Any pollutants, substances, or wastewater prohibited by this Section shall not be processed or stored in such a manner that they could be discharged to the POTW.

2.3 Prohibition of Wastes.

The Department may, if deemed necessary in its judgment, impose the following limitations on discharges of the following described waters or wastes to any public sewer or any part thereof:

- (1) Any aluminum exceeding a concentration of 500 milligrams per liter;
- (2) Any iron exceeding a concentration of 10 milligrams per liter;
- (3) Any tin exceeding a concentration of 2 milligrams per liter;
- (4) Any fluorides exceeding a concentration of 100 milligrams per liter;
- (5) Any phenols exceeding a concentration of 100 milligrams per liter;
- (6) Any chlorides exceeding a concentration of 3,000 milligrams per liter;
- (7) Any sulphates exceeding a concentration of 6y00 milligrams per liter;
- (8)
 - (a) Any waters or wastes containing animal or vegetable based fats, wax, grease or oils whether emulsified or not, in excess of 500 milligrams per liter or containing substances which may solidify or become viscous at temperatures between thirty-two (32) degrees and one hundred fifty (150) degrees Fahrenheit (zero(0) and sixty-five (65) degrees centigrade).
 - (b) Any waters or wastes containing hydrocarbon (non-polar) based fats, wax, grease or oils, whether emulsified or not, in excess of 100 milligrams per liter or containing substances which may solidify or become viscous at temperatures between thirty-two (32) degrees and one hundred fifty (150) degrees Fahrenheit (zero (0) and sixty-five (65) degrees centigrade).
 - (c) In the **Westbrook Intermunicipal Sewer Service Areas**, any waters or wastes containing animal or vegetable based fats, wax, grease or oils, whether emulsified nor not, in excess of 100 milligrams per liter or containing substances which may solidify or become viscous at temperatures between thirty-two (32) degrees and one hundred fifty (150) degrees Fahrenheit (zero (0) and sixty-five (65) degrees centigrade).

2.4 Specific Discharge Prohibitions in the Westbrook Intermunicipal Sewer Service Area

The following discharges to the Westbrook Intermunicipal Sewer Service Area are specifically prohibited:

- (a) Any gasoline, benzene, naphtha, fuel, oil, or other flammable or explosive liquid, solid, or gas, or any other pollutants which create a fire or explosive hazard in the POTW, including, but not limited to, waste streams with a closed-cup flash point of less than 140 degrees F (60 degrees C) using the test methods specified in 40 CFR 261.21;
- (b) Any wastewater containing toxic objectionable pollutants in sufficient quantity or concentration, either singly or by interaction with other pollutants, to injure or interfere with any wastewater treatment process, to constitute a hazard to humans or animals, to create a toxic effect in the receiving waters of the Facility, or to exceed the limitations set forth in a National Categorical Pretreatment Standard found in 40CFR Chapter I, Subchapter N, Parts 405-471, the Local Discharge Limitations prescribed herein in Section 3.5, or a Wastewater Discharge Permit issued pursuant to these Rules and Regulations. A toxic pollutant shall include, but not be limited to, any pollutant identified pursuant to Section 307(a) of the Act and as listed at 40 C F R Part 403, App B.
- (c) Also, prohibited are any wastewaters which may cause corrosive structural damage to the Facility including, but not limited to the following characteristics:

All wastewaters with a pH lower than 5.0 or greater than 10.3 **

** (The City may authorize discharge of wastes with a pH greater than 10.3 provided that the caustic (hydroxide) alkalinity of the sample does not exceed 1000 mg/l.)
- (d) Any wastes or wastewaters having solid or viscous material which could cause an obstruction to flow in the Facility or in any way could interfere with the treatment process, including as examples of such materials, but without limiting the generality of the foregoing, significant proportions of ashes, wax, paraffin, cinders, sand, mud, straw, shavings, metal, glass, rags, lint, feathers, tars, plastics, wood and sawdust, hair and fleshings, entrails, lime slurries, beer and distillery slops, grain processing wastes, grinding compounds, acetylene generation sludge, chemical residues, acid residues, food processing bulk solids, snow, ice, and whole or ground seafood shells, whole blood, unground garbage, paper dishes, cups, whole or ground milk containers, and all other solid objects, material, refuse, and debris not normally contained in sanitary sewage.
- (e) Any waste which, either singly or by interaction with other wastes may result in the presence of noxious or malodorous liquids, gases, vapors, fumes or solids, or other wastewater which, either singly or by interaction with other wastes, are sufficient to create a public nuisance or a hazard to life, or to prevent entry into the sewers for maintenance or repair;
- (f) Any substance which may cause the Facility's effluent or any other product of the Facility such as biosolids, sludges, or scums, to be unsuitable for disposal in a permitted landfill or for reclamation and reuse, or to interfere with the reclamation and reuse process. In no case shall a substance discharged to the Facility cause the Facility to be in noncompliance with sludge use or disposal criteria, guidelines, or regulations developed under Section 405 of the Act; or with any criteria, guidelines, or regulations affecting sludge use or disposal developed pursuant to the Solid Waste Disposal Act, the Clean Air Act, or Maine D E P "Rules for Agronomic Utilization of Residuals – MRS A Title 38, Section 1304, Chapter 419.
- (g) Any pollutants, including oxygen demanding pollutants (BOD, etc.) released in a discharge at a flow rate and/or pollutant concentration which, either singly or by interaction with other pollutants, will cause interference to the Facility or Pass Through to the Waters of the State.
- (h) Any wastewater load (slug) having a flow rate or containing concentrations or quantities of pollutants that exceed for any time period longer than fifteen (15) minutes more than five (5) times the average twenty-four (24) hour concentration, quantities, or flow during normal operation.

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- (g) Any wastewaters with objectionable color not removed in the treatment process, such as, but not limited to, dye wastes and vegetable tanning solutions.
- (h) Any wastewater having a temperature which may inhibit biological activity in the Facility resulting in interference, but in no case wastewater which causes the temperature at the introduction to the treatment plant to exceed 40 degrees Centigrade (104 degrees Fahrenheit).
- (i) Any wastewater containing any radioactive wastes or isotopes with such half-life or concentration as may exceed limits necessary to comply with applicable state or federal regulation.
- (j) Any sludges or deposited solids resulting from an industrial pretreatment process.
- (k) Any petroleum oil, non-biodegradable cutting oil or products of mineral oil origin in amounts that will cause Interference or Pass Through.
- (l) Any pollutants which result in the presence of toxic gases, vapors, or fumes within the POTW in a quantity that may cause acute worker health and safety problems;

~~2.3.2—Prohibition of Wastes in the Westbrook Intermunicipal Sewer Service Area.~~

~~The Department may prohibit the discharge of the following wastes in the Westbrook Inter-municipal Sewer Service Area, if any discharge is, in their opinion, of sufficient quantity to create a hazard, public nuisance or deleterious effect upon receiving waters or the waste treatment facilities:~~

- ~~(a) Any hexavalent chromium, aluminum, iron, tin, fluorides, arsenic, phenols, chlorides or sulfates. In addition, those metals specified in 40 CFR 433.17 shall not exceed the concentrations therein listed.~~
- ~~(b) Any reducing substances having an immediate chlorine demand exceeding 30.0 mg/l.~~
- ~~(c) Any radioactive wastes greater than allowable releases as specified by current U.S. Bureau of Standards Handbooks dealing with the handling and release of radioactivity.~~
- ~~(d) Any waters or wastes containing any combination of solids, liquids, or gases listed in this section but at concentrations not prohibited when such commingled waters or wastes shall yield a concentration of contamination which the Department deems detrimental to the wastewater works or wastewater treatment processes.~~
- ~~(e) Any waters or wastes which cause corrosive structural damage to the sewers or treatment works including, but not limited to any wastes having a concentration of caustic alkalinity exceeding 1000 mg/l, or all wastes with a pH lower than 5.0.~~
- ~~(f) Any liquid or vapor other than water having a temperature higher than one hundred fifty (150) degrees Fahrenheit (65 C).~~
- ~~(g) Any waters or wastes containing fats, wax, grease or oils, whether emulsified or not, in excess of one hundred (100) mg/l, or containing substances which may solidify or become viscous at containing substances which may solidify at temperatures between thirty two (32) degrees and one hundred fifty (150) degrees Fahrenheit (0 and 65 C).~~
- ~~(h) Any waters or wastes containing suspended solids exceeding a concentration of 400 mg/l, or dissolved solids of such character and quantity that unusual attention or expense is required to handle such materials at the wastewater treatment plant or in the public wastewater works.~~
- ~~(i) Any waters or wastes having any color that is not removable in the existing treatment plant processes.~~
- ~~(j) Any waters or wastes having an average B.O.D. in excess of 400 mg/l.~~
- ~~(k) Any waters or wastes having an average C.O.D. in excess of 600 mg/l.~~

2.5 Prohibition of Wastes in the Westbrook Intermunicipal Sewer Service Area.

In addition to the wastes listed in Section 2.4, the following discharges to the Facility are specifically prohibited:

- (a) Water from roof downspouts, foundation drains, or areaway drains, or other sources of surface runoff or groundwater; nor discharge or cause to be discharged any storm water, surface water, groundwater, roof runoff, subsurface drainage, uncontaminated cooling water, or unpolluted industrial process waters, except into storm drains.
- (b) Any gasoline, benzene, naphtha, fuel, flammable or explosive liquid, solid or gas.
- (c) Any petroleum oil, non-biodegradable cutting oil or products of mineral oil origin in amounts that will cause Interference or Pass Through.
- (d) Any sludges or deposited solids resulting from an industrial pretreatment process.
- (e) Any radioactive wastes greater than allowable releases as specified by state or federal regulation.
- (f) Any waters or wastes containing toxic or poisonous solids, liquids or gases in sufficient quantity, as determined by the city engineer, either singularly or by interaction with other wastes, to injure or interfere with any wastewater treatment process, constitute a hazard to humans or animals, create a public nuisance, or create any hazard in the receiving waters of any wastewater treatment plant now or in the future to be treating wastewater from the city; including, but not limited to those which exceed the limitations set forth in a National Categorical Pretreatment Standard found in 40 C.F.R. Chapter I, Subchapter N, Parts 405-471, the Local Discharge Permit issued pursuant to those as defined in standards issued from time to time under Section 307(a) of the Federal Water Pollution Control Act Amendments of 1972, Public Law 92-500. A toxic pollutant shall include, but not be limited to, any pollutant identified pursuant to Section 307(a) of the Act and as listed at 40 C.F.R. Part 403, App. B.
- (g) Any slug of wastes as defined in section 26-4 of the City of Westbrook Code of Ordinances
- (h) Any wastes or wastewaters having solid or viscous material which could cause an obstruction to flow in the Facility or in any way could interfere with the treatment process, including as examples of such materials, but without limiting the generality of the foregoing, significant proportions of ashes, wax, paraffin, cinders, sand, mud, straw, shavings, metal, glass, rags, lint, feathers, tars, plastics, wood and sawdust, hair and fleshings, whole blood, paunch manure, entrails, lime slurries, beer and distillery, slops, grain processing wastes, grinding compounds, acetylene generation sludge chemical residues, acid residues, food processing bulk solids, snow, ice, and whole or ground seafood shells, whole blood, underground garbage, paper dishes, cups, whole or ground mild containers, and all other solid objects, material, refuse, and debris not normally contained in sanitary sewage.
- (i) Any waste which, either singly or by interaction with other wastes may result in the presence of toxic vapors, gases, or fumes within the POTW in a quantity that may cause worker health or safety problems, or are sufficient to prevent entry into the sewers for maintenance and repair.
- (j) Any substance which may cause the Facility's effluent or any other product of the Facility such as biosolids, sludges, or scums, to be unsuitable for disposal in a permitted landfill or for reclamation and reuse, or to interfere with the reclamation and reuse process. In no case shall a substance discharged to the facility cause the facility to be in noncompliance with sludge use or disposal criteria, guidelines, or regulations affecting sludge use or disposal developed pursuant to the Solid Waste Disposal Act, the Clean Air Act, or Maine D.E.P. "Rules for Land Application of Sludge and Residuals" – M.R.S.A. Title 38, Section 1304, Chapter 567.
- (k) Any pollutants, including oxygen demanding pollutants (BOD, etc.) released in a discharge at a flow rate and/or pollutant concentration which will cause Interference to the Facility or Pass Through to the Waters of the State.
- (l) The city engineer may also prohibit or limit any hexavalent chromium, aluminum, tin, fluorides, phenols, chlorides or sulfates.
- (m) Any reducing substances having an immediate chlorine demand exceeding 30.0 mg/l.

- (n) Any waters or wastes which cause corrosive structural damage to the sewers or treatment works including, but not limited to, any wastes having a concentration of caustic alkalinity exceeding 1000 mg/l, or all wastes with a pH lower than 5.0.
- (o) Any liquid or vapor other than water having a temperature higher than one hundred fifty (150) degrees Fahrenheit (65 C).
- (p) Any waste which may create a fire explosion hazard in the facility, including, but not limited to, waste streams with a closed cup flash point of less than one hundred forty (140) degrees Fahrenheit (60 degrees Centigrade) using the test methods specified in 40 CFR 261.21.
- (q) Any waters or waste containing fats, wax, grease or oils, whether emulsified or not, in excess of one hundred (100) mg/l, or containing substances which may solidify or become viscous at temperatures between thirty-two (32) degrees and one hundred fifty (150) degrees Fahrenheit (0 and 65 C). (Ord. of 9-19-77; Ord. of 5-15-06)

2.6 National Categorical Pretreatment Standards

Upon the promulgation of National Categorical Pretreatment Standards for a particular industrial subcategory found in 40 CFR, Chapter I, Subchapter N, Parts 405-471 and hereby incorporated in these Rules and Regulations, the Pretreatment Standard, if more stringent than limitations imposed under these Rules and Regulations, shall immediately supersede, for Users in that subcategory, the limitations imposed under these Rules and Regulations. The City shall notify all affected Users of the applicable requirements under the Act; and subtitles C and D of the Resource Conservation and Recovery Act.

2.7 Modification of National Categorical Pretreatment Standards

Pursuant to 40 CFR §403.7, where the Facility achieves consistent removal of pollutants limited by a National Categorical Pretreatment Standard, the City may apply to the EPA for modification of the discharge limits for a specific pollutant covered in the relevant national Categorical Pretreatment Standards in order to reflect the Facility's ability to remove said pollutant. The City may modify pollutant discharge limits contained in a National Categorical Pretreatment Standard only if the requirements of 40 CFR §403.7 are fulfilled and prior written approval from the EPA is obtained.

2.7.1 The City may develop Best Management Practices by rule for individual wastewater discharge permits to implement Local Limits and the requirements of Section 2.2.

2.8 Local Discharge Limitations

No person shall discharge wastewater containing any pollutant specified in Schedule A annexed hereto and incorporated herein by reference, in excess of the limitations for each of said pollutants as specified in said Schedule A (Portland POTW discharge limitations). Compliance with the provisions of this Section 2.6 shall be assessed on the basis of samples of the person's wastewater discharge collected at each point of connection between the person's building, structure, facility or installation and the Facility. If a National Categorical Pretreatment found in 40 CFR, Chapter I, Subchapter N, Parts 405-471 and hereby incorporated in these Rules and Regulations establishes limitations for Users in a particular industrial subcategory which are more stringent than the limitations specified in Schedule A, those more stringent limitations shall immediately apply to those Users subject to that National Categorical Pretreatment Standard. Compliance with National Categorical Pretreatment Standard limitations shall be determined in accordance with the requirements set forth in 40 CFR §403.12(b) (5).

2.9 State Requirements

Users must comply with State Pretreatment Standards codified at 06-096 CMR Chapter 528 Pretreatment Program.

2.10 City's Right of Revision

The City reserves the right to establish by amendment to these Rules and Regulations more stringent limitations or requirements on discharges to the Facility if deemed necessary to comply with the objectives presented in Section 1.1 of these Rules and Regulations or as may be imposed by Federal or State authorities.

2.11 Dilution Prohibited in Absence of Treatment

No User shall ever increase the use of process water or in any other way attempt to dilute a discharge as a partial or complete substitute for adequate treatment to achieve compliance either with the limitations contained in any National Categorical Pretreatment Standard or Pretreatment Requirement, or in any other pollutant-specific discharge limitation developed by the City or the EPA.

2.12 Pretreatment

Each user shall provide wastewater treatment as necessary to comply with these Rules and Regulations and shall achieve compliance with all categorical Pretreatment Standards, Local Discharge Limitations set forth in Schedule A hereto, and the prohibitions set out in Section 2.2 of these Rules within the time limitations specified by EPA, the State, or the City, whichever is more stringent. Any facilities required to pretreat wastewater to a level which will achieve compliance with these Rules and Regulations shall be provided, operated and maintained at the User's expense. Detailed plans showing the pretreatment facilities and operating procedures shall be submitted to the City for review and shall be acceptable to the City before construction of the facility. The review of such plans and operating procedures will in no way relieve the User from the responsibility of modifying the facility as necessary to produce an effluent which complies with the provisions of these Rules and Regulations or from liability for non-compliance with Pretreatment Standards or Pretreatment Requirements and these Rules and Regulations. Any subsequent changes in the pretreatment facilities or method of operation shall be reported to and be acceptable to the City prior to the User's initiation of the changes.

- (a) Whenever deemed necessary, the City may require Users to restrict their discharge during peak flow periods, designate that certain wastewater be discharged only into specific sewers, relocate and/or consolidate points of discharge, separate sewage wastestreams from industrial wastestreams, and such other conditions as may be necessary to protect the POTW and determine the User's compliance with the requirements of this ordinance.
- (b) The City may require any person discharging into the POTW to install and maintain, on their property and at their expense, a suitable storage and flow-control facility to ensure equalization of flow. An individual wastewater discharge permit may be issued solely for flow equalization.
- (c) Grease, oil, and sand interceptors shall be provided when they are necessary for the proper handling of wastewater containing excessive amounts of grease and oil, or sand; except that such interceptors shall not be required for residential users. All interception units shall be of a type and capacity approved by the City and shall be so located to be easily accessible for cleaning and inspection. Such interceptors shall be inspected, cleaned, and repaired by the User at their expense.

2.13 Records and Public Notification Procedures.

All records relating to compliance with applicable Pretreatment Standards and Pretreatment Requirements as defined in 40 CFR §403.3(j) and (r) shall be made available to officials of the EPA, DEP, or City upon request. In addition, pursuant to the public participation requirements of 40 CFR Part 25, the City shall publish annually, in a newspaper of general circulation that provides meaningful public notice within the City, a list of the Users which, at any time during the previous twelve (12) months, were in Significant Noncompliance with applicable Pretreatment Standards and Requirements. The term Significant Noncompliance shall be applicable to all Significant Industrial Users (or any other Industrial User that violates paragraphs (c), (d) or (h) of this Section) and shall mean:

- (a) Chronic violations of wastewater discharge limits, defined here as those in which sixty-six percent (66%) or more of all measurements taken for the same pollutant parameter taken during a six (6) month period exceed (by any magnitude) a numeric Pretreatment Standard or Requirement, including Instantaneous Limits;
- (b) Technical Review Criteria (TRC) violations, defined here as those in which thirty-three percent (33%) or more of wastewater measurements taken for each pollutant parameter during a six (6) month period equals or exceeds the product of the numeric Pretreatment Standard or Requirement including Instantaneous Limits, multiplied by the applicable criteria (1.4 for BOD, TSS, fats, oils and grease, and 1.2 for all other pollutants except pH);
- (c) Any other violation of a Pretreatment Standard or Requirement (Daily Maximum, long-term average, Instantaneous Limit, or narrative standard) that the City determines has caused, alone or in combination with other discharges, Interference or Pass Through, including endangering the health of POTW personnel or the general public;
- (d) Any discharge of a pollutant that has caused imminent endangerment to the public or to the environment, or has resulted in the City's or District's exercise of its emergency authority to halt or prevent such a discharge;
- (e) Failure to meet, within ninety (90) days of the scheduled date, a compliance schedule milestone contained in an individual wastewater discharge permit or enforcement order for starting construction, completing construction, or attaining final compliance;
- (f) Failure to provide within forty-five (45) days after the due date, any required reports, including baseline monitoring reports, reports on compliance with categorical Pretreatment Standard deadlines, periodic self-monitoring reports, and reports on compliance with compliance schedules;
- (g) Failure to accurately report noncompliance; or
- (h) Any other violation(s), which may include a violation of Best Management Practices, which the City determines will adversely affect the operation or implementation of the local pretreatment program.

2.14 Accidental Discharges.

- (a) **Plans and Procedures.** Each Industrial User shall provide protection from accidental discharge of prohibited materials or other substances regulated by these Rules and Regulations. Facilities to prevent accidental discharge of prohibited materials shall be provided and maintained at the Industrial User's own cost and expense. Detailed plans showing facilities and operating procedures to provide this protection shall be submitted to the City for review and shall be approved by the City.

No Industrial User shall be permitted to introduce pollutants into the Facility until accidental discharge procedures have been approved by the City. Review and approval of such plans and operating procedures shall not relieve the Industrial User from the responsibility to modify the Industrial User's facility as necessary to meet the requirements of these Rules and Regulations, or from any other violation of these Rules and Regulations.

In the case of an accidental discharge, the Industrial User shall immediately notify the City of the Incident. The notification shall include location of discharge, type of waste, concentration and volume, and any and all corrective actions.

- (b) **Written Notice.** Within five (5) days following an accidental discharge, the Industrial User shall submit to the City a detailed written report describing the cause of the discharge and the measures which have been and shall be taken by the User to prevent similar future occurrences. Such notification shall not relieve the Industrial User of any expense, loss, damage, or other liability which may be incurred as a result of damage

to the Facility, fish kills, or any other damage to person, animals or property; nor shall such notification relieve the Industrial User of any fines, civil penalties, or other liability which may be imposed by these Regulations or other applicable law.

- (c) Notice to Employees. A notice shall be permanently posted on the Industrial User's bulletin board or other prominent place advising employees whom to call in the event of an accidental discharge. Employers shall ensure that all employees who may cause or suffer such a discharge to occur, or who may know or have reason to know thereof, are advised of the emergency notification procedures.

2.15 Slug Discharge.

At least once every two years, the City shall evaluate whether each Significant Industrial User needs a plan to control slug discharges. The Significant Industrial User shall comply with the provisions of any such slug control plan which the City determines to be necessary, including but not limited to:

- (a) A description of discharge practices, including non-routine batch discharges;
- (b) A description of stored chemicals;
- (c) Procedures for immediately notifying the Facility of slug discharges, including any discharge that would violate a prohibition under 40 CFR §403.5(b), with procedures for follow-up written notification; and
- (d) If necessary, procedures to prevent adverse impact from accidental or Slug Discharge. Such procedures include, but are not limited to, inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site runoff, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants, including solvents, and/or measures and equipment for emergency response.

2.16 Reports of Potential Problems.

- (a) In the case of any discharge, including, but not limited to, accidental discharges, discharges of a nonroutine, episodic nature, a noncustomary batch discharge, a Slug Discharge or Slug Load, that might cause potential problems for the POTW, the User shall immediately telephone and notify the City of the incident. This notification shall include the location of the discharge, type of waste, concentration and volume, if known, and corrective actions taken by the User.
- (b) Within five (5) days following such discharge, the User shall, unless waived by the City, submit a detailed written report describing the cause(s) of the discharge and the measures to be taken by the User to prevent similar future occurrences. Such notification shall not relieve the User of any expense, loss, damage, or other liability which might be incurred as a result of damage to the POTW, natural resources, or any other damage to person or property; nor shall such notification relieve the User of any fines, penalties, or other liability which may be imposed pursuant to these rules.
- (c) A notice shall be permanently posted on the User's bulletin board or other prominent place advising employees who to call in the event of a discharge described in Paragraph (a), above. Employers shall ensure that all employees, who could cause such a discharge to occur, are advised of the emergency notification procedure.
- (d) Significant Industrial Users are required to notify the City immediately of any changes at its facility affecting the potential for a Slug Discharge.

3. CONTROL MECHANISM

3.1 Permit Requirements

- (a) No Significant Industrial User shall discharge wastewater directly or indirectly into the Facility without first obtaining a Wastewater Discharge Permit from the City, except that a Significant Industrial User that has filed a timely application pursuant to Section 3.2 of these rules may continue to discharge for the time period specified therein.
- (b) Any violation of the terms and conditions of the Permit shall be deemed a violation of these Rules and Regulations. Obtaining a Permit does not relieve the Industrial User of its obligation to obtain other permits required by Federal, State or local law.
- (c) The City may require that any Industrial User obtain a Permit as necessary to carry out the purpose of these Rules and Regulations.
- (d) New Industrial Users located beyond the City's wastewater service area shall submit a permit application, in accordance with Section 3.2. below, to the City 60 days prior to discharging into the sewer collection system. Upon review and approval of such application, the City may issue a permit to the User which requires the User to abide by these Rules and Regulations, including all permitting, compliance monitoring, reporting, and enforcement provisions herein.
- (e) Any Significant Industrial User proposing to begin or recommence discharging non-domestic wastes into the Facility must obtain a Permit prior to beginning or recommencing such discharge. An application for this Permit must be filed at least 60 days prior to the anticipated start-up date.

3.2 Permit Application

In order to be considered for a Permit, all Industrial Users required to have a Permit must submit the following information on an application form approved by the City:

- 1. Name, address and location (if different from the address), including the name of the operator and owner.
- 2. Standard Industrial Classification (SIC) code of both the industry as a whole and any processes for which National Categorical Standards have been promulgated.
- 3. Wastewater constituents and characteristics including any pollutants in the discharge which are limited by any Federal, State, or local standards. Sampling and analysis will be undertaken in accordance with 40 CFR Part 136.
- 4. Time and duration of the discharge.
- 5. Daily maximum, daily average, and monthly average wastewater flow rates identified separately by regulated discharge streams, including daily, monthly and seasonal variations, if any.
- 6. Description of activities, facilities and plant processes on the premises, including a list of all raw materials and chemicals used at the facility which are or could accidentally or intentionally be discharged.
- 7. The site plans, floor plans, mechanical plans, plumbing plans, and details to show all sewers, floor drains and appurtenances by size, location and elevation.
- 8. Each product produced by type, amount, process or processes, and rate of production where production based National Categorical Standards may apply.

- | 9. Type and amount of raw materials processed (average and maximum per day) where production based National Categorical Pretreatment Standards may apply.
- | 10. Number and type of employees and hours of operation, and proposed or actual hours of operation of the pretreatment system.
- | 11. Whether additional operation and maintenance (O&M) and/or additional pretreatment is required for the Industrial User to meet all applicable Federal, State and local standards. If additional pretreatment and/or O&M will be required to meet the standards, then the Industrial User shall indicate the shortest time schedule necessary to accomplish installation or adoption of such additional treatment and/or O&M. The completion date in this schedule shall not be longer than the compliance date established for the applicable pretreatment standard. The following conditions apply to this schedule:
 - (a) The schedule shall contain progress increments in the form of dates for the commencement and completion of major events leading to the construction (as required) and operation of additional pretreatment required for the Industrial User to meet the applicable pretreatment standard (such events include hiring an engineer, completing preliminary plans, completing final plans, executing contracts for major components, commencing construction, completing construction, beginning operation and conducting routine operation). No increment referred to shall exceed nine months, nor shall the total compliance period exceed eighteen months.
 - (b) No later than 14 days following each date in the schedule and the final date for compliance, the User shall submit a progress report to the City including, as a minimum, whether or not it complied with the increment of progress, the reason for any delay, and if appropriate, the steps being taken by the User to return to the established schedule. In no event shall more than nine months elapse between such progress reports to the City.
- | 12. A list of any environmental control permits held by or for the Facility.
- | 13. The location(s) for monitoring all waste streams covered by the permit.
- | 14. Any other information as may be deemed by the City to be necessary to evaluate the Permit application.

3.3 Certification Statement for Permit Applications, User Reports and Initial Monitoring Waiver

The following certification statement is required to be signed and submitted by Users submitting the permit applications in accordance with Section 3.2; Users submitting baseline monitoring reports under 40 CFR 403.12(f); Users submitting reports on compliance with the categorical Pretreatment Standard deadlines under 40 CFR 403.12(d); Users submitting periodic compliance reports required by 40 CFR 403.12(e) and (h); and Users submitting an initial request to forego sampling of a pollutant on the basis of 40 CFR 403.12(c)(2)(iii). The following certification statement must be signed by an Authorized Representative as defined in Section 1.2:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Users that have an approved monitoring waiver based on Section 4.2(b) must certify on each report with the following statement that there has been no increase in the pollutant in its wastestream due to activities of the User.

Based on my inquiry of the person or persons directly responsible for managing compliance with the Pretreatment Standard for 40 CFR _____ [specify applicable National Pretreatment Standard part(s)], I certify that, to the best of my knowledge and belief, there has been no increase in the level of _____ [list

pollutant(s)] in the wastewaters due to the activities at the facility since filing of the last periodic report under the rules.

Application Signatories and Certifications

- (a) All wastewater discharge permit applications, User reports and certification statements must be signed by an Authorized Representative of the User and contain the certification statement in Section 3.3.
- (b) If the designation of an Authorized Representative is no longer accurate because a different individual or position has responsibility for the overall operation of the facility or overall responsibility for environmental matters for the company, a new written authorization satisfying the requirements of this Section must be submitted to the City prior to or together with any reports to be signed by an Authorized Representative.

3.4 Wastewater Discharge Permit Approval.

The City will evaluate the data furnished by the Industrial User. The City may require additional information. Within forty-five (45) days of receipt of a complete permit application, the City will determine whether to issue an individual wastewater discharge permit. The City may deny any application for an individual wastewater discharge permit and may require additional information. After evaluation of the data furnished, the City may issue a Permit subject to terms and conditions provided herein.

3.5 Wastewater Discharge Permit Contents

Wastewater Discharge Permits shall include such conditions as are reasonably deemed necessary by the City to prevent Pass Through or Interference, protect the quality of the water body receiving the treatment plan effluent, protect worker health and safety, facilitate treatment plan sludge management and disposal, protect ambient air quality, and protect against damage to the Facility. Permits must contain, but need not be limited to, the following:

- (a) A statement that indicates the wastewater discharge permit issuance date, expiration date and effective date;
- (b) A statement that the wastewater discharge permit is nontransferable without prior notification to the City in accordance with Section 3.8 of these rules, and provisions for furnishing the new owner or operator with a copy of the existing wastewater discharge permit;
- (c) Effluent limits, including Best Management Practices, based on applicable Pretreatment Standards;
- (d) Self-monitoring, sampling, reporting, notification, and record-keeping requirements. These requirements shall include an identification of pollutants (or best management practice) to be monitored, sampling location, sampling frequency, and sample type based on Federal, State, and local law.
- (e) The process for seeking a waiver from monitoring for a pollutant neither present nor expected to be present in the Discharge in accordance with Section 4.2(b).
- (f) A statement of applicable civil and criminal penalties for violation of Pretreatment Standards and Requirements, and any applicable compliance schedule. Such schedule may not extend the time for compliance beyond that required by applicable Federal, State, or local law.
- (g) Requirements to control Slug Discharge, if determined by the City to be necessary.
- (h) Any grant of the monitoring waiver by the City (4.2(b)) must be included as a condition in the User's Permit.

Wastewater discharge permits may contain, but need not be limited to, the following conditions:

- (1) Limits on the average and/or maximum rate of discharge, time of discharge, and/or requirements for flow regulation and equalization.
- (2) Requirements for installation of pretreatment technology, pollution control, or construction of appropriate containment devices, etc. designed to reduce, eliminate, or prevent the introduction of pollutants into the Facility.
- (3) Requirements for the development and implementation of spill control plans or other special conditions including additional management practices necessary to adequately prevent accidental unanticipated or nonroutine discharges.
- (4) Development and implementation of waste minimization plans to reduce the amount of pollutants discharged to the Facility;
- (5) The unit charge or schedule of user charges and fees for the management of the wastewater discharged to the Facility.
- (6) Requirements for installation and maintenance of inspection and sampling facilities and equipment, including flow measurement devices.
- (7) A statement that compliance with the individual wastewater discharge permit does not relieve the permittee of responsibility for compliance with all applicable Federal and State Pretreatment Standards, including those which become effective during the term of the individual wastewater discharge permit; and
- (8) Other conditions as deemed appropriate by the City to ensure compliance with this ordinance, and State and Federal laws, rules and regulations.

3.6 Permit Issuance Process

- (a) **Permit Duration:** Permits shall be issued for a specified time period, not to exceed three (3) years. A Permit may be issued for a period less than three (3) years at the discretion of the City.
- (b) **Public Notification:** The City will publish [in an official government publication and/or newspaper(s) of general circulation that provides meaningful public notice within the City, or on a web page], a notice to issue a pretreatment permit, at least forty-five (45) days prior to issuance. The notice will indicate a location where the draft permit may be reviewed and an address where written comments may be submitted.
- (c) **Permit Appeals:** Upon receipt of the Permit, the Industrial User may petition to appeal the terms of the permit. Such petition shall be made in writing to the City Manager within Fourteen (14) days from receipt of the Permit.
 - (1) Failure to submit a timely petition for review shall be deemed to be a waiver of the appeal.
 - (2) In its petition, the appealing party must indicate the Permit provisions objected to, the reasons for this objection, and the alternative condition, if any, it seeks to be placed in the Permit.
 - (3) The effectiveness of the Permit shall not be stayed pending reconsideration by the City. If, after considering the petition and any arguments put forth by the User, the City determines that reconsideration is proper, it shall remand the Permit back for reissuance. Those Permit provisions being reconsidered by the City shall be stayed pending reissuance.
 - (4) City's decision not to reconsider a final Permit shall be considered final administrative action for purposes of judicial review.

- (5) Aggrieved parties seeking judicial review of the final City action must do so by filing a complaint with the Superior Court for Cumberland County within thirty (30) days of the City's decision.

3.7 Permit Modification

The City may modify the Permit for good cause including, but not limited to, the following:

- (a) To incorporate any new or revised Federal, State, or local pretreatment standards or requirements.
- (b) Material or substantial alterations or additions to the Industrial User's operation processes, or discharge volume or character which were not considered in drafting the original Permit.
- (c) A change in any condition in either the Industrial User or the Facility that requires either a temporary or permanent reduction or elimination of the permitted discharge.
- (d) Information indicating that the permitted discharge poses a threat to the Facility, treatment plan personnel or the receiving waters.
- (e) Violation of any terms or conditions of the Permit.
- (f) Misrepresentation or failure to disclose fully all relevant facts in the Permit application or in any required reporting.
- (g) Revision of or a grant of variance from National Categorical Standards pursuant to 40 CFR §403.13.
- (h) To correct typographical or other errors in the Permit.
- (i) To reflect transfer of the facility ownership and/or operation to a new User or;
- (j) Upon a written request of the Industrial User, provided such request does not create a violation of any applicable requirements, standards, laws or rules and regulations.

The filing of a request by the Industrial User for a Permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any Permit condition.

3.8 Permit Transfer

Permits may be reassigned or transferred to a new owner and/or operator whether by merger, sale of assets or otherwise, with prior written approval of the City with the following stipulations:

- (a) The Industrial User must give at least forty-five (45) days advance notice of the proposed transfer to the City.
- (b) The notice must include a written certification by the new owner which:
 - (1) States that the new owner has no immediate intent to change the facility's operations and processes.
 - (2) Identifies the specific date on which the transfer is to occur.
 - (3) Acknowledges full responsibility for complying with the existing permit.
 - (4) Describes the new User, and gives the same information about the User as prescribed in Section 3.2.

3.9 Permit Termination

Permits may be terminated in accordance with the City Code of Ordinance for any of the following reasons:

- (a) Failure to notify the City of significant changes to the wastewater prior to the changed discharge.
- (b) Falsifying self-monitoring reports.
- (c) Tampering with monitoring equipment.
- (d) Refusing to allow timely access to the facility premises and records.
- (e) Failure to meet effluent limitations.
- (f) Failure to pay fines.
- (g) Failure to pay sewer charges.
- (h) Failure to meet compliance schedules.
- (i) Any Pass-Through or Interference.
- (j) Any other activity which may threaten the Facility, the City or District's employees or the public.

Individual wastewater discharge permits shall be voidable upon cessation of operations or transfer of business ownership. All individual wastewater discharge permits issued to a User are void upon the issuance of a new individual wastewater discharge permit to that User.

3.10 Permit Reissuance

The User shall apply for Permit reissuance by submitting a complete Permit application a minimum of sixty (60) days prior to the expiration of the User's existing Permit.

3.11 Continuation of Expired Permits

An expired Permit will continue to be effective and enforceable until the Permit is reissued if:

- (a) The Industrial User has submitted a complete Permit application at least sixty (60) days prior to the expiration date of the Industrial User's existing Permit.
- (b) The failure to reissue the Permit prior to expiration of the previous Permit is not due to any act or failure to act on the part of the Industrial User.

3.12 Special Agreements

Nothing in these Rules and Regulations shall be construed as preventing any special agreement or arrangement between the City and any Industrial User whereby wastewater of unusual strength or character is accepted into the Facility and specially treated and subject to any payments or user charges as may be applicable or specially arranged. However, no discharge which violates these Rules and Regulations will be allowed under the terms of such special agreements. If, in the opinion of the City, the wastewater may have the potential to cause or result in any of the following circumstances, no such special agreement will be authorized:

- (a) Pass- Through or Interference.
- (b) Threaten the Facility, the City or District employees, or the public.

4. REPORTING REQUIREMENTS, MONITORING AND INSPECTIONS

4.1 Reporting Requirements

- (a) **Baseline Report:** Within 180 days following the effective date of a National Categorical Pretreatment Standard, an existing Industrial User subject to said Standard and currently discharging to or scheduled to discharge to the Facility shall submit to the City a report as prescribed under 40 CFR §403.12(b), which shall include the information required under Section 3.2.1., 2., 3., 5., 6., 11 and 12 of these Regulations. This report shall be signed by an Authorized Representative of the User and contain the certification statement in Section 3.3. of these Rules and Regulations. The report shall also contain a statement indicating whether Pretreatment Standards are being met on a consistent basis and, if not, whether additional Operation and Maintenance (O&M) and/or additional pretreatment is required for the Industrial User to meet the Pretreatment Standards and Requirements.

At least ninety (90) days prior to commencement of discharge, New Sources and sources that become Industrial Users subsequent to the promulgation of an applicable National Categorical Standard, shall be required to submit to the City a report which contains the information required in these Rules and Regulations. Reports by New Sources shall include information on the method of pretreatment the new Source intends to use to meet applicable Pretreatment Standards. The report shall be signed by an Authorized Representative of the User and shall contain the certification statement in Section 3.3 of these Rules and Regulations. A New Source also shall give estimates of its anticipated flow and quantity of pollutants to be discharged.

- (b) **Compliance Certification:** A statement, reviewed by the User's Authorized Representative as defined in Section 1.2 and certified by a qualified professional, indicating whether Pretreatment Standards are being met on a consistent basis, and, if not, whether additional operation and maintenance (O&M) and/or additional pretreatment is required to meet the Pretreatment Standards and Requirements.
- (c) **Compliance Schedule Progress Reports:** If the report described above states that additional pretreatment and/or Operation and Maintenance (O&M) will be required to meet the Pretreatment Standards and Requirements, the Industrial User shall submit to the City a compliance schedule as described in these rules. Not later than fourteen (14) calendar days following each date in the compliance schedule and the final date for compliance, the Industrial User shall submit a progress report to the City as prescribed under 40 CFR §403.12(c) in writing stating, at a minimum, whether or not the Industrial User complied with the increment of progress to be met on such date and, if not, the date on which it expects to comply with this increment of progress, the reason for the delay, and the steps being taken by the Industrial User to return the construction to the schedule established. In no event shall more than nine (9) months elapse between such progress reports to the City. The reports shall be signed by an Authorized Representative of the User and shall contain the certification statement in Section 3.3 of these Rules and Regulations.
- (d) **Compliance Deadline Report:** Within ninety (90) days following the date for final compliance with an applicable Pretreatment Standards or Requirements or, in the case of a New Source, following commencement of the introduction of wastewater into the Facility, any User subject to Pretreatment Standards or Requirements shall submit to the City a report in writing as prescribed under 40 CFR §403.12(d) indicating the nature and concentration of all pollutants in the discharge which are limited by Pretreatment Standards or Requirements, and the average and maximum daily flow of the wastewater containing such pollutants. The report shall state whether the applicable Pretreatment Standards or Requirements are being met on a consistent basis and, if not, what additional O&M and/or pretreatment is necessary to bring the User into compliance with the applicable Pretreatment Standards or Requirements. The report shall also contain the certification statement in Section 3.3. of these Rules and Regulations.

- (e) Periodic Continued Compliance Reports: Any User subject to a Pretreatment Standard or Requirement, after the compliance date for such Pretreatment Standard or Requirement, or, in the case of a New Source, after commencement of the discharge into the Facility, shall submit to the City during the months of June and December, unless required more frequently in the applicable Pretreatment Standard or Requirement or by the City, a report in writing as prescribed under 40 CFR §403.12(e) containing the results of sampling and analysis of the discharge, indicating the average and maximum daily flows and nature and concentration of pollutants in the effluent which are limited by such Pretreatment Standard or Pretreatment Requirement. At the discretion of the City and in consideration of such factors as local high or low flow rates, holidays, budget cycles, etc., the City may agree to alter the months during which the above reports are to be submitted. The reports required under this Section 4.1 shall be signed by an Authorized Representative of the Industrial User, and shall contain the certification described in Section 3.3 of these Rules and Regulations.
- (f) All Significant Industrial Users (Categorical and non-Categorical) must, at a frequency determined by the City submit no less than twice per year (June and December, or on dates specified) reports indicating the nature, concentration of pollutants in the discharge which are limited by Pretreatment Standards and the measured or estimated average and maximum daily flows for the reporting period. In cases where the Pretreatment Standard requires compliance with a Best Management Practice (BMP) or pollution prevention alternative, the User must submit documentation required by the City or the Pretreatment Standard necessary to determine the compliance status of the User.
- (g) All wastewater samples must be representative of the User's discharge. Wastewater monitoring and flow measurement facilities shall be properly operated, kept clean, and maintained in good working order at all times. The failure of a User to keep its monitoring facility in good working order shall not be grounds for the User to claim that sample results are unrepresentative of its discharge.
- (h) Non-Significant Industries (N-S-I): Reporting of self-monitoring results shall be at a frequency determined by the City and designated in the N-S-I's Industrial Discharge Permit.
- (i) Elimination or change of Discharge: The Industrial User shall notify the City in writing 45 days prior to the permanent elimination of a discharge or any modification in the waste collection, treatment and disposal facilities, changes in operational procedures, or other significant activities which alter the volume, nature or frequency of the discharge as specified in the Users Permit application.
- (j) Notifications of Potential Problems: All Industrial Users shall notify the City immediately of all discharges that could cause problems to the Facility, including any slug loadings by an Industrial User.
- (k) Notification of Hazardous Waste Discharge:
 - (1) An Industrial User shall notify the City, the EPA Regional Waste Management Division Director and the Director of DEP's Division of Solid and Hazardous Waste, in writing, of any discharge into the Facility of a substance which, if otherwise disposed of, would be a hazardous waste under 40 CFR Part 261. Such notification shall include the name of the hazardous waste as set forth in 40 CFR Part 261, or 38 MRSA, Section 1301 et seq., the EPA hazardous waste number, and the type of discharge (continuous, batch, or other). If the Industrial User discharges more than 100 kilograms of such waste per calendar month to the Facility, the notification shall also contain the following information to the extent such information is known and readily available to the User: an identification of the hazardous constituents contained in the wastes, an estimation of the mass and concentration of such constituents in the waste stream discharged during the calendar month, and an estimation of the mass of constituents in the waste stream expected to be discharged during the following twelve months.

All existing Industrial Users must file such notifications by February 19, 1991. All Industrial Users who commence discharging after August 23, 1990 shall file the notification no later than one hundred eighty (180) days after the discharge of the listed or characteristic waste. Any notification under this Section

need be submitted only once for each hazardous waste discharged. However, all Industrial Users must notify the City in advance, in accordance with these Rules and Regulations, of any change in their wastewater discharge. The notification requirement set forth herein does not apply to any pollutants already reported under the self-monitoring requirements set forth in these rules. Any such notification shall in no way remove the liability of the User for any damages caused by introduction of such hazardous waste.

- (2) Industrial Users are exempt from the requirements above during a calendar month in which they discharge no more than fifteen kilograms of hazardous wastes, unless the wastes are acute hazardous wastes as specified in 40 CFR §261.30(d) and 261.33(e). Discharge of more than fifteen kilograms of non-acute hazardous waste as specified in 40 CFR §261.30(d) and 261.33(e) requires a one-time notification. Subsequent months during which the Industrial User discharges more than such quantities of any hazardous waste do not require additional notification.
- (3) In the case of any new regulations under Section 3001 of RCRA identifying additional characteristics of hazardous waste or listing any additional substance as hazardous waste, the Industrial User must notify the City, the EPA Regional Waste Management Division Director, and the Director of DEP's Division of Solid and Hazardous Waste of the discharge of such substance within ninety (90) days of the effective date of such regulation.
- (4) In the case of any notification made under this Section an Industrial User shall certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical.

This provision does not create a right to discharge any substance not otherwise permitted to be discharged by these rules, a permit issued thereunder, or any applicable Federal or State law.

4.2 Monitoring and Analysis

- (a) The reports required in Section 4.1 and such other reports as the City may require under these Rules and Regulations, shall contain the results of all sampling and analysis of the Industrial User's discharge, whether or not conducted more frequently than required by the City, including the flow and the nature and concentration of pollutants contained therein which are limited by applicable Pretreatment Standards and Requirements. The sampling and analysis may be performed by the City in lieu of the Industrial User, in which event the Industrial User will not be required to submit the compliance certification set forth in Section 3.3 above. In addition, where the City collects all of the information required for the report, including analytical results and flow data, the Industrial User is not required to submit the report or compliance certification required therein.

If the Industrial User's sampling indicates a violation, the User must notify the City within 24 hours of becoming aware of such violation. The User must also repeat the sampling and analysis and submit the results of the repeat analysis to the City within thirty (30) days after becoming aware of the violation. The Industrial User may not be required to resample, however, if the City performs sampling and analysis at the Industrial User for the parameter in violation between the time when the Industrial User performs its initial sampling and the time when said User receives the results of sampling, or if the City has performed the sampling & analysis in lieu of the Industrial User.

The frequency of monitoring shall be prescribed in the Wastewater Discharge Permit and, for Industrial Users subject to National Categorical Pretreatment Standards, shall not be less frequent than prescribed in Section 4.1. All analyses shall be performed in accordance with procedures established by the EPA pursuant to section 304(h) of the Act and contained in 40 CFR Part 136 and amendments thereto, or with any other test procedures approved by the EPA. Where 40 CFR Part 136 does not include sampling or analytical techniques for the pollutants in question, sampling and analyses shall be performed using validated analytical methods or any other sampling and analytical procedures, including procedures suggested by the City or other parties, approved by the EPA.

- (b) The City may authorize an Industrial User subject to a categorical Pretreatment Standard to forego sampling of a pollutant regulated by categorical a Pretreatment Standard if the Industrial User has demonstrated through sampling and other technical factors that the pollutant is neither present nor expected to be present in the Discharge, or is present only at background levels from intake water and without any increase in the pollutant due to activities of the Industrial User [see 40 CFR 403.12(e)(2)]. This authorization is subject to the following conditions:
- (1) The waiver may be authorized where a pollutant is determined to be present solely due to sanitary wastewater discharged from the facility provided that the sanitary wastewater is not regulated by an applicable categorical Standard and otherwise includes no process wastewater.
 - (2) The monitoring waiver is valid only for the duration of the effective period of the individual wastewater discharge permit, but in no case longer than 5 years. The User must submit a new request for the waiver before the waiver can be granted for each subsequent individual wastewater discharge permit.
 - (3) In making a demonstration that a pollutant is not present, the Industrial User must provide data from at least one sampling of the facility's process wastewater prior to any treatment present at the facility that is representative of all wastewater from all processes.
 - (4) The request for a monitoring waiver must be signed in accordance with Section 3.3., and include the certification statement in 3.3 (40 CFR 403.6(a) (2) (ii)).
 - (5) Non-detectable sample results may be used only as a demonstration that a pollutant is not present if the EPA approved method from 40 CFR Part 136 with the lowest minimum detection level for that pollutant was used in the analysis.
 - (6) Any grant of the monitoring waiver by the City must be included as a condition in the User's permit. The reasons supporting the waiver and any information submitted by the User in its request for the waiver must be maintained by the City for 3 years after expiration of the waiver.
 - (7) Upon approval of the monitoring waiver and revision of the User's permit by the City, the Industrial User must certify on each report with the statement in Section 3.3, that there has been no increase in the pollutant in its waste stream due to the activities of the Industrial User.
 - (8) In the event that a waived pollutant is found to be present or is expected to be present because of changes that occur in the User's operations, the User must immediately: Comply with the monitoring requirements of Section 4.2, or other more frequent monitoring requirements imposed by the City and notify the City.
 - (9) This provision does not supersede certification processes and requirements established in categorical Pretreatment Standards, except as otherwise specified in the categorical Pretreatment Standard.

4.2.1 Reports of Changed Conditions

Each User must notify the City of any significant changes to the User's operations or system which might alter the nature, quality, or volume of its wastewater at least thirty (30) days before the change.

- (a) The City may require the User to submit such information as may be deemed necessary to evaluate the changed condition, including the submission of a wastewater discharge permit application under Section 3.5 of these Rules.
- (b) The City may issue an individual wastewater discharge permit under Section 3.10 of these Rules or modify an existing wastewater discharge permit under Section 3.7 of these Rules in response to changed conditions or anticipated changed conditions.

4.2.2 Reports of Potential Problems

- (a) In the case of any discharge, including, but not limited to, accidental discharges, discharges of a nonroutine, episodic nature, a noncustomary batch discharge, a Slug Discharge or Slug Load, that might cause potential problems for the POTW, the User shall immediately telephone and notify the City of the incident. This notification shall include the location of the discharge, type of waste, concentration and volume, if known, and corrective actions taken by the User.
- (b) Within five (5) days following such discharge, the User shall, unless waived by the City, submit a detailed written report describing the cause(s) of the discharge and the measures to be taken by the User to prevent similar future occurrences. Such notification shall not relieve the User of any expense, loss, damage, or other liability which might be incurred as a result of damage to the POTW, natural resources, or any other damage to person or property; nor shall such notification relieve the User of any fines, penalties, or other liability which may be imposed pursuant to these Rules.
- (c) A notice shall be permanently posted on the User's bulletin board or other prominent place advising employees who to call in the event of a discharge described in paragraph (a) above. Employers shall ensure that all employees, who could cause such a discharge to occur, are advised of the emergency notification procedure.
- (d) Significant Industrial Users are required to notify the City immediately of any changes at its facility affecting the potential for a Slug Discharge.

4.3 Record Keeping Requirements

- (a) An Industrial User subject to the reporting requirements set forth in Section 4.1 shall retain, and make available for inspection and copying, all records of information obtained pursuant to any monitoring activities required by these Rules, any additional records of information obtained pursuant to monitoring activities undertaken by the User independent of such requirements, and documentation associated with Best Management Practices. Such records shall include, for all samples:
 - (1) The date, exact place, method, and time of sampling and the names of the person or persons taking the samples;
 - (2) The dates analyses were performed;
 - (3) Who performed the analyses;
 - (4) The analytical techniques/methods used;
 - (5) The results of such analyses; and
 - (6) The results of any quality control procedures which may be required by the City.
- (b) The Industrial User shall keep copies of all such records and reports of monitoring activities and results for a minimum of three (3) years, and shall make such records available for inspection and copying by EPA, DEP, District, and the City with or without notice. This period of retention shall be extended during the course of any unresolved litigation regarding the discharge of pollutants by the Industrial User or the operation of the Facility pretreatment program, or when requested by the City, District, DEP or EPA.

4.4 Monitoring Facilities.

- (a) The City may require each Industrial User to provide and operate, at the Industrial User's own expense, monitoring facilities to allow inspection, sampling, and flow measurement of the building sewer and/or internal drainage systems. The monitoring facility should normally be situated on the Industrial User's

premises, but the City may, when such a location would be impractical or cause undue hardship on the User, allow the facility to be constructed in the public street or sidewalk area and located so that it will not be obstructed by landscaping or parked vehicles.

- (b) There shall be ample room in or near such sampling manhole or facility to allow accurate sampling and preparation of samples for analysis. The facility, sampling, and measuring equipment shall be maintained at all times in a safe and proper operating condition by and at the expense of the Industrial User.
- (c) Whether constructed on public or private property, the sampling and monitoring facilities shall be provided in accordance with the City's Requirements and all applicable local construction standards and specifications. Construction shall be completed within ninety (90) days following written notification to the Industrial User by the City.

4.5 Inspection and Sampling

The City shall have the right to enter the premises of any User to determine whether the User is complying with all requirements of these Rules and any individual wastewater discharge permit or order issued hereunder. Users shall allow the City ready access to all parts of the premises for the purposes of inspection, sampling, records examination and copying, and the performance of any additional duties.

- (a) Where a User has security measures in force which require proper identification and clearance before entry into its premises, the User shall make necessary arrangements with its security guards so that, upon presentation of suitable identification, the City shall be permitted to enter without delay for the purposes of performing specific responsibilities.
- (b) The City shall have the right to set up on the User's property, or require installation of, such devices as are necessary to conduct sampling and/or metering of the User's operations.
- (c) The City may require the User to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the User at its own expense. All devices used to measure wastewater flow and quality shall be calibrated at a frequency determined by the City to ensure their accuracy.
- (d) Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the User at the written or verbal request of the City and shall not be replaced. The costs of clearing such access shall be borne by the User.
- (e) Unreasonable delays in allowing the Superintendent access to the User's premises shall be a violation of these Rules.

Search Warrants

If the City has been refused access to a building, structure, or property, or any part thereof, and is able to demonstrate probable cause to believe that there may be a violation of these Rules, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program of the City designed to verify compliance with these Rules or any permit or order issued hereunder, or to protect the overall public health, safety and welfare of the community, the City may seek issuance of a search warrant from the Maine State Court.

4.6 Confidentiality of Information

- (a) In accordance with 40 CFR §403.14 and MRSA §401 et seq., any information and data concerning an Industrial User which is contained in or obtained from reports, questionnaires, Permit applications, Permits, monitoring programs, and inspections shall be available to the public and governmental agencies without restriction, unless the User specifically claims, and is able to demonstrate to the satisfaction of the City, that the release of such information would divulge information, processes or methods of production entitled to

protection as trade secrets of the User in accordance with applicable law. Any such claim of confidentiality must be asserted at the time of submission in the manner prescribed on the application form or instructions and the words "CONFIDENTIAL BUSINESS INFORMATION" must be stamped or written on each page containing such information. If no claim is made, the City may make the information available to the public without further notice.

- (b) Notwithstanding any claim of confidentiality, any information and data provided to the City which is effluent data, as defined at 40 CFR §2.302 (including, but not limited to, wastewater constituents and characteristics), shall be available to the public without restriction. All other information and data shall be available to the public at least to the extent provided by 40 CFR §2.302.
- (c) Information accepted by the City as confidential shall not be made available for inspection by the public, except as provided by 40 CFR §2.302 and MRSA §401 et seq., but shall be made available upon written request to governmental agencies for uses related to these Rules and Regulations, the National Pollutant Discharge Elimination System (NPDES) Permit, DEP permit, and the industrial pretreatment program, provided, however, that such portions of a report shall be available for use by the State or any state agency, the City, or by the United States or EPA in criminal or civil judicial or administrative enforcement proceedings involving the user.

5. ENFORCEMENT

5.1 Notice of Violation

- (a) When the City finds that a User has violated, or continues to violate, any provision of these Rules and Regulations, an Industrial Discharge Permit condition or order issued hereunder, the City may serve upon that User a written Notice of Violation. Within 10 days of the receipt of this notice, an explanation of the violation and a plan for the satisfactory correction and prevention thereof, to include specific required actions, shall be submitted by the User to the City.
- (b) When the City finds that a User has violated the discharge limitations as set forth in the User's permit, the City will serve upon that User a written Notice of Violation. Within 5 days of the receipt of this notice, the User shall submit to the City a written report with corrective and preventive action taken to prevent recurrence.
- (c) Nothing in this section shall limit the authority of the City to take any action, including emergency actions or any other enforcement action, without first issuing a Notice of Violation. Submission of this plan or report in no way relieves the User of liability for any violations occurring before or after receipt of the Notice of Violation.
- (d) If the User fails to respond to the Notice of Violation within the specified times noted above, or fails to provide the required information specified in the Notice of Violation, the City will take whatever measures necessary to correct or alleviate the violation. The District staff will be made available to assist in developing or implementing corrective measures, if requested by the City.
- (e) If the City fails to act within a reasonable period of time such deleterious acts, or otherwise fails to act responsibly in protecting the Facility, the District may directly impose requirements to correct deleterious acts or violations of these Rules and Regulations on persons, firms, or corporations causing or contributing to such violations. In such cases any action required by the District such as, but not limited to, pretreatment of prohibited wastes or flow equalization facilities, will be done entirely at the cost of the Industrial User and subject to review and approval of the City.

5.2 Penalties

Any person failing to comply with or violating any provision of these Rules shall be served by the Department with written notice stating the nature of the failure or violation and providing a reasonable time limit for the satisfactory correction thereof. Such person shall, within the period of time stated in such notice, permanently cease or correct all such failures or violations. Any person who shall continue any failure or violation beyond the time limit required for compliance in any notice given pursuant to this section shall be guilty of an offense. Any person violating any of the provisions of these Rules shall be liable to the City and shall be assessed a civil penalty of a minimum of one thousand dollars (\$1000.00) per day for each violation of industrial pretreatment standards and requirements, and in addition, shall be liable for any expense, loss, or damage occasioned by the City by reason of such violation. The City may seek injunctive relief for the purposes of enforcing these Rules.

5.3 Appeals Process

Whenever the person receiving written notice shall deem himself aggrieved by an order made by the City, that person may file an appeal to the City Manager within ten (10) days of the date of the written notice, and the person shall be afforded a hearing on the matter before the City Manager or their designee, and unless by their authority the aggrieved order is revoked, such order shall remain in force and be forthwith complied with by this person.

5.4 Enforcement Response Plan

The City shall maintain and enforce an Enforcement Response Plan (ERP) to specify detailed procedures which the representatives of the City will follow to adequately investigate and respond to instances of Industrial User non-compliance with the City of Portland/Portland Water District Industrial Pretreatment Program. A copy of this ERP shall be available from the Department.

6. SUB-METER PROGRAM

6.1 Purpose and Scope

It is the purpose of these Rules & Regulations to set forth uniform requirements for users of the City of Portland Sewer System in regard to volumetric measurement of sewer discharge. The Portland City Council on January 7, 2013 authorized an Amendment to Sewer User Charge Collection Agreement between the City of Portland and the Portland Water District under Council Order 138-12/13. In March 2013, modifications to Chapter 24 - Sewers of the City of Portland's Code of Ordinances were made to reflect the requirements of the Agreement which documents procedures and processes for billing Portland sewer users including the development of a revised sub-meter program that is managed by the Department of Public Services Works, specifically Section 24.75 Volume Measurements.

The program is optional and the customer will be required to bear all costs associated with the installation and maintenance of the sub-meter. Under the City's program the following two types of sub-meters can be installed:

1. Deductive/Subtractive Sub-meter in which your wastewater bill is reduced by usage that flows through this sub-meter and does not discharge to the sewer. This sub-meter is used to measure the water not entering the sanitary sewer system and is normally associated with irrigation of lawns and gardens, cooling towers on buildings and pool filling. By installing this sub-meter, you will be able to water your lawn and fill your pool without paying a sewer charge for the water used. This is the typical sub-meter for most residential applications.
2. Sewer/Reverse Mode Sub-Meter in which your wastewater bill is calculated on usage that flows through this sub-meter and discharges into the sewer. This sub-meter is used to measure water that is being discharged to the sanitary sewer system and is normally associated with post process wastewater, cooling tower blow down or industrial wastewater discharge. By installing this sub-meter, your wastewater bill will be calculated by the volume that discharges through this sub-meter. This is a sub-meter that may be used in some commercial/ industrial applications. Sewer/Reverse mode sub-meters will be required to receive an

annual calibration by a certified technician/ plumber with documentation of such submitted to the City.

It is intended that these Rules & Regulations provide guidance and requirements for compliance with the City of Portland's Sub-meter Program. It is also intended that these Rules & Regulations conform with and supplement the City of Portland Sewer Use Ordinance, the Federal Water Pollution Control Act (33 U.S.C. §1251 *et seq.*) as amended, State of Maine Statutes, and Section 16 of the Portland Water District Charter.

6.2 Definitions

For the purposes of these Rules, all words shall have their normal meanings and such meanings as may be in common use in the field when installing or reading certain types of meters. Certain words are more particularly defined as follows:

Blow-down – Water discharged from a cooling tower system to control concentration of salts or other impurities in the circulating water.

Cooling Tower – a heat rejection device; common applications for cooling towers are providing cooled water for air-conditioning, manufacturing and electric power generation

Customer - means an owner or operator of a property receiving wastewater charges from the Portland Water District Utilities on a Combined Utility Billing Statement, "Water Charges and Wastewater Charges" by direct invoice.

Deductive / Subtractive Sub-Meter - Wastewater bill is reduced by usage that flows through this sub-meter and does not discharge to the sewer. This sub-meter is used to measure the water not entering the sanitary sewer system and is normally associated with irrigation of lawns and gardens, cooling towers on buildings and pool filling. By installing this sub-meter, you will be able to water your lawn and fill your pool without paying a sewer charge for the water used. This is the typical sub-meter for most residential applications.

DPS-DPW - Department of Public Services-Works located at 55 Portland Street Portland Maine 04101

Evaporation Loss - water evaporated from the circulating water into the atmosphere by the cooling process

HCF = Hundred Cubic Feet = 748 gallons = 1 HCF.

Irrigation - means water used exclusively for watering lawns and gardens.

Make-up Water - Water added to the circulating water system to replace water lost from the system by evaporation, drift, blow-down, and leakage

Metered Water Consumption - means water measured through public utility meters or meters owned and installed by the customer and approved by the Director of Portland Public Services-Works.

Multiple Use Facility - means commercial or industrial parks, office complexes, marinas, and others specifically identified in commission rules with five or more units.

Owner - means the legal titleholder of an apartment house, manufactured home rental community, or multiple use facility and any individual, firm, or corporation that purports to be the landlord of tenants in the apartment house, manufactured home rental community, or multiple use facility.

PRIMARY WATER METER – Single meter measuring the volume of water in HCF for Residential, Commercial, Governmental and Industrial customers within the City of Portland limits. This water is supplied and billed by PWD.

PWD – Portland Water District located at 225 Douglass Street Portland Maine 04102

Sewer Rate Impact - means the dollar charge per HCF of wastewater measured in accordance with Chapter 24: Sewer Ordinance.

Sewer Main - means an artificial conduit to carry off sewage and sometimes surface water (as from rainfall).

Sewer / Reverse Mode Meter - Wastewater bill is calculated on usage that flows through this sub-meter and discharges into the sewer. This sub-meter is used to measure water that is being discharged to the sanitary sewer system and is normally associated with post process wastewater, cooling tower blow down or industrial wastewater discharge. By installing this sub-meter, your wastewater bill will be calculated by the volume that discharges through this sub-meter. This is a sub-meter that may be used in some commercial/ industrial applications. Sewer/Reverse mode sub-meters will be required to receive an annual calibration by a certified technician/ plumber with documentation of such submitted to the City.

Single-Family Residence - means an individual dwelling unit with no commercial use and one (1) water meter.

Sub-meter - means a meter installed down the line from a Primary water meter, measuring a portion of the total amount of water delivered through the Primary water meter.

Treatment Plant- means the removal and disposal of sewage and surface water by sewers, or a system of sewers.

Wastewater - means refuse liquids or waste matter carried off by sewers; a synonym for sewage.

Wastewater Volume Charge (WWVC) - means the dollar charge equal to the wastewater volume rate multiplied by the measured volume of water from all sources consumed on the premises plus any applicable franchise fees, in accordance with Chapter 24: Sewer Ordinance.

6.3 Use of Sub-meters

- (a) The sub-meter program allows City of Portland sewer system customers to use data from private water sub-meters in the calculation of their wastewater volume charge (WWVC).
- (b) A ~~DPSDPW~~ staff member will assist in determining whether the applicant needs a Deductive/Subtractive Sub-meter or Sewer/Reverse Mode Sub-Meter application.
- (c) Each sub-meter must be installed and configured to separate the water distribution lines on the customer's property which drain to the sanitary sewer ("tributary lines") from those which do not drain to a sanitary sewer ("non-tributary lines").
- (d) The applicant will be responsible for all costs associated with the installation and maintenance of the private sub-meter. The private sub-meter belongs to you.
- (e) The cost of the installation for the sub-meter by a third party plumbing contractor is the responsibility of the applicant.
- (f) Since the sub-meter will be private, the applicant will be required to maintain it in good operating condition per manufacturer's specifications.
- (g) Sub-meters measuring wastewater volumes returning to the sewer system will be required to under an annual calibration by a certified technician/ plumber with documentation of such submitted to ~~DPSDPW~~.
- (h) Direct discharge of wastewater or industrial waste to salt or fresh water or to points other than the City sewer system shall not be cause for adjustment or reduction of the wastewater volume charge or rate unless measure through a sub-meter.

6.3.1 Deductive/Subtractive Sub-meter

- (a) In the residential situation, tributary lines serve interior (domestic) uses, and non-tributary lines serve exterior (primarily irrigation/ pool) uses.
- (b) The customer or their hired contractor shall install the private sub-meter on the non-tributary line.
- (c) Additional hose bibs (faucets and spigots) may remain attached to the tributary line, but no credit against the WWVC will be given.
- (d) In the commercial situation, tributary lines may serve interior (domestic) uses as well as process water in the manufacture of goods or commodities, fire suppression service availability, delivery of water to ships, ice generation and water cooling towers (to name a few). The sub-meter will be installed to measure flows which are not being returned/ discharged to the sewer system.

6.3.2 Sewer/Reverse Mode Sub-Meter

- (a) In the commercial / industrial situation, tributary lines may serve interior uses which reduce the volume of water discharging into the sewer. Several examples include food or beverage production, cooling tower blow down, post production / process wastewater or industrial wastewater discharge. By installing this sub-meter, your wastewater bill will be calculated by the volume that discharges through this sub-meter.
- (b) The use of such a meter will be investigated and coordinated with DPSDPW during the application process.
- (c) Sewer/Reverse mode sub-meters will be required to receive an annual calibration by a certified technician/ plumber with documentation of such calibration submitted to the City.

6.4 Application and Installation of Sub-meter

The following steps are required for the purchase and activation of any sub-meter:

- 1. Applicant will consult with DPSDPW staff to review purpose, size and location of sub-meter. (Appointments can be made by calling 874-8846.)
- 2. Applicant must prepare and submit an application (available at the Street Opening Desk of Public ServicesPublic Works, 55 Portland Street).
- 3. Applicant must sign application certification statement.
- 4. Before a sub-meter can be installed DPSDPW must review, approve and authorize any sub-meter application.
- 5. Applicant will be responsible for any and all costs associated with the sub-meter and shall pay for said sub-meter at the Street Opening desk at DPSDPW.
- 6. DPSDPW staff authorizes PWD to ship the sub-meter (or order for pickup if greater than 3").
- 7. Applicant shall install sub-meter and notify DPSDPW when ready for inspection.
- 8. DPSDPW shall contact authorized plumbing contractor for inspection of the sub-meter.
- 9. Public ServicesPublic Works will notify PWD to activate the sub-meter account once inspection is completed and approved by DPSDPW staff.

6.5 Reading of Sub-meter by PWD

- (a) PWD mobile meter reading vehicle must be able to read the sub-meter from the main road without entering the customer's driveway. Factors such as: terrain surrounding your property; the distance from the property to the main road (under 300 feet is optimal); and the distance the sub-meter is to an outside wall could interfere with transmission of the reading. Disclaimer: PWD does not guarantee the sub-meter will be able to be read from the main road.

- (b) If PWD's mobile meter reading vehicle is unable to read the sub-meter from the main road on the first read date following installation, PWD will send a letter to the customer stating the sub-meter could not be read. No sub-meter credit will be given until PWD's mobile meter reading vehicle can read the meter. Customers can contact the District to attempt to have the mobile meter reading vehicle pick up a sub-meter reading from their driveway. A successful driveway read indicates the equipment is working properly, but the meter and/or electronic reading device needs to be re-positioned to pick up a signal from the main road. There is a PWD Troubleshooting Fee of \$19 per visit for this service that will be billed to your PWD account.

7. FATS, OILS, AND GREASE PROGRAM

7.1 Authority

- (a) As allowed in Chapter 24; Section 47, part 8, of the City's Code of Ordinances, and Chapter 2; Section 10, part C of the City's Rules and Regulations for Use of the Sewer System, the following rules are addressing the City's Fats, Oils, and Grease Program. City staff have right of entry for inspection and sampling as allowed by Chapter 24; Section 52. ◀
- (b) As allowed in Chapter 10 of Uniform Plumbing Code version 2009 in Section 1014.0. ◀

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7.2 Purpose

- (a) The intent of this policy is to establish transparent design standards and procedures in order to regulate Food Service Establishments relative to wastewater discharges containing animal based fats, oils, and greases. The City of Portland's goal with this program is to prevent excessive introduction of oil and grease into the sewer system and wastewater treatment plants. Oil and Grease have the potential for creating sanitary sewer overflows, hazardous conditions in the collection system, treatment plant inhibitions, increased treatment cost, fines and other cost for the City. ◀

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7.3 Definitions

25% Rule - The "25 Percent Rule" is a benchmark for interceptor servicing when the interceptor is 25% filled with fats, oils, greases and solids.

Additives - Include but are not limited to products that contain solvents, emulsifiers, surfactants, caustics, acids, and enzymes

Automatic Grease Recovery Unit (AGRU) - An electro-mechanical grease control device that separates and removes FOG and solid particles from the wastewater stream prior to discharging to the sewerage system. The AGRU is typically installed immediately downstream from a plumbing fixture's point of discharge. Dishwashers cannot be plumbed into these devices.

Best Management Practices (BMP's) - Schedules of activities, prohibitions of practices, maintenance procedures and other management practices to prevent or reduce the introduction of FOG to the sewerage system.

Flow Control - device, either internal or external to grease control equipment, which controls the influent flow rate and must be present on the inlet side for equipment to work properly. Also referred to as a reducer.

F.O.G. - shall mean fats, wax, grease and oils (other than petroleum based materials).

Food Service Establishment (Food Service Establishment) - Any establishment, business, facility or user engaged in preparing, serving or making food available for consumption. Single family residences are not a Food Service Establishment.

Grease (Brown) - Fats, oils and grease that is discharged to the grease control equipment, or is from kitchen or food prep wastewater.

Grease (Yellow) - Fats, oils and grease that has not been in contact or contaminated from other sources (water, wastewater, solid waste, etc.) and can be recycled.

Grease Control Equipment (GCE) - Devices for separating and retaining Food Service Establishment's wastewater FOG prior to entering the City of Portland sewer system. The grease control equipment is constructed to separate and trap or hold fats, oils and grease substances from entering the sewer system. Grease control equipment should only receive kitchen wastewater. Devices include grease interceptors or other devices approved by the City of Portland.

Grease Interceptor (GI) -- the grease control equipment identified as a large multi-compartment tank, usually 1,000 gallon to 2,000 gallon capacity with proper venting, inlet and outlet T's, and other necessary components, that provides FOG control for a Food Service Establishments. Only sinks, floor drains, and other waste lines from kitchen drainage shall be plumbed to the grease interceptor. No sanitary wastewater line should be connected to the grease interceptor. Grease interceptors will be located exterior to the Food Service Establishment. Any GI must be certified by the Plumbing and Drainage Institute and be approved by the City of Portland.

Interference -- a discharge that, alone, or in conjunction with a discharge, or discharges, from other sources, both inhibits, or disrupts, the publicly owned treatment works, its treatment processes or operations, or sludge process, use, or disposal, and is a cause of a violation of any requirement of the City of Portland's National Pollutant Discharge Elimination System.

Uniform Plumbing Code -- A model code developed by the International Association of Plumbing and Mechanical Officials to govern the installation and inspection of plumbing systems as a means of promoting the public's health, safety and welfare. The City of Portland enforces the Uniform Plumbing Code.

7.4 General Requirements

- (a) All Food Service Establishments must have grease-handling equipment that work and are maintained. Establishments whose grease-handling facilities or methods are not adequately maintained to prevent floatable oils, fat or grease from entering the sewerage system shall be notified in writing of any noncompliance. (For example, a collapsed or deteriorated baffle wall, leaks, infiltration and inflow, improperly located components, and any other deficiencies that will prevent the grease interceptor from working properly.)
- (b) Regularly scheduled maintenance of grease-handling facilities and equipment is required to ensure adequate operation. All grease interceptors must be cleaned, maintained and repaired as needed. All grease interceptors must be pumped out completely. Outside interceptors should be pumped quarterly and small under the sink grease interceptors should be pumped monthly or more frequently based on size and grease production.
- (c) All Food Service Establishments grease-handling facilities shall be subject to review, evaluation, and inspection by City of Portland staff during normal working hours. Results of inspections will be made available to facility owner, leaseholder or operator. City of Portland staff may lend assistance and make recommendations for correction and improvement.
- (d) Food Service Establishments whose operations cause or allow excessive grease to discharge or accumulate in the City of Portland collection system may be liable for costs related to line blockages, line cleanings, and line and pump repairs, etc. including all labor, materials, and equipment.

- (e) The introduction of emulsifying agents such as chemicals, solvents or enzymes directly or indirectly into the grease interceptor, other than what is considered typical business operational practices such as dishwashing or sanitation, is strictly prohibited. By approval from the Director of Public Works, products which reduce Fats, Oil and Grease (FOG), such as bacteria, may be used in addition to the regular grease interceptor maintenance program, but will not be a consideration in determining grease interceptor sizing or maintenance frequency.
- (f) The user must maintain a file on site of the records and other documents pertaining to the facility's grease interceptor. The file contents shall include, but is not limited to, record of inspections, log of pumping activities and receipts, log of maintenance activities, hauler information, and disposal information. The file must be available at all times for inspection and review. Records must be maintained for a period of three (3) years.

7.5 Compliance

7.5.1 New or Remodeled Food Service Establishments

- (a) Food Service Establishments may be allowed to continue current operations without significant modifications until such time as:
 - (1) Significant remodeling is performed at the Food Service Establishment facility, and/or
 - (2) Change in ownership, and/or
 - (3) The facility's existing grease control equipment is deemed to be of substandard size and/or design, and/or
 - (4) The Food Service Establishment is shown to be the cause of a FOG blockage in the City of Portland's sewer collection system and/or
 - (5) Food Service Establishment has a change of operation that will increase the quantity and/or frequency of FOG discharge and/or
 - (6) Any other reason deemed by City of Portland as appropriate for significant modifications including improperly installed equipment, equipment with missing flow controls, or non-functioning equipment
- (b) New construction of Food Service Establishments shall conform to the Uniform Plumbing Code enforced by the City of Portland and have separate sanitary (restroom) and kitchen process lines. The kitchen process lines shall be plumbed to grease control equipment. Kitchen process lines and sanitary lines may combine prior to entering the public sewer; however the lines cannot be combined until after the grease control equipment. Sanitary wastewater, or black water, cannot be connected to grease control equipment.

Minimum acceptable size of grease control equipment for each Food Service Establishment classification will be as follows:

Class 1 - Ice Cream shops, Coffee Shops, Beverage Bars (non-alcoholic and alcoholic), Bagel Shops – engaged in the sale of cold-cut and microwaved sandwiches with no frying or grilling on site – 25 gallons per minute Automated Grease Removal Unit or approved alternative.

Class 2 - Limited-Service Restaurants, Caterers, Supermarkets and other Grocery (except Convenience) Stores that engage in the on-site preparation of food, and both Convenience Stores and Gasoline Stations with Convenience Stores that engage in the on-site preparation of food – 25 gallons per minute Automated Grease Removal Unit ~~(no dishwasher)~~ or approved alternative (with dishwasher)

Class 3 – Full service restaurant – 1,000 gallon GI, Automatic Grease Removal Unit or approved alternative

Class 4 – Buffet and Cafeteria Facilities – 1,500 gallon GI, Automatic Grease Removal Unit or approved alternative

Class 5 - Institutions (i.e. Schools, Hospitals, Prisons, etc.) - - 2,000 gallon GI or ~~two 1,000-gallon GI in series,~~
Automatic Grease Removal Unit or approved alternative

Monthly or Quarterly service agreement for maintenance and full pump out is required based on capacity of grease control equipment and expected grease output. Records must be kept on site for a minimum of three years and will be inspected periodically by the Department of Public Health or Department of Public Works.

7.5.2 Variance

(a) Automatic Grease Control Unit

At the discretion of the City of Portland, in some instances where an AGRU is required, a Food Service Establishment may request a variance in lieu of the required installation where limited grease production is expected and a grease control plan which includes alternative equipment, best management practices, maintenance agreements, or other grease control measures.

(b) 1,000 Gallon Grease Interceptor

At the discretion of the City of Portland, in some instances where a minimum 1,000 gallon capacity or equivalent grease interceptor is required, a Food Service Establishment may request a variance in lieu of the required installation of a 1,000 gallon capacity or equivalent grease interceptor where unusual circumstances, such as space constraints or in the interest of historical preservation, would render an otherwise typical grease interceptor installation impractical or unreasonable. A variance may be granted provided that there is a grease control plan which includes alternative equipment, best management practices, maintenance agreements, or other grease control measures.

Any variance request must be approved by the City of Portland. Final specifications for the capacity and type of all new grease control equipment for any given Food Service Establishment kitchen equipment / plumbing fixture configuration must be approved by City of Portland prior to installation.

7.6 Grease Control Equipment Specifications

- (a) Grease Control Equipment must remove fats, oils, and grease to a level at or below that which is required by City of Portland Ordinance Section 24-47 Prohibited Wastes.**
- (b) Grease Control Equipment must meet requirements found in Uniform Plumbing Code Chapter 10, section 1014.1, 1014.1.1, and 1014.1.2.**
- (c) New or replacement grease interceptor installations shall be of the Automatic Grease Recovery Unit (AGRU) type unless a variance is approved.**
- (d) Grease Interceptors must be located so as to be readily accessible for cleaning, maintenance and inspections. They should be located exterior to the FOG point of discharge and / or in a location approved by the City of Portland. In the event that the GI will be located in the right-of-way, a license agreement must be obtained prior to the installation from the City of Portland Corporation Council.**
- (e) Grease interceptors must be protected against siphonage, back-pressure, and air circulation throughout all parts of the drainage system by means of a vent pipe installed in accordance to Chapter 10, Section 40021014.0 of the Uniform Plumbing Code enforced by the City of Portland.**
- (f) 1,000 gallon grease interceptor specifications can be found in the City of Portland Technical Manual in Chapter 2, Section II-19.**

7.7 Restrictions and Prohibitions

- (a) Sink water temperatures will not exceed 140 degrees Fahrenheit if discharged into a grease interceptor or AGRU.
- (b) Dishwashers are not allowed to be discharged through an internal grease interceptor, without prior approval of the enforcement authorities.
- (c) Food Grinders are not allowed to be discharged through a grease interceptor.
- (d) The use of emulsifying agents such as solvents, acids and caustics, and other toxic and or hazardous chemicals, and petroleum products known to have uses as a declogger or degreaser is prohibited. Biological enzymes are prohibited unless approved by the Director of ~~Public Services~~Public Works.

7.8 Maintenance

7.8.1 Automatic Grease Control Unit or Passive Grease Interceptor

- (a) The owner and/or operator of an establishment subject to these regulations shall check the grease storage container and empty collected grease into a leak proof container for storage prior to disposal daily. For passive grease interceptors, the lid should be removed daily for inspection and removal of collected FOG.
- (b) The owner and/or operator of an establishment subject to these regulations shall open and inspect all Automatic Grease Control Units or passive grease interceptors on a weekly basis, at minimum.
- (c) Passive interceptors shall be completely cleaned out as needed, but at minimum of once per month. Passive interceptors may need to be cleaned out more frequently based on grease production and capacity.
- (d) The AGRU shall be completely cleaned out as needed, but at minimum on a ~~monthly~~ quarterly basis. Inlet/outlet pipes and baffles shall be inspected, and maintained free of all caked on FOG and residual waste.
- (e) The maintenance provider shall provide written documentation to the establishment on the services provided, date, quantity of material removed, and disposal facility. The owner or operator shall maintain this documentation on site and have it available for inspections.

7.8.2 Grease Interceptor

- (a) The owner and/or operator of an establishment subject to these regulations shall open and inspect all Grease Interceptors on a monthly basis. Cleanouts shall be scheduled based on the 25 % rule, or at minimum once every three months, whichever is more frequent. Partial pump of interceptor contents or on-site pump & treatment of interceptor contents will not be allowed due to reintroduction of fats, oils and grease to the interceptor and pursuant to the Code Federal Regulation (CFR) § 403.5 (b) (8) and Section 24-47 of the City of Portland Code of Ordinances.
- (b) The unit shall be maintained in an efficient operating condition at all times. Cleanouts shall be performed by a licensed hauler and shall include the complete removal of all the contents and cleaning of the unit. The hauler shall provide written documentation to the establishment on the services provided, date, quantity of material removed, and disposal facility. The owner or operator shall maintain this documentation on site and have it available for inspections.

7.9 Waste Fats, Oils, & Grease Storage and Removal

- (a) Waste grease and oil shall not be disposed of in the sanitary sewer. All waste fats, oil and grease must be ~~collected~~ collected in an appropriate container provided by a waste management vendor, and stored in

an accessible but secure location on the premises. The container must be stored on an impervious surface such as concrete or pavement. Efforts should be made to prevent any spilled liquid from entering into any nearby drains. Containers must be capable of being sealed to prevent entry of precipitation, or stored in a sheltered area. During storage, all grease containers and surrounding areas shall be maintained in a clean and sanitary condition at all times.

7.10 Record Keeping

- (a) All Food Service Establishments are required to have grease control equipment installed, maintained and operating properly at all times and maintain records of cleaning and disposal of FOG.
- (b) A record of all servicing of the grease interceptor shall be kept on file at the Food Service Establishment and shall be accessible during normal business hours. Such records shall include the dates, quantities pumped, condition, any repairs and the identity of the person or business that conducted the service. The City of Portland may require such records to be submitted directly to the Health Department, or to the City of Portland annually with a business license renewal. The Food Service Establishment shall maintain grease control equipment maintenance records for three (3) years.

7.11 Enforcement

Enforcement action against the Food Service Establishment may be taken for various reasons including but not limited to: failure to clean or pump out grease control equipment; failure to maintain grease control equipment including inspection and installation of properly functioning effluent- Tee and baffles; failure to install grease control equipment; failure to control FOG discharge from the Food Service Establishment; contributing to a sewer line blockage or obstruction; contributing to a Sanitary Sewer Overflow; or use of additives.

Enforcement action and penalties for Food Service Establishment's that are not in compliance with the Fats, Oils and Grease Management Policy are as follows:

Based on *City of Portland Code of Ordinances Chapter 24 Section 47* the following apply:

Fats, Oils and Grease blockage in sewer line caused by a Food Service Establishment:

1. Any establishment failing to comply with or violating any provision of this article shall be served by the public service authority with written notice stating the nature of the failure or violation and providing a reasonable time limit for the satisfactory correction thereof. Such person shall, within the period of time stated in such notice, permanently cease or correct all such failures or violations.
2. Any establishment which causes a blockage in a sewer line will be required to apply and receive an Industrial Discharge Permit through the Department of ~~Public Services~~ Public Works prior to discharging any wastewater to the sewer system. The establishment will be required to provide records of maintenance of grease control equipment, implement best management practices, and may be required to upgrade grease control equipment to prevent a future blockage.
3. Any person who shall continue any failure or violation beyond the time limit required for compliance in any notice given pursuant to this section shall be guilty of an offense. Any person violating any of the provisions of this article shall be liable to the city and shall be assessed a civil penalty of a minimum of one thousand dollars (\$1,000.00) per day for each violation.

Food Service Establishment failure to maintain grease control equipment after Notification:

1. Whenever it is determined that the frequency of pumping of a grease interceptor is inadequate, the City of Portland shall notify the establishment as being in non-compliance with the Fats, Oils, and Grease Program. If initial contact with the establishment is unsuccessful, a second attempt will be made within three days.
2. If no contact can be made, the intent of the department to have the grease interceptor pumped at a specified date, generally ten (10) working days from the notice (if not pumped by the Food Service Establishment prior to the specified date) will be made through Certified Letter.
3. Whenever the grease interceptor is pumped by the Department or its contractor, the customer shall be charged twice the actual cost of pumpage. Charges shall be added to the customer's regular bill for sewer service or may be billed separately.

8. SCHEDULE "A"

PORTLAND WATER DISTRICT, PORTLAND POTW AND WESTBROOK INTERMUNICIPAL SEWER SERVICE AGREEMENT AREA

PORTLAND POTW LIMITS		INTERMUNICIPAL AGREEMENT LIMITS	
Parameter	Discharge Limits mg/L Daily Maximum	Parameter	Discharge Limits mg/L Daily Maximum
BOD*	3,000	BOD	13701371
TSS*	1500	TSS	2816
Arsenic**	0.020	Arsenic	0.094
Cadmium	0.024	Cadmium	0.0132
Chromium	1.90	Chromium	2.35
Copper	1.88	Copper	0.69
Cyanide	0.13	Cyanide	0.52
Hydrocarbon (NPM)	100	Hydrocarbon (NPM)	Not Applicable
Lead	0.60	Lead	0.33
Mercury	0.014	Mercury	0.0037
Nickel***	0.76	Nickel	0.20
Silver	0.42	Silver	0.14
Total Oil & Grease	500	Total Oil & Grease	100
Zinc	2.57	Zinc	1.41

pH must be greater than 5.0 Standard Units (S.U.) and have a caustic alkalinity less than 1000 mg/l. Any pH result of over 810.3 S.U. must be accompanied by a result for caustic (hydroxide) alkalinity from the same sample. pH above 12.5 is prohibited and is considered hazardous waste.

*Screening Limit: BOD and TSS screening limits are valid through the renewal of Portland Water District's Maine Pollutant Discharge Elimination System permit in 2016. Licensees shall take all reasonable measures to comply with the screening limits. The City will exercise its enforcement discretion on a case-by-case basis with regard to screening limit violations. Violations of the screening limits that occur as the result of normal, routine operations will not result in any fines, public notices or formal compliance schedules. However, other resultant violations of the screening limits, including but not limited to operator error, mechanical or electrical failures, inappropriate procedures, failure to notify or mitigate, spills or slug releases, and natural events may result in formal enforcement action. . Additionally, discharge violations in excess of 10,000 mg/L of BOD, 5,000 mg/L of TSS will result in formal enforcement action. Nothing herein shall prevent the City from enforcing all other Industrial Pretreatment regulations.

** A three tiered Arsenic limit as follows: Seafood Processors = 0.228 = 0.228 mg/L, Landfills plus ecoMaine Incinerator = 0.055 mg/L, All Others = 0.020 mg/L.

*** Metal Finisher required to meet Categorical Maximum 30 day Average Nickel Discharge Limit of 2.38 mg/L

INDUSTRIAL USER LIMIT VARIANCE FOR THE WESTBROOK INTERMUNICIPAL SEWER SERVICE AREA ONLY

The Control Authority may grant a variance to an industrial user discharging into the sewer system when the industrial user provides sufficient historical documentation to support such request. The Control Authority must determine that allowing such a variance will not:

- result in an increase of the Maximum Allowable Industrial Headworks Loading
- result in a non-permitted discharge from the POTW
- adversely affect the treatment of wastewater
- adversely impact the sanitary sewer system
- be in violation of any applicable local, state or federal law or regulation

Should such variances be authorized, any industrial user receiving the variance will impact the total available loadings to other industrial facilities within the treatment system.

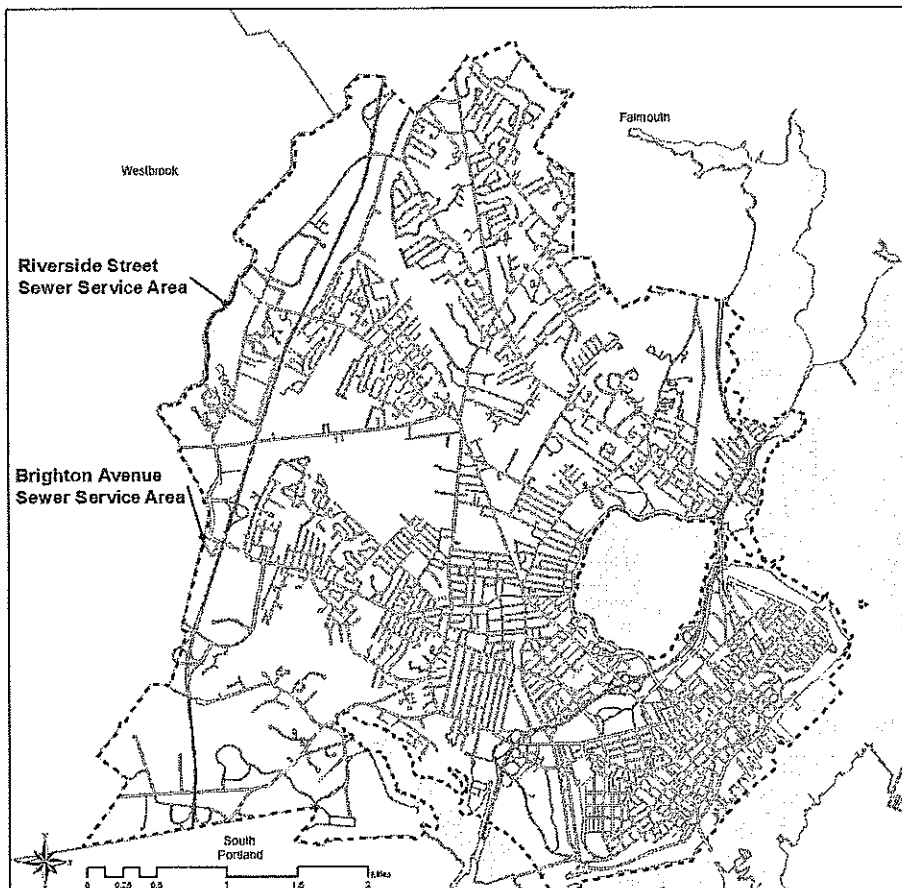
The Control Authority will be required to assess the effectiveness of any variances. Modifications to local, state or federal requirements or wastewater characteristic changes within the wastewater system would also require the reevaluation of any variances.

A variance may be revoked at any time at the discretion of the Control Authority (Portland Water District)

As stated in Section 4.2(a), sampling and analysis will be undertaken in accordance with 40 CFR Part 136. Below is a partial list of accepted methods according to 40 CFR Part 136. For a complete list, consult Table IA and IB in 40 CFR 136.3

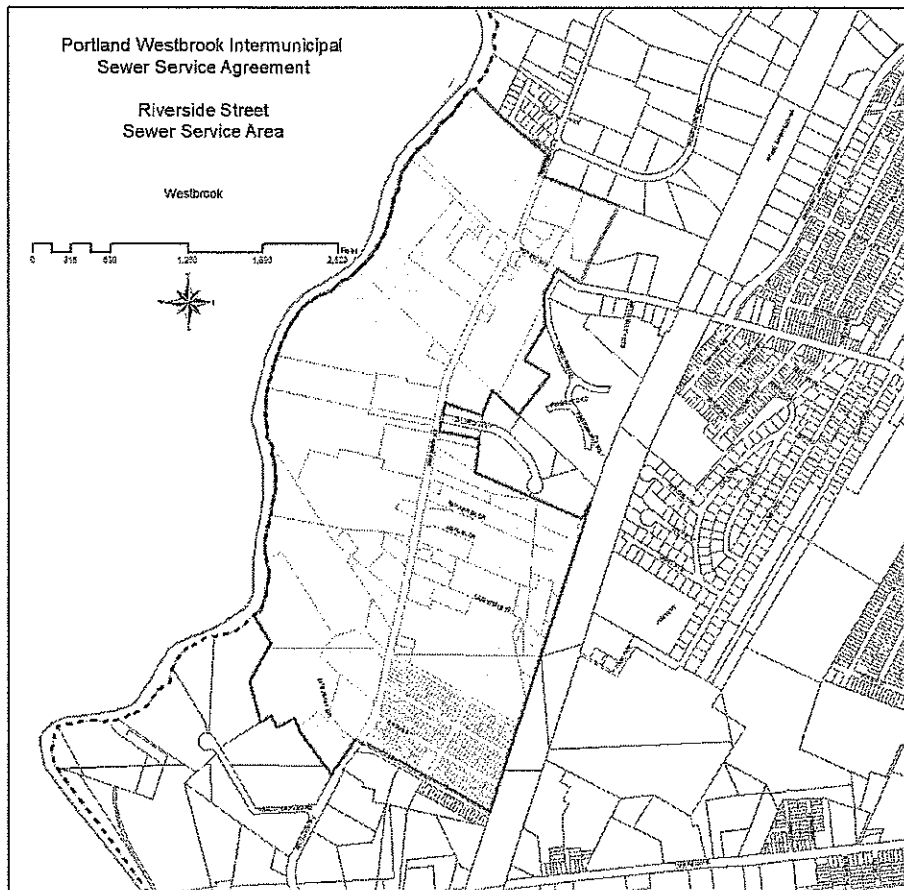
Parameter	Method
BOD	Standard Method: 5210-B
TSS	Standard Method: 2540 D
Arsenic	EPA: 206.5, 200.9, 200.5, 200.7 Standard Method: 3114 B, 3111 C, 3113 B, 3120 B, 3125 B
Cadmium	EPA: 200.9, 200.5, 200.7, 200.8 Standard Method: 3111 B, 3114 C, 3113 B, 3120 B, 3125 B
Chromium	EPA: 200.9, 200.5, 200.7, 200.8 Standard Method: 3111 B, 3114 C, 3113 B, 3120 B, 3125 B
Copper	EPA: 200.9, 200.5, 200.7, 200.8 Standard Method: 3111 B, 3114 C, 3113 B, 3120 B, 3125 B
Cyanide	EPA: 335.4 Standard Method: 4500-CN B 4500-CN C 4500-CN D 4500-CN E 4500-CN F
Hydrocarbon (NPM)	EPA: 1664 A HEM Standard Method: 5520 B, 5520 F
Lead	EPA: 200.9, 200.5, 200.7, 200.8 Standard Method: 3111 B, 3111 C, 3113 B, 3120 B, 3125 B, 3500-Pb B
Mercury	EPA: 200.9, 200.5, 200.7, 200.8 Standard Method: 3112 B
Nickel	EPA: 200.9, 200.5, 200.7, 200.8 Standard Method: 3111 B, 3111 C, 3113 B, 3120 B, 3125 B
Silver	EPA: 200.9, 200.5, 200.7, 200.8 Standard Method: 3111 B, 3111 C, 3113 B, 3120 B, 3125 B
Total Oil & Grease	EPA: 1664 A SGT-HEM Standard Method: 5520 B, 5520 F
Zinc	EPA: 289.2, 200.5, 200.7, 200.8 Standard Method: 3111 B, 3111 C, 3113 B, 3120 B, 3125 B

9. Exhibit A Locus Map of Portland-Westbrook Intermunicipal Sewer Service Areas



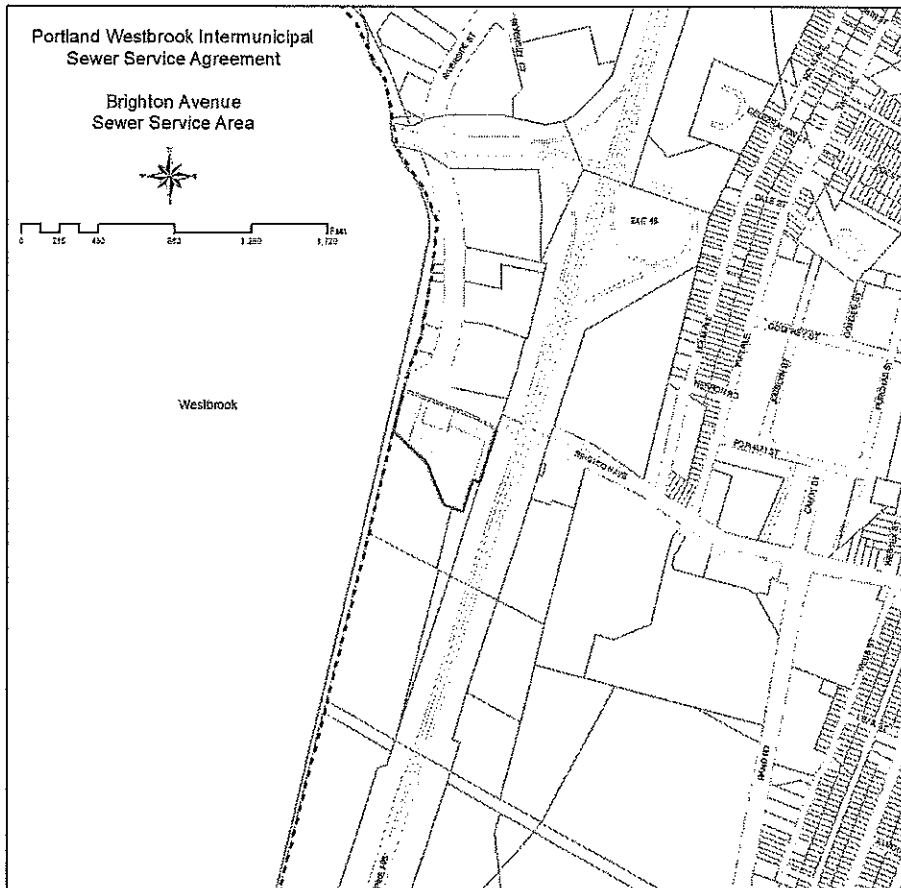
Map Prepared by the City of Portland's Department of Public Works February 2016

10. Exhibit B Map of Portland-Westbrook Intermunicipal Sewer Service Area



Map Prepared by the City of Portland's Department of Public Works July 2016

11. Exhibit C Map of Portland-Westbrook Intermunicipal Sewer Service Area



Map Prepared by the City of Portland's Department of Public Works July 2016

***CITY OF PORTLAND, MAINE
DEPARTMENT OF PUBLIC SERVICES
WATER RESOURCES DIVISION
COMMUNICATION***

TO: Honorable Mayor Ethan Strimling and City Councilors

FROM: Benjamin N. Pearson, P.E., Compliance Coordinator

CC: Christopher Branch, Public Works Director
Nancy Gallinaro, Water Resources Division Manager
Danielle West-Chuhta, Corporation Counsel
Scott Firmin, Portland Water District Plant and Systems Operator

DATE: October 3, 2016

SUBJECT: Revision of the Rules and Regulations for Use of the Sewer System

This communication is to inform the mayor and members of the Council that the Department of Public Works, Water Resources Division is revising the Rules and Regulations for Use of the Sewer System. The following items are being revised:

- Addition of the Three Party Intermunicipal Agreement for the Brighton Avenue Area
- Update of Prohibited Discharges for the areas of Portland under intermunicipal agreement
- Upper limit for pH added
- Added language to temperature section of prohibited waste to include damage to the sewer system caused by hot temperature discharge
- Corrected UPC section referenced in Section 7.6 (e)
- Updated Schedule A to correct caustic alkalinity requirements
- Added EPA recommended testing and analysis methods

As required, a public hearing was held on October 5th at 1 P.M. in room 209 at City Hall.

The items being revised are explained in further detail below. The revisions are being made to include the recently signed three party Intermunicipal Agreement and the most up to date discharge prohibitions related to the areas of Portland that send sewage to Westbrook. The remaining revisions are meant to clarify sections of the Rules and Regulations that pertain to the Industrial Pretreatment Program and the Fats, Oils, and Grease Program.

Intermunicipal Agreement and Prohibited Discharges in the Agreement Service Area

Two sections of Portland are not served by the East End Treatment Facility but have their sewage treated by the Westbrook Treatment Facility. One of the sections, located along Riverside Street, Forest Avenue, and Warren Avenue already had an intermunicipal agreement. Recently, a second agreement

was agreed upon for a small area of Brighton Avenue. The basic details of this agreement have been added to the Rules. Also, the prohibited discharges for areas served by Westbrook have been updated.

Upper limit for pH added (Section 2.2 (b))

Previously, there was no upper limit to pH. Water with a pH equal or above 12.5 is considered hazardous. This upper limit was added so it is clear. In addition to an upper limit, the requirement to test for caustic alkalinity specified in the prohibited discharge section (2.2 b) for any pH above 10.3 is now reflected in Schedule A, which previously erroneously required caustic alkalinity analysis for any pH above 8.3.

Temperature language added (Section 2.2 (i))

The following language in bold was added or changed:

Wastewater having a temperature **greater than 140 degrees F (60 degrees C), or** which may inhibit biological activity **or cause damage** in the Facility resulting in interference, but in no case wastewater **which causes** the temperature at the introduction into the **treatment plant** to exceed 40 degrees Centigrade (104 degrees Fahrenheit).

The additional language was changed to differentiate between the Facility, which includes pipes, and the treatment plant, which is where all the sewerage is treated. Sewer infrastructure can be damaged due to high temperature discharge and can cause pipes to sag or cracks to occur. Treatment plant performance can be impacted if wastewater being treated is above 104 degrees Fahrenheit.

Updated Schedule A

Schedule A was updated to include the following:

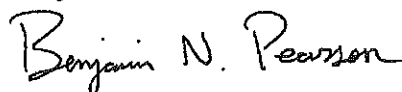
- Westbrook's BOD Local Limit
- Language regarding caustic alkalinity as found in section 2.2 requiring analysis if pH is above 10.3 S.U.
- Language prohibiting pH above 12.5 as it is considered hazardous waste

Also added is a partial list of methods for analysis from the Code of Federal Regulations Part 136.

Corrected UPC section referenced in Section 7.6 (e)

This section previously referenced UPC Section 1012 regarding venting erroneously. The reference has been changed to UPC Section 1014.

Benjamin N. Pearson, P.E.



Compliance Coordinator

*Resolved 2-16/14
Tab 8 10-17-16*

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

**CITY OF PORTLAND
IN THE CITY COUNCIL**

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

**RESOLUTION CONDEMNING VIOLENCE AND HATE SPEECH, EXPRESSING
SOLIDARITY WITH MUSLIMS AND ALL THOSE TARGETED FOR THEIR
ETHNICITY, RACE OR RELIGION**

WHEREAS, the United States was founded by immigrants, many fleeing religious persecution, who enshrined freedom of religion as one of our nation's fundamental legal and ethical principles; and

WHEREAS, the history of Islam in the United States began even before its founding when African Muslims were enslaved and brought to the Americas, where they later helped in numerous ways to build this country, including sacrificing their lives on the line in every major war from the Revolutionary War on; and

WHEREAS, there are more than 3 million Muslims living in the United States today, including many of our neighbors living in the City of Portland, making invaluable contributions to our economy, our social and political life, and our culture; and

WHEREAS, there has been an unprecedented backlash since 9/11 in the form of hate crimes and employment discrimination toward Arab and Muslim Americans and those perceived as Muslims; and

WHEREAS, we are saddened and outraged at the recent escalation of hateful rhetoric against Muslims, those perceived to be Muslims, immigrants, and all people of color, and we are particularly concerned to see political figures and elected government officials leading this escalation and using it in order to gain power; and

WHEREAS, in the face of extreme bigotry and violence, Muslim communities and their leaders are using the language and teachings of Islam to promote peace and justice and service, and their institutions are continuing to play an essential societal role providing charitable and humanitarian services to those in need; and

WHEREAS, we, as elected representatives of the people, have a special responsibility not to stay silent in the face of hate, violence, and discrimination against any of our constituents or countrymen:

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Portland, Maine:

- (1) Condemns all hateful speech and violent action directed at Muslims, those perceived to be Muslims, immigrants and people of color;

- (2) Categorically rejects political tactics that use fear to manipulate voters or to gain power or influence;
- (3) Commits to pursuing a policy agenda that affirms civil and human rights, and ensures that those targeted on the basis of race, religion or immigration status can turn to government without fear of recrimination; and
- (4) Reaffirms the value of a pluralistic society, the beauty of a culture composed of multiple cultures, and the inalienable right of every person to live and practice their faith without fear.

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**

Order 58- 16/17
~~Tab 12 - 9-19-16~~
~~Tab 8 - 10-5-16~~
Tab 9 10-17-16

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.



Department of Public Works
Christopher C Branch, P.E., Director

To: Jon P. Jennings, City Manager
From: Christopher C. Branch, P.E., Director of Public Works
Regarding: Forest Avenue-Dartmouth Street Intersection Project

In 2012, the Department of Public Services applied to the MaineDOT for Transportation Enhancements funding as part of the implementation of the just-adopted Transforming Forest Avenue Study. The project is included in the MaineDOT's 2016-2018 Work Plan. The proposed funding of \$103,805 is a mix of 80% federal funding and 20% local "matching" funding.

The design of the project has yet to be done but the general scope of the project may include:

- replacement of the sidewalks
- adding street trees and other place-making elements
- changes to traffic-pedestrian signal timing and phasing
- driveway-access management modifications
- preparing a location for a bus shelter, which will be installed by METRO.

No reductions in traffic capacity to Forest Avenue are planned as part of the project. The project team will work in close consultation with area property owners, residents and business owners on the development of the design.

MEMORANDUM
City Council Agenda Item

DISTRIBUTE TO: City Manager, Mayor, Anita 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 65-16/17
~~Tab 13 10-5-16~~
Tab 10 10-17-16

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 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.

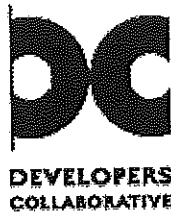
VIII. LIST ATTACHMENTS

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.

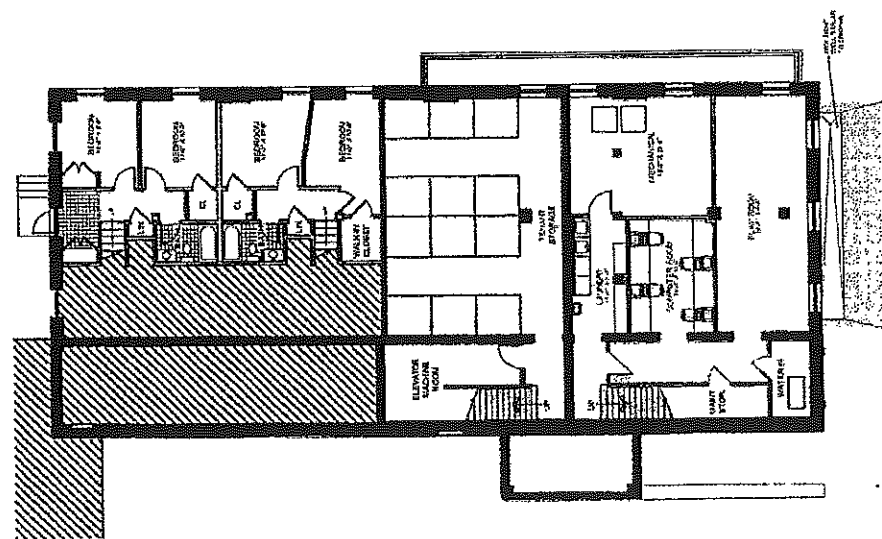
16) An analysis and discussion of market demand justifying the need for the proposed project:

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.

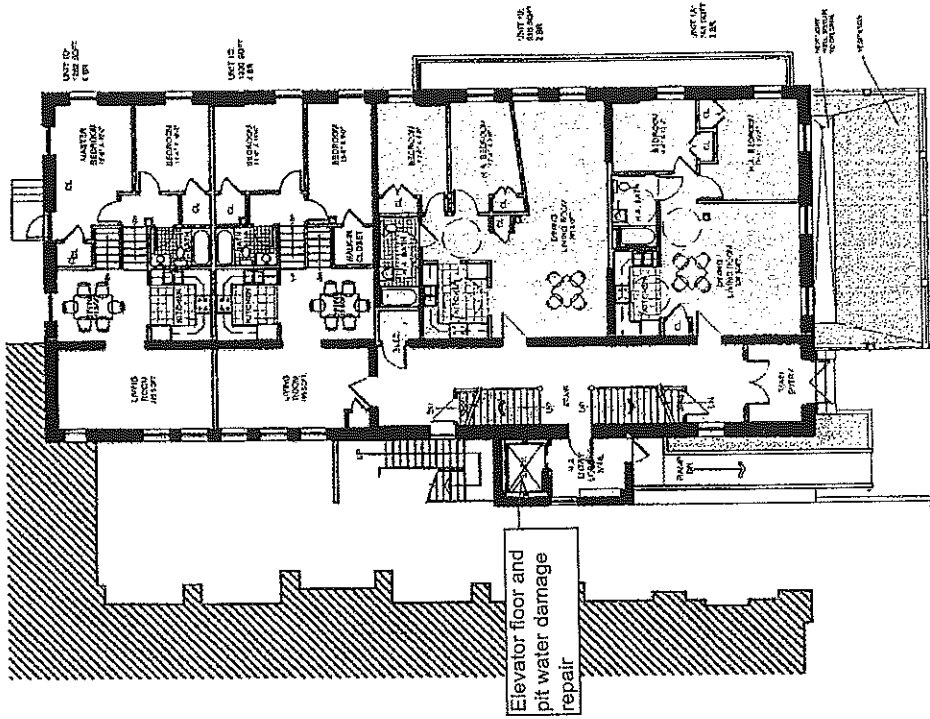
Portland's vitality depends on the availability of a diverse array of housing options, particularly apartments, which are often the first and only choice for working professionals, immigrants, and families. Over the last five years, a number of trends have solidified:

- 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%.

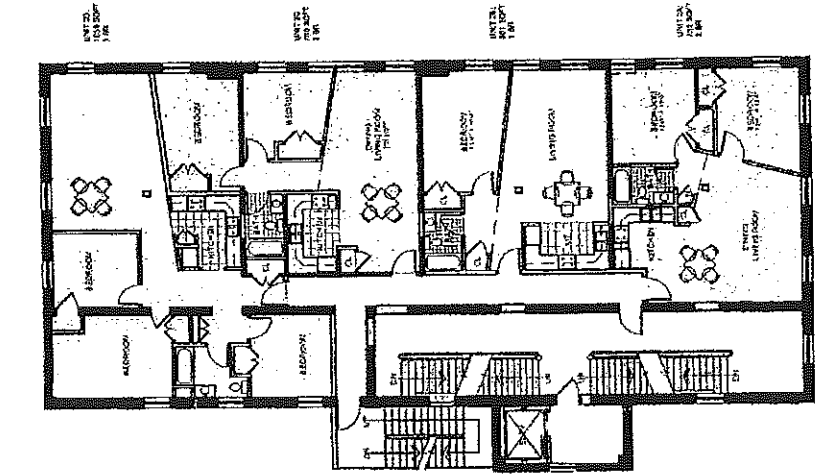
As a result of these trends, the Portland Press Herald recently published a series called "No Vacancy," the work of a team of journalists who documented "Portland's unforgiving housing market. What they found was a city in harsh transition as wealthy newcomers displace less affluent residents." The need 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"



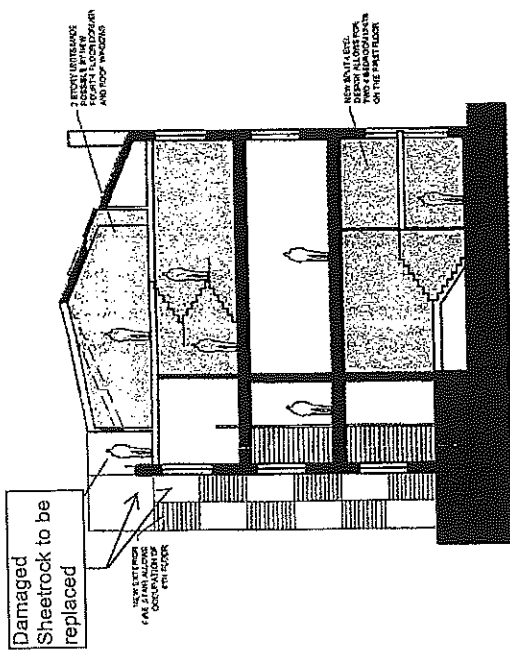
FIRST FLOOR
SCALE: 1/8" = 1'-0"



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

SECOND FLOOR SUMMARY
UNIT TOTAL: 1331 SQFT
PUBLIC: 176 SQFT
TOTAL: 1507 SQFT

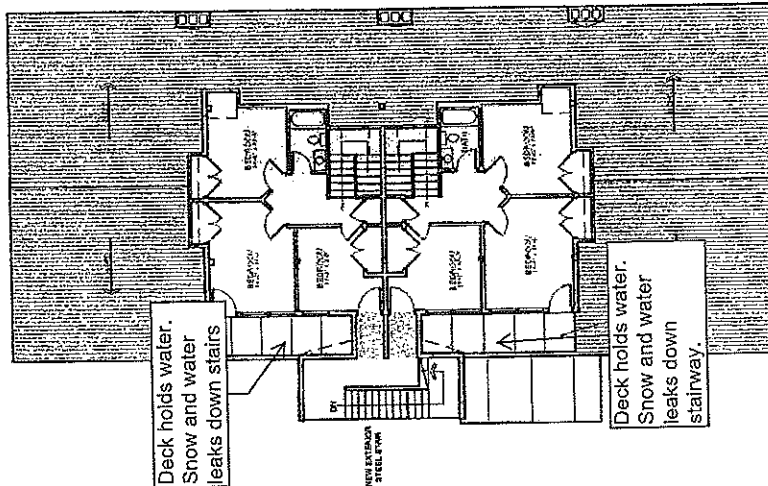
FIRST FLOOR SUMMARY
UNIT TOTAL: 412 SQFT
PUBLIC: 88 SQFT
TOTAL: 500 SQFT



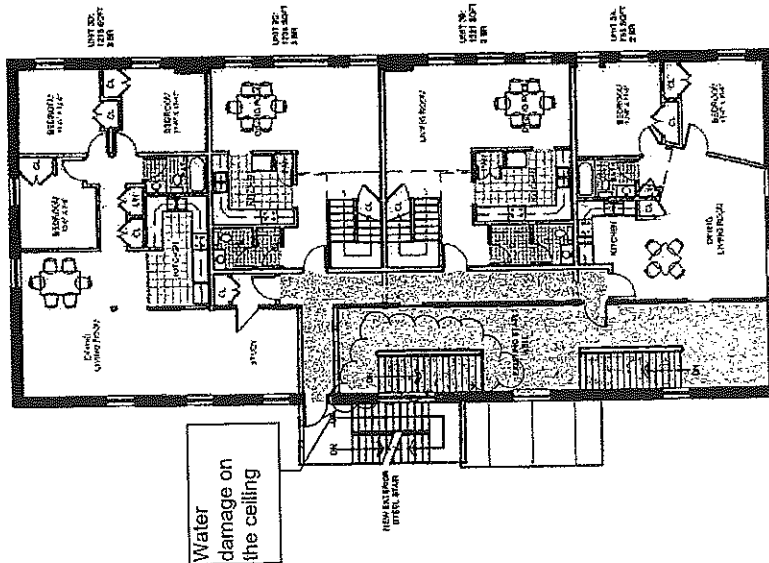
SCHEMATIC SECTION
SCALE: 1/8" = 1'-0"

SUMMARY OF UNITS				
1 BDRM. UNITS	2 BDRM. UNITS	3 BDRM. UNITS	4 BDRM. UNITS	
3RD & 4TH FLOOR	1	1	3	1200 SQ. FT.
SECOND FLOOR	1	2	1	1200 SQ. FT.
FIRST FLOOR		2	2	1200 SQ. FT.
TOTAL	1	5	6	4800 SQ. FT.
TOTAL OF 12 UNITS				4800 SQ. FT.

TOTAL GROSS SQUARE FOOTAGE: 4800 SQ. FT. (12 UNITS x 400 SQ. FT. PER UNIT)
TOTAL GROSS SQUARE FOOTAGE: 4800 SQ. FT. (12 UNITS x 400 SQ. FT. PER UNIT)
TOTAL GROSS SQUARE FOOTAGE: 4800 SQ. FT. (12 UNITS x 400 SQ. FT. PER UNIT)
TOTAL PROJECT SQUARE FOOTAGE: 18,000 SQ. FT.

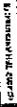


FOURTH FLOOR
SCALE: 1/16" = 1'-0"



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

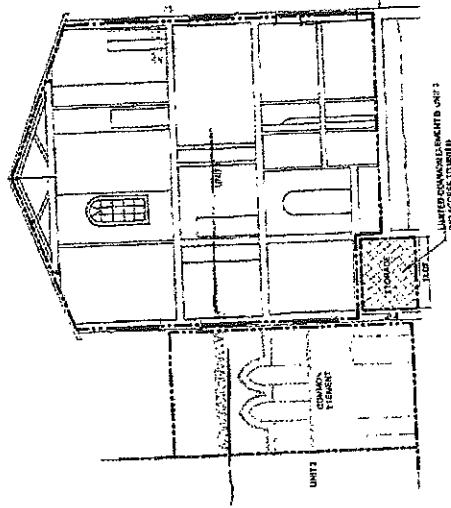
SECOND FLOOR SUMMARY
TOTAL GROSS SQUARE FOOTAGE: 1200 SQ. FT.
TOTAL GROSS SQUARE FOOTAGE: 1200 SQ. FT.
TOTAL GROSS SQUARE FOOTAGE: 1200 SQ. FT.



THE UNIVERSITY OF CHICAGO
LIBRARY

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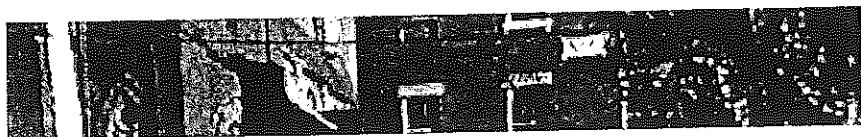
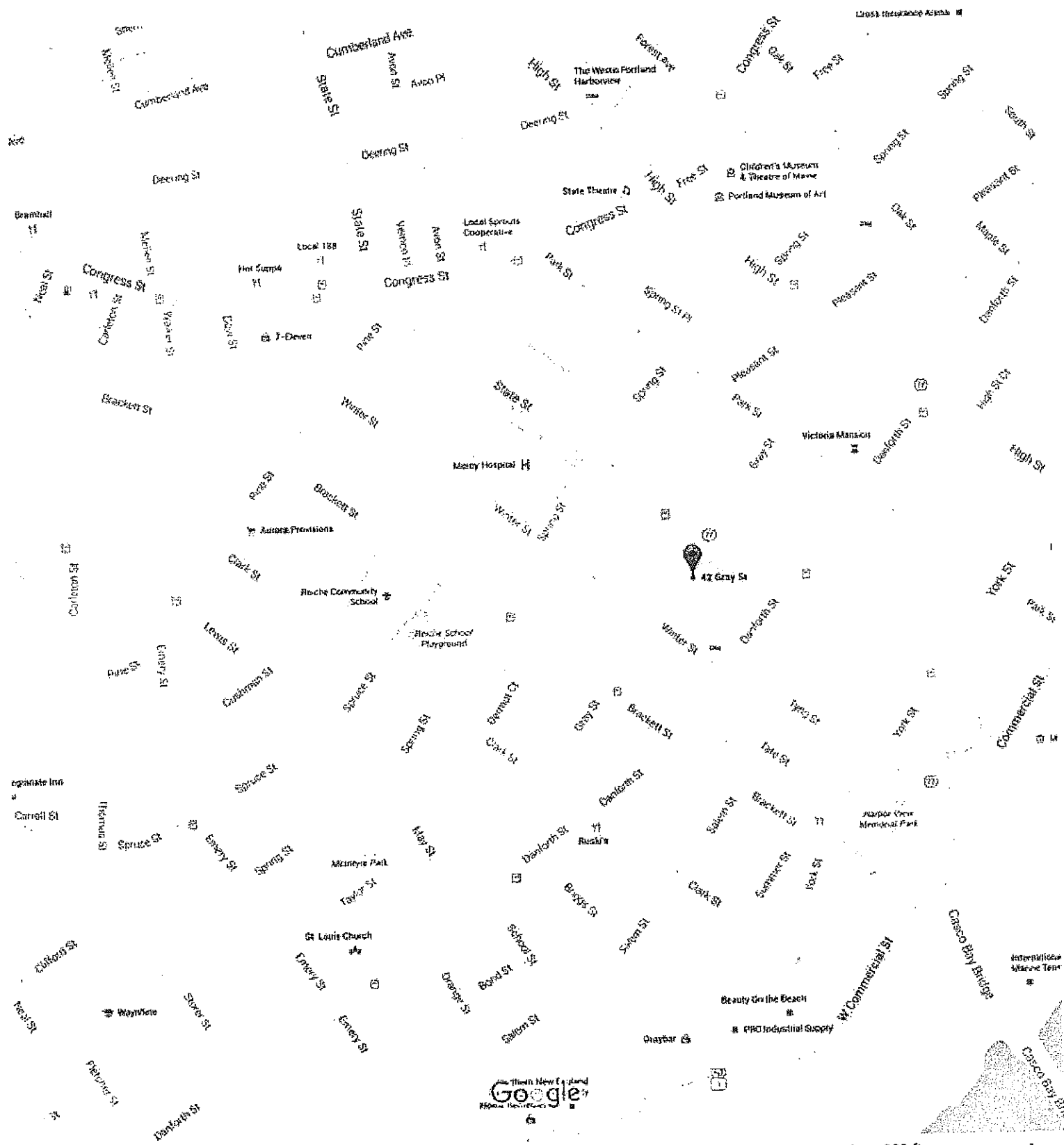


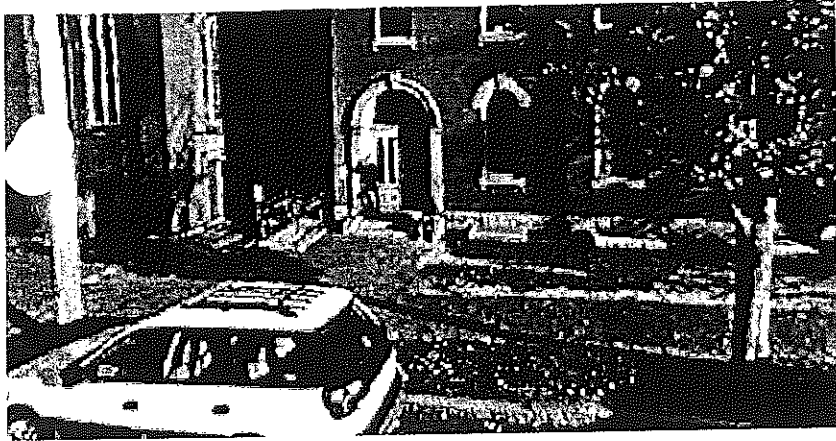
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STATE OF TEXAS
COUNTY OF DALLAS

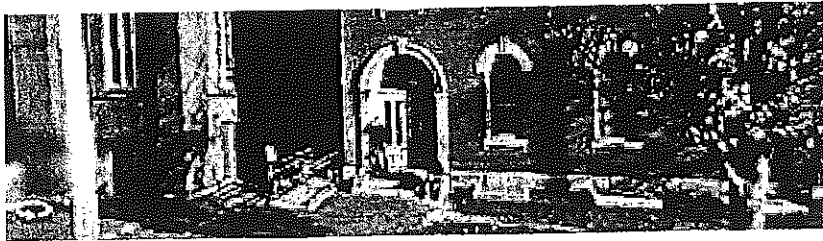
BEFORE ME, the undersigned authority, on this 11th day of January, 2008, personally appeared _____, known to me to be the person whose name is subscribed to the foregoing instrument, acknowledged to me that he executed the same for the purposes and consideration therein expressed.

My commission expires _____.





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,

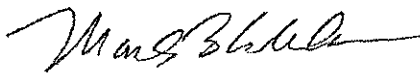
Portland Housing Development Corporation is pleased to submit this response to the City of Portland's Affordable Housing Development HOME Funds 2016-2017 Application. 58 Boyd Street Apartments is a 48 unit multi-family development in the heart of the East Bayside neighborhood that will compliment our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

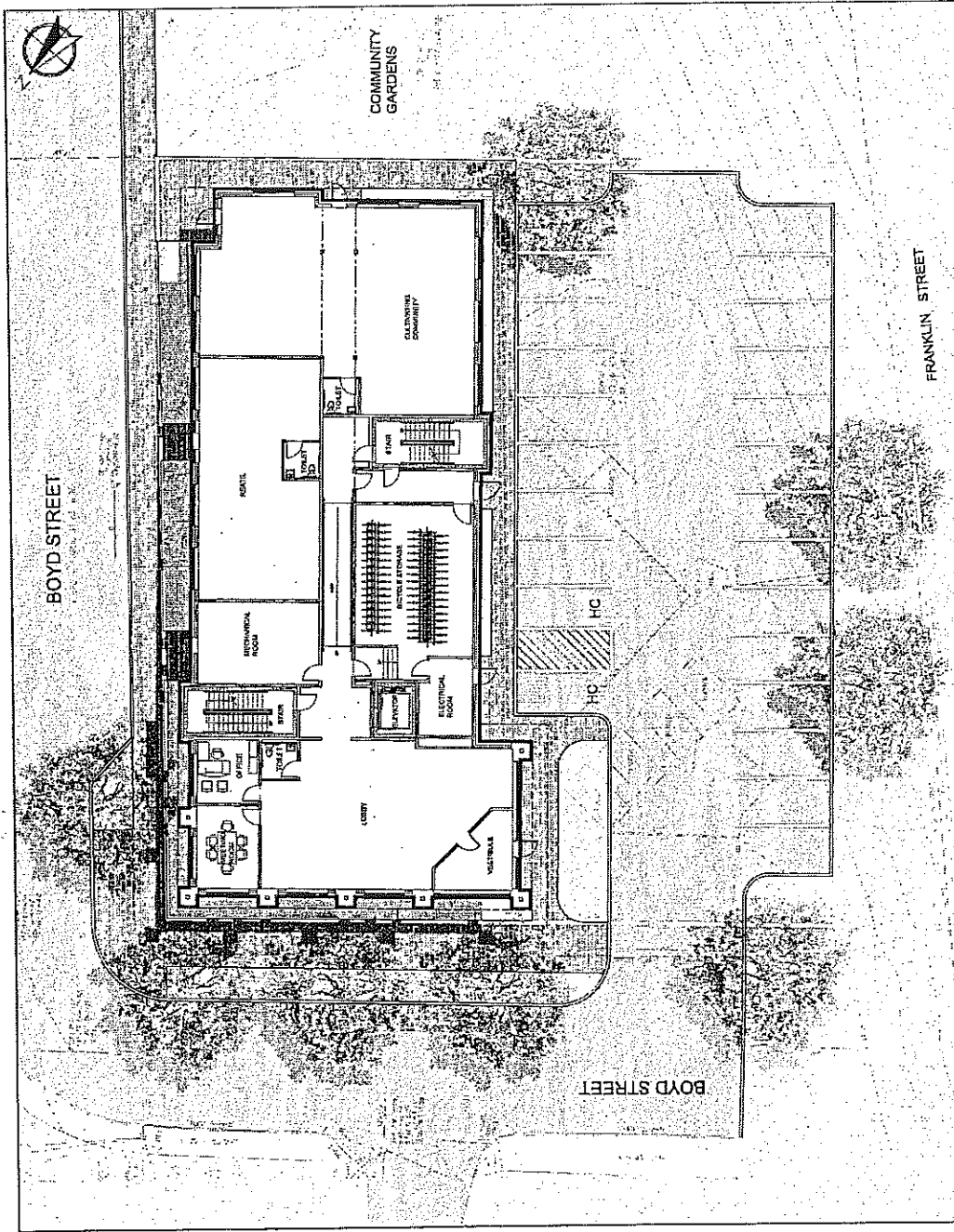
Criterion 4 - Impact on Surrounding Neighborhood, Design Compatibility and Environmental Issues

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"

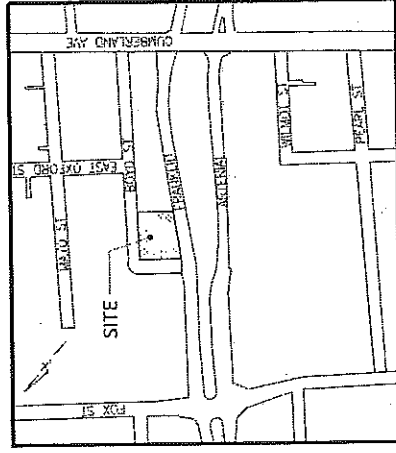
OWNER:
58 BOYD STREET, LP
14 BAXTER BLVD.
PORTLAND, ME 04101

ARCHITECT:
CWS ARCHITECTS
404 CUMBERLAND AVE
PORTLAND, ME 04101

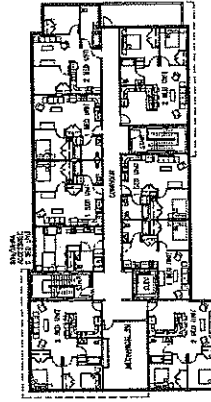
58 BOYD ST APARTMENTS

Portland, ME

MARCH 14, 2016

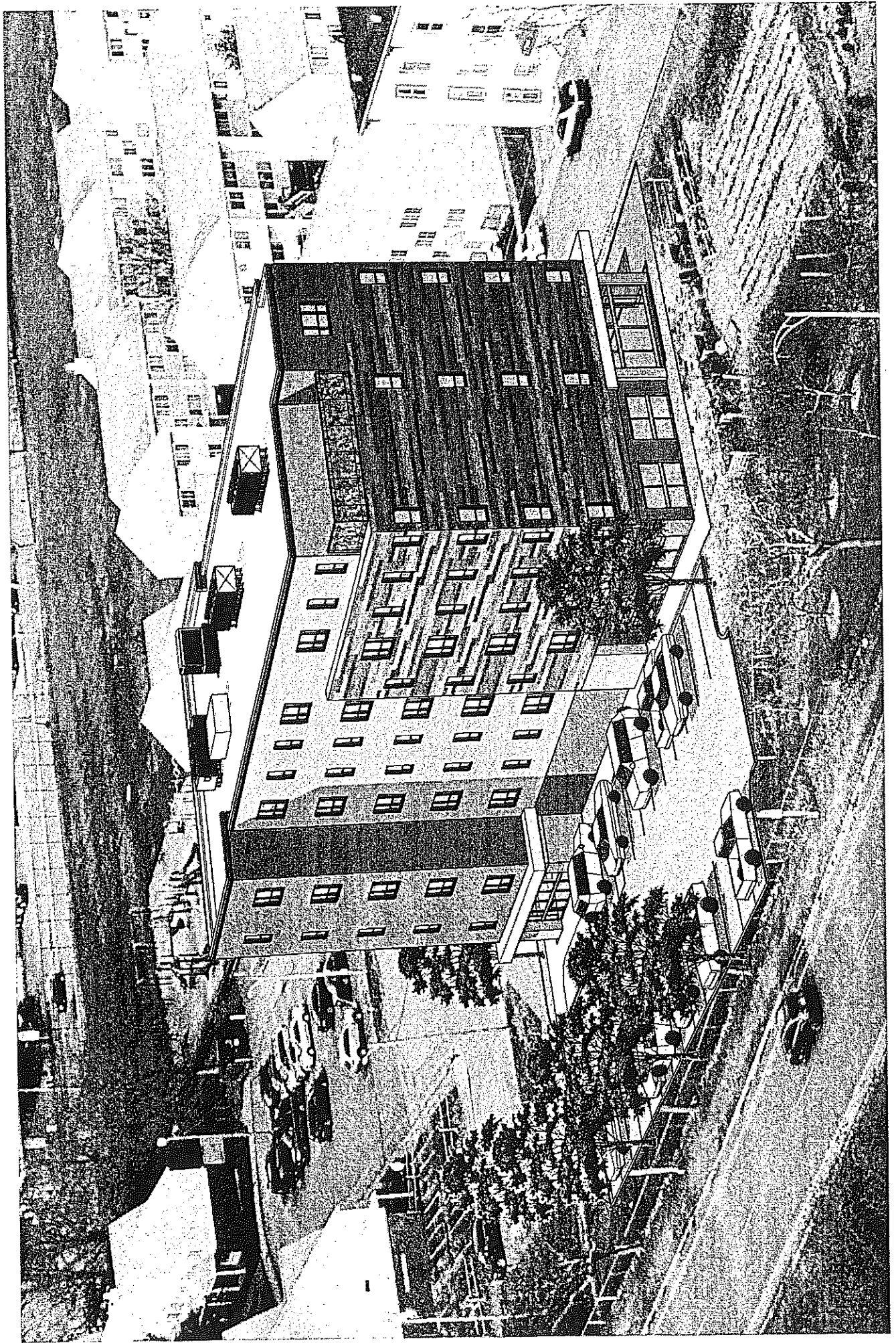


LOCATION MAP
SCALE: N.T.S.



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





58 Boyd St, Portland, ME

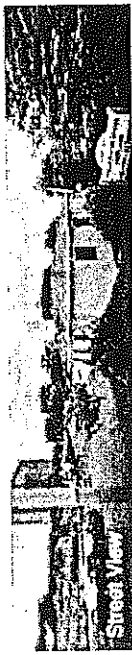
Search nearby: hotels, restaurants

58 Boyd St

Portland, ME 04101

Directions

Save



Explore this area

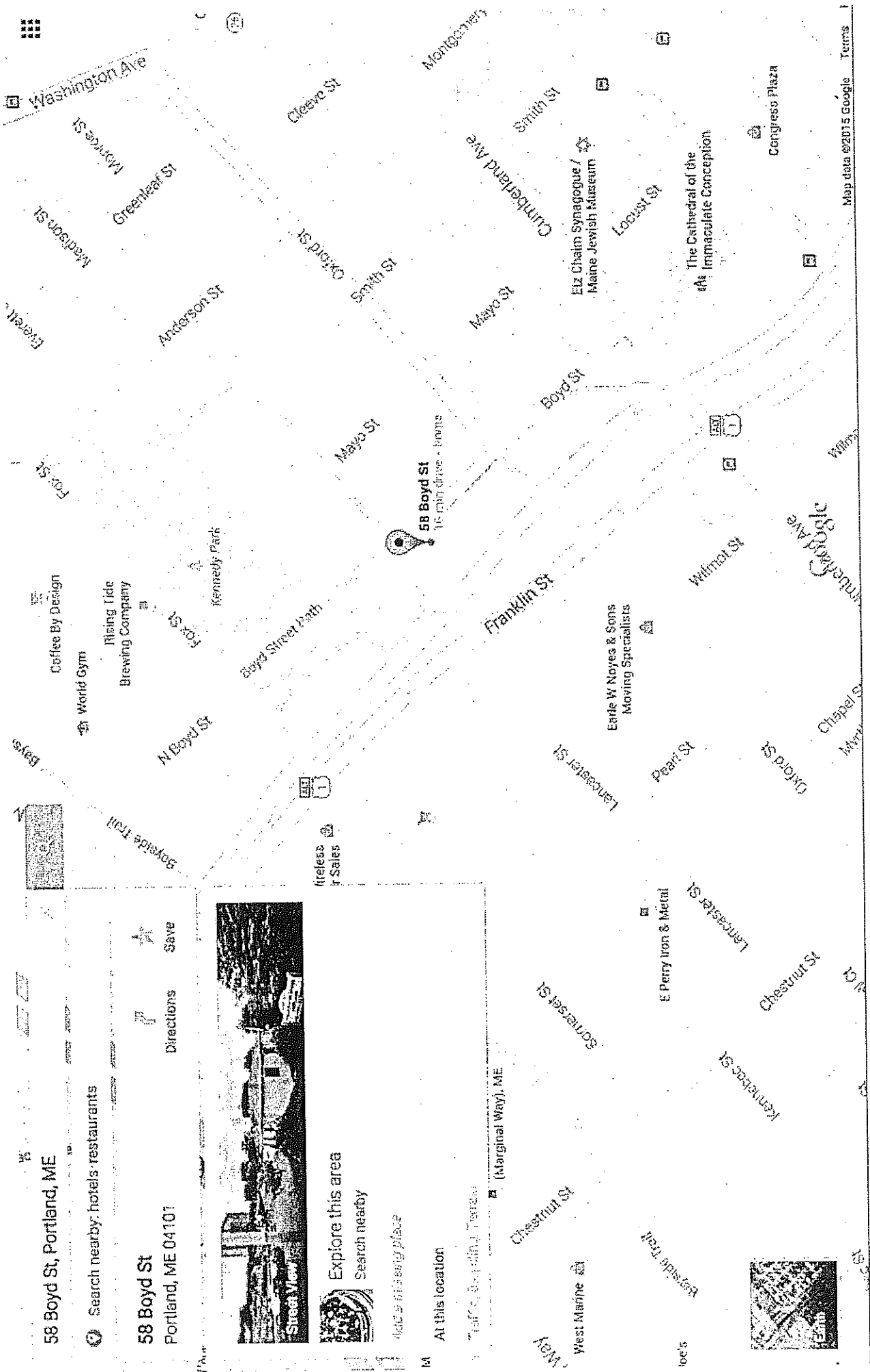
Search nearby

4402 S Main St, Portland, ME

At this location

700 S Main St, Portland, ME

(Marginal Way), ME



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.

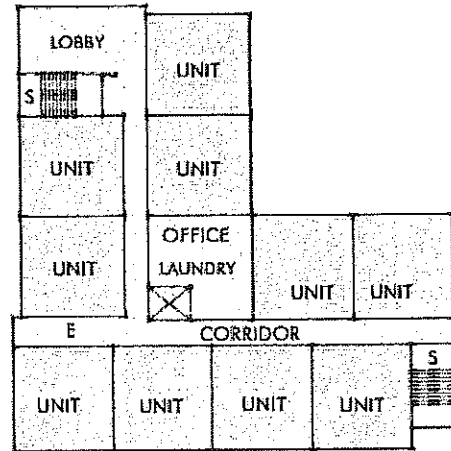
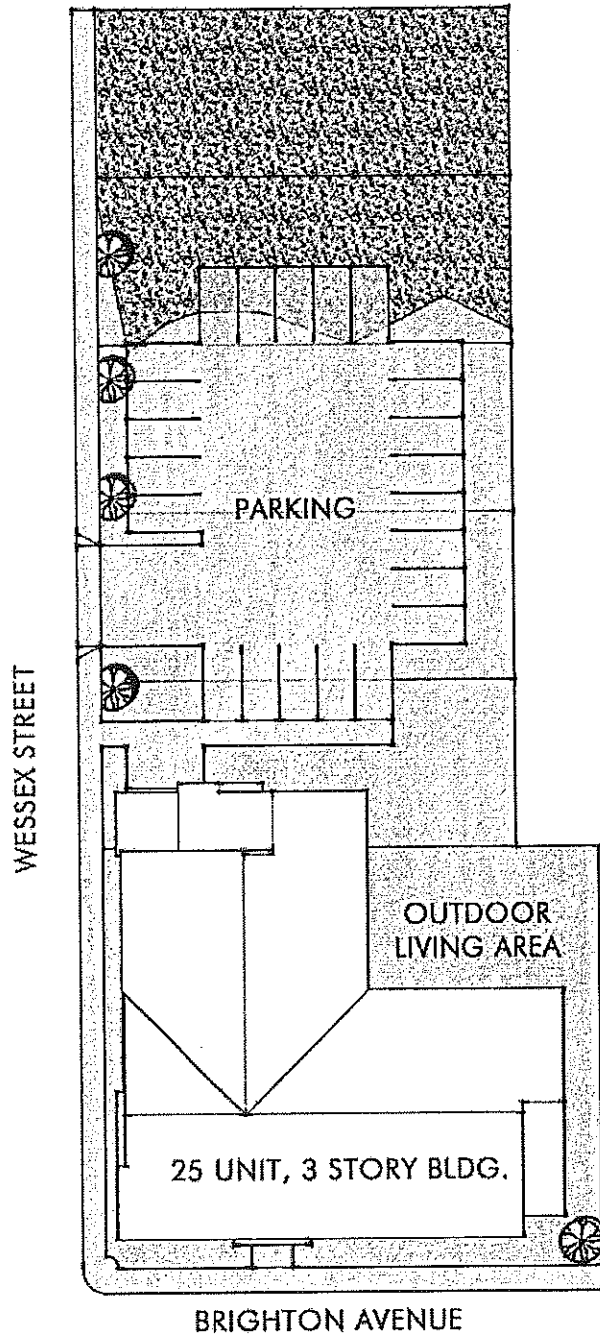
CONCEPT PROJECT SCOPE DEFINITION

**977 Brighton Avenue Apartments
Portland, Maine**

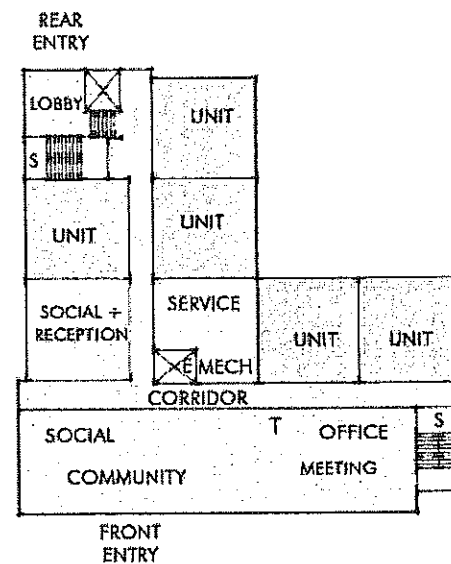


Scope Summary: New construction at 977 Brighton Avenue is a three story Type 5A protected wood frame construction residential use that will serve as a Senior Housing facility that will provide 25 one-bedroom housing units located on the corner of Brighton Avenue and Wessex Street in Portland, Maine. 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.

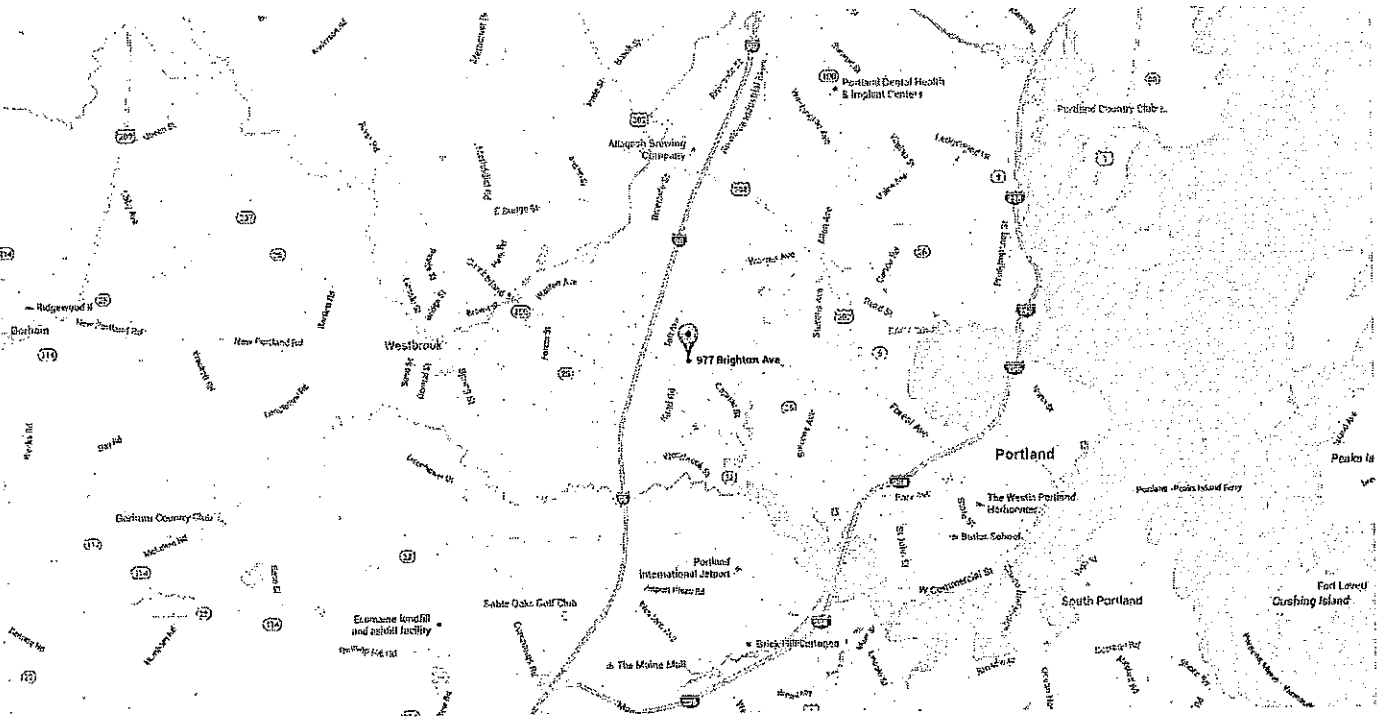


2ND + 3RD FLOOR PLANS

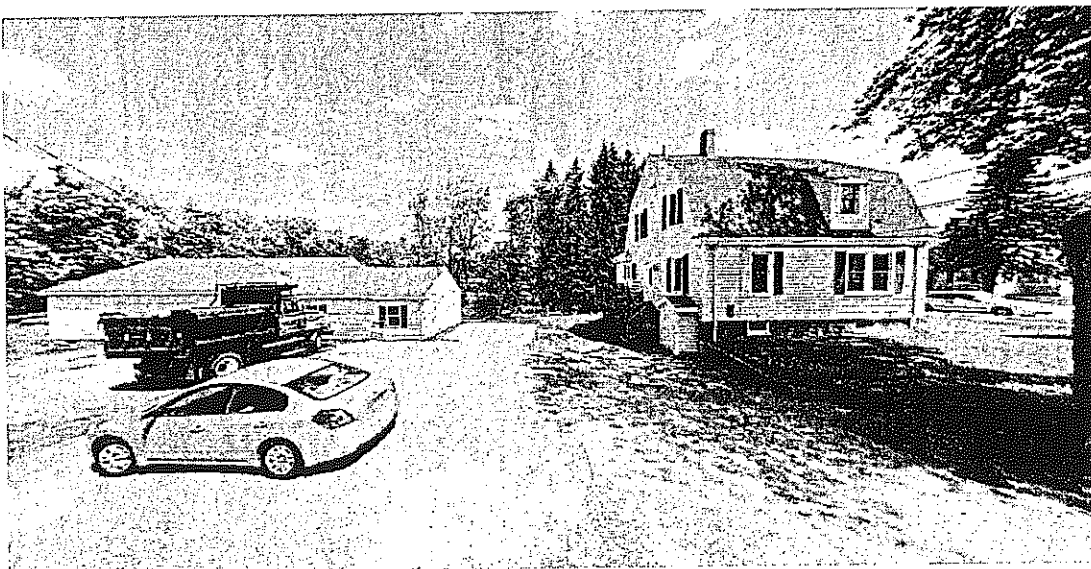
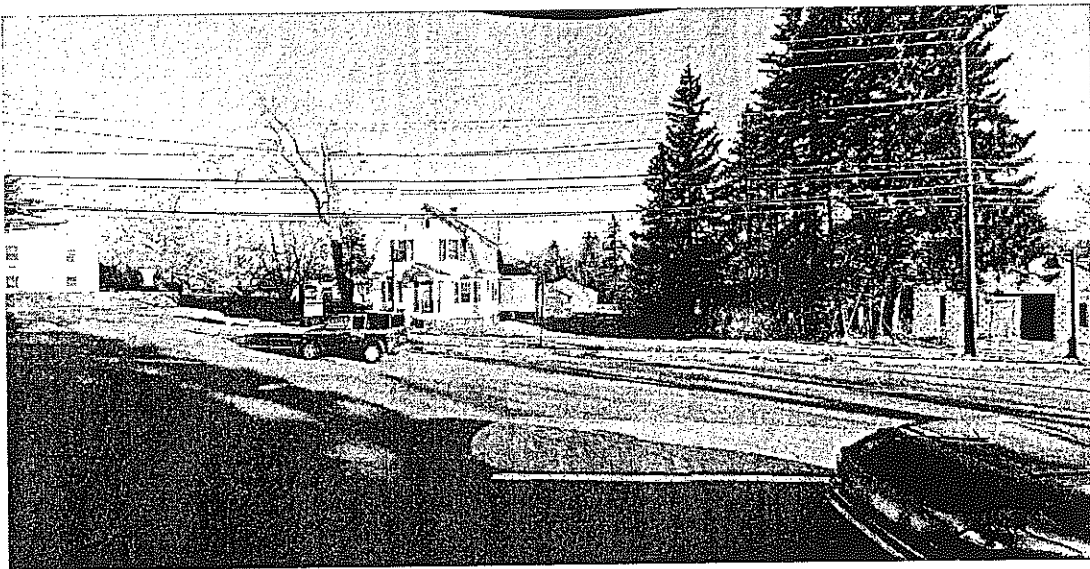
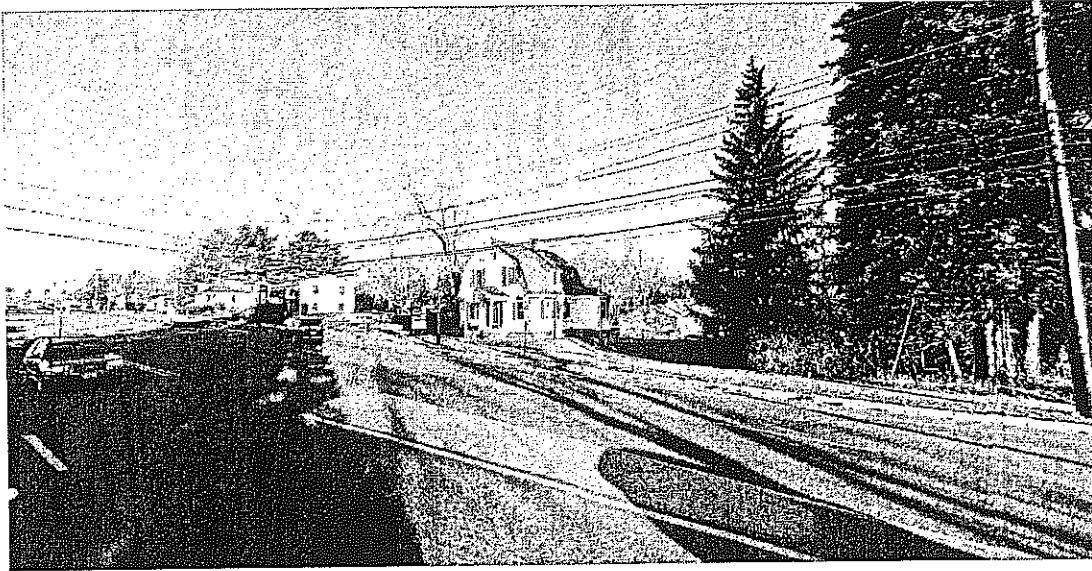


FIRST FLOOR PLAN

977 Brighton Avenue, Portland, Maine



977 Brighton Ave., Portland, ME



FLOW OF FUNDS									
Sources	CLC Oct-16	Dec-16	During Construction		Sep-17	PLC Nov-17	Jan-17	Jun-17	Total
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	375,000				0			0
AHP Grant						375,000			750,000
AHP Loan		326,743				866,858			866,858
City HOME	0	0				0			326,743
Other	0	0				0			0
Other	0					0			0
Other						100,000			100,000
Development Fee Loan						2,818,922	162,500	50,000	7,120,111
TOTAL SOURCES	1,203,813	721,219	721,219	721,219	721,219	2,818,922			
Uses									
Acquisition	293,000	721,219	721,219	721,219	721,219				293,000
Construction	586,885								2,884,875
Soft Costs	96,750								586,885
Financing Costs	87,178					30,000			96,750
Miscellaneous	140,000					172,500			117,178
Dev Fee						163,259	162,500	50,000	525,000
Reserves		721,219	721,219	721,219	721,219	365,759	162,500	50,000	163,259
TOTAL DEV. COSTS	1,203,813	721,219	721,219	721,219	721,219	0			4,666,947
Repay GP Bridge Loan						2,453,163			0
Repay Construction Loan		0	0	0	0	2,453,163	0	0	2,453,163
SUBTOTAL OTHER ITEMS	0	0	0	0	0	2,453,163	0	0	0
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

1,621,362

1363708.7

PROJECT FINANCING							Annual DIS		
Source	Amount	Rate	Term	Lien	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								
Source 6: Other	0								
Source 7: Development Fee Loan	100,000								
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				446,880	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
Tab 11 10-19-16

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

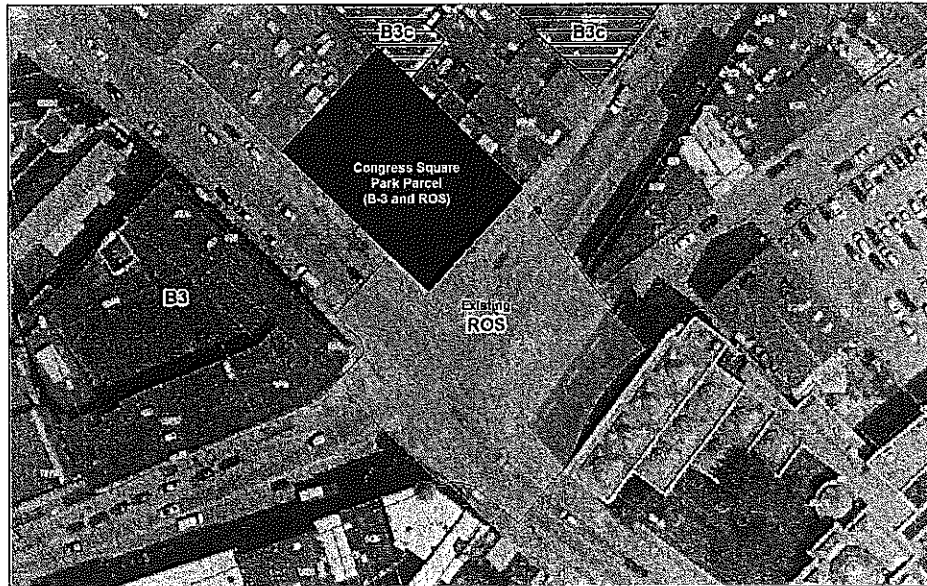
**CITY OF PORTLAND
IN THE CITY COUNCIL**

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.

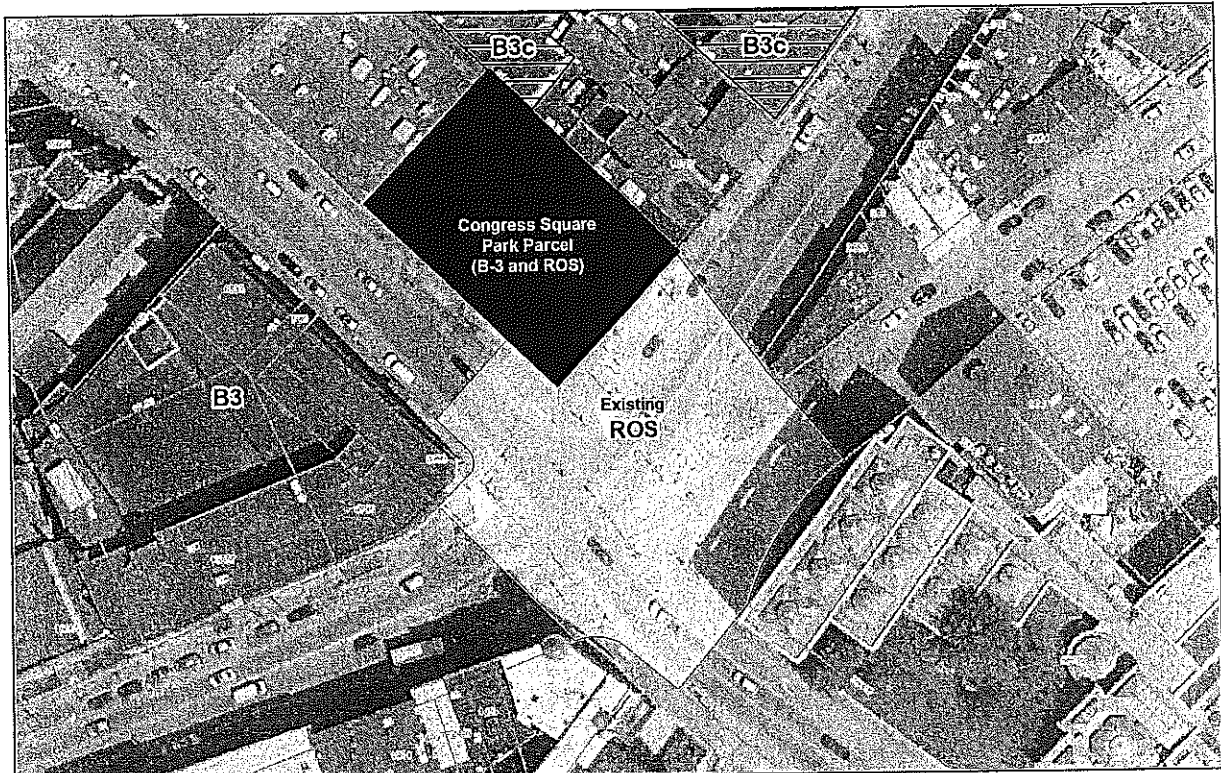


Figure 1: Existing Zoning

Proposed Congress Square ROS Map Amendment

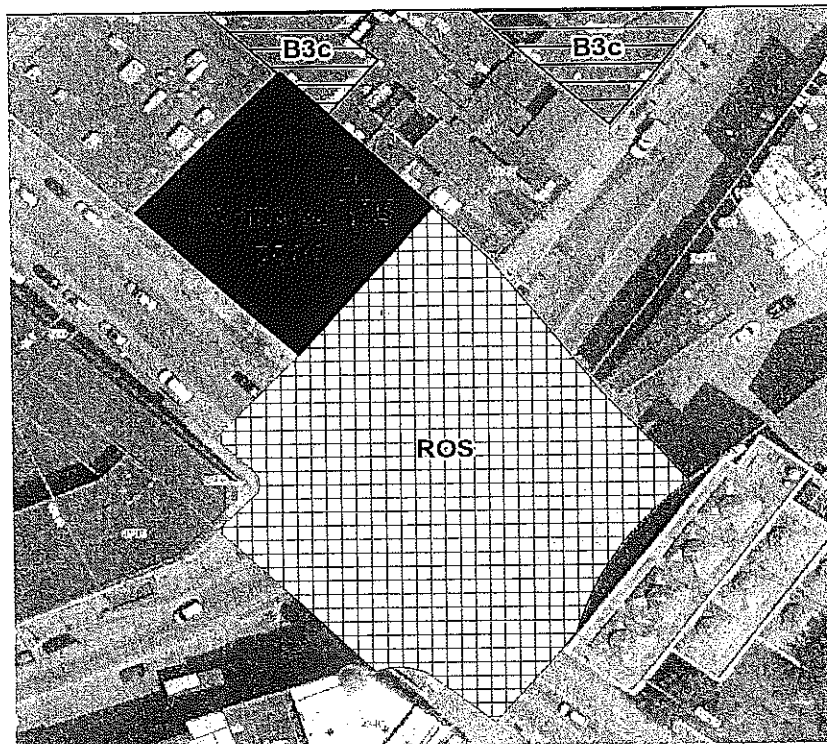


Figure 2: Proposed Zoning

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.

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**

Order 67-16/17
~~Tab 15~~ 10-5-16
Tab 12 10-17-16
DAVID H. BRENERMAN (5)
JILL C. DUSON (A/L)
JON HINCK (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

**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 Benchmarker 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

*Order 72 -16/17
Tab 13 10-17-16*

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 A LICENSE TO PORTLAND NORWICH GROUP LLC

ORDERED, that a license allowing encroachments by foundation footings, an underground electric vault and window and door canopies in the public right-of-way is hereby approved for Portland Norwich Group LLC 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 documents and any other related documents necessary or convenient to carry out the intent of said documents and this Order.

MEMORANDUM
City Council Agenda Item

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

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

DATE: September 28, 2016

SUBJECT: License Agreement for Awnings, Electrical Vault, and Foundation Footings for AC Hotel, 158 Fore Street

SPONSOR: Department of Planning and Urban Development

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st reading _____ **Final Action:** October 17, 2016

Can action be taken at a later date: ___ Yes ___ ☒ No (If no why not?)
The applicant is ready to begin construction imminently.

PRESENTATION: Jeff Levine, Director, Planning and Urban Development Department, 5 minute oral presentation

I. ONE SENTENCE SUMMARY

The Department of Planning and Urban Development is seeking that the Council authorize the City Manager to execute a license to allow encroachments into the right-of-way, required as a condition of approval, at the proposed AC Hotel project at 158 Fore Street.

II. AGENDA DESCRIPTION

On May 24, 2016, the Planning Board approved a Level III site plan for a hotel on the eastern half of the block bounded by Thames Street, Hancock Street, and Fore Street, the AC Hotel. The site plan includes awnings and canopies proposed to encroach on the Hancock Street right-of-way and an underground electrical vault proposed to encroach on the Fore Street right-of-way. In addition, as the applicant has developed their final building plans, they have proposed footings to encroach in the Hancock Street right-of-way. At the time of approval, the Planning Board required a license for such encroachments as a condition of approval.

III. BACKGROUND

The 158 Fore Street site is currently undeveloped. The applicant proposes to develop it as a 6-story, 180-room hotel. The project was approved with conditions by the Planning Board on May 24, 2016.

IV. INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED

The license will allow the redevelopment of a currently vacant lot at 158 Fore Street in the city's Eastern Waterfront and thereby support economic development goals.

V. FINANCIAL IMPACT

There is no cost to the city. The hotel is expected to be fully taxable and generate annual tax revenue for the city.

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

Corporation Counsel's office has reviewed the proposed license and exhibits as presented here. As noted above, the Planning Board approved the proposed development on May 24, 2016 on the condition of the proposed license.

VII. RECOMMENDATION

The Department recommends that the Council authorize the City Manager to grant the attached license agreement.

VIII. LIST ATTACHMENTS

1. Order (to be forwarded under separate cover)
2. Proposed license agreement

Prepared by: Nell Donaldson, Planner

Date: September 28, 2016

Bean/agendarequestmemo/rev 11/2015

LICENSE AGREEMENT
(Fore Street and Hancock Street)

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which is hereby acknowledged, the **CITY OF PORTLAND**, a Maine body corporate and politic, with a mailing address of City Hall, 389 Congress Street, Portland, Maine 04101 (the "City"), hereby GRANTS to **PORTLAND NORWICH GROUP LLC**, a Delaware limited liability company (hereinafter the "Grantee") with its principal place of business in Sanibel, County of Lee and State of Florida, having a mailing address of 500 Sawgrass Place, Sanibel, FL 33957 (hereinafter the "Licensee"), and Licensee's successors and assigns as set forth herein, a license (revocable only as hereinafter set forth in section 4, below) to occupy and use portions of property of the City being known as Fore Street and Hancock Street, in Portland, Cumberland County, Maine. The land of City abuts the property of Licensee conveyed to Licensee by Warranty Deed from Ocean Gateway Garage, LLC to the Portland Norwich Group LLC, dated November 18, 2015, recorded in said Registry in Book 32746, Page 289, being "Parcel 1—Development Parcel" therein.

The purpose of this License is to allow installation and encroachment by certain portions of the buildings, improvements and appurtenances, to be constructed by Licensee, onto the City's property, such encroachments being described as follows: (i) footings for building foundations under the proposed sidewalk areas on Hancock Street; and (ii) window and door canopies and/or awnings along Hancock Street; and (iii) an underground electrical vault and related facilities into Fore Street. The forgoing installations and encroachments are shown, generally, on the attached **Exhibit A**.

The License granted in this License Agreement is subject to the following conditions:

1. **Indemnification.** Licensee, its successors and assigns, shall indemnify the City, its officers, agents, and employees from any and all claims which arise out of Licensee's use, or the use by others under authority from Licensee, of the City's property encroached upon as described above.
2. **Insurance.** Licensee, its successors and assigns, shall procure and maintain liability insurance in an amount of not less than Four Hundred Thousand Dollars (\$400,000) combined single limit (or any amount noted in the Maine Tort Claims Act, as may be amended from time to time), covering claims for bodily injury, death and property damage and shall either name the City of Portland as an additional insured with respect to such coverage or shall obtain a contractual liability endorsement covering the obligations of Licensee under the terms of this license. This provision in no way waives the immunities and limitations on damages provided to the City by the Maine Tort Claims Act.

3. Assignment. This License Agreement is assignable to any subsequent owners of the buildings located on the land described on the approved site plan for an "AC Hotel" for Norwich Portland Group LLC, having a project address of "158 Fore Street," and located on Fore Street, Hancock Street and Thames Street, Portland, Maine, such buildings being depicted on the attached Exhibit A. This License Agreement shall also be for the benefit of any mortgagee or secured party of Licensee.

4. Revocation. This license may only be revoked or terminated by City upon the giving of not less than six (6) months written notice by the City to Licensee, its successors and assigns, and only in the event that: (a) the buildings shown on the attached plans (Exhibit A) fail to be constructed substantially in accordance with such plans or any amendments thereto; or (b) the buildings, as shown on such plans or any amendments thereto, are destroyed, removed or otherwise hereafter cease to exist for a period of not less than three (3) years following such destruction or removal without any reconstruction or replacement having been commenced.

The buildings and improvements referred to herein are to be constructed on the land identified as Lot 1 on a plan prepared by Owen Haskell, Inc. entitled "Recording Plat, 158 Fore Street" recorded in said Registry in Plan Book 216, Page 185 (the "Plan").

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by John R. Jennings, its City Manager, duly authorized, on October ____, 2016.

CITY OF PORTLAND

By: _____
John R. Jennings, its City Manager

STATE OF MAINE
CUMBERLAND, ss.

October ____, 2016

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

Before me,

Notary Public/Attorney at Law
Print name:
My commission expires:
SEAL

[Next page is Licensee signature.]

IN WITNESS WHEREOF, Portland Norwich Group LLC has executed, acknowledged and accepted this instrument on October _____, 2016.

Witness

PORTLAND NORWICH GROUP LLC

By: _____
Name: David Leatherwood
Its Manager

STATE OF FLORIDA
LEE, ss

October __, 2016

PERSONALLY APPEARED the above named David Leatherwood and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of said Portland Norwich Group LLC.

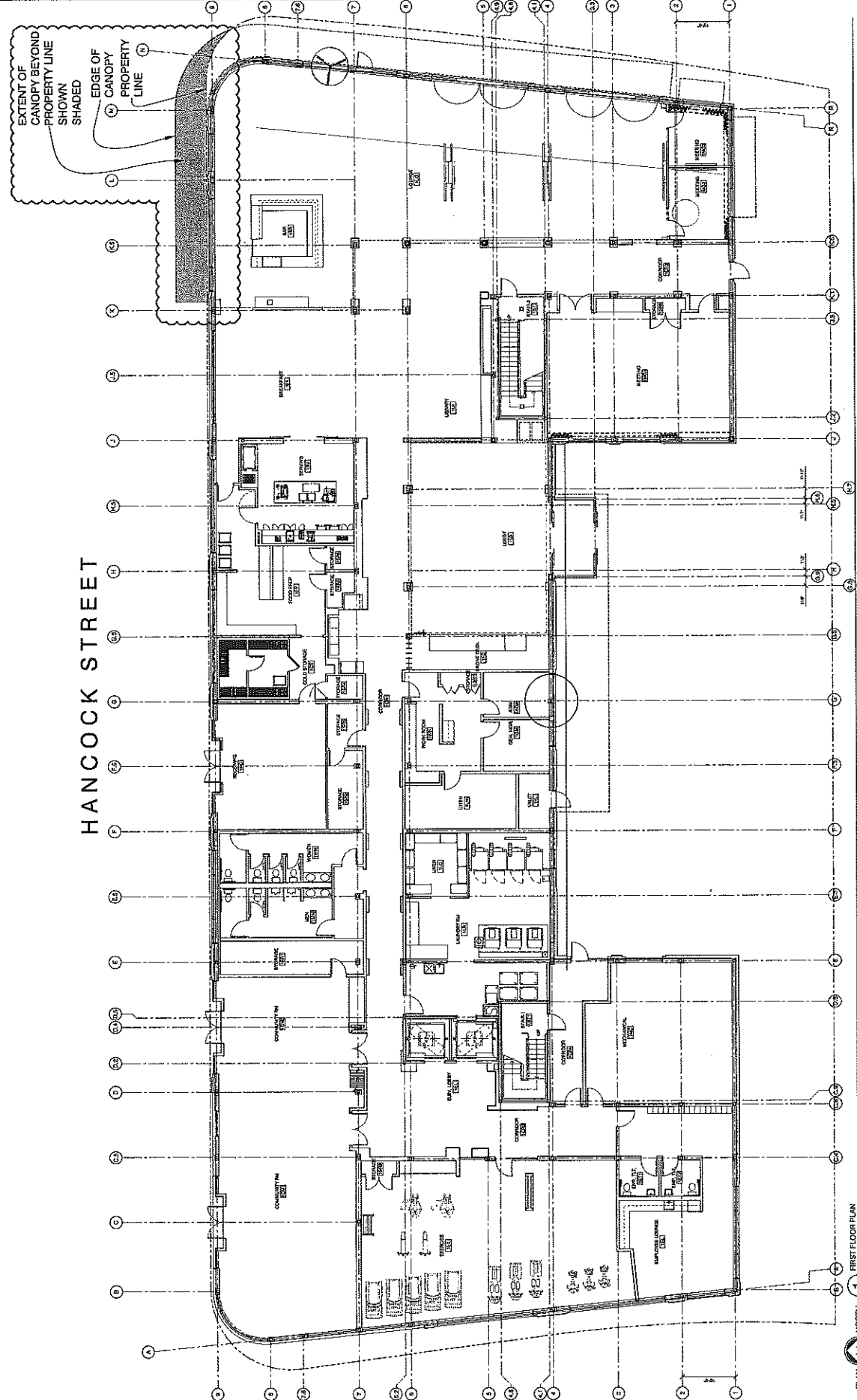
Before me,

Notary Public
Print name:
My commission expires:

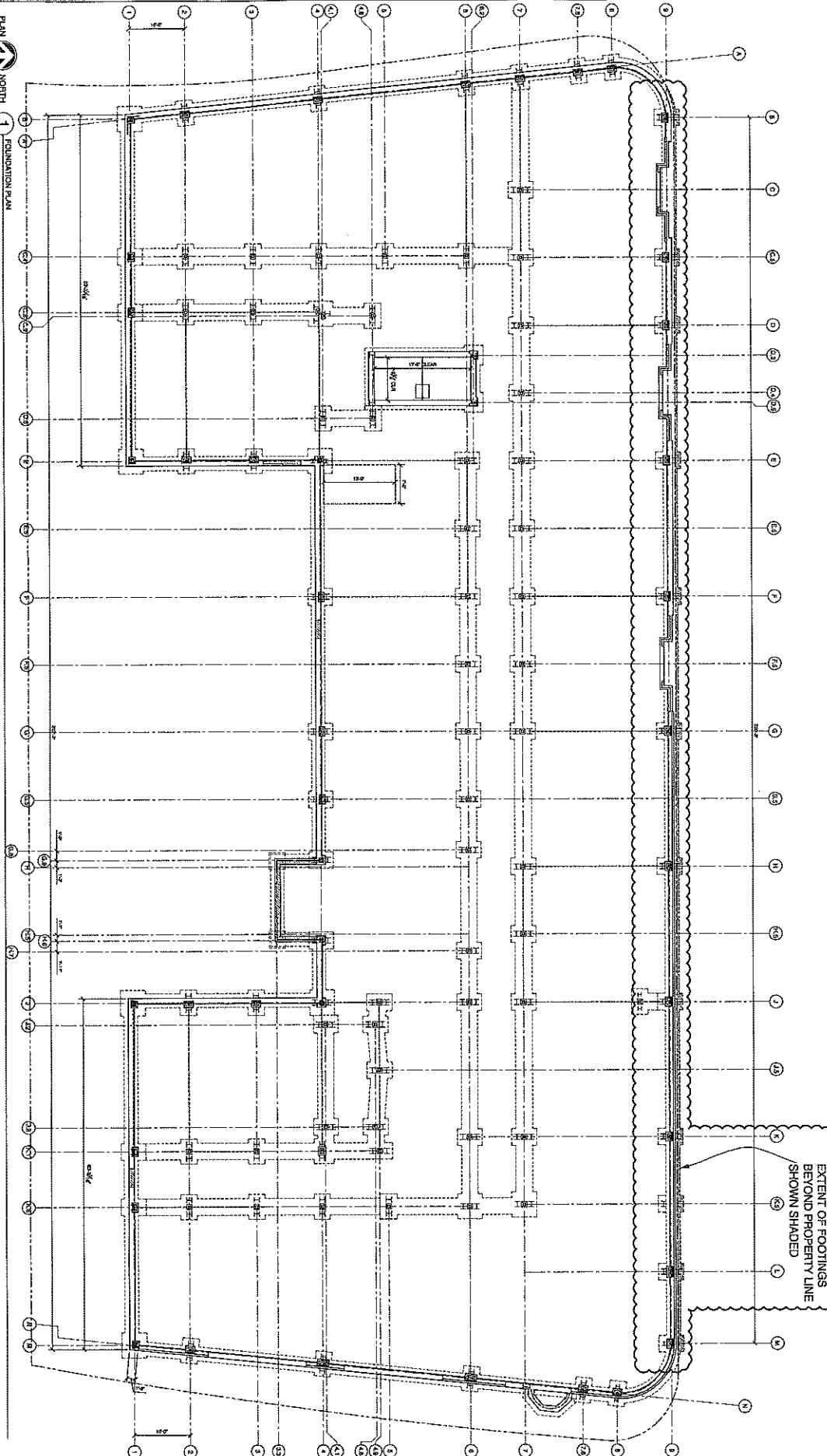
SEAL

Exhibit A: Installations and Encroachments

[illegible]



PLAN
NORTH
1
FOUNDATION PLAN
1/8" = 1'-0"



S1.01	FOUNDATION PLAN	ISSUED: 09-27-16 ROW OVERLAY PLAN	REVISION:	AC HOTELS by MARRIOTT	Fore Street / Hancock Street / Thames Street Portland, Maine
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*Order 73-16/17
Tab 14 10-17-16*

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)

**Moratorium
Re: City Parks and Public Grounds in the
R-6 Zone on the Portland Peninsula**

WHEREAS, the Comprehensive Plan for the City of Portland acknowledges that “Being virtually encircled by water, Portland owes much of its beauty to the surrounding water bodies including freshwater rivers, the ocean, a working harbor and an enclosed cove”; and

WHEREAS, the Comprehensive Plan further describes the importance of “Vistas from Promenades and High Points,” stating that City parks were established on the Eastern and Western Promenades “precisely because of the scenic views they afforded of Casco Bay, the Fore River, the surrounding countryside, and the White Mountains”; and

WHEREAS, Fort Sumner, which was first listed as a City park in 1934, offers unparalleled views not only of the cityscape but also of the Back Cove and Mount Washington while also providing Portland residents and visitors with the ability to experience open space, a view of the shoreline, long sightlines, and a feeling of expansiveness not often achieved in a public space in an urban environment; and

WHEREAS, a City master plan for Fort Sumner completed in 2006 includes elements designed to highlight the park’s most valued asset: its view; and

WHEREAS, at present there is a lack of regulation in City Code to ensure that developments on parcels abutting City parks and public grounds as defined in City Code, Chapter 18, section 18-11 in the R-6 Zone of the 1st Council District (hereinafter “District 1”) on the City of Portland Peninsula (hereinafter referred to as “City parks and public grounds”) in Portland do not infringe upon the natural beauty or compromise the quality of open space provided by such City parks and public grounds; and

WHEREAS, development pressure concentrated in District 1 on the Portland Peninsula, which contains many public parks, has resulted in two (2) recent citizen initiative petitions to address and preserve parks and view corridors; and

WHEREAS, this development pressure has not been adequately accounted for in the existing Portland City Code; and

WHEREAS, there is a strong likelihood that District 1 on the Portland Peninsula, and specifically the R-6 zone located in that District, will continue to be subjected to this

development pressure; and

WHEREAS, pursuant to 30-A M.R.S. § 4356(1)(A), the continued development of projects directly abutting City parks and public grounds in the R-6 Zone of District 1 on the Portland Peninsula pursuant to the existing City Code requirements could pose serious threats to the public health, safety and welfare of the residents of the City of Portland through the over-development of and overburdening of the City's public facility (i.e. public parks and grounds) which is reasonably foreseeable as a result of the development pressure; and

WHEREAS, pursuant to 30-A M.R.S. § 4356(1)(B), since the application of existing Portland City Code provisions or regulations or other applicable laws are inadequate to address the development pressure and prevent the public harm from the potential residential, commercial and/or industrial development in the R-6 zone of District 1 of the City of Portland on the Portland Peninsula; and

WHEREAS, after sufficient notice and a public hearing, there is strong support for this Moratorium on the City Council; and

WHEREAS, the City will need at least sixty (90) days to develop and implement the necessary amendments to the City Code to address these development pressures through-out the City of Portland; and

WHEREAS, in the judgment of the Portland City Council, these facts create an emergency within the meaning of 30-A M.R.S. § 4356(1) and the City Charter, and require the following Moratorium as immediately necessary for the preservation of the public health, safety and welfare;

NOW THEREFORE, pursuant to its authority in 30-A M.R.S. §§ 3001 and 4356, the Portland City Council hereby ordains that a Moratorium is imposed on any and all site plan or subdivision proposals for property located in the R-6 zone in District 1 on the Portland Peninsula [see map attached hereto as Exhibit A] which directly abuts a City park or public ground [i.e. directly touches a City park or public ground, and specifically does not include properties located across the street from a City park or public ground]; and

BE IT ORDERED, that no site plan or subdivision application shall be accepted or processed and no site plan or subdivision approval shall be issued or granted by the Planning Authority or the Planning Board for any and all property located in the R-6 zone of District 1 on the Portland Peninsula which directly abuts a City park and/or public ground, from and after October 5, 2016 to and including January 4, 2017; and

BE IT FURTHER ORDERED, that this Moratorium shall go into effect on October 5, 2016 and shall remain in effect until January 4, 2017, unless extended, repealed, or modified by the Portland City Council; and

BE IT FURTHER ORDERED, that notwithstanding the provisions of 1 M.R.S.A. § 302, this Ordinance shall only apply to any site plan or subdivision proposal or application to

develop property, excluding applications for building permits, located in the R-6 zone in District 1 on the Portland Peninsula which directly abuts [i.e. touches a City park or public ground, and specifically does not include properties located across the street from a City park or public ground] a City park and/or public ground, whether or not an application or proceeding to establish said development proposal would be deemed a pending proceeding under 1 M.R.S. § 302; and

BE IT FURTHER ORDERED, that to the extent any provision of this Moratorium is deemed invalid by a court of competent jurisdiction, the balance of the Moratorium that shall remain shall be considered valid; and

BE IT FURTHER ORDERED, that in view of the emergency cited in the preamble above, that it is hereby found and determined by the Portland City Council that it is necessary that this Moratorium take effect immediately as an emergency pursuant to Article II, Section 8 of the City of Portland Charter.

MEMORANDUM
City Council Agenda Item

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

FROM: Councilor Belinda S. Ray

DATE: October 6, 2016

SUBJECT: Moratorium Re: City Parks and Public Grounds in the R-6 Zone in the 1st District on the Portland Peninsula

SPONSOR: Councilor Belinda S. Ray

(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 10/17/2016 Final Action 11/7/2016

Can action be taken at a later date: ____ Yes ____ ☒ No (If no why not?) Action now is needed to prevent the acceptance of site plan or subdivision applications by the Planning and Urban Development Department for projects on properties affected by the moratorium. This will provide city staff with adequate time to craft regulations designed to preserve the essential character and open space of the city parks and public grounds in the geographic area defined in the moratorium.

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

I. ONE SENTENCE SUMMARY

This order would stop consideration of any site plan or subdivision applications submitted on or after October 5, 2016 on property adjacent to City parks in the R-6 Zone in the 1st District on the Portland Peninsula until January 4, 2017, in order to allow ordinances designed to preserve the essential character and open space of city parks in the defined area to be drafted and considered.

II. AGENDA DESCRIPTION

All parks have elements which contribute to their essential character, such as views and sightlines, landscape features, historic associations, trails, athletic fields, meadowlands, and wildlife habitat. Development that occurs adjacent to public parks can affect one or more of these defining elements, thereby compromising the essential character of a park and decreasing the quality and availability of open space in the City. Councilor Belinda Ray has proposed that the City Council consider a 90-day moratorium on the approval of site plans and subdivisions from

October 5, 2016 until January 4, 2017, in order to allow time to draft ordinances that could guard against such infringement on the essential character and open space of city parks.

The moratorium would affect only projects on properties that directly abut city parks, and not any on properties across a city street. It would only apply to such properties in the R-6 Zone in the 1st Council District on the Portland Peninsula. According to the Planning and Urban Development Department, this moratorium would affect now under consideration.

Should the City Council approve the moratorium, staff would follow up by developing language designed to limit the potential for damage caused by development projects to the essential character and primary assets of the city's parks in the defined area. That language would likely return to the City Council for review and approval prior to the expiration of the moratorium.

III. BACKGROUND

In response to a proposed development directly abutting Fort Sumner Park which—in its initial iteration—would have substantially blocked views from the park plaza, citizens began organizing to determine what they could do to ensure such a development would not have an adverse impact on the park. Fort Sumner has long been valued for its expansive views of the cityscape as well as the Back Cove. Thus it was surprising to find that there was no existing language in the City Code to protect and preserve the park's essential character and primary assets.

Open space is an extremely valuable commodity in an urban environment. This is recognized in Division 8.5 of Article III of the Portland City Code, Section 14-153, which defines the Recreation and Open Space (R-OS) Zone. It states the purpose of this Division is as follows:

1. To preserve and protect open space as a limited and valuable resource;
2. To permit the reasonable use of open space, while simultaneously preserving and protecting its inherent open space characteristics to assure its continued availability for public use as scenic, recreation, and conservation or natural resource area, and for the containment and structuring of urban development;
3. To coordinate with and carry out federal, state, regional, and city recreation and open space plans;
4. To provide a suitable location for large-scale regional sports and athletic facilities; and
5. To develop a open space system throughout the downtown, which provides the highest quality parks, plazas, and pedestrian environment.

In addition to traditional uses in the R-OS Zone (including but not limited to parks, picnic areas, playgrounds, cemeteries, scenic overlooks, trails, community gardens, sewage treatment facilities, and sports complexes) there are also provisions for conditional uses, such as wind energy systems and recreational facilities that are open to the public. However, written into the

standards the Board of Appeals must consider for such conditional uses in the R-OS Zone is the following language:

“Buildings and structures shall not obstruct significant scenic views presently enjoyed by nearby residents, passersby, or users of the site.”

And yet, there are no such restrictions on developments on properties directly abutting R-OS Zones, even though such developments could have equally detrimental effects on R-OS Zone properties.

Likewise, when 52 parks and public grounds, including Fort Sumner, were officially dedicated and placed under the provisions of Article 1B of Chapter 18 of the City Code, the use and maintenance requirements for these properties were addressed, but the potential impact from development on abutting parcels, was not.

This is an oversight that requires remedy. In creating, protecting, and preserving open space within the city, both the footprints of public parks and grounds and the way in which these spaces interact with the surrounding landscape must be considered in the City Code.

Article III, Section 14-46* of the City Code, which states the purpose for all zoning in the city, specifically points to zoning as a tool for use in “providing adequate light and air; preventing the over-crowding of land; avoiding undue concentration of population; facilitating the adequate provision of transportation, sewerage, schools, parks and other community facilities and utilities; thus promoting the health, safety, convenience and general welfare of the citizens of the city.”

If approved, this 90-day moratorium will provide City staff time to develop language to protect and preserve open space in Portland by limiting the potential for negative impacts from developments abutting city parks in the defined area. Again—any language developed would be specific to the area defined in the moratorium: properties in the R-6 Zone in the 1st District on the Portland Peninsula that directly abut city parks.

While it is possible that information gleaned during this process could, in the future, be extrapolated to help create regulations to protect and preserve open space in other areas of the city, that is a long-term goal and not the focus of this moratorium.

* Below is the full text of Article III, Section 14-46:

“This article, made in accordance with a comprehensive plan, is enacted for the purpose of decreasing congestion in streets; securing safety from fire, panic and other dangers; providing adequate light and air; preventing the over-crowding of land; avoiding undue concentration of population; facilitating the adequate provision of transportation, sewerage, schools, parks and other community facilities and utilities; thus promoting the health, safety, convenience and general welfare of the citizens of the city.”

IV. INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED

The intended result of the moratorium is to provide enough time for City staff to address the need to protect and preserve open space in the defined area in Portland.

The moratorium also allows the Council to begin to address one goal set for the Energy and Sustainability Committee in January 2016. This goal was tied for 5th place among ESC goals and highlighted with four dots:

Create a plan for protecting and investing in green space and parks.

While the strategies and language crafted to protect city parks and public grounds in this well-defined area of the moratorium may eventually be extrapolated in order to preserve the essential character and primary assets of other City parks and public grounds, it is important to be clear that at this time staff is not being asked to craft a comprehensive plan for protecting open space in Portland. They are being asked to look at the geographic area defined in the moratorium and to make recommendations for that area alone.

V. FINANCIAL IMPACT

This action may postpone development, thereby postponing any tax revenues that would have been generated by that development.

On the other hand, according to the American Planning Association, "Parks provide intrinsic environmental, aesthetic, and recreation benefits to our cities. They are also a source of positive economic benefits. They enhance property values, increase municipal revenue, bring in homebuyers and workers, and attract retirees. At the bottom line, parks are a good financial investment for a community."¹

Thus, taking the time to craft language to preserve the essential character and primary assets of Portland's city parks, could ultimately have a positive financial impact on the city.

¹ Lewis, Megan. "How Cities Use Parks for Economic Development." *American Planning Association*. American Planning Association, 2007. Web. 10 Oct. 2016.

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

See information provided by Jeff Levine, Director, Department of Planning and Urban Development.

VII. RECOMMENDATION

The moratorium is approved as to form by Corporation Counsel.

VIII. LIST ATTACHMENTS

Order

Memo from Jeff Levine, Director of the Department of Planning and Urban Development

Prepared by: Nancy English

Date: 10/11/2016

Bean/agendarequestmemo/rev 11/2015



Jeff Levine, AICP
Director, Planning & Urban Development Department

Memorandum

To: City Council
Jon Jennings, City Manager

From: Jeff Levine, Director

Date: October 11, 2016

Re: Proposed Moratorium Re: City Parks and Public Grounds
R-6 Zone on the Portland Peninsula - Potentially Impacted Projects

I have been asked to comment on the potential impact of the proposed moratorium on currently proposed development projects.

The directly applicable language in the order is as follows:

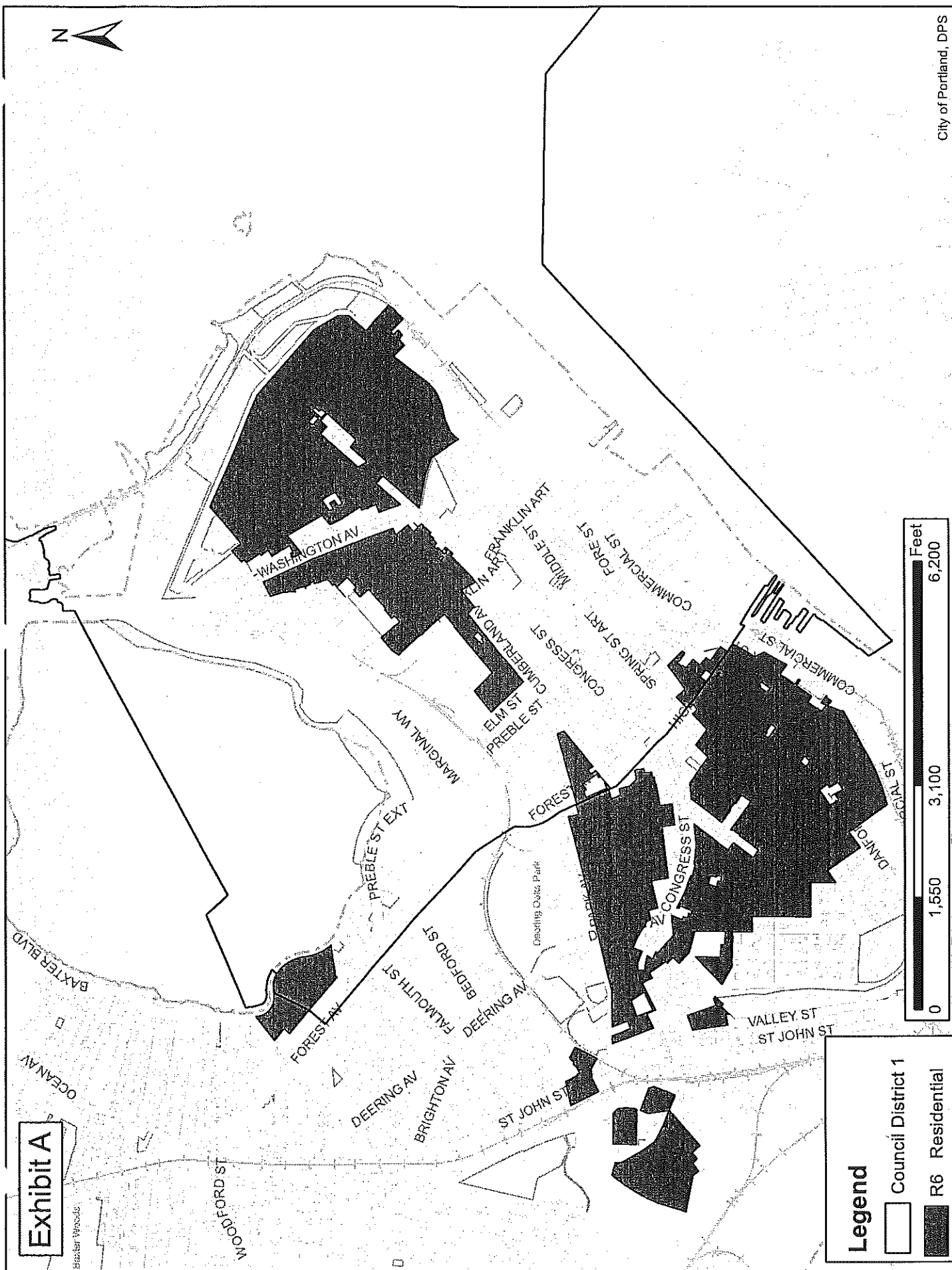
"BE IT ORDERED, that no site plan or subdivision application shall be accepted or processed and no site plan or subdivision approval shall be issued or granted by the Planning Authority or the Planning Board for any and all property located in the R-6 zone in the 1st District of the City of Portland on the Portland Peninsula which directly abuts a City park and public ground, from and after October 5, 2016 to and including December 5, 2016; and

BE IT FURTHER ORDERED, that this Moratorium shall go into effect on October 5, 2016 and shall remain in effect until December 5, 2016, unless extended, repealed, or modified by the Portland City Council; and

BE IT FURTHER ORDERED, that notwithstanding the provisions of 1 M.R.S.A. §302, this Ordinance shall apply to any site plan or subdivision proposal or application to develop property, excluding applications for building permits, located in the R-6 zone in the 1st District of the City of Portland on the Portland Peninsula which directly abuts [i.e. touches a City park or public ground, and specifically does not include properties located across the street from a City park or public ground] a City park or public ground, whether or not an application or proceeding to establish said development proposal would be deemed a pending proceeding under 1 M.R.S. § 302..."

I have consulted with staff in my office and the only project we are aware of to which this might apply would be the proposed development at 155 Sheridan Street next to Fort Sumner. This evaluation is based on the assumption that this language does not apply to Building Permits for projects that have already received Planning Board approval.

Please let me know if you have any questions.



Order 74-16/17
Tab 14 10-17-16

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 PORTLAND CITY CODE
CHAPTER 14 LAND USE, ARTICLE V. SITE PLAN
Re: Street Trees**

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

*That Chapter 14, Sections 14-526 of the Portland City Code
are hereby amended to read as follows:*

Sec. 14-526. Site plan standards.

Requirements for approval. The Planning Board or Planning
Authority shall not approve a site plan application unless the
development proposal meets the following criteria:

(a) *Transportation Standards*

...

(b) *Environmental Quality Standards*

1. *Preservation of Significant Natural Features:*

...

2. *Landscaping and Landscape Preservation:*

a. *Landscape Preservation.*

...

b. *Site Landscaping.*

(i) *Landscaped Buffers:*

...

(iii) *Street Trees:*

(a) All development shall include street trees in numbers and locations as specified in Section 4 of the Technical Manual. Street trees are intended to benefit public spaces by providing green and natural elements that contribute to the streetscape and the urban forest ecosystem, provide health benefits, and increase the tree canopy to maximize shade and reduce energy use. Street trees shall be planted in the ~~right-right-of-of-way~~, as specified in Section 4 of the Technical Manual, except where section (b) below applies. Street trees shall be of a species identified on the City of Portland Recommended Tree List, unless otherwise approved by the Portland City Arborist or his/her designee.

(b) ~~Waiver.~~ Where the applicant can demonstrate that site constraints prevent the planting of required street trees in the City ~~right-right-of-of-way~~, the Reviewing Authority may permit the following to be counted towards the street tree requirement, subject to the detailed standards set out in the Technical Manual: ~~the planting of street trees in the front yard, within ten feet of the property line. Existing preserved healthy trees that are six (6) inches or more in caliper and are on the site within ten (10) feet of the property line may be counted towards this requirement. If planting street trees is neither feasible in the City right-of-way nor within the site, the applicant shall contribute to the City of Portland Tree Fund an amount proportionate to the cost of required street trees.~~

i. The planting of new street trees on public land or public facilities in the neighborhood where a reasonable chance of good health and longevity is documented;

- ii. The provision of measures to enhance tree survival (such as raised planters, irrigation and structural soils, as recommended by the City Arborist) in association with a street tree will be counted towards the total street tree requirement, based on the cost of the measure divided by the current street tree contribution for a new tree;
- iii. The preservation of existing healthy trees that are six (6) inches or more in caliper, visible from the right-of-way and on the site within twenty feet of the property line;
- iv. The planting of street trees where visible from the right-of-way on the site and within twenty feet of the property line;
- v. The installation of other planted features in the right-of-way or within 10 feet of the right-of-way and visible from the right-of-way, which are documented to the satisfaction of the City Arborist and Planning Authority to meet the objectives of street trees and to be feasible, viable and long-term street features;
- vi. A contribution for each required street tree made to the City of Portland's Tree Fund as outlined in the Technical Manual where the other alternatives are not feasible. The contribution would primarily be for new trees in the neighborhood of the development, but would include an element of maintenance; and/or
- vii. Where the proposed development includes the removal of an existing street tree determined by

the City Arborist to be a Heritage
or feature tree, the applicant
shall be required to contribute to
the Tree Fund at the designated
rate in the Technical Manual so
that the total replacement cost is
significantly higher than planting
a new street tree/contributing for
a new street tree.

MEMORANDUM
City Council Agenda Item

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

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

DATE: September 29, 2016

SUBJECT: **Street Tree Text Amendment-** to Portland City Land Use Code Article V. *Site Plan* - Section 14-526 (b) 2. *Landscaping and Landscape Preservation* b. *Site Landscaping* (iii) *Street Trees*

SPONSOR: Elizabeth Boepple, Chair, Planning Board

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st reading October 17, 2016 **Final Action** November 7, 2016

Can action be taken at a later date: X Yes No (If no why not?) Note that public notices will be placed in the newspaper and mailed in advance of the final action hearing, so the date needs to be confirmed in advance.

PRESENTATION: Chair of the Planning Board; brief explanation.

I. ONE SENTENCE SUMMARY

The Planning Board recommends the City Council adopt the text amendment to convert the current street tree “waiver” provision into a street tree “standard”, which would streamline the review and give site plan applicants alternatives and technical guidance for addressing the street tree requirement.

II. AGENDA DESCRIPTION

The proposed text amendment would allow applicants to meet the site plan street tree requirements through a number of alternatives where planting street trees along the frontage of the development site is not feasible. Alternatives include planting trees on public land in the neighborhood; provision of measures to enhance street tree survival; preservation/planting of trees on the site near the ROW; green features; and a contribution to the Tree Fund. The amendment also includes provisions to encourage the preservation of mature existing street trees.

III. BACKGROUND

The current ordinance text includes a waiver provision which has been increasingly requested by applicants because the planting of street trees along the site frontage is not feasible. The waiver review is cumbersome, and the proposed conversion to a standard allows the applicant more flexibility and encourages tree planting in public settings and greater street tree preservation and survival.

IV. INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED

The amendment would help meet the Council Goals: “Boost the urban tree canopy 15%” and “Create more efficient permitting process with specifics”.

V. FINANCIAL IMPACT

One of the alternatives for providing street trees is to make a contribution to the City’s Tree Fund, which is used by the City Arborist to plant and maintain street trees. The associated Technical Standards (approved by the Planning Board) would increase the contribution to \$400 per tree, still below the full cost of planting a street tree.

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

The proposed text amendment streamlines the street tree review process and allows alternatives that are more responsive to the development and local circumstances. The associated increase in the street tree contribution addresses the need to ensure adequate funding for street tree maintenance. The amendment seeks to discourage the removal of heritage and mature street trees to help maintain the existing tree canopy.

VII. RECOMMENDATION

On September 13, 2016 the Planning Board voted 7-0 to approve the following motion:

On the basis of the material provided in this report, public testimony, a review of current operation and applicable policies, Portland's Comprehensive Plan, the information provided at the Planning Board meetings:

Text Amendments to Site Plan Ordinance (Section 14-526 (b) 2. Landscaping and Landscape Preservation b. Site Landscaping (iii) Street Trees

That the Planning Board finds that the proposed text amendments to Section 14-526 (b) 2. *Landscaping and Landscape Preservation b. Site Landscaping (iii) Street Trees* as presented in this Report are consistent with the Comprehensive Plan for the City of Portland; and

Therefore, the Planning Board recommends to the City Council approval of the zoning text amendments to Section 14-526 (b) 2. *Landscaping and Landscape Preservation b. Site Landscaping (iii) Street Trees*, as amended at the PB Hearing to add in text to clarify the purpose of street trees.

[The Board also approved the amended Technical Standards relating to street trees].

VIII. ATTACHMENT: City Council Report (to follow)



CITY COUNCIL REPORT

from

PLANNING BOARD

PORTLAND, MAINE

Text Amendment to Portland City Land Use Code Article V. *Site Plan*
Section 14-526 (b) 2. *Landscaping and Landscape Preservation* b. *Site Landscaping* (iii) *Street Trees*

To convert the current street tree “waiver” into a street tree “standard”

City of Portland, Applicant

Submitted to: Portland City Council	Prepared by: Portland Planning Division
First Reading: October 17, 2016	Jean Fraser, Planner
Second Reading: November 7, 2016	Date: September 30, 2016

I. INTRODUCTION

The Site Plan Ordinance (Section 14-526 (b) 2. *Landscaping and Landscape Preservation* b. *Site Landscaping* (iii) *Street Trees* requires applicants for development to plant street trees in the right-of-way (ROW) and provides a waiver where this is not feasible. In summary the waiver allows for three alternatives to a tree planted in the ROW:

- Preserve existing trees near ROW;
- Plant new trees within 10 feet of the back line of the ROW;
- Make a contribution to the City’s Tree fund for any required street tree not provided (since 2010 this has been \$200 per tree).

The waiver, particularly the contribution to the Tree Fund, has been increasingly requested because applicants are not able to plant required street trees in the ROW. This has become a frequent situation largely because:

- In some parts of Portland the street trees are already closely spaced;
- The zoning setback requirements in central Portland are often “no setback” or a setback of 5 feet, so any new building would crowd out new street trees, and preserved or new trees could not be located in the setback;
- In the more urban redevelopment locations it is difficult to achieve the 5 ft wide sidewalk to meet ADA requirements, while at the same time providing tree wells of sufficient size for tree health.

The amendment allows the waiver be converted to a requirement that can be met in a number of specified ways and reviewed by staff, who would give comments and recommendations as with other site plan requirements. This approach recognized that the requirement for waivers was a cumbersome approach when the constraints are recognized and acceptable alternatives can be identified.

The Planning Board held a Workshop on August 9, 2016 where there was one public comment (Attachment 1) and as a result of the Workshop discussion staff developed three new alternatives to the planting of a street tree and qualified three of the existing alternatives. The Board also approved the amended Technical Standards (Attachment 2) that confirmed a higher Tree Fund contribution per street tree not planted, including a higher contribution when replacing mature or heritage trees. The Technical Standards are not before the City Council but are included as they support the amended text.

II. PLANNING BOARD RECOMMENDATION

On September 13, 2016 the Planning Board voted 7-0 to approve the following motion:

On the basis of the material provided in this report, public testimony, a review of current operation and applicable policies, Portland's Comprehensive Plan, the information provided at the Planning Board meetings:

A. Text Amendments to Site Plan Ordinance (Section 14-526 (b) 2. *Landscaping and Landscape Preservation* b. *Site Landscaping* (iii) *Street Trees*)

That the Planning Board finds that the proposed text amendments to Section 14-526 (b) 2. *Landscaping and Landscape Preservation* b. *Site Landscaping* (iii) *Street Trees* as presented in this Report are consistent with the Comprehensive Plan for the City of Portland; and

Therefore, the Planning Board recommends to the City Council approval of the zoning text amendments to Section 14-526 (b) 2. *Landscaping and Landscape Preservation* b. *Site Landscaping* (iii) *Street Trees*, as amended at the PB Hearing to add in text to clarify the purpose of street trees.

B. Amendments to the City or Portland Technical Manual Section 4- *Landscaping and Landscape Preservation*

That the Planning Board **approves/does not approve** the amended text for the *Section 4.6 STREET TREES* as set out in Attachment 3 to this Report. [*Att 2 to the CC Report*]

III. BACKGROUND

The staff and Planning Board considered a number of the issues that currently constrain the potential of the current street tree ordinance to result in new and viable street tree planting and preservation. These informed the development of the three new alternative ways of meeting the street tree requirements that are more responsive to the development and local circumstances. These include:

Location of street trees if not in the Right-of Way

The suggestion from Will Savage (for street trees on abutting land - Attachment 1) raised a number of issues to do with the risk of the trees disappearing in the future if planted on private land not subject of a site plan. This risk is contrasted with the fact that trees in the right of way are generally "protected" by virtue of the location, and their longevity is more assured because the City has identified all street trees on a GIS data base and has a capital budget for ongoing maintenance (after they are established).

The introduction of easements or deed references to try and secure protection of a tree on private property that has been planted to meet the street tree requirement is seen as overly complicated and difficult to enforce in the long term. The Board and staff concluded that it is preferable that an option be clarified to allow the street tree to be located on public land (including parks, play grounds, school property etc) rather than private land wherever possible.

Costs of planting new street trees

Where applicants have contributed to the Tree Fund this has been used by the City Arborist to cover the costs of acquiring trees to replace and expand the street tree network in the neighborhoods where development is occurring. The Tree Fund has not been used to cover the full cost of planting the tree nor the more intense early period of maintenance and watering. The full costs would be up to \$300 for the tree itself, plus approximately another \$400 for planting and maintenance. Therefore a contribution to the Tree Fund for a new tree of, say, \$400 would still not cover all of the costs and remains a "contribution".

Street Tree survival and longevity

The City Arborist has noted that maintenance - both costs and ensuring that it is carried out- is a key concern and that ideally the ordinance should be strengthened to address current concerns.

The amended street tree ordinance could address these concerns by:

- Promoting “best practice” techniques for street tree planting that ensure adequate water and root protection for the newly planted street trees so to improve the long term viability of the street tree and reduce the initial and ongoing maintenance costs. These could include irrigation, structure soils, Silva cells, raised planters and similar. The capital costs for such measures is considerable (for example, a raised granite tree planter can be \$1200). It is suggested that the street tree ordinance could provide an incentive to encourage the developer to make this additional investment in association with the planting of street trees along the frontage of the site, and that this could be balanced against the total number of trees.
- Clarifying that Tree Fund expenditures could include the costs for early establishment of new trees (where necessary in addition to the Defect Guarantee) or replacement of old trees. This would help offset the maintenance cost of establishing a young tree, and the costs of replacing trees that are at the end of their lives. Staff suggest that the text amendment/technical standards could identify this need and confirm that maintenance costs could utilize up to 15% of the annual Tree Fund contributions.

Costs of Replacing Heritage and Feature trees

In thinking about the cost of replacement of street trees removed by development (as distinct from the cost of planting new street trees) the City Arborist has noted that the value of particular species (termed “Heritage Trees”) and mature “feature” trees is more than the replacement cost of a new tree. The GIS identifies most of these trees and the City Arborist is responsible for facilitating their preservation (see Chapter 29 *Vegetation* Article II *Trees*).

Other cities (eg Portland, Oregon) have required a larger Street Tree contribution for a tree that replaces an existing important street tree- partly to discourage unnecessary loss of fine trees. Given the increasing pressure on existing street trees and frequent removal of mature trees for driveways or because of the proximity of new buildings, staff suggest the higher replacement cost might be incorporated into the text amendment/technical standards.

IV. ASSOCIATED AMENDMENTS TO THE TECHNICAL STANDARDS

Attachment 2 sets out amendments to the Technical Standards that augment and support the proposed text amendments above. The Planning Board approved these Standards on September 9, 2016 and they do not require City Council approval.

The Technical Manual amendment includes a number of technical clarifications and specifies that Tree Fund contribution levels. It is suggested that \$400 would be the revised “regular” Tree Fund contribution (per tree) and \$100 per inch diameter for the Tree Fund would be the contribution where a “heritage” or feature mature tree is removed. If the applicant is supplying the replacement tree for a removed “heritage” or feature tree, the required Tree Fund contribution would be \$100 per inch diameter (of removed tree) less \$400.

V. PROPOSED TEXT AMENDMENTS

The text amendments:

- Add three new alternatives that could be counted towards the street tree requirement subject to the provisions;
- Clarified that the contribution to the Tree Fund would be where other alternatives were not feasible and would include a contribution toward maintenance; and
- Address the need to encourage the preservation of “heritage” and feature mature trees (as identified by the City Arborist) with a higher replacement cost if these were proposed to be removed.

The amended text is below (underlined is new text; ~~stike-through~~ text is from the current site plan ordinance wording):

Proposed Amendments to the Site Plan Ordinance (Section 14-526 (b) 2. Landscaping and Landscape Preservation b. Site Landscaping (iii) Street Trees

(iii) *Street Trees:*

- (a) All development shall include street trees in numbers and locations as specified in Section 4 of the Technical Manual. Street trees are intended to benefit public spaces by providing green and natural elements that contribute to the streetscape and the urban forest ecosystem, provide health benefits, and increase the tree canopy to maximize shade and reduce energy use. Street trees shall be planted in the right of way, as specified in Section 4 of the Technical Manual, except where section b) below applies. Street trees shall be of a species identified on the City of Portland Recommended Tree List, unless otherwise approved by the Portland City Arborist or his/her designee.
- (b) ~~Waiver.~~ Where the applicant can demonstrate that site constraints prevent the planting of required street trees in the City right of way, the Reviewing Authority may permit the following to be counted towards the street tree requirement, subject to the detailed standards set out in the Technical Manual;
- i. The planting of new street trees on public land or public facilities in the neighborhood where a reasonable chance of good health and longevity is documented.
 - ii. The provision of measures to enhance tree survival (such as raised planters, irrigation and structural soils, as recommended by the City Arborist) in association with a street tree will be counted towards the total street tree requirement based on the cost of the measure divided by the current street tree contribution for a new tree.
 - iii. The preservation of existing ~~preserved~~ healthy trees that are six (6) inches or more in caliper, visible from the right-of-way and on the site within ~~ten~~ (10) twenty feet of the property line. ~~may be counted towards this requirement.~~
 - iv. The planting of street trees ~~in the front yard~~ where visible from the right-of-way on the site and within ~~ten~~ twenty feet of the property line.
 - v. The installation of other planted features in the right-of-way or within 10 feet of the right-of-way and visible from the right-of-way, which are documented to the satisfaction of the City Arborist and Planning Authority to meet the objectives of street trees and to be feasible, viable and long term street features.
 - vi. If planting street trees is neither feasible in the City right of way nor within the site, the applicant shall contribute to the City of Portland Tree Fund an amount proportionate to the cost of required street trees. ~~A contribution for each required street tree may be made into the City of Portland's Tree Fund as outlined in the Technical Manual where the other alternatives are not feasible. The contribution would primarily be for new trees in the neighborhood of the development, but would include an element of maintenance.~~
 - vii. Where the proposed development includes the removal of an existing street tree determined by the City Arborist to be a "Heritage" or feature tree, the applicant shall be required to contribute to the Tree Fund at the designated rate in the Technical Manual so that the total replacement cost is significantly higher than planting a new street tree/contributing for a new street tree.

VI. CONSISTENCY WITH COMPREHENSIVE PLAN

The proposed amendments are consistent with the Comprehensive Plan as it includes the adopted “*Green Spaces, Blue Edges: An Open Space and Recreation Plan for the City of Portland*” (1995, updated 2001) which includes policies to promote tree preservation and planting in the public realm.

VII. PLANNING BOARD DELIBERATION AND RECOMMENDATION

The Planning Board considered the issues that were limiting the street tree program (see above under III above) and discussed the likely effectiveness of various alternatives to street trees planted in the Right-of-Way. These included measures to help street trees survive; alternative features such as “green screens”; and street trees planted on private land. The concern regarding the removal of mature and heritage street trees was also considered. The amendments include those considered most realistic and potentially successful.

During the deliberation the Board suggested that it would be useful to include the objectives that street trees would achieve, as this was not set out in the Site Plan standards nor in the associated Technical Standards for street trees. The City’s Code of Ordinances Chapter 29 *Vegetation* Article II *Trees* clearly reflects the City’s objectives of promoting “public trees” and includes the following:

Sec. 29-17 Authority of the city arborist

(a) The city arborist shall have the authority to regulate the planting, maintenance, preservation and removal of trees and shrubs in all public places for the benefit and welfare of the public and to protect and preserve the symmetry and beauty of such trees and public places.”

Other municipalities eg Boston have described street trees as helping to define streets and having an urban design function and being an important component of the urban forest ecosystem. The City of Portland Energy and Sustainability Committee sees street trees as important in increasing the tree canopy over the City as a way of providing shade and reducing energy consumption. The proposed ordinance includes a statement to reflect these objectives.

On September 13, 2016 the Planning Board voted 7-0 to approve the following motion:

On the basis of the material provided in this report, public testimony, a review of current operation and applicable policies, Portland’s Comprehensive Plan, the information provided at the Planning Board meetings:

A. Text Amendments to Site Plan Ordinance (Section 14-526 (b) 2. *Landscaping and Landscape Preservation b. Site Landscaping (iii) Street Trees*

That the Planning Board finds that the proposed text amendments to Section 14-526 (b) 2. *Landscaping and Landscape Preservation b. Site Landscaping (iii) Street Trees* as presented in this Report are consistent with the Comprehensive Plan for the City of Portland; and

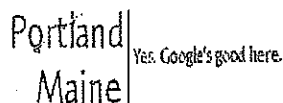
Therefore, the Planning Board recommends to the City Council approval of the zoning text amendments to Section 14-526 (b) 2. *Landscaping and Landscape Preservation b. Site Landscaping (iii) Street Trees*, as amended at the PB Hearing to add in text to clarify the purpose of street trees.

B. Amendments to the City or Portland Technical Manual *Section 4- Landscaping and Landscape Preservation*

That the Planning Board **approves/does not approve** the amended text for the *Section 4.6 STREET TREES* as set out in Attachment 3 to this Report. [*Att 2 to the CC Report*]

Attachments:

1. Public Comment from Will Savage 8.9.2016
2. Proposed Amendments to Technical Standards for Street Trees (extract from Section 4)



Barbara Barhydt <bab@portlandmaine.gov>

Street Tree Waiver - Public Comment

1 message

William Savage <wsavage@acorn-engineering.com>

Tue, Aug 9, 2016 at 2:53 PM

To: "Stuart \"Tuck\" O'Brien (sgo@portlandmaine.gov)" <sgo@portlandmaine.gov>, Barbara Barhydt <BAB@portlandmaine.gov>

Barbara,

As the owner of 120A Brackett St and Acorn Engineering I would like to offer my support for the proposed Street Tree Text Amendment. For multi-family residential developments within the R-6, the required minimum number of street trees, when combined with the spacing requirements of thirty to forty five feet typically exceed the property line street frontage (Section 4.6.1). Take a forty by eighty foot lot in the East End. The net residential density would allow for four units but the street frontage (forty feet) would only allow for one tree to meet the spacing requirements once you include the driveway.

I would suggest one additional alternative. With a written agreement the ability to plant street trees on adjacent properties within 500 ft of the subject parcel and within twenty feet of the street frontage. The goal is to be able to plant trees within the neighborhood of the proposed development versus a contribution to the Tree Fund.

Best,

Will Savage, PE**Principal**

Licensed in Maine

Acorn Engineering, Inc

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Portland, Maine 04104

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B. 207.775.2655

C. 207.317.1884

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4.6 STREET TREES: [Underlined is proposed new text]

Arrangement and spacing of trees proposed in the City Right of Way shall be coordinated with the Portland City Arborist or their designee. If it is determined by the City Arborist that there is not adequate space or conditions for street trees in the public right of way or if there is a conflict between the location of proposed street trees and the location of existing or proposed underground utilities, the required number of street trees shall be provided on private property or through a contribution to the City of Portland Tree fund as specified in para 4.6.4. ~~within 10 feet of the property line along the street frontage. within 10 feet of the property line along the street frontage.~~ Tree species shall be selected according to the City of Portland recommended tree list (Figure IV-1). Trees proposed in the sidewalk shall be planted with approved tree planters or grates, as shown in figure IV-6.

4.6.1 Residential Development:

Single-family residential: Single-family residential developments shall provide a minimum of two (2) street trees per unit, planted in the City right of way unless otherwise approved and spaced twenty-five (25) to thirty-five (35) feet on center.

Multi-family residential: Multi-family residential developments shall provide a minimum of one tree per unit, planted in the City right of way unless otherwise approved and spaced thirty (30) to forty five (45) on center.

Single-family residential subdivisions: Single-family residential subdivisions shall provide a minimum of two (2) trees per lot, planted in the City right of way unless otherwise approved and spaced thirty (30) to forty five (45) feet on center.

Standards for Manufactured Housing: Where manufactured housing is proposed within traditional single family subdivision or within a manufactured housing park, landscaping for such housing shall comply with the standards as set forth in Section 14-499.5 of the City Code- Additional Requirements for Manufactured Housing Parks.

Where a single family, single component manufactured house is sited in a residential zone, landscaping and street tree requirements shall correspond to the standards for single-family residential development of the City Code and of this section.

4.6.2 Planned Residential Unit Developments (PRUDs): Where a manufactured housing park or subdivision is also a planned residential unit development (PRUD), the development shall provide a minimum of two (2) street trees per unit, planted within 8-10 ft of the City right of way and/or private roadway proposed as part of the development.

4.6.3 Commercial, Industrial and Institutional Development: Commercial, industrial and institutional developments shall provide street trees thirty (30) to forty five (45) feet apart on center in the City right of way along all street frontages unless otherwise approved.

(NEW) 4.6.4 Street tree alternatives: The Site Plan Ordinance Section Section 14-526 (b) 2. Landscaping and Landscape Preservation b. Site Landscaping (iii) Street Trees states that where the applicant can demonstrate that site constraints prevent the planting of required street trees in the City right of way, the Reviewing Authority may permit the following to be counted towards the street tree requirement. The alternatives to a street tree in the ROW should help achieve the objectives of a street tree and contribute to the street environment. The following specifications are provided to guide the applicant; the acceptability of the alternative to a street tree shall be at the discretion of the City Arborist.

- a. The preferable location for new street trees that can not be located in the ROW along the frontage of the site is on public land or facilities elsewhere in the neighborhood. Locations may include esplanades and sidewalks in the neighborhood, and also places such as parks, playgrounds and other areas where the public benefit would be derived from the addition of new trees. Evidence that the planting site was unlikely to be redeveloped in the near future and that the trees would be protected and looked after would also be required.
- b. The requirement for street trees may be met by incorporating measures to enhance tree survival (such as raised planters, irrigation and structural soils where these have been recommended and agreed by the City Arborist. The objective is to improve the likelihood of the new tree becoming established and to reduce the need for costly maintenance in the future. The cost of the agreed measure(s) would be the basis for the calculation, as follows:

$$\frac{\text{Cost of measure(s)}}{\text{Contribution currently assessed for a new street tree}} = \text{\# of street tree equivalent}$$

4. c. Existing healthy trees that are six (6) inches or more in caliper, visible from the right-of-way and on the site within 20 (twenty) feet of the property line may be counted as street trees. Plans for the protection and preservation of these trees during construction shall be included as part of the development review.
- a.d. New street trees may be planted where visible from the right-of way within 20 (twenty) feet of the property line, subject to the species being appropriate to the location and from the Recommended Tree List (Figure IV-1). Applicants should note that trees planted within the site would be subject to the Performance Guarantee Defect Period provisions and should be documented on deed plans for future preservation.
- e. Where the option to install other planted features is being considered, applicants will need to submit comprehensive information and document that the prpospoal would fully meet the ordinance requirements.
- d.f. Where the other alternatives are demonstrated to be not feasible, a contribution for each required street tree may be made into the City of Portland's Tree Fund in accordance with the table below. The contribution would be used by the City to provide street trees in the right-of-way or in the neighborhood of the proposals site. The contribution would be considered a "one-time" Infrastructure Contribution which is payable prior to the issuance of a building permit. It should be noted that at least 85% of the Tree Fund would be allocated towards new trees and 15% towards maintenance to ensure trees get established or to replace failing trees.

<u>Contribution for new street tree</u>	<u>\$400</u>
<u>Contribution for tree to replace "heritage" or feature mature tree</u>	<u>\$100 per inch diameter of the removed existing "heritage" or feature mature tree</u>
<u>Contribution where applicant plants a tree to replace "heritage" or feature mature tree</u>	<u>\$100 per inch diameter of the removed existing "heritage" of feature mature tree less \$400</u>

Order 25-16/17
Tab 15 10-17-16

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 PORTLAND CITY CODE
CHAPTER 14 LAND USE, ARTICLE X. ALTERNATIVE ENERGY
Re: Solar Energy Generation**

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

*That Chapter 14, Sections 14-430 and 14-775 to 14-784 of
the Portland City Code are hereby amended to read as follows:*

Sec. 14-430. Height limits.

(a) *Roof structure.* Roof structures for the housing of elevators, stairways, tanks, fans, or other building operating equipment not intended for human occupancy, skylights, steeples, roof signs, flag poles, chimneys, smokestacks, radio or television masts, water tanks, or silos may be erected above the height limitation herein prescribed for buildings. Roof-mounted wind and solar energy systems shall not be considered to be roof structures for the purposes of Article X, Alternative Energy.

(b) *Public art.* Except in residential zones, public art that has been individually accepted by the city council for inclusion within the public art collection, pursuant to Article XI, Public Art Program of the Land Use Code, (Section 14-852(c)), shall not be subject to the height limitations for buildings within the underlying zone.

(c) *Temporary wind anemometer towers.* Temporary wind anemometer towers may be erected above the height limitation for buildings within the underlying zone, subject to receiving Board of Appeals approval and FAA approval, if necessary.

(d) *Wind energy systems.* Wind energy systems may be erected above the height limitation for principal buildings within the underlying zone, pursuant to Article X, Alternative Energy.

(e) Roof mounted solar energy systems: Photovoltaic panels and thermal water heating panels may be erected above the height limitation for principal or accessory buildings, subject to historic preservation approval, as follows:

1. For all residential zones: A solar energy system, whether parallel or angled to a pitched or gable roof, may be up to 3 feet above the maximum height allowed in the underlying zone on principal and accessory structures. In the case of flat roofs, the solar energy system may be up to 5 feet above the maximum height allowed in the underlying zone. All roof-mounted solar energy systems shall be set back from the edge of the roof by 1 foot for every 1 foot of solar energy system height.
2. For B4 and Industrial zones: A solar energy system, whether parallel or angled to a pitched or gable roof, may be up to 4 feet above the maximum height allowed in the underlying zone. In the case of flat roofs, there are no height limits.
3. For all other zones: A solar energy system, whether parallel or angled to a pitched or gable roof, may be up to 3 feet above the maximum height allowed in the underlying zone on principal and accessory structures. In the case of flat roofs, the solar energy system may be up to 8 feet above the maximum height allowed in the underlying zone. All roof-mounted solar energy systems shall be set back from the edge of the roof by 1 foot for every 1 foot of solar energy system height.

...

Division 2. Solar Energy Generation

Sec. 14-775. Reserved.—Purpose.

The purpose of this division is to allow for the construction and operation of public or private solar energy generation systems to produce energy for use on site or off site, by establishing appropriate standards to ensure safe, effective and efficient use of solar energy systems compatible with surrounding uses.

Sec. 14-776. Reserved.—Applicability.

All applicants for the installation or replacement of all solar energy systems or devices, expansion of any existing solar energy system, or installation of associated facilities must obtain a building permit and, as determined by the Planning Authority, site plan approval as outlined in section 14-779.

Sec. 14-777. Reserved. Definitions

For the purposes of this division, the following words and phrases shall have the following meanings:

Abandonment means the date at which a solar energy system has been out of service for a continuous period of 12 months.

Building integrated solar energy system means a solar energy system that is an integral part of a principal or accessory building and include, but are not limited to, photovoltaic or hot water systems that are contained within roofing materials, windows, walls, skylights and awnings.

Dual-Use Systems means solar energy systems where photo-voltaic panels are introduced in conjunction with a primary use eg photo-voltaic panels on structures cantilevered over parked cars in a parking lot. These tend to include emerging technologies and multiple systems with potential impacts, and would require site plan review.

Expansion of a Solar Energy System means any physical modification to an existing solar energy system which alters the total rated capacity, the size, type or location of the system or its associated equipment.

Ground mounted solar energy system (also known as free-standing solar energy systems) means a solar energy system that is structurally mounted to the ground. The panels may be stationary or revolving and of any size.

Operations and Maintenance Plan means a plan outlining the operation and maintenance of a solar energy system, to include safety measures and procedures for maintenance.

Physical size of solar energy system means, for the purposes of this division, the size of the system will be based on the physical size based on total airspace projected over the ground. It should be noted that the physical size as defined here is different from the area that would be the basis for calculating the impervious surface associated with the system.

Public industrial, utility or highway facility means a facility operated by a public entity that contains industrial or utility operations or is an unused part of such a facility.

Roof-mounted solar system means a solar energy system in

which solar panels are mounted on top of the structure of a roof either as a flush-mounted system or as modules fixed to frames which can be tilted toward the south at an optimal angle.

Small, Medium and Large solar energy systems means for the purposes of this division physical size as defined herein. Based on current technology the small systems are about 20 kW or less; medium systems are between about 20kW and 250kW; and large systems are over 250kW.

Solar Access means space open to the sun and clear of overhangs or shade, including orientation of buildings and lots to the sun, so as to permit the use of active and/or passive solar energy systems on individual properties.

Solar Energy System means a complete assembly consisting of one or more solar collectors and associated mounting hardware or equipment, intended to provide for the collection, storage and distribution of solar energy for heating or cooling, electricity generation, or solar/thermal hot water systems.

Total height of solar energy system means the total vertical distance as measured from the average elevation of the finished grade adjacent to the fixed base of the support structure, to the highest part of the system.

Total rated capacity means the maximum rated output of electrical power production of the photovoltaic system in watts of Direct Current (DC)

Sec. 14-778. Reserved.

Sec. 14-779. Reserved.—Permitting.

(a) Solar systems are allowed in most zones subject to permits/approvals as set out in the table below and subject to compliance with the associated standards in Section 14-780. The level of review relates to the scale of the proposed system, whether they comply with zoning, and the zoning context.

P = allowed as a **permitted** use if the system complies with zone requirements and section 14-780 of this Division, and are located to rear and side of the site wherever possible; would require a building permit (and historic preservation review if a landmark or in an historic district*).

S = allowed subject to **site plan** review as indicated, to meeting performance standards in section 14-780, and to meeting the submittal requirements in 14-782 and the technical standards outlined in the Technical Manual; a

building permit would also be required (and historic preservation review if a landmark or in an historic district*)).

C= allowed as a **conditional** use reviewed by the Planning Board and subject to meeting performance standards in section 14-780, the submittal requirements in 14-782, and the technical standards outlined in the Technical Manual; a building permit would also be required (and historic preservation review if a landmark or in an historic district*)).

<u>Zone</u>	<u>Roof Mounted and Building Integrated</u>	<u>Small Scale Ground Mounted</u>	<u>"Dual Use" systems</u>	<u>Medium Scale Ground Mounted</u>	<u>Large Scale Ground Mounted</u>
<u>Physical Size (see Definitions)</u>	N/A	< 1000 sq ft	Any size	1001 to 9,999 sq ft	10,000 sq ft or greater
<u>Residential; RP; Business zones except B4; waterfront zones</u>	<u>P</u>	<u>P</u>	<u>S (Level II)</u>	<u>S (Level II)</u>	<u>Not allowed</u>
<u>Industrial zones and B4 zone</u>	<u>P</u>	<u>P</u>	<u>S (Level II)</u>	<u>S (Level II)</u>	<u>C (Planning Board)</u>
<u>ROS, Shoreland</u>	<u>P</u>	<u>S (Level II)</u>	<u>S (Level II)</u>	<u>C (Planning Board)</u>	<u>C (Planning Board)</u>
<u>Historic Landscapes</u>	<u>P</u>	<u>S (Level II) & HP</u>	<u>S (Level II) & HP</u>	<u>S (Level II) & HP</u>	<u>Not allowed</u>
<u>Cemeteries</u>	<u>P</u>	<u>Not allowed</u>	<u>Not allowed</u>	<u>Not allowed</u>	<u>Not allowed</u>
<u>Stream Protection zones</u>	<u>Not allowed (Unless on legally non-conforming structure)</u>	<u>Not allowed</u>	<u>Not allowed</u>	<u>Not allowed</u>	<u>Not allowed</u>

**Historic Resource:* Where any part of the proposed solar energy system (including associated facilities) is within an historic district, such development shall be reviewed and approved by the planning authority (historic preservation) in accordance with Article IX Historic Preservation prior to a review under this ordinance. Where any part of the proposed solar energy system

(including support structures and associated facilities) is within one hundred (100) feet of any designated landmark, historic district or historic landscape district, such development shall meet the site plan Sections 14-526(d)5 regarding compatibility with the landmark or historic district.

Sec. 14-780. Reserved. Performance Standards.

All solar energy systems shall meet the following performance standards as indicated (section numbers are included to allow for reference).

(a) Standards applicable to all solar energy systems, whether permitted, site plan or conditional use:

<u>Roof Mounted and Building Integrated</u>	<u>Small Scale Ground Mounted</u>	<u>"Dual Use" systems</u>	<u>Medium Scale Ground Mounted</u>	<u>Large Scale Ground Mounted</u>
N/A	< 1000 sq ft	N/A	1001 to 9,999 sq ft	10,000 sq ft or greater
i. <u>Application requirements for permitted solar energy systems: All applications for permitted solar energy systems shall meet the submittal requirements as specified by the Permitting and inspections Department. Where systems are proposed in the front part of the site, the application shall include technical documentation as to why it is not possible to locate the system to the rear or side of the site.</u>				
ii. <u>Application requirements for site plan and conditional use review of solar energy systems: submissions for approval under this ordinance shall address the submittal requirements set out in section 14-782 Submittal Requirements.</u>				
iii. <u>Height: The maximum height for all solar energy systems shall be as specified in that zone's dimensional requirements. Where the total height of the support structure/building plus the solar energy system is equal to or below the zone-based height maximum (including any allowance under 14-430), the absolute height of the solar energy system shall be:</u>				
a. <u>Ground mounted: 20 feet above the ground as measured from the base of the support.</u>				
b. <u>Roof mounted (on any type of roof, and applies to systems that are parallel or angled to the roof):</u>				
• <u>For all residential and RP zones: 5 feet above the roof and set back from the edge of the roof by 1 foot for every 1 foot of solar energy system height.</u>				

- For B4 and Industrial zones: no limit.
- For all other zones: 8 feet above the roof and set back from the edge of the roof by 1 foot for every 1 foot of solar energy system height.

For height limitations for roof-mounted solar energy systems that exceed the zone dimensional requirements for height, see 14-430(e).

- iv. Technical and Safety: All solar energy systems shall meet the technical, safety and maintenance standards as set out in the City of Portland Technical Manual. These standards may include the prohibition of panels containing cadmium to minimize the potential for hazardous waste.
- v. Impact of construction and connection to the grid: The applicant shall minimize impacts resulting from construction and maintenance of the solar energy system, including lighting, security measures, traffic, and grid connections.
- vi. Conditions: The reviewing authority may impose conditions to ensure compliance with the standards and purposes set out in this ordinance, including but not limited to post-construction certification of compliance by a licensed professional engineer or authorized factory representative.
- vii. Glare: Solar panels are designed to absorb (not reflect) sunlight and are generally less reflective than other varnished or glass exterior materials. However, solar panel placement should minimize or negate any solar glare impacting nearby properties or roadways, without unduly impacting the functionality or efficiency of the solar energy system.
- viii. Solar Access: All applicants are encouraged to ensure the maximum solar energy generation from their system by obtaining solar access easements. Solar access easements may be filed consistent with Maine State law. Any property owner may purchase an easement across nearby properties to protect access to sunlight. The easement would be purchased or granted by owners of nearby properties and can apply to buildings, trees, or other structures that would diminish solar access.

(b) Additional performance standards for particular systems subject to site plan or conditional Use (PB) review

<u>Roof Mounted and</u>	<u>Small Scale Ground</u>	<u>"Dual Use" systems</u>	<u>Medium Scale Ground Mounted</u>	<u>Large Scale Ground Mounted</u>
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<u>Building Integrated</u>	<u>Mounted</u>			
<u>N/A</u>	<u>< 1000 sq ft</u>	<u>N/A</u>	<u>1001 to 9,999 sq ft</u>	<u>10,000 sq ft or greater</u>
<u>N/A</u>	a) <u>Meet 14-780 (1) above</u>	a) <u>Meet 14-780 (1) above</u> b) <u>Demonstrate that the energy generation is not the principal use of the site;</u> c) <u>Demonstrate that scale of the installation does not create adverse impacts.</u>	a) <u>Meet 14-780 (1) above</u> b) <u>Designed to avoid safety impacts;</u> c) <u>Located in side or rear yards, wherever possible;</u> d) <u>Set back 50 feet from residential, RP, B1 and B2 zones</u> e) <u>Located away and screened from public ways and nearby residential /institutional uses to extent possible;</u> f) <u>Co-locate with other land uses on lots in residential, B1, B2, B3, B7 & waterfront zones</u>	a) <u>Meet 14-780 (1) above</u> b) <u>Designed to avoid safety impacts;</u> c) <u>Located in side or rear yards, wherever possible;</u> d) <u>Set back 75 feet from residential, RP, B1 and B2 zones;</u> e) <u>Located away and screened from public ways and nearby residential /institutional uses to extent possible.</u>

(c) Additional performance standards for solar energy systems located in ROS & Shore-land Zones.

<u>Roof Mounted and Building Integrated</u>	<u>Small Scale Ground Mounted</u>	<u>"Dual Use" systems</u>	<u>Medium Scale Ground Mounted</u>	<u>Large Scale Ground Mounted</u>
<u>N/A</u>	<u>< 1000 sq ft</u>	<u>N/A</u>	<u>1001 to 9,999 sq ft</u>	<u>10,000 sq ft or greater</u>

			a) <u>Meet 14-780 (1 and (2) above</u> b) <u>If over 10,000 sq ft, locate on landfills or co-terminus with public industrial, utility or highway facilities</u> c) <u>Be supported by Land Bank Commission and Parks Commission where applicable</u> d) <u>Layout and fencing to be integrated with the landscape to the extent possible</u> e) <u>Screen from abutters and minimize impact on significant scenic views to the extent possible</u> f) <u>Not required to meet the conditional use requirements of the zone; for ROS see 14-156</u> g) <u>Prohibited within the 75 ft setback from High Water mark in Shoreland Zones and meeting other Shoreland Zone requirements</u>
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(d) Additional performance standards for solar energy systems in Business and Industrial Zones.

<u>Roof Mounted and Building Integrated</u>	<u>Small Scale Ground Mounted</u>	<u>"Dual Use" systems</u>	<u>Medium Scale Ground Mounted</u>	<u>Large Scale Ground Mounted</u>
<u>N/A</u>	<u>< 1000 sq ft</u>	<u>N/A</u>	<u>1001 to 9,999 sq ft</u>	<u>10,000 sq ft or greater</u>

				a) <u>Meet 14-780 (1) (2) above</u> b) <u>Be located on areas already paved or built upon, or where other development is documented to be unlikely due to local conditions.</u>
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Sec. 14-781. Reserved.

Sec. 14-782. Reserved.—Submittal requirements for site plan and conditional use review of solar energy systems.

(a) The following information shall be submitted with a site plan application for a review of a solar energy system and associated facilities under this ordinance (S or C in 14-779) in addition to the submittal requirements set out in section 14-527 (a), (c), (d) and (e) of the Site Plan ordinance:

1. A narrative describing the proposed solar energy system, including an overview of the project; the project location; the generating capacity of the solar energy system; dimensions of all components and respective manufacturers; and a description of associated facilities and how the system and associated facilities comply with the standards of this ordinance (including a plan or other graphics that demonstrate compliance). Where systems are proposed in the front part of the site, the application shall include technical documentation as to why it is not possible to locate the system to the side or rear of the site.
2. An accurate scaled site plan of the subject property showing the planned location of the proposed solar energy system and all associated facilities; property lines, adjoining streets and access; topographic contour lines; existing and proposed buildings; fencing; structures; potential shade from nearby trees and structures; vegetation; driveways, parking, and curb cuts on the subject property; and specifications for all proposed electrical cabling/transmission lines, accessory equipment, and landscaping.
3. A scaled elevation drawing showing the proposed solar energy system and all proposed structures, foundations, supports, fencing, vegetation and

landscaping, indicating the size, color and materials of the system. Drawings of structures and foundations shall be stamped by a licensed Professional Engineer.

4. Information on any proposed connections to the grid including any proposed off-site modifications to provide grid connections, access the installation, or to maintain the proposed solar energy system and grid connections.
5. In the case of medium and large ground mounted solar energy systems, the applicant shall provide an Operations and Maintenance Plan prepared and stamped by a licensed Professional Engineer or other licensed professional as appropriate.

Sec. 14-783. Reserved. Abandonment and Removal of Medium and Large Scale Ground Mounted Solar Energy Systems.

(a) In the case of medium and large ground mounted solar energy systems, the submitted Operations and Maintenance Plan shall include an estimate of the life of the project and outline the anticipated options/action when it has reached the end of its estimated useful life.

(b) The Owner and Operator shall, at their expense, complete the removal of the solar energy system within 6 months of the end of the useful life of the solar energy system or within 6 months of the date of abandonment. "Removal" includes restoration of the site to its approximate original condition, unless a valid approved site plan is intended to be pursued in which case a performance guarantee for the restoration would be required until the approved redevelopment has received a certificate of occupancy.

(c) The City shall revoke any approvals and/or pursue removal of the solar energy system at the Owner and Operator's expense in the following circumstances:

1. The solar energy system is not complete and operating within 24 months from the date of approval under this ordinance; or
2. The solar energy system is determined by the City to be in an unsafe condition in respect to federal, state and local safety standards and timeframes; or
3. The solar energy system has not been brought back to a safe condition/operation or removed from the site within the required timeframe; or

4. The solar energy system is defective or abandoned and has not been removed from the site within the required timeframe.

14-784. Reserved. Appeals.

For all appeals, the date of the decision shall be the date of the hearing, if an oral decision was made, or the date of the written decision.

(a) Any aggrieved party may appeal a decision by the Permitting and Inspections Department under the provisions of this ordinance by requesting in writing that it be referred to the Zoning Board of Appeals within 30 days of the decision being rendered.

(b) Any aggrieved party may appeal a decision by the Planning Authority under the provisions of this ordinance by requesting in writing that it be referred to the Planning Board within 30 days of the decision being rendered.

(c) Any aggrieved party may appeal a decision of the Planning Authority determination under provision 14-761(b)(2) of this ordinance (compatibility if within 100 feet of a designated landmark, Historic District or Historic Landscape District) by requesting in writing that it be referred to the Historic Preservation Board within 30 days of the determination. This appeal is de-novo.

(d) Any aggrieved party may appeal the final decision of the Planning Board or the Historic Preservation Board under provision 14-761 (b) 2 of this ordinance to the superior court in accordance with Rule 80B of the Maine Rules of Civil Procedure.

MEMORANDUM
City Council Agenda Item

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

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

DATE: September 29, 2016

SUBJECT: **Division 2: Solar Energy Generation Ordinance: Text Amendment-**
to Portland City Land Use Code Article X *Alternative Energy*

SPONSOR: Elizabeth Boepple, Chair, Planning Board

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st reading October 17, 2016 **Final Action** November 7, 2016

Can action be taken at a later date: X Yes No (If no why not?) Note that public notices will be placed in the newspaper and mailed in advance of the final action hearing, so the date needs to be confirmed in advance.

PRESENTATION: Chair of the Planning Board/City Planning Director; brief explanation.

I. ONE SENTENCE SUMMARY

The Planning Board recommends the City Council adopt the new Solar Energy Generation ordinance, which encourages solar installations by clarifying the permitting framework for systems of all sizes.

II. AGENDA DESCRIPTION

The proposed new ordinance introduces a streamlined permitting framework to allow: a) installation of smaller solar energy systems with just a building permit and minimal limitations; and b) installation of larger systems (including community solar farms and City initiatives) subject to site plan review to ensure that performance standards are addressed. The size of the solar energy system would be measured in terms of the physical land area over which the system projects. The ordinance is relatively permissive and also takes account of any potential impacts.

III. BACKGROUND

The ordinance would be the second division under *Alternative Energy*; the first division was the Wind Energy Generation Ordinance adopted in 2012. The ordinance is necessary because the existing Land Use Code is “silent” in respect of solar energy systems and technically does not allow the larger systems in most areas of the City.

IV. INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED

The amendment would help meet the Council Goals: “Create more efficient permitting process with specifics” and Energy & Sustainability sub goal to “install 13 megawatts new solar”.

V. FINANCIAL IMPACT

Solar energy systems of all types and locations would not only bring financial benefit to the owners in terms of reduced electricity costs over the medium term, but also would contribute to the reduction of Portland’s carbon footprint and help mitigate the costs of climate change.

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

The proposed ordinance was informed by similar ordinances from across the country including South Portland, and is customized to integrate with the current Portland Land Use Code. Smaller systems are proposed to be limited by the current zone dimensions, with exceptions for roof mounted systems and with some requirements regarding location and safety. The larger and “dual use” systems are proposed to be subject to site plan review to ensure that any potential impacts are addressed. Solar energy generation is proposed to be allowed as an accessory or principal use in most zones.

The ordinance includes provisions regarding submittal requirements and abandonment, but the bulk of the technical and safety requirements would be set out in the City’s Technical Manual so that the latest technical advice can be incorporated.

The ordinance is focused on providing a framework for solar energy installations that are likely in the near future. Staff expect to add sections in the future to address questions that have been raised regarding solar energy systems in Historic Districts/Cemeteries, how to encourage solar access and solar readiness, and possibly the introduction of incentives for solar energy installations.

VII. RECOMMENDATION

On September 27, 2016 the Planning Board voted 7-0 to approve the following motion:

On the basis of the material provided in this report, public testimony, a review of current operation and applicable policies, Portland’s Comprehensive Plan, the information provided at the Planning Board meetings:

- i. That the Planning Board finds that the proposed text amendments to create a new Division 2 *Solar Energy Generation* under Article X *Alternative Energy* in the Land Use Code, as presented in this Report and Attachment 1 to this Report, are consistent with the Comprehensive Plan for the City of Portland; and
- ii. Therefore, the Planning Board recommends to the City Council approval of the zoning text amendments to create a new Division 2 *Solar Energy Generation* under Article X *Alternative Energy* in the Land Use Code.

VIII. ATTACHMENT: City Council Report (to follow)



CITY COUNCIL REPORT
from
PLANNING BOARD
PORTLAND, MAINE

New Ordinance Division 2: Solar Energy Generation
Text Amendments to the Land Use Code Article X

City of Portland, Applicant

Submitted to: Portland City Council	Prepared by: Portland Planning Division
First Reading: October 17, 2016	Jean Fraser, Planner
Second Reading: November 7, 2016	Date: September 30, 2016

I. INTRODUCTION

The Planning Board recommends the new Solar Energy Ordinance ([Attachment 1](#)) as the second division under *Alternative Energy*. The first division was the Wind Energy Generation Ordinance that was adopted in 2012. The ordinance is necessary because the existing Land Use Code is “silent” in respect of solar energy systems and technically does not allow the larger systems in most areas of the City.

The impetus to move forward now with the Solar Energy ordinance has come from a number of sources:

- *Environment Maine’s* 2014 Report “*Shining Cities: At the Forefront of America’s Solar Energy Revolution*” which compiled data on solar installations nationwide, and found Portland to be 44th out of the 57 major cities studied in terms of PV solar capacity installed;
- The City Council and Mayor have identified reduction of energy as a priority, and are also moving towards approving the installation of a large solar PV array at the former Ocean Avenue landfill;
- The Sierra Club and other non-profits and community groups are moving forward with proposals for community solar farms within Portland;
- Federal government initiatives to support solar eg US Dept. of Energy *Sun Shot* and *SolSmart*.

Solar energy is an important option for residents and businesses interested in distributed generation in Portland. Portland has a good solar resource with an average of 4.71 hours per day of sunlight, with 7 months having an average between 5 and 6 hours a day- which is better or similar to most of the USA except the very southwest. At present installation of solar energy systems is mostly small roof-mounted systems that meet existing zoning requirements. However, interest in installing solar energy systems is expected to grow as the economic and technological environment becomes more supportive, and there is a need to adapt the Land Use Ordinance to facilitate and regulate solar energy installations.

The proposed text amendment creates a new separate solar energy ordinance (text in [Attachment 1](#)) to provide clarity and predictability for the installation of solar systems by removing any omissions or vagueness in the ordinance, and to be as permissive as possible while limiting any potential foreseeable negative impacts and land use conflicts.

II. PLANNING BOARD RECOMMENDATION

On September 27, 2016 the Planning Board voted 7-0 to approve the following motion:

On the basis of the material provided in this report, public testimony, a review of current operation and applicable policies, Portland's Comprehensive Plan, the information provided at the Planning Board meetings:

- i. That the Planning Board finds that the proposed text amendments to create a new Division 2 *Solar Energy Generation* under Article X *Alternative Energy* in the Land Use Code, as presented in this Report and Attachment 1 to this Report, are consistent with the Comprehensive Plan for the City of Portland; and
- ii. Therefore, the Planning Board recommends to the City Council approval of the zoning text amendments to create a new Division 2 *Solar Energy Generation* under Article X *Alternative Energy* in the Land Use Code.

III. BACKGROUND

Best practice across the country suggests that the most user-friendly approach is to adopt a single ordinance that clearly sets out where and under what circumstances solar energy systems are permitted. The challenge is to broadly allow solar energy systems almost anywhere in Portland but ensure any potential adverse impacts are minimized. As drafted, the ordinance intends that solar energy generation may be a principal use on sites in most zones. This would allow for community solar farms (usually ground mounted solar arrays up to about a quarter of an acre but may be larger in the future) which are an increasingly effective way for urban dwellers to invest in/benefit from solar energy.

The development of the ordinance has been informed by:

- Ongoing discussions on the Portland Comprehensive Plan and its climate change and energy efficiency policies;
- Reference to national and regional generic guides and specific ordinances in other comparable USA cities and European examples; (key provisions included in [Attachment 2](#))
- Comments from the Energy and Sustainability Committee and Planning Board; and
- Consultations with internal and external experts on technical issues;
- Noticing as part of the review process, although the Planning Division has not received any written public comments.

Unlike the Wind Energy ordinance, there is considerable variation in the solar energy ordinances elsewhere in the country as they are associated with different land use development control frameworks and different patterns of development. Therefore the proposed ordinance has been "customized" to relate to local Portland issues and priorities.

While the ordinance is relatively "permissive" compared to similar ordinances in other USA cities/towns, it consciously intends to be a first phase ordinance to provide an immediate framework based on a wide base of support. However, it is anticipated that the ordinance would need some adjustment in the near future to address key questions, such as about solar energy systems in Historic Districts/Cemeteries, how to manage solar access and solar readiness, and whether the ordinance should include incentives for solar energy installations.

IV. PROPOSED TEXT AMENDMENTS (See [Attachment 1](#) for the full text)

Permitting

The review framework for the Wind Energy Ordinance was the Zoning Administrator and Zoning Board of Appeals. The proposed Solar Energy ordinance allows small solar energy systems with a Zoning Administrator review and a building permit, but the larger scale systems would be reviewed by Planning staff and the Planning Board within the site plan ordinance framework. This reflects the greater land area occupied by solar energy systems and the associated local impacts that are akin to those addressed under the site plan ordinance.

One key feature is that solar energy is proposed to be permitted as principal land use in most zones. The draft ordinance would allow any solar energy system in any zone where allowed under this new ordinance to be a principal use or an accessory use. The thinking behind these provisions is that there are many sites

where limited access and ground conditions make development unrealistic and that these sites would potentially be appropriate for solar energy generation.

In residential areas it is unlikely that solar energy generation would be viable as a principal use as only small systems are allowed in the residential zones. Staff were concerned that along arterials and in the more dense urban parts of the City the larger solar energy systems should be integrated or alongside other uses that form part of the street scene and the community, so the Performance Standards have introduced some limitations. In most zones the limitations include language to encourage ground-mounted systems to be in the side and rear yards wherever possible.

The large systems in business and industrial zones are proposed to be limited to areas that are already paved or built upon or difficult to develop. The objective of this provision is to retain land for employment generating uses and encourage the solar energy systems to utilize brownfield or undevelopable areas.

The following table and legend is included in the proposed ordinance to clarify the basis of permitting:

Sec. 14-779 Permitting

- (a) Solar systems are allowed in most zones subject to permits/approvals as set out in the table below and subject to compliance with the associated standards in Section 14-780. The level of review relates to the scale of the proposed system, whether they comply with zoning, and the zoning context.

P = allowed as a **permitted** use if the system complies with zone requirements and section 14-780 of this Division, and are located to rear and side of the site wherever possible; would require a building permit (and historic preservation review if a landmark or in an historic district*).

S = allowed subject to **site plan** review as indicated, to meeting performance standards in section 14-780, and to meeting the submittal requirements in 14-782 and the technical standards outlined in the Technical Manual; a building permit would also be required (and historic preservation review if a landmark or in an historic district*).

C = allowed as a **conditional** use reviewed by the Planning Board and subject to meeting performance standards in section 14-780, the submittal requirements in 14-782, and the technical standards outlined in the Technical Manual; a building permit would also be required (and historic preservation review if a landmark or in an historic district*).

Zone	Roof Mounted and Building Integrated	Small Scale Ground Mounted	"Dual Use" systems	Medium Scale Ground Mounted	Large Scale Ground Mounted
Physical Size (based on airspace area over ground)	N/A	≤ 1000 sq ft	N/A	1001 to 9,999 sq ft	10,000 sq ft or greater
Residential; RP; Business zones except B4; waterfront zones	P	P	S (Level II)	S (Level II)	Not allowed
Industrial zones and B4 zone	P	P	S (Level II)	S (Level II)	C (Planning Board)
ROS, Shoreland	P	S (Level II)	S (Level II)	C (Planning Board)	C (Planning Board)
Historic Landscapes	P	S (Level II) & HP	S (Level II) & HP	S (Level II) & HP	Not allowed
Cemeteries	P	Not allowed	Not allowed	Not allowed	Not allowed
Stream Protection zones	Not allowed (Unless on legally non-conforming structure)	Not allowed	Not allowed	Not allowed	Not allowed

**Historic Resource:* Where any part of the proposed solar energy system (including associated facilities) is within an historic district, such development shall be reviewed and approved by the planning authority (historic preservation) in accordance with article IX historic preservation prior to a review under this ordinance. Where any part of the proposed solar energy system (including support structures and associated facilities) is within one hundred (100) feet of any designated landmark, historic district or historic landscape district, such development shall meet the site plan Sections 14-526 (d) 5 regarding compatibility with the landmark or historic district.

Performance Standards - Requirements for all systems:

In discussion with the Zoning Administrator it was concluded that all solar energy generation systems, however small, would need to be reviewed against more specific criteria than currently apply under the dimensional requirements of the zones. Therefore section 14-780 (1) seeks to guide the review of all solar energy systems by specifying or referencing the following:

- ***Application requirements:*** Included for clarification. There is a concern that the installation of a large number of small solar energy systems in the front yards of small-lot residential areas would be detrimental to Portland's character. The wording in the proposed text for permitted solar energy systems is that they be "located to the rear and side of the site wherever possible". The proposed ordinance specifies that the submissions should include documentation justifying the location of the solar energy system when proposed for the front part of the site.
- ***Height limits:*** This has been included here because where a solar energy system is the principle use it potentially could be as high as the height for a principle structure. So the maximum of 20 feet is specified for ground mounted systems but does not override the zone dimensional standards for permitted systems where they are stated to be lower (ie 18 feet for most accessory structures). Setbacks and absolute height limits for roof mounted solar energy systems are also introduced to avoid excessively high or disproportionate installations.
- ***Technical and Safety:*** It is proposed to follow the format of the site plan ordinance in placing the technical, safety and maintenance standards in the Technical Manual. Further detail in relation to toxic materials and abandonment could also be included.
- ***Impact of Construction:*** It is expected that there will be impacts since underground conduits and electrical connections are necessary. The provision requests applicant to try and minimize these impacts.
- ***Conditions; Glare; Solar Access:*** Included to bring these to the attention of applicants.

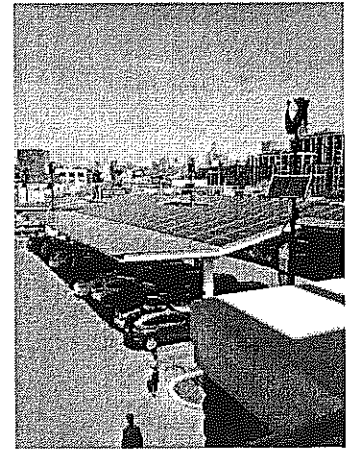
Performance Standards - Specific standards depending on scale/zone

The standards have been developed to address potential impacts of the proposed solar energy system and most are based on provisions recommended in guidance documents or included in other municipal ordinances (see Summary of key provisions in [Attachment 2](#)).

The following discussion of the standards is organized around the potential impact that the standards are trying to address. The size of the solar energy system would be measured in terms of the physical land area over which the system projects:

- Where the solar energy generation use is a principal use and potentially covers most or all of the lot, the standards focus on ensuring integration with the surrounding uses and built fabric. The proposed setbacks relate to the more sensitive zones and allow for more buffer landscaping. The standard requiring co-location with other land uses aims to maintain the street definition and street liveliness in the non-industrial zones.
- Many potentially "good" locations for solar energy systems happen to be located within ROS and Shoreland zones, often because the areas around them are ROS/Shoreland. The ordinance seeks to allow solar energy systems in such locations and the standards are intended to ensure that they do not overwhelm the limited parkland resource.
- While it is generally agreed that industrial and B4 zones are the preferred location for the large solar energy systems, staff are concerned that this could result in the loss of excessive land available for employment generating uses in these zones. Therefore the large systems in these zones are specified to be located on areas already paved or built upon, or where other development is documented to be unlikely due to local conditions.
- Dual use systems: The ordinance text introduces this category of system because of the increasing installation of solar PV panels on posts over parking spaces, on a large scale

(see photo right). Other variations on this idea are anticipated to evolve and the potential impacts are somewhat unknown while the cumulative scale could be very large. It is proposed that this category be subject to site plan review (rather than “permitted” with a building permit) to allow these more innovative solar energy systems to go forward but with some review of impacts.



Submittal Requirements

The Performance Standard that applies to all systems (14-780 (1) includes a general provision that allows the Permitting and Inspections Department to develop some specific requirements as necessary. The separate section regarding submittal requirements for site plan reviews of solar energy systems (14-782) complements the Site Plan Submittal requirements to add some detailed requirements specific to solar energy.

Abandonment - See discussion below under Section VI of this Report.

Appeals - These are standard provisions similar to those for the Wind Energy Generation ordinance.

V. CONSISTENCY WITH COMPREHENSIVE PLAN

The current Comprehensive Plan (from 2005) does not explicitly address climate change and associated issues such as energy use reduction and alternative energy generation. The objective is addressed indirectly by a number of goals and policies under the State Goal F:

“To protect the Stat’s other critical natural resources, including without limitation, wetlands, wildlife and fisheries habitat, sand dunes, shorelands, scenic vistas and unique natural areas”.

The proposed text amendments generally are consistent with the Comprehensive Plan and it is noted that the City is currently undertaking the creation of a new comprehensive Plan which is expected to be more specific regarding the role of solar energy in achieving community goals.

VI. PLANNING BOARD WORKSHOP DELIBERATION AND RECOMMENDATION

The Planning Board discussions centered around the following:

- **Roof mounted solar energy systems:** The Board identified a concern that the ordinance did not include any limit on the height of a roof mounted system on a flat roof. The Board were also concerned that all roof mounted systems should be able to access the solar resource but also respect the surrounding architectural patterns. The final version introduces limits and setbacks from the edge of the roof, and the limits are understood to be realistic in the context of solar energy installation technology.
- **Abandonment:** The Board were concerned that an abandoned solar energy system may remain in place and blight the site, and that the cadmium in some PV panels (understood to be the older and less expensive PV panels) would deter removal because of the toxic nature of the materials. Staff suggest that Technical Standards should be prepared to support the new ordinance, particularly in relation to safety and technical issues, and that this question could be amplified in the Technical Standards based on further research. Staff do not feel that the introduction of a Performance Guarantee for the larger installations (which is included in the proposed South Portland ordinance) is constructive, as that would discourage investment in solar energy.

- Submittal requirements: The Board were concerned that some of the draft requirements were not necessary in relation to some of the smaller systems. Staff have clarified that the Submittal Standards (in the separate section) apply only to proposals that require site plan review and have edited the text to focus on those related to solar energy systems. The requirement for a PE stamp is considered important in relation to the structural elements.

The Board sought wording that would be clear and ensure a streamlined permitting framework to allow: a) installation of smaller solar energy systems with just a building permit and minimal limitations; and b) installation of larger systems (including community solar farms and City initiatives) subject to site plan review to ensure that performance standards are addressed.

On September 27, 2016 the Planning Board voted 7-0 to approve the following motion:

On the basis of the material provided in this report, public testimony, a review of current operation and applicable policies, Portland's Comprehensive Plan, the information provided at the Planning Board meetings:

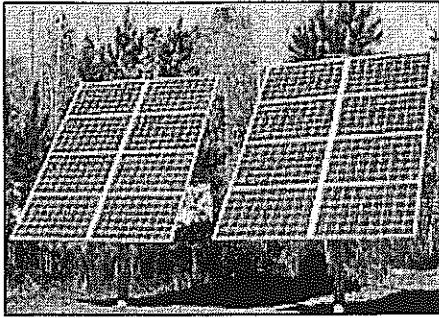
- i. That the Planning Board finds that the proposed text amendments to create a new Division 2 *Solar Energy Generation* under Article X *Alternative Energy* in the Land Use Code, as presented in this Report and Attachment 1 to this Report, are consistent with the Comprehensive Plan for the City of Portland; and
- ii. Therefore, the Planning Board recommends to the City Council approval of the zoning text amendments to create a new Division 2 *Solar Energy Generation* under Article X *Alternative Energy* in the Land Use Code.

Attachments:

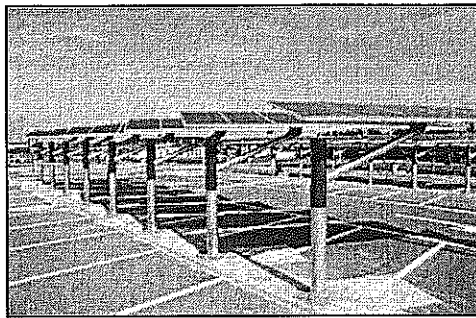
1. Proposed text amendments for adoption: *Solar Energy Generation Ordinance*
2. Summary of relevant provisions in other USA and European solar energy ordinances (to follow)

Rev 10.12.2016 FINAL FOR CITY COUNCIL

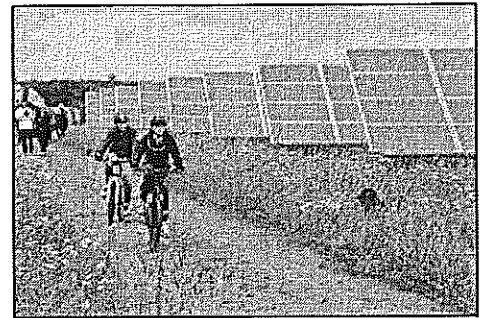
TEXT AMENDMENT: DIVISION 2. SOLAR ENERGY GENERATION



Small



Dual Use



Community

Division 2. Solar Energy Generation

Sec. 14-775. Purpose.

The purpose of this division is to allow for the construction and operation of public or private solar energy generation systems to produce energy for use on site or off site, by establishing appropriate standards to ensure safe, effective and efficient use of solar energy systems compatible with surrounding uses.

Sec. 14-776. Applicability.

All applicants for the installation or replacement of all solar energy systems or devices, expansion of any existing solar energy system, or installation of associated facilities must obtain a building permit and, as determined by the Planning Authority, site plan approval as outlined in section 14-779.

Sec. 14-777. Definitions

For the purposes of this division, the following words and phrases shall have the following meanings:

Abandonment means the date at which a solar energy system has been out of service for a continuous period of 12 months.

Building integrated solar energy system means a solar energy system that is an integral part of a principal or accessory building and include, but are not limited to, photovoltaic or hot water systems that are contained within roofing materials, windows, walls, skylights and awnings.

Dual-Use Systems means solar energy systems where photo-voltaic panels are introduced in conjunction with a primary use eg photo-voltaic panels on structures cantilevered over parked cars in a parking lot. These tend to include “emerging technologies” and multiple systems with potential impacts, and would require site plan review.

Expansion of a Solar Energy System means any physical modification to an existing solar energy system which alters the total rated capacity, the size, type or location of the system or its associated equipment.

Ground mounted solar energy system (also known as free-standing solar energy systems) means a solar energy system that is structurally mounted to the ground. The panels may be stationary or revolving and of any size.

Operations and Maintenance Plan means a plan outlining the operation and maintenance of a solar energy system, to include safety measures and procedures for maintenance.

Physical size of solar energy system means, for the purposes of this division, the size of the system will be based on the physical size based on total airspace projected over the ground. It should be noted that the physical size as defined here is different from the area that would be the basis for calculating the impervious surface associated with the system.

Public industrial, utility or highway facility means a facility operated by a public entity that contains industrial or utility operations or is an unused part of such a facility.

Roof-mounted solar system means a solar energy system in which solar panels are mounted on top of the structure of a roof either as a flush-mounted system or as modules fixed to frames which can be tilted toward the south at an optimal angle.

Small, Medium and Large solar energy systems means, for the purposes of this division physical size as defined herein. Based on current technology the small systems are about 20 kW or less; medium systems are between about 20kW and 250kW, and large systems are over 250kW.

Solar Access means space open to the sun and clear of overhangs or shade, including orientation of buildings and lots to the sun, so as to permit the use of active and/or passive solar energy systems on individual properties.

Solar Energy System means a complete assembly consisting of one or more solar collectors and associated mounting hardware or equipment, intended to provide for the collection, storage and distribution of solar energy for heating or cooling, electricity generation, or solar/thermal hot water systems.

Total height of solar energy system means the total vertical distance as measured from the average elevation of the finished grade adjacent to the fixed base of the support structure, to the highest part of the system.

Total rated capacity means the maximum rated output of electrical power production of the photovoltaic system in watts of Direct Current (DC)

Sec. 14-778. Reserved.

Sec. 14-779 Permitting

- (a) Solar systems are allowed in most zones subject to permits/approvals as set out in the table below and subject to compliance with the associated standards in Section 14-780. The level of review relates to the scale of the proposed system, whether they comply with zoning, and the zoning context.

P = allowed as a **permitted** use if the system complies with zone requirements and section 14-780 of this Division, and are located to rear and side of the site wherever possible; would require a building permit (and historic preservation review if a landmark or in an historic district*).

S = allowed subject to **site plan** review as indicated, to meeting performance standards in section 14-780, and to meeting the submittal requirements in 14-782 and the technical standards outlined in the Technical Manual; a building permit would also be required (and historic preservation review if a landmark or in an historic district*).

C= allowed as a **conditional** use reviewed by the Planning Board and subject to meeting performance standards in section 14-780, the submittal requirements in 14-782, and the technical standards outlined in the Technical Manual; a building permit would also be required (and historic preservation review if a landmark or in an historic district*).

Zone	Roof Mounted and Building Integrated	Small Scale Ground Mounted	"Dual Use" systems	Medium Scale Ground Mounted	Large Scale Ground Mounted
Physical Size (see Definitions)	N/A	≤ 1000 sq ft	Any size	1001 to 9,999 sq ft	10,000 sq ft or greater
Residential; RP; Business zones except B4; waterfront zones	P	P	S (Level II)	S (Level II)	Not allowed
Industrial zones and B4 zone	P	P	S (Level II)	S (Level II)	C (Planning Board)
ROS, Shoreland	P	S (Level II)	S (Level II)	C (Planning Board)	C (Planning Board)
Historic Landscapes	P	S (Level II) & HP	S (Level II) & HP	S (Level II) & HP	Not allowed
Cemeteries	P	Not allowed	Not allowed	Not allowed	Not allowed
Stream Protection zones	Not allowed (Unless on legally non-conforming structure)	Not allowed	Not allowed	Not allowed	Not allowed

**Historic Resource:* Where any part of the proposed solar energy system (including associated facilities) is within an historic district, such development shall be reviewed and approved by the planning authority (historic preservation) in accordance with article IX historic preservation prior to a review under this ordinance. Where any part of the proposed solar energy system (including support structures and associated facilities) is within one hundred (100) feet of any designated landmark, historic district or historic landscape district, such development shall meet the site plan Sections 14-526 (d) 5 regarding compatibility with the landmark or historic district.

Sec. 14-780. Performance Standards

All solar energy systems shall meet the following performance standards as indicated (section numbers are included to allow for reference):

[see table below]

- (a) Standards applicable to all solar energy systems, whether permitted, site plan or conditional use:

	Roof Mounted and Building Integrated	Small Scale Ground Mounted	"Dual Use" systems	Medium Scale Ground Mounted	Large Scale Ground Mounted
Physical Size (See Definitions)	N/A	≤ 1000 sq ft	N/A	1001 to 9,999 sq ft	10,000 sq ft or greater
14-780 (1) Standards applicable to all solar energy systems, whether permitted, site plan or conditional use	i. <i>Application requirements for permitted solar energy systems:</i> All applications for permitted solar energy systems shall meet the submittal requirements as specified by the Permitting and Inspections Department. Where systems are proposed in the front part of the site, the application shall include technical documentation as to why it is not possible to locate the system to the rear or side of the site. ii. <i>Application requirements for site plan and conditional use review of solar energy systems:</i> submissions for approval under this ordinance shall address the submittal requirements set out in section 14-782 <i>Submittal Requirements</i>. iii. <i>Height:</i> The maximum height for all solar energy systems shall be as specified in that zone's dimensional requirements. Where the total height of the support structure/building plus the solar energy system is equal to or below the zone-based height maximum (including any allowance under 14-430), the absolute height of the solar energy system shall meet the following requirements: a. Ground mounted: 20 feet above the ground as measured from the base of the support. b. Roof mounted (on any type of roof, and applies to systems that are parallel or angled to the roof): • For all residential and RP zones: 5 feet above the roof and set back from the edge of the roof by 1 foot for every 1 foot of solar energy system height. • For B4 and Industrial zones: no limit. • For all other zones: 8 feet above the roof and set back from the edge of the roof by 1 foot for every 1 foot of solar energy system height. For height limitations for roof-mounted solar energy systems that exceed the zone dimensional requirements for height, see 14-430(e). iv. <i>Technical and Safety:</i> All solar energy systems shall meet the technical, safety and maintenance standards as set out in the City of Portland Technical Manual. These standards may include the prohibition of panels containing cadmium to minimize the potential for hazardous waste. v. <i>Impact of construction and connection to the grid:</i> The applicant shall minimize impacts resulting from construction and maintenance of the solar energy system, including lighting, security measures, traffic, and grid connections. vi. <i>Conditions:</i> The reviewing authority may impose conditions to ensure compliance with the standards and purposes set out in this ordinance, including but not limited to post-construction certification of compliance by a licensed professional engineer or authorized factory representative. vii. <i>Glare:</i> Solar panels are designed to absorb (not reflect) sunlight and are generally less reflective than other varnished or glass exterior materials. However, solar panel placement should minimize or negate any solar glare impacting nearby properties or roadways, without unduly impacting the functionality or efficiency of the solar energy system. viii. <i>Solar Access:</i> all applicants are encouraged to ensure the maximum solar energy generation from their system by obtaining solar access easements. Solar access easements may be filed consistent with Maine State law. Any property owner may purchase an easement across nearby properties to protect access to sunlight. The easement would be purchased or granted by owners of nearby properties and can apply to buildings, trees, or other structures that would diminish solar access.				

(b) Additional performance standards for particular systems subject to site plan or conditional use (PB) review

Roof Mounted and Building Integrated	Small Scale Ground Mounted	"Dual Use" systems	Medium Scale Ground Mounted	Large Scale Ground Mounted
N/A	≤ 1000 sq ft	N/A	1001 to 9,999 sq ft	10,000 sq ft or greater
N/A	a) Meet 14-780 (a) above	a) Meet 14-780 (a) above b) Demonstrate that the energy generation is not the principal use of the site; c) Demonstrate that scale of the installation does not create adverse impacts.	a) Meet 14-780 (a) above b) Designed to avoid safety impacts; c) Located in side or rear yards, wherever possible; d) Set back 50 feet from residential, RP, B1 and B2 zones e) Located away and screened from public ways and nearby residential /institutional uses to extent possible; f) Co-locate with other land uses on lots in residential, B1, B2, B3, B7 & waterfront zones	a) Meet 14-780 (a) above b) Designed to avoid safety impacts; c) Located in side or rear yards, wherever possible; d) Set back 75 feet from residential, RP, B1 and B2 zones e) Located away and screened from public ways and nearby residential /institutional uses to extent possible;

(c) Additional performance standards for solar energy systems located in ROS & Shoreland Zones

Roof Mounted and Building Integrated	Small Scale Ground Mounted	"Dual Use" systems	Medium Scale Ground Mounted	Large Scale Ground Mounted
N/A	≤ 1000 sq ft	N/A	1001 to 9,999 sq ft	10,000 sq ft or greater
			a) Meet 14-780 (a) and (b) above b) If over 10,000 sq ft, locate on landfills or co-terminus with public industrial, utility or highway facilities c) Be supported by Land Bank Commission and Parks Commission where applicable d) Layout and fencing to be integrated with the landscape to the extent possible e) Screen from abutters and minimize impact on significant scenic views to the extent possible f) Not required to meet the conditional use requirements of the zone; for ROS see 14-156 g) Prohibited within the 75 ft setback from High Water mark in Shoreland Zones and meeting other Shoreland Zone requirements	

(d) Additional performance standards for solar energy systems in *Business and Industrial* Zones

Roof Mounted and Building Integrated	Small Scale Ground Mounted	"Dual Use" systems	Medium Scale Ground Mounted	Large Scale Ground Mounted
N/A	≤ 1000 sq ft	N/A	1001 to 9,999 sq ft	10,000 sq ft or greater
				a) Meet 14-780 (a) (b) above b) Be located on areas already paved or built upon, or where other development is documented to be unlikely due to local conditions.

Sec. 14-781. Reserved

Sec. 14-782 Submittal requirements for site plan and conditional use review of solar energy systems.

- (a) The following information shall be submitted with a site plan application for a review of a solar energy system and associated facilities under this ordinance (S or C in 14-779) in addition to the submittal requirements set out in section 14-527 (a), (c),(d) and (e) of the Site Plan ordinance:
1. A narrative describing the proposed solar energy system, including an overview of the project; the project location; the generating capacity of the solar energy system; dimensions of all components and respective manufacturers; and a description of associated facilities and how the system and associated facilities comply with the standards of this ordinance (including a plan or other graphics that demonstrate compliance). Where systems are proposed in the front part of the site, the application shall include technical documentation as to why it is not possible to locate the system to the side or rear of the site.
 2. An accurate scaled site plan of the subject property showing the planned location of the proposed solar energy system and all associated facilities; property lines, adjoining streets and access; topographic contour lines; existing and proposed buildings; fencing; structures; potential shade from nearby trees and structures; vegetation; driveways, parking, and curb cuts on the subject property; and specifications for all proposed electrical cabling/transmission lines, accessory equipment, and landscaping.
 3. A scaled elevation drawing showing the proposed solar energy system and all proposed structures, foundations, supports, fencing, vegetation and landscaping, indicating the size, color and materials of the system. Drawings of structures and foundations shall be stamped by a licensed Professional Engineer.
 4. Information on any proposed connections to the grid including any proposed off-site modifications to provide grid connections, access the installation, or to maintain the proposed solar energy system and grid connections.

5. In the case of medium and large ground mounted solar energy systems, the applicant shall provide an Operations and Maintenance Plan prepared and stamped by a licensed Professional Engineer or other licensed professional as appropriate.

Sec. 14-783 Abandonment and Removal of Medium and Large Scale Ground Mounted Solar Energy Systems

- (a) In the case of medium and large ground mounted solar energy systems, the submitted Operations and Maintenance Plan shall include an estimate of the life of the project and outline the anticipated options/action when it has reached the end of its estimated useful life.
- (b) The Owner and Operator shall, at their expense, complete the removal of the solar energy system within 6 months of the end of the useful life of the solar energy system or within 6 months of the date of abandonment. "Removal" includes restoration of the site to its approximate original condition, unless a valid approved site plan is intended to be pursued in which case a performance guarantee for the restoration would be required until the approved redevelopment has received a certificate of occupancy.
- (c) The City shall revoke any approvals and/or pursue removal of the solar energy system at the Owner and Operator's expense in the following circumstances:
 1. The solar energy system is not complete and operating within 24 months from the date of approval under this ordinance; or
 2. The solar energy system is determined by the City to be in an unsafe condition in respect to federal, state and local safety standards and timeframes; or
 3. The solar energy system has not been brought back to a safe condition/operation or removed from the site within the required timeframe; or
 4. The solar energy system is defective or abandoned and has not been removed from the site within the required timeframe.

14-784. Appeals.

For all appeals, the date of the decision shall be the date of the hearing, if an oral decision was made, or the date the written decision.

- (a) Any aggrieved party may appeal a decision by the Permitting and Inspections Department under the provisions of this ordinance by requesting in writing that it be referred to the Zoning Board of Appeals within 30 days of the decision being rendered.
- (b) Any aggrieved party may appeal a decision by the Planning Authority under the provisions of this ordinance by requesting in writing that it be referred to the Planning Board within 30 days of the decision being rendered.
- (c) Any aggrieved party may appeal a decision of the Planning Authority determination under provision 14-761 (b) 2 of this ordinance (compatibility if within 100 feet of a designated landmark, Historic District or Historic Landscape District) by requesting in writing that it be referred to the Historic Preservation Board within 30 days of the determination. This appeal is de-novo.
- (d) Any aggrieved party may appeal the final decision of the Planning Board or the Historic Preservation Board under provision 14-761 (b) 2 of this ordinance to the superior court in accordance with Rule 80B of the Maine Rules of Civil Procedure.

Associated amendment to existing ordinance text 14-430
(SEE PROPOSED UNDERLINED TEXT)

Sec. 14-430. Height limits.

(a) *Roof structure.* Roof structures for the housing of elevators, stairways, tanks, fans, or other building operating equipment not intended for human occupancy, skylights, steeples, roof signs, flag poles, chimneys, smokestacks, radio or television masts, water tanks, or silos may be erected above the height limitation herein prescribed for buildings. Roof-mounted wind and solar energy systems shall not be considered to be roof structures for the purposes of Article X, Alternative Energy.

(b) *Public art.* Except in residential zones, public art that has been individually accepted by the city council for inclusion within the public art collection, pursuant to Article XI, Public Art Program of the Land Use Code, (Section 14-852(c)), shall not be subject to the height limitations for buildings within the underlying zone.

(c) *Temporary wind anemometer towers.* Temporary wind anemometer towers may be erected above the height limitation for buildings within the underlying zone, subject to receiving Board of Appeals approval and FAA approval, if necessary.

(d) *Wind energy systems.* Wind energy systems may be erected above the height limitation for principal buildings within the underlying zone, pursuant to Article X, Alternative Energy.

(e) *Roof mounted solar energy systems:* Photovoltaic panels and thermal water heating panels may be erected above the height limitation for principal or accessory buildings, subject to historic preservation approval, as follows:

1. For all residential zones: A solar energy system, whether parallel or angled to a pitched or gable roof, may be up to 3 feet above the maximum height allowed in the underlying zone on principal and accessory structures. In the case of flat roofs, the solar energy system may be up to 5 feet above the maximum height allowed in the underlying zone. All roof-mounted solar energy systems shall be set back from the edge of the roof by 1 foot for every 1 foot of solar energy system height.

2. For B4 and Industrial zones: A solar energy system, whether parallel or angled to a pitched or gable roof, may be up to 4 feet above the maximum height allowed in the underlying zone. In the case of flat roofs, there are no height limits.

3. For all other zones: A solar energy system, whether parallel or angled to a pitched or gable roof, may be up to 3 feet above the maximum height allowed in the underlying zone on principal and accessory structures. In the case of flat roofs, the solar energy system may be up to 8 feet above the maximum height allowed in the underlying zone. All roof-mounted solar energy systems shall be set back from the edge of the roof by 1 foot for every 1 foot of solar energy system height.

Summary of Key Provisions from other Solar Energy Ordinances

AT 1 4

Guide/Ordinance	Allowing ground mounted in front yard	Maximum Height gable/hip/gambrel roof	Maximum Height flat roof	Roof mounted setbacks	Maximum height ground mounted	Ground mounted setbacks
NY State "Model Solar Energy Law" 2016	All in residential districts shall be installed in the side or rear yards	As per zone dimensions		As per zone dimensions	As per zone dimensions	As per zone dimensions
California County Planning Directors Assoc. "Model SEF Permit Streamlining Ordinance" 2012		Res: 2 ft above roof surfaces; Other: 4 ft above roof surface			Res: 10 ft Other: 15 ft-25ft	Res: as for zone; other: 30 ft and up to 100 ft
NC "Template Solar Energy Development Ordinance" 2016	Max 50% of footprint of primary structure;	Per zone			20 ft	Setbacks generally as for zone, except up to 100 ft from residential for large systems
South Portland Solar Ordinance Spring 2016	Res: Shall not be located in front yards unless 100 ft from front property line; shall not be located in side yards unless more than 50 ft from side property line	Res: Not exceed max bldg. ht for zone; Other zones: treat as mechanical appurtenances		3 ft wide pathway required along 3 sides of solar roof	Res: 12 ft; if set back 30 ft from property line may be 20 ft; Other zones: max ht as for buildings in zone	Must meet setbacks for principal buildings
Minneapolis Solar Ordinance	In residential districts area of solar collector surface shall not exceed 3% of the lot area; other areas 5% of lot area	3 ft above ridge line	10 above roof surface	1 ft from edge for every 1 ft of system height above roof	20 ft or principle structure, which ever is less	Up to 16 ft, meet setbacks as for accessory structure; above 16 ft meet setbacks as for principle structure
Portland Oregon	Ground mounted no closer to the street than primary street-facing facade	Res: 1 ft above surface and no higher than ridge line	Res: 5 ft above roof surface and screened by parapet or set back as**	Res: ** Flat roof: set back from street-facing roof edges by 4 feet for each foot of system height; pitched roof: 3 feet from edge	8 feet	1 ft for each foot of height in residential zones
Maplewood Miss Renewable Energy Ordinance		Up to max height allowed by zone			Up to max height for accessory structure allowed in zone	Meet accessory structure setback
UK (Small solar energy systems under permitted development)	Res: No part of a freestanding panel is closer to the road than the part of the house nearest the road	Res: Max 20 inches above roof slope/surface and not higher than highest part of roof	Res: 5 ft above roof surface		Res: No higher than 13 ft	Res: 16 ft from property boundary

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**

*Order 76-16/14
Feb 16 10-17-16*

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

**AMENDMENT TO PORTLAND CITY CODE
CHAPTER 6, BUILDINGS AND BUILDING REGULATIONS,
Re: TENANT HOUSING RIGHTS**

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

WHEREAS, the Portland City Council Housing Committee (the Committee) has been working on behalf of City residents who rent and/or reside in rental properties as their home, with the goal of educating these persons of their rights and seeking to ensure through the imposition of regulations, among other things, that their housing is secure; and

WHEREAS, according to public testimony given to the Committee, tenants have lost their homes as the price of real estate increased in the last few years, and the monthly rent has risen; and

WHEREAS, after taking a significant amount of public testimony and after researching and reviewing this issue for numerous months, the Committee recommends to the Portland City Council that it should enact certain tenant protections, including but not limited to a longer notice period of an impending rent increase and clear and straightforward written information to help tenants and also for the property owners who rent to tenants, maintain and improve their properties and who must comply with those protections; and

WHEREAS, these actions are necessary in order to protect the City of Portland residents' public health, and welfare;

NOW, THEREFORE, BE IT ORDERED, that, pursuant to its authority in 30-A M.R.S. §3001, the Code of Ordinances, City of Portland, Maine, is hereby amended by adding the following Article, to be numbered City of Portland General Provisions Code of Ordinances Chapter 6

Article IX, which shall read as follows:

ARTICLE XI. TENANT HOUSING RIGHTS

6-219. Purpose.

The purpose of this Article is to address housing insecurity in the City of Portland; to minimize the potential adverse impacts of un-noticed or short-notice rent increases; to educate at-will Tenants of their rights; and to help bring about through fair, orderly and lawful procedures, the opportunity of each person within the City of Portland without regard to, among other things, receipt of public benefits, to rent, enjoy and retain secure housing.

6-220. Applicability.

This article shall apply to any and all rental housing units in the City limits of Portland.

6-221. Definitions.

Discrimination means the unjust or prejudicial treatment of different categories of people, when those categories are protected from discrimination by municipal, state and federal law, including, but not limited to, categories based on race, color, religious creed, sex, sexual preference, national origin, age, physical handicap or mental handicap, and based on receipt of public assistance, as provided in 5 M.R.S. §4581-A and as amended from time to time.

Housing unit means one (1) or more rooms forming a single unit including food preparation, living, sanitary and sleeping facilities used or intended to be used by two (2) or more persons living in common or by a person living alone.

Landlord means an owner, manager, lessee, sublessee, managing agent or other person having the right to rent or sell or manage any housing unit or rental property or any agent of these individuals or entities.

Tenant means an individual, individuals, an entity, entities, a lessee or sub-lessee, or other person having the right to rent any housing unit or rental property or any agent of these individuals or entities. This definition includes a Tenant at will as described in 14 M.R.S. §6002, as amended from

time to time.

6-222. Discrimination prohibited in sale or rental of housing units.

(a) A Tenant shall have the right to secure a rental housing unit without being refused that right on the basis of discrimination because of race, color, sex, sexual orientation, physical or mental disability, ancestry, national origin, or family status, pursuant to 5 M.R.S. Section 4581-A, et. seq., as amended from time to time.

(b) A Landlord shall not refuse to rent or impose terms of tenancy on any Tenant who is a recipient of federal, state or local public assistance, including medical assistance and housing subsidies primarily because of the individual's status as a recipient as described in 5 M.R.S. §4581-A(4), as amended from time to time.

6-223. Notification of rent increases.

Notwithstanding 14 M.R.S. Section 6015, a Landlord shall give seventy-five (75) days' written notice of any rent increase to a Tenant.

6-224. Protection of Tenants.

(a) The Planning Department or its designee shall create and make available on the City's publically accessible web site a plain language document that explains Tenancy at Will and the rights and responsibilities of Tenants and Landlords of rental housing units. That document shall also include a checklist of required notices concerning environmental lead hazards, energy efficiency or radon testing, pursuant to 14 M.R.S. Sections 6030-B, 6030-C, and 6030-D, respectively, as amended from time to time.

(b) The document referenced above shall be provided by Landlords to all Tenants in the City of Portland at the commencement of the rental of a housing unit and shall be provided again upon any update to the document made by the Planning Department.

(c) An acknowledgement of receipt of the documents described above must be signed by all Tenants, and a copy of the acknowledgement kept on file by the Landlord for at least three

(3) years and made available for inspection at the request of the City of Portland.

(d) At the time of the annual registration required by Chapter 6, Article VI of the City of Portland Code of Ordinances, all Landlords must certify to the City that they have provided the above-referenced documents to each of their respective Tenants.

6-225. Rental Housing Advisory Committee

(a) There is hereby created a Rental Housing Advisory Committee (the "Committee").

(b) The Committee shall be comprised of seven (7) members, including three (3) Landlord representatives, three (3) Tenant representatives and one (1) at-large resident representative who is neither a Tenant nor a Landlord of rental property, all of whom shall be appointed by the City Council. All members of the Committee shall be residents of the City of Portland and shall serve staggered terms set by City Council order.

(c) The Committee shall be co-chaired by one (1) Landlord representative and one (1) Tenant representative as agreed to by the members of the Committee.

(d) The Committee shall meet not less than quarterly and shall undertake the following duties:

1. Compile and provide the Housing Committee with City of Portland housing market data;
2. Report annually to the Housing Committee on the state of the housing market in the City of Portland; and
3. Provide the Housing Committee with recommendations or proposals for improvements, modifications, or changes to the City's housing ordinances or policies.

6-226. Variation by agreement.

No provision of, or right conferred by, this Article may be waived by a Tenant, by agreement or otherwise, and any such waiver shall be void. Any attempt to require, encourage or induce a Tenant to waive any provision hereof or right hereby shall be a violation of this Article. Nothing herein shall be construed to void any term of a lease that offers greater rights than those conferred hereby.

6-227. Limitation of liabilities.

(a) Nothing in this Article shall be interpreted to contravene the general laws of the State of Maine; and

(b) Nothing in this Article shall be construed to create additional liabilities greater than those already existing under law or to create new private causes of action.

6-228. Enforcement and remedies.

(a) Any violation of sections 6-223, 6-224 and 6-225 of this Article may be considered a civil infraction and may be enforced pursuant to the Portland City Code Chapter 1, §1-15.

(b) Any violation of §6-222 of this Article shall be enforced as required by the Maine Human Rights Act, 5 M.R.S. §§4551, et seq.

6-229. Severability.

The provisions of this Article are severable. If any of its provisions are held invalid by act of competent jurisdiction, all other provisions of this Article shall continue in full force and effect.

MEMORANDUM
City Council Agenda Item

TO: Mayor and City Council

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

DATE: September 30, 2016

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

SUBJECT: Order Approving the Housing Insecurity Package for Implementation into
the City Code and Related Administrative Actions by City Staff.

SPONSOR: Jill Duson, Chair, David Brenerman, Vice Chair
Housing Committee

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st reading October 17, 2016 Final Action November 7, 2016

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)

Jeff Levine, Planning & Urban Development Director and Tyler Norod, Housing Planner will be available to provide information as requested.

I. SUMMARY OF ISSUE (Agenda Description)

On September 28, 2016, the Housing Committee voted to recommend a package of five (5) housing insecurity policy items to the Council for their consideration. The package includes the following items:

1. Increase notification for residential rent increases from 45 days to 75 days for all tenants-at-will and prior to the end of an existing lease.
2. Landlords and tenants must sign a document to be drafted by the City explaining tenancy-at-will.
3. Creation of a leaflet outlining tenant/landlord rights and responsibilities that must be distributed to all tenants.
4. Establish a tenant/landlord commission comprised of 7 members and co-chaired by one landlord and one tenant representative.
5. Incorporation of Maine Human Rights Act prohibition against income discrimination into City ordinance.

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

Over the past few months the Housing Committee has gathered public feedback and reviewed potential policy directions to recommend to the City Council. Following a robust public process two themes emerged for addressing housing concerns in Portland; housing insecurity and housing supply. The Housing Committee spent their most recent meetings examining potential policy directions for dealing with issues related to housing insecurity for tenants in Portland. The following policy package is the outcome of this effort. The Committee acknowledges more work needs to be done as it pertains to housing supply issues and anticipates working towards these measures in subsequent meetings.

III. INTENDED RESULT

The housing insecurity package is intended to engage and educate both landlords and tenants as to their rights and responsibilities while ensuring more predictability and stability for tenants.

IV. COUNCIL GOAL ADDRESSED

Assess the housing problem; look regionally; develop agreement on specific market goals and which kinds of housing needs the most focus.

To encourage and promote affordable, decent housing opportunities for all citizens.

V. FINANCIAL IMPACT

The creation of a tenant/landlord commission, will require additional staff resources. While the meetings themselves will not take much staff time, the additional requirement for staff to provide analysis, data collection, expertise, and organization for a new committee and all of its members will require staff support. Depending on the final design and requirements for the Committee, it is anticipated that the new Committee would require the equivalent of at least ¼ FTE of a Planner position. Additional recommendations from the Housing Committee may similarly require additional staff resources.

Given existing staff responsibilities and potential future workloads such as the development and implementation of short term rental regulations, continued zoning reforms and other policy additions that may come out of the Committees efforts there may be a need for a new planner position within the Housing & Community Development Division at some point. Traditionally similar Planning staff work has been funded through federal resources such as HOME and CDBG funds. Unfortunately, these funding sources are at capacity. The cost to the City would likely need to be paid through the general fund or some other source. Including benefits, a full time position would cost approximately \$62,000 - \$88,000 per year. Proportionately, the ¼ FTE required of this commission would therefore cost about \$15,500-\$22,000 per year.

VI. STAFF ANALYSIS

The following proposal outlines a housing insecurity package recommended by the Housing Committee.

Proposed Housing Insecurity Package Items

1) Increase notification for rent increases.

Increase minimum notifications for rent increases from 45 days to 75 days for both tenants-at-will and prior to the end of an existing lease.

2) For tenant at will, landlord and tenant must sign a document that explains what tenancy-at-will means.

This document will be created by the City and be available online for download/printing. The document will use easily understandable language. Signing the document indicates an understanding of the provisions of at-will-tenancies. A copy of this signed document must be kept on file by the landlord and be available to the City upon request.

During the annual landlord registration process, landlords will be required to check a box (online or on a document) stating that this form (explanation of terms of at-will tenancy) has been signed by both tenant and landlord and that they are maintaining a copy for their records. They will not be able to complete the registration process without checking this box.

At this time, there is no fine associated with this requirement, but if it is determined that landlords are not generally complying, a fine may be established at a future time.

3) The City will require landlords to distribute a leaflet outlining rights, responsibilities and privileges of tenants and landlords.

Links to the leaflet and expanded information will be available online for all. The City will develop a template for a rights and responsibilities leaflet based on similar existing documents such as "The Rights of Tenants in Maine", which was developed by Pine Tree Legal and has been attached to this memo.

Landlords will be asked to distribute this leaflet to tenants, and as with #2, above, they will need to check a box on their annual registration form stating that they have done so. They will not be able to complete the registration process without checking this box.

At this time no fine is being suggested with this requirement, but if it is determined that landlords are not generally complying, a fine may be established at some point in the future.

4) Establish a Landlord-Tenant Committee

The Landlord-Tenant Committee will work with City staff to collect housing market data, report annually on the state of the housing market, recommend policy changes, and report to the Council's Housing Committee. The Committee and staff will also act as a clearinghouse for tenants and landlords connecting them to resources such as mediators, legal services, advocates, and programs related to landlord or tenant issues.

The Committee shall meet not less than quarterly. Committee to be co-chaired by one tenant and one landlord elected from among the seven members. The seventh member will be neither a landlord nor tenant but must be a resident of Portland.

5) Incorporation of the Maine Human Rights prohibitions against income discrimination into City ordinance.

The following language based on the Maine Human Rights Act prohibiting discrimination against tenants based on their source of income will be incorporated into City ordinance. Language would be included requiring a complainant to follow the process outlined in the Maine Human Rights statute.

It will be prohibited for any person furnishing rental premises or public accommodations to refuse to rent or impose different terms of tenancy to any individual who is a recipient of federal, state or local public assistance, including medical assistance and housing subsidies, primarily because of the individual's status as recipient.

Nothing in this ordinance may be construed to prohibit or limit the exercise of the privilege of every person and the agent of any person having the right to sell, rent, lease or manage a housing accommodation to set up and enforce specifications in the selling, renting, leasing or letting or in the furnishings of facilities or services in connection with the facilities that are consistent with business necessity and are not based on the receipt of public assistance payments by any prospective or actual purchaser, lessee, tenant or occupant. Nothing in this ordinance may be construed to prohibit or limit the exercise of the privilege of every person and the agent of any person making loans for or offering financial assistance in the acquisition, construction, rehabilitation, repair or maintenance of housing accommodations to set standards and preferences, terms, conditions, limitations or specifications for the granting of loans or financial assistance that are consistent with business necessity and are not based the receipt of public assistance payments by the applicant for a loan or financial assistance or of any existing or prospective owner, lessee, tenant or occupant of housing accommodation.

VII. RECOMMENDATION

The Housing Committee is recommending approval of the five (5) items listed above as part of the housing insecurity package.

It is requested that the City Council set the Public Hearing on this item for the City Council meeting scheduled on November 7, 2016 at 7:00 p.m.

VIII. LIST ATTACHMENTS

- The related Housing Committee memo from September 28, 2016 outlining the proposed package.
- Pine Tree Legal's "The Rights of Tenants of Maine".

Prepared by:

Tyler Norod, Housing Planner
Housing & Community Development Division

Date: September 30, 2016



Planning & Urban Development Department

TO: Councilor Duson, Chair
Members of the Housing Committee

FROM: Mary Davis, Division Director
Tyler Norod, Housing Planner
Housing and Community Development Division

DATE: September 23, 2016

SUBJECT: Housing Insecurity Package

Over the past few months the Housing Committee has gathered public feedback and reviewed potential policy directions to recommend to the City Council. Recently the Committee has focused on similarly themed policy ideas associated with housing insecurity. A variety of policy elements were discussed including but not limited to items listed below:

1. Rent control/Rent increase limitations
2. Increases to notification minimums for rent increases and non-renewal of leases
3. Voucher discrimination
4. Tenant/Landlord mediation/ombudsman
5. Tenant relocation payments
6. Restrictions on unit turn over in large buildings

Attached to this memo is also a chart outlining Corporation Counsel's past legal analysis to the Committee on many of the items listed above. The chart is intended to serve as a general reference to help the Committee keep in mind the various legal issues associated with each element as the discuss a possible package to recommend to the Council. For more detailed information about this legal analysis please see past memos written by Corporation Counsel to the Committee over the last several meetings.

The Committee received analysis and public testimony on these general topics. The next step is for the Committee to formulate a final package on housing insecurity issues to recommend to the Council for their consideration. To that end, the Committee Chair and Vice Chair have assembled a proposed package containing various elements of the items above aimed at mitigating concerns related to housing insecurity. The package is outlined below for further discussion and input by Committee members.



Planning & Urban Development Department

1. Increase notification for rent increases from 45-60 days.
2. Landlords and tenants must sign a document to be drafted by the City explaining tenancy-at-will.
3. Creation of a leaflet outlining tenant/landlord rights and responsibilities that must be distributed to all tenants.
4. Establish a tenant/landlord commission comprised of 6 members and co-chaired by one landlord and one tenant representative.
5. Incorporation of Maine Human Rights Act prohibition against income discrimination into City ordinance.

The Chair and Vice Chair also propose that the Committee take time to further study the potential implications and feasibility of instituting a Tenant Relocation Assistance Fund for households earning below 50% of Area Median Income (AMI) that are asked to relocate due to substantial rehabilitation or renovations to their unit. Outstanding questions that would need to be considered would include possible funding amounts/sources, definitions that trigger "substantial renovation", income thresholds, enforcement, and payment amounts.



The chart below represents a brief outline of Corporation Counsel's opinion as to the potential legal issues to be considered for any of the general proposed policy ideas described during recent public discussions. Please refer to Corporation Counsel's prior legal memos to the Housing Committee on each proposed ordinance provision mentioned in this chart for more specific information and legal research about each provision.

Most Likely Legal Under Maine Law (i.e. Maine law seems to specifically allow enactment of these possible ordinance requirements)*	Maybe Legal Under Maine Law (i.e. these possible ordinance requirements have not been tested yet under Maine law)*	Most Likely Not Legal Under Maine Law (i.e. the City Council does not have home rule authority to enact these possible ordinance requirements)*
Rent Control (i.e. similar to Westbrook's Ordinance for mobile home parks).	Extend Notice Provisions for Evictions and Rent Increases. (Please note that any violation of the proposed increased notice requirement would not impact an Forcible Entry and Detainer ("FED") action filed by a landlord, but would instead be enforced by the City through fines or some other penalty in a separate City-initiated court action).	Some of the Enforcement Provisions including the private right of action (since anything enacted would need to be enforced by the City itself), and anything that attempts to circumvent the Maine Human Rights Commission's required process for discrimination complaints.
Mediation Program (but may be redundant and unnecessary with other existing programs).	Requiring Acceptance of Housing Vouchers (including, but limited to, section 8 vouchers).	Entire Constructive Lease Section in the proposed ordinance.
Prohibit Discrimination based on source of income (but is redundant and unnecessary given the existing requirements in Maine law).	Tenant Relocation Payment Ordinance.	



ASSISTANCE

The Rights of Tenants in Maine

Find more easy-to-read legal information at www.ptla.org



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How To Use This Guide

This guide gives you a quick look at Maine's landlord-tenant laws as of October 2015. The law is always changing. Also, you may need more information. If you have a problem with your landlord, ask for legal help. Call Pine Tree Legal or a lawyer you know.

If your rent is subsidized, read the "Subsidized Housing" section at page 26 first. **If you own your own mobile home and rent a lot**, go to "Mobile Home Parks" at page 26.

This handbook sometimes refers you to **Small Claims Court**. Call Pine Tree Legal or your local District Court for instructions.

Area Pine Tree Offices

Office	Telephone
Augusta	622-4731
Bangor	942-8241
Machias	255-8656
Lewiston	784-1558
Portland	774-8211
Presque Isle	764-4349



Multi-lingual language line: 774-8211
TTY: 711



Tips Before You Rent

- ✓ **Read the lease or rental agreement carefully before you sign or put money down.** Ask about anything you do not understand. Look for hidden charges or penalties. If you sign the lease, you may be stuck paying those charges.
- ✓ If something is important to you, get it in writing. Don't count on an oral promise.
- ✓ Make a list of major problems in the apartment. Include the condition of walls, floors, windows, and other areas. Try to get the landlord to sign your list. This will help protect you when it comes time to move out.
- ✓ If the building was built before 1978, beware of possible lead-based paint problems. Owners of these older buildings must tell you of any known lead-based hazards and show you any relevant records before you rent. Your landlord must give you a form notice explaining the dangers of lead-based paint. He must also give you a government pamphlet called "Protecting Your Family from Lead in Your Home." (See more at page 9.)
- ✓ Find out who pays for hot water, heat, electricity, parking, snow removal, and trash disposal.
- ✓ Find the utility controls. Ask questions. Where is the thermostat? Who controls it? Where is the electric box? Where is the hot water heater?
- ✓ You have the right to know the energy costs for the living unit before you rent. If you will be paying an energy bill (such as electric or heating oil), ask the energy supplier for billings on your unit for the past 12 months. The company must tell you. Or ask to see the landlord's "Energy Efficiency Disclosure Statement." (Contact the Maine Public Utilities Commission 1 (800) 452-4699 for more information about this law.)
- ✓ Be sure that all utilities and appliances are working right. Make sure the landlord agrees to fix appliances, furnace and all other building systems.



- ✓ Bedbugs are becoming a major issue in some parts of Maine. It is against the law for a landlord to rent a living unit with bedbugs. If you ask about when the building was last treated and declared free of bedbugs, the landlord must tell you. (Read more at page 10.)
- ✓ Your landlord must show you a written "smoking policy." This tells you where smoking is prohibited and identifies any smoker-friendly areas. Your landlord can include this in the lease or give you a separate notice to read and sign. You have the right to know this information before you pay a deposit or commit to a rental contract.
- ✓ If you share rent, remember that the landlord can charge you for all of the rent if your roommates don't pay their share.
- ✓ Try to talk with another tenant about the building and the landlord.
- ✓ Check about off-street parking, public transportation, and stores. Try to check the neighborhood at night.
- ✓ Check to see that all the windows and doors can be locked and are not broken. Are there window screens?
- ✓ Your landlord's insurance probably does not protect you from damage or loss of your furniture or other property. Consider buying tenant's insurance if you want this protection.
- ✓ Be careful about putting money down to "hold an apartment." If you decide later not to rent it, the landlord may refuse to return your money. You can sue him in Small Claims Court, but this will take time. Also, depending on how the judge interprets your agreement, you may not get all of your money back. For example, the court may decide that you

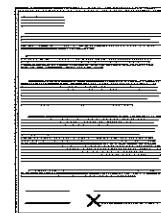
put the money down as a security deposit. (See section on security deposits at page 4.)

- ✓ If a landlord suggests that you buy a surety bond, instead of paying a security deposit, be careful. A few basic rules about surety bonds:
 1. You cannot be forced to buy one. It is your choice.
 2. You will not get back the money you pay for the bond, even if you owe the landlord nothing when you move out.
 3. Although a surety bond can save you money in the short-run, it may cost you more in the long-run if you leave owing rent or damages. The surety company can choose to sue you for the money it pays to the landlord under the bond.
 4. Buying a bond will not save you from getting a bad mark on your credit report, if you leave owing the landlord money. Contact Pine Tree Legal for more information.
- ✓ **Get something to keep your records in. Keep in your file:**
 - ☐ your lease or rental agreement
 - ☐ security deposit receipt
 - ☐ dated list of things wrong with the apartment
 - ☐ rent receipts (or cancelled checks)
 - ☐ landlord's address and phone number
 - ☐ all other papers about your tenancy

Types of Rental Agreements

Leases

The agreement you make with your landlord affects what rights you will have. You may sign a





written agreement called a lease. A lease lists the names of the landlord and tenant, the address of the apartment, the length of the lease, and the day the rent is due. Most leases contain much more than this. Read these "extra conditions" carefully and understand them before you sign. This handbook will give an idea of what to look for in a lease.

If you sign a lease, be aware that it sets out the rules you and your landlord agree to follow. For example, it will probably say whether the landlord can evict you before the lease ends, what reasons he must have, and what kind of notice he must give you. If the landlord is trying to evict you, a judge will look at what your lease says to decide the case. If something in a lease is grossly unfair to you, a judge **may** say that it can't be used against you. But **usually** your rights depend on what the lease says.

Note: If you have a written agreement that does not have a "lease term" (a specific amount of time you will be renting), then you have a "rental agreement," not a lease. Our advice to you is the same. **Read the agreement and understand it before you sign!**

A new statute, effective September 2011, clarifies that either the landlord or the tenant can choose to end the lease if the other party has "materially breached" the lease. This requires a written 7-day notice, served in-hand, or, after 3 good faith efforts, mailed by first class mail, with a copy left at the other party's home. Read more about landlord's duty to seek a court order before evicting a tenant at page 14 "Evictions."

The Maine Attorney General's office posts a "model lease" form that landlords and tenants can use for reference:
maine.gov/ag/dynld/documents/clg16.pdf

Tenancies at Will

When you rent without a lease, you become a "tenant at will." Maine law gives you certain rights we will tell you about here. For example, to evict you, your landlord must give you time after a written notice and must get a court order if you are still not out. Read more about this under "Evictions" at page 15.

Hotels, Motels, Inns, and Rooming Houses

Generally, if you are staying in a hotel or motel, you are not a tenant and do not have the rights of a tenant. A motel owner can evict you on short notice and without going to court.

If you live in a rooming house, are you a tenant? This is a gray area of the law. The owner may say that you are not a tenant because she has an "innkeeper's license" or runs a "lodging house." But there is more to it. If the owner acts like a motel owner by:

- providing clean sheets and towels
- cleaning your room
- signing guests in and out in a registry
- renting rooms by the day, rather than by the month

then you are probably not a tenant. But if the owner does **not** do these things, then he is probably a landlord, and you **do** have the rights of a tenant.

If you live in an inn or rooming house and you are not sure about your rights, call Pine Tree Legal (contact info. at page 2).

Security Deposits



What is a security deposit?

A security deposit is money you give to your landlord when you move in. Your landlord can use it to cover any



unpaid rent or damages. You may not use your security deposit to cover your last month's rent unless your landlord agrees.

NOTE: A surety bond is very different from a security deposit. If your landlord suggests that you buy a surety bond, read our tips at page 3.

How much can my landlord charge for a security deposit?

Your landlord cannot charge more than two times your monthly rent. If you live in subsidized housing, your security deposit should be much less. Check with your housing authority.

Does my landlord have to return my security deposit to me?

If you owe back rent or you have damaged your apartment, your landlord may deduct those costs from your security deposit. If you owe your landlord more than the amount of your security deposit, he may sue you in court.

Does my landlord have to pay me interest when returning my security deposit?

No, not unless you both agreed to this. If you live in subsidized housing, check your lease or ask the housing authority. Your landlord **may** have to pay interest on your deposit. (See page 26 for mobile home park rules.)

Can my landlord keep my security deposit to pay for routine upkeep?

No, your landlord **cannot** keep your security deposit for "normal wear and tear." Examples of "normal wear and tear" could be:

- a worn carpet
- chipped paint
- worn finish on wood floor

- faded or dingy paint

This means that your landlord cannot charge you for routine upkeep, such as periodic cleaning and painting.

The landlord can deduct the cost of fixing damages which are beyond "normal wear and tear." Examples of these damages could be:

- broken windows
- holes in the wall
- leaving trash or other items that have to be thrown away
- leaving your apartment so dirty that it's unhealthy or unsafe

If your apartment is damaged by a storm, a fire, or a vandal, tell your landlord right away. He cannot charge you for the repairs if you or your guests did not cause the damage. It is also a good idea to make a police report.

What kind of notice do I have to give if I am moving?

If you are a tenant at will (no written lease), you must give your landlord a 30 day written notice. The notice period should end on a rent day. You and your landlord can agree to a shorter notice period, if you agree in writing.



If you have a lease, read it to see what kind of notice you must give.

If you do not give the right notice, your landlord may try to charge you for time after you move. If you have a lease, she may try to charge you rent for the rest of the lease term. Again, this will depend on what the lease says.

Your landlord must try to re-rent your apartment as soon as she knows you have moved out. If she re-rents your apartment



right away, she can only charge you for the time you were there and the time it took her to find a new tenant. For example, your rent is \$500 a month and you moved out on the 10th day of the month without notice. Your landlord re-rents the apartment on the 15th of the month. You owe \$250, or half a month's rent. Your landlord may also charge you reasonable expenses for re-renting the apartment if you did not give the right notice.

Note: If you are moving out because your landlord has "substantially breached" the lease, the rules are different. You must give the landlord a written 7-day notice, served in-hand, or, after 3 good faith efforts, mailed by first class mail, with a copy left at the landlord's home. The notice should explain your intention to leave based on the landlord's failure to uphold his duties under the lease. If you follow these rules, then the lease ends, and you have no more responsibilities under the lease.

When does my landlord have to return my security deposit?

Your landlord must either return all of your security deposit or send you a letter telling you why he is not giving some or all of it back. He must send this letter to your "last known address." Give your landlord your new address, or make sure your mail is being forwarded so that you will get the letter.

If you are a tenant at will (no written lease), your landlord must give back the deposit or send you the letter within **21 days** after you move out and return the key. **If you have a lease**, check to see what it says. If there is nothing in the lease about this, or if the lease gives more than 30 days, then your landlord has **30 days** to return the deposit. This is the legal limit.

What can I do if my landlord does not return my security deposit?

⇒Step One

Contact your landlord and ask her to give back your deposit.



⇒Step Two



If the 21 or 30 days has gone by and you still don't have the deposit, send your landlord a letter asking for

return of your deposit within 7 days. Write that if your deposit is not returned, you will bring legal action. Your landlord should return your full deposit. (We have a form letter you can use. Call Pine Tree Legal.)

⇒Step Three

Sue your landlord in Small Claims Court.

Ask your District Court clerk for a pamphlet explaining the steps.

In your written complaint, ask the Court to order your landlord to pay you **two times** the deposit amount plus your court costs. The judge will order this unless the landlord can show at the court hearing that she had good reason not to return the deposit to you.



Note: If your landlord lives in your building and there are 5 living units or fewer, then you can still sue to get your deposit back but you cannot get twice that amount.

If I take my landlord to court, can he/she sue me?

Keep in mind before you sue that if you owe your landlord money, he will probably bring these claims against you to counter your claim for return of the deposit. So, if you owe him more money than he owes you, suing in court is probably not a good idea. On the other hand, if he sues you, you can



"counterclaim" for return of your deposit and for any other money he owes you.

Does my landlord have to keep my security deposit in any special account?

Yes. He has to keep security deposits in an account that is separate from his other accounts and safe from his creditors. This includes protecting your money from a lender who forecloses on the building and from a trustee in bankruptcy. If you ask, the landlord must tell you the name of the bank where the money is deposited and the account number.

What if my landlord doesn't follow these "separate account" rules for protecting my deposit?

You can take your landlord to court. If you win you can get:

- "actual damages" (your losses)
- \$500, or
- one month's rent,

whichever is greatest, plus your court costs. Also, the court can order the landlord to pay your lawyer's fees.

This right to sue started on June 1, 2010 for all deposits paid after that date. For security deposits paid before that date, you can sue your landlord if he violates the rules after October 1, 2010. (This law gives landlords an extra four months to bring pre-existing accounts into compliance.)

What if my landlord sells my building?

If your building is sold (or passes to a new owner for any reason), your landlord must give your security deposit to the new owner or give it back to you. If he gives it to the new owner, he must mail you a notice with that person's name and address and how much money was passed on to him. He can deduct charges for back rent or damages.

Remember, if you follow these tips you will have a better chance of getting your security deposit back.

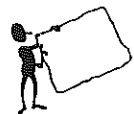
- ☐ Get a payment receipt and keep it.
- ☐ When you move in, make a list of the defects. Keep the list and give a copy to your landlord.
- ☐ Clean your apartment and take away all of your things, including trash.
- ☐ Take pictures or write down what is right and what is wrong with the apartment when you leave. Have a witness look over the apartment just before you move out. (He can testify in case you have to go to court).
- ☐ If you don't get the deposit back right away, leave your new address with the landlord (so he can send you your deposit).
- ☐ Try not to owe any rent when you leave.

Rent

Should my landlord give me a receipt when I pay my rent?

If you pay any of your rent in cash, the landlord must give you a receipt at the same time. The receipt must include:

- the date
- the amount paid
- your name
- what the payment was for
- the landlord's signature



If you live in a building with 5 apartments or fewer and your landlord lives there, he does not have to give rent receipts. If your landlord won't give a receipt, try to pay with a check or money order and keep your own records.



Can my landlord charge interest on a late payment of rent?

Yes. If you do not pay your rent within 15 days after it is due, your landlord can charge a late fee. The fee cannot be more than 4% of one month's rent. For example, if your rent is \$800 per month, the late charge cannot be more than \$32. **To charge a late fee, your landlord must tell you about it in writing when you agree to rent from him.**

General Assistance

Does my landlord have to accept general assistance (GA) rent vouchers?

Yes. Your landlord cannot refuse your rent just because the town is paying some or all of it. (read more about General Assistance in Maine)

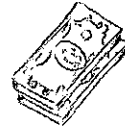
What if the landlord refuses to take GA vouchers?

First, find out why your landlord will not take GA vouchers. Maybe the problem is that the town only pays by the week but your landlord charges by the month. Ask the town to pay by the month or to agree with your landlord on a payment schedule. If the town will not help, call the General Assistance Unit at the Department of Health and Human Services in Augusta. Their toll free number is **1-800-442-6003**. If that does not help, call your local Pine Tree Legal office (listed on page 2).

Your landlord cannot refuse to take GA simply because he doesn't like city vouchers. You can file a discrimination complaint with the Maine Human Rights Commission in Augusta: **624-6050**. Pine Tree Legal can help you to file a complaint.

Rent Increases

Can my landlord increase my rent?



Yes, if you are a tenant at will (without a lease). Your landlord must give you a **45 day written notice** of any rent increase. If your landlord does not do this, you have two choices.

1. You can refuse to pay the increase, or
2. You can pay under protest and later sue your landlord for the amount you were overcharged. You can ask the court to order the landlord to pay for your court costs and lawyer's fees. Or you can sue in Small Claims Court without a lawyer.

If you choose not to pay the increase, your landlord may try to evict you. See "Evictions" at page 15.

If you have a lease, the landlord probably cannot increase the rent during the lease term. Read your lease to find out if it says something different.

If you live in subsidized housing, your rent is based on your income. So, your rent can be raised or lowered if your income changes. Also, there are special "earnings disregard" rules if you start working. Read your lease. Then contact Pine Tree Legal if you think you are paying too much.

Can my landlord increase my rent if there are serious problems with my apartment?

No. If there are serious problems, which are unsafe or could make you sick, the landlord must fix the problems before she can charge more rent. For example, your landlord cannot increase your rent if there is no heat in the winter. If you or your guests have caused the problems, then your landlord can still raise your rent. For more information about heating your apartment, see "How Much Heat and Other Utilities Does my



Landlord Have to Provide?"

<http://ptla.org/how-much-heat-and-other-basic-utilities-does-my-landlord-have-provide>

Unsafe or Unfit Housing

Does my landlord have to keep my home safe and in decent condition?

Yes. Maine law gives tenants an "implied warranty of habitability." This means that your landlord must promise that your home is safe and fit to live in.

Examples of landlord violations:

- undrinkable water
- no heat or too little heat in the winter
- a combination of problems, such as leaking ceilings, unsafe heating system, broken windows, and roaches

The heating system should be able to heat your living space to at least 68°. (For more details, ask for our pamphlet "How Much Heat?")

What can I do if my home is not safe?

⇒ **Step One**

Ask your landlord to fix the problem. If he does nothing, you may want to follow up with a **written** demand. Keep a copy of your letter.

⇒ **Step Two**

Call your city hall or town office and ask about any housing codes that may apply to your building. If your town has a building code enforcement officer, you can ask him to look at your home and send the landlord a letter demanding that he fix any code violations. State law also requires each town to have a health officer, who can inspect and require that unhealthy conditions be remedied (or the building vacated). Also, each town must have a local plumbing inspector to enforce



state and local plumbing-related rules.

⇒ **Step Three**

If you cannot get local help, you may be able to get some help, or other referrals, from these state agencies:

- Fire hazards:
State Fire Marshall's Office
Inspections Unit
626-3880 TTY: 287-3659
- Electrical wiring problems:
Senior Electrical Inspector
624-8519 (leave a voicemail for inspector); for general inquiries, call
624-8603 TTY: 1-888-557-6690
- Plumbing problems:
Plumbing Inspector
624-8639 TTY: 1-888-557-6690
- Wastewater, drinking water, and radon:
DHHS Division of Environmental Health
TTY: 1-800-606-0215
Wastewater program: **287-5689**
Drinking water: **287-2070**
Mold, radon, indoor air quality: **287-5676**
- Mold:
Office of Local Public Health: **287-6227**
Health Inspection Program: **287-5671**

Also, the non-profit agency Maine Indoor Air Quality Council (**626-8115**) is a reliable resource and posts useful information here: www.maineindoorair.org

What if I think there is lead paint in my apartment?

You can be tested or have your children tested for lead. Ask your family doctor or clinic about lead tests. If your child's test shows a very high level of lead, the lab will tell the Childhood Lead Poisoning Prevention Program in Augusta (see below). They can inspect your home for free and order your landlord to remove the lead. This program gives other help and information as well.



If you want to check the paint or water in your home for lead, ask your landlord for help or call one of these state agencies:

- The Health and Environmental Testing Laboratory at 287-2727 (Water testing)
- Maine State Housing Authority 1-800-452-4668 (Paint testing; they can also test for lead in soil where your child plays.)

Some Community Action Programs (CAPs) can also help you with dust testing.

For more information contact:

- Childhood Lead Poisoning Prevention Program, DHHS: 1-866-292-3474
- Lead Hazard Control Program, MSHA: 1-800-452-4668
- Lead Hazard Prevention Program, DEP: 1-800-452-1942

If you have a young child who has been harmed by a landlord's failure to tell you about known lead hazards, or failure to give you other required warnings (see page 2), he may be fined or ordered to pay you damages. Get legal advice.

For all places built before 1978, a landlord must give you 30 days advance notice before doing any repairs or renovations that disturb lead-based paint. This notice includes postings on all exterior entry doors and a certified mail letter to all residential units in the building. Or the landlord can post the notices and get a signed written waiver from an adult in each unit. The waiver must contain specific warnings. Your landlord can be fined up to \$500 for each violation of these notice rules. If you believe that you or your children have suffered harm because your landlord failed to notify you, you can report the violation to your local District Attorney or the Maine Attorney General's Consumer Protection Division: 1-800-436-2131.

The purpose of this law is to make sure that you have the chance to protect yourself and your children from lead dust while the work is being done. Also, your landlord must use lead-safe practices so as to minimize the danger. Read more in our pamphlet: "What You and Your Family Should Know about Lead."

Bedbugs: What can I do to avoid them and get rid of them?

Bed bugs have become much more common in Maine. They are difficult to get rid of. As with other health and safety issues, the first step is to contact your landlord and ask him to have the building professionally treated. You and others in the building will also have to take steps to help combat the problem.

Before you rent:

It is illegal for a landlord to rent an apartment that he knows (or suspects) to have bedbugs. He must also tell you whether other nearby apartments in the building have bedbug problems.

Before you rent ask when the apartment and nearby units:

- were last inspected for bedbugs, and
- found to be free of bedbugs.

The landlord must give you an honest answer.

What happens if my apartment is infected with bedbugs after I move in?

First, you must tell your landlord right away. To create a record, it is probably a good idea to do this in writing. (Get a sample letter here.) After that, both you and your landlord must make efforts to fix the problem. Here is how it works:



- After you notify your landlord, he must inspect your apartment within 5 days.
- Next, your landlord must contact a state certified pest control expert within 10 days of inspecting and finding bedbugs.
- Then your landlord must take all reasonable steps to treat the problem, based on the expert's advice.
- Your landlord and the pest control expert will probably need access to your bed, furniture and other belongings. They must be respectful of your privacy but at the same time do whatever inspections are needed to take care of the problem. You need to cooperate to get rid of the bedbugs. Your landlord must tell you the costs of your participation in the process.

NOTE: Your landlord should always give you 24-hour advance notice before entering your apartment or sending pest control experts, unless it's an emergency. See "Landlord Entering Your Home" at page 25.

What if I can't afford to "cooperate?"

To help get rid of the bedbugs, you may be asked to move furniture, launder clothing and linens, or take other steps to assist in the process. If you cannot afford to do these things or are not able to do them, your landlord can go ahead with the necessary steps and charge you for any costs specific to you (such as moving your furniture or laundering your linens). If your landlord fronts these costs for you, after first telling you how much they will be, he can ask that you repay those costs over a 6-month period (or longer, by agreement).

What should I do if my landlord doesn't do anything to get rid of the bedbugs?

You can take your landlord to court. You can get at least \$250 or your "actual

damages" (whatever you lost). You must show that:

- you did not cause the problem;
- you gave your landlord oral or written notice of the problem when you learned about it;
- the landlord didn't take prompt steps to get rid of the bedbugs; and
- you did not owe the landlord any back rent when you gave the notice.

Note: If your landlord tries to evict you within six months of your complaint, the law may protect you. See "Retaliation Defenses" at page 17.

TIPS

- ✓ Make sure you have correctly identified the bug. You can send samples to the University of Maine Cooperative Extension's Insect Lab.
- ✓ Avoid picking up beds, mattresses and other old furniture off the street or from the dump.
- ✓ When moving to a new place from one with bed bugs, make sure that you are not bringing the bugs, or their eggs, with you in your belongings. (See article links below)

Here is a helpful resource on bed bugs, how to identify them, and how to get rid of them:

"Bed Bugs: University of Kentucky Entomology"
<http://www2.ca.uky.edu/entomology/entfacts/ef636.asp>

Some Maine landlords have been using high-heat treatment as a remedy. (Landlords and homeowners should consult with a qualified, experienced expert.)



What can I do about mold?

If you think you have mold, ask your landlord to find and fix the water problem that is allowing mold to grow, then to fix any water damage. If this doesn't work, follow the steps at page 9. Approach your landlord again with findings from your local health officer and your doctor, if you can get them.

The state's Health and Environmental Testing Laboratory is no longer doing mold testing. Some private labs will do testing, but it is expensive.

For More Information Contact:

- ♦ Office of Local Public Health **287-6227**
- ♦ The non-profit agency Maine Indoor Air Quality Council (**626-8115**) is a reliable resource and posts useful information here: www.maineindoorair.org
- ♦ The federal EPA posts "A Brief Guide to Mold, Moisture and Your Home" here: www.epa.gov/iaq/molds/moldguide.html

Does my landlord have to provide smoke and carbon monoxide alarms?

Yes. All apartments must have working smoke and carbon monoxide alarms in or near bedrooms. Any carbon monoxide alarm in an apartment that needs to be replaced after January 1, 2016 must be replaced with an alarm that runs on electricity with a battery backup or on a single-use battery that will last for 10 years. In apartment buildings with more than three stories, all hallways must have smoke alarms. All new smoke alarms put in after October 2009 must plug into the wall and have a battery backup.

Single-family homes built or renovated after 1981 must also have smoke alarms. Any renovation that adds a bedroom must include a carbon monoxide alarm. If that renovation is done after January 1st, 2016 (or if an alarm required by this law needs to be

replaced after January 1, 2016), the new carbon monoxide alarm must run on electricity with a battery backup. All new smoke alarms put in after October 2009 must also plug into the wall and have a battery backup.

If you are deaf or hard-of-hearing, you may request a non-audible alarm. If your landlord refuses, you may put one in yourself and deduct the actual cost from your rent. (See "Can I fix the problem myself?" at page 13.)

Any smoke detectors located within 20 feet of kitchen or a bathroom containing a tub or shower must be photoelectric-type smoke detector.

Landlords may be fined up to \$500 for each violation of these rules.

Tenants should:

- Test alarms periodically
- Make sure the batteries are working
- Not disable alarms, and
- Notify the landlord in writing when an alarm is not functioning properly.

How do I know if my building has dangerous radon levels?

Radon is a gas you can't see or smell that can be harmful to your health. According to Maine DHHS radon is the second leading cause of lung cancer. By March 1, 2014, your landlord must test for radon in your building.. He must do this every 10 years at the request of a tenant, unless there is a working radon mitigation system. Whoever tests your building must be registered with the state's Division of Environmental Health at DHHS. (There are some exceptions for landlord-or tenant-conducted testing.) Your landlord must notify you in writing about the results of the most recent radon test when you enter into a rental agreement. If asked, the landlord must tell a



prospective tenant about the radon levels in the building. To help landlords comply, DHHS has issued a standard disclosure form: www.ptla.org/sites/default/files/Maine-radon-disclosure-info-renters.pdf

The landlord is not required to fix radon problems. A landlord who chooses to fix the problem must use a licensed radon mitigation person. If radon levels are over 4.0 picocuries per liter of air, a tenant may vacate the premises by giving a 30-day notice to the landlord.

Violation of these requirements can result in a \$250 fine per violation. Failure to supply the required notice also means that the landlord has violated Maine's "implied warranty of fitness for human habitation." Landlords must also report results to Maine DHHS.

For more information contact:

DHHS Division of Environmental Health
287-5676 TTY: 1-800-606-0215



Can I fix the problem myself?

Sometimes if a repair is not too major, you can "repair and deduct." You can fix the problem and deduct the cost of the repair from your next month's rent. Here are the rules:

1. Your problem must be one that makes your home unhealthy or unsafe. Examples:

- no heat or not enough heat in the winter
- unsafe drinking water
- falling ceiling
- unsafe wiring

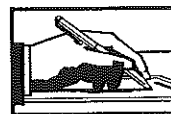
2. You must be able to fix the problem for less than \$500, or half of your monthly rent, whichever is greater. For example:

- If your rent is \$800 per month, you can spend up to \$500 to do the repair.
- If your rent is \$1200, you can spend up to \$600.

- This amount is increased to two times your monthly rent if your building is in foreclosure.

3. You, your family, or your guests did not cause the problem.

4. Before you fix the problem, you must write a letter to your landlord. Send the letter by certified mail, return receipt requested. In the letter, ask your landlord to fix the dangerous condition within 14 days, **or sooner if it is an emergency**. Tell him that if he does not do the repair, you will have it fixed and deduct the cost from your rent. (We have a form letter you can use. Call Pine Tree Legal if you want a copy.) If your landlord offers to fix the problem, then you must let him into your home to do the repair. See "Landlord Entering Your Home" at page 25.



5. If you have the work done, both the work and the materials must be of good quality. If your problem is with the heating, plumbing, or electricity, you must get a licensed worker to do the repairs.

6. After the work is done, send the landlord a copy of the bill. Keep the original bill. Then you can deduct the cost from your rent payment.

Here are a few more "repair and deduct" limitations:

- You cannot use "repair and deduct" if your landlord lives in your building **and** there are fewer than 5 apartments.
- If you do the repairs yourself, you can deduct for parts and materials but not for your labor.
- Members of your immediate family cannot charge for labor either.





- You cannot hold your landlord responsible if anyone gets hurt doing the repairs.

What if the repairs cost more than \$500.00 or half my monthly rent (or 2x monthly rent if building is in foreclosure)?

You and your neighbors may be able to use "repair and deduct" together to fix a bigger problem. For example, your building might have a bad roof or furnace that costs a lot to fix. If you had 8 tenants who each pay \$800 per month, you could pay for a repair costing as much as \$4000 (8 x \$500).



Caution: We do not know of anyone who has tried this before in Maine. If you want to try a group "repair and deduct," try to talk with a lawyer first.

My landlord just stopped paying his utility bills. What can I do?

Your agreement was that the landlord would pay for utilities- such as lights, electric heat, fuel or water. Then he stopped paying. You can legally put the account in your name, pay the bill, and then deduct the cost from your rent.

If this doesn't work to make you even, you can sue the landlord for "actual damages" (your losses). The court can also order the landlord to pay the court costs and lawyer's fees.

Can I just refuse to pay my rent if my landlord won't fix things?

No. You will risk eviction and can still be charged for the rent while you are living there. Talk to a lawyer before you decide to stop paying rent.

Exception to the rule: If your apartment burns down or is so damaged that you can no longer live there (and it's not your fault),

you do not have to pay rent from the day you are forced out.

I have tried all of the things you have suggested but my home still is not safe. What about suing my landlord in court?

Warning your landlord of court action may be enough to get him to fix the problem. If not, you may either want to move or to sue.



To win a lawsuit, you must meet these tests:

- ☐ Your problem must be serious-- something that makes your home unsafe or unhealthy.
- ☐ You, your family or guests did not cause the problem.
- ☐ You must tell your landlord about the problem **in writing** within a reasonable time, and give her a reasonable time to get it fixed. (Telling the building manager or someone else who collects rent for the landlord may be good enough. But the best way to prove that your landlord knew about the problem is by giving her written notice and keeping a copy.) Get a sample form here.
- ☐ You should be fully up-to-date in your rent payments at the time you give the landlord written notice.

If your landlord does not fix the problem within a reasonable time after you give the written notice, talk to a lawyer about going to court or file a complaint in Small Claims Court yourself. (If you need quick action, going to Small Claims Court may take too long.)

At a court hearing the judge will decide whether your landlord has given you a safe



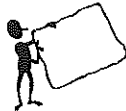
and healthy place to live. The judge may order any of these remedies:

- that your landlord fix the apartment
- that your rent be less until the landlord does the repairs
- that your landlord pay you back some of the rent you have paid

Can my landlord make me agree to live in a home that is unsafe or unfit?

No. A landlord cannot force you to accept unsafe or unfit housing. You can agree **voluntarily** to live with certain unsafe or unfit conditions. The agreement does not stand unless:

- ☐ it is in writing
- ☐ it says exactly what unsafe conditions you have agreed to live with
- ☐ it says exactly how much the rent was lowered because of the unsafe conditions



Learn more from our pamphlet: "How Much Heat and Other Basic Utilities Does My Landlord Have to Provide?"

Evictions

Can my landlord turn off my utilities or change the locks on my door or otherwise kick me out without first going to court?



No. It is illegal for your landlord to throw you out by force. Your landlord must get a court order before he evicts you. If your landlord tries get around this by changing the locks, taking your property, or shutting off any of your utilities, he has broken the law. If you take him to court and ask for immediate help, the court may stop the landlord and order him to pay you for your losses or \$250.00, whichever is greater, plus your court costs. If you have a lawyer and

you win the case, the court can also order your landlord to pay your attorney fees.

NOTE: The electric company must determine if tenants are living in a place before cutting off service at the owner's request. If you agree to put the service in your name, the electric company cannot cut you off.

Does my landlord have to have a reason to evict me?

This depends on whether you are a tenant at will or have a written lease.

If you have a written lease, your landlord probably has to have a reason to evict you. This is also the rule if you live in **subsidized housing** or own your own home in a **mobile home park**.

If you are a tenant at will (no lease), your landlord can evict you without giving a reason. However, he must give you 7 or 30 days notice in writing. There are some exceptions to this, explained below.

Does my landlord have to warn me before I can be evicted?

Yes. The type of notice he must give depends on what type of tenancy you have.

➤ If you have a written lease:

- Your landlord can evict you for a "material breach" of the lease. This means that you have violated one of your major duties under the lease, such as payment of rent, not disturbing other tenants in the building, not causing major damage, or some other "material" lease clause. **Know what your lease says so that you will know exactly what you have agreed to.** (Note: You have a similar right if your landlord "materially breaches" the lease. (Read



more at page 3-4 under "Leases.")

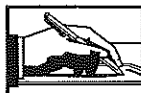
- If you have "materially breached" the lease, your landlord can serve you with a 7-day notice to quit. The notice must advise you of your right to contest the eviction in court. Read more about 7-day notice rules below.
- **End of lease term.** If your lease does not say that it automatically renews when the lease term ends, your landlord can go to court without giving you any notice. But he can do this only during the seven days following the end of your lease term. For example, you have a one year lease that ends on February 28. Your landlord may file a court complaint between March 1 and March 7, asking for an eviction order without giving you a notice first. **(If your rent is subsidized, your lease probably renews automatically, so this paragraph does not apply to you.)**

➤ **If you are a tenant at will (no lease):**

Your landlord must give you either a 30-day or 7-day written notice to leave, or he can combine both of these into one notice. Any notice must advise you of your right to contest the eviction in court. This is called a "Notice to Quit."

30-day written notice

Your landlord can evict you with 30 days notice for almost any reason or no reason.



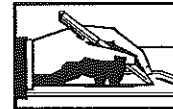
Exceptions: You may be able to stop the eviction if your landlord is evicting you because of "retaliation" or "illegal discrimination." Read "Retaliation defense" and "Discrimination defense" at page 18.

The notice must not terminate the tenancy until the last date for which rent has been paid, or later. For example, if your rent is

paid through the end of June, your notice period cannot end before June 30th. Also, the notice must give you a full 30 days. (Example: A notice ending the tenancy on June 30 must be given to you no later than May 31.) If the notice does not follow these rules, you may be able to stop or delay the eviction. Get legal advice.

7-day written notice

To evict you with a 7-day notice, your landlord must have a reason and state that reason in writing. The reason must be one of these:



- ✓ You have **seriously** damaged the apartment and have not repaired the damage.
- ✓ You have been a "nuisance" to other tenants or neighbors. (Examples: You pick fights with your neighbors, don't let them sleep, or destroy their property.)
- ✓ You have made the apartment unlivable or unfit to live in.
- ✓ You have changed your door locks and have refused to give your landlord a duplicate key (see page 25).
- ✓ You are 7 days or more behind in rent.

If the reason is that you have not paid your rent, the notice **must include** these two sentences:

"If you pay the amount of rent due as of the date of this notice before this notice expires, then this notice as it applies to rent arrearage is void."

"After this notice expires, if you pay all rental arrears, all rent due as of the date of payment and any filing fees and service of process fees actually paid by the landlord before the writ of



possession issues at the completion of the eviction process, then your tenancy will be reinstated."

This means that you can stop the eviction by paying the rent you owe. After 7 days, if you do not pay up what you owe before your next rent date, you have to pay both months' rent to stop the eviction. You can still stop the eviction by paying all rent owed even after the landlord takes you to court to get an eviction order. But to stop the eviction then, you have to pay all of the rent due **and** the landlord's court costs. These costs are:

- cost of serving the court papers
- court filing fee

Your last chance to stop the eviction is just before the court issues the "writ of possession." Your landlord can get this "writ" 7 days after he gets the Court order.

Does the landlord, or his agent, have to give me the "Notice to Quit" in person?

Yes. In a tenancy at will, the landlord, or his agent, must deliver the 7-day or 30-day notice to the tenant in person. The notice does not have to be served by a sheriff.

Exception: The landlord, or his agent, must make 3 good faith efforts to hand deliver you the notice. If he still cannot find you after 3 tries, he can mail you the notice and leave a copy at your home.

What if I rent my home from my employer?

If your landlord is also your employer, he may be able to go to court to evict you without first giving you a written notice to quit. Get legal advice. Your landlord must still go to court to evict you.

What if I do not move out after I get an eviction notice?



Your landlord must go to court to evict you! If you do not move out by the end of the notice period, then your

landlord can have you served with court papers. The court case is called a "Forcible Entry and Detainer." (This does **not** mean that the landlord can enter your home by force or detain you.) The papers say that he is trying to evict you. They ask the court to hold a hearing, to decide if you can be evicted. If you want to fight the eviction, you have a right to be heard in court. A landlord **cannot** legally evict you without a court order.

Here is what will happen:

⇒ A deputy sheriff will give you court papers: a summons and a complaint. The landlord can have these papers served on you any time after the end of the notice period. The summons will tell you the date, time and place of the court hearing. You must get the papers at least 7 days before the court hearing. The officer must make a good faith effort to deliver the papers in hand at least 3 times on 3 different days. If that doesn't work, then the landlord may mail you the notice and leave a copy at your residence where you are likely to find it (such as posting on your door). Then the landlord must file an affidavit with the court swearing to the steps he has taken to notify you.

⇒ **Seek legal advice immediately.** (If you cannot get a lawyer, we have more information about facing an eviction on your own at: <http://ptla.org/what-can-i-do-if-my-landlord-trying-evict-me>.)

⇒ If you end up going to the hearing without a lawyer, ask for a **recorded hearing**. Send a letter to the court ahead of time. Your request should be at least



24 hours in advance. Then ask for a recording again when you get to court.

⇒ **Be on time for your hearing.**

⇒ The judge may tell you that you must go to "mediation" before having a court hearing. (Read more about this and other court procedures in our pamphlet on Evictions.) If you do not come to an agreement during mediation, then you will go on to a formal court hearing.

⇒ At the court hearing the landlord will tell the judge what notice he gave you and why he wants to evict you. Then you have a chance to explain why you should not be evicted. Here are some common defenses:

• **Improper notice defense**

Your landlord must follow all of the notice rules. (Most of the notice rules are explained above.) If you think that your notice to quit did not meet all of the rules, explain that to the judge. If the judge finds that your landlord did not follow all of the notice rules, then the landlord loses and he will have to start the eviction process all over again.

• **Unsafe or unfit housing defense**

If your landlord is trying to evict you because you are behind in paying rent, you may be able to stop the eviction if you didn't pay because of serious problems with your home that your landlord refused to fix. This is called a "warranty of habitability defense" because the landlord has broken his promise to rent you a safe home. (See "Unsafe or Unfit Housing" section at page 9.)

If the judge finds that the landlord has not fixed serious problems that you told him about, then you can ask the court:

✓ To let you out of your lease, **OR**

✓ To let you stay and to pay a lower rent until the landlord makes your home safe. If you stay, the judge will also decide how much back rent you must pay, at the lower rate.

• **Retaliation defense**

There are laws to protect you if your landlord tries to evict you because you asserted your rights. For example, if you can show that the landlord is trying to evict you because you:

- Complained to the city of code violations
- Asked your landlord in writing to do necessary repairs
- Filed a fair housing (discrimination) complaint with the government,
- Are the victim of domestic violence, sexual assault, stalking, or
- Started or joined a tenants' union

The judge should not let the landlord evict you.

Warning: If the landlord convinces the judge that he is trying to evict you for some other good reason (like causing a "nuisance"), then you may still be evicted. Also, the law does not allow this defense where the eviction is based on failure to pay rent or causing substantial damage to the premises unless you had tried to use "repair and deduct" because of bad living conditions. (See "Can I fix the problem myself?" at page 13.) Effective October 2015, different rules apply to protect victims of domestic violence, sexual assault or stalking. (Read more at page 22.)

You also have the right **not** to pay an unlawful rent increase and **not** to pay for common utilities. (See sections on "Rent" at page 7 and "Heat and Utility Charges for Common Areas" at page 24.) If your landlord is trying to evict you for one of



these reasons, explain that to the judge. These defenses **might** stop the eviction.

• Discrimination defense

You should not be evicted because of your:

- race
- color
- sex
- sexual orientation
- physical or mental impairment
- religion
- ancestry or national origin
- getting welfare, or
- being a single parent, being pregnant or having children

Read more about "Discrimination" at page 22.

Note: If you or someone in your family has a physical or mental impairment, most landlords must allow for "reasonable accommodations" to help you stay in your home. You can ask for this help even after you get an eviction notice. A court should not allow your landlord to evict you if your landlord has not tried a "reasonable accommodation." Try to get a lawyer to help you with this defense.

Caution: Your landlord may have more than one reason for trying to evict you. Even if you have a good defense to one of his complaints, the judge may still allow the eviction if the landlord has another good reason why he wants you to move out.

Will the court give me extra time to move?

Most judges do not believe that the law gives them the power to grant extra time where you have no legal defense. You may try to negotiate with the landlord or his lawyer for some extra time. Or, if you have

the option to talk to a court mediator, you can try to get an agreement for extra time through mediation. But, unless you have an agreement, the court will probably not delay the eviction.

Can I be evicted during the winter or if I have children?

Yes. Maine law allows your landlord to evict you at any time during the year and even if you have children. However, you cannot be evicted **because** you have children. See "Discrimination" section at page 22.



NOTE: If you are evicted, your children still have the right to be in school. For more information, ask for our pamphlet: "Rights of Homeless Students to Attend School."

What happens if I do not go to the eviction hearing in court?

If you do not go to the court hearing and your landlord does, you will lose. The judge will most likely enter a "default judgment" against you. Then the landlord can go back to court 7 days later and get a "writ of possession."

If you owe the landlord money for rent or damages, he cannot get a court order for this at the eviction hearing. He can only ask for an eviction order. He can sue you later, if he wants to, for any money you owe him.

What happens if I go to court and lose?

If the court rules against you and you do not appeal, then your landlord can get a "writ of possession" from the court 7 days later.

What is a "writ of possession?"

This paper comes from the Court and gives the landlord the right to get his property back from you. Your landlord can ask a law enforcement officer to give you a copy of the "writ." You must move out of your



apartment within 48 hours after getting the "writ." If you do not move out, you will become a trespasser. The landlord then, and only then, has the right to have the police remove you by force (and to put your things in storage at your expense).

Can I appeal my case?

Yes. You can appeal your case if you believe that the court's decision was wrong.

There is an appeal deadline. Any appeal must be filed before the "writ" issues (see above). To be safe, file the appeal with the District Court within **6 days** of the day the judge signed the order against you. (The absolute deadline is 30 days from judgment, if a "writ" was not issued earlier.)

On appeal you can have a new trial with a jury. To get a jury trial, you must prove to the Court that you and your landlord disagree about the **facts** of the case. If you only disagree about what the **law** means, the appeals court will only review the record of your first hearing to see if the judge made any legal mistakes in deciding the case.

Be prepared to pay rent to the landlord or into a court escrow account while your appeal is pending.

If you want to appeal, especially if you are going to ask for a jury trial, try to get a lawyer. This would be hard to do on your own. The court provides an appeal form, but completing and filing the form is only the first step of pursuing an appeal. The appeal form, CV-206, is posted here:

www.courts.maine.gov/fees_forms/forms/index.shtml#cv

Abandoned Property

What happens if I move and do not take all my property with me?

If you move out without taking your property with you, you could lose it. So take all your things with you when you leave if you can. Don't leave things behind to pick up later. If this is not possible, Maine law does offer some protections.

The law says your landlord must store your property in a safe, dry, secured place. Then she must mail a notice to your "last known address," saying she plans to get rid of your things and listing the items. (Leave a forwarding address if you want to get the notice.) You must claim your property within **7 days** after the notice was sent. If you do this, your landlord must store the property for at least **14 days from the date notice was sent**, giving you time to get your things. Pick up your things within the 14 days. If you do this, **your landlord cannot make you pay any rent owed, damages, or costs of storage as a condition for giving back your property.**

If you don't claim the property within 7 days, or don't pick it up within 14 days, your landlord may:

- sell the property for fair market value,
- get rid of anything he thinks has no fair market value, or
- return your property to you only if you pay for rent owed, damages, and costs of storage

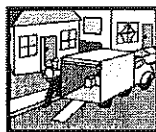
If he sells your property, he must send any money left over to the State Treasurer in Augusta, after deducting what you owe him for rent, damages, and storage costs.

NOTE: Effective September 2011, there are new rules for mobile home park owners who claim that a tenant has abandoned a



mobile home. Go to Mobile Home section to read more (page 26).

What if I can't get my things because I am hospitalized due to my disability?



Write to your landlord and ask him to make a "reasonable accommodation" for you, giving you more time or a chance to get someone to help you move your things.

Note: If you're not moving out voluntarily, your landlord must follow eviction rules to get you out.

Remember: The best way to protect your property is to take it with you when you leave. Even though the law says that your landlord must protect your property, things can go wrong.

- Sometimes it is hard to get back what you have lost or to prove what it is worth.
- If your landlord does not have your current mailing address, you won't get his notice. Then you could easily miss the 7 day deadline for claiming your things.
- If you fail to act within the deadline, your landlord can deduct for money you owe, which will be more as time goes on if there are storage fees.
- If your landlord damages your property, it will be difficult to recover that loss.
- Your landlord might ignore the law and get rid of your things illegally.



Sale or Foreclosure of Your Building

What happens if my landlord sells my building?

The sale of your building may affect your rights.

If you do not have a written lease, your old tenancy will end. The new owner must let you stay for at least as long as you have paid for. You and your new landlord can make a new agreement. If your new landlord accepts rent from you, then you have a new tenancy.

If you have a lease, you probably have the right to stay until the end of your lease term. Read your lease to see if it says anything different. If your lease term is for more than 2 years, you should record your lease in your county Registry of Deeds **before** the sale, to help protect your lease rights. This rule also applies if you have a long-term lease with no specific ending date.

Does the new landlord have to give me a notice to quit before evicting me?

Yes. Even if you are a tenant at will (no lease), your new landlord must give you a 30-day or a 7-day written notice, unless your old landlord already gave you the notice. (See "Eviction" section at page 15.)

What if my building is in foreclosure?

From May 2009 through December 2014, a federal law gave additional protections to renters living in foreclosed buildings. But that law has ended. Maine law does offer tenants in foreclosed buildings some notice protections. If the bank - or lender - takes the building back from your landlord, it must notify you in writing about the change in ownership. But this notice is not required until the lender has gotten a final court judgment in the foreclosure case.

A typical foreclosure - from initial notice to final court judgment - can take several months, sometimes years. Your landlord is still responsible for the building and its tenants during the foreclosure process. He can also bring an eviction action, following all of the normal eviction rules. This means that your original landlord can bring an



eviction until such time as the court grants a change in ownership through the foreclosure action. At that point in time, the bank assumes responsibilities for the building and its tenants - along with the power to evict. The bank is required to give tenants written notice of the court's foreclosure order. The notice can be mailed, served by sheriff, or posted at each entrance to the building. The bank can bring an eviction action in court 21 days (or more) after giving that notice. Typically, the bank then sells the building to a new owner, who would then become your landlord if you are still living in the building. Again, this new owner either:

- assumes your lease, if you have one,
- decides to keep you on as a tenant, with a new agreement (where no ongoing lease), or
- decides to evict you.

If the new landlord chooses the third option, again, he must follow all of the normal eviction rules.

Discrimination

Landlords may not discriminate against you because of your:

- race
- color
- sex
- sexual orientation
- physical or mental impairment
- religion
- ancestry or national origin
- getting welfare
- being a single parent, being pregnant or having children

This means that a landlord cannot refuse to rent to you, charge you extra, or evict you for any of these reasons.

Note: The state law barring discrimination based on sexual orientation went into effect

on December 28, 2005. This law also protects trans-gendered people. And it prohibits discrimination based on another person's belief that you are gay or trans-gendered, even if you are not.

If you think your landlord has illegally discriminated against you, contact Pine Tree Legal or one of these offices:

Maine Human Rights Commission
51 State House Station
Augusta, Maine 04333-0051
phone: 624-6290 TTY: 1-888-577-6690

U.S. Fair Housing Office (HUD)
10 Causeway Street, Room 321
Boston, MA 02222-1092
phone: 1-617-994-8300
toll-free: 1-800-827-5005
TTY: 1-617-565-5453

Pine Tree Legal has more information about how a landlord must treat you fairly if you have a mental or physical impairment. You can get that information from our offices, or visit our "Fair Housing for People with Disabilities" page: www.ptla.org/fair-housing-faq-housing-protection-people-disabilities

Victims of Domestic Violence, Sexual Assault and Stalking

Beginning October 15, 2015, a Maine tenant who is the victim of domestic violence, sexual assault, or stalking has new legal protections. Generally, this law is intended to lessen the impact on victims who are tenants by giving them more options around their living situations. More details below.

How do I let my landlord know that I am in an abusive situation?

A key part of this new law is communication with your landlord. Your landlord must protect your rights, but only after he knows they exist. You must also "verify" the situation by naming the abuser and giving



your landlord some “proof.” This “proof” can include things like a:

- statement signed by a sexual assault counselor or a victim witness advocate
- statement signed by a health care provider or law enforcement officer
- copy of a Protection from Abuse complaint or order
- copy of a Protection from Harassment complaint or order
- copy of a relevant police report, or
- copy of a criminal complaint, indictment or conviction

Once you have notified your landlord of your situation, the following rights come into play.

Won't I be in worse trouble with my landlord if I tell him?

Under the more general Maine landlord/tenant laws, an eviction can be based on: 1) nuisance, 2) damage to property, or 3) disturbance (to other tenants or neighbors). This new law says that your landlord cannot evict you for one of these reasons if the problem was caused by an abuser, and you are the victim of that abuse. Again, your landlord needs to know the facts of your situation so that he will know that this legal protection applies.

But what if my landlord tries to evict me because I told him about my situation?

The law says that your landlord cannot do this. This is called “illegal retaliation.” So, once you notify your landlord of the abuse, the law assumes that, for the next 6 months, any attempted eviction is in retaliation. The court would not give your landlord an eviction order unless he proves that the eviction is for a different reason (like non-payment of rent). Read more about the Maine eviction process at page 15.

Can I be charged by my landlord if the abuser damages the property?

The answer depends on whether the abuser lives with you.

The abuser is also a tenant in your unit.

Your landlord can charge you for any damage by taking it out of your joint security deposit. But he cannot charge you more than that amount. Again, notification to your landlord is the key. To invoke this protection, you must give your landlord notice and “proof” (see above, page 22-23) within 30 days of the relevant incident.

The abuser does not live in the unit. If you did not invite the abuser in or allow him to be there, you cannot be held responsible. Filing a police report can help to verify your lack of responsibility in this situation.

What if I need to move because of the abuse? Can I end my tenancy?

Yes. Again, you need to “document” the abuse. See above, page 22-23.

You are a “tenant at will” (no lease) or you have a lease for less than a year: You must give your landlord a written notice of your intent to move at least 7 days before you intend to move out.

You have a lease term for a year or more: You must give your landlord a written notice of your intent to move at least 30 days before you intend to move out.

After the 7 days, or 30 days, ends, you are no longer responsible for paying rent. (By giving the notice, you have ended your tenancy, so you must move.) If you have prepaid rent for the month, your landlord does **not** have to give you a refund.

Can I stay if the abuser is evicted?

Yes. In this situation, your landlord can evict the abuser, if he chooses to do that. Read about eviction procedures the landlord must use to evict the abuser at page 15. But your landlord cannot evict you – unless he has another allowable reason (such as non-payment of rent).



Going forward, you will still be responsible for paying the rent. If you get a rent subsidy (such as a Section 8 voucher) and your household income is now lower, you need to ask the Housing Authority for a recalculation of your rent based on the new household income.

Does the abuser have to pay me back for damages?

You can sue the abuser for the damages the abuser caused. You can also get court costs and attorney's fees against the abuser. This "attorney fee" part of the law is significant. This may make it easier for you to find a lawyer to help you to sue the abuser.

What if I need to change the locks to keep the abuser out?

The general rule in Maine is that a tenant who changes the locks to his rental unit must notify his landlord. And he must give the landlord a duplicate key within 48 hours. But in this case, you have 72 hours to provide your landlord with a duplicate key. You must pay for the work.



Heat and Utility Charges for Common Areas

Can the landlord make me pay for heat and utilities outside of my apartment?

If you live in an apartment building, you may find out that you are paying for heat, lights, or other utilities for "common areas." This includes, for example, hallways, basements, or a common hot water heater or furnace. It is illegal for your landlord to make you pay those costs alone. For example, the hall lights should not be hooked up to your meter.

If you find out that you are paying for heat or utilities going to "common areas" or to someone else's apartment, take these steps.

⇒ First talk to your landlord. Ask her to put in a separate meter or to lower your rent to make up for the extra money you are paying.

⇒ If you agree to lower your rent, do it in writing. Write down exactly how much less rent you will pay in exchange for paying for the extra heat or utility costs.

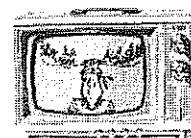
⇒ If you have been paying these extra charges for some time, ask your landlord to pay you back. If you cannot figure out how much you should be paid, check with your heating or utility company or city electrician to find out if they will help you.

⇒ If your landlord refuses to pay what is fair, you can sue. If you win, you can get \$250.00 or your "actual damages" (how much you lost), whichever is more. The landlord will have to pay your court costs and lawyer's fees. Or you can file your claim in Small Claims Court on your own.

Caution: If you are not ready to move, think about whether you want to sue now or later. Read the section on "Evictions" at page 15. If you are not protected by a lease, then you may want to wait and sue after you have moved or are ready to move, in case the landlord retaliates with an eviction.

Cable TV, Dishes, Antennas

If I live in an apartment building, can my landlord stop me from getting cable TV, a satellite dish or an antenna?



Generally, no. Your landlord can refuse to allow these installations **only** if he has "good cause" to deny that company. "Good cause" could be:



- if that company has broken agreements with the landlord before
- if that company has damaged the building before and has not fixed it
- some similar valid complaint against that company

Maine has detailed laws about how cable TV companies and landlords must deal with each other. Call Pine Tree Legal if you want a copy of that law.

The Federal Communications Commission also has rules allowing tenants to have small dishes (one meter or less in diameter) and certain types of "customer-end" antennas. But you must have "exclusive use" of the area where you install the dish or antenna, such as a balcony (not common areas, such as the roof of an apartment building, unless your landlord allows it).

More information from the FCC:
<https://www.fcc.gov/encyclopedia/faqs-satellite>. If you still have questions, contact Pine Tree Legal for more information.

Landlord Entering Your Home



Can my landlord come into my apartment or house at any time?

No. If your landlord wants to come into your home to make non-emergency repairs, or to show or inspect the apartment, she must give you "reasonable notice." Normally, this means at least 24 hours notice.

Your landlord can come in only at "reasonable times." Generally, this means during the daytime or evening, not in the middle of the night. There may be other factors that make certain times "unreasonable" for you.

Exception: If there is an emergency, your landlord can enter after a shorter notice or without notice. For example, the pipes burst or there is a fire in your apartment.

What can I do if my landlord comes in without giving me reasonable notice?

If your landlord does not follow these rules, or if your landlord tries to come in without good reason to the point you feel harassed, you can sue your landlord. The judge can order your landlord to pay you for your "actual damages," or \$100.00, whichever is more. She can also order the landlord to stop coming into your apartment without good reason and without fair notice. If you have a lawyer and you win at hearing, the court can also order your landlord to pay your lawyer fees.

If you cannot get a lawyer and if you need fast protection from serious, repeated harassment, you can file a Protection from Harassment complaint in District Court. Call Pine Tree Legal if you want more information about how to do this.

Is it legal to change the locks to keep my landlord out?

No. If you need to change your locks for any reason, you must notify your landlord. Also, you must give him a key within 48 hours of the change. Victims of domestic violence, sexual violence or stalking who need to change the locks for safety reasons have 72 hours to provide a new key to the landlord.



Your landlord may give you a 7-day eviction notice (see page 16) if you change the locks without following these rules. He can also charge you for any damage caused, if he needs to enter in an emergency and is locked out.



Subsidized Housing

If a housing authority or similar agency pays all of part of your rent, your housing is "subsidized." Your rent may be subsidized even if your house or apartment is owned by a private landlord. "Public housing" is also subsidized.

If you need to find out where to apply for subsidized housing in your area, contact:

Maine State Housing Authority
89 State House Station
353 Water Street
Augusta, Maine 04330
Toll-free phone: **1-800-452-4668**
TTY: **1-800-452-4603**

If you live in "subsidized housing," you should have a standard lease. This lease gives you more protections than most non-subsidized tenants have. For example, your lease may have a "grievance procedure" which gives you the right to an informal out-of-court hearing on a complaint you have against your landlord. **Your lease probably gives you more protections against eviction than the ones described in this "Rights of Tenants" Guide.** . It may say that your landlord cannot evict you unless he has "good cause" or unless he can prove you broke the lease.

If you are in one of the 3 major HUD subsidy programs (public housing, Section 8, or voucher choice), you cannot be evicted because you were the victim of domestic violence, dating violence, sexual assault or stalking. You may have other rights under federal law that are not explained in your lease.

Different subsidized housing programs have different rules and different form leases. **Read your lease!** If you are not sure of your rights under your lease or if you are being evicted from subsidized housing,

contact your local Pine Tree Legal office (contact information at page 2).

Mobile Home Parks

Who is protected by the mobile home park laws?

This section applies to you if you **own your mobile home and rent a lot in a mobile home park**. Also, these "Rights of Tenants" Guidebook sections above apply to you:

Tips Before You Rent	page 2
Types of Rental Agreements	page 3
Fee for Late Payment of Rent	page 8
General Assistance	page 8
Discrimination	page 22

If you **rent a mobile home**, you have the same rights as a tenant in an apartment building or house. Read the earlier sections of this handbook, which apply to you. To read about your security deposit, see below.

If you **own your mobile home and rent the land it sits on but not in a mobile home park**, you should talk to a lawyer if you have a problem. (Only some parts of this handbook apply to you.)

What is a mobile home park?

A mobile home park is a piece of land that has, or is laid out to have, two or more mobile homes on it.

How much can I be charged for a security deposit and how do I get it back?

The "Security Deposit" section at page 4 applies to you, with these exceptions:

- The park owner may charge up to 3 times the monthly rent for a security deposit.



- For the period before September 12, 2009, the landlord must pay 4% interest on your deposit. For later periods, the park owner must pay you a market-based rate of interest. Your landlord must put your money in a separate, protected bank account (which can be pooled with other deposits). You should get all of the interest earned on your deposit. In the alternative, your post 9/12/09 interest will be based on the Federal Reserve's secondary market 6-month CD rate for each year the landlord has been holding your deposit.

Read the "Security Deposit" section at page 4 to find out how to get your deposit back if the park owner refuses.

What kind of fees can I be charged?

The park owner may charge fees. Fees may include rent, utilities, incidental service charges, security deposit and an entrance fee. Before you move into the park, the park owner must explain all fees to you in writing. Before increasing any fees, he must give **all tenants** at least 30 days written notice.



If you are moving into a mobile home that is already in the park, the park owner cannot charge you more than 2 times the monthly rent for an entrance fee. He cannot call this fee something else, in order to get around this limit.

The park owner cannot require you to buy your oil or bottled gas from him. He cannot choose your dealer; that is **your** choice.

The park owner cannot require you to buy from him any under skirting, equipment for tying down mobile homes or any other equipment.

Park Rules

What kind of rules can the park owner have?

The rules must be reasonably related to keeping order and peace in the mobile home park. All park rules must be fair and reasonable. A rule is presumed to be unfair if it does not apply to all park tenants. (However, the park owner may be able to prove that a non-uniform rule is fair, if he has a compelling reason for the rule.) The park owner must give **all tenants** at least 30 days notice of any rule change before it takes effect.

These rules are **not** legal and a park owner **cannot** enforce them:

- A rule that says the park owner is not responsible for his own negligence
- A rule that says you have to pay the park owner's legal fees (in an eviction, for example)
- A rule that says you must give the park owner a lien on your property if you owe him money
- A rule that gives up your right to challenge the fairness of any park rule or any part of your lease or rental agreement

How do I find out what the park rules are?

Before you sign an agreement to rent, the park owner must give you:

- ☐ a copy of the mobile home park rules **and**
- ☐ a copy of the Maine mobile home park laws



Eviction



Does the park owner have to have a reason to evict me?

Yes. He must have a reason and he must be able to prove it in court. His reason must be on this list. (These rules apply to you, all household members, and your guests.)

- 1) You did not pay rent, utility charges or **reasonable** service charges. You will not be evicted if you pay the amount you owe **plus a fee** before the end of the notice period. The notice must give you at least 30 days. The fee is 5% of what you owe, up to a maximum of \$5.00. (A 2005 law allows park owners to charge interest on late payments. See page 8. It is unclear how this new rule on interest charges intersects with this older \$5 fee rule. Call Pine Tree Legal (see page 2) if you need advice on this issue.)
- 2) You broke a mobile home park law. Before giving you an eviction notice, the park owner must tell you in writing what law you have broken and give you a reasonable chance to comply.
- 3) You broke a **reasonable** park rule. (See section on "Park Rules.") Before giving you an eviction notice, the park owner must tell you in writing what rule you have broken and give you a reasonable chance to comply.
- 4) You violated Paragraph 1, 2 or 3 above three times within 12 months. After 3 chances within a one-year period, you can be evicted even if you corrected all three violations.
- 5) You damaged the property in some way. "Damage" does not include "normal wear and tear." Normal wear and tear is what happens to property over time from normal use.

6) You **repeatedly** disturbed the peace and quiet or safety of other tenants.

7) You violated a term of your written lease that the lease says you can be evicted for. **Read your lease before you sign!**



8) The park is condemned or changed to some other use. Before evicting you for "change of use," the park owner must have told you about this when you moved in or must give you a **one-year** written notice.

9) If the park owner wants to evict you because he plans to renovate the park, he must give you between 6 months to 12 months notice. He may also have to pay for your moving costs.

Exceptions:

- If there is a serious problem that is dangerous for tenants, the park owner can evict you "temporarily" with a shorter notice, if he pays your costs.
- If it is **not** an emergency, he can give a 30-day written notice to "temporarily" evict, if he pays your costs.
- If the government orders the park owner to do a major renovation that requires evictions, the park owner can give a shorter notice.

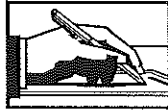
Note: If you are being evicted for reason #9 above, talk to a lawyer or Pine Tree Legal.



What kind of notice do I get?

Before taking you to court to get an eviction order, the park owner must give you a written notice to quit. The notice must:

- be in writing
- state the reasons for the eviction
- give you **45 days** before your tenancy ends



Note: The notice period is different in some cases, like for nonpayment of rent (30 days). To find out these exceptions, read the list 1-9 above.

The park owner, or his agent, must give this notice to you in person.

Exception: He can send the notice by mail and leave a copy at your home if he has tried for 3 days to serve you in person and has not been able to find you. He must have a witness.

If someone has a lien on your mobile home (such as a seller to whom you are still making payments), the park owner may also notify the lien-holder of the eviction. If your contract with the lien-holder allows it, she may try to repossess your home to protect her interest in the property. Get legal advice.

What happens at the end of the notice period?

If you have not moved and the park owner still wants to evict you, she must file a complaint in District Court asking the court to allow the eviction. This is called a "Forcible Entry and Detainer" action. A deputy sheriff will serve you with a copy of the complaint and a court summons. The

summons will tell you the date and time of the court hearing.

At the hearing, the judge will listen to both sides. If the judge finds that the park owner did not follow all of the notice rules or did not prove one of the reasons for eviction listed above, the judge will dismiss the case and you will not be evicted. But if the park owner gets the eviction order from the court, she can then ask the Sheriff's Department to evict you and your family **and to remove your mobile home from the lot.**

Talk to a lawyer right away if you get a notice to quit or a court complaint and summons.



What if the park owner is trying to evict me because I complained, because I am in a tenant group, or for some other unfair reason?

The Court should not evict you if you prove that the park owner's main reason for trying to evict you is that:

- You helped to start a tenant's organization or you belong to a tenant's organization; or
- You have complained about the park owner's violations of mobile home park laws.

If you think that the park owner is trying to evict you because you complained about unsafe conditions in the park, read the section above on "Retaliation Defense" at page 18. This defense to eviction **may** apply to you. If you believe that the park owner is illegally discriminating against you because of your:

- race
- color
- sex
- sexual orientation



- physical or mental impairment
- religion
- ancestry or national origin
- getting welfare
- being a single parent, being pregnant or having children

See "Discrimination" section at page 22.

What if I refused to pay rent because of bad living conditions in the park?

If the park owner is trying to evict you because you owe rent and there are unsafe living conditions in the park, you may have a good defense to the eviction. Read the section "Unsafe or unfit housing defense" under "Evictions" at page 17. These rules also apply to mobile home park tenants. In your case, the problem might be dangerous outside wiring or unsanitary septic system, instead of lack of heat.

Additional rule for mobile home parks:

You must have given the park owner or his agent notice of the problem when your rent was paid up.

What if the court orders an eviction and I can't move my mobile home right away?

The park owner must mail you a "14-day notice" - sent first class mail, with proof of mailing. The notice tells you that the park owner plans to get rid of your mobile home. You have 14 days to claim the mobile home before this happens. The landlord must send this notice to your "last known address." In order to get the notice, you must let your landlord know where you are getting mail. Otherwise, the 14 days could lapse without your knowing about it.

If you claim the mobile home within 14 days, then the park owner must give you another 21 days to move it. If the weather or roads prevent you from moving the mobile home, then the park owner must give you more time to move it. But he can charge you

for any actual costs he incurs as a result of the delay.

If you do not claim your mobile home within 14 days - or move it within the 21 days (or other agreed-upon time period) - then the park owner may treat the mobile home as "abandoned property."

The park owner can:

- Hold your mobile home until you pay all back rent, damages, legal fees, and storage costs; OR
- Sell the mobile home for a "reasonable fair market price." He can then deduct from the sale money his costs: back rent, damages, legal fees, storage costs, marketing expenses, and taxes. (He may also dispose of any property that has "no reasonable fair market value.")

If there is money left over after the sale and deduction of expenses, the park owner must send it to your last known address. If the mailing is returned by the post office, then the park owner must forward the money to the Treasurer of State. The park owner cannot keep any money that is left over.

Unsafe or Unfit Conditions

What areas must the park owner take care of?



A park owner must promise that the space he rents and its facilities are "fit for habitation." This means that they are safe and healthy. For example, if your septic system backs up or your park road becomes impassable, the park owner must fix the problems. On the other hand, you must fix problems inside your home, unless they were caused by the park owner.

**What if the park facilities are unsafe or unhealthy?**

You can file a court action against the park owner. Before going to court you should take these steps:

- ☐ Talk with the park owner or manager about the problem.
- ☐ Talk with other tenants about the problem and meet as a group with the owner or manager.
- ☐ Contact the local code enforcement officer, plumbing inspector or fire chief and ask for an inspection.
- ☐ Contact the Maine Manufactured Housing Board:
35 State House Station
Augusta, ME 04333
Phone: 624-8612
TTY: 1-888-577-6690

If you still cannot resolve the problem, talk to a lawyer or Pine Tree Legal before going to court. Also, read the section about suing your landlord in court at page 14. The procedures and remedies are very similar.

What happens if I am forced to leave my mobile home during repairs?

If you must leave for a short time so things can be fixed, the park owner cannot charge you any rent until you move back in. If the owner offers you a reasonable place to stay, then the court will not order the park owner to pay for your costs of staying somewhere else.

Sale of Your Mobile Home**Can the park owner interfere if I want to sell my mobile home?**

No.

- The park owner **cannot** charge you a fee for selling, unless you asked him to sell it for you and signed a contract agreeing to pay him.
- The park owner **cannot** force you to hire him as your sales agent.
- The park owner **cannot** restrict any advertising you do, as long as it is reasonable.

You must tell the park owner before you put up any "For Sale" signs in the park.

If your mobile home was built before June 15, 1976, the park owner can require you to show that it meets the state standards. If the buyer plans to stay in the park, he should make sure that the park owner will accept him as a tenant. He can back out of a sale agreement within the first 30 days if the park owner does not agree to rent the lot to him.

He can also back out of the deal if the park owner wants the home removed because it does not meet state or park standards. The park owner cannot require removal because of **park** standards unless these standards are clearly stated in the park rules **and** are reasonable.

Sale of Mobile Home Park**Does the park owner have to let me know if he is selling the park?**

Yes, in most cases.

General rule: The park owner must give you and all other tenants 45 days written notice of his intent to sell. During the 45 days, he cannot contract to sell the park.

Exception: The park owner does not have to give the 45-day notice if the buyer's deed says that he cannot change the use of the park for two years after he buys it. This



deed restriction must also say that tenants have the right to enforce it.

What if the new owner tries to close the park anyway?

You can sue the new owner in Superior Court and ask the judge to order the buyer to keep renting the lots for at least two years.

You can also make a money claim for any damages you have suffered. You can sue alone or as a group of tenants or as a tenant association. If you have a lawyer, the judge can order the park owner to pay your lawyer fees if you win.

Notice



Pine Tree Legal Assistance
September 2011; partially revised October 2015

We have tried to make this accurate as of the date above. Sometimes the laws change. We cannot promise that this information will always be up to date and correct. If the date above is not this year, call us to find out if there is an update.

This information is not legal advice. By sending you this, we are not acting as your lawyer.

AMENDMENT TO ORDER 76-16/17 RE: DISCRIMINATION

PREPARED BY CORPORATION COUNSEL
FOR COUNCILOR SPENCER THIBODEAU, COUNCILOR JON HINCK, AND
MAYOR STRIMLING

AMENDMENT TO PORTLAND CITY CODE
CHAPTER 6, BUILDINGS AND BUILDING REGULATIONS,
RE: TENANT HOUSING RIGHTS

. . .
Tenant-Based Rental Assistance means any and all forms of
tenant-based rental assistance and vouchers, including but not
limited to:

- (a) Tenant-based rental assistance through the Section 8
Housing Choice Voucher Program, 42 U.S.C § 1437f (o)
- (b) Tenant-based rental assistance through the HOME
Investment Partnerships Act at title II of the Cranston-
Gonzalez National Affordable Housing Act, as amended, 42
U.S.C § 12701 et seq.;
- (c) Tenant-based rental assistance under the HUD-Veterans
Affairs Supportive Housing (HUD-VASH), authorized by § 8
(o) (19) of the United States Housing Act of 1937, 42
U.S.C. § 1437f (o) (19);
- (d) Tenant-based rental assistance through the Shelter
Plus Care Program authorized by title IV, subtitle F, of
the Stewart B McKinney Homeless Assistance Act, 42 U.S.C.
§§ 11403-11407b, as amended;
- (e) Tenant-based rental assistance through the Supportive
Housing Program authorized by title IV, subtitle F, of the
Stewart B McKinney Homeless Assistance Act, 42 U.S.C. §§
11381-11389, as amended;
- (f) Tenant-based rental assistance through the Section 8
Disaster Voucher Program (DVP);
- (g) Tenant-based rental assistance through the Housing
Opportunities for Persons with AIDS (HOPWA) Program, 42
U.S.C. § 12901 - 12912 as amended;

- (h) Tenant-based rental assistance through the Community Block Grant Program, 42 U.S.C. § 5301 et seq. as amended;
- (i) Tenant-based rental assistance through the Continuum of Care Program authorized by subtitle C of title IV of the McKinney-Vento Homeless Assistance Act, 42 U.S.C. §§ 11381-11389; and
- (j) Tenant-based rental assistance through the Rural Development Voucher Program authorized through § 542 of the Housing Act of 1949, as amended. See 78 Fed. Reg. 49374 (Aug. 14, 2013) (proposed rule); and
- (k) Tenant-based rental assistance through the Maine Bridging Rental Assistance Program, authorized by M.R.S. Title 34-B § 3011; and
- (l) Tenant-based rental assistance through the Maine State Housing Authority Home To Stay Program, M.R.S. Title 30-A § 4771; and
- (m) Tenant-based rental assistance through the Maine State Housing Authority Stability Through Engagement Program, M.R.S. Title 30-A § 4771; and
- (n) Tenant-based rental assistance through the City of Portland's Tennant Based Rental Assistance Program, M.R.S. Title 30-A § 4771;
- (o) Tenant-based rental assistance through the City of Portland's General Assistance Program, authorized by M.R.S. Title 22 § 4301 et seq.; and
- (p) Such other Tenant-based rental assistance or rental vouchers or rental coupons as may be authorized under any federal, state, or local program.

6-222. Discrimination prohibited in sale or rental of housing units.

(a) A tenant shall have the right to secure a rental housing unit without being refused that right on the basis of discrimination because of race, color, sex, sexual orientation, physical or mental disability, ancestry, national origin, or family status, pursuant to 5 M.R.S. Section 4581-A, et. seq., as amended from time to time.

(b) A landlord shall not refuse to rent or impose terms of tenancy on any tenant who is a recipient of federal, state or local public assistance, including medical assistance and housing subsidies primarily because of the individual's status as a recipient as described in 5 M.R.S. §4581-A(4), as amended from time to time.

(c) It shall be prohibited for a landlord to refuse to rent or negotiate for the rental of, or otherwise make unavailable or deny a dwelling to any tenant because of the tenant's source of income or because of the requirements of any program providing the source of income;

(d) It shall be prohibited for or a landlord to refuse to participate in or comply with any federal, state, or local requirements of a tenant-based rental assistance program, including, but not limited to the following:

- 1) Refusing to allow inspections of a dwelling by the public housing authority or other entity administering a tenant-based rental assistance program;
- 2) Refusing to make reasonable repairs necessary for the dwelling to meet the housing quality standards of the tenant-based rental assistance program; such repairs will be considered reasonable if they do not substantially alter or change the housing unit or do not require repairs substantially different from those that would be required to bring the rental unit into compliance with the Maine Warranty of Habitability Act or local building or housing codes applicable for new construction
- 3) Refusing to complete any necessary paperwork, including but not limited to such documents as the Request for Tenancy Approval form, the Housing Assistance Payments Contract, and the Tenancy Addendum or applicable General Assistance forms; and
- 4) Refusing to provide information required by the public housing authority or other entity administering the source of income or tenant-based rental assistance program;

. . .

AMENDMENT TO ORDER 76-16/17 RE: TRANSLATION

PREPARED BY CORPORATION COUNSEL
FOR COUNCILOR SPENCER THIBODEAU, COUNCILOR JON HINCK, AND
MAYOR STRIMLING

AMENDMENT TO PORTLAND CITY CODE
CHAPTER 6, BUILDINGS AND BUILDING REGULATIONS,
RE: TENANT HOUSING RIGHTS

. . .

6-224. Protection of tenants.

(a) The Planning Department or its designee shall create and make available on the City's publically accessible web site a plain language document that explains Tenancy at Will and the rights and responsibilities of tenants and landlords of rental property. The document shall include a checklist of required notices concerning environmental lead hazards, energy efficiency or radon testing, pursuant to 14 M.R.S. Sections 6030-B, 6030-C, and 6030-D, respectively, as amended from time to time. The document and any other documents produced in connection with this Article shall made available in multiple languages, including but not limited to: English, Somali, Arabic, Spanish, French, and Vietnamese. Additional languages may be included at the discretion of the City Manager or his/her designee.

. . .

AMENDMENT TO ORDER 76-16/17 RE: LEEWAY IN TERMINATIONS

PREPARED BY CORPORATION COUNSEL
FOR COUNCILOR SPENCER THIBODEAU, COUNCILOR JON HINCK, AND
MAYOR STRIMLING

AMENDMENT TO PORTLAND CITY CODE
CHAPTER 6, BUILDINGS AND BUILDING REGULATIONS,
RE: TENANT HOUSING RIGHTS

6-224. Termination of Tenancies-At-Will

- (1) In order to be terminated by a Landlord, tenancies-at-will must be terminated by providing a minimum of 90 days' written notice to Tenant except as provided below:
- (a) "For Cause" tenancies terminable on 7 days' notice pursuant to 14 M.R.S. § 6002(1) may be terminated in accordance with Section 6002(1);
 - (b) Short-term rentals with a term of fewer than 30 days' are exempt from the 90-day notice period outlined herein;
 - (c) Holdover tenancies are exempt from the 90 day notice period outlined herein;
 - (d) Where a Landlord provides \$500.00 reimbursement to Tenant for the inconvenience of termination, tenancies-at-will may be terminated by notice to the Tenant of sixty (60) to eighty-nine (89) days;
 - (e) Where a Landlord provides \$1000 reimbursement to Tenant for the inconvenience of termination, tenancies-at-will may be terminated by notice to the Tenant of thirty (30) to fifty-nine (59) days.
- (2) Reimbursement amounts outlined in subsections (c) and (d) above are lump-sum amounts payable in a single installment for the collective benefit of all tenants of a unit. Tenants are responsible for allocating the reimbursement amount among themselves.

6-225. Protection of tenants.

. . .

6-226. Tenant-Landord Advisory Committee

. . .

| 6-2276. Variation by agreement.

. . .

| 6-2287. Limitation of liabilities.

. . .

| 6-2296. Enforcement and remedies.

. . .

| 6-23026. Severability.

. . .

AMENDMENT TO ORDER 76-16/17 RE: OMBUDSPERSON

PREPARED BY CORPORATION COUNSEL
FOR COUNCILOR SPENCER THIBODEAU, COUNCILOR JON HINCK, AND
MAYOR STRIMLING

AMENDMENT TO PORTLAND CITY CODE
CHAPTER 6, BUILDINGS AND BUILDING REGULATIONS,
RE: TENANT HOUSING RIGHTS

. . .
6-227. Housing Ombudsperson.

- (a) Duties. The City Manager shall hire or appoint an employee to serve as the City's Housing Ombudsperson. The Ombudsperson shall responsible for fielding questions from landlords and tenants regarding federal, state, and local housing laws, rules and ordinances as well as furnishing a list of available resources, when needed. The Ombudsperson shall also be responsible for oversight and enforcement of the Leeway Program.
- (b) Voluntary Tenant/Landlord Mediation. At the request of both the Landlord and Tenant the Ombudsperson may review disputes between the Landlord and Tenant regarding a tenancy and make recommendations regarding the resolution of the dispute. Neither party shall be prejudiced by seeking mediation through the Ombudsperson and it shall be non-binding be available to receive questions or complaints from either tenants or landlords.

. . .

IN COUNCIL SPECIALMEETING OCTOBER 5, 2016 VOL. 133 PAGE 22

ROLL CALL: Mayor Strimling called the meeting to order at 5:00 P.M. (Councilor Thibodeau absent).

ANNOUNCEMENTS: Councilor Ray announced that at the October 17th City Council meeting she will be putting on the agenda for October 17, 2016 a moratorium regarding City Parks and Public Grounds in the R-6 Zone on the Portland Peninsula.

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:

Motion was made by Councilor Costa and seconded by Councilor Duson for passage of the minutes of the September 19, 2016 Regular City Council meeting.

Motion was made by Councilor Hinck and seconded by Councilor Costa to amend the minutes by striking out on Order 61 “and has done work for ImmuCell Corporation.” Passage 8-0.

PROCLAMATIONS:

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

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

APPOINTMENTS:

CONSENT ITEMS:

LICENSES:

Order 61A -16/17 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.

IN COUNCIL SPECIALMEETING OCTOBER 5, 2016 VOL. 133 PAGE 23

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

Order 62 -16/17 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.

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

BUDGET ITEMS:

COMMUNICATIONS:

Com 2-16/17 Communication Re: City Code Chapter 17, Article VIII. Recreational Use of Marijuana by Adults 21 Years of Age or Order – 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.

RESOLUTIONS:

UNFINISHED BUSINESS:

Order 57-16/17 Order Approving the Riverside Recycling Facility Agreement with CPRC Group, LLC – Sponsored by Jon P. Jennings, City Manager. This item was given first reading on September 19, 2016.

Motion was made by Councilor Hinck and seconded by Councilor Ray to pass Order 57 as an emergency. Passage 8-0.

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. This item was given first reading on September 19, 2016.

Motion was made by Councilor Ray and seconded by Councilor Costa for passage.

Motion was made by Councilor Mavodones and seconded by Councilor Suslovic to postpone Order 58 to the October 17, 2016 City Council Meeting. Passage 8-0.

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 item was given first reading on September 19, 2016.

Motion was made by Councilor Duson and seconded by Councilor Costa to postpone Order 59 to the November 7th City Council meeting. Passage 8-0.

Order 60-16/17 Order Reappropriating Unspent Bond Proceeds Re: Moody-Wilson Storm Drain – Sponsored by Jon P. Jennings, City Manager. This item was given first reading on September 19, 2016.

Motion was made by Councilor Suslovic and seconded by Councilor Ray for passage as an emergency. Passage 8-0.

ORDERS:

Order 63 -16/17 Order Amending the Sidewalk Materials Policy and Map – Sponsored by Jon Jennings, City Manager

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

Order 64-16/17 Order Setting Time For Opening of Polls on November 8, 2016 RE: Presidential and General Municipal Election – Sponsored by Katherine L. Jones, City Clerk.

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

IN COUNCIL SPECIALMEETING OCTOBER 5, 2016 VOL. 133 PAGE 25

Order 65-16/17 Order Approving and Allocating Cumberland County HOME Consortium Funds – Sponsored by the Housing Committee, Jill Duson, Chair.

This is its first reading.

AMENDMENTS:

Order 66-16/17 Amendment to Zoning Map Re: Congress Square as Recreation Open Space (ROS) – Sponsored by the Planning Board, Elizabeth Boepple, Chair.

This is its first reading.

Order 67-16/17 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.

This is its first reading.

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.

Motion was made by Councilor Duson and seconded by Councilor Ray to move into executive session pursuant to 1 M.R.S. Section 405 (6)E. Passage 8-0.

Motion was made by Councilor Duson and seconded by Councilor Ray to move out of executive session. Passage 8-0, 7:25 P.M.

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.

Motion was made by Councilor Costa and seconded by Councilor Suslovic to adjourn the Regular City Council meeting and go into Executive Session pursuant to 1 M.R.S. section 405 (6)(A). Passage 8-0, 7:40 P.M.

Motion was made by Councilor Ray and seconded by Councilor Duson to come out of executive session. Passage 7-0, (Suslovic gone), 9:51 P.M.

LICENSE RENEWALS:

A TRUE COPY.

Katherine L. Jones, City Clerk