

Regular City Council Meeting
February 6, 2017

1. Agenda Only

Documents:

[AGENDA ONLY 2017-02-06.PDF](#)

2. Agenda And Packet

Documents:

[AGENDA AND PACKET 2017-02-06.PDF](#)

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

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

AGENDA
REGULAR CITY COUNCIL MEETING
FEBRUARY 6, 2017

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

PLEDGE OF ALLEGIANCE:

ROLL CALL:

ANNOUNCEMENTS:

RECOGNITIONS:

“Arts in the Chamber”, The Flukes (Ukulele Group)

APPROVAL OF MINUTES OF PREVIOUS MEETING:

(Tab 1) January 18, 2017 City Council Meeting Minutes

PROCLAMATIONS:

Proc 19-16/17 Proclamation Honoring Officer Matthew Pavlis as Police Officer of the
(Tab 2) Month for December 2016 – Sponsored by Mayor Ethan K. Strimling.

APPOINTMENTS:

CONSENT ITEMS:

Order 121-16/17 Order Approving Transfer of Funds Under 15 M.R.S. Section 5821(6)
(Tab 3) et seq. Re: Victor Kohutka – Sponsored by Jon P. Jennings, City
Manager.

This order authorizes the City Council to approve the transfer of \$6,679.00 in forfeited assets from the State of Maine to the City of Portland from the case of the State of Maine v. Victor Kohuta.

The money was seized during a drug investigation conducted by the M.D.E.A. in conjunction with the Portland Police Department. The money will be deposited into the Portland Police Department’s drug investigation account.

The money is used to offset the costs of drug investigations, such as drug analysis, drug purchases, covert surveillance, surveillance equipment, drug training and protective gear, such as body armor. The money may also be used to support the department's Law Enforcement Addiction Advocacy Program.

**Order 122-16/17
(Tab 4)**

Order Approving Transfer of Funds Under 15 M.R.S. Sections 5824(3) and 5826(6) Re: Brandon York – Sponsored by Jon P. Jennings, City Manager.

This order authorizes the City Council to approve the transfer of \$1,000 in forfeited assets from the State of Maine to the City of Portland from the case of the State of Maine v. Brandon York.

The money was seized during a drug investigation conducted by the M.D.E.A. in conjunction with the Portland Police Department. The money will be deposited into the Portland Police Department's drug investigation account. The money is used to offset the costs of drug investigations, such as drug analysis, drug purchases, covert surveillance, surveillance equipment, drug training and protective gear, such as body armor. The money may also be used to support the department's Law Enforcement Addiction Advocacy Program.

Five affirmative votes are required for passage of the Consent Calendar items.

LICENSES:

**Order 123-16/17
(Tab 5)**

Order Granting Municipal Officers' Approval of The Pig Exchange, LLC d/b/a The Thirsty Pig. Application for a Class A Lounge License At 37 Exchange Street – Sponsored by Michael Russell, Permitting and Inspections Director.

Application filed on 1/11/2017. Applicant holds a current Class III and Class IV License which includes a license for Entertainment with no dance and Outdoor Dining. They are upgrading to include spirituous liquors for purposes of catering.

Five affirmative votes are required for passage after public comment.

BUDGET ITEMS:

COMMUNICATIONS:

RESOLUTIONS:

UNFINISHED BUSINESS:

ORDERS:

**Order 124-16/17
(Tab 6)**

Order Accepting 2016 Annual Report and 2017 Budget Plan of the Portland Public Art Committee - Sponsored by Lin Lisberger, Chair of the Portland Public Art Committee.

The Portland Public Art Ordinance requires the Portland Public Art Committee to make an Annual Report to the Council to present an Annual Public Art Plan with proposed budget for the Council's consideration.

Five affirmative votes are required for passage after public comment.

**Order 125-16/17
(Tab 7)**

Order Granting a Utility License at the Portland Technology Park to Oxford County Telephone Service Co. – Sponsored by Jon P. Jennings, City Manager.

The road through the Portland Technology Park, named Technology Park Drive, is owned by the City. An existing communications duct bank, also owned by the City, runs under the road. Oxford Networks needs a Revocable License from the City in order to be able to install fiber optic cable in the communications duct bank to serve the Patrons Oxford Insurance Co. building that is being constructed at the Park.

Five affirmative votes are required for passage after public comment.

**Order 126-16/17
(Tab 8)**

Order Approving Agreement Between Portland and Maine Department of Transportation Re: Veranda Street Paving – Sponsored by Jon P. Jennings, City Manager.

City Council Order 103-16/17 previously authorized the City to enter into a three-party agreement with MaineDOT and Portland Area Comprehensive Transportation System. That agreement covered only the design phase for a specific paving project on Veranda St (between Wordsworth St. and the Martin's Point Bridge). This two-party agreement covers the bid and construction phase responsibilities.

This two-party agreement stipulates financial and other obligations related to highly leveraged Collector Road pavement preservation utilizing Federal and Local funds. Entering into this agreement allows MaineDOT to proceed with bidding and construction so paving will occur in 2017, inclusive of as-needed City Utility structure adjustments.

The City of Portland owes a 25% local match to this \$299,000 paving project; the agreement estimates that cost as \$74,750. Additionally, the City must pay 100% of its Utility systems costs estimated at \$12,000. The estimated City cost obligation is, therefore, \$86,750. These funds will be drawn from PACTS project capital funding in the city's Capital Improvement Program.

These costs are slightly higher than the estimate contained in the three-party agreement authorized by Order 103 16/17. The Local Match was reduced, but that was offset by the addition of the City's Utility systems costs.

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

AMENDMENTS:

**Order 127-16/17
(Tab 9)**

Amendment Portland City Code Chapter 10 Fire Prevention and Protection Re: Smoke Alarms, Re-inspection Fees, Open Burning, False Alarms and Inspection and Enforcement - Sponsored by the Health & Human Services Committee, Councilor Belinda Ray, Chair.

On January 10, 2017 the Health & Human Services Committee met and voted 3-0 to forward this item to the City Council with a recommendation for passage.

The Portland Fire Department proposes to make the following changes to Chapter 10:

- Amend the requirements for smoke alarms in existing one- and two-family dwellings;
- Increase re-inspection fees to make them consistent with re-inspection fees for other departments;
- Amend the open burning requirements to make them consistent throughout the City;
- Change the calculation for false alarms from calendar year to rolling 12-month basis; and
- Clarify inspection and enforcement provisions.

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

**Order 128-16/17
(Tab 10)**

Amendment to Portland City Code Chapter 14 Land Use, Article V. Site Plan Re: Fort Sumner Park Height Overlay – Sponsored by the Planning Board, Elizabeth Boepple, Chair.

On January 24, 2017, the Planning Board met and voted unanimously, 6-0 (Dundon absent) to forward this item to the City Council with a recommendation for passage.

The Moratorium Order 73-16/17, which placed a moratorium on development near Fort Sumner Park and which passed on November 21, 2016, expires on February 6, 2017. The Planning Staff recommends that the Council adopt the proposed amendments, including this order and the two orders following, retroactively to the expiration date of the moratorium.

City staff is requesting City Council approval of the proposed text amendment to the Division 7 R-6 Residential Zone, establishing the Fort Sumner Park Overlay Zone.

This text amendment would establish an absolute height limit for new developments and/or additions tied to the elevation of the viewing platform at Fort Sumner Park, 160.27 feet above mean sea level. Permissible building heights for developments occurring within this zone would be reduced by 1 vertical foot for every 25 feet the structure stands away from the identified apex point.

This text amendment also includes a provision for building setbacks of 15 feet and would require advisory review of all projects occurring within the proposed overlay zone by the Park Commission.

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

**Order 129-16/17
(Tab 11)**

**Amendment to Zoning Map Re: Fort Sumner Park R6 to ROS
– Sponsored by the Planning Board, Elizabeth Boepple, Chair.**

On January 24, 2017, the Planning Board met and voted unanimously, 6-0 (Dundon absent) to forward this item to the City Council with a recommendation for passage.

City staff is requesting City Council approval of the proposed map amendment to rezone three parcels comprising Fort Sumner Park and a City held Land Bank property from R-6 Residential to ROS Recreation Open Space. This map amendment would extend between the centerlines of North Street and Sheridan Street and prohibit future incongruous development within this municipal park and would further protect its historic and scenic attributes.

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**Order 130-16/17
(Tab 12)**

**Establishment of the Fort Sumner Park Overlay Zone – Sponsored by
the Planning Board – Elizabeth Boepple, Chair.**

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City staff is requesting City Council approval of the proposed map amendment to establish the Fort Sumner Park Overlay Zone. This map amendment would establish the geographic area linked with the proposed text amendment, establishing a zone in which additional regulatory standards, intended to protect the panorama at Fort Sumner Park, would apply. This zone would extend 200 feet from an identified key apex point located in the center of the viewing platform at Fort Sumner Park. This zone would encompass areas roughly to the north, south and west of the apex point within a 180 degree arc whose line runs through the key apex point parallel to the centerline of Sheridan Street. The proposed overlay zone does not encompass parcels located in either the B-2b or C-46 zone that fall within the 200-foot arc.

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

ETHAN K. STRIMLING (MAYOR)
BELINDA S. RAY (1)
SPENCER THIBODEAU (2)
BRIAN E. BATSON (3)
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6:00 P.M. PUBLIC COMMENT PERIOD ON NON-AGENDA ITEMS:

Tab 1 2/6/17

IN COUNCIL SPECIAL MEETING JANUARY 18, 2017 VOL. 133 PAGE 53

ROLL CALL: Mayor Strimling called the meeting to order at 5:30 P.M. (Councilor Costa arrived during "arts in the chamber").

ANNOUNCEMENTS:

RECOGNITIONS:

"Arts in the Chamber", Apollonian Ballet

APPROVAL OF MINUTES OF PREVIOUS MEETING:

Motion was made by Councilor Duson and seconded by Councilor Costa to approve the meeting of the January 4, 2017, City Council Meeting and the January 9, 2017, Special City Council Meeting – State of the City Address. Passage 9-0.

PROCLAMATIONS:

APPOINTMENTS:

Order 114-16/17 Order Appointing the Executive Board of the Portland Technology Park Condominium Association – Sponsored by Jon P. Jennings, City Manager.

This order appoints the following individuals to the Executive Board of the Portland Technology Park Condominium Association:

Jon P. Jennings, City Manager	President
Chris Branch, Public Works Director	Treasurer
Mark Pettingill, CEO, Patrons Oxford	Secretary

Motion was made by Mayor Strimling and seconded by Councilor Costa to amend Order 114 by striking Mark Pettingill and adding Eric Swanson as Secretary. Passage 9-0.

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

Order 115-16/17 Order Appointing Christopher A. Huff Tax Assessor – Sponsored by Jon P. Jennings, City Manager.

Motion was made by Councilor Ray and seconded by Councilor Thibodeau to waive the seconded reading. Passage 9-0.

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

CONSENT ITEMS:

Order 116-16/17 Order Approving Transfer of Funds Under 15 M.R.S. §§5824(3) and 5826(6) Re: Kenyatta Martin – Sponsored by Jon P. Jennings, City Manager.

Order 117-16/17 Order Approving Transfer of Funds Under 15 M.R.S. §§5824(3) and 5826(6) Re: Abdalla Dud – Sponsored by Jon P. Jennings, City Manager.

Motion was made by Councilor Batson and seconded by Councilor Thibodeau for passage of the consent items. Passage 9-0.

LICENSES:

Order 118-16/17 Order Granting Municipal Officers' Approval of Forefront Brick South, LLC d/b/a Forefront Brick South Catering Company. Application for a Qualified Catering Class 1 with Entertainment with Dancing and with Outdoor Dining on Private Property at 8 Thompson's Point Road – Sponsored by Michael Russell, Permitting and Inspections Director.

Councilor Thibodeau recused himself, he represents Thompsons Point.

Motion was made by Councilor Brenerman and seconded by Councilor Ray for passage. Passage 8-0.(Thibodeau recused).

Order 119-16/17 Order Granting Municipal Officers' Approval of Oscar Pizza LLC d/b/a Otto. Application for a Class I FSE License at 225 Congress Street – Sponsored by Michael Russell, Permitting and Inspections Director.

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

Order120-16/17 Order Granting Municipal Officers' Approval of Oscar Pizza LLC d/b/a Otto. Application for a Class I FSE License at 576 Congress Street – Sponsored by Michael Russell, Permitting and Inspections Director.

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

BUDGET ITEMS:

IN COUNCIL SPECIAL MEETING JANUARY 18, 2017 VOL. 133 PAGE 55
COMMUNICATIONS:

**Com-8-16/17 Communication Re: Membership of the Hall School Building
Committee – Sponsored by Mayor Ethan K. Strimling.**

This communication appoints Councilor Brian Batson to the Hall School Building Committee. It also designates current committee members Councilor Nicholas Mavodones and School Board Member Laurie Davis as Co-Chairs. Prior Chair and former Councilor Ed Suslovic will remain on the Building Committee as a member representing the public.

RESOLUTIONS:

UNFINISHED BUSINESS:

**Order 102-16/17 Traffic Schedule Amendment Re: Junior Street to No Parking -
– Sponsored by Councilor David Brenerman and Jon P. Jennings, City
Manager. This item was given first reading on December 5, 2016.
Postponed on December 10, 2016.**

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

**Com 7-16/17 Communication Re: Harbor Commission Revised Rules Section 12.3
Mooring Fees – Sponsored by Jon P. Jennings, City Manager.**

EXECUTIVE SESSION:

**Executive Session Re: Bargaining Guidance for Portland Police
Benevolent Association and Portland Police Superior Officers Pursuant
to 1 M.R.S. Section 405(6)(D) - Sponsored by Jon P. Jennings, City
Manager.**

Motion was made by Councilor Ray and seconded by Councilor Thibodeau to adjourn the City Council meeting and move into Executive Session. Passage 9-0, 6:15 P.M.

Motion was made by Councilor Costa and seconded by Councilor Duson to move out of Executive Session. Passage 9-0, 7:59 P.M.

A TRUE COPY.

Katherine L. Jones, City Clerk

Dec 19-16/17
Tab 2 2-6-17

PROCLAMATION
HONORING
OFFICER MATTHEW PAVLIS

WHEREAS, **Officer Pavlis** holds a Bachelor of Science degree in criminology from Thomas College and joined the Police Department in December 2008 and serves as a member of the United States Air National Guard; and

WHEREAS, **Officer Pavlis** is recognized for his caring and compassionate approach to policing. During the cold winter weather he sought out those in vulnerable situations and worked to get them to warm, dry and safe locations; and

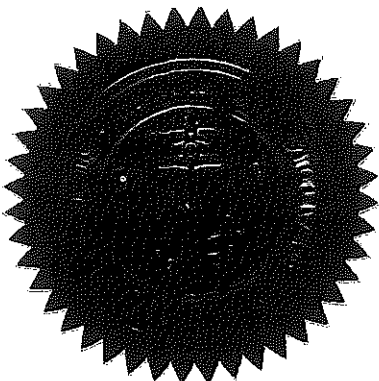
WHEREAS, **Officer Pavlis** is additionally recognized for locating a missing person suffering from Alzheimer's who had been wandering outside in the winter; and

WHEREAS **Officer Pavlis** is described as a proactive and extremely reliable Officer who's kindness and consideration continues through his demanding schedule; and

WHEREAS, **Officer Pavlis** is commended for his exemplary performance and outstanding representation of the Portland Maine Police Department.

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

Signed and sealed this 6th day of February 2017



Ethan K. Strimling, Mayor
City of Portland, Maine

Order 121 16/17
Tab 3 2-6-17

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

CITY OF PORTLAND
IN THE CITY COUNCIL

DAVID H. BRENERMAN (5)
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PIOUS ALI (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

ORDER APPROVING TRANSFER OF FUNDS UNDER
15 M.R.S. SECTION 5821(6) ET SEQ.
RE: VICTOR KOHUTKA

ORDERED, that the City Council hereby accepts the amount of \$6,679.00 in forfeited assets in the case of State of Maine vs. Victor Kohutka from the State of Maine to the City of Portland, pursuant to 15 M.R.S. Section 5821(6) et seq. and as provided in the attached Approval of Transfer.

MEMORANDUM
City Council Agenda Item

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

FROM: Richard Bianculli, Neighborhood Prosecutor (Police)

DATE: January 6, 2017

SUBJECT: Civil Forfeiture Approval Request

SPONSOR: N/A

(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: NEXT AVAILABLE (2/6/17)
1st reading _____ **Final Action** X

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

PRESENTATION: Brief presentation by Richard Bianculli, Neighborhood Prosecutor, regarding the Superior Court judgment and statutory transfer requirements.

I. ONE SENTENCE SUMMARY

The statute requires Council approval of the Court-approved transfer of forfeited assets (\$6,679.00) to the Portland Police Department.

II. AGENDA DESCRIPTION

Portland Police seized assets that were deemed to be either proceeds from the sale of illicit substances or assets intended to be furnished in exchange for illicit substances. A judgment has been received by the Superior Court awarding the assets to the State and allowing transfer to the City of Portland. The Civil Forfeiture statute, 15 M.R.S.A. § 5824 (3) and § 5826(6), requires that before any forfeitable item may be transferred to a State agency, County or municipality, the legislative body of that entity must publicly vote to accept the item.

III. BACKGROUND

See attached judgment.

IV. INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED

The amount of \$6,679.00 may be transferred to the Portland Police Department.

V. FINANCIAL IMPACT

No negative financial impact. The funds will be used to offset the costs of drug investigation and prosecution efforts.

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

N/A

VII. RECOMMENDATION

Staff recommends approval.

VIII. LIST ATTACHMENTS

- (a) Superior Court judgment.
- (b) City approval form.

Prepared by: Richard Bianculli

Date: January 6, 2017.

STATE OF MAINE
Cumberland, ss

SUPERIOR COURT
Docket No. CV-2016-0024

STATE OF MAINE,)
Plaintiff,)
)
)
v.)
)
\$6,679.00 in U.S. Currency,)
Defendant(s) *In Rem*,)
)
and)
)
VICTOR KOHUTKA,)
Party-in-Interest.)

CITY OF PORTLAND
APPROVAL OF TRANSFER
15 MRS §§ 5821(6) et seq.

NOW COMES the City of Portland, Maine, by and through its legislative body, the City Council, and does hereby grant approval pursuant to Section 5821(6) et seq. of Title 15 of the Maine Revised Statutes, to the transfer of the above captioned Defendant *In Rem*, namely \$6,679.00 in US Currency, on the grounds that the City of Portland Police Department did make a substantial contribution to the investigation of this or a related criminal case.

WHEREFORE, the Portland City Council does hereby approve of the transfer of the Defendant *In Rem* to the City of Portland, Maine pursuant to 15 M.R.S. Section 5821(6) et seq.

Dated: _____, 2017.

Mayor

(Impress Legislative Body Seal Here)

STATE OF MAINE

SUPERIOR COURT

Cumberland, ss

STATE OF MAINE,

Plaintiff,

v.

Docket No. PORSC-CV-2016-0024

\$6,679.00 IN U.S. CURRENCY,

Defendant *In Rem*,

and

VICTOR KOHUTKA,

Party-in-Interest.

STATE OF MAINE
Cumberland, ss. Clerk's Office

JAN 04 2017

RECEIVED

ORDER AND JUDGMENT

A hearing on Plaintiff's Petition For Asset Forfeiture Pursuant To 15 M.R.S. § 5821 *et seq.* was held January 3, 2017 at 1:00 p.m. The State and Party-in-Interest Victor Kohutka were previously provided with proper notice of the proceedings.

Shortly before the scheduled 1 p.m. start time, the Clerk's Office received a telephone call from a person identifying himself as Victor Kohutka. The person advised the Clerk that he was in Lewiston and was unable to obtain transportation to the court. On being advised of the telephone call, Plaintiff State objected to the hearing being postponed, noting that its three witnesses were present at court, and also pointing out that Mr. Kohutka had previously failed to appear in this case. The court elected to proceed with the hearing. The hearing was electronically recorded.

The State presented the testimony of Nicholas Gowen and Daniel Townsend, both of whom are Portland police officers who participated in the seizure of the \$6,679 in cash that is the subject of the State's Petition. The State also presented the testimony of Ashley Wade, a

Lewiston police officer who had contact with Mr. Kohutka relevant to the \$6,679 in cash.

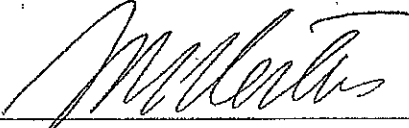
After the close of the evidence, the court orally made findings of fact and conclusions of law on the record, and ruled that the State had met its burden of persuasion to prove by a preponderance of the evidence that the \$6,679 in cash was "furnished or intended to be furnished by any person in exchange for a scheduled drug in violation of Title 17-A, chapter 45" or was "money . . . used or intended to be used to facilitate any violation of Title 17-A, chapter 45." 15 M.R.S. § 5821(6). The court also decided that Mr. Kohutka did not have any right, title or interest in the \$6,679 in cash. The entirety of the court's oral findings and conclusions are hereby incorporated by reference in this Order and Judgment.

On the basis of the entire record, it is hereby ORDERED AND ADJUDGED AS FOLLOWS:

1. The \$6,679 in cash that is the subject of the State's Petition for Asset Forfeiture was lawfully seized by the Portland Police Department pursuant to 15 M.R.S. § 5821(6).
2. Judgment is granted to the plaintiff, the State of Maine as prayed for in the Petition. The \$6,679 in cash is hereby adjudged forfeited to the State of Maine.
3. By consent of the Attorney General pursuant to 15 M.R.S. § 5822(4)(A), the forfeited property shall be transferred forthwith to the City of Portland.

Pursuant to M.R. Civ. P. 79(a), the Clerk is directed to incorporate this Order and Judgment by reference in the docket.

Dated: January 4, 2017


A. M. Horton, Justice

STATE OF MAINE
Cumberland, ss

SUPERIOR COURT
Docket No. CV-2016-0024

STATE OF MAINE,)
Plaintiff,)
)
)
v.)
)
\$6,679.00 in U.S. Currency,)
Defendant(s) *In Rem*,)
)
and)
)
VICTOR KOHUTKA,)
Party-in-Interest.)

CITY OF PORTLAND
APPROVAL OF TRANSFER
15 MRS §§ 5824(3), 5826(6)

NOW COMES the City of Portland, Maine, by and through its legislative body, the City Council, and does hereby grant approval pursuant to Section 5824(3) and Section 5826(6) of Title 15 of the Maine Revised Statutes, to the transfer of the above captioned Defendant *In Rem*, namely \$6,679.00 in US Currency, on the grounds that the City of Portland Police Department did make a substantial contribution to the investigation of this or a related criminal case.

WHEREFORE, the Portland City Council does hereby approve of the transfer of the Defendant *In Rem* to the City of Portland, Maine pursuant to 15 M.R.S. §§ 5824(3) and 5826(6).

Dated: _____, 2017.

Chairperson/Mayor/Selectman/Clerk

(Impress Legislative Body Seal Here)

*Order 122-16/17
Tab 4 2-6-17*

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

**CITY OF PORTLAND
IN THE CITY COUNCIL**

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

**ORDER APPROVING TRANSFER OF FUNDS UNDER
15 M.R.S. §§ 5824(3) and 5826(6)
RE: BRANDON YORK**

ORDERED, that the City Council hereby accepts the amount of \$1,000.00 in forfeited assets in the case of State of Maine vs. Brandon York from the State of Maine to the City of Portland, pursuant to 15 M.R.S. § 5824(3) and § 5826(6) and as provided in the attached "Approval of Transfer."

STATE OF MAINE
Cumberland, SS

UNIFIED CRIMINAL DOCKET
Criminal Action
Docket No. CR-15-4998

State of Maine

v.

Brandon York,
Defendant

}
}
}
}
}
}
}
}
}
}

City of Portland
Approval of Transfer
15 M.R.S. §5824(3)
and §5826(6)

AND
\$7,700.00 US CURRENCY
DEFENDANT IN REM

NOW COMES the City of Portland, Maine, by and through its legislative body, the City Council, and does hereby grant approval pursuant to Section 5824(3) and Section 5826(6) of Title 15 of the Maine Revised Statutes, to the transfer of any portion of the above captioned Defendant(s) *In Rem*, \$7,700.00 US Currency, namely \$1,000.00 US Currency, on grounds that the City of Portland Police Department did make a substantial contribution to the investigation of this or a related criminal case.

WHEREFORE, the Portland City Council does hereby approve of the transfer of the Defendants *In Rem*, to the City of Portland, Maine pursuant to 15 M.R.S. §5824(3) and §5826(6).

Dated: _____

Mayor
(Impress Legislative Body Seal Here)

Order 123 - 16/17
Tab 5 2-6-17

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

CITY OF PORTLAND
IN THE CITY COUNCIL

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

ORDER
GRANTING MUNICIPAL OFFICERS'
APPROVAL OF:

**The Pig Exchange, LLC d/b/a The Thirsty Pig. Application for a Class A Lounge License
at 37 Exchange Street.**

January 4, 2017

To The Mayor of Portland and Members of the City Council,

In recent years The Thirsty Pig has expanded it's services beyond operating as a Restaurant and Bar to offering Catering services. The relationships we have built with local craft beer brewers has made for some wonderful collaborations that have generated revenue for the local economy and attracted local residents and out of town visitors to the local food and beer scene in Portland. The Thirsty Pig has had the honor of catering events at local breweries, each time filing for an individual event license with the City of Portland. This is the reason for wanting to file for a change in License from a Class III & IV to a Class X License. With a Class X License we would participate in more local collaborations with Maine breweries by catering their events, and be able to provide more catering services to local offices, businesses, and individuals. The Thirsty Pig will remain with the current alcoholic beverage options of Wine, Beer and Cider, there are no plans to have a full liquor bar in the restaurant. We look forward to continuing to serve the City of Portland high quality product and services, and connecting people with other local businesses to keep Portland thriving. Thank you for your time and consideration in this matter.

Sincerely,

Allison B. Stevens
Owner of The Thirsty Pig
37 Exchange Street
Portland, ME 04101

Portland, Maine



Yes. Life's good here.

Permitting and Inspections Department
 Michael A. Russell, MS, Director
 389 Congress St. Room 307 • 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):	The Thirsty Pig Phone: 207-773-2469
Location Address:	37 Exchange Street Zip: 04101
If new, what was formerly at this location:	
Mailing Address:	37 Exchange Street Zip: 04101
Contact Person:	Allison B. Stevens Phone: 207-245-4056
Contact Person Email:	allisonstevens56@hotmail.com
Manager of Establishment:	Allison B. Stevens Date of Birth: 10/11/80 Phone: 207-245-4056
Owner of Premises (Landlord):	Albert Palacci
Address of Premises Owner:	4761 Broadway, NY, NY 10034 Zip: 10034

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	
The Pig Exchange, LLC		37 Exchange Street Zip: 04101	
Contact Person:	Allison Booth Stevens	Phone:	207-245-4056
Principal Officers	Title	Date of Birth	Residence Address
Allison Booth Stevens	owner	10/11/80	Upper A. St., Peaks Island, ME

About Your Establishment

Class of Liquor License:	III IV Class A Lounge
Type of food served:	Sausages, hot dogs, pub snacks
Please circle all that will be served:	☒ Beer ☒ Wine ☐ Liquor
Projected percentage of sales:	Generated from Food: 33.44% Generated from Alcohol: 61.18%
Hours & days of operation:	Mon-Thur 11-10, Fri-Sat 11

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: .25 miles from church	
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: _____ # of pool tables: _____	
What is your targeted opening date?	
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): Allison Booth Stevens, The Pig Exchange LLC, 37 Exchange Street	
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, Allison Stevens do hereby swear and affirm that every employee in my establishment that serves alcohol to the public has attended server training, or will attend server training within 90 days of their hire. I also understand that at any time the City license administrator can, upon request, require me to produce Server Training certificates for each employee that serves alcohol to the public in my establishment. Failure to meet the training requirement imposed by section 15-41 may result in the denial of a liquor license pursuant to 28-A M.R.S.A. § 653 (2) (G).

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

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

Signature [Signature] Title Owner Date 1/3

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.

Portland, Maine



Yes. Life's good here.

Permitting and Inspections Department

Michael A. Russell, MS, Director

389 Congress St. Room 307 • Portland, ME 04101 • (207) 874-8557

www.portlandmaine.gov

Supplemental Application for Dancing and Entertainment License

License accompanies a City of Portland Food Service Establishment or Food Service Establishment with Alcohol license.

☒ Entertainment without Dancing: \$281 ☐ Entertainment with Dancing: \$504 ☐ After-Hours (1 a.m. to 3 a.m.): \$567

Business Information	
Business Name (d/b/a):	<i>The Thirsty Pig</i>
Location Address:	<i>37 Exchange Street</i>
Phone:	<i>207 773-2469</i>
Zip:	<i>04101</i>

About Your Establishment

Describe in detail the type and nature of the business and proposed entertainment: <i>Restaurant/Bar serving house-made sausages + hot dogs, local craft beer and wine. Live music performed weekly, no dancing - just listening to music.</i>	
Will music be electric, acoustical, or both? (Circle)	<i>both</i>
Will amplification be used?	<i>Y</i>
If yes, where and at what level?	
Will music be played (Circle all that apply):	<i>Inside Outside</i>
Will you permit dancing on the premises?	<i>N</i>
Will you permit dancing after 1:00 a.m.?	<i>N</i>
What is the distance to the nearest residential dwelling unit both inside and outside the building from where the entertainment will take place? <i>500 ft.</i>	
What is your targeted opening date?	<i>Business opened Jan 2011</i>
Does the issuance of this license directly or indirectly benefit any City employee(s)?	<i>N</i>
If Yes, list name(s) of employee(s) and department(s):	

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

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

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

Signature *[Signature]* Title *owner* Date *1/3/17*

For more information, refer to the City Code of Ordinance: Chapter 4 Amusements, at www.portlandmaine.gov

BUREAU OF ALCOHOLIC BEVERAGES AND LOTTERY OPERATIONS
DIVISION OF LIQUOR LICENSING AND ENFORCEMENT
8 STATE HOUSE STATION, AUGUSTA, ME 04333-0008
10 WATER STREET, HALLOWELL, ME 04347
TEL: (207) 624-7220 FAX: (207) 287-3434
EMAIL INQUIRIES: MAINE.LIQUOR@MAINE.GOV

DIVISION USE ONLY	
License No:	
Class:	By:
Deposit Date:	
Amt. Deposited:	
Cash Ck Mo:	

NEW application: ☐ Yes ☒ No

PRESENT LICENSE EXPIRES 12/29/17

INDICATE TYPE OF PRIVILEGE: ☒ MALT ☒ VINOUS ☒ SPIRITUOUS

INDICATE TYPE OF LICENSE:

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

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

REFER TO PAGE 3 FOR FEE SCHEDULE

ALL QUESTIONS MUST BE ANSWERED IN FULL

Corporation Name: <u>Pig Exchange, LLC</u>	Business Name (D/B/A) <u>The Thirsty Pig</u>
APPLICANT(S) (Sole Proprietor) DOB: <u>Allison Booth Stevens 10/11/80</u>	Physical Location: <u>37 Exchange Street</u>
DOB:	City/Town State Zip Code <u>Portland ME 04101</u>
Address <u>37 Exchange Street</u>	Mailing Address <u>37 Exchange Street</u>
City/Town State Zip Code <u>Portland ME 04101</u>	City/Town State Zip Code <u>Portland ME 04101</u>
Telephone Number Fax Number <u>207-245-4056</u>	Business Telephone Number Fax Number <u>207-773-2469</u>
Federal ID. # <u>45-3969465</u>	Seller Certificate #: or Sales Tax #: <u>1154094</u>
Email Address: Please Print <u>pig@thirstypigportland.com</u>	Website: <u>thirstypigportland.com</u>

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

Requested inspection date: January Business hours: 11a-10p

3. If a premise is a hotel, indicate number of rooms available for transient guests: 0

4. State amount of gross income from period of last license: ROOMS \$ 0 FOOD \$ 219,510.10 LIQUOR \$ 492,546.87

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: _____

9. Business records are located at: 37 Exchange Street, Portland, ME 04101

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

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

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

Name in Full (Print Clearly)	DOB	Place of Birth
Allison Booth Stevens	10/11/80	Watertown, NY

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 or indirectly in your license, if issued?

Yes ☐ No ☒ If Yes, give name: _____

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

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

Albert Palacci, 4761 Broadway, NY, NY 10034

17. Describe in detail the premises to be licensed: (On Premise Diagram Required) _____

60 indoor seats, 36 seasonal outdoor seats

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? 25 miles 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 & Enforcement 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 on 1/11, 20 17

Town/City, State

Date

Please sign in blue ink

Signature of Applicant or Corporate Officer(s)

Signature of Applicant or Corporate Officer(s)

Print Name

Print Name

FEE SCHEDULE

FILING FEE: (must be included on all applications).....	\$ 10.00
Class I Spirituous, 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 Spirituous, 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 Spirituous Only	\$ 550.00
CLASS II: Airlines; Civic Auditoriums; Class A Restaurants; Clubs with catering privileges; Dining Cars; Golf Clubs; Hotels; Indoor Ice Skating Clubs; Indoor Tennis Clubs; and Vessels.	
Class III Vinous Only	\$ 220.00
CLASS III: Airlines; Civic Auditoriums; Class A Restaurants; Clubs with catering privileges; Dining Cars; Golf Clubs; Hotels; Indoor Ice Skating Clubs; Indoor Tennis Clubs; Restaurants; Vessels; Pool Halls; and Bed and Breakfasts.	
Class IV Malt Liquor Only	\$ 220.00
CLASS IV: Airlines; Civic Auditoriums; Class A Restaurants; Clubs with catering privileges; Dining Cars; Golf Clubs; Hotels; Indoor Ice Skating Clubs; Indoor Tennis Clubs; Restaurants; Taverns; Pool Halls; and Bed and Breakfasts.	
Class V Spirituous, Vinous and Malt (Clubs without Catering, Bed & Breakfasts)	\$ 495.00
CLASS V: Clubs without catering privileges.	
Class X Spirituous, Vinous and Malt – Class A Lounge	\$2,200.00
CLASS X: Class A Lounge	
Class XI Spirituous, Vinous and Malt – Restaurant Lounge	\$1,500.00
CLASS XI: Restaurant/Lounge; and OTB.	

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

All fees must accompany application, make check payable to the Treasurer, State of Maine.

This application must be completed and signed by the Town or City 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
Division of Alcoholic Beverages and
Lottery Operations
Division of Liquor Licensing and Enforcement

Corporate Information Required for
Business Entities Who Are Licensees

For Office Use Only:

License #: _____

SOS Checked: _____

100% Yes ☐ No ☐

Questions 1 to 4 must match information on file with the Maine Secretary of State's office. If you have questions regarding this information, please call the Secretary of State's office at (207) 624-7752. Please clearly complete this form in its entirety.

1. Exact legal name: Pig Exchange, LLC
2. Doing Business As, if any: The Thirsty Pig
3. Date of filing with Secretary of State: 12/2011 State in which you are formed: Maine
4. If not a Maine business entity, date on which you were authorized to transact business in the State of Maine: _____
5. 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 (5 YEARS)	Date of Birth	TITLE	Ownership %
Allison Booth Stevens		10/11/80		100

(Stock ownership in non-publicly traded companies must add up to 100%.)

6. If Co-Op # of members: _____ (list primary officers in the above boxes)

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

Yes ☐ No ☒ If Yes, Name: _____ Agency: _____

8. 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 ☒

9. If Yes to Question 8, please complete the following: (attached additional sheets as needed).

Name: _____

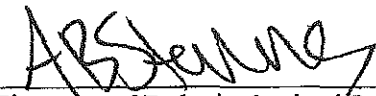
Date of Conviction: _____

Offense: _____

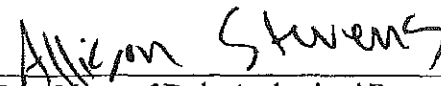
Location of Conviction: _____

Disposition: _____

Signature:


Signature of Duly Authorized Person

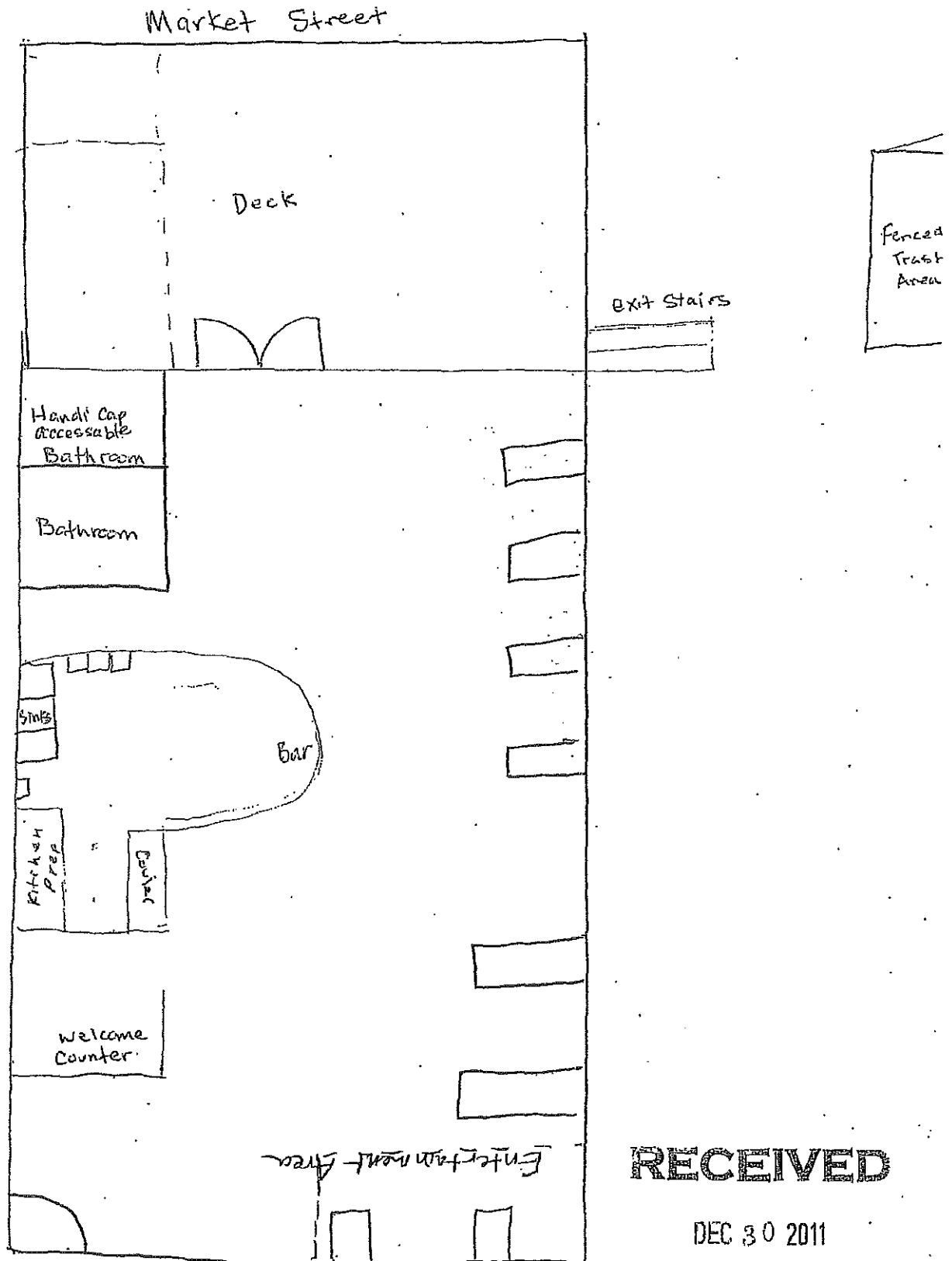

Date


Print Name of Duly Authorized Person

Submit Completed Forms To:

Bureau of Alcoholic Beverages
Division of Liquor Licensing and Enforcement
8 State House Station, Augusta, Me 04333-0008 (Regular address)
10 Water Street, Hallowell, ME 04347 (Overnight address)
Telephone Inquiries: (207) 624-7220 Fax: (207) 287-3434
Email Inquiries: MaineLiquor@Maine.gov

PREMISE DIAGRAM

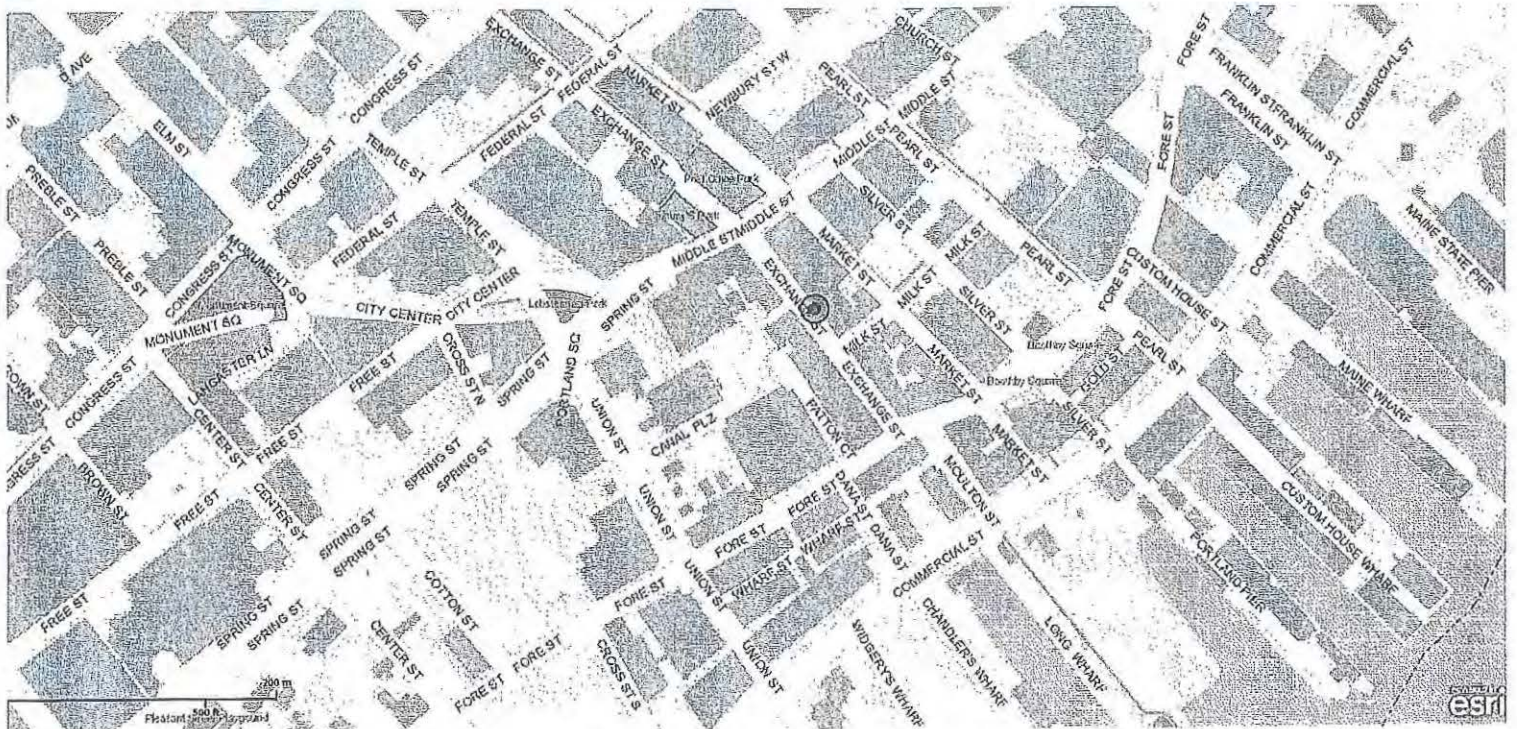


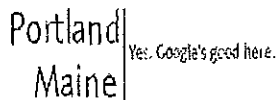
RECEIVED

DEC 30 2011

DEPT PUBLIC SAFETY
LIQUOR LICENSING & INSPECTION

EXCHANGE ST.
Public Safety





Jessica Hanscombe <jhanscombe@portlandmaine.gov>

Re: The Thirsty Pig Upgrade

Kevin Cashman <kevindc@portlandmaine.gov>

Fri, Jan 13, 2017 at 3:43 AM

To: Jessica Hanscombe <jhanscombe@portlandmaine.gov>

Cc: David Petruccelli <petruccellid@portlandmaine.gov>, Eric Cobb <ecobb@portlandmaine.gov>, Gary Rogers <garyr@portlandmaine.gov>, Keith Gautreau <kng@portlandmaine.gov>, Laurie Carlson <lac@portlandmaine.gov>, Melissa Caiazzo <mcaiazzo@portlandmaine.gov>, Tom Williams <tw@portlandmaine.gov>, Treasury Division <treasury@portlandmaine.gov>, Vernon Malloch <vwm@portlandmaine.gov>, Zoning <zoning@portlandmaine.gov>

No issues from PD.

Kevin C.

On Wed, Jan 11, 2017 at 11:22 AM, Jessica Hanscombe <jhanscombe@portlandmaine.gov> wrote:

Good Morning

Please see the attached application for the Thirsty Pig, 37 Exchange Street. They currently hold a Class III and Class IV License (malt & vinous) with Entertainment no dance and Outdoor dining. They are upgrading to a Class A Lounge for catering purposes.

They will be going before council on 2/6/2017

Same owner- The Pig Exchange LLC- Allison Stevens 207-245-4056 allisonstevens56@hotmail.com

Please advise via email with approvals. Thanks Jessica

 The Thirsty Pig.pdf

Jessica B. Hanscombe
Business License Specialist
389 Congress Street Room 307
Portland, Maine 04101
207-874-8783
jhanscombe@portlandmaine.gov

—
Lt. Kevin Cashman
Portland Police Department
Patrol Division
109 Middle St
Portland, Maine 04101
(O) 207-756-8294
kevindc@portlandmaine.gov

Portland, Maine



Yes. Life's good here.

Permitting and Inspections Department

Michael A. Russell, MS, Director

January 11, 2017

The Thirsty Pig
37 Exchange Street
Portland, Maine 04101

Re: The Pig Exchange, LLC d/b/a The Thirsty Pig. Application for a Class A Lounge License at 37 Exchange Street.

Dear Ms. Stevens,

This letter shall serve as a reminder of the Public Hearing before the Portland City Council on **Monday February 6th, 2017 at 5:30 p.m.**, for the review of your application for a Class A Lounge License at 225 Congress Street. The meeting will take place in Council Chambers on the 2nd floor of City Hall, 389 Congress Street, Portland, ME 04101.

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

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

Sincerely,

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

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

A Public Hearing will be held on February 6th at 5:30 P.M., in City Council Chambers, 389 Congress St., The Pig Exchange, LLC d/b/a The Thirsty Pig. Application for a Class A Lounge License at 37 Exchange Street. Sponsored by Michael Russell, Director of Permitting and Inspections.

*Order 124-16/17
Tab 6 2-6-17*

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

**CITY OF PORTLAND
IN THE CITY COUNCIL**

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

**ORDER ACCEPTING 2016 ANNUAL REPORT AND 2017 BUDGET PLAN
OF THE PORTLAND PUBLIC ART COMMITTEE**

ORDERED, that the 2016 Annual Report and 2017 Budget Plan of the Portland Public Art Committee, attached hereto as Attachment A, is hereby accepted.

MEMORANDUM
City Council Agenda Item

TO: Mayor and City Council

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

DATE: January 25, 2017

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

SUBJECT: **Order Accepting** the Portland Public Art Committee 2016 Annual Report and FY17 and FY18 Budget Plan

SPONSOR: Lin Lisberger, Chair, Portland Public Art Committee

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st reading N/A **Final Action** February 6, 2017

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)

Brief presentation by Lin Lisberger, Chair of the Portland Public Art Committee and Planning Staff (if necessary).

- I. SUMMARY OF ISSUE (Agenda Description)**
Order accepting the 2016 Annual Report and FY17/18 Budget Plan of the Portland Public Art Committee. Sponsored by Lin Lisberger, Chair of the Portland Public Art Committee.
- II. REASON FOR SUBMISSION (Summary of Issue/Background)**
The Portland Public Art Ordinance requires the Portland Public Art Committee to make an Annual Report to the Council to present an Annual Public Art Plan with proposed budget for the Council's consideration.
- III. INTENDED RESULT**
Present the 2016 Annual Public Art Report and FY17/18 Budget Plan. Acceptance of this report results in the approval of the proposed budget for the remainder of 2017 and for the fiscal year 2018.
- IV. COUNCIL GOAL ADDRESSED**
The Public Art Committee efforts seek to improve and enhance the quality of life of all Portland residents and visitors.
- V. FINANCIAL IMPACT**

The FY17/18 budget plan uses funds already within the PPAC budget, which are generated through the ½ % for Public Art in the CIP. Acceptance of the Annual Report and Budget Plan constitutes acceptance of the proposed budget allocations contained within the plan. The budget allocations for 2017 continue ongoing programs of conservation, community art, and the acquisition/commission of artwork for the Amethyst Lot. The budget allocations for 2018 include additional conservation work.

VI. STAFF ANALYSIS

On January 18, 2017, the Portland Public Art Committee voted unanimously to recommend the 2016 Annual Report and FY17/18 Budget Plan to the Portland City Council. The Budget Plan focuses on conservation and maintenance of the collection to continue to improve the quality of the built environment for residents and employees and further improve the public image of the city for visitors.

VII. RECOMMENDATION

Staff recommends that the City Council accept the recommendations of the 2016 Annual Report, accompanying Guidelines revisions, and FY17/18 Budget Plan.

VIII. LIST ATTACHMENTS

1. PPAC 2016 Annual Report and FY17/18 Budget Plan

Prepared by: Caitlin Cameron, Urban Designer
Date: January 25, 2017 (revised)

2016 Public Art Committee Annual Report & FY17/FY18 Budget Plan

OUTLINE OF REPORT

I. Overview

II. Administrative Updates

Committee Members

Administrative Policies – Five Year Goals and Strategic Plan

Guidelines and Ordinance Revisions

Subcommittees

- Governance Subcommittee
- Gifts and Gifts Subcommittee
- Communication Subcommittee

III. Conservation & Maintenance

Conservation & Maintenance

- 2016 Conservation Activity
- *Art Underfoot* - restoration of missing bricks
- *Loring Memorial* repair
- Theft and replacement of *Porcupine* at the Jetport

IV. Accomplishments in 2016

Community Art Work Program

- *Portland Brick* completion

Collection Updates

- Bernard Langlais *Puffin*, installation and lighting
- Bernard Langlais *Reliefs* placed in Burbank Library branch and Peaks Island School
- Bernard Langlais *Acrobatic Dogs* relocated from Library to Portland Jetport
- *Common Ground Gazebo* de-accessed and removed

Project Updates

- Congress Square Public Art Commission
- Woodfords Corner Commission
- Room 24 photographs of pieces in the collection

Temporary Public Art

- *The American Dream* by Judith Hoffman
- *Icelandx207* at Congress Square
- *Welcome New Mainers* by Natasha Mayers at Portland Jetport

V. Goals for 2017

VI. Proposed Budget

I. OVERVIEW

In April 2000, the City Council established the Portland Public Art Program to preserve, restore, and enhance the City's public art collection. The Portland Public Art Committee (PPAC) is tasked to commission art that engages the surrounding environment to facilitate a sense of place by expressing the spirit, values, and visions of Portland through public art.

The public art collection currently contains fifty-eight permanent pieces installed throughout Portland and one long-term loan. The collection contains works of both historical significance dating from the nineteenth century; and contemporary pieces reflecting Portland's diversity and spirit. The PPAC administers the Portland Public Art Program. The Committee has also overseen the development of projects that can be categorized as Environmental Art Works and Temporary Art Works. The Committee's responsibilities are outlined in Article XI of the City Code (Public Art Program). The Committee utilizes the Guidelines for the Public Art Ordinance (Volume 1, Number 1 – adopted 2008) for direction in administering their responsibilities.

The Portland Public Art Committee is responsible for the following:

- Develop and present an Annual Public Art Plan to the City Council which includes recommendations for the use of allocated CIP funding; program administration; conservation of the collection; and initiation of new projects;
- Provide recommendations to the City Council regarding proposed gifts to the collection; Seek donations to fulfill Committee responsibilities in the case that CIP funding is insufficient;
- Recommend appropriate locations for the installation of public art;
- Promote public awareness and engagement between the public and the collection.

II. ADMINISTRATIVE UPDATES

COMMITTEE MEMBERS

The Committee as of January 2017 is as follows:

Lin Lisberger, Chair, Artist and Professor of Art at USM

Julia Kirby, Vice Chair, Development Director at St. Lawrence Arts

James Cradock, Information Technology consultant at Yellahoose LLC

Jenna Crowder, Artist and Admissions assistant at MECA

Christopher Devlin, attorney at Bernstein Shur

Penny Harris, Creative Portland representative

Alison Hildreth, Artist

Pandora LaCasse, Artist and Portland's seasonal lighting sculptor;

Anthony Muench, Landscape Architect

Corey Templeton, photographer and UNUM employee, City Manager's appointee

Jill Duson, City Council representative

Management & Administration

Caitlin Cameron, Urban Designer

ADMINISTRATION AND POLICY

Five-Year Goals

In fall 2016 the Committee held several meetings and agreed upon the following goals for the coming five years:

- To increase the prevalence of public art in regions of outer Portland. This may be in the form of Community Art Projects, or temporary art event coordination. This objective aims to work with current and future City projects, pay attention to project and partner opportunities, and identify potential sites in order to be prepared when gift opportunities arise;
- To activate small urban spaces with public art;
- To further public education, interest, and enjoyment of public art by providing public art walks or public art guides in Portland; and to publicize and archive the collection. This includes revising the website to provide additional functions and increase traffic, producing a 30 second commercial to distribute to promotional sites, such as movie festivals, a City Hall video stream, or outdoor screening, create cards, brochures or other saleable items, increase and control social media outreach, meet with City stakeholders to reinforce our mission, and look for an intern to help with assorted clerical and archival jobs;
- To increase donation solicitation for projects supported by the PPAC, particularly for projects that enhance community engagement and identity. To solicit grant and private money for current and upcoming projects;
- To have greater influence on site selection for gifts and commissioned works, and to provide a simple and consistent evaluation for acceptance of gifts;
- To continue to provide forums for public input.

Ultimately, these goals aim to contribute to Portland's identity as a cultural destination. The Committee recognizes that the prevalence and quality of Public Art will greatly contribute to Portland's overall image and increase both national and international recognition.

Ordinance and Guidelines Changes

The PPAC recommends several revisions to the Public Art Guidelines to clarify the process to select artists or artwork and a revision to Ordinance ARTICLE XI Public Art Program to clarify what is considered to be the public art collection. Please see the attached documents for those proposed changes.

SUBCOMMITTEES

Governance Subcommittee – No updates

Gifts Subcommittee – Seeking Donations

Many of the pieces in the collection are gifts or have been subsidized by donations. Soliciting financial donations must be an increased focus of the Committee because of the nature of the CIP allocations. Anything funded using the CIP budget must have a projected life span of at least 20 years. Since the Public Art Program applies to all forms of public art, the committee must actively seek donations for any semi-permanent, rotating, or temporary installments, and for large-scale significant pieces. In 2017 a major fundraising campaign will begin for Congress Square Redesign and Public Art Commission. This will be supplemented by grant applications such as the National Endowment for the Arts Our Town and ArtWorks grants.

Communication Subcommittee – Public Awareness and Engagement

The PPAC continues to update and make improvements to the collection website: publicartportland.org

The *Art in Our Front Yard* series was expanded in 2015. All talks in 2015 and 2016 were filmed to post on the Public Art website. Speakers included some of the artists who made pieces at the Jetport, and local “celebrities” including Monica Wood and Herb Adams. Additional talks and filming are planned for 2017 to increase the public outreach and education about the collection. These include a talk by conservator Jonathan Taggart about the ongoing conservation of several major pieces of public art in the collection, including Our Lady of Victories, the Lincoln Park Fountain, and the Jewel Box Bus Shelter.

III. CONSERVATION & MAINTENANCE

It is essential to the longevity and safety of the works in the collection to engage a conservator for conservation and repair of our public art collection. The collection requires on-going assessment and maintenance. Jonathan Taggart, of Taggart Object Conservation, has been contracted on an annual basis to provide ongoing conservation work on the collection. In 2016, conservation and maintenance work included the following:

CONSERVATION CONTRACT

Jonathan Taggart was awarded a two-year contract for conservation of six (6) pieces in the collection. In 2016 he resurfaced the cast iron parts of the Jewel Box Bus Shelter and cleaned and did other maintenance on it. Additional work will be needed on the bus shelter. This will be bid to a contractor and the estimate appears in the FY 18 budget proposal. He also cleaned, recoated with resin protector, and repointed parts of Our Lady of Victories. He did several small maintenance jobs as well, and began his restoration work on the Lincoln Park Fountain.

The contract also requires the conservator to review/approve any proposed additions to the collection.



ART UNDERFOOT REPAIR

After the winter, the PPAC noticed four bronze bricks missing from the *Art Underfoot* installation. The artist, Natasha Mayers, provided the committee with the original molds. The PPAC replaced the missing bricks with duplicate casts. Molds have also been made of the originals for future preservation and restoration.

After this repair it was noticed that two more bronze bricks were missing. These will be replaced by memorial bronze bricks in memory of MECA alum Patrick O'Brien who cast the original bricks. MECA will be casting these bricks.

LORING MEMORIAL REPAIR

In February 2016 a driver lost control of his vehicle and toppled and broke one of the granite columns at the *Loring Memorial*. The committee contacted the original fabricator of the column to have it replaced. The column was replaced in September 2016.

PORCUPINE AT THE PORTLAND JETPORT

In April 2016, Wendy Klemperer's *Porcupine* (part of *Glimpse*) was stolen from its site at the Portland Jetport. A report was filed with the Portland police but the sculpture was not found. June LaCombe generously donated another Klemperer *Porcupine* at the same site; this time imbedded in granite and with a baby porcupine by Klemperer added.

FESSENDEN PORTRAIT AND FRAME RESTORATION

The PPAC committed \$1,000 from its donation budget to the restoration of the gilded frame for the portrait Of William Fessenden.

IV. ACCOMPLISHMENTS IN 2016

COLLECTION UPDATES

***Portland Brick* by Ayumi Horie and Elise Pepple Installed**

In 2014/2015 the Committee worked with The Portland Brick Project to develop a community art project that has begun in the India Street neighborhood. *Portland Brick* is thirty (30) installations around the India Street neighborhood. Project installation began in the fall of 2015 and was completed in 2016. The work was done by members of the public works department with guidance by David Margolis-Pineo.

***Puffin* by Bernard Langlais Installed**

Puffin was installed in Casco Bay Lines Ferry terminal in February 2016. The lighting was completed in September 2016. City Council accepted this gift in 2015 from Anne Waldron. The work was made by Bernard Langlais in 1976.

***Reliefs* by Bernard Langlais Installed**

One relief by Bernard Langlais was placed at the renovated Burbank Library Branch. An additional 6 reliefs will be placed in the Peaks Island School in early 2017.

***Acrobatic Dogs* by Bernard Langlais Relocated**

Portland Public Library requested *Acrobatic Dogs* by Bernard Langlais be relocated from the Main Library building. The sculpture was moved to the Portland Jetport.

New Porcupine by Wendy Klemperer gifted by June LaCombe

After the theft of Wendy Klemperer's *Porcupine* at the Jetport in April 2016, June LaCombe generously donated another Klemperer *Porcupine* at the site; this time imbedded in granite and with a baby porcupine by Klemperer added.

**Common Ground Gazebo Deaccessioned**

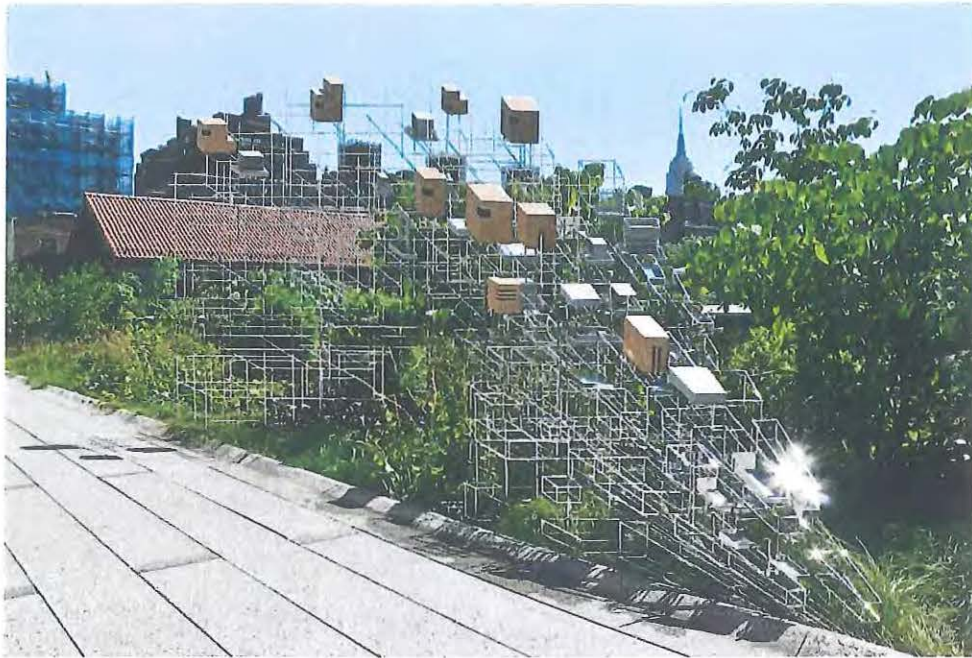
The PPAC did extensive research on a new placement for the Common Ground Gazebo in Payson Park, but with research into the cost of the necessary repairs and the move it was decided to de-accession the piece. It was removed by City parks staff during the summer.

PROJECT UPDATES**Congress Square Public Art Commission**

The Congress Square Art Selection committee, which includes members of PPAC and the public, released a Request for Qualifications in December 2015 to begin the process to select an artist to create a significant work for Congress Square. The committee consisted of Pandora Lacasse, Alison Hildreth, and Tony Muench (PPAC members), Jessica May (Portland Museum of Art), Jessica Tomlinson (MECA), Scott Simons (architect), and Ian Jacobs from Friends of Congress Square Park.

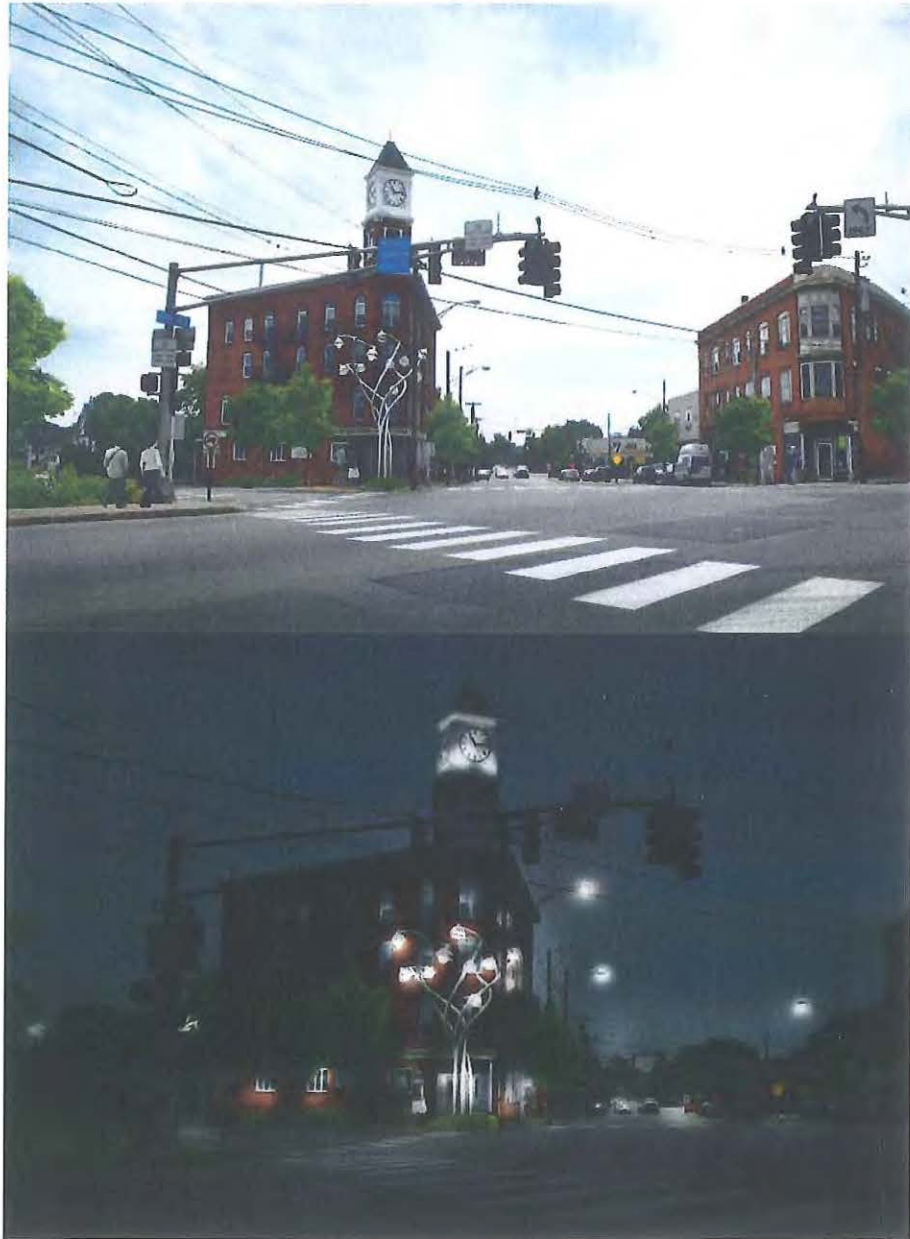
Four finalists for the project were selected in May – Ned Kahn, Patrick Marold, Matthew Ritchie, and Sarah Sze. The artists were invited to come to Portland in June for interviews and to present their work at a public forum hosted by the project partners at the Portland Museum of Art. The Selection Artist Sarah Sze was ultimately selected by the committee after much deliberation for the commission and work is underway to develop a public art concept for the Square. Two out of three public meetings have been held to date for the concept development with Sze Studio and the design team WRT. The concept phase is scheduled to be completed in the spring of 2017. A fundraising effort will begin in 2017 for the Square and Public Art project implementation.

Example work by artist Sarah Sze in New York City



Woodfords Corner Commission

Aaron Stephan was commissioned to make a free-standing light sculpture in Woodford's Corner as part of the rebuilding of the State roadway project at that intersection. A public hearing was held with the neighborhood associations and other interested parties at the Woodford's Club and at the PPAC meeting in August 2016. Stephan will present a revised design to the committee and the public again in January 2017 to select a final design. Installation will happen concurrent with the roadwork. The cost for this piece is \$20,000 plus \$5,000 for installation.



Room 24 Photographs

A collection of photographs, mostly by committee member Corey Templeton, was installed in Room 24 of City Hall. This installation had been requested by former mayor, Michael Brennan, and was funded through the current City Manager's office.



TEMPORARY PUBLIC ART

***The American Dream* by Judith Hoffman in Lincoln Park, May 2016**

The first installation by the private group, TEMPO was completed in May 2016 in Lincoln Park after approvals by the temporary art subcommittee. The piece, *The American Dream*, by Judith Hoffman, will be in Lincoln Park for a year and TEMPO has requested a one year extension.



Icelandx207 by Justin Levesque in Congress Square Park, October 2016

Levesque placed an altered Eimskip shipping container in the Park to coincide with the Arctic Council meeting, and filled it with his photographs from a 2015 trip he did on an Eimskip container ship.



Welcome New Mainers by Natasha Mayers, at Portland Jetport, May 2016

Mayers was a visiting artist in residence at the University of Southern Maine during the Spring 2016 semester. During that time she worked with native and international students on a project that involved painting the flags of Portland's large immigrant population on lobster buoys. These were hung in the waiting area of the Portland Jetport as a temporary art installation in May 2016.



V. GOALS FOR 2017

COMMUNICATIONS AND EDUCATION

- Art in Our Front Yard lectures + filming continues
- Art Walking Tours updated and possibly printed for visitors and residents.
- Continued upgrades to the PPAC website, publicartportland.org

CONSERVATION & MAINTENANCE

- 2-year Conservation Contract continues
- Lincoln Park Fountain Conservation
- Install 2 memorial bricks at Art Underfoot

COLLECTION

- Congress Square Public Art Commission Concept Design
- Congress Square Fundraising – ArtPlace and Art Works grant applications
- Assist Portland Trails and East Bayside Neighborhood Association with placement of sculpture and landscaping at the intersection of Cove and Anderson streets.
- Create an art selection subcommittee for selection of public art for the new Amethyst Lot Park.
- Engage with the City on possible placement of public art at the new traffic circle being developed on Deering St. by the UMaine Law School.
- Sites Subcommittee identification of future sites – on-going

VI. PROPOSED BUDGETS FY17 and FY18

The City allocates .05% of the annual Capital Improvement Project (CIP) budget for the conservation and acquisition of permanent public art. This FY18 Budget Plan includes an estimate of \$65,000 for the .05% allocation from the FY18 CIP budget that is unknown at this time.

The Committee intends to realign its budget year with that of the City's fiscal year – in the past the budget was per calendar year. The proposed budget below includes the remainder of the FY17 fiscal year and a budget proposal for the FY18 fiscal year.

Remaining Encumbrances from approved budget plans

	Activity	Description	Budget
A	Conservation and Maintenance	2-year Conservation contract	\$ 8,248
B	Conservation and Maintenance	Conservation contract addendum	\$ 2,950
C	Lincoln Park Fountain Conserv.	Under contract (Phase I and II)	\$ 21,000
D	Congress Square Public Art	New commission – Sarah Sze artist	\$ 221,000
E	Woodfords Corner Public Art	New commission – Aaron Stephan artist	\$ 22,000
F	Langlais Installation	Peaks Island School installation	\$1,500
	Total Encumbered		\$ 276,698

	Starting Balance	Approximate, after encumbrances	\$ 132,640
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FY17 – Proposed Budget (January 2017-June 2017)

	Activity	Description	Budget
A	Conservation and Maintenance	<i>Lincoln Park Fountain</i> conservation (Phase III)	\$ 10,000
B	Amethyst Lot Public Artwork	New Acquisition (Phase I)	\$ 48,000
C	Community Art Project	Unidentified	\$ 5,000
D	Contingency Fund	To cover repairs, theft, relocation, etc.	\$ 2,000
	Total FY17 Budget		\$ 65,000

FY18 – Proposed Budget (July 2017-June 2018)

	Activity	Description	Budget
A	Conservation and Maintenance	2-year Conservation Contract (assessment)	\$ 38,000
B	Community Art Project	Unidentified	\$ 5,000
C	Operations	Web hosting, collection documentation, etc.	\$ 500
D	Contingency Fund	To cover repairs, theft, relocation, etc.	\$ 5,000
	Total FY18 Budget		\$ 48,500

	Remaining Balance	approximate	\$ 19,140
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*Order 125-16/17
Tab 7 2-6-17*

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

**CITY OF PORTLAND
IN THE CITY COUNCIL**

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

**ORDER GRANTING A UTILITY LICENSE
AT THE PORTLAND TECHNOLOGY PARK
TO OXFORD COUNTY TELEPHONE SERVICE CO.**

ORDERED, that a revocable utility license at the Portland Technology Park is hereby granted to Oxford County Telephone Service Co. 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.



Economic Development Department
Gregory A. Mitchell, Director

TO: Mayor and City Council

FROM: Gregory A. Mitchell, Economic Development Director
Nelle Hanig, Business Programs Manager

DATE: January 23, 2017
(Rev. 1/27/2017)

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

SUBJECT: **Approval of Revocable License to Oxford Networks to Install its Fiber Optic Cable Through the Communications Duct Bank under Technology Park Drive at the Portland Technology Park**

SPONSOR: Jon Jennings, City Manager

COUNCIL MEETING DATE ACTION IS REQUESTED:

One Reading: February 6, 2017

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

Oxford Networks needs to install its fiber optic cable in February/March in order to have services in place for Patrons Oxford Insurance Company in April.

PRESENTATION: (Greg Mitchell – 5 minutes)

I. ONE SENTENCE SUMMARY: Oxford Networks (Oxford County Telephone Service Co. d/b/a Oxford Networks) is seeking a Revocable License from the City to install its fiber optic cable in the existing communications duct bank installed under Technology Park Drive located in the Portland Technology Park.

II. AGENDA DESCRIPTION: The road through the Portland Technology Park, named Technology Park Drive, is owned by the City. An existing communications duct bank, also owned by the City, runs under the road. Oxford Networks needs a Revocable License from the City in order to be able to install fiber optic cable in the communications duct bank to serve the Patrons Oxford Insurance Co. building that is being constructed at the Park.

III. BACKGROUND: The Portland Technology Park was developed by the City of Portland on City-owned land. This condominium business campus was approved for seven units and has all environmental permits in place. Presently, Technology Park Drive provides access to four development sites with utilities. Unit Four was sold to Patrons Oxford Insurance Company in March

of 2016. The company's 19,000 sf building is under construction and will be completed in the Spring. The remaining three units are listed for sale with NAI The Dunham Group.

III. INTENDED RESULT: With a Revocable License from the City, Oxford Networks can install its fiber optic cable through the existing communications duct bank in order to serve the Patrons Oxford Insurance Co. building.

IV. COUNCIL GOAL ADDRESSED: The Council goal addressed is to promote economic development in the City in a manner that provides for increased property values, diversification across industry sectors, and high paying jobs.

V. FINANCIAL IMPACT: There will be no financial impact in granting a Revocable License to Oxford Networks for the stated purpose.

VI. STAFF ANALYSIS: Serving the Portland Technology Park with fiber optic cable is vital to the operations of any company that would consider locating there.

VII. RECOMMENDATION: Staff recommends that the City Council grant a Revocable License to Oxford Networks to allow it to install its fiber optic cable in the communications duct bank under Technology Park Drive (Easement Area 1).

VIII. LIST ATTACHMENTS: Revocable License

Prepared by: Nelle Hanig, Business Programs Manager

Date: January 19, 2016

LICENSE AGREEMENT

This License Agreement ("Agreement") is entered into as of the ____ day of February between CITY OF PORTLAND, a body politic and corporate organized and existing under the laws of the State of Maine and declarant of PORTLAND TECHNOLOGY PARK CONDOMINIUM, having a mailing address of 389 Congress Street, Portland, Maine 04101 ("City" or "Licensor"), and OXFORD COUNTY TELEPHONE SERVICE CO. (d/b/a Oxford Networks), a Maine corporation, with a place of business at 491 Lisbon Street, Lewiston, Maine 04240 (hereinafter the "Licensee"), who hereby agree as follows:

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which is hereby acknowledged, City grants a nonexclusive revocable license to Licensee in common with others, to construct, erect, bury, rebuild, replace, operate, maintain and do all other actions involving telecommunication distribution equipment and facilities, consisting of wires and cables to be placed in duct of existing underground conduit, together with all necessary fixtures and appurtenances connected therewith, along, under and across a portion of the land conveyed to the City by deed recorded in the Cumberland County Registry of Deeds, Book 15211, Page 31. Said portion is more particularly described in Exhibit A attached hereto and incorporated herein by reference (the "Licensed Premises"). The Licensed Premises is part of the area identified as "Easement Area 1" on the Second Amended Subdivision Plat Of Portland Technology Park Condominium, Rand Road, Portland, Maine, dated September 29, 2011, prepared by SGC Engineering, LLC for the City of Portland – Declarant, and approved by the City of Portland Planning Board on December 8, 2015, recorded in the Cumberland County Registry of Deeds, Plan Book 216, Page 63. The Licensee shall have the further right to enter the Licensed Premises for all of the herein stated purposes and to connect said conduits, cables and wires which are located or which may be placed in parcels of land, adjacent or contiguous to the aforesaid premises. With the prior approval of the Portland Technology Park Condominium Association, Grantee shall also have the right to cut, trim, and remove such trees, bushes and growth as the Grantee may from time to time reasonably deem necessary for the safe and efficient operation and maintenance of Grantees facilities. Licensee's use of the Licensed Premises is for the purpose of providing telecommunication services to one or more unit owners of the Portland Technology Park Condominium and is subject to the following conditions:

1. All work performed upon and use of the Licensed Premises for the purposes set forth herein shall be at Licensee's sole cost and expense (unless otherwise agreed in writing), the parties acknowledging that there may be temporary interruptions in enjoyment of the property adjacent to the Licensed Areas related to the conduct of any work related to this License. Licensee agrees at its sole expense to restore any portion of the Licensed Premises and adjacent property damaged by work conducted by Licensee related to this License to substantially its condition prior to such work.

2. By acceptance of this License, Licensee hereby covenants and agrees to indemnify, defend, and hold harmless the City, Portland Technology Park Condominium Association, and its unit owners, their successors and assigns (the "Indemnified Parties") from and against any and all loss, damage, cost, expense, or liability based on personal injury, death, loss, or damage to property suffered or incurred by any employee, licensee, or agent of Licensee, which may arise from Licensee's exercise of its rights herein granted hereunder, except and in proportion to the extent such loss, damage, cost, expense, or liability is due in whole or in part by the Indemnified Parties, their officers, agents, employees, guests, or invitees.

3. Prior to the execution of this License, Licensee will procure and maintain Automobile Insurance and General Public Liability Insurance coverage in amounts of not less than Four Hundred Thousand Dollars (\$400,000.00) per occurrence for bodily injury, death and property damage, naming the City and Portland Technology Park Condominium Association as an additional insureds thereon for coverage only in those areas where government immunity has been expressly waived by 14 M.R.S. A. § 8104-A, as limited by § 8104-B, and § 8111. This provision shall not be deemed a waiver of any defenses, immunities or limitations of liability or damages available under the Maine Tort Claims Act, other Maine statutory law, judicial precedent or common law. Licensee shall furnish the City and thereafter maintain certificates evidencing all such coverages, which certificates shall guarantee thirty (30) days' notice to the City of termination of insurance from insurance provider or agent.

4. This Agreement may be revoked by the City or Portland Technology Park Condominium Association sixty (60) days after receipt by the Licensee of written notice that an Event of Revocation has occurred, identifying such Event of Revocation, provided that such Event of Revocation is not cured within thirty (30) days after receipt of such notice by Licensee. "Event of Revocation" shall mean: 1) Licensee fails to comply with any terms or conditions of this License; 2) Licensee no longer provides services to any unit owner of the Portland Technology Park Condominium Association. Any notice of an Event of Revocation delivered pursuant to Section 5 of this Agreement must be sent by certified mail, return receipt requested to the Licensee at the address for Licensee set forth above, or at such other address as the Licensee may provide to the City and Portland Technology Park Condominium Association in writing from time to time. Upon revocation of this License, Licensee shall, at its own expense, remove from the Licensed Premises all of its equipment, facilities, wires, and cables, including, without limitation, all of its wires and cables placed in duct of existing underground conduit.

5. Compliance with laws: Licensee agrees to comply with all applicable laws and regulations in its operations hereunder, including but not limited to all applicable federal, state and local environmental law and regulations, including without limitation all laws and regulations governing hazardous substances. Licensee further understands and agrees that it must obtain at its own cost any permits and licenses required for its operations.

6. This instrument is a License and no provision hereof shall be construed as conveying an easement or other estate in land. This instrument shall not be recorded in any Registry of Deeds.

7. No Assignment and Termination: This License is non-transferable and shall not be assigned, pledged, sublet or otherwise transferred to another party except upon the prior written approval of the City.

8. Amendment: This License shall be amended only in writing executed by the parties.

9. This License may be executed in any number of counterparts and by different parties in separate counterparts. Each counterpart when so executed shall be deemed to be an original and all of which together shall constitute one and the same agreement. A signature in a pdf or electronic document shall be considered the equivalent of an original signature.

IN WITNESS WHEREOF, the parties have caused this Revocable License to be executed by their duly authorized representatives, as of the day and year first written above.

CITY OF PORTLAND, MAINE

Witness

By: _____
Jon P. Jennings,
Its City Manager

OXFORD COUNTY TELEPHONE SERVICE CO.

Witness

By: _____

Printed Name: _____

Title: _____

JOINDER BY PATRONS OXFORD INSURANCE COMPANY

PATRONS OXFORD INSURANCE COMPANY, a Maine insurance corporation, and owner of Unit 4 of the Portland Technology Park Condominium, hereby joins this instrument solely to indicate its joinder to, and consent to, this instrument.

PATRONS OXFORD INSURANCE COMPANY

By: _____

Mark A. Pettingill, Its President

EXHIBIT A

Commencing at a point on the southerly sideline of Rand Road, said point being marked with a 5/8" rebar with cap (PLS#2002) located at the northeasterly corner of a parcel of land now or formerly of the City of Portland as described in a deed recorded in Book 15211, Page 31 of the Cumberland County Registry of Deeds;

Thence, from said Point of Commencement, S62°51'57"W a distance of one hundred twelve and 43/100 (112.43') feet along the southerly sideline of Rand Road to a 5/8" rebar with cap (PLS #2002) found, thence S81°40'58"W a distance of three hundred sixty nine and 39/100 (369.39') feet along the southerly sideline of Rand Road to a 5/8" rebar with cap (PLS #2002) found, thence Westerly along the southerly sideline of Rand Road a distance of forty eight and 62/100 (48.62') feet along a curve to the right with a radius of one thousand one hundred eighty and 00/100 (1180.00') feet to a monument to be set and the Point of Beginning of Easement Area 1 herein described,

Thence from said Point of Beginning Southwesterly a distance of two hundred eighty one and 21/100 (281.21') feet along a curve to the right (not tangent with the previous course) with a radius of two hundred thirty and 00/100 (230.00') feet to a monument (to be set), said curve having a chord bearing of S37°22'03"W and a chord distance of two hundred sixty four and 02/100 (264.02) feet,

Thence S35°54'43"E a distance of twenty and 97/100 (20.97') feet to a point,

Thence Southwesterly a distance of forty and 37/100 (40.37') feet along a curve to the right (not tangent with the previous course) with a radius of two hundred fifty and 00/100 (250.00') to a point, said curve having a chord bearing of S75°30'34"W and a chord distance of forty and 32/100 (40.32) feet,

Thence S80°08'06"W a distance of one hundred twenty five and 99/100 (125.99') feet to a monument (to be set),

Thence Southwesterly a distance of one hundred seventy five and 29/100 (175.29') feet along a curve to the left with a radius of one hundred fifty and 00/100 (150.00') feet to a monument (to be set),

Thence S12°59'08"W a distance of one hundred forty two and 05/100 (142.05') feet to a monument (to be set),

Thence Southwesterly a distance of one hundred forty three and 10/100 (143.10') feet along a curve to the right with a radius of three hundred fifty and 00/100 (350.00') feet to a monument (to be set),

Thence S36°24'40"W a distance of forty two and 76/100 (42.76') feet to a point,

Thence Southwesterly a distance of one hundred forty one and 33/100 (141.33') feet along a curve to the right with a radius of three hundred thirty nine and 00/100 (339.00') to a point,

Thence S75°00'00"W a distance of sixty nine and 87/100 (69.87') feet to a point,

Thence S15°00'00"E a distance of seventeen and 60/100 (17.60') feet to a point,

Thence S29°19'50"W a distance of seventy five and 02/100 (75.02') feet to a point,

Thence S87°29'56"W a distance of nineteen and 03/100 (19.03') feet to a point,

Thence Southwesterly, westerly and northwesterly a distance of two hundred seventy three and 30/100 (273.30') feet along a curve to the right (not tangent with the previous course) with a radius of eighty five and 00/100 (85.00') feet to a point, said curve having a chord bearing of N76°47'08"W and a chord distance of one hundred sixty nine and 88/100 (169.88') feet,

Thence N50°49'40"E a distance of one hundred ninety and 32/100 (190.32') feet to a point,

Thence Northeasterly a distance of seventy one and 09/100 (71.09') feet along a curve to the left (not tangent with the previous course) with a radius of eighty nine and 00/100 (89.00') feet to a point, said curve having a chord bearing of N71°42'16"E and chord distance of sixty nine and 21/100 (69.21') feet,

Thence Northeasterly a distance of twenty six and 82/100 (26.82') feet along a reverse curve to the right with a radius of ninety five and 00/100 (95.00') feet to a point, said curve having a chord bearing of N56°54'40"E and chord distance of twenty six and 73/100 (26.73') feet,

Thence N65°00'00"E a distance of five and 88/100 (5.88') feet to a point,

Thence Southeasterly a distance of thirty five and 37/100 (35.37') feet along a curve to the right with a radius of twenty five and 00/100 (25.00') feet to a point, said curve having a chord bearing of S74°28'25"E and chord distance of thirty two and 49/100 (32.49') feet,

Thence N50°25'32"E a distance of sixty two and 08/100 (62.08') feet to a point,

Thence N45°00'00"E a distance of sixty one and 90/100 (61.90') feet to a point,

Thence N23°58'49"E a distance of sixty and 69/100 (60.69') feet to a point,

Thence N63°52'43"W a distance of eight and 11/100 (8.11') feet to a point,

Thence Northeasterly a distance of forty six and 88/100 (46.88') feet along a curve to the left (not tangent with the previous course) with a radius of two hundred seventy and 00/100 (270.00') feet to a monument (to be set), said curve having a chord bearing of N17°57'37"E and chord distance of forty six and 82/100 (46.82') feet,

Thence N12°59'08"E a distance of one hundred forty two and 13/100 (142.13') feet to a monument to be set,

Thence Northeasterly a distance of seventy three and 11/100 (73.11') feet along a curve to the right (not tangent with the previous course) with a radius of two hundred thirty and 00/100 (230.00') feet to a point, said curve having a chord bearing of N22°14'22"E and chord distance of seventy two and 80/100 (72.80') feet,

Thence Northwesterly a distance of sixty four and 22/100 (64.22') feet along a curve to the right (not tangent with the previous course) with a radius of seventy four and 58/100 (74.58') feet to a point, said curve having a chord bearing of N39°39'58"W and chord distance of sixty two and 25/100 (62.25') feet,

Thence N15°00'00"W a distance of two and 94/100 (2.94') feet to a point,

Thence N75°00'00"E a distance of one hundred forty one and 62/100 (141.62') feet to a monument (to be set),

Thence Northeasterly a distance of sixty four and 00/100 (64.00') feet along a curve to the right (not tangent with the previous course) with a radius of two hundred thirty and 00/100 (230.00') feet to a monument (to be set), said curve having a chord bearing of N72°09'49"E and a chord distance of sixty three and 79/100 (63.79') feet,

Thence N80°08'06"E a distance of one hundred twenty five and 99/100 (125.99') feet to a monument (to be set),

Thence N32°26'19"E a distance of twenty three and 23/100 (23.23') feet to a point,

Thence N00°04'04"E a distance of seventy nine and 87/100 (79.87') feet to a point,

Thence S89°51'35"E a distance of one hundred fourteen and 00/100 (114.00') to a monument (to be set),

Thence Northerly a distance of fifty six and 12/100 (56.12') feet along a curve to the left (not tangent with the previous course) with a radius of one hundred seventy and 00/100 (170.00') feet to a monument (to be set) at the

southerly sideline of Rand Road, said curve having a chord bearing of N14°13'36"E and a chord distance of fifty five and 87/100 (55.87') feet,

Thence Easterly a distance of sixty and 59/100 (60.59') feet along a curve to the left (not tangent with the previous course) and the southerly sideline of Rand Road with a radius of one thousand one hundred eighty and 00/100 (1180.00') feet to the Point of Beginning, said curve also having a chord bearing of N85°30'52"E and chord distance of sixty and 58/100 (60.58') feet.

The above described area is more particularly depicted as "Easement Area 1" on a plan entitled Second Amended Subdivision Plat Of Portland Technology Park Condominium, Rand Road, Portland, Maine, dated September 29, 2011, prepared by SGC Engineering, LLC for the City of Portland – Declarant, and approved by the City of Portland Planning Board on December 8, 2015, recorded in the Cumberland County Registry of Deeds, Plan Book 216, Page 63.

Bearings referenced herein are grid north.

SUBJECT TO all rights, easements, and restrictions of record, including (without limitation) the following:

1. Rights and easements granted to the Portland Pipe Line Company in a deed dated August 28, 1941, recorded in Deed Book 1646, Page 189 (CCRD) and in a deed dated May 24, 2012, recorded in Deed Book 29703, Page 129 (CCRD).
2. Rights and easements granted to Portland Trails in a deed dated July 16, 2012 and recorded in Deed Book 30001, Page 66 (CCRD) as amended by an Amendment to And Partial Release of Conservation Easement to Portland Trails dated March 8, 2016 and recorded in the CCRD Book 32964, Page 28.
3. Rights and easements granted to Portland Water District to Easement Area 1 in a deed dated March 8, 2016 and recorded in the CCRD Book 32964, Page 46.
4. Rights and easements granted to Northern Utilities, Inc. d/b/a/ Unitil by an easement deed dated March 18, 2016 recorded in the CCRD Book 32964, Page 34.
5. Rights and easements granted to Central Maine Power Company dated March 8, 2016 recorded in the CCRD Book 32964, Page 23.
6. Declaration of Condominium for the Portland Technology Park recorded in the CCRD Book 32969, Page 97.
7. Such statement of facts and conditions as shown on a Subdivision Plat of Portland Technology Park Condominium prepared by SGC Engineering, LLC dated September 29, and recorded in CCRD Plan Book 212, page 324, as amended by a First Amended Subdivision Plat of Portland Technology Park Condominium prepared by SGC Engineering, LLC dated September 29, 2011, last revised through May 1, 2015, and recorded in CCRD Plan Book 215, Page 250, and as further amended by a Second Amended Subdivision Plat of Portland Technology Park Condominium prepared by SGC Engineering, LLC dated September 29, 2011 and approved by the City of Portland Planning Board on December 8, 2015, recorded in the Cumberland County Registry of Deeds, Plan Book 216, Page 63.
8. Rights and easements granted to Northern New England Telephone Operations LLC dated March 8, 2016 and recorded in the CCRD Book 32964, Page 41.

*Order 126-16/17
Tab 8 2-6-17*

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

**CITY OF PORTLAND
IN THE CITY COUNCIL**

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

**ORDER APPROVING AGREEMENT BETWEEN PORTLAND AND MAINE
DEPARTMENT OF TRANSPORTATION
RE: VERANDA STREET PAVING**

ORDERED, that the two-party agreement between the Maine Department of Transportation and the City of Portland, for construction on the section of Veranda Street between Wordsworth Street and the Martin's Point Bridge, WIN 018631, is hereby approved in substantially the form attached hereto; and

BE IT FURTHER ORDERED, that the City Council hereby authorizes the City Manager or his or her designee to execute said 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: Kathi Earley, Engineering Manager/City Engineer

DATE: Jan 23, 2017 *RVSD Jan 26, 2017*

SUBJECT: Veranda St Paving – Two-Party Agreement with MaineDOT

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 Feb 6, 2017 **Final Action** Feb 22, 2017

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

MaineDOT must receive City authorization prior to March 1, 2017 to meet targeted bid advertisement and construction dates.

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

N/A

I. ONE SENTENCE SUMMARY

Requesting City Council authorization for City Manager to enter into two-party agreement with MaineDOT to pave portion of Veranda St. in 2017.

II. AGENDA DESCRIPTION

City Council Order #103 16/17 previously authorized the City to enter into a three-party agreement with MaineDOT and PACTS. That agreement covered only the design phase for a specific paving project on Veranda St (between Wordsworth St. and the Martin's Point Bridge), and projected this two-party agreement to cover the bid and construction phase responsibilities.

This two-party agreement stipulates financial and other obligations related to highly leveraged Collector Road pavement preservation utilizing Federal and Local funds. Entering into this agreement allows MaineDOT to proceed with bidding and construction so paving will occur in 2017, inclusive of as needed City Utility structure adjustments.

III. BACKGROUND

This Collector Paving project is part of MaineDOT's 2017 Work Plan and was initially awarded via the PACTS 16-18 TIP. The project will result in a ¾" overlay of Veranda St between Wordsworth St. and the Martin's Point Bridge.

IV. INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED

Utilizes federally funded paving program through PACTS to preserve & improve regionally important Transportation systems.

V. FINANCIAL IMPACT

The City of Portland owes a 25% Local Match to this \$299,000 paving project; the agreement estimates that cost as \$74,750. Additionally, the City must pay 100% of its Utility systems costs; that is estimated at \$12,000. The estimated City cost obligation is therefore \$86,750; these funds will be drawn from PACTS project capital funding in the City's CIP.

Please note that these costs are slightly higher than the estimate contained in the three-party agreement authorized by Order #103 16/17. The Local Match was reduced, but that was offset by the addition of the City's Utility systems costs.

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

MaineDOT is preparing a bid advertisement now with the goal of paving occurring sometime between June and September 2017. They are aware of the Maine Marathon event and will endeavor to coordinate activities if needed.

Please note this paving project was reduced in scope as MaineDOT is also preparing a major bridge project that will result in significant roadway realignments sometime in or after 2020. The City has therefore also held back on requesting significant additional improvements related to our Martin's Point Shared Use Path Feasibility Study completed in January 2016. We will be achieving specific pavement marking outcomes to improve the bicycle facility in this street segment.

VII. RECOMMENDATION

DPW recommends entering into this agreement & allowing MaineDOT to pave this portion of Veranda St in 2017.

VIII. LIST ATTACHMENTS

MaineDOT Municipal/State agreement for WIN #18631.00

Prepared by: Kathi Earley

Date: Jan 23, 2017



MaineDOT

**MAINE DEPARTMENT OF TRANSPORTATION
MUNICIPAL/STATE AGREEMENT**

PROPOSED IMPROVEMENTS TO VERANDA STREET

MaineDOT use only

TEDOCS #: _____
CT #: _____
CSN #: _____
PROGRAM: _____

(MaineDOT Use Only)

Project Location: <u>Portland</u>	Estimated Municipal Share: <u>\$86,750.00</u>
State WIN #: <u>18631.00</u>	Vendor Customer #: <u>17A12984</u>
Federal Aid Project #: <u>NHPP-1863(100)</u>	Agreement Begin Date: _____
	Agreement End Date: <u>(3 years from the date last signed below)</u>

This Agreement is entered into between the Maine Department Of Transportation (hereafter the "MaineDOT") and the Municipality of Portland, a municipal corporation located in the County of Cumberland (hereafter the "Municipality") (hereinafter the "Parties") regarding the planning, development, design, right of way, construction, cost sharing and reimbursement for a project to make improvements to Veranda Street, in Portland, Maine, (hereafter Project) as follows:

The following checked appendices are hereby incorporated into this Agreement by reference:

- ☒ Appendix A – Project scope, cost sharing, and payment schedule
- ☐ Appendix B – Perpetual Bicycle/Pedestrian Facility Maintenance
- ☐ Appendix B – Perpetual Landscape Maintenance
- ☐ Appendix B – Perpetual Operation and Maintenance of Lighting/Flashing Beacon and/or signage and associated light(s)
- ☐ Appendix B – Perpetual Traffic Signal Operation and Maintenance
- ☐ Appendix B – Perpetual Bridge Lighting/Approach Lighting Maintenance & Snow Plowing
- ☒ Appendix C – Additional work requested by Municipality

- A. MaineDOT agrees to procure and administer a contract to construct the Project in accordance with the plans and specifications developed by MaineDOT and, subject to Department approval. This would include any additional plans, specifications and estimates furnished by the Municipality. Please refer to Appendix A of this Agreement for the outline of the scope, limits of work and cost sharing.
- B. MaineDOT shall be the sole administrator of this contract. MaineDOT will pay all project costs, subject to cost sharing by the Municipality, when applicable, as specified in this agreement. Neither MaineDOT nor its contractors will be required to pay for inspections and permits from the Municipality.
- C. MaineDOT reserves the right to terminate the Project for any reason prior to the award of a contract to construct the Project. MaineDOT also reserves the right to terminate all provisions pertaining to work requested by the Municipality at any time prior to the award of a contract to construct the Project

because of any failure by the Municipality to meet any of the conditions and stipulations set forth in this Agreement.

- D. Upon acceptance of plans, specifications and estimates, MaineDOT shall solicit competitive bids for the Project. Upon acceptance of the lowest acceptable responsive, responsible bid to construct the Project and fulfillment of all terms set forth herein, MaineDOT will submit the information to the Municipality, who will have up to five (5) business days to review the information and notify MaineDOT of any questions or concerns. If MaineDOT is not presented with any questions or concerns during the time allotted all decisions pertaining to the acceptance of the bids, the award and administration of the contract and all payments thereunder shall be the sole discretion of MaineDOT.
- E. The Municipality, at its election, may request that changes be made or work added to the Project during the period of construction, provided the Municipality agrees in writing to pay any additional cost plus an amount not to exceed ten (10%) percent of such construction cost to cover all necessary engineering, inspection and administrative costs associated therewith, unless specified otherwise. All such requests shall be subject to approval by MaineDOT. In the event that such changes or work are approved for federal participation in the cost thereof, such additional cost may be reduced to the non-federal share.
- F. The Municipality agrees to allow MaineDOT's contractor to control all traffic through the work areas in accordance with the Traffic Control Plan approved by MaineDOT. The development of the Traffic Control Plan will follow the process outlined below:
 - 1. The PM will submit the project for Traffic Analysis and Movement Evaluation (TAME), when possible, approximately one year prior to advertisement. Once the results are received, the PM/Regional Traffic Engineer will discuss the proposed project with the Municipality (scope, limits, day or night work, work window, etc).
 - 2. The Municipality will comment on their concerns/issues (two week timeframe allowed).
 - 3. The PM & Designer will incorporate these comments where practical based on engineering judgment.
 - 4. If the Municipality desires, a meeting will be held prior to PS&E to review the project design, Special Provision 105 – Limitations of Operations, Special Provision 107 - Time, etc.
 - 5. The Municipality will have the opportunity to review and comment.
- G. The Municipality agrees to alter, move, relocate or remove, or cause to be, at no cost to the Project, any municipal property, including all fixtures, facilities or monuments, located on, under or above the ground, as necessary to permit construction of the Project, which has not otherwise been provided for during the development of the Project. Any work necessary to do so during the period of construction shall be coordinated with the contractor for the Project.
- H. The Municipality will, at no cost to MaineDOT, assure proper adjustment, relocation, or repair of any portion of a service, whether above or below ground, that is located within the limits of the highway right-of-way and connected to any municipal utility, which might become necessary to permit construction of the Project. The Municipality agrees to hold MaineDOT harmless from any claims for damages occurring as a result thereof.

- I. The Municipality agrees that during and after construction it will apply the requirements of the most recent version of MaineDOT's "Utility Accommodation Rules" as the minimum guidelines not withstanding any municipal rules that are more lenient.
- J. To the extent that it is statutorily responsible therefore, the Municipality agrees to provide utilities, and to maintain all improvements and fixtures constructed, installed or furnished as a part of the Project in such a manner as necessary to preserve the use and function thereof for the expected period of their normal useful life as determined by accepted engineering and/or industry standards. To the extent any warranty exists for said improvements or fixtures, said warranty shall be first relied on by MaineDOT to address maintenance and/or repairs described in this paragraph.
- K. The Municipality agrees that except for an emergency, or as allowed in § 3351-A, it will prohibit the excavation of the highway within the limits of the Project for a period of at least five (5) years after completion of the Project, and agrees to make all necessary notifications to abutters and occupants of the highway as otherwise required of any city government under the provisions of 23 M.R.S.A. § 3351. Thereafter, all future excavations within the right-of-way of the Project shall be regulated and controlled in the manner specified by MaineDOT in its most recent "Utility Accommodation Rules", which is incorporated herein and made a part hereof by reference.
- L. The Municipality will be responsible to keep new or replaced/rehabilitated pedestrian facilities in usable condition.
- M. The Municipality agrees to keep the right-of-way of the Project inviolate from all encroachments and agrees to remove, or cause to be removed, anything that may encroach thereon.
- N. When applicable the Municipality agrees to regulate all entrances to the highway within the limits of the Project in accordance with the provisions of 23 M.R.S.A. § 704.
- O. The Municipality with city council approval agrees to limit all on-street parking to the parking spaces as designed and constructed under the Project.
- P. MaineDOT shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to MaineDOT's option to withhold for the purposes of set-off any monies owed to the Municipality with regard to this Agreement and any other agreement with MaineDOT, including any agreement for a term commencing prior to the term of this Agreement, plus any amounts owed to the Municipality for any other contract with any State of Maine department or agency.
- Q. To the extent permitted by law, the Municipality shall indemnify, defend and hold harmless MaineDOT, its officers, agents and employees from all claims, suits or liabilities arising from any negligent or wrongful act, error or omission by the Municipality, its officials, employees, agents, consultants or contractors. Nothing herein 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 any other privileges or immunities provided by law. *Any other provision of this agreement to the contrary notwithstanding, this provision shall survive any termination or expiration of this Agreement.*
- R. MaineDOT may postpone, suspend, abandon or otherwise terminate this Agreement upon thirty (30) days written notice to the Municipality and in no event shall any such action be deemed a breach of contract. Postponement, suspension, abandonment or termination may be taken for any reason by

MaineDOT or specifically as the result of any failure by the Municipality to perform any of the services required under this Agreement to the satisfaction of MaineDOT.

In the event of Project termination, all provisions of this Agreement shall become null and void except for those set forth under *Appendices A and C, if attached to this Agreement, as well as those provisions that by their very nature are intended to survive.*

- S. The Municipality certifies, by signing this Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal department or agency. If the Municipality is unable to certify to this statement, it shall attach an explanation to this Agreement. The Municipality shall promptly notify MaineDOT if it or its principals becomes debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- T. The Parties agree to: comply with and abide by all applicable State and Federal laws, statutes, rules, regulations, standards and guidelines, including the MUTCD and OSHA standards, and Agreement provisions; avoid hindering each other's performance; fulfill all obligations diligently; and cooperate in achievement of the intent of this Agreement.
- U. All provisions of this Agreement, *except those provided above in Paragraphs J-Q and those that by their very nature are intended to survive* shall expire at Project final voucher, or upon final payment by the Municipality of any Project costs as hereinbefore provided, whichever occurs later.
- V. Anything herein to the contrary notwithstanding, the Municipality acknowledges and agrees that although the execution of this agreement by MaineDOT manifests its intent to honor its terms and to seek funding to fulfill any obligations arising hereunder, by law any such obligations are subject to available budgetary appropriations by the Maine Legislature and, therefore, this agreement does not create any obligation on behalf of MaineDOT in excess of such appropriations.
- W. No assignment of this agreement is contemplated, and in no event shall any assignment be made without the express written permission of MaineDOT.

IN WITNESS WHEREOF, the Parties hereto have executed this AGREEMENT in duplicate effective on the day and date last signed below.

MUNICIPALITY OF PORTLAND

MAINE DEPARTMENT OF TRANSPORTATION

By: _____
Jon Jennings, City Manager

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

(Date Signed)

(Date Signed)

I certify that the signature above is true and accurate. I further certify that the signature, if electronic: (a) is intended to have the same force as a manual signature; (b) is unique to myself; (c) is capable of verification; and (d) is under the sole control of myself.

APPENDIX A
PROJECT SCOPE AND COST SHARING
MAINE DEPARTMENT OF TRANSPORTATION
MUNICIPAL/STATE AGREEMENT
Transportation Improvement Project

MUNICIPALITY OF PORTLAND

PROPOSED IMPROVEMENTS TO VERANDA STREET

FEDERAL AID PROJECT NO. NHPP-1863(100)
STATE PROJECT IDENTIFICATION NUMBER (WIN) 18631.00

Project Scope: 3/4" overlay beginning at Wordsworth Street and extending 0.46 miles to Martins Point Healthcare entrance.

Funding Outline: The Total Project Estimated Cost is \$ 311,000.00 , and the Parties agree to share costs through all stages of the Project under the terms outlined below.

Work Element	Municipal Share		Project Share				Total Cost
			MPO	Portion	MaineDOT (State) Portion		
	%	\$	%	\$	%	\$	\$
Preliminary Engineering	25.0%	\$ 2,000.00	75.0%	\$ 6,000.00	0.0%	\$ -	\$ 8,000.00
Right of Way	25.0%	\$ -	75.0%	\$ -	0.0%	\$ -	\$ -
Construction	25.0%	\$ 62,750.00	75.0%	\$ 188,250.00	0.0%	\$ -	\$ 251,000.00
Construction Engineering	25.0%	\$ 10,000.00	75.0%	\$ 30,000.00	0.0%	\$ -	\$ 40,000.00
PROJECT SHARES		\$ 74,750.00		\$ 224,250.00		\$ -	\$ 299,000.00
Total Cost of Additional Work Requested by Municipality (Below)	100.0%	\$ 12,000.00					
TOTAL ESTIMATED MUNICIPAL SHARE (Receivable Amount)		\$ 86,750.00					

(Check if applicable)

☒ Additional Work as outlined in Appendix C to this Agreement.

Funding Outline: The Municipality agrees to pay 100% of the costs for the work outlined below.

Additional Work		Cost: 100% Municipal Share	
Sewer Adjusts (12 EA @ \$1000)		\$	12,000.00
TYPE OF WORK		\$	-
TYPE OF WORK		\$	-
TOTAL COST OF ADDITIONAL WORK REQUESTED BY MUNICIPALITY		\$	12,000.00

Payment:

The Municipality shall submit payment to MaineDOT within 30 days from the invoice date.

1. Prior to award of the contract for Project construction, the Municipality will be invoiced a portion of its share of the cost of the Project.

Invoicing will include the following:

- a. 100% of the local share of the Preliminary Engineering and Right of Way costs; plus
- b. Fifty percent (50%) of the local share of the Construction and Construction Engineering cost based on the total bid price of the Project; plus
- c. 100% of all additional work requested by the Municipality.

2. Final Voucher Payment to the Contractor. A final bill will be created following MaineDOT's final voucher payment to the Contractor, after all quantities are verified, and any required adjustments have been made. The cost of the work for which MaineDOT will bill the Municipality shall be determined by the contract prices and the completed quantities of the work items or, in the event of termination, the local share of Project development cost to the point of termination as stipulated above. The final invoice will include the Municipality's share of any remaining costs.

Invoicing Schedule: The Municipal Payment Schedule shown below includes estimated invoicing dates based upon the estimated schedule and estimated cost of the Project:

Municipality Name	Receivable Amount	Estimated Invoice Date
Portland	\$46,750.00	4/1/2017
Portland	\$40,000.00	12/1/2017
Portland	Balance	12/1/2018
Total Receivable Amount:	\$86,750.00	

APPENDIX C
Additional Work

MAINE DEPARTMENT OF TRANSPORTATION
MUNICIPAL/STATE AGREEMENT
Transportation Improvement Project

MUNICIPALITY OF PORTLAND

PROPOSED IMPROVEMENTS TO VERANDA ST

FEDERAL AID PROJECT NO. NHPP-1863(100)
STATE PROJECT IDENTIFICATION NUMBER (WIN) 18631.00

1. Description of Work Being Added to Project By The Municipality:
Sewer structure adjustments

2. The Municipality agrees to furnish all plans, specifications and estimates necessary to include additional work under the Project; No ☒ - Disregard this Section, or Yes ☐ - as follows:

- a) All plans and specifications shall conform to the standards used by MaineDOT as set forth in the latest version of its *"Highway Design Guide"* and *"Standard Details"* and comply with MaineDOT's Utility Accommodation Rules.
- b) All plans shall be size "D" drawings measuring 22 inches by 36 inches reproducible in black and white print.
- c) All specifications shall be printed on 8-1/2 inch wide by 11 inch long paper suitable for binding in MaineDOT's proposal book.
- d) The Municipality shall provide a detailed engineer's estimate of the cost of such additional work calculated in a manner acceptable to MaineDOT and allowable for bidding. The Municipality agrees that all cost information developed for such bidding shall be kept confidential pursuant to the provisions of Title 23 of the Maine Revised Statutes Annotated (M.R.S.A.) Section 63.
- e) The Municipality shall obtain all permits, licenses, releases and approvals necessary or incidental to the additional work described in Section 1 above.
- f) The submission of all plans, specifications and estimates; as well as all permits, licenses, releases and approvals shall be done in such a timely manner as not to unreasonably delay MaineDOT's schedule for soliciting bids to construct the Project.
- g) The Municipality may utilize the electronic exchange of CADD data; the Municipality must accept pertinent electronic input data as specified by MaineDOT. A copy of MaineDOT's specifications can be found on its website under Business and CADD support. It is the

responsibility of the Municipality to translate this data into other formats required for use in their design software.

3. Following solicitation of competitive bids for the Project under Paragraph D of the Agreement; but before award of a contract to construct the Project that includes additional work as described in Section 1 above; action must be taken by the Municipality:

- a) If the bid price received for such additional work exceeds the detailed engineers estimate by any more than ten (10%) percent, the Municipality may reject such bid price by notifying MaineDOT in writing within five (5) business days following the opening of such bids. The Municipality may waive such right by doing so in writing anytime prior to or during such period. Otherwise, all decisions pertaining to the acceptance of bids and the award of any construction contract shall be the sole discretion of MaineDOT.
- b) If the bid price for such additional work is acceptable to the Municipality, the Municipality shall pay MaineDOT, an amount equal to the Municipality's share of the estimated cost of such additional work based upon the prices of the successful bidder. Following receipt of payment, MaineDOT agrees to award a contract to construct the Project including the additional work.
- c) The parties agree that any additional adjustments to the amount of any payment or deposit made pursuant to the provisions of subparagraph b) above because of any differences between estimated and actual quantities which effects the actual cost of such additional work shall be due and payable upon determination of final quantities, unless MaineDOT determines that the actual cost of such additional work is expected to differ measurably from the amount of such payment, due to changes in quantities placed or work performed during the period of construction.

*Ord 127-16/17
Feb 9 2-6-14*

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

**CITY OF PORTLAND
IN THE CITY COUNCIL**

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

**AMENDMENT TO PORTLAND CITY CODE
CHAPTER 10 FIRE PREVENTION AND PROTECTION
Re: Smoke Alarms, Reinspection Fees, Open Burning, False
Alarms, and Inspections and Enforcement**

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

*1. That Chapter 10, Article I, Section 10-3 of the City of
Portland Code is hereby amended to read as follows:*

Sec. 10-3. Amendments.

The NFPA 101: Life Safety Code adopted by section 10-1 is amended, modified and deleted in the following respects:

...

- (i) New smoke alarm installations must use photoelectric technology.

Further, in new single or multiple-station smoke alarm installationss in buildings subject to NFPA 101, Chapter 31, the primary power source must be the building's electrical service and the smoke alarms must be provided with a secondary (standby) power source. Therefore, the following sections shall be deleted:

Section 31.3.4.5.2
Section 31.3.4.5.4

...

- (n) Inspections. The authority having jurisdiction, upon proper identification, shall have the right to enter at any and all reasonable times for the purpose of inspecting in order to determine compliance with the provision of this Code into or upon any of the following premises: any rental unit subject to

registration under section 6-151; any premises subject to this Article, with the exception of premises subject to Chapter 24 of NFPA 101; any premises when any governmental agency having jurisdiction over a particular premises should request it to do so; or any premises in response to a complaint regarding conditions governed by this Chapter. It shall be a violation of this article for any person either to interfere with or to prevent such inspection.

2. That Chapter 10, Article III, Sections 10-25 and 10-25.9 of the City of Portland Code are hereby amended to read as follows:

Sec. 10-25. Violations.

The authority having jurisdiction is authorized to institute, or cause to be instituted by the corporation counsel, in the name of the city, any and all actions, legal or equitable, that may be appropriate or necessary for the enforcement of the provisions of Chapter 10.

- (a) Any person, including, but not limited to, a landowner, the landowner's agent or a contractor, who shall violate any of the provisions of Chapter 10, including the codes adopted under this Chapter, or fail to comply therewith, or who shall violate or fail to comply with any order made thereunder, or who shall build in violation of any detailed statement of specifications or plans submitted and approved thereunder, or any certificate or permit issued thereunder, and from which no appeal has been taken, or who shall fail to comply with such an order as affirmed or modified by the city council or by a court of competent jurisdiction, within the time fixed herein, shall severally for each and every such violation and noncompliance respectively pay a penalty as provided in section 1-15 of the city code and/or as provided under state law. The imposition of any penalty for any violation shall not excuse the violation or permit it to continue; and all such persons shall be required to correct or remedy such violations or defects within a reasonable time; and when not otherwise specified, each day that prohibited conditions are maintained shall constitute a separate offense. The application of the above penalty shall not be held to prevent the enforced removal of

prohibited conditions.

...

Sec. 10-25.9. Reinspection.

Following the issuance of a notice of violation and an order to correct violations, the authority having jurisdiction will reinspect once for no fee in order to determine whether the violations have been corrected in compliance with this chapter. If the violations have not been corrected in compliance with this chapter, the violator shall be assessed a fee of one hundred and fifty dollars (\$150.00) for each subsequent reinspection. Failure to pay the assessment for reinspection shall create a lien on the property and the assessment and lien shall be collected and enforced pursuant to §1-16.

3. *That Chapter 10, Article VII, Sections 10-92, 10-94 and 10-95 of the City of Portland Code are hereby amended to read as follows:*

Sec. 10-92. Campfires in the City of Portland

Camp fires are permitted within the City of Portland with a valid burning permit. All such campfires shall comply with all State laws, this Chapter, and all rules and regulations promulgated pursuant to this Chapter for recreational outdoor fires. Any such burning permit may be cancelled for cause.

...

Sec. 10-94. Violations.

In addition to the process established by section 10-25, this article may also be enforced by the police chief, or his or her designee.

Sec. 10-95. Outdoor fireplaces.

(a) No permit shall be required to burn in a fixed outdoor fireplace that has been installed and is operated in accordance with this Chapter, all rules and regulations promulgated pursuant to this Chapter, and National Fire Protection Association 211 (2010); Standard for Chimneys, Fireplaces, Vents, and Solid Fuel-Burning Appliances.

(b) No permit shall be required to burn in a recreational fire appliance that is operated in accordance with this Chapter, all rules and regulations promulgated pursuant to this Chapter, and the manufacturer's instructions. This paragraph shall not apply to the use of an open fire ring.

(c) All outdoor fireplaces and recreational fire appliances allowed under this section must be set back at least fifteen (15) feet from all structures, combustible material, and adjacent property lines.

4. That Chapter 10, Article VIII, Sections 10-100, 10-104 and 10-107 of the City of Portland Code are hereby amended to read as follows:

Sec. 10-100. Purpose; definitions.

(a) Purpose. In order to protect public safety and welfare and ensure fully operational signaling systems for the protection of life and property, it is necessary to ensure that such systems are correctly designed, installed and maintained.

(b) For purposes of this article, the following definitions shall apply unless the context clearly implies otherwise:

Alarm number means any number assigned by the fire chief to a building which is connected by a fire alarm system to an approved private central station.

Alarm user means an owner of any building, or part thereof, that has a master box alarm system or an approved private central station, or an agent of the owner who is responsible for the building.

Approved private central station means any privately operated message monitoring service which is approved by Underwriters' Laboratories, Incorporated, and approved by the authority having jurisdiction.

Dispatch Center (also known as the public safety answering point "PSAP") means any place utilized by the City of Portland for the receipt, monitoring or dispatching of alarms.

False alarm means any signal emitted from an approved

private central station or master box alarm system that is not in response to heat, smoke or fire requiring an immediate response by the fire department. "False alarm" includes any signal emitted by a negligently activated alarm system, or by an alarm system deliberately activated when an immediate response by the fire department is not required, or by a malfunctioning alarm system. However, "false alarm" does not include any signal emitted by an alarm system activated by unusually severe weather conditions, or other cause beyond the control of the alarm user. In case of any dispute, it shall be the burden of the alarm user to demonstrate to the satisfaction of the fire chief that an alarm signal was not a "false alarm."

...

Sec. 10-104. False alarm penalties.

(a) *Third response.* Once a third false alarm at a building within any twelve-month period has been identified by the fire chief or his/her designee, the fire chief shall give written notice of the false alarm to the alarm user within ten (10) business days, and the alarm user shall file a written report with the chief within five (5) days thereafter stating the cause of the false alarm, if known, and describing corrective action taken, if any.

(b) *Fourth, fifth and sixth responses.* For the fourth, fifth and sixth false alarms at a building within any twelve-month period, the alarm user shall, upon demand, pay a penalty of two hundred dollars (\$200.00) per instance and shall, in the case of any equipment failure, file with the fire chief within three (3) days of notice to do so a signed statement by a qualified private alarm agent that the alarm system has been inspected and is in proper working order. In the case of human error or other cause, the alarm user shall file a written report with the fire chief describing corrective action taken, if any.

(c) *Seventh and subsequent responses.* For the seventh and subsequent false alarms at a building within any twelve-month period, the alarm user shall, upon demand, pay a penalty of three hundred and fifty dollars (\$350.00).

...

Sec. 10-107. Violations.

In addition to the process set forth in section 10-25, when the chief of the fire department, in his or her sole discretion, determines that the property owner has failed to take action to correct a faulty fire alarm system within four (4) hours of being notified of its deficiency, the chief shall have the authority, in person or through agents, to enter onto any property to have fire protection equipment repaired. The fire chief shall cause the condition to be corrected and shall send a notice of any action taken to correct an unsafe condition and the charges for the work done to the owner or the owner's authorized representative. The charges shall be payable to the city within thirty (30) days of the date of the notice. Any unpaid charges assessed under this section shall be enforceable by lien for the benefit of the city and shall be collected pursuant to section 1-16 of this Code.

MEMORANDUM
City Council Agenda Item

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

FROM: Chief David Jackson, Portland Fire Department

DATE: January 19, 2017

SUBJECT: Fire Prevention Amendments to Chapter 10, Fire Prevention and Protection

SPONSOR: Health and Human Services Committee
January 10, 2017
3-0 vote in favor of recommending the proposed changes be adopted

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)

I. ONE SENTENCE SUMMARY

These amendments make recommended changes to Chapter 10, Fire Prevention and Protection that concern smoke alarms, re-inspection fees, open-burning, false alarms and inspection and enforcement provisions.

II. AGENDA DESCRIPTION

The Portland Fire Department proposes to make the following changes to Chapter 10:

- Amend the requirements for smoke alarms in existing one- and two-family dwellings;
- Increase re-inspection fees to make them consistent with reinspection fees for other departments;
- Amend the open burning requirements to make them consistent throughout the City;
- Change the calculation for false alarms from calendar year to rolling 12-month basis; and
- Clarify inspection and enforcement provisions.

III. BACKGROUND

See attached memorandum.

IV. INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED

To adopt the proposed changes to Chapter 10.

V. FINANCIAL IMPACT

None anticipated, with the possible exception of a slight increase in reinspection fee revenue.

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

See attached memorandum.

VII. RECOMMENDATION

To adopt the changes, as recommended.

VIII. LIST ATTACHMENTS

- a. Memorandum
- b. Proposed changes to Chapter 10
- c. Excerpts from NFPA 101 (2009)

Prepared by:

Date:

Bean/agendarequestmemo/rev 11/2015

MEMORANDUM

TO: City of Portland City Council
FROM: Chief David Jackson Portland Fire Department
DATE: January 12, 2017
RE: Amendments to Chapter 10

Staff is proposing changes to Chapter 10, Fire Prevention and Protection, of the City of Portland Code of Ordinances to clarify certain provisions of the Chapter, and to provide for increased fire and life safety protections. A summary of the changes are as follows:

Smoke Alarms Requirements in Existing One- and Two-Families. The City has adopted NFPA 101 (2009), Fire and Life Safety Code, which allows existing one- and two-unit buildings to use battery operated smoke alarms, rather than having them hardwired. The current version of Chapter 10, however, alters this provision of NFPA 101 to require that all buildings in the City have hardwired smoke alarm systems.

When dealing with existing buildings, the cost and difficulty of upgrading to hardwired alarms can be significant. In staff's opinion, with current smoke alarm technology, battery operated, ten-year sealed battery smoke alarms provide sufficient detection in one- and two-family dwellings to address fire and life safety concerns. Additionally, this technology is more accessible to homeowners, enhancing the likelihood of compliance. Because of this, staff recommends adopting the default position in NFPA 101 that battery smoke alarms are sufficient in one- and two-family dwellings.

Re-inspection Fees. If a building or business fails an initial occupancy inspection, or a re-inspection for corrected violations, the Fire Department has the right to charge a fee for the second inspection to compensate for the additional staff time required. Currently, that fee is \$75.00. The proposed changes increase this fee to \$150.00 to standardize this with parallel fees for the Permitting and Inspections Department.

Open Burning. When the Council first amended the open burning requirements, there were conversations about making the rules uniform across the City, including the islands, and this is how the Fire Department has been enforcing those rules. The proposed language to accomplish that, however, was never included in the Council packet at the time and was, therefore, not adopted. The proposed changes rectify that oversight and clarify the types of permissible open burning, and the requirements for permits. No changes from current practice is intended.

Alarm Systems. False fire alarms are currently regulated on a calendar year basis, and staff recommends that the time period be changed to a rolling twelve-month period to help prevent the waste of City resources in responding to false alarms.

Inspection and Enforcement Provisions. The language regarding inspections and enforcement has been updated to clarify the Fire Department's authority to inspect and take enforcement action to ensure compliance with Chapter 10 and state law. No changes from current practice are intended.

CHAPTER 10

ARTICLE I. LIFE SAFETY CODE

Sec. 10-3. Amendments.

The NFPA 101: Life Safety Code adopted by section 10-1 is amended, modified and deleted in the following respects:

...

- (i) New smoke alarm installations must use photoelectric technology.

~~All Further, new single and/or multiple-station smoke alarm installations in buildings subject to NFPA 101, Chapter 31, the primary power source must be the building's electrical service and the smoke alarms must be provided with a secondary (standby) power source. s shall comply with section 9.6.2.10 without exception. New detectors shall not use ionization detection technology. Therefore, the following sections shall be deleted:~~

~~Section 24.3.4.3~~

~~Section 31.3.4.5.2~~

~~Section 31.3.4.5.4~~

...

- (n) Inspections. ~~The authority having jurisdiction, whenever any governmental agency having jurisdiction over a particular premises should request it to do so, upon proper identification, shall have the right to enter at any and all reasonable times into or upon any premises subject to this Code for the purpose of inspecting the premises in order to determine compliance with the provision of this Code into or upon any of the following premises: any rental unit subject to registration under section 6-151; any premises subject to this Article, with the exception of premises subject to Chapter 24 of NFPA 101; any premises when any governmental agency having jurisdiction over a particular premises should request it to do so; or any premises in response to a complaint regarding conditions governed by this Chapter.~~ It shall be a violation of this article for any person either to interfere with or to prevent such inspection.

...

ARTICLE III. ENFORCEMENT AND APPEALS

Sec. 10-25. Violations.

The authority having jurisdiction is authorized to institute, or cause to be instituted by the corporation counsel, in the name of the city, any and all actions, legal or equitable, that may be appropriate or necessary for the enforcement of the provisions of Chapter 10. The provisions of Chapter 10 may be enforced by the authority having jurisdiction through the Uniform Summons and Complaint process or M.R.Civ.P. Rule 80K.

- (a) Any person, including, but not limited to, a landowner, the landowner's agent or a contractor, who shall violate any of the provisions of Chapter 10, including the codes adopted under this Chapter, the Fire Code and/or the Life Safety Code hereby adopted or fail to comply therewith, or who shall violate or fail to comply with any order made thereunder, or who shall build in violation of any detailed statement of specifications or plans submitted and approved thereunder, or any certificate or permit issued thereunder, and from which no appeal has been taken, or who shall fail to comply with such an order as affirmed or modified by the city council or by a court of competent jurisdiction, within the time fixed herein, shall severally for each and every such violation and noncompliance respectively pay a penalty as provided in section 1-15 of the city code and/or as provided under state law. The imposition of any penalty for any violation shall not excuse the violation or permit it to continue; and all such persons shall be required to correct or remedy such violations or defects within a reasonable time; and when not otherwise specified, each day that prohibited conditions are maintained shall constitute a separate offense. The application of the above penalty shall not be held to prevent the enforced removal of prohibited conditions.
- (b) Notwithstanding anything to the contrary in the foregoing, failure to obtain a permit required under this chapter or failure to correct an unsafe condition after receipt of written notice from the city of the need for such permit or for such correction shall be subject to the following minimum penalties:
 - (1) First offense: Five hundred dollar (\$500.00) fine;
 - (2) Second offense: One thousand dollar (\$1,000.00) fine;
 - (3) Third offense: One thousand five-hundred dollar (\$1,500.00) fine.
- (c) In addition to the foregoing, violators will be required to pay all unpaid permit fees and the city may enjoin or abate any violation by appropriate action.

Sec. 10-25.6. Restriction on conveyance of property; exception.

It shall be a violation of this article for any person to sell, transfer, or otherwise dispose of any property against which an order has been issued by the authority having jurisdiction under the provisions of this article unless he or she shall first furnish to the grantee a true copy of any such order and shall at

the same time notify the authority having jurisdiction in writing of the intent to so transfer either by delivering the notice to the authority having jurisdiction and receiving a receipt or by registered mail, return receipt requested, giving the name and address of the person to whom the transfer is proposed. In the event of a violation of this section, such person shall be subject to a penalty as provided in section 1-15, in addition to any penalty which may be imposed for failure to comply with any order of the authority having jurisdiction.

Sec. 10-25.9. Reinspection.

Following the issuance of a notice of violation and an order to correct violations, the authority having jurisdiction will reinspect once for no fee in order to determine whether the violations have been corrected in compliance with this chapter. If the violations have not been corrected in compliance with this chapter, the violator shall be assessed a fee of ~~seventy-five~~ one hundred and fifty dollars (\$~~150~~75.00) for each subsequent reinspection. Failure to pay the assessment for reinspection shall create a lien on the property and the assessment and lien shall be collected and enforced pursuant to §1-16.

ARTICLE VII. OPEN BURNING

Sec. 10-92. ~~Recreational Campfires~~ on the City of Portland islands

~~Recreational Camp fires are may be permitted on islands of within the City of Portland with a valid burning permit. All such recreational camp fires shall be kindled below the mean high tide line and comply with all State laws, this Chapter, and all rules and regulations promulgated pursuant to this Chapter and rules for open burning recreational outdoor fires. Any such burning permit may be cancelled for cause.~~

Sec. 10-94. Violations.

~~A violation of any provision of this article shall be punishable as provided in section 1-15 of this code.~~

~~—In addition to the process established by section 10-25, this article may also be enforced by the fire chief or his or her designee, or by the police chief, or his designee through the Uniform Summons and Complaint process or M.R. Civ. P. Rule 80k.~~

Sec. 10-95. Outdoor fireplaces.

~~(a) No permit shall be required to burn in a fixed outdoor fireplaces shall be permitted when that has been installed and is operated in accordance with Section 10-16 of the City Code this Chapter, all rules and regulations promulgated pursuant to this Chapter, and National Fire Protection Association (NFPA) 211 (2010); Standard for Chimneys, Fireplaces, Vents, and Solid Fuel-Burning Appliances.~~

~~(b) No permit shall be required to burn in a recreational fire appliance that is operated in accordance with this Chapter, all rules and regulations promulgated pursuant to this Chapter, and the manufacturer's instructions. This paragraph shall not apply to the use of an open fire ring.~~

~~(c) Setback of an outdoor fire place from adjacent property lines shall be five (5) feet. All outdoor fireplaces and recreational fire appliances allowed under this section must be set back at least fifteen (15) feet from all structures, combustible material, and adjacent property lines.~~

ARTICLE VIII. SIGNALING SYSTEMS FOR THE PROTECTION OF LIFE AND PROPERTY

Sec. 10-100. Purpose; definitions.

(a) Purpose. In order to protect public safety and welfare and ensure fully operational signaling systems for the protection of life and property, it is necessary to ensure that such systems are correctly designed, installed and maintained.

(b) For purposes of this article, the following definitions shall apply unless the context clearly implies otherwise:

Alarm number means any number assigned by the fire chief to a building which is connected by a fire alarm system to an approved private central station.

Alarm user means an owner of any building, or part thereof, that has a master box alarm system ~~y person whose building is connected to either the Dispatch Center of the City of Portland fire department or an approved private central station, or an agent of the owner who is responsible for the building.~~

Approved private central station means any privately operated message monitoring service which is approved by Underwriters' Laboratories, Incorporated, and approved by the authority having jurisdiction.

Dispatch Center (also known as the public safety answering point "PSAP") means any place utilized by the City of Portland for the receipt, monitoring or dispatching of alarms.

False alarm means any signal emitted from an approved private central station or master box alarm system that ~~which~~ is not in response to heat, smoke or fire requiring an immediate response by the fire department. "False alarm" includes any signals emitted by a negligently activated alarm system, or by an alarm system deliberately activated when an immediate response by the fire department is not required, or by a malfunctioning alarm system. However, "false alarm" does not include any signals emitted by an alarm system activated by unusually severe weather conditions, or other cause beyond the control of the alarm user. In case of any dispute, it shall be the burden of the alarm user to demonstrate to the satisfaction of the fire chief that an alarm signal was not a "false alarm."

Fire chief means the chief of the City of Portland fire department or his authorized representative or designee.

Master box alarm system means any mechanism or device, including protective signaling systems, designed for the detection of heat, smoke or fire requiring an immediate response by the fire department and which automatically emits a signal to the dispatch center.

Person means any individual, firm or corporation.

Sec. 10-104. False alarm penalties.

(a) *Third response.* Once a third ~~response to a false alarm at a building~~ within any ~~calendar year~~twelve-month period has been identified by the fire chief or his/her designee, the fire chief shall give written notice of the false alarm to the alarm user within ten (10) business days, and the alarm user shall file a written report with the chief within five (5) days thereafter stating the cause of the false alarm, if known, and describing corrective action taken, if any.

(b) *Fourth, fifth and sixth responses.* For the fourth, fifth and sixth ~~responses to a false alarm at a building by the fire department~~ within any ~~calendar year~~twelve-month period, the alarm user shall, upon demand, pay a penalty of two hundred dollars (\$200.00) per instance and shall, in the case of any equipment failure, file with the fire chief within three (3) days of notice to do so a signed statement by a qualified private alarm agent that the alarm system has been inspected and is in proper working order. In the case of human error or other cause, the alarm user shall file a written report with the fire chief describing corrective action taken, if any.

(c) *Seventh and subsequent responses.* For the seventh and subsequent ~~responses false alarms at a building by the fire department to a false alarm~~ within any ~~calendar year~~twelve-month period, the alarm user shall, upon demand, pay a penalty of three hundred and fifty dollars (\$350.00).

(d) *Written notice deemed complete.* Written notice by the fire chief shall be complete upon leaving such notice at or in the property at the time of response by the fire department or by mailing such notice within ten (10) business days by first class mail.

Sec. 10-107. Violations.

~~A violation of any provision of this article, including the failure to pay any false alarm penalty, shall be punishable as provided in section 1-15 of this Code.~~

~~This article may be enforced by the fire chief or his or her designee through the Uniform Summons and Complaint process or through M.R. Civ. P. 80k.~~

In addition to the process set forth ~~above~~in section 10-25, when the chief of the fire department, in his or her sole discretion, determines that the property owner has failed to take action to correct a faulty fire alarm system within four (4) hours of being notified of its deficiency, the chief shall have the authority, in person or through agents, to enter onto any property to have fire protection equipment repaired. The fire chief shall cause the condition to be corrected and shall send a notice of any action taken to correct an unsafe condition and the charges for the work done to the owner or the owner's authorized representative. The charges shall be payable to the city within thirty (30) days of the date of the notice. Any unpaid charges assessed under this section shall be enforceable by lien for the benefit of the city and shall be collected pursuant to section 1-16 of this Code.

24.2.5 Stairs, Ramps, and Guards.

24.2.5.1 Stairs, ramps, guards, and handrails shall be in accordance with 7.2.2 for stairs, 7.2.2.4 for guards, and 7.2.5 for ramps, as modified by 24.2.5.1.1 through 24.2.5.1.3.

24.2.5.1.1 The provisions of 7.2.2.5, 7.2.5.5, and 7.7.3 shall not apply.

24.2.5.1.2 If serving as a secondary means of escape, stairs complying with the fire escape requirements of Table 7.2.8.4.1 (a) or Table 7.2.8.4.1 (b) shall be permitted.

24.2.5.1.3 If serving as a secondary means of escape, ramps complying with the existing ramp requirements of Table 7.2.5.2 (b) shall be permitted.

24.2.5.2 Interior stairways shall be provided with means capable of providing artificial light at the minimum level specified by 7.8.1.3 for exit stairs, measured at the center of treads and on landing surfaces within 24 in. (610 mm) of step nosings.

24.2.5.3 For interior stairways, manual lighting controls shall be reachable and operable without traversing any step of the stair.

24.2.5.4 The clear width of stairs, landings, ramps, balconies, and porches shall be not less than 36 in. (915 mm), measured in accordance with 7.3.2.

24.2.5.5 Spiral stairs and winders in accordance with 7.2.2.2.3 and 7.2.2.2.4 shall be permitted within a single dwelling unit.

24.2.5.6 No sleeping rooms or living areas shall be accessible only by a ladder, a stair ladder, an alternating tread device, or folding stairs or through a trap door.

24.2.6 Hallways.

24.2.6.1 The width of hallways, other than existing approved hallways, which shall be permitted to continue to be used, shall be not less than 36 in. (915 mm).

24.2.6.2 The height of hallways, other than existing approved hallways, which shall be permitted to continue to be used, shall be not less than 7 ft (2135 mm) nominal, with clearance below projections from the ceiling of not less than 6 ft 8 in. (2030 mm) nominal.

24.2.7 Bulkheads.

24.2.7.1 Bulkhead Enclosures. Where provided, bulkhead enclosures shall provide direct access to the basement from the exterior.

24.2.7.2 Bulkhead Enclosure Stairways. Stairways serving bulkhead enclosures that are not part of the required primary means of escape, and that provide access from the outside finished ground level to the basement, shall be exempt from the provisions of 24.2.5.1 when the maximum height from the basement finished floor level to the finished ground level adjacent to the stairway does not exceed 8 ft (2440 mm), and the finished ground level opening to the stairway is covered by a bulkhead enclosure with hinged doors or other approved means.

24.3 Protection.

24.3.1 Protection of Vertical Openings. (No requirements.)

24.3.2 Reserved.

24.3.3 Interior Finish.

24.3.3.1 General. Interior finish shall be in accordance with Section 10.2.

24.3.3.2 Interior Wall and Ceiling Finish. Interior wall and ceiling finish materials complying with Section 10.2 shall be Class A, Class B, or Class C.

24.3.3.3 Interior Floor Finish. (No requirements.)

24.3.3.4 Contents and Furnishings. Contents and furnishings shall not be required to comply with Section 10.3.

24.3.4 Detection, Alarm, and Communications Systems. Smoke alarms or a smoke detection system shall be provided in accordance with either 24.3.4.1 or 24.3.4.2, as modified by 24.3.4.3.

24.3.4.1* Smoke alarms shall be installed in accordance with 9.6.2.10 in the following locations:

- (1) All sleeping rooms
- (2)* Outside of each separate sleeping area, in the immediate vicinity of the sleeping rooms
- (3) On each level of the dwelling unit, including basements

24.3.4.2 Dwelling units shall be protected by an approved smoke detection system in accordance with Section 9.6 and equipped with an approved means of occupant notification.

24.3.4.3 In existing one- and two-family dwellings, approved smoke alarms powered by batteries shall be permitted.

24.3.5* Extinguishment Requirements.

24.3.5.1 All new one- and two-family dwellings shall be protected throughout by an approved automatic sprinkler system in accordance with 24.3.5.2.

24.3.5.2 Where an automatic sprinkler system is installed, either for total or partial building coverage, the system shall be in accordance with Section 9.7; in buildings of four or fewer stories in height above grade plane, systems in accordance with NFPA 13R, *Standard for the Installation of Sprinkler Systems in Residential Occupancies up to and Including Four Stories in Height*, and with NFPA 13D, *Standard for the Installation of Sprinkler Systems in One- and Two-Family Dwellings and Manufactured Homes*, shall also be permitted.

24.4 Reserved.

24.5 Building Services.

24.5.1 Heating, Ventilating, and Air-Conditioning.

24.5.1.1 Heating, ventilating, and air-conditioning equipment shall comply with the provisions of Section 9.2.

24.5.1.2 Unvented fuel-fired heaters shall not be used unless they are listed and approved.

24.5.2 Reserved.

Chapter 25 Reserved

Chapter 26 Lodging or Rooming Houses

26.1 General Requirements.

26.1.1 Application.

26.1.1.1* The requirements of this chapter shall apply to buildings that provide sleeping accommodations for fewer persons on either a transient or permanent basis, without meals, but without separate cooking facilities for individual occupants, except as provided in Chapter 24.

31.3.4.4.2 Automatic fire detection devices shall be installed as follows:

- (1) Smoke detectors shall be installed in all common areas and work spaces outside the living unit, such as exit stairs, egress corridors, lobbies, storage rooms, equipment rooms, and other tenantless spaces in environments that are suitable for proper smoke detector operation.
- (2) Heat detectors shall be located within each room of the living unit.

31.3.4.5 Smoke Alarms.

31.3.4.5.1* In buildings other than those equipped throughout with an existing, complete automatic smoke detection system, smoke alarms shall be installed in accordance with 9.6.2.10, as modified by 31.3.4.5.2, outside every sleeping area in the immediate vicinity of the bedrooms and on all levels of the dwelling unit, including basements.

31.3.4.5.2 Smoke alarms required by 31.3.4.5.1 shall not be required to be provided with a secondary (standby) power source.

31.3.4.5.3 In buildings other than those equipped throughout with an existing, complete automatic smoke detection system or a complete, supervised automatic sprinkler system in accordance with 31.3.5, smoke alarms shall be installed in every sleeping area in accordance with 9.6.2.10, as modified by 31.3.4.5.4.

31.3.4.5.4 Smoke alarms required by 31.3.4.5.3 shall be permitted to be battery powered.

31.3.4.6* Protection of Fire Alarm System. The provision of 9.6.1.8.1.3 shall not apply to the smoke detection required at each fire alarm control unit by 9.6.1.8.1(1).

31.3.5 Extinguishment Requirements.

31.3.5.1 Reserved.

31.3.5.2 Reserved.

31.3.5.3* Where an automatic sprinkler system is installed, either for total or partial building coverage, the system shall be installed in accordance with Section 9.7, as modified by 31.3.5.4 and 31.3.5.5. In buildings four or fewer stories above grade plane, systems in accordance with NFPA 13R, *Standard for the Installation of Sprinkler Systems in Residential Occupancies up to and Including Four Stories in Height*, shall be permitted.

31.3.5.4 In individual dwelling units, sprinkler installation shall not be required in closets not exceeding 24 ft² (2.2 m²) and in bathrooms not exceeding 55 ft² (5.1 m²). Closets that contain equipment such as washers, dryers, furnaces, or water heaters shall be sprinklered, regardless of size.

31.3.5.5 The draft stop and closely spaced sprinkler requirements of NFPA 13, *Standard for the Installation of Sprinkler Systems*, shall not be required for convenience openings complying with 8.6.8.2 where the convenience opening is within the dwelling unit.

31.3.5.6 Reserved.

31.3.5.7 Reserved.

31.3.5.8 Reserved.

31.3.5.9 Buildings using Option 3 shall be provided with automatic sprinkler protection installed in accordance with 31.3.5.9.1 through 31.3.5.9.4.

31.3.5.9.1 Automatic sprinklers shall be installed in the corridor, along the corridor ceiling, utilizing the maximum spacing requirements of the standards referenced by Section 9.7.

31.3.5.9.2 An automatic sprinkler shall be installed within every dwelling unit that has a door opening to the corridor, with such sprinkler positioned over the center of the door, unless the door to the dwelling unit has not less than a 20-minute fire protection rating and is self-closing.

31.3.5.9.3 The workmanship and materials of the sprinkler installation specified in 31.3.5.9 shall meet the requirements of Section 9.7.

31.3.5.9.4 Where Option 3 is being used to permit the use of 1¾ in. (44 mm) thick, solid-bonded wood-core doors in accordance with 31.2.2.1.3, sprinklers shall be provided within the exit enclosures in accordance with NFPA 13, *Standard for the Installation of Sprinkler Systems*.

31.3.5.10 Buildings using Option 4 shall be protected throughout by an approved automatic sprinkler system in accordance with 31.3.5.3 and meeting the requirements of Section 9.7 for supervision for buildings seven or more stories in height.

31.3.5.11* Where sprinklers are being used as an option to any requirement in this *Code*, the sprinklers shall be installed throughout the space in accordance with the requirements of that option.

31.3.5.12 High-Rise Building Sprinklers.

31.3.5.12.1 All high-rise buildings, other than those meeting 31.3.5.12.2 or 31.3.5.12.3 shall be protected throughout by an approved, supervised automatic sprinkler system in accordance with 31.3.5.3.

31.3.5.12.2 An automatic sprinkler system shall not be required where every dwelling unit has exterior exit access in accordance with 7.5.3.

31.3.5.12.3* An automatic sprinkler system shall not be required in buildings having an approved, engineered life safety system in accordance with 31.3.5.12.4.

31.3.5.12.4 Where required by 31.3.5.12.3, an engineered life safety system shall be developed by a registered professional engineer experienced in fire and life safety system design, shall be approved by the authority having jurisdiction, and shall include any or all of the following:

- (1) Partial automatic sprinkler protection
- (2) Smoke detection systems
- (3) Smoke control systems
- (4) Compartmentation
- (5) Other approved systems

31.3.5.13 Portable fire extinguishers in accordance with 9.7.4.1 shall be provided in hazardous areas addressed by 31.3.2.1, unless the building is protected throughout with an approved, supervised automatic sprinkler system in accordance with 31.3.5.3.

31.3.6 Corridors.

31.3.6.1* Walls. Exit access corridor walls shall consist of fire barriers in accordance with Section 8.3 having a minimum ½-hour fire resistance rating.

31.3.6.2 Doors.

31.3.6.2.1 Doors that open onto exit access corridors, other than those complying with 8.3.4 or in buildings meeting the

Order 28-16/17
Feb 10 2-6-17

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

**CITY OF PORTLAND
IN THE CITY COUNCIL**

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

**AMENDMENT TO PORTLAND CITY CODE
CHAPTER 14 LAND USE, ARTICLE V. SITE PLAN
Re: Fort Sumner Park Height Overlay**

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

*That Chapter 14, Section 14-139 of the Portland City Code
is hereby amended to be repealed as follows:*

Sec. 14-139. Dimensional requirements.

(a) In addition to the provisions of division 25 (space and bulk regulations and exceptions) of this article, lots in the R-6 and R-6A zones shall meet or exceed the following minimum requirements:

...

R-6 Dimensional Requirements	
Maximum Height	Principal and attached accessory structure: 45 ft <u>except as provided under the Fort Sumner Park Height Overlay (Sec. 14-139 (d))</u> .
	Detached accessory structure: 18 ft
	In R-6A the maximum principal and attached accessory structure height shall be 65 ft.
Landscaped Open Space	20%. This area shall not include parking areas or other impervious surfaces as defined in section 14-47.

...

(b) Townhouse Subdivisions.

Subdivisions consisting of horizontally attached dwellings

on individual lots are not required to have side yards between such dwellings where a party wall condition will exist. Horizontally attached dwellings located within a single lot shall be required to meet the applicable side yard requirements at the external lot boundaries of the subdivision and internal lot boundaries between such dwellings that are not attached to each other. No minimum lot size width shall be required for individual lots underlying townhouse (horizontally attached) dwelling types. The applicable minimum lot area per dwelling shall apply to each lot.

(c) Alterations to Single-family, two-family, and multi-family dwellings in existence as of June 15, 2015 shall not result in the creation of any additional dwelling unit of less than six hundred (600) square feet of floor area, exclusive of common hallways and storage in basement and attic; and Shall not result in any existing dwelling unit being reduced in size to less than one thousand (1,000) square feet of floor area, exclusive of common areas and storage in basement and attic.

(d). Fort Sumner Park Overlay: This Overlay is established to protect the public interest by limiting the impact of development on the quintessential views of natural resources and the changing Portland skyline from Fort Sumner Park. There is established a key apex point in Fort Sumner Park at 43° 40' 2.3359"N. 70° 15' 4.3687"W. The Fort Sumner Park Overlay includes all land within 200 feet, or the R-6 zone boundary, whichever is closer, of this key apex point that is located closer to the middle line of Sheridan Street than said apex point.

Notwithstanding any other section of this Ordinance, development in the Overlay shall be subject to the following additional provisions:

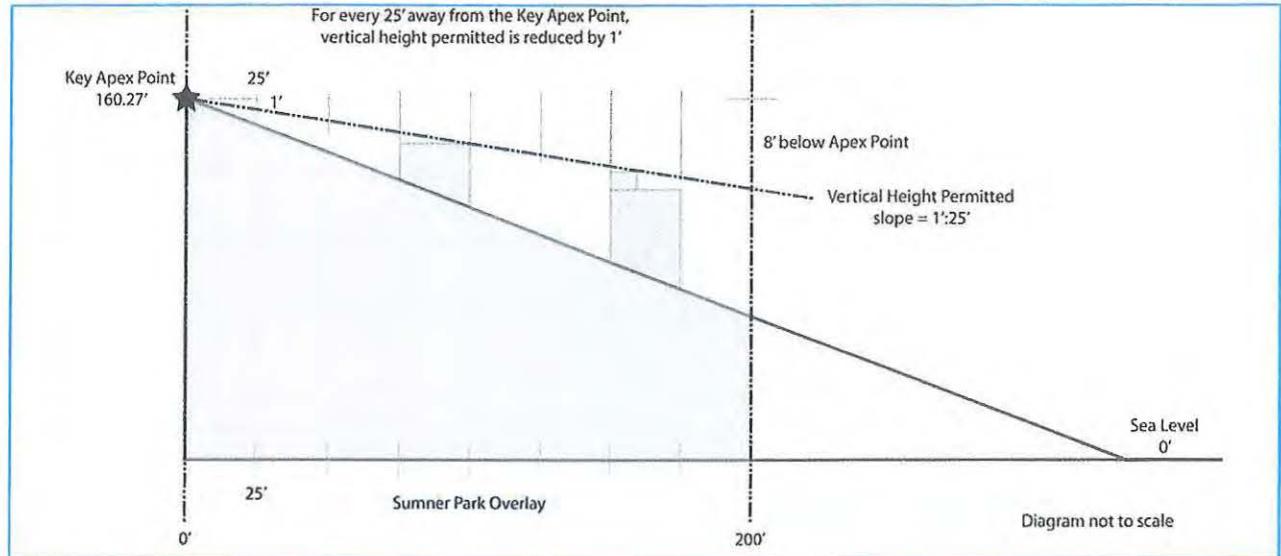
(1) The top of structures, including rooftop appurtenances, within the Overlay shall not exceed the baseline vertical height of the apex point (160.27' City of Portland Datum (Mean Tide)). For each 25' radially away from the apex point, the vertical height permitted in the Overlay is reduced by 1 foot (see Figure below, Ordinance Height graphic); and

(2) The minimum building setback from the park property shall be 15 feet.

Any project within this Overlay shall also go to the Parks

Commission for a recommendation to the Planning Board regarding potential impacts on Fort Sumner Park.

Table 14-139 Fort Sumner Park Overlay Permissible Height



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 of Planning and Urban Development

DATE: January 25, 2017

SUBJECT: Text and Map Amendments to the Zoning Code in Regard to Fort Sumner Park

SPONSOR: Elizabeth Boepple, Chair, Portland Planning Board

COUNCIL MEETING DATE ACTION IS REQUESTED:
1st reading February 6, 2017 **Final Action** February 22, 2017

Can action be taken at a later date: ____ Yes X No (If no why not?)
Moratorium (Order #73-16/17) on November 21, 2016, expires on Feb. 6, 2017

PRESENTATION: (List the presenter(s), type and length of presentation)
Short presentation by Planning Board Chair. Short presentation by Planning Staff (if necessary).

I. ONE SENTENCE SUMMARY

The City is seeking text and map amendments to the City's Zoning Code in order to rezone three parcels comprising Fort Sumner Park and adjacent Land Bank property from R-6 Residential to ROS Recreation Open Space, and to establish the Fort Sumner Park Overlay Zone in the R-6 zone to protect the park's panorama.

II. AGENDA DESCRIPTION

- A. The Planning Board voted unanimously, 6-0 (Dundon absent), to recommend to City Council adoption of the proposed map amendment to rezone three parcels comprising Fort Sumner Park and adjacent Land Bank property from R-6 Residential to ROS Recreation Open Space. This map amendment would extend between the centerlines of North Street and Sheridan Street and prohibit future incongruous development within this municipal park and would further protect its historic and scenic attributes.
- B. The Planning Board voted unanimously, 6-0 (Dundon absent), to recommend to City Council adoption of the proposed text amendment to the Division 7 R-6 Residential Zone, establishing the Fort Sumner Park Overlay Zone. This text amendment would establish an absolute height limit for new developments and or additions tied to the elevation of the viewing platform at Fort Sumner Park, 160.27 feet above mean sea level.

Permissible building heights for developments occurring within this zone would be reduced by 1 vertical foot for every 25 feet the structure moves away from the identified apex point. This text amendment also includes a provision for building setbacks of 15 feet and would require advisory review of all projects occurring within the proposed overlay zone by the Parks Commission.

- C. The Planning Board voted unanimously, 6-0 (Dundon absent), to recommend to City Council adoption of the proposed map amendment to establish the Fort Sumner Park Overlay Zone. This map amendment would establish the geographic area linked with the proposed text amendment, establishing a zone in which additional regulatory standards, intended to protect the panorama at Fort Sumner Park, would apply. This zone would extend 200 feet from an identified key apex point located in the center of the viewing platform at Fort Sumner Park. This zone would encompass areas roughly to the north, south and west of the apex point within a 180 degree arc whose line runs through the key apex point parallel to the centerline of Sheridan Street. The proposed overlay zone does not encompass parcels located in either the B-2b or C-46 zone that fall within the 200-foot arc.

III. BACKGROUND

The City Council filed Order #73-16/17 on November 21, 2016, establishing a 90-day moratorium on all development of parcels immediately abutting public ground within District I on the peninsula in response to the perceived vulnerability of the Fort Sumner Park Panorama. In discussions with members of the City Council, the community action group "Friends of Fort Sumner Park" and the local community, city staff developed a regulatory solution that limits building and or addition heights, including rooftop appurtenances, within the proposed overlay zone to a height that shall not exceed the identified elevation of the viewing Platform at Fort Sumner Park, 160.27 feet above mean sea level. The proposed text amendment provides further protection through increased building setbacks, requisite Parks Commission advisory review and a gradual reduction in permissible height for every 25 feet radially away from the identified key apex point within the proposed overlay zone.

These items went before the Planning Board on January 10, 2017 as a workshop item, were presented to the public at a neighborhood meeting at the East End School on January 18, 2017 and was unanimously recommended by the Planning Board, 6-0 (Dundon absent), on January 24, 2017 as a Public Hearing item. Twenty written public comments largely in support of the city's proposal were received for the proposed text and map amendments. At the public hearing, 24 individuals gave public comment with the majority in support of the proposed amendments. Representatives of the developer suggested raising the height limit by 3 feet and allowing elevator overruns, which were not supported by the Board. The public input is attached to the Planning Board report.

IV. INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED

The request supports the general Council goal to "Protect and Invest in Green Space and Parks".

V. FINANCIAL IMPACT

The granting of this proposal would have potential financial impacts on those individuals who own property within the proposed overlay zone. This proposal necessarily limits building heights within this zone to a maximum elevation of 160.27 feet above mean sea level, regardless of existing site grades. This figure is more restrictive than that of the current base zoning district.

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

The Planning Board unanimously recommended adoption, 6-0 (Dundon absent), of the requested text and map amendments as they support the currently approved Comprehensive Plan by strengthening the city's green infrastructure, providing key visual access to the city's water resources and preserving a panorama specifically highlighted within the Downtown Height Study adopted as part of the Comprehensive Plan.

VII. STAFF RECOMMENDATION

The Planning Staff recommend that the Council adopt the proposed amendments retroactively to the expiration date of the moratorium.

VIII. PLANNING BOARD RECOMMENDATION

- A. The Planning Board unanimously recommended adoption 6-0 (Dundon absent), of the zoning map amendment to rezone three parcels encompassing Fort Sumner Park and adjacent Land Bank property totaling 1.2027 acres from R-6 to Recreation Open Space (ROS), as this amendment supports key policies found in the Comprehensive Plan.
- B. The Planning Board unanimously recommended adoption, 6-0 (Dundon absent), of the zoning text amendments for the Fort Sumner Park Overlay Zone, including the Ordinance Height Graphic to Division 7- R-6 Residential Zone, as this amendment supports key policies found in the Comprehensive Plan.
- C. The Planning Board unanimously recommended adoption, 6-0 (Dundon absent), of the zoning map amendment to create the Fort Sumner Park Overlay Zone in the R-6 zone, as this amendment supports key policies found in the Comprehensive Plan.

IX. LIST ATTACHMENTS

- A. **Proposed Text and Map Amendment for the Fort Sumner Park Overlay Zone**
- B. **Planning Board Report to City Council with Attachments**

Prepared by: Matthew Grooms
Date: January 25, 2017



PLANNING BOARD REPORT TO CITY COUNCIL PORTLAND, MAINE

Fort Sumner Park Overlay Ordinance Amendment (Within R-6 Zone)
Applicant: City of Portland

Submitted to: Portland City Council
First Reading: February 6, 2017
Second Reading: February 22, 2017

From: Portland Planning Board
Prepared by: Matthew Grooms, Planner
Date: January 26, 2017



Figure 1: Views from Fort Sumner Park at Present.

I. INTRODUCTION

In response to Order 73-16/17, which established a 90-day moratorium on developments within the R-6 Residential Zone in District 1 for properties directly abutting a City Park or Public Ground, the Planning Board is recommending the city's proposal for a map and text amendment to establish a height overlay zone intended to protect the existing sightlines at Fort Sumner Park. The proposed Fort Sumner Park Overlay Zone encompasses several parcels located within the R-6 Residential zone. At the present time, one can view Portland's

changing skyline as well as a variety of natural resources from this location, including Casco Bay, Back Cove and portions of the White Mountains. Recent development proposals for a six-story condominium complex at 155 Sheridan Street, have demonstrated the vulnerability of this vista under the current zoning and citywide height overlay.

II. BOARD'S RECOMMENDATION

On January 24, 2017, the Planning Board voted unanimously, 6-0 (Dundon absent), to approve the text and map amendments to rezone three properties comprising Fort Sumner Park and the adjacent Land Bank property from R-6 Residential to ROS Recreation Open Space, and to establish the Fort Sumner Park Overlay Zone within the R-6 zone. The board's decision was guided by plans and materials submitted by the City of Portland, the policies of the R-6 Residential Zone, the policies of the ROS Recreation and Open Space Zone, Portland's Comprehensive Plan, public comment, and information provided in the workshop and public hearing.

III. BACKGROUND

Originally, the site of an earth and timber fortification built in 1794, and later designated as a city park in 1934, Fort Sumner Park today constitutes an integral component of the open space portfolio for the Munjoy Hill neighborhood (Attachment 1). From its viewing platform, visitors are afforded quintessential vista of the region that serve to connect them with the city's ever changing landscape, its maritime resources and the distant mountains. At present, no clear and predictable mechanism is in place through zoning, adopted design standards or historic preservation that would preserve the existence of the panorama from this location.

According to the Comprehensive Plan's Future Growth Area Map, the parcels surrounding Sumner Park within

the proposed overlay zone have been designated as a target area for ongoing growth and development. Since the Comprehensive Plan's update in 2005, four new condominium buildings have been constructed along Sheridan Street between Walnut Street and Cumberland Avenue. In 2016, preliminary renderings were circulated to the public for the development of a condominium building that would be built on CBL 012 Q012, or the parcel located immediately to the northwest of Sumner Park along Sheridan Street. This development as originally envisioned by a developer could have potentially obstructed part of the view over Back Cove, the western foothills and White Mountains. Although language existed in the City's site plan and subdivision ordinances to address project context and visual impact, concern was raised that existing mechanisms did not go far enough to preserve the integrity of this vista.

The potential for redevelopment of 155 Sheridan Street and potential impact on Ft Sumner park raised significant concern among residents, the city council and staff. Neighborhood residents asked the city to designate the park as a historic landmark which would require the Planning Board to consider any negative externalities to the park from developments occurring within 100 feet of the park's parcel boundary. Additionally, on September 19, 2016, two petitions constituting more than 300 signatures were submitted to the City Council requesting that any proposed developments along Sheridan Street be properly vetted to ensure that there be no adverse impacts to views from the park. On November 7, 2016, the Portland City Council unanimously approved a 90-day moratorium for development review and consideration on projects located



Figure 2: Illustration of Ft. Sumner Lookout circa 1911

city skyline and water" as a vista to receive "special attention" (Portland Maine Downtown Height Study, pg.6). In addition, under Section IV, Green Space, Blue Edges, an Open Space and Recreation Plan for the City of Portland, 1995, updated 2001, in the 'Portland's Goals and Policies for the Future' document within the Comprehensive Plan, it states that a principle goal of the City is to "Develop a vision of the natural environment that enhances the full range of dynamic contrasts between the landscapes and built forms found in Portland, which will enrich the appearance and enliven the use of our city." Despite the history and intent to preserve this vista, little has been done to address formalizing this space; however, recent market pressures for new multi-family housing in the R-6 necessitate the development of a targeted regulatory solution at this time.

within the R-6 Zone in District 1, in instances where projects directly abut City Parkland and/or Public Grounds. This moratorium went into effect on November 21, 2016 and will expire on February 6, 2017 (Attachment 2). This moratorium cites several elements of the Comprehensive Plan as justification, including the importance of maintaining "vistas from promenades and high points" and properly valuing and celebrating the city's relationship with its water resources.

The vista from the site in the vicinity of the former Fort Sumner has been identified for its value as a panorama of the City of Portland, the Back Cove and western mountains for over 100 years (See Figure 2) In the Downtown Height Study completed in 1989, the Fort Sumner panorama was singled out for its "panoramic views of the



Figure 3: Downtown Height Study, Structure of Views, page 5. Fort Sumner Park panorama is highlighted.

The purpose of this proposed overlay zoning district is to protect the public interest by limiting the impact of development on the quintessential views of natural resources and the changing Portland skyline from Sumner Park. In developing this overlay concept, the Planning and Parks staff researched overlay approaches used in Denver and San Antonio that are designed to protect viewsheds of natural features. In Portland, height overlays currently regulate maximum building heights within the B-3, B-6 and B-7 zoning districts.

IV. PUBLIC COMMENT

Eighteen written comments were received, (Attachment 2). A majority of emails received have expressed concerns regarding the potential obstruction of views at Fort Sumner Park by future development, and one comment was specifically in support of the proposed overlay zone (See Attachment

6). On January 18th, city staff held a neighborhood meeting at the East End School attended by 26 individuals. At this meeting, staff presented information regarding the context of the rezoning effort, the proposed text and map amendments and justification for the approaches taken by the City. Following the presentation, residents voiced a number of comments, questions and concerns. The neighborhood packet and meeting notes are included as Attachment 3.

At the public hearing, 24 individuals gave public comment, which were almost entirely in support of the proposed amendments and preserving the vista. A representative of the developer seeking to develop 155 Sheridan Street, located immediately to the north of Fort Sumner Park along Sheridan Street, submitted written comments and suggested at the hearing raising the height limit by 3 feet and allowing elevator overruns. These suggestions were not supported by the Board.

V. ZONING CONTEXT

The proposed text and map amendments would occur within a largely residential neighborhood composed of single-family, duplex and multi-family homes along with commercial activity along Washington Avenue. To the north, east and immediate south of Fort Sumner Park, properties are zoned R-6 Residential, while to the west, properties are zoned B-2b Community Business. In response to the request regarding the elevation of Sheridan Street, an excerpt of the city map with topography is shown below. The elevation as provided by William Clark, Surveyor with the Department of Public Works, shows Fort Sumner Park to be located at 160.27 feet, Sheridan Street to be located at 115 feet and Washington Avenue at 71.9 feet. Thus, the staff concluded that development within the B-2b zone, which has a maximum building height of 50 feet, would not intrude on the vista from Fort Sumner due to the significant change in elevations. Thus, the height overlay zone is recommended for the R-6 zone only.

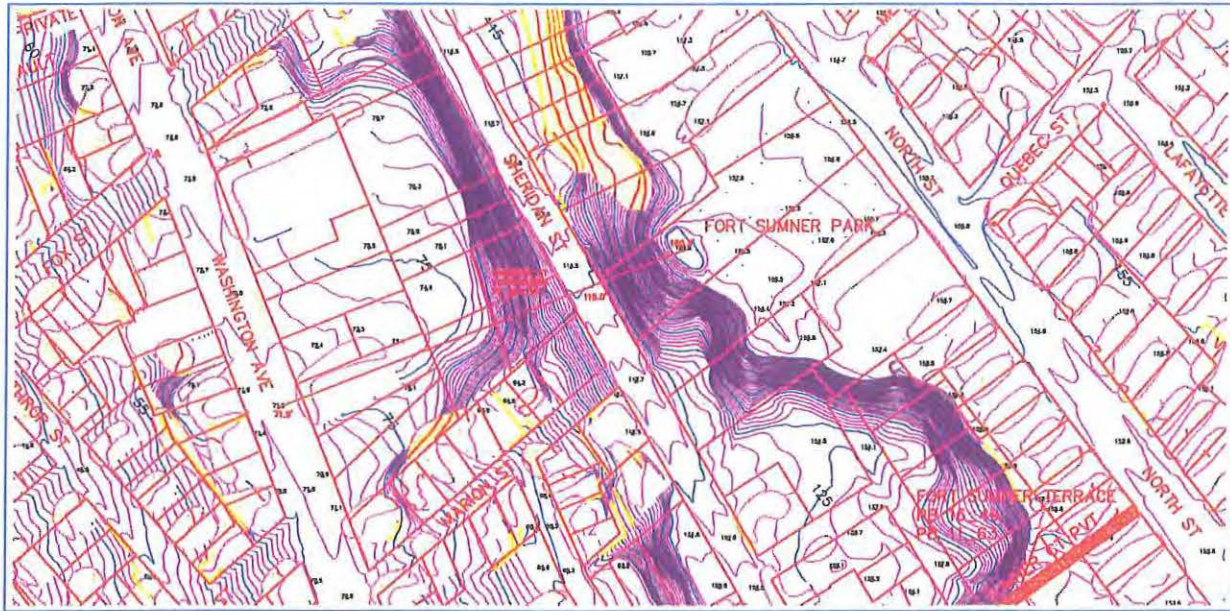


Figure 4: Topographic Map of Streetscape around Fort Sumner Park

The purpose of the R-6 zone, which can currently be found predominantly in the East and West Ends of the city, is to “set aside areas...for housing characterized primarily by multi-family dwellings at a high density” and to “conserve the existing housing stock and residential character of neighborhoods by controlling the scale and external impacts of professional offices and other nonresidential uses” (*Section 14-135*). Meanwhile, the B-2b zone is intended to provide neighborhood and community retail in a format cognizant of pedestrian character and scale (*Section 14-216*). According to the City of Portland, Maine Building Height Regulation Map, properties located within the R-6 zone are permitted building heights of 45’ for principal structures, while residential structures located in the B-2b zone are permitted a maximum height of 45’, with an option of going to 50’ if the first floor of the building is commercial. Within the R-6 and B-2b zones, building height is measured from the average grade of the site, allowing for instances where structure extrusion may surpass the aforementioned maximum heights.

VI. PROPOSED TEXT AND MAP AMENDMENT

The proposed text and map amendments presented below focuses on the height overlay provisions proposed to be included within the R-6 zone as well as the proposed rezoning of Fort Sumner Park from R-6 Residential to ROS Recreation Open Space.

A. Proposed Map Amendment: Recreation Open Space (ROS)

The city is seeking to rezone Fort Sumner Park (1.2027 acres) from R-6 Residential to ROS, which has the following purpose statement

- (a) *The purpose of this division is:*
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 an open space system throughout the downtown, which provides the highest quality parks, plazas, and pedestrian environment.*

- (b) *The recreation open space zone may include parcels of public property, and private property legally restricted from intensive use or development through deed, covenant, or otherwise.*

Fort Sumner Park currently operates as publicly accessible open space and yet at present is zoned R-6 Residential, a zone that allows by right the development of single-family, multi-family and limited commercial uses. The rezoning of this property to ROS Recreation Open Space would prohibit future developments incongruent with the existing character of Fort Sumner Park and emphasize the city's goal of preserving this site and the panorama available from the park as public space.

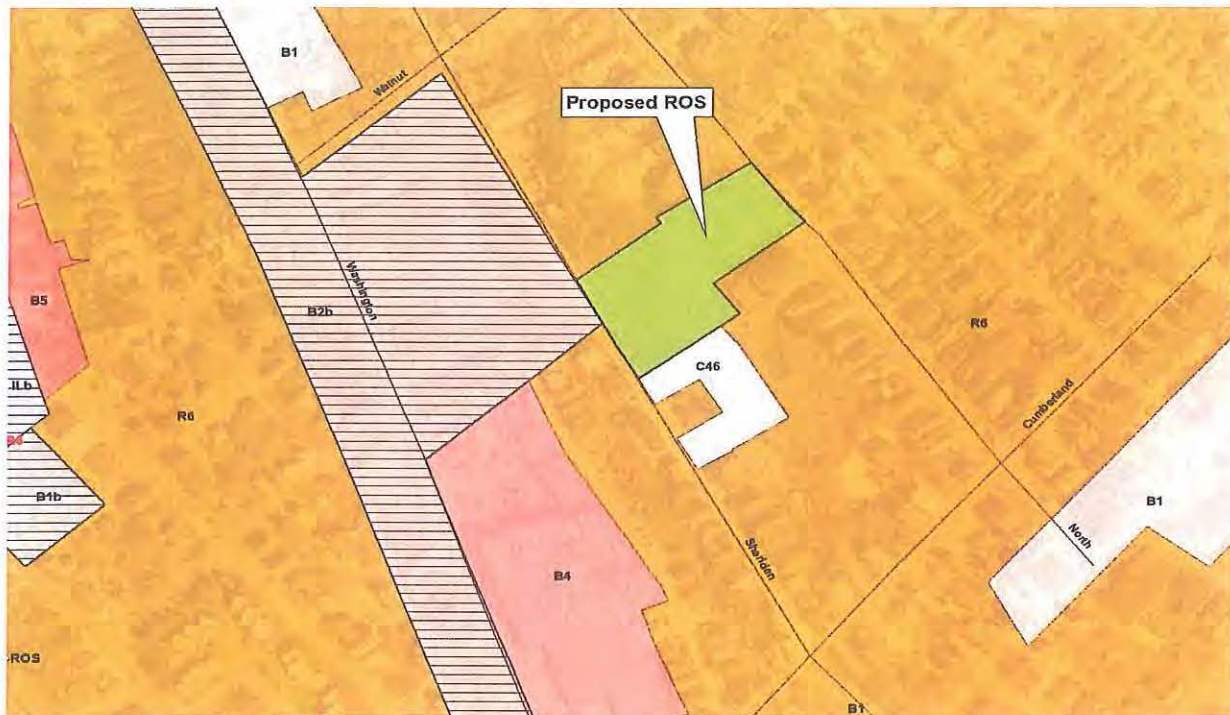


Figure 5: Proposed Rezoning from R-6 Residential to ROS Recreation Open Space

B. Proposed Text Amendment (Fort Sumner Overlay)

1. Amend: Section 139 (a) Dimensional Requirements.

Maximum Height	Principal and attached accessory structure: 45 ft, <i>except as provided under the Fort Sumner Park Height Overlay (Sec. 14-139 (d))</i>
----------------	---

2. Amend Section 139, by adding (d) R-6 Height Overlay Amendment (Fort Sumner Park)

Add a new section to 14-139 as follows:

(d). Fort Sumner Park Overlay: This Overlay is established to protect the public interest by limiting the impact of development on the quintessential views of natural resources and the changing Portland skyline from Fort Sumner Park. There is established a key apex point in Fort Sumner Park at 43° 40' 2.3359"N. 70° 15' 4.3687"W. The Fort Sumner Park Overlay includes all land within 200 feet, or the R-6 zone boundary, whichever is closer, of this key apex point that is located closer to the middle line of Sheridan Street than said apex point.

Notwithstanding any other section of this Ordinance, development in the Overlay shall be subject to the following additional provisions:

- The top of structures, including rooftop appurtenances, within the Overlay shall not exceed the baseline vertical height of the apex point (160.27' City of Portland Datum (Mean Tide)). For each 25' radially away from the apex point, the vertical height permitted in the Overlay is reduced by 1 foot (see Figure below, Ordinance Height graphic).
- The minimum building setback from the park property shall be 15 feet.

Any project within this Overlay shall go to the Parks Commission for a recommendation to the Planning Board regarding potential impacts on Sumner Park.

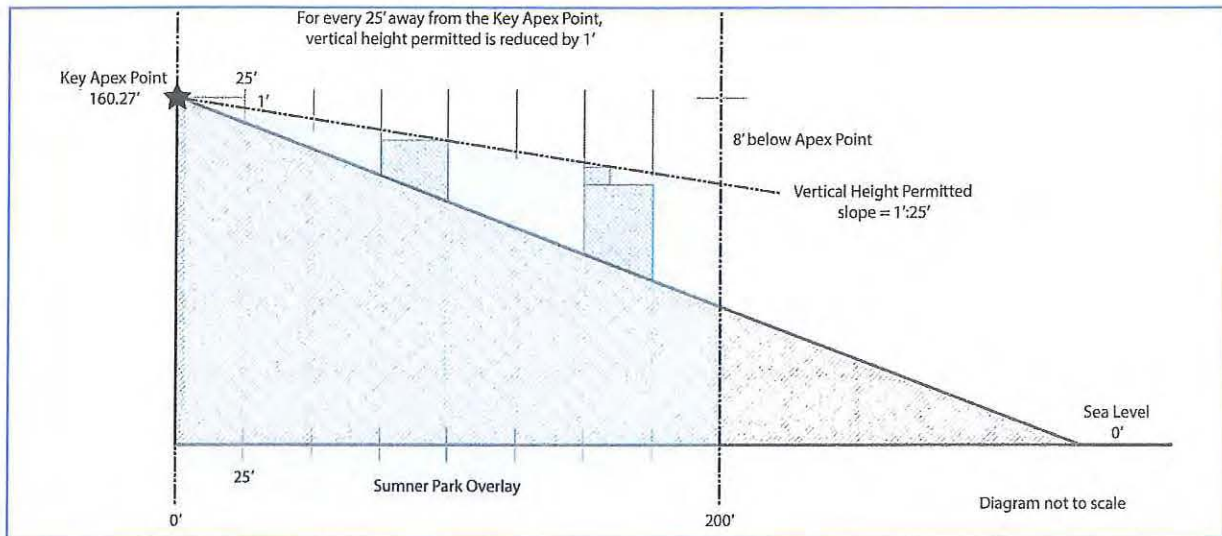


Figure: Ordinance height graphic. Note: Within the Overlay, permitted height is reduced by 1' for each 25' away from apex point (not to scale).

C. Proposed Map Amendment (Fort Sumner Overlay)



Figure

VII. POLICY ANALYSIS

The proposed text and map amendments will serve to preserve Fort Sumner Park and its quintessential vista while maintaining reasonable development potential for properties located within the proposed overlay zone. In addition to the historical documents cited in the background section of this report, the proposed amendments meet multiple goals of the city's Comprehensive Plan:

State Goal E: To protect the quality and manage the quantity of the State's water resources, including lakes, aquifers, great ponds, estuaries, rivers and coastal areas.

A key goal within Portland's Open Space and Recreation Plan, Green Spaces, Blue Edges, is the development of an open space system that utilizes the natural forces of air, water, vegetation and landform to minimize negative impacts related to human development, including eyesores. This overlay zone supports the following policies from the plan:

- *Using scientific models and studies, determine the optimal organization of open space and vegetation to minimize the identified environmental problems.*

State Goal F: To protect the State's other critical natural resources, including without limitation, wetlands, wildlife and fisheries habitat, sand dunes, shorelands, scenic vistas and unique natural areas. Further, it is stated under the State's Coastal Management Policies that critical habitat and natural areas of state and national significance should be maintained to preserve natural beauty, even in locations where development occurs. As with State Goal E, the City's Open Space and Recreation Plan, Green Spaces, Blue Edges, incorporates several policies intended to further these state goals. Those policies adhered to by the proposed overlay zone include:

- *Conservation of natural resources should include a complete array of natural features and habitats, so that the public may learn about and experience the full realm of Portland's natural environment.*
- *Develop High Point Parks, open spaces located on the higher elevations of the city, in neighborhoods throughout the city such as the Ocean Avenue Landfill, hilltop on Ocean Avenue by rock shop, Rocky Hill, and hills in Stroudwater.*

State Goal I: To preserve the State's historic and archeological resources.

As both a military installation and later as a public park, the defining feature of this site is its location along the ridge of Munjoy Hill, which has historically afforded visitors expansive views of the city, local water resources and the surrounding countryside. Portland's Historic Preservation Ordinance calls for the preservation of the city's architectural and historical heritage and the promotion of the city's educational, cultural, economic and general welfare, two goals supported by this proposed overlay zone, which would serve to protect one of the defining features of this park, its view. A few of the policies found within the HP ordinance taken into account by the proposed overlay zone include:

- *Create a mechanism to identify, preserve and enhance distinctive areas, sites, structures and objects that have historic, cultural, architectural and archaeological significance.*
- *Apply design standards in a reasonable and flexible manner to prevent the unnecessary loss of the community's historical features and to insure compatible construction and rehabilitation in historic districts while not stifling change and development or forcing modern recreations of historic styles.*
- *Protect and enhance neighborhood character.*
- *Protect and enhance the attractiveness of the city to its home buyers, home owners, residents, tourists, visitors, businesses and shoppers.*
- *Foster and encourage preservation, restoration and rehabilitation that respect the historic, cultural, architectural and archaeological significance of distinctive areas, sites, structures and objects.*

Likewise, this overlay zone would meet the goals of the 1991 *Downtown Vision*, which state that the city should strive to "preserve and enhance the livability and walkability of Downtown Portland for residents, workers, shoppers, and visitors."

State Goal J: To promote and protect the availability of outdoor recreation opportunities for all Maine Citizens, including access to surface water. Similarly, the State's Coastal Management Policy calls for the expansion of opportunities for outdoor recreation and the encouragement of appropriate coastal tourist activities and development. Fort Sumner Park currently preserves a pivotal point of visual access for both visitors and residents to Maine's scenic landscapes and water bodies. This overlay zone would serve to perpetuate the following policies of the City's Open Space and Recreation Plan; Green Spaces, Blue Edges:

- *Neighborhoods should have open space focal points.*
- *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.*
- *Develop a vision of the natural and landscape environment that provides for the full range of dynamic contrasts found in our City that will enrich and enliven the use of our City and its built form.*

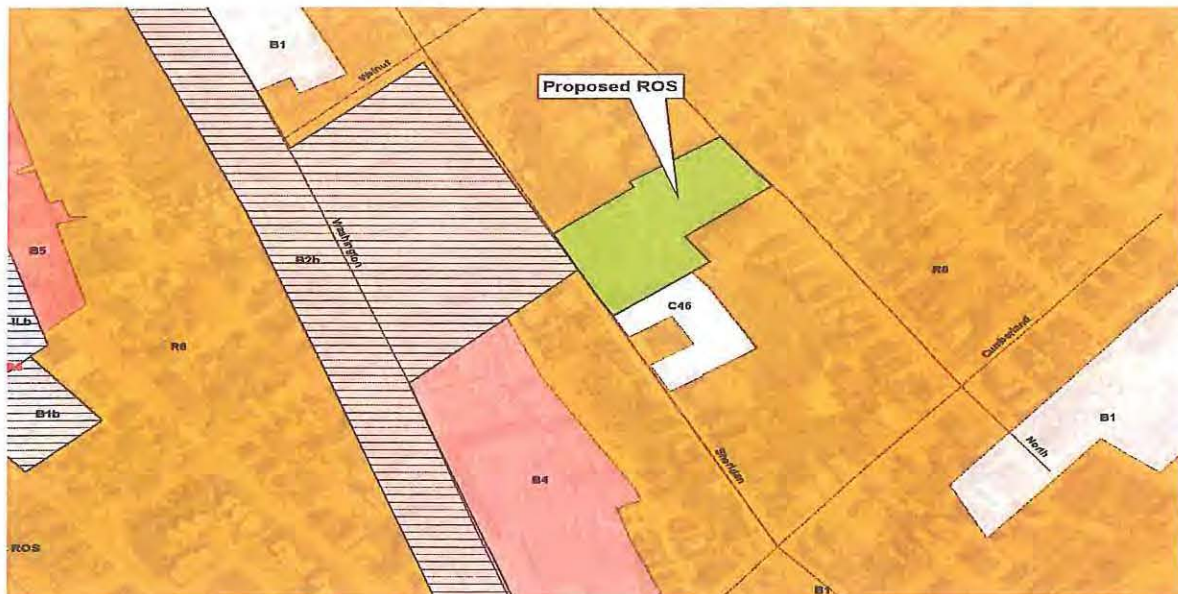
VIII. PLANNING BOARD'S RECOMMENDATION

On the basis of plans and materials submitted by the City of Portland, the policies of the R-6 Residential Zone, the policies of the ROS Recreation and Open Space Zone, Portland's Comprehensive Plan, public comment, the information provided in the public hearing on January 24, 2017 for the Fort Sumner Park Overlay, and/or other findings as follows:

A. **Map Amendments from R-6 Residential to ROS Recreation Open Space:**

The Planning Board finds that the proposed rezoning of Fort Sumner Park and adjoining City Owned Land Bank Property to ROS Recreation Open Space is consistent with the Comprehensive Plan for the City of Portland; and

Therefore, the Planning Board unanimously recommends 6-0 (Dundon absent) to the City Council approval of the zoning map amendment for Fort Sumner Park and adjoining City Owned Land Bank Property from R-6 Residential to ROS Recreation Open Space for 1.2027 acres as area shown below.



B. **Text Amendment R-6 Residential Zone**

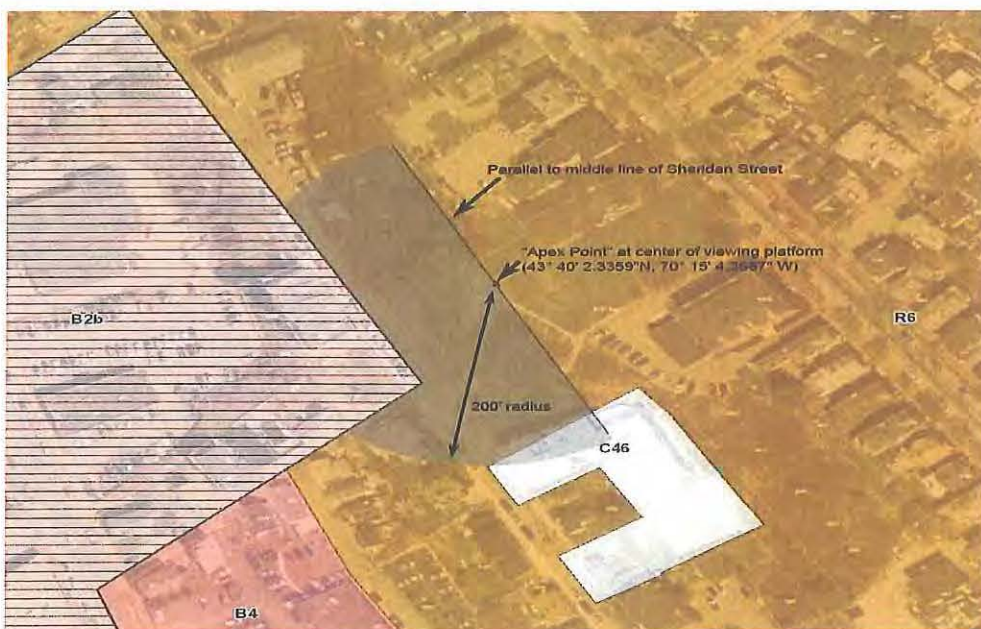
The Planning Board finds that the proposed text amendments for the Fort Sumner Park Overlay Zone including Figure 6, Ordinance Height Graphic, from this report to Division 7 R-6 Residential Zone, as presented in Attachment 1 of this report are consistent with the Comprehensive Plan for the City of Portland; and

Therefore, the Planning Board unanimously recommends 6-0 (Dundon absent) to the City Council approval of the zoning text amendments to Division 7 R-6 Residential as presented in Attachment 1.

C. Map Amendment from R-6 Residential to R-6 Residential with Fort Sumner Park Overlay:

The Planning Board finds that the proposed zoning amendment to create the Fort Sumner Park Overlay Zone is consistent with the Comprehensive Plan for the City of Portland; and

Therefore, the Planning Board unanimously recommends 6-0 (Dundon absent) to the City Council approval of the zoning map amendment to establish the Fort Sumner Park Overlay Zone as shown below.



IX. REPORT ATTACHMENTS

1. Proposed Fort Sumner Park Overlay Zone Text Amendment
2. Public Comments
3. Neighborhood Meeting Packet

A. Proposed Text Amendment (Fort Sumner Overlay)

1. Amend: Section 139 (a) Dimensional Requirements.

Maximum Height	Principal and attached accessory structure: 45 ft, <i>except as provided under the Fort Sumner Park Height Overlay (Sec. 14-139 (d)).</i>
-----------------------	--

2. Amend Section 139, by adding (d) R-6 Height Overlay Amendment (Fort Sumner Park)

Add a new section to 14-139 as follows:

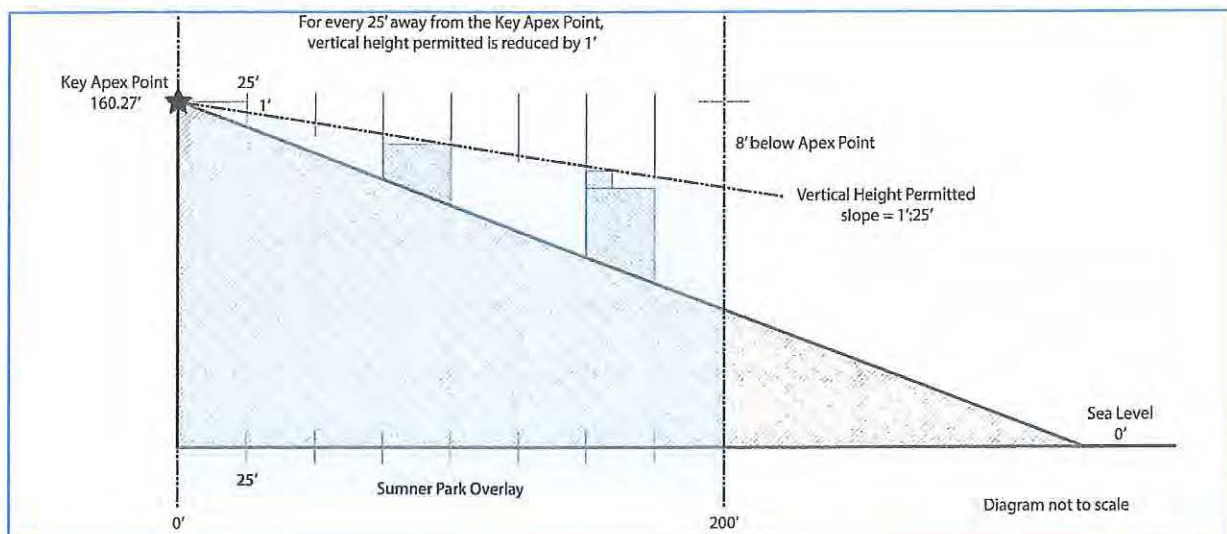
(d). Fort Sumner Park Overlay: This Overlay is established to protect the public interest by limiting the impact of development on the quintessential views of natural resources and the changing Portland skyline from Fort Sumner Park. There is established a key apex point in Fort Sumner Park at 43° 40' 2.3359"N. 70° 15' 4.3687"W. The Fort Sumner Park Overlay includes all land within 200 feet, or the R-6 zone boundary, whichever is closer, of this key apex point that is located closer to the middle line of Sheridan Street than said apex point.

Notwithstanding any other section of this Ordinance, development in the Overlay shall be subject to the following additional provisions:

- The top of structures, including rooftop appurtenances, within the Overlay shall not exceed the baseline vertical height of the apex point (160.27' City of Portland Datum (Mean Tide)). For each 25' radially away from the apex point, the vertical height permitted in the Overlay is reduced by 1 foot (see Figure below, Ordinance Height graphic).
- The minimum building setback from the park property shall be 15 feet.

Any project within this Overlay shall go to the Parks Commission for a recommendation to the Planning Board regarding potential impacts on Sumner Park.

WITHIN THE OVERLAY, PERMITTED HEIGHT IS REDUCED BY 1' FOR EACH 25' AWAY FROM APEX POINT



B. Proposed Map Amendment (Fort Sumner Overlay)





Att. 2

PC1

Jennifer Munson <jmy@portlandmaine.gov>

Portland's historic Fort Sumner Park

1 message

Richard Peterson <rpeterson@une.edu>

Tue, Jan 3, 2017 at 10:18 AM

To: "planningboard@portlandmaine.gov" <planningboard@portlandmaine.gov>

Dear Elizabeth Boepple, Chair, and Members of the Portland City Planning Board,

I write to express my strong support of efforts to limit development near Munjoy Hill's Fort Sumner Park in order to preserve the park's spectacular aesthetic value known most powerfully through the view the park provides of our great city, and of the natural magnificence of the Back Bay landscape. It is the only place in Portland that affords such a view for the public and for all those who will continue into the future to call Portland home. It would be a travesty to block access to the beauty the park provides by allowing a single developer and a few tenants to claim for themselves what is now enjoyed by all.

Please find a solution that allows the developer to provide needed housing without stealing away from all of us the pleasure, appreciation, and solace that beautiful landscapes afford.

Sincerely,

Dr. Richard Peterson
93 Winding Way
Portland, ME 04102

Richard B. Peterson, Ph.D.
Associate Professor
Department of Environmental Studies
University of New England
(207) 602-2862
rpeterson@une.edu

This e-mail may contain information that is privileged and confidential. If you suspect that you were not the intended recipient, please delete it and notify the sender as soon as possible.

Google Groups

Fort Sumner Park Protection

Paula Hill <paulafhill60@gmail.com>

Jan 3, 2017 9:17 PM

Posted in group: **Planning Board**

Hello Planning Board Members!

I'm new to the Munjoy Hill neighborhood. I'm at the Ft Sumner Park every morning and evening, with my dog, Tyrus. We visit with neighbors and check out the vista. Not a day goes by where I don't meander over to the park to soak-up the lighting over the bluff. I fear the new development plan. It is far too close to the park and I believe will completely downgrade the view.

I see people on the park benches, enjoying the morning or nighttime scene. It would be a shame for us to not have this park and the extraordinary view, to enjoy in the future.

Thanks for allowing me in your IN box!

Paula

--

Paula F Hill
72 Melbourne Street #1
Portland, ME 04101

Sorted Affairs/Encore Life

<http://paulafhill.com/>

207-332-6197 (note the new number!!)

LinkedIn member

Facebook



Jennifer Munson <jmy@portlandmaine.gov>

Fort Sumner Park

1 message

Kate Lawrence <klawrence33@gmail.com>

Wed, Jan 4, 2017 at 1:26 PM

To: planningboard@portlandmaine.gov

Attn: Elizabeth Boepple, Chair, and Members of the Planning Board,

Dear Ms. Boepple,

I am a homeowner at 81 Quebec Street on Munjoy Hill, almost directly across from Ft. Sumner Park. The unrestricted views that the park provides are a rare find in a city like Portland. People go there daily to peacefully sit, watch the sunset, and enjoy the outdoor space. The proximity of the park, its beautiful views, and the chance to be near some green space, were a major factor in my family's decision to buy our home. I am very concerned that a proposed development will undermine the historic park and its view.

Thank you for taking the time to consider this message.

Best,

Kate

Kate M. Lawrence, Esq.
81 Quebec St. 2
Portland, ME 04101
(845) 544 4088



Jennifer Munson <jmy@portlandmaine.gov>

Ft. Sumner Park

1 message

'Dbird34' via Planning Board <planningboard@portlandmaine.gov>

Thu, Jan 5, 2017 at 9:46 AM

Reply-To: Dbird34 <dbird34@protonmail.com>

To: "planningboard@portlandmaine.gov" <planningboard@portlandmaine.gov>

Dear Elizabeth Boepple, Chair,
and Members of the Planning Board—

My wife and I moved to Portland three years ago, and our only regret is that we didn't do it ten years earlier. We love this city, not least the views over Casco Bay from the Eastern Prom and over downtown from Ft. Sumner Park. These views *must* be preserved. We recognize the need for new housing, and support most of the development that seeks to supply it. But, surely, this development can proceed without compromising the views from Ft. Sumner Park and elsewhere. It is the board's job to insist on that compromise. I urge you to do so, thus preserving Portland's unique esthetic.

Sincerely,
Richard Pollak

28 Melbourne Street
Portland, ME 04101
917-848-5843



Jennifer Munson <jmy@portlandmaine.gov>

Please preserve the view from Fort Sumner Park

1 message

Joyce Walworth <joycewalworth@gmail.com>

Thu, Jan 5, 2017 at 9:47 AM

To: planningboard@portlandmaine.gov

Dear Ms. Boepple and members of the Planning Board:

Having recently turned 70, I reflect daily on the urgency of what to preserve for future generations. Change is inevitable, but some changes are mistakes and cannot be undone. I believe it would be a mistake to block the view from Fort Sumner Park. The view - available to one and all - is spectacular. It's a spot for reflection and wonder but also appreciation for a thriving city below. I hope that tomorrow's children will not lose this view because of a developer's lack of concern for the historic value of Fort Sumner Park and the residents of Munjoy Hill.

Sincerely,

Joyce Walworth
135 Sheridan St
Portland, ME 04101

Google Groups

Fort Sumner Park

Fort Sumner <fortsumnerpark@gmail.com>

Jan 5, 2017 9:12 PM

Posted in group: **Planning Board**

To: Elizabeth Boepple, Chair and Members of the Planning Board

The Friends of Fort Sumner Park is extremely grateful for the work done by staff to preserve the views from Fort Sumner Park. We heartily endorse the concept of the overlay zone, keeping in mind that in 1983 the state legislature protected the park "solely for park and recreational purposes in perpetuity". We are also supportive of the establishment of a view cone which defines the panoramic view from the park, and also the graduated protection from foreground clutter in the proposed overlay.

While we would prefer a greater setback from the property line to preserve the quiet and tranquility of the park, we think the addition of vegetative screening in the "no build" area can provide additional visual and noise protection from air handling systems and all manner of HVAC equipment and systems on the building roofs.

With respect to the height limit, we would like to set this established at the historic altitude for the park lookout, which can be seen in an early twentieth century postcard, which was at the level of what we believe to have been the parade ground for Fort Sumner. The current bumped-up observation deck was added during the 1991 renovation of the park and we would like to see the original topography restored at some point, without the visual and noise intrusion of roof appliances and structures such as heat pumps or elevator shafts.

Finally, we would like to see the height limits to include landscaping. One new American elm could spoil the sunset view very quickly.

We urge you to endorse the staff recommendations, with the amendments suggested above. The view from Fort Sumner Park is unique and extraordinary, so much so that area hotels regularly send visitors up to the park in the summer to enjoy the sunset. We believe the McCarthy family, owners of the land at 155 and 165 Sheridan Street, as well as a developer, can make a good profit building on the land within the overlay zone. We look forward to working with city staff to enhance the recreational and historic value of Fort Sumner Park so that future generations will get to enjoy it as much as we do today.

Mayor Baxter, in his 1905 report, *The Park System of Portland*, made it clear that the view was the central defining feature of this park, established and designed in 1891:

"Some years ago, when the Mayor of Cork visited Portland, I took him to the Eastern Promenade, pausing at Fort Sumner Park, and while he was admiring the charming view of the city, which that lofty outlook affords, I ventured to outline to him some of the improvements which I was then considering and which Mr. Olmsted has so admirably embodied into his plans. "But why don't you do it?" asked the Mayor with the little brogue which made him most engaging. "Because," I replied, "our people are rather shy of taxes". "Taxes!" he exclaimed. "Why should they bother about that if they get their money's worth? What's money for but to get the good of it?" (Park System of Portland, City of Portland, 1911)

Respectfully yours,

Carolyn Young, President
Friends of Fort Sumner Park
207-899-2276

Re: Fort Sumner Park Development

Kobi Eng <kobieng47@gmail.com>

Jan 5, 2017 6:44 PM

Posted in group: **Planning Board**

Elizabeth Boepple, Chair, and Members of the Planning Board,

I apologize for the two unfinished messages I've sent to you, my computer is being problematic. I am writing in support of Fort Sumner Park, and asking that nothing be done that would obstruct the park's view or degrade its ambience. I am an 18-year-old student at Casco Bay High School, and I have lived on Munjoy Hill for almost ten years. Fort Sumner Park was the first place where I spent time outside in Portland, and it has been a significant location for me every year since. I have spent countless hours climbing its trees, playing hacky sack in it, resting on the grass, and enjoying its glorious view; in these ways it has become an important part of the city to me - just the way it is. I would be greatly saddened to see a building constructed very close to it, as this would detract from the park's aesthetic value. It would also make the park feel much more cramped and awkward, for I feel that it should maintain its wide-open quality and be surrounded by as much forest and nature as possible. I recognize that there are many incentives at play in this situation, but I plead that you take my concerns into consideration. Thank you very much.

Sincerely,

Kobi Eng

kobieng47@gmail.com

39 North Street

Portland, Maine 04101

On Thu, Jan 5, 2017 at 5:54 PM, Kobi Eng <kobieng47@gmail.com> wrote:

Elizabeth Boepple, Chair, and Members of the Planning Board,

On Thu, Jan 5, 2017 at 5:53 PM, Kobi Eng <kobieng47@gmail.com> wrote:

Elizabeth Boepple, Chair, and Members of the Planning Board,

Google Groups

Ada Mathews <beloadada@yahoo.com>

Jan 5, 2017 10:37 PM

Posted in group: **Planning Board**

Please save Fort Sumner, Portland need this beautiful place for us Portland natives and others.

Thank you,

Ada Mathews

beloadada@yahoo.com

ANNE B. PRINGLE

44 Neal Street Portland, ME 04102-3527
oldmayor@maine.rr.com

January 5, 2017

Portland Planning Board
389 Congress Street
Portland, ME 04101

Re: Proposed Sumner Park Overlay Ordinance

Dear Members of the Board:

I have lived in Portland for 43 years and learned early on that its wonderful network of parks and open spaces is a defining feature of our fabulous city. I chaired the Parks Commission for two years while serving on the City Council in the early 1990s and have been a vocal park advocate ever since.

That said, I must confess that until recently I was not fully aware of Fort Sumner Park and the truly exceptional public asset it represents. Anyone who visits, as I have done several times recently, can attest that the view is spectacular and unique in its scope. It is fully on par with the magnificent vistas seen from the historic Eastern and Western Promenades. It **must** be protected from encroachment!

I believe the proposed Sumner Park Overlay projects this unique public asset and urge the Planning Board to unanimously recommend it for adoption by the Portland City Council.

Very truly yours,





Jennifer Munson <jmy@portlandmaine.gov>

Fort Sumner Park

1 message

'Gunnel Larsdotter' via Planning Board <planningboard@portlandmaine.gov>

Thu, Jan 5, 2017 at 5:14 PM

Reply-To: Gunnel Larsdotter <glarsdotter@yahoo.com>

To: planningboard@portlandmaine.gov

Attention:

Elizabeth Boepple, Chair &
Members of the Planning Board
City of Portland, Maine

As a resident of Munjoy Hill, as well as longtime resident of both Portland and Peaks Island, I am writing to implore you to do what you possibly can to save Fort Sumner Park from becoming an embarrassment to the City. I'm referring here to that of the historic Union Station which no longer exists due to bad judgment by city managers.

PLEASE DO NOT TAKE THE JOY OUT OF MUNJOY HILL by allowing money hungry developers to ruin forever the magnificent view enjoyed by countless visitors who return again and again, year in and year out, to Fort Sumner Park. In 2014 my husband and I decided to move in order to live our senior years on Munjoy Hill. We love it here. Since then I have taken countless silhouette pictures (sample attached) of people all ages enjoying the peace and beauty of the park. Personally I am able to walk only a certain distance each day. I am sure I'm not the only 'senior person' with similar concern. Fort Sumner Park, or "Sunset Park" as we call it, has become our daily walk of joy. The very thought of losing the Park with its view is heart breaking, to say the least.

PLEASE DO EVERYTHING YOU CAN TO KEEP MUNJOY HILL FROM BECOMING A FUTURE
"MUNSORROW HILL".

Thanking you,
Sincerely,
Gunnel Larsdotter
46 Cumberland Avenue
Portland ME 04102
207-272-2076

Our grandson, Noah age 6, lives in Texas. He and his mother visit us on Munjoy Hill every year. The first thing he says when they arrive is -
"Can we go to Sunset Park?"

Sent from my iPhone

3 attachments



IMG_1756.JPG
102K



IMG_1729.JPG
88K



IMG_1727.JPG
52K



Jennifer Munson <jmy@portlandmaine.gov>

Fort sumner park

1 message

Elaine H Jones <jonesedj@gmail.com>

Fri, Jan 6, 2017 at 9:47 AM

To: planningboard@portlandmaine.gov

I implore you to keep the vista at this park. Portland's scenery and our sense of place is very important to the vibrancy of our city. We don't need to look like the canyons of large cities. Our open spaces and green spaces are an integral part of why we live here and so many people are moving here.

E. Jones...Portland native

Sent from my iPad



Jennifer Munson <jmy@portlandmaine.gov>

Letter in support of Fort Sumner park recommendations from staff

1 message

'Jean McManamy' via Planning Board <planningboard@portlandmaine.gov>

Fri, Jan 6, 2017 at 9:53 AM

Reply-To: Jean McManamy <ninimaine@aol.com>

To: planningboard@portlandmaine.gov

Dear Chair Boepple and members of the Planning Board:

I am writing to you as a neighbor and user of Fort Sumner Park. I have watched that park come back from a drug dealing haven three years ago to a much visited gathering spot, thanks to the vigilance of neighbors and the Portland Police. The view is, as you know, a defining feature of the park, and has been since the park's establishment in 1891. Enclosed is a postcard from the early 1900's showing the landscape at the time. While we, as a band of neighbors, came together originally to save the view, our research into the park has uncovered an unappreciated gem on North St: Fort Sumner Park was the site of a revolutionary era fortification, a citadel built as part of the coastal defense system in 1794 under George Washington, and finally an early piece of the city's park system in 1891.

Preservation of this view—the city, with glimpses of the harbor, back cove, the sunset, and Mount Washington—is the cornerstone to future enhancement of the park's historic and recreational value.

I believe that two amendments to the staff recommendations would make a difference in the visitor experience: a requirement for buffer plantings in the "no-build" zone between the setback and property line, and a lowering of the plane of the height limit in the new overlay zone to the level of the original parade ground—a difference of 2 or 3 feet. It would be nice to be able to restore the original topography of the site without intrusion of elevator shafts or solar panels into the view. This would open up the vista to visitors entering the park; it is now quite hidden until you approach the bumped-up observation deck (added in 1991).

Thank you.

Sincerely,
Nini McManamy
10 Willis St.



ft sumner gazebo postcard.pdf

233K



Portland, Maine, The Lookout, Fort Sumner Park.



Matthew Grooms <mgrooms@portlandmaine.gov>

Overlay for Fort Sumner Park

Douglas <jimdoog@gmail.com>
To: mgrooms@portlandmaine.gov

Sat, Dec 31, 2016 at 3:46 PM

Mr Grooms:

Our house is at 32 North St, so we're very close to Fort Sumner Park and we go there often. If you've been there you know it provides the unique spectacular view of the Peninsula and Maine and NH mountains, including Mt Washington.

Btw, what is an "overlay"?

Lastly, I have two suggestions for board:

ALL Portland residents have a stake in in the overlay issue, not just Munjoy Hill residents, and thus they should have received the notice for the meeting on Jan 10.

It is not Sumner Park, it is Fort Sumner Park.

Thank you,

James Douglas Cowie
Tel 321-8615

Google Groups

Make Portland a model for livability by maintaining historically significant height limitations.

Carol Parker <carolaparker@earthlink.net>

Jan 3, 2017 3:19 PM

Posted in group: **Planning Board**

Dear Elizabeth Boepple, Chair, and Members of the Planning Board:

Please restrict the height of new buildings so that it will be more in keeping with the Historical nature of Portland. It is also critical to the most stunning view of the sunset from Ft. Sumner Park. People gather there every night to watch the spectacular sunset over Portland. High rise buildings near Munjoy Hill would ruin one of the most beautiful community resources.

I know you must consider that the building would create jobs that would help employ many people. Lowering the height could still provide employment, but without destroying the view and historical nature of one of the most beautiful cities on the East Coast. Developers need to create livable cities that fit into the historical character of Portland.

Washington DC years ago placed a height limit so that one can see the Washington Monument and the Capitol from all over the city. When you come into Washington, it still is a welcoming, soothing city surrounded by green parks and trees. Let that be a model for Portland as well.

Please stand tough to create buildings and spaces that promote livability over profits for the few. You have the opportunity to create jobs, improve the tax base, while creating a strong precedence to integrate new buildings to enhance the community's beauty and historical significance to make the City of Portland a model jewel for others to follow.

Carol Parker
carolaparker@earthlink.net

18 North Street
Portland, ME 04101
703-405-2486 c



James Dealaman <jdealaman@portlandmaine.gov>

Fort Sumner Park and its value to the community

1 message

Judith Tierney <judy.tierney@gmail.com>
To: planningboard@portlandmaine.gov

Tue, Jan 10, 2017 at 2:45 PM

Hello Elizabeth and Planning Board members,

Thank you all for the work you do on behalf of our wonderful community and city.

As a 12 year resident of Munjoy Hill, a renter and recently semi-retired on a fixed income, I realize how blessed I am to be living in such a beautiful location with a vibrant community of folks who care deeply about one another as well as the life of the precious earth we share; green spaces, trees and the sky and water which is, in reality, our shared **home**.

There's a lot of development happening very quickly in Portland. I am not against development, only development that is pushed through without enough foresight for the long term values of everyone, not just those whose narrow focus is real estate development and profit margins in a hot market. It is difficult to quantify on paper the values of a **qualitative** nature.

If we lose our green spaces and parks to ever increasing, fast paced encroachments for (mostly) high end condominiums (built ever higher), what does that do to **quality of life for everyone**? There may be a few folks who enjoy a better quality (those who can afford the new residences and those who profit from selling and building them) but what about the greater number of all the citizens of Portland?

Please take these questions and considerations into your heart as well your minds as you make decisions that affect the quality of life for a great number of people.

Thank you again for good work and taking a moment to listen to these words.

Judith Tierney
10 Willis Street, #1
Portland, Maine 04101
judy.tierney@gmail.com
207 899-5238



Patrick Venne
Redwood Development Consulting, LLC
15 Monument Square
Portland, ME 04101

January 19, 2017

Via Email

Jeff Levine,
Director of Planning & Development
City of Portland

RE: *R-6 Height Overlay Proposal;*

Dear Mr. Levine:

I am writing on behalf of BD Sheridan, LLC, as contract purchaser and prospective developer of real property located at and around 155 Sheridan Street in Portland (the "Project").

The Project's development team appreciates your distribution of planning board materials related to the Fort Sumner Park Overlay ordinance proposed in response to the City's recent and related enactment of a 90-day development moratorium. This letter sets forth our response to the same, which we hope will be fully considered by staff, the Board, and Council prior to any formal action.

Rooftop Appurtenances –

While not without its complications or expense, the Project team is prepared to pursue design approaches which meet the spirit of the height limitations by incorporating traditional mechanical rooftop units into the body of the proposed Project. However, the rooftop elevator override penthouse represents an exception to this general point anchored in impracticality. In order for the Project to be ADA compliant, it must have an elevator. In order for the elevator to allow for safe maintenance, it must have an override. Without an exception for the elevator override, the Project will be forced to eliminate an entire floor of housing.

As such, we would respectfully ask the Board consider, and staff to support, a modification to the proposed ordinance language which allows rooftop elevator overrides alone to be exempt from the overlay restrictions otherwise applicable. While I know there has been discussion of this in the past, it bears emphasizing that such an allowance would still be subject to the 'no undue adverse impact' requirements of the existing subdivision ordinance. The proposal would neither permit as of right, nor completely prohibit, the enclosure. Instead, it would merely permit an opportunity to explore the options by allowing the eminently qualified Board to exercise its discretion in line with the intent of the overlay in order to reach a reasonable outcome that meets City expectations and works for the Project team as well.



Apex Point -

Our Project team notes that the proposed apex point appears to be tied to ground level. Further, it has reflected that if the intent of the proposed apex point is principally to preserve the cherished viewshed, it should be considered from the perspective of the viewing public. The lowest point at which someone visiting Fort Sumner Park would normally perceive the view, without lying down, is from a seated position while sitting on a park bench. This would call for an apex at eye level from that perspective, or approximately 163.77 (3 ½ feet above the proposed apex point). This apex point would also permit children old enough to appreciate the view to enjoy the same from a standing position.

From a Project benefits perspective, the increased height of the apex point reference would provide additional ceiling height (and thus bear upon the marketability of Project units), in addition to extending the extent to which the Project may remain four as opposed to three stories in height. As such, it would have a positive impact on marketability and may even increase the total number of housing units (by up to two additional residences).

It is important to stress that we understand and appreciate the public interest driving the proposed regulations, and in this letter have attempted to propose only such modifications which result in increased Project flexibility without impinging on that interest.

Thank you for your time and attention to these matters. Please let me know if I can answer any questions or clarify anything herein in advance of the public hearing next week.

Very Sincerely.

A handwritten signature in black ink, appearing to read 'Patrick Venne', with a stylized initial 'P' and a long horizontal stroke extending to the right.

Patrick Venne

Enclosures: Exhibit A: Requested modification to proposed Sec. 14-139(d)

CC: Stuart O'Brien, Planning Director, City of Portland
Matthew Grooms, Planner, City of Portland
planningboard@portlandmaine.gov
Bernard Saulnier, BD Sheridan, LLC
William Savage, Acorn Engineering
Ryan Senatore, Ryan Senatore Architecture



Exhibit A

Requested modification to proposed Sec. 14-139(d)

R-6 Height Overlay Ordinance Amendment (Fort Sumner Park)

Add a new section as follows:

14-139 (d) Fort Sumner Park Overlay: This Overlay is established to protect the public interest by limiting the impact of development on the quintessential views of natural resources and the changing Portland skyline from Fort Sumner Park. There is established a key apex point in Fort Sumner Park at 43° 40' 2.3349"N. 70° 15' 4.3687"W. The Fort Sumner Park Overlay includes all land within 200 feet, or the R-6 zone boundary, whichever is closer, of this key apex point that is located closer to the middle line of Sheridan Street than said apex point.

Notwithstanding any other section of this Ordinance, development in the Overlay shall be subject to the following additional provisions:

- *The top of structure, including rooftop appurtenances, within the Overlay shall not exceed the baseline vertical height of the apex point (~~163.77'~~ ~~160.27'~~ City of Portland Datum (Mean Tide)). For each 25' radially away from the apex point, the vertical height permitted in the Overlay is reduced by 1 foot (see Figure 4 below). Notwithstanding anything within this Section to the contrary, rooftop elevator equipment enclosures are permissible above the baseline vertical height of the apex point where the same are necessary for a building which is otherwise compliant with this Section to satisfy State or federal law, so long as they shall not cause any undue adverse impact on the quintessential views of natural resources and the changing Portland skyline from Fort Sumner Park.*
- *The minimum building setback from the park property shall be 15 feet.*

Any project within this Overlay shall go to the Parks Commission for a recommendation to the Planning Board regarding potential impacts on Sumner Park.

Google Groups

Fort Sumner Park and its value to the community

Judith Tierney <judy.tierney@gmail.com>

Jan 10, 2017 2:45 PM

Posted in group: **Planning Board**

Hello Elizabeth and Planning Board members,

Thank you all for the work you do on behalf of our wonderful community and city.

As a 12 year resident of Munjoy Hill, a renter and recently semi-retired on a fixed income, I realize how blessed I am to be living in such a beautiful location with a vibrant community of folks who care deeply about one another as well as the life of the precious earth we share; green spaces, trees and the sky and water which is, in reality, our shared **home**.

There's a lot of development happening very quickly in Portland. I am not against development, only development that is pushed through without enough foresight for the long term values of everyone, not just those whose narrow focus is real estate development and profit margins in a hot market. It is difficult to quantify on paper the values of a **qualitative** nature.

If we lose our green spaces and parks to ever increasing, fast paced encroachments for (mostly) high end condominiums (built ever higher), what does that do to **quality of life for everyone**? There may be a few folks who enjoy a better quality (those who can afford the new residences and those who profit from selling and building them) but what about the greater number of all the citizens of Portland?

Please take these questions and considerations into your heart as well your minds as you make decisions that affect the quality of life for a great number of people.

Thank you again for good work and taking a moment to listen to these words.

Judith Tierney
10 Willis Street, #1
Portland, Maine 04101
judy.tierney@gmail.com
207 899-5238



Jennifer Munson <jmy@portlandmaine.gov>

'Fort Sumner Park Overlay Zone Amendment'

1 message

TinytownWorkshop <tinytownworkshop@gmail.com>
To: planningboard@portlandmaine.gov

Fri, Jan 20, 2017 at 11:04 AM

Spoke with the city this am regarding the cryptic plan view drawings on the recent flyer sent out regarding 'Fort Sumner Park Overlay Zone Amendment'. I reminded them that humans are not drones or seagulls and do not look at the world in a plan view but in elevation. Therefore, I suggested that someone simply take a pano photo of the view standing on the outer edge of the viewing deck. Simply superimpose a bright line that boxes out what the new proposed maximum allowable structure is. Print it out approx 4feet x8 feet and post it in the ground on the down hill slope approx 10 feet from the edge of the existing viewing deck. In addition to planting this sign for visitors, demand that the city post it online and in the local newspaper. Ultimate goal is to insure that the entire shoreline of Back Cove will continue to be visible from the EXISTING LANDING (not a foolish built up monstrosity). This appears to have become a very time sensitive concern.

Logical to me.

You?

Neighborhood Meeting Certification

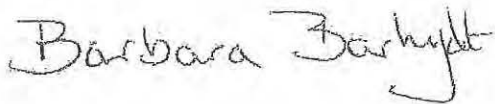
Fort Sumner Park Height Overlay Zone and Rezone from R-6 to ROS

I, Barbara Barhydt, Development Review Services Manager, hereby certify that a neighborhood meeting was held on January 18, 2017 at the East End School at 5:30 p.m.

I also certify that the notice was mailed on January 9, 2017, invitation were mailed to the following:

1. All addresses on the mailing list provided by the Planning Division which includes property owners within 500 feet of the proposed development.
2. Residents on the "interested parties" list.
3. A digital copy of the notice was provided to the Planning Division (iym@portlandmaine.gov) and the assigned planner to be forwarded to those on the interested citizen list.

Signed,

A handwritten signature in black ink that reads "Barbara Barhydt". The signature is written in a cursive, flowing style.

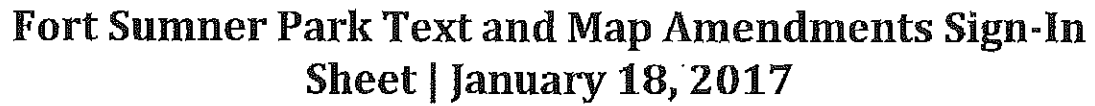
Attached to this certification are:

1. Copy of the invitation sent
2. Sign in Sheets
3. Meeting Minutes
4. Copy of Power Point Presentation



**Fort Sumner Park Text and Map Amendments Sign-In
Sheet | January 18, 2017**

Name	Address Email
Thomas Leonhardt	340 E. Prom
Brent Adler	67 Mount St 19/Walnut
Brendan O'Neil	105 Walnut St
Kevin Schoch	275 Sheridan St.
David Cowie	32 North Street #3 Portland
CA RPL McCRACKEN	645 Congress St #207
Douglas Cowie	32 North St # ptyld
Kelley Erickson	156 SHERIDAN ST, #2A, Portland 04101
Rhonda Green	156 Sheridan St., #1A Portland 04101
Tim Baehr	105 North St #2
Ann Landsberg	105 North St #2
Neil Rouda	109 Sheridan St.
Vaua Casmona	105 North #1
Rose Olmsted	73 North St
Cynthia Cochran	17 Hammond St.
HERB ADAMS	231 STATE ST.
Carolyn Young	135 Sheridan St #201

[illegible]

Neighborhood Meeting – January 18, 2017
Sumner Park Overlay Zone and Zone Change from R-6 to ROS for Sumner Park
East End School – 5:30

Matthew Grooms, Planner, presented the zoning amendments proposed by the city to regulate the heights of buildings near Sumner Park and to rezone the park from Residential R-6 to ROS (power point presentation attached). The proposed height overlay zone sets an elevation above sea level of 160.27 feet at the apex point in the park and extends in an arc 200 feet from this point within the R-6 zone or to the extent of the R-6 and B-2b line. Building heights and all appurtenances would need to be under the sight line as shown on the graphic and the allowable building height is decreased by 1 foot for every 15 feet from the apex point. The overlay zone establishes a 15 foot building setback from the park and development proposals will go to the Park Commission for a recommendation to be submitted to the Planning Board's project review.

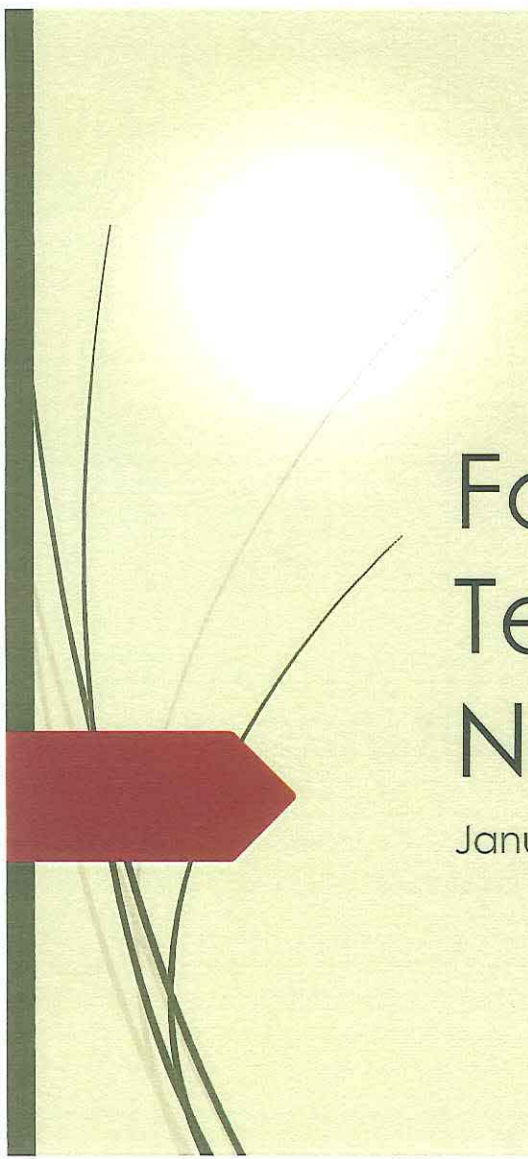
The Planning Board public hearing will be on January 24, 2017 at 7:00 p.m. and the Board's recommendation will be considered by the City Council on February 6, 2017.

Questions and Comments from the Public:

- Explain how the underlying zone with the 45-foot height limit and the overlay zone will work? The 45 foot building height is too high. What is the elevation of Sheridan Street? Want to see a virtual image of what will be looking at the maximum height. Show us what we will see.
- D. Cowie stated the purpose of the sloped line is to retain the sight line, so that building heights will not obstruct the vista. The proposal doesn't keep the shoreline near Marginal Way in view, but the water and the land on the far shore will be visible. The higher land and views of Mount Washington will be preserved.
- Is the newest house across the street from this site the highest that can be built in the B-2 zone along Sheridan Street? Discussion: The house is at the maximum height.
- Does the developer have to be in agreement with this proposal? Discussion: If adopted by the City Council, then this becomes part of the zoning ordinance and would regulate building height in this area. There is no pending application for the adjoining site.
- When does the moratorium end? Discussion Feb 6, 2017
- Will the B-2b zone be restricted by the height overlay? Discussion: The height overlay applies to the R-6 zone and does not extend into the B-2b.
- N. McManamy clarified that the steep slope between Sheridan Street and the park is owned by the City and would not be developed. The overlay zone sweeps to the right and will effect what is built. From the observation point in the park, there are views of Mount Washington. The building height

within the overlay zone would be roughly 8 to 10 feet lower than this point. Screening and landscaping can be used to buffer development. Convinced views of Mount Washington will be preserved.

- C. Cochran asked what is the height of Sheridan Street and where is it in relationship to the figure showing sight lines. Discussion: The planning staff will look into getting this information.
- Using the height overlay slide, B. Adler asked where the view lines are for the sunset and Mount Washington. Discussion: N. McManamy indicated on the slide the general sight lines for sunsets and views of Mount Washington.
- Why are the three lots beyond the overlay zone not included? Discussion: Due to the grades of the land in the B-2b zone, the maximum building height would not impact the sight lines.
- Concerned that building up the hill will be the problem and that the 45 foot height will block views. Discussion: The proposed overlay is based upon the sea level and not the grade of the street. The overlay zone will supersede the underlying R-6 height limit.
- Why not have overlay in B-2b zone? Discussion: Current zoning would apply and the buildings would not block the view.
- C. Cochran shared concern about the overlay zone not extending over B-2b because the zoning could change. What is the hesitation of extending the overlay zone?
- Putting a compass on the plan would help.
- R. Gan asked for clarification of the height in the B-2b zone, which is 45 feet and not 65 feet as had been stated earlier. He noted that building height is measured with the median height, but that the overlay zone and the sloping land will lower the building heights.
- P. Murray asked why the overlay zone did not go to the end of Sheridan Street to protect the views?
- C. Young asked to include the lot adjoining the park and held by the Land Trust to be included within the ROS. Discussion: The parcel has been included in the proposal.
- What is the significance of the 200 feet for the arc? Discussion: Beyond that there are no view impacts due to the slope of the land.
- C. Cochran asked what will happen with the elevation figure with sea level rise. Discussion: The ordinance could include a specific Portland datum of a particular date.
- Is it possible that the developer cannot build with this overlay zone. Discussion: Development will be possible on the parcel, but the height could not block the view.
- D. Cowie, representing Friends of Fort Sumner Park, is encouraged by the proposal and encourages residents to participate in the Planning Board public hearing o Feb. 24th and the City Council hearing on Feb 6th.



Fort Sumner Park Map and Text Amendments: Neighborhood Meeting

January 18, 2017

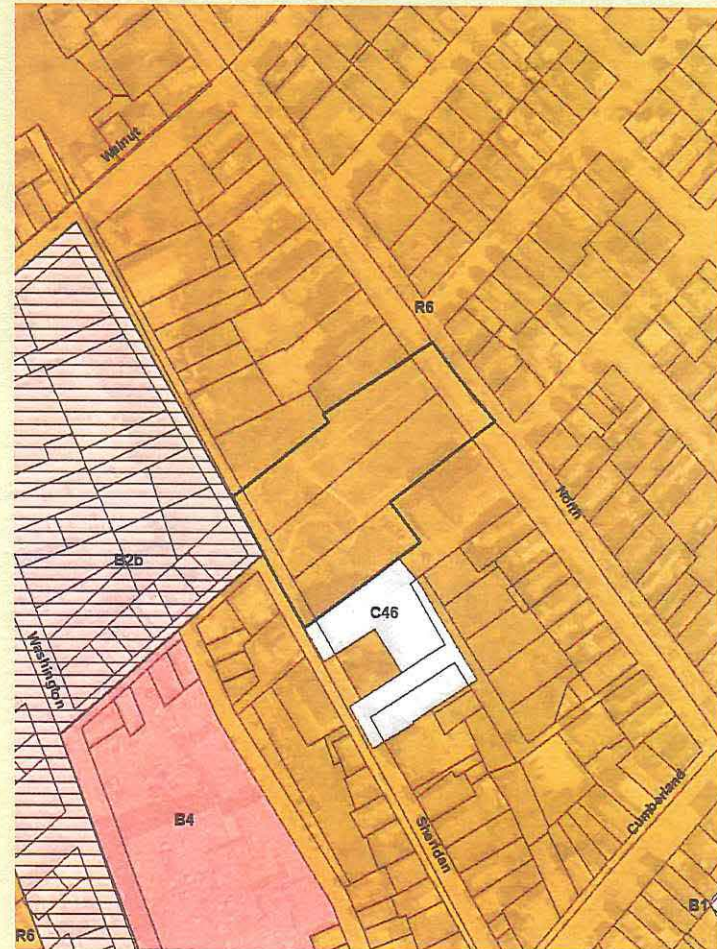
Introduction

- Provides Publicly Accessible 'Panorama'
- Lacks Sufficient Protection Under Zoning/Applicable Design Standards
- Recent Development Discussions Have Highlighted Vulnerability
- City Council Order 73-16/17

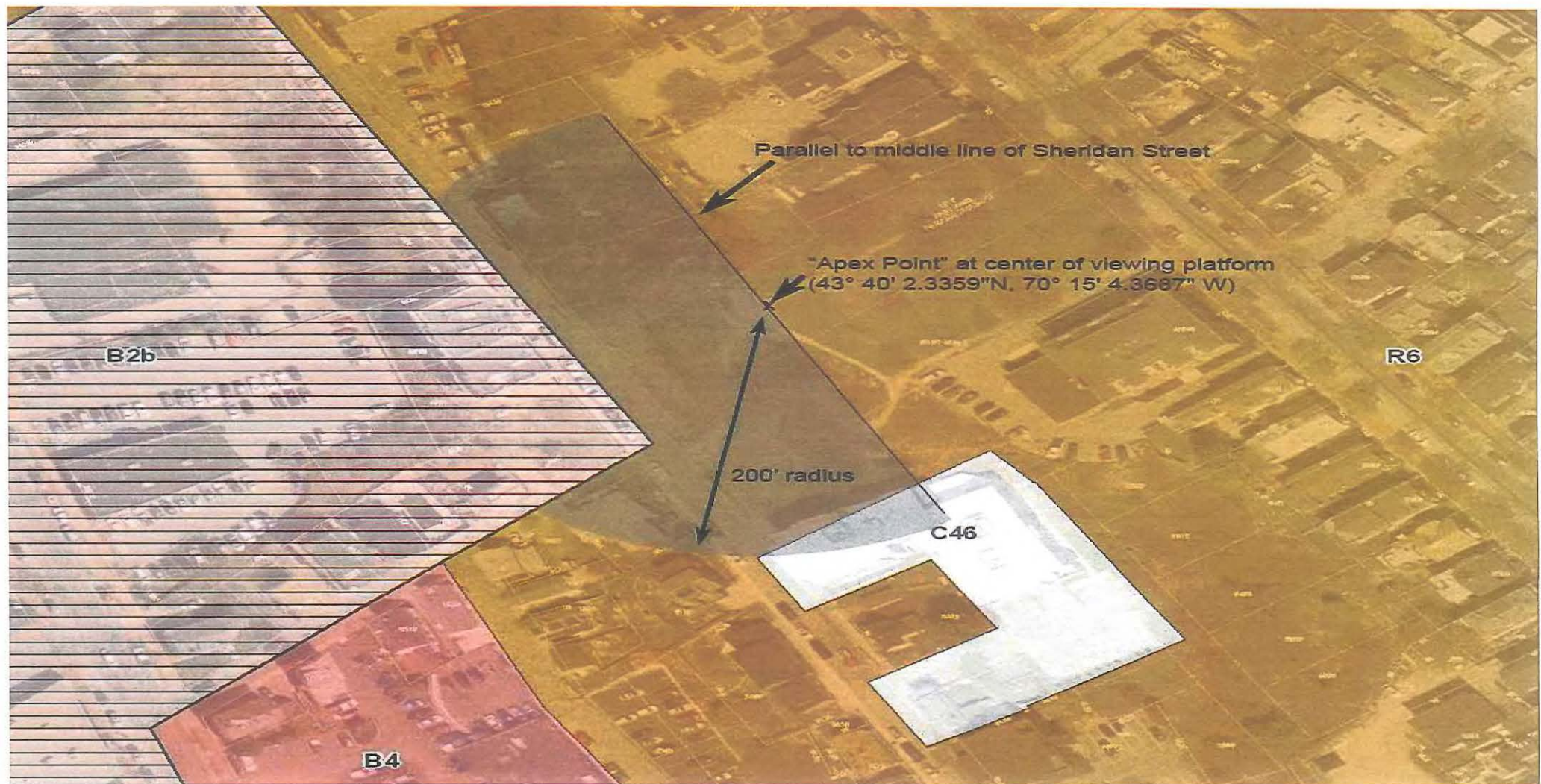


Zoning Context

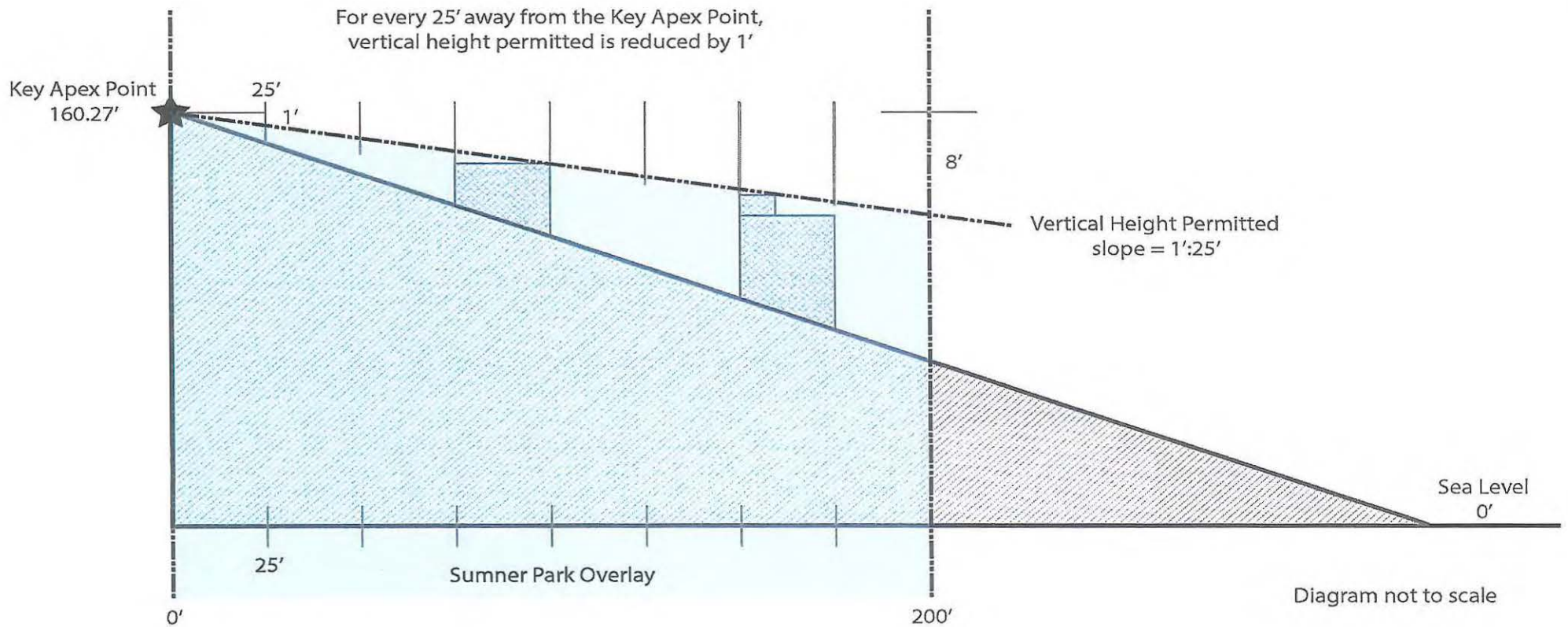
- Three parcels totaling 1.2027 acres
- Zoned R-6 Residential
- Permissible Heights within R6: 45 Feet
- Zoning Districts in the Immediate Vicinity:
 - R-6: Residential
 - B-2b: Neighborhood Business
 - B-4: Commercial Business
 - C46: Contract



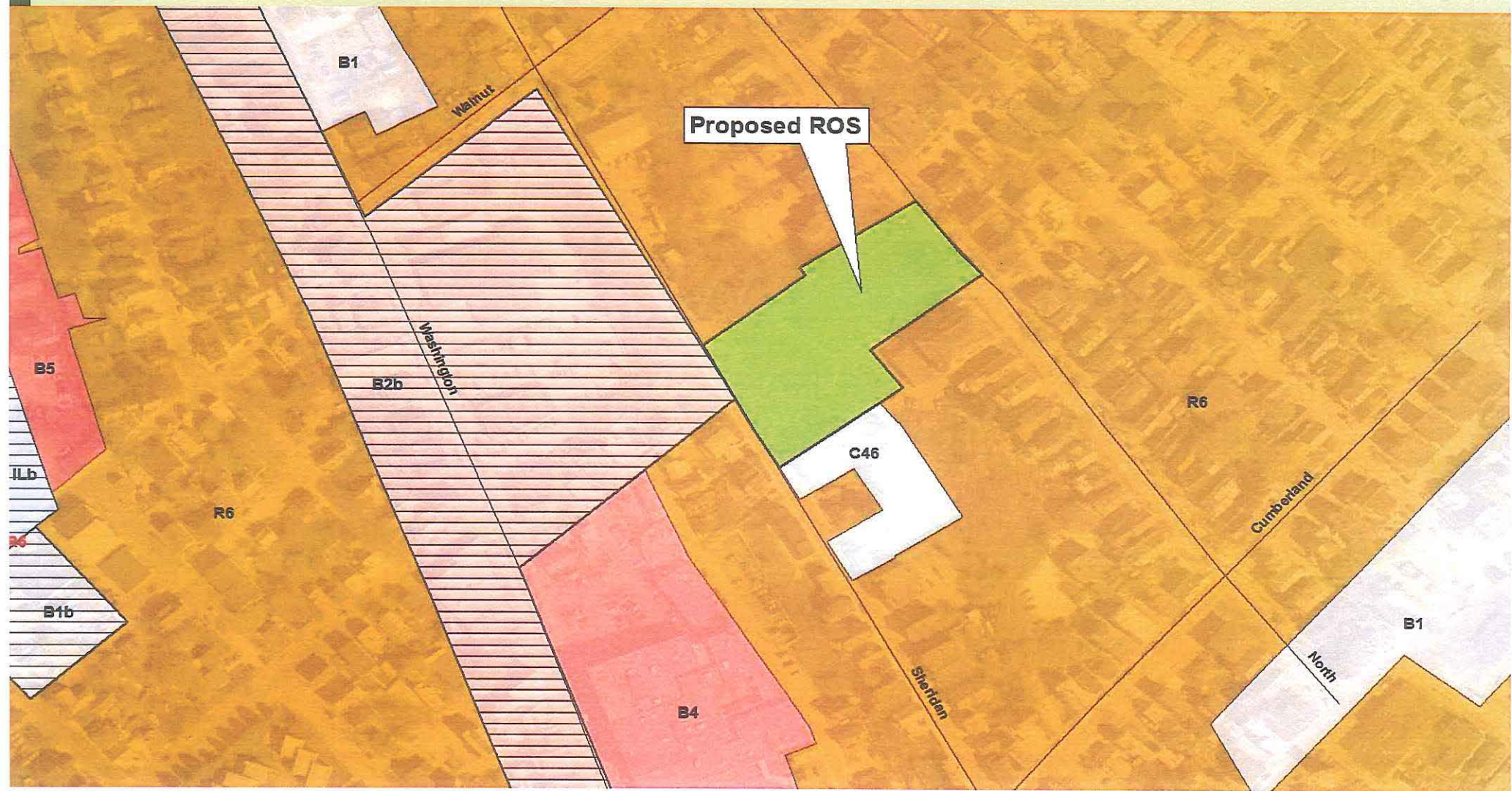
Proposed Map Amendment: Overlay Zone



Proposed Overlay Ordinance Graphic



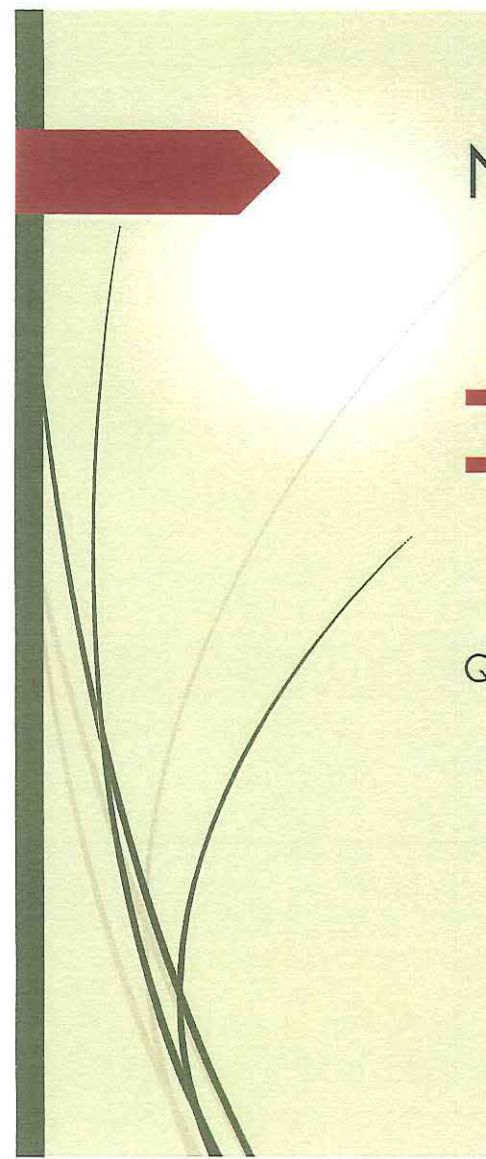
Proposed Map Amendment: ROS





Approach Justification

- Comprehensive Plan Calls For:
 - Preservation of Vistas From High Places
 - Celebration of Portland's Water Resources
 - Recreation/Open Space Opportunities that Address Scenic Needs
 - Public Access to Surface Water
- Downtown Height Study Highlights Fort Sumner Park Views for Preservation



Next Steps

- ▶ January 24th: Planning Board Public Hearing
- ▶ February 6th: City Council

QUESTIONS?

A. Proposed Text Amendment (Fort Sumner Overlay)

1. Amend: Section 139 (a) Dimensional Requirements.

Maximum Height	Principal and attached accessory structure: 45 ft, <u>except as provided under the Fort Sumner Park Height Overlay (Sec. 14-139 (d))</u>
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2. Amend Section 139, by adding (d) R-6 Height Overlay Amendment (Fort Sumner Park)

Add a new section to 14-139 as follows:

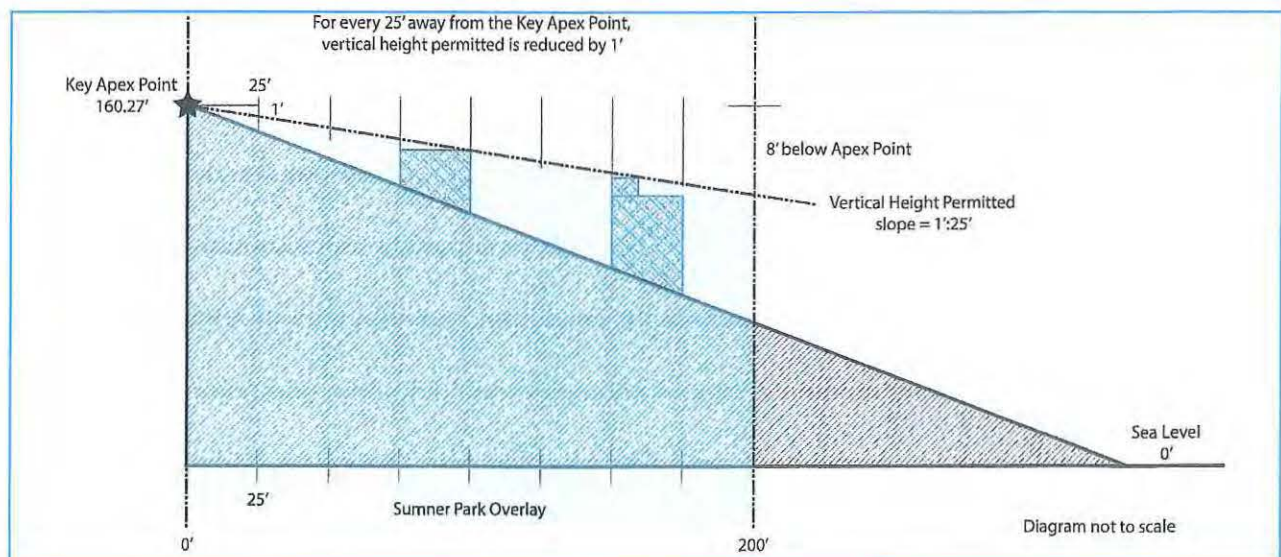
(d). Fort Sumner Park Overlay: This Overlay is established to protect the public interest by limiting the impact of development on the quintessential views of natural resources and the changing Portland skyline from Fort Sumner Park. There is established a key apex point in Fort Sumner Park at 43° 40' 2.3359"N. 70° 15' 4.3687"W. The Fort Sumner Park Overlay includes all land within 200 feet, or the R-6 zone boundary, whichever is closer, of this key apex point that is located closer to the middle line of Sheridan Street than said apex point.

Notwithstanding any other section of this Ordinance, development in the Overlay shall be subject to the following additional provisions:

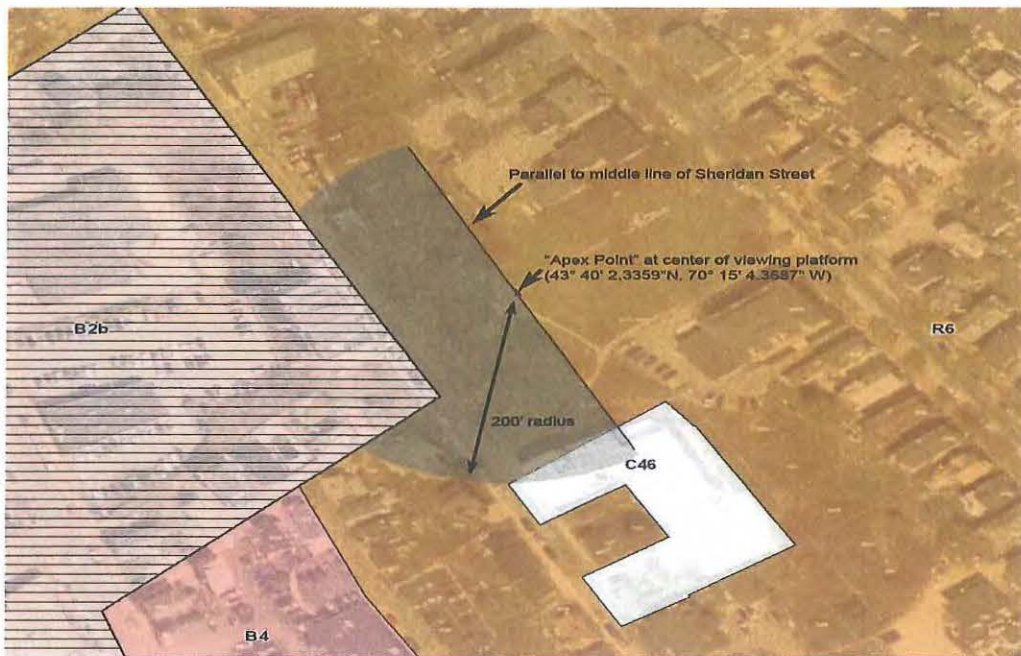
- The top of structures, including rooftop appurtenances, within the Overlay shall not exceed the baseline vertical height of the apex point (160.27' City of Portland Datum (Mean Tide)). For each 25' radially away from the apex point, the vertical height permitted in the Overlay is reduced by 1 foot (see Figure below, Ordinance Height graphic).
- The minimum building setback from the park property shall be 15 feet.

Any project within this Overlay shall go to the Parks Commission for a recommendation to the Planning Board regarding potential impacts on Sumner Park.

WITHIN THE OVERLAY, PERMITTED HEIGHT IS REDUCED BY 1' FOR EACH 25' AWAY FROM APEX POINT



B. Proposed Map Amendment (Fort Sumner Overlay)



*Order 129-16/17
Feb 11 2-6-17*

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

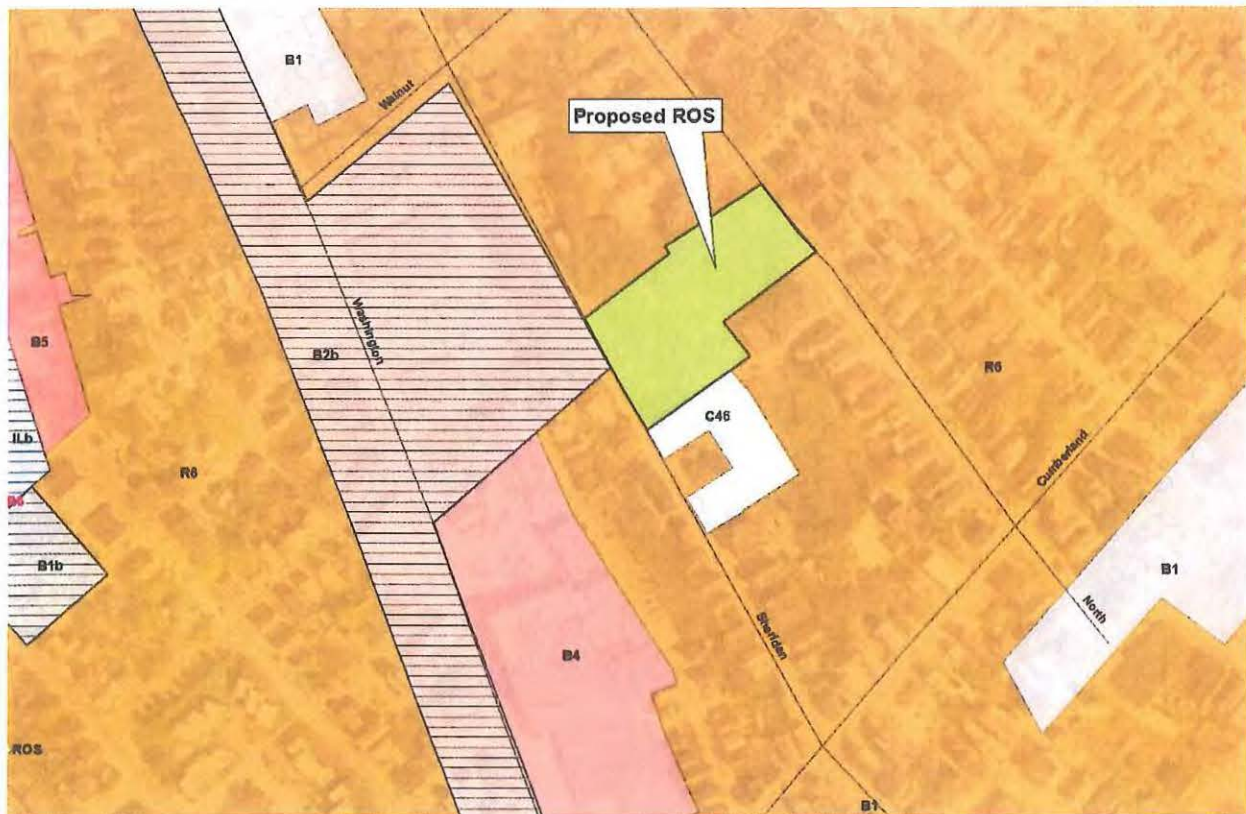
**CITY OF PORTLAND
IN THE CITY COUNCIL**

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

**AMENDMENT TO ZONING MAP
RE: FORT SUMNER PARK R6 to ROS**

**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 Fort Sumner Park from R6 to Recreation Open Space, as shown in the figure below.



Order 135-16/17
Tab 12 2-6-17

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

**CITY OF PORTLAND
IN THE CITY COUNCIL**

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

ESTABLISHMENT OF THE FORT SUMNER PARK OVERLAY

**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 specifically creating the Fort Sumner Park Overlay, as shown in the figure below.

