

1. **Agenda Only 2017-03-06.pdf**

Documents:

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2. **Agenda and Packet 2017-03-06**

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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
MARCH 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” - Sarah Juli – Dance Performance Artist.

SPECIAL MEETING OF THE PORTLAND DEVELOPMENT CORPORATION

A special meeting of the Portland Development Corporation will be held by the City Council on March 6, at 5:30 p.m. in City Council Chambers.

**Order 146-16/17
(Tab 1)** **Order Amending Guidelines of the Regional Economic Development Revolving Loan Program – Sponsored by Drew Swenson, President, Portland Development Corporation Board of Directors.**

The Portland Development Corporation (PDC) met on January 19, 2017, and voted unanimously to approve the proposed amendments.

The Regional Economic Development Revolving Loan Program is one of the Portland Development Corporation’s loan programs and is funded by grants from Finance Authority of Maine (FAME). As FAME has updated their rules for this program, the PDC would like to amend the City’s program guidelines for consistency with FAME and is seeking the City Council’s approval of the amendments.

Five affirmative votes are required for passage after public comment.

**Order 147-16/17
(Tab 2)** **Order Amending Guidelines of the Portland Brownfields Cleanup Revolving Loan Fund - Sponsored by Drew Swenson, President, Portland Development Corporation Board of Directors.**

The Portland Development Corporation (PDC) met on February 16, 2017, and voted unanimously to approve the proposed amendments to the Portland Brownfields Cleanup Revolving Loan Fund.

The PDC would like to provide grants and loans for the remediation of Brownfields sites in Portland with the EPA's recently granted \$800,000 in cleanup funds to the City. In order to do so it is necessary to have amended guidelines that meet current EPA requirements. The PDC is seeking the City Council's approval of proposed amendments to the guidelines.

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APPROVAL OF MINUTES OF PREVIOUS MEETING:

(Tab 3) February 22, 2017 Special City Council Meeting Minutes

PROCLAMATIONS:

Proc 22-16/17 (Tab 4) Proclamation Honoring Danny Wilcox – Parks, Recreation, and Facilities Department as Employee of the Month for January 2017 - Sponsored by Mayor Ethan K. Strimling, Mayor.

Proc 23-16/17 (Tab 5) Proclamation Honoring Officer Thomas Kwok as Police Officer of the Month for January 2017 – Sponsored by Mayor Ethan K. Strimling, Mayor.

APPOINTMENTS:

Order 148-16/17 (Tab 6) Order Appointing Members to Various Boards and Committees – Sponsored by the Legislative and Nominating Committee, Councilor Justin Costa, Chair.

The Legislative and Nominating Committee met on February 22, 2017 and voted 3-0 to forward this item to the City Council with a recommendation for passage.

Name	Board and Committee	Expiration
David Eaton	Planning Board	02/28/2020
Brandon Mazer	Planning Board	02/28/2020
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Emily West	Police Citizen Review	03/30/2020
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CONSENT ITEMS:

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COMMUNICATIONS:

RESOLUTIONS:

UNFINISHED BUSINESS:

**Order 145-16/17 Order Approving Agreement between Portland and Maine Department
(Tab 7) of Transportation Re: West Commercial Street Trail – Sponsored by
Jon P. Jennings, City Manager.**

This order authorizes the City Manager to sign a Municipal-State Agreement with the Maine Department of Transportation for design and construction of the West Commercial Street Trail.

In 2012, the MaineDOT awarded Transportation Enhancements funding to the City of Portland's Department of Public Works for the design and construction of a portion of the West Commercial Street Trail. The shared use pathway, from the Star Match Building west to the Fore River Trail is a vital link in plans to create a circumferential shared use pathway network around the Portland Peninsula, and the planning work that preceded the application had begun two years earlier, with the West Commercial Street Trail Feasibility Study.

The city reaffirmed its commitment to completing the pathway segment, within the scope of the broader bicycle and trail planning for the peninsula, in the 2014 West Commercial Street Multi-Modal Corridor Study, which placed the pathway first on its list of priority recommendations. In June 2013, the City Council unanimously endorsed the funding of this project as part of the 2014 CIP. In 2016, the city agreed to oversee the pathway design and construction as a locally administered project, and the city's Department of Planning and Urban Development was selected to manage the project.

The Municipal-State Agreement formally commits both the city and MaineDOT to the West Commercial Trail project, with 20%/80% split through the Transportation Enhancements program.

Total Agreement Amount: \$353,488.00

Federal Share: \$282,790.40 (80%)

Municipal Share: \$ 70,697.60 (20%)

The local share for the West Commercial Street Pathway project is \$70,698. \$70,000 of this match is currently programmed in the city's CIP (Project ID# C14P01). Remaining funds are anticipated to come from the MaineDOT Quality Community Program account (C14114).

This item must be read on two separate days. It was given a first reading on February 22, 2017. Five affirmative votes are required for passage after public comment.

ORDERS:

**Order 149-16/17
(Tab 8)**

Order Setting Public Hearings on Fiscal Year 2018 Annual Action Plan and Appropriations for Community Development Block Grant Program, HOME Program, and Emergency Solutions Grant Program - Sponsored by Jon P. Jennings, City Manager.

Public Hearings are held each spring to consider the City's Housing and Community Development Program proposal for the ensuing year. The Community Development Block Grant Annual Allocation Committee, appointed by the City Council, reviewed each application and made funding recommendations. They are given an opportunity to make a presentation to the Council at this meeting, and citizens may comment on the City's annual plan for the use of CDBG, HOME and Emergency Solutions Grant funds.

The citizen participation process calls for two public hearings before adopting the annual program.

Public hearings will be held on March 27, 2017 and on April 5, 2017 at a Special City Council Meeting held at 5:30 p.m., both in Portland City Hall Council Chambers, 389 Congress Street.

The 2017/2018 Housing and Community Development Program will report in the Annual Action Plan to the Housing and Urban Development Program a total budget of \$2,026,448 funded by a Community Development Block Grant allocation of \$1,791,448 plus \$125,000 in program income, along with \$110,000 in CDBG Housing Program Income; a HOME Consortium Program Grant allocation of \$832,642; HOME Program income of \$200,000; Lead Safe Housing Program Income of \$170,866; local Housing Trust Funds of \$468,551; and an Emergency Solutions Grant Allocation of \$161,232.

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Order Amending the Bylaws of the Portland Technology Park Condominium Association – Sponsored by Jon P. Jennings, City Manager.

Currently, the Portland Technology Park Condominium Association (PTPCA) Bylaws note a fiscal year that ends December 31st. Given that the City will be a member of the PTPCA until the last property unit is sold and City staff serve as the President and Treasurer positions on its Executive Board, it will be easier if the Association's fiscal year is the same as the City's, which is July 1 – June 30. It is also being requested that PTPCA's annual meeting be changed from October to April each year.

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Order Appropriating Funds from the Clement P. Wescott Trust Fund for Barron Center for a New Fire Alarm System – Sponsored by Jon P. Jennings, City Manager.

The Westcott Trust Fund was left to the City of Portland in 1973 by Dr. Clement P. Wescott to assist in the improvements and additions to the Portland Hospital. On July 7, 1975 the Portland City Council accepted the trust fund. In Dr. Westcott's Last Will and Testament it was stated that the Trust be used for improvements in and additions to the buildings thereof, for the acquisition of equipment and other facilities and for any other purposes which shall improve the standard of said hospital and its services.

The fire alarm system at the Barron Center is over 30 years old, and it is increasingly difficult to find replacement parts. Protection professionals are hesitant to work on the system because of the age and limitation of parts.

The current balance in the fund is \$291,205.48. The balance will be reduced by approximately \$180,000 leaving a remaining balance in the fund of \$111,205.48.

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

**Order 152-16/17
(Tab 11)**

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City Council action is necessary to modify the two-party agreement with MaineDOT for the Woodford's Corner Intersection Improvement project. The original two-party agreement was approved by the City Council on March 21, 2016 (Council Order 172-14/15).

During the design process three (3) utility system upgrades were added to the project scope. Specifically, Unitil, Portland Water District, and City of Portland Water Resources systems will all be upgraded/replaced within the project zone. The resulting level of impact to Forest Avenue and a short section of Deering Avenue will be significant enough to warrant full street reconstruction.

All three (3) utilities will be making their own contributions to this effort through separate agreements with MaineDOT. The additional cost of street reconstruction is outside of the original scope of the project; those additional costs will be borne by the City.

The project is now estimated to cost \$3,183,728. The City's Local Share obligations are 10% for the core of the project, i.e. sidewalk, signal and other transportation items. The City has added design, paving, rail crossing work, and street reconstruction not covered by Federal and State shares and therefore pays 100% of those costs (\$987,199.22). Appendix A of the agreement spells out all the details; the total estimated amount owed by the City is \$1,206,852.10, or an increase of \$566,375.

Funding resources for this project are provided by three categories of previously appropriated CIP funds:

- A. FY13 and FY15 CIP accounts for "Transforming Forest Avenue"
- B. FY13, FY14, and FY15 CIP accounts for "Railroad Quiet Zone" compliance
- C. FY17 CIP for "Pavement Preservation"

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**Order 153-16/17
(Tab 12)**

Order Authorizing General Obligation Bonds to Finance a Portion of the City's FY18 Capital Improvement Program in an Amount not to Exceed \$24,340,500 – Sponsored by Jon P. Jennings, City Manager.

On February 16, 2017 and March 2, 2017 the Finance Committee considered the Fiscal Year 18 Capital Improvement Plan (CIP) proposal to authorize \$17.8M of general fund general obligation bonds and \$6.5M of sewer fund general obligation bonds. Upon recommendation of the FY18 CIP by the Finance Committee, this proposal is being forwarded to the full City Council at this meeting. Two orders are required, one authorizing the FY18 CIP bonds, and another appropriating the bond proceeds. A complete listing of the projects being authorized is included in the agenda backup.

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

**Order 154-16/17
(Tab 13)**

Order Appropriating Bond Proceeds, TIF Funds and Committed Fund Balance in an Amount not to Exceed \$26,965,460 for the City's FY18 Capital Improvement Program – Sponsored by Jon P. Jennings, City Manager.

This is a companion order to Order 153-16/17 above.

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

**Order 155-16/17
(Tab 14)**

Order Approving Longfellow, Lyseth, Presumpscot and Reiche Elementary School Renovation Projects with Total Project Costs not to Exceed \$64,260,000 and Authorizing General Obligation Bonds Therefore – Sponsored by the Finance Committee, Nicholas M. Mavodones, Jr., Chair.

On February 23, 2017 the Finance Committee voted (2-0) to recommend a \$64.26M proposal to substantially renovate four elementary schools. The Finance Committee made their recommendations after an extensive process which included a Portland Public Schools Board of Education recommendation (6/21/16, 6-2 for a \$70.59M bond), a School Facilities Ad-Hoc Committee amendment and recommendation (1/19/17, 7-1 for a \$61M bond) and another Portland Public Schools Board of Education recommendation (1/31/17, 8-0 for a \$61M bond). The schools and amounts included in the current Finance Committee recommendation are:

Presumpscot: Modularity eliminated and classroom space added. Separate gym and cafeteria created. Adequate OT, PT, ELL, music, art, library, kitchen and restroom space added. Improved security and sightlines for the entrance. More functional parent drop off/bus loop constructed. Upgraded learning technology, plumbing, electrical and sprinklers installed. LEED Certified. *Cost: \$13,628,000*

Longfellow: Building made fully ADA compliant with new, more secure entrance. Full asbestos abatement. Separate gym and cafeteria created. Adequate reading, ELL, Gifted & Talented, music, art, library, and kitchen space. Upgraded learning technology, plumbing, electrical and sprinklers installed. LEED Certified. *Cost: \$15,388,000*

Reiche: Acoustic and lighting problems corrected. Enclose classroom corridor walls and provide operable partitions. Maintain ability for open spaces for collaborative learning. Appropriate health station created. Rightsize art, music and reading spaces. Pre-K, Title #1, OT, PT and Reading 180 spaces added. Upgraded learning technology, plumbing, electrical and sprinklers installed. Solar heater for the pool. LEED Certified. *Cost: \$17,246,000*

Lyseth: Modularity eliminated and classroom space added. Pre-K, Kindergarten and Gifted & Talented space created. Adequate ELL, speech, art, music, library, nurse's station and social worker space added. Separate gym and cafeteria created. Upgraded learning technology, plumbing, electrical and sprinklers installed. LEED Certified. *Cost: \$17,998,000*

It should be noted that the allocation for each school is an estimate and the Finance Director will have the flexibility to adjust amounts between schools as long as the total bond is not exceeded.

The proposal from the School Board did not recommend any specific order/timing of school construction. The proposal does include an estimated timetable for construction from Oak Point Associates with School 1 estimated completion in fall 2020, School 2 in fall 2021, School 3 in fall 2023, and School 4 in fall 2024.

The proposal includes beginning design on the first school by the end of 2017 and therefore a 2017 referendum is required. It is important to note that any projects approved during a local referendum would become ineligible for State of Maine Department of Education Major Capital School Construction Funding. Applications for a new round of State funding are due on April 14, 2017. Given the tight timeline and not knowing what action will be taken by the City Council, or ultimately might be taken by the voters, the School Department is applying for funding for these four schools. Sixteen projects were completed from the State's current priority list. Had the State continued with the list, Longfellow School and Reiche were #2 and #3. A preliminary priority list from this next funding round is expected in April 2018.

It is anticipated that the \$64.26M would be borrowed over a six-year time period. This would result in an estimated \$92M in debt service payments, principal and interest, spread over the next 26 years. The tax rate would rise an estimated 3.1% by FY24 due to these debt service payments. For a taxpayer with an average home value (\$240,000) there would be an estimated \$2,707 of total additional taxes over the 26 year life of the bonds, an average of approximately \$104 per year.

Additional details on the proposal including the presentation provided to the Finance Committee and all additional materials requested and considered by the Committee are included in the agenda backup.

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

**Order 156-16/17
(Tab 15)**

Order Appropriating \$64,260,000 of Bond Proceeds – Sponsored by the Finance Committee, Councilor Nicholas M. Mavodones, Jr., Chair.

This is a companion order to Order 155-16/17 above.

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

**Order 157-16/17
(Tab 16)**

Order Submitting Elementary School Renovation Projects Bond Order to Referendum – Sponsored by the Finance Committee, Councilor Nicholas M. Mavodones, Jr., Chair.

This is a companion order to Order 155 and Order 156 above.

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

AMENDMENTS:

Order 158-16/17 (Tab 17)

Amendment to Portland City Code Chapter 14 Land Use, Article V. Site Plan Re: Repeal of Zoning Determination Provision – Sponsored by the Planning Board, Elizabeth Boepple, Chair.

On February 14, 2017, the Planning Board voted unanimously (7-0) to forward this item to the City Council with a recommendation for passage.

Michael Russell, Director, Permitting and Inspections Department, proposed the elimination of Section 14-465 as a means of streamlining the permitting process.

The zoning determination fee (Section 14-465) was adopted on May 15, 2000 and states that the building authority will provide a written decision, determination or interpretation upon request and payment of a fee.

Providing advisory opinions is a discretionary function for the Department. Striking Section 14-465 will not reduce or hinder public access to the information used for zoning research and interpretation. The information used for written determinations will remain available to the public and those who frequently request zoning determinations, such as appraisers, realtors, attorneys, and others.

This item must be read on two separate days. In order for this Order to take effect immediately, staff is requesting that the second reading be waived and the Order be passed as an emergency action because it addresses immediate resource, liability, and customer service issues.

Seven affirmative votes are required to waive the second reading. Emergency enactment requires seven affirmative votes after public comment.

Order 159-16/17 (Tab 18)

Amendment to City Chapter 14 Re: Community Business B-2 Zone – Sponsored by the Planning Board, Elizabeth Boepple Chair.

On February 14, 2017 the Planning Board voted unanimously (7-0) to forward this item to the City Council with a recommendation for passage.

On December 20, 2016, Luke Davidson of Maine Craft Distilling submitted a Zoning Text Amendment which asked to amend the allowed uses in the B-2 zone to allow his facility to move from Fox Street in the IL-B to a facility at Washington Avenue in the B-2. As the B-2 zone is currently structured, his distillery and tasting room would be prohibited from moving to the B-2 on Washington Avenue, because distilleries are not allowed uses. Planning staff and the applicant collaborated to propose a revised use approach in the B-2, which would serve as a pilot project for larger holistic changes to treating uses citywide.

The key components of proposal, however, have not changed and as amended are:

1. Simplification of the structure of the B-2 by inserting a use table, regrouping uses and reformatting. The proposal reduces the length of the section from 9 to 4 pages;
2. Making change of use between similar uses much more straightforward than previously allowed; and
3. Creating a more permissive structure to uses not specifically listed in the code. Recognizing that, with the beneficial innovation occurring in the City, allowing additional flexibility could provide a substantial benefit to entrepreneurs looking to establish a business in the B-2 zone in Portland.

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

**Order 160-16/17
(Tab 19)**

Amendment to Zoning Map Re: 117 Auburn Street – Sponsored by the Planning Board, Elizabeth Boepple, Chair.

On February 14, 2017 the Planning Board voted unanimously (7-0) to forward this item to the City Council with a recommendation for passage.

The Planning Board recommends a zoning map amendment to change 117 Auburn Street, which is currently zoned part Residential (R3) and part Business Community (B2), to the Residence Professional (RP) zone. The application was submitted by MacDermot LLC to facilitate the reuse of the property, which includes a vacant two-story office building constructed in 1980 and most recently used as medical offices.

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

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BELINDA S. RAY (1)
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BRIAN E. BATSON (3)
JUSTIN COSTA (4)

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**Order 154-16/17
(Tab 13)**

Order Appropriating Bond Proceeds, TIF Funds and Committed Fund Balance in an Amount not to Exceed \$26,965,460 for the City's FY18 Capital Improvement Program – Sponsored by Jon P. Jennings, City Manager.

This is a companion order to Order 153-16/17 above.

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

**Order 155-16/17
(Tab 14)**

Order Approving Longfellow, Lyseth, Presumpscot and Reiche Elementary School Renovation Projects with Total Project Costs not to Exceed \$64,260,000 and Authorizing General Obligation Bonds Therefore – Sponsored by the Finance Committee, Nicholas M. Mavodones, Jr., Chair.

On February 23, 2017 the Finance Committee voted (2-0) to recommend a \$64.26M proposal to substantially renovate four elementary schools. The Finance Committee made their recommendations after an extensive process which included a Portland Public Schools Board of Education recommendation (6/21/16, 6-2 for a \$70.59M bond), a School Facilities Ad-Hoc Committee amendment and recommendation (1/19/17, 7-1 for a \$61M bond) and another Portland Public Schools Board of Education recommendation (1/31/17, 8-0 for a \$61M bond). The schools and amounts included in the current Finance Committee recommendation are:

Presumpscot: Modularity eliminated and classroom space added. Separate gym and cafeteria created. Adequate OT, PT, ELL, music, art, library, kitchen and restroom space added. Improved security and sightlines for the entrance. More functional parent drop off/bus loop constructed. Upgraded learning technology, plumbing, electrical and sprinklers installed. LEED Certified. *Cost: \$13,628,000*

Longfellow: Building made fully ADA compliant with new, more secure entrance. Full asbestos abatement. Separate gym and cafeteria created. Adequate reading, ELL, Gifted & Talented, music, art, library, and kitchen space. Upgraded learning technology, plumbing, electrical and sprinklers installed. LEED Certified. *Cost: \$15,388,000*

Reiche: Acoustic and lighting problems corrected. Enclose classroom corridor walls and provide operable partitions. Maintain ability for open spaces for collaborative learning. Appropriate health station created. Rightsize art, music and reading spaces. Pre-K, Title #1, OT, PT and Reading 180 spaces added. Upgraded learning technology, plumbing, electrical and sprinklers installed. Solar heater for the pool. LEED Certified. *Cost: \$17,246,000*

Lyseth: Modularity eliminated and classroom space added. Pre-K, Kindergarten and Gifted & Talented space created. Adequate ELL, speech, art, music, library, nurse's station and social worker space added. Separate gym and cafeteria created. Upgraded learning technology, plumbing, electrical and sprinklers installed. LEED Certified. *Cost: \$17,998,000*

It should be noted that the allocation for each school is an estimate and the Finance Director will have the flexibility to adjust amounts between schools as long as the total bond is not exceeded.

The proposal from the School Board did not recommend any specific order/timing of school construction. The proposal does include an estimated timetable for construction from Oak Point Associates with School 1 estimated completion in fall 2020, School 2 in fall 2021, School 3 in fall 2023, and School 4 in fall 2024.

The proposal includes beginning design on the first school by the end of 2017 and therefore a 2017 referendum is required. It is important to note that any projects approved during a local referendum would become ineligible for State of Maine Department of Education Major Capital School Construction Funding. Applications for a new round of State funding are due on April 14, 2017. Given the tight timeline and not knowing what action will be taken by the City Council, or ultimately might be taken by the voters, the School Department is applying for funding for these four schools. Sixteen projects were completed from the State's current priority list. Had the State continued with the list, Longfellow School and Reiche were #2 and #3. A preliminary priority list from this next funding round is expected in April 2018.

It is anticipated that the \$64.26M would be borrowed over a six-year time period. This would result in an estimated \$92M in debt service payments, principal and interest, spread over the next 26 years. The tax rate would rise an estimated 3.1% by FY24 due to these debt service payments. For a taxpayer with an average home value (\$240,000) there would be an estimated \$2,707 of total additional taxes over the 26 year life of the bonds, an average of approximately \$104 per year.

Additional details on the proposal including the presentation provided to the Finance Committee and all additional materials requested and considered by the Committee are included in the agenda backup.

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

**Order 156-16/17
(Tab 15)**

Order Appropriating \$64,260,000 of Bond Proceeds – Sponsored by the Finance Committee, Councilor Nicholas M. Mavodones, Jr., Chair.

This is a companion order to Order 155-16/17 above.

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

**Order 157-16/17
(Tab 16)**

Order Submitting Elementary School Renovation Projects Bond Order to Referendum – Sponsored by the Finance Committee, Councilor Nicholas M. Mavodones, Jr., Chair.

This is a companion order to Order 155 and Order 156 above.

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

AMENDMENTS:

**Order 158-16/17
(Tab 17)**

**Amendment to Portland City Code Chapter 14 Land Use, Article V.
Site Plan Re: Repeal of Zoning Determination Provision – Sponsored
by the Planning Board, Elizabeth Boepple, Chair.**

On February 14, 2017, the Planning Board voted unanimously (7-0) to forward this item to the City Council with a recommendation for passage.

Michael Russell, Director, Permitting and Inspections Department, proposed the elimination of Section 14-465 as a means of streamlining the permitting process.

The zoning determination fee (Section 14-465) was adopted on May 15, 2000 and states that the building authority will provide a written decision, determination or interpretation upon request and payment of a fee.

Providing advisory opinions is a discretionary function for the Department. Striking Section 14-465 will not reduce or hinder public access to the information used for zoning research and interpretation. The information used for written determinations will remain available to the public and those who frequently request zoning determinations, such as appraisers, realtors, attorneys, and others.

This item must be read on two separate days. In order for this Order to take effect immediately, staff is requesting that the second reading be waived and the Order be passed as an emergency action because it addresses immediate resource, liability, and customer service issues.

Seven affirmative votes are required to waive the second reading. Emergency enactment requires seven affirmative votes after public comment.

**Order 159-16/17
(Tab 18)**

**Amendment to City Chapter 14 Re: Community Business B-2 Zone
– Sponsored by the Planning Board, Elizabeth Boepple Chair.**

On February 14, 2017 the Planning Board voted unanimously (7-0) to forward this item to the City Council with a recommendation for passage.

On December 20, 2016, Luke Davidson of Maine Craft Distilling submitted a Zoning Text Amendment which asked to amend the allowed uses in the B-2 zone to allow his facility to move from Fox Street in the IL-B to a facility at Washington Avenue in the B-2. As the B-2 zone is currently structured, his distillery and tasting room would be prohibited from moving to the B-2 on Washington Avenue, because distilleries are not allowed uses. Planning staff and the applicant collaborated to propose a revised use approach in the B-2, which would serve as a pilot project for larger holistic changes to treating uses citywide.

The key components of proposal, however, have not changed and as amended are:

1. Simplification of the structure of the B-2 by inserting a use table, regrouping uses and reformatting. The proposal reduces the length of the section from 9 to 4 pages;
2. Making change of use between similar uses much more straightforward than previously allowed; and
3. Creating a more permissive structure to uses not specifically listed in the code. Recognizing that, with the beneficial innovation occurring in the City, allowing additional flexibility could provide a substantial benefit to entrepreneurs looking to establish a business in the B-2 zone in Portland.

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

**Order 160-16/17
(Tab 19)**

Amendment to Zoning Map Re: 117 Auburn Street – Sponsored by the Planning Board, Elizabeth Boepple, Chair.

On February 14, 2017 the Planning Board voted unanimously (7-0) to forward this item to the City Council with a recommendation for passage.

The Planning Board recommends a zoning map amendment to change 117 Auburn Street, which is currently zoned part Residential (R3) and part Business Community (B2), to the Residence Professional (RP) zone. The application was submitted by MacDermot LLC to facilitate the reuse of the property, which includes a vacant two-story office building constructed in 1980 and most recently used as medical offices.

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

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

*Order 146-16/17
Tab 1 3-6-17*

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 AMENDING THE GUIDELINES OF THE
REGIONAL ECONOMIC DEVELOPMENT REVOLVING LOAN PROGRAM**

ORDERED, that the guidelines of the Regional Economic Development Revolving Loan Program, a loan program administered by the Portland Development Corporation, are hereby amended in substantially the form attached.



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: February 21, 2017

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

SUBJECT: Amendments to the Guidelines for the Regional Economic Development Revolving Loan Program (REDRLP)

SPONSOR: Drew Swenson, President/Portland Development Corporation Board of Directors

COUNCIL MEETING DATE ACTION IS REQUESTED:

One Reading: March 6, 2017

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

PRESENTATION: (Greg Mitchell – 5 minutes)

I. ONE SENTENCE SUMMARY: The Portland Development Corporation (PDC) is recommending Council approval for proposed amendments to the Regional Economic Development Revolving Loan Program (REDRLP) guidelines in order to be consistent with the Finance Authority of Maine's (FAME) updated rules for REDRLP.

II. AGENDA DESCRIPTION: REDRLP is one of the PDC's loan programs and is funded by grants from FAME. As FAME has updated their rules for this program, the PDC would like to amend the City's program guidelines for consistency with FAME, and is seeking the City Council's approval of the amendments. The PDC approved the proposed amendments at its January 19th meeting.

III. BACKGROUND: Within the REDRLP fund, the PDC currently has \$237,000 to lend and twelve loans under management, with an outstanding principal balance of \$776,402 as of 1/13/2017. The guidelines were last amended in October 2011.

IV. INTENDED RESULT: Overall, the proposed amendments to the REDRLP guidelines will allow for greater flexibility in making loans to Portland businesses, ranging from larger loans, loans to a wider range of eligible business types and sizes, to increased refinancing assistance and help with down payments on other loans. These changes are reflected in a strike-through/underlined version of the City's current REDRLP guidelines and are attached to this memo.

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 making the proposed amendments to the REDRLP guidelines. They will just allow greater flexibility in lending to Portland businesses with the REDRLP funds that FAME grants to the City.

VI. STAFF ANALYSIS: Staff sees great value in having increased flexibility for lending to Portland businesses of all types, sizes and situations when using the City's REDRLP funds. More businesses will be able to be helped with loans when there is a need for gap financing or for loans to startups that are not yet bankable.

VII. RECOMMENDATION: The PDC and staff recommend approval of the proposed amendments to the REDRLP guidelines.

VIII. LIST ATTACHMENTS:

- REDRLP Guidelines with proposed amendments in strike-through/underlined text;
- A clean version of the REDRLP Guidelines including all proposed amendments.

Prepared by: Nelle Hanig, Business Programs Manager

Date: February 20, 2017

**FAME Regional Economic Development Revolving
Loan Program (REDRLP) Guidelines**

*Amended by Corporator at 11/17/08 Meeting adding an amendment for
Requests for Amendment to Loan Terms.*

Amended by Corporator at 10/17/11 Meeting.

Program Description

The Regional Economic Development Loan Program (REDLP) provides loans to Portland businesses for the purpose of creating or retaining jobs and stimulating economic growth and development in the City. The Program provides individual loans up to \$250,000. \$350,000.

Program Requirements

- A. Business to be assisted must be located in the City of Portland
- B. Maximum loan amounts, though City reserves the right to finance less relative to project cost; is as follows:
 - ~~1) Loans of less than \$50,000 may be for the total amount of new funds being provided to a borrower;~~
 - ~~2) Loans of \$50,000 to \$100,000 may not exceed one half (1/2) of the net new funds being provided to a borrower;~~
 - ~~3) Loans over \$100,000 may not exceed one third (1/3) of the net new funds being provided to a borrower.~~
 - Up to 50% of total project cost, for projects from \$50,000 up to a maximum loan amount of \$350,000;
 - 100% of total project cost, for projects less than \$50,000;
 - 100% of total project cost for quality child care projects up to a maximum loan amount of \$350,000.
- C. The project applicant or owner cannot owe outstanding property taxes, judgments, or fees to the City of Portland, and must be free of all City liens and encumbrances.
- D. Borrower is unable to obtain funding for the project from other public and private sources including the personal resources of the owners of the business borrowing from the fund.

Eligible Businesses

Sole proprietorships, partnerships, limited liability companies, and corporations which own, lease, or rent commercial property within the City of Portland.

Business has ~~fifty (50)~~ one hundred (100) or fewer employees, or annual sales of ~~\$5,000,000- \$10,000,000~~ or less, **and** it consists of or involves at least one of the following categories:

- A. Advanced manufacturing technologies, such as value-added wood products and specialty fabricated metal and electronic products; precision manufacturing and use of composites or advanced materials;
- B. ~~Technologies, such as~~ Advanced information systems technologies, such as advanced telecommunications, energy and environmental products and services;
- C. ~~Value-added Advanced biological and natural resources enterprises and biological and natural resource technologies, such as aquaculture, marine technology, agriculture, forestry products and biotechnology;~~
- D. Converting from defense dependencies;
- E. A business sSignificantly engaged in export of goods or services to locations outside the state Maine;
- F. A business that dDedicates significant resources to research and development activities;
- G. Other businesses with ~~ten (10)~~ fifteen (15) or fewer employees; and,
- H. Quality child care project;
- I. A business significantly engaged in commercial and mixed-use real estate and community facilities; or
- ~~H.~~J. A business significantly engaged in serving tourists, such as in the area of outdoor recreation, culture, heritage and hospitality.

Eligible Activities:

- A. Renovation, improvement, reconstruction, or restoration of commercial space;
- B. Leasehold improvements;

C. Purchase of machinery and equipment, furniture and fixtures, and other fixed assets;

D. Permanent working capital (e.g., inventory and receivables);

E. Soft costs related to a larger project including architectural, engineering, legal, accounting, and other professional services;

F. Purchase of existing business (which has a positive economic impact on jobs and/or tax base);

F.G. Use of loan proceeds as partial downpayment on other loans;

G.H. Refinance existing debt if the following criteria are met:

- ~~• Project must include a business expansion component that is at least 25% over the debt amount to be refinanced. (As an example, for a \$50,000 project, the expansion must be at least \$12,500 of the total project cost.);~~
- Should improve the financial condition of the business by measurably reducing its debt service;
- Borrower must be current on all payments of its debt for the last twelve months;
- Loan proceeds must be used for a legitimate business purpose;
- Same collateral and debt service coverage requirements need to be met as with any other loan request to the Portland Development Corporation (PDC), the City's lending board;
- Refinancing of existing secured loans will require that the previously held collateral be released to the PDC as security. (This does not preclude the PDC from requiring additional collateral if it is necessary to properly secure the new loan.);
- When refinancing credit card debt, it must be determined that the credit card debt was used for business and not personal purposes;
- As part of the due diligence process, the existing lender confirms that it is unwilling or unable to modify the terms of the existing debt.

H.I. Acquisition of fishing vessels, marine-related machinery and equipment, licenses and permits;

H.J. Acquisition of existing real estate (including land and buildings) or construction of new buildings with the following restrictions:

1. Financing for owner-occupied real estate only. This is defined as property which is 51% or more occupied by the owner's business(es). Financing of speculative real estate acquisitions or non-owner occupied properties is not eligible;
2. May not be utilized for the purchase of undeveloped land.

Financing Terms

The following terms will generally guide the actions of the Portland Development Corporation (PDC), the City's lending board:

- A. Loan amount will be limited to a maximum of ~~\$250,000~~ \$350,000;
- B. Up to a 20-year Maximum amortization loan term of 20 years with a maximum 10-year balloon;
- C. Interest rate will be determined by the PDC;
- D. Business asset collateral and/or personal guaranties will be required;
- E. Origination fee structure to be determined by the PDC but generally not to exceed one (1) percent of the loan amount.

Underwriting Criteria:

Project review will include, but not be limited to the following factors:

- A. Has a positive impact on creating or retaining jobs and businesses in the City;
- B. Private investment, relative to public loan funds, is maximized;
- C. Necessity of public funds to make the project economically feasible;
- D. Project has a high potential for economic success;
- E. Return on public investment in the form of projected property taxes, or, in the case of a tax exempt entity, fees in lieu of property taxes;
- F. Highest level of lease occupancy commitment.

The following information will be required for consideration of a loan request:

1. Loan application;
2. Statement of project scope, including relevant plans and specifications;
3. Brief history of business and owners/managers;
4. For existing businesses, historical financial information to consist of three years of financial statements and/or tax returns;
5. Personal financial statements and tax returns of personal guarantors;
6. Projected financial information;

7. Any available market data demonstrating the project's economic feasibility, including, if necessary, appraisals;
8. Option on land, title opinion letter, or lease agreement;
9. Letters of commitment for all financing, with terms and conditions;
10. If applicable, letters of intent from prime tenants to lease, with rates and terms;
11. Appraisals to determine the value of real estate assets when those assets are securing a loan.

Applications and Approval Process

Submit signed loan application with all requested materials to the City's Economic Development ~~Department~~^{Division}, Portland City Hall, Room 308.

The PDC reviews and approves loan requests.

Requests for Amendment to Loan Terms:

A maximum one (1) percent fee may be applied for requests for amendments to loan terms for consulting, recording and legal fees associated with preparing any additional loan documents/modifications. The one (1) percent fee will be based on the current loan balance at the time of the request.

The Economic Development Director has the discretion to determine whether requested loan amendments should be brought to the PDC or addressed administratively, with follow up communication to the Board.

**FAME Regional Economic Development Revolving
Loan Program (REDRLP) Guidelines**

*Amended by Corporator at 11/17/08 Meeting adding an amendment for
Requests for Amendment to Loan Terms.*

Amended by Corporator at 10/17/11 Meeting.

Program Description

The Regional Economic Development Loan Program (REDLP) provides loans to Portland businesses for the purpose of creating or retaining jobs and stimulating economic growth and development in the City. The Program provides individual loans up to \$350,000.

Program Requirements

- A. Business to be assisted must be located in the City of Portland
- B. Maximum loan amounts, though City reserves the right to finance less relative to project cost:
 - Up to 50% of total project cost, for projects from \$50,000 up to a maximum loan amount of \$350,000;
 - 100% of total project cost, for projects less than \$50,000;
 - 100% of total project cost for quality child care projects up to a maximum loan amount of \$350,000.
- C. The project applicant or owner cannot owe outstanding property taxes, judgments, or fees to the City of Portland, and must be free of all City liens and encumbrances.
- D. Borrower is unable to obtain funding for the project from other public and private sources including the personal resources of the owners of the business borrowing from the fund.

Eligible Businesses

Sole proprietorships, partnerships, limited liability companies, and corporations which own, lease, or rent commercial property within the City of Portland.

Business has one hundred (100) or fewer employees, or annual sales of \$10,000,000 or less, **and** it consists of or involves at least one of the following categories:

- A. Advanced manufacturing technologies, such as value-added wood products and specialty fabricated metal and electronic products, precision manufacturing and use of composites or advanced materials;
- B. Technologies, such as advanced information systems advanced telecommunications, energy and environmental products and services;
- C. Value-added natural resource enterprises and biological and natural resource technologies, such as aquaculture, marine technology, agriculture, forestry products and biotechnology;
- D. Converting from defense dependencies;
- E. A business significantly engaged in export of goods or services to locations outside Maine;
- F. A business that dedicates significant resources to research and development activities;
- G. Other businesses with fifteen (15) or fewer employees,
- H. Quality child care project;
- I. A business significantly engaged in commercial and mixed-use real estate and community facilities; or
- J. A business significantly engaged in serving tourists, such as in the area of outdoor recreation, culture, heritage and hospitality.

Eligible Activities:

- A. Renovation, improvement, reconstruction, or restoration of commercial space;
- B. Leasehold improvements;
- C. Purchase of machinery and equipment, furniture and fixtures, and other fixed assets;
- D. Permanent working capital (e.g., inventory and receivables);
- E. Soft costs related to a larger project including architectural, engineering, legal, accounting, and other professional services;

- F. Purchase of existing business (which has a positive economic impact on jobs and/or tax base);
- G. Use of loan proceeds as partial downpayment on other loans;
- H. Refinance existing debt if the following criteria are met:
 - Should improve the financial condition of the business by measurably reducing its debt service;
 - Borrower must be current on all payments of its debt for the last twelve months;
 - Loan proceeds must be used for a legitimate business purpose;
 - Same collateral and debt service coverage requirements need to be met as with any other loan request to the Portland Development Corporation (PDC), the City's lending board;
 - Refinancing of existing secured loans will require that the previously held collateral be released to the PDC as security. (This does not preclude the PDC from requiring additional collateral if it is necessary to properly secure the new loan.);
 - When refinancing credit card debt, it must be determined that the credit card debt was used for business and not personal purposes;
 - As part of the due diligence process, the existing lender confirms that it is unwilling or unable to modify the terms of the existing debt.
- I. Acquisition of fishing vessels, marine-related machinery and equipment, licenses and permits;
- J. Acquisition of existing real estate (including land and buildings) or construction of new buildings with the following restrictions:
 1. Financing for owner-occupied real estate only. This is defined as property which is 51% or more occupied by the owner's business(es). Financing of speculative real estate acquisitions or non-owner occupied properties is not eligible;
 2. May not be utilized for the purchase of undeveloped land.

Financing Terms

The following terms will generally guide the actions of the Portland Development Corporation (PDC), the City's lending board:

- A. Loan amount will be limited to a maximum of \$350,000;
- B. Up to a 20-year amortization with a maximum 10-year balloon;
- C. Interest rate will be determined by the PDC;

- D. Business asset collateral and/or personal guaranties will be required;
- E. Origination fee structure to be determined by the PDC but generally not to exceed one (1) percent of the loan amount.

Underwriting Criteria:

Project review will include, but not be limited to the following factors:

- A. Has a positive impact on creating or retaining jobs and businesses in the City;
- B. Private investment, relative to public loan funds, is maximized;
- C. Necessity of public funds to make the project economically feasible;
- D. Project has a high potential for economic success;
- E. Return on public investment in the form of projected property taxes, or, in the case of a tax exempt entity, fees in lieu of property taxes;
- F. Highest level of lease occupancy commitment.

The following information will be required for consideration of a loan request:

1. Loan application;
2. Statement of project scope, including relevant plans and specifications;
3. Brief history of business and owners/managers;
4. For existing businesses, historical financial information to consist of three years of financial statements and/or tax returns;
5. Personal financial statements and tax returns of personal guarantors;
6. Projected financial information;
7. Any available market data demonstrating the project's economic feasibility, including, if necessary, appraisals;
8. Option on land, title opinion letter, or lease agreement;
9. Letters of commitment for all financing, with terms and conditions;
10. If applicable, letters of intent from prime tenants to lease, with rates and terms;
11. Appraisals to determine the value of real estate assets when those assets are securing a loan.

Applications and Approval Process

Submit signed loan application with all requested materials to the City's Economic Development Department, Portland City Hall, Room 308.

The PDC reviews and approves loan requests.

Requests for Amendment to Loan Terms:

A maximum one (1) percent fee may be applied for requests for amendments to loan terms for consulting, recording and legal fees associated with preparing any additional loan documents/modifications. The one (1) percent fee will be based on the current loan balance at the time of the request.

The Economic Development Director has the discretion to determine whether requested loan amendments should be brought to the PDC or addressed administratively, with follow up communication to the Board.

*Order 147-16/17
Tab 2 3-6-17*

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 AMENDING THE GUIDELINES OF THE
PORTLAND BROWNFIELDS CLEANUP REVOLVING LOAN FUND**

ORDERED, that the guidelines of the Portland Brownfields Cleanup Revolving Loan Fund, a loan program administered by the Portland Development Corporation, are hereby amended in substantially the form attached.

C



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: February 20, 2017

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

SUBJECT: Amendments to Guidelines for the Recently Recapitalized Portland Brownfields Revolving Loan Fund (P-BRLF)

SPONSOR: Drew Swenson, President/Portland Development Corporation Board of Directors

COUNCIL MEETING DATE ACTION IS REQUESTED:

One Reading: March 6, 2017

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

The Environmental Protection Agency (EPA) is urging the City to begin providing loans and grants using its P-BRLF as soon as possible.

PRESENTATION: (Greg Mitchell – 5 minutes)

- I. ONE SENTENCE SUMMARY:** The Portland Development Corporation (PDC) is recommending City Council approval of proposed amendments to the P-BRLF guidelines.
- II. AGENDA DESCRIPTION:** The PDC would like to provide grants and loans for the remediation of Brownfields sites in Portland with the EPA's recently granted \$800,000 in cleanup funds to the City. In order to do so it is necessary to have amended guidelines that meet current EPA requirements. The PDC is seeking the City Council's approval of proposed amendments to the guidelines. The proposed updates were approved by the PDC at its February 16th meeting.
- III. BACKGROUND:** When EPA funded the first P-BRLF, the City Council approved guidelines for that program back in September of 2001. Minor amendments were added in July 2007. At this time, the PDC is proposing substantial modifications to those guidelines to meet today's EPA requirements. The guideline sections with the most modifications are Ineligible Activities, Financing Terms, and Application Review Criteria. P-BRLF Guidelines with proposed amendments in strike-through/underlined text are attached to this memo.

- IV. INTENDED RESULT:** The proposed amendments to the P-BRLF guidelines are consistent with today's EPA BRLF program and process requirements. If approved by the Council, the guidelines will provide a road map for reviewing and approving applications for use of these cleanup funds and the process for implementation.
- 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 approving the recommended amendments to the 2001 P-BRLF guidelines.
- VI. STAFF ANALYSIS:** The proposed amendments to the P-BRLF guidelines are consistent with EPA's requirements for the review and approval of applications for BRLF cleanup funds and the process for their implementation.
- VII. RECOMMENDATION:** The PDC and Economic Development Staff recommend approval of the proposed amended P-BRLF guidelines.
- VIII. LIST ATTACHMENTS:**
- P-BRLF Guidelines with proposed amendments in strike-through/underlined text;
 - Clean version of the P-BRLF Guidelines with the inclusion of all proposed amendments.

Prepared by: Nelle Hanig, Business Programs Manager

Date: February 20, 2017

PORTLAND BROWNFIELDS CLEANUP REVOLVING LOAN FUND

Amended to be applicable City-wide and passed by the City Council on 7/16/07.

Amended by Corporator at 11-17-08 Meeting adding an amendment for Requests for Amendment to Loan Terms.

The Portland Brownfields Cleanup Revolving Loan Fund (BCRLF) provides loans and subgrants to assist those interested in remediating and redeveloping Brownfields sites within the City of Portland. Brownfields are abandoned, idled or underused industrial or commercial properties with real or perceived environmental contamination. The funding for this program comes from the U.S. Environmental Protection Agency (EPA) and is authorized by the City of Portland.

1. Program Goals

- ~~(a) To finance the removal of CERCLA hazardous substances from Brownfields sites within the City of Portland.~~
- ~~(b) To demonstrate the feasibility of establishing a sustainable revolving loan fund program. To assist in financing the cleanup of Brownfields sites within the City of Portland, properties, thereby making these properties available for redevelopment and contributing to the revitalization of the community, creation of jobs, improving the environment, and eliminating the public health risks associated with these sites.~~
- ~~(c) To assist the remediation and redevelopment of Brownfields sites within the City of Portland.~~

2. Program Objectives

- ~~(a) To create an incentive for private investment in the Brownfields properties/sites areas within of the City of Portland;~~
- ~~(b) To assess and safely clean up Brownfields properties based on end use in order to facilitate their sustainable use;~~
- ~~(c) To foster development and implementation of financial and administrative approaches that can support self-sustaining efforts to facilitate Brownfields cleanup efforts; and~~
- ~~(d) To prevent the creation or spread of contamination on or between properties to protect the public health by minimizing exposure to toxic materials in the environment.~~

3. Program Description

This program is designed to encourage the cleanup of eligible Brownfields sites and activities associated with removing, mitigating, or preventing the release, or threat of a release, of a hazardous substance, pollutant, or contaminant from Brownfields sites. Assistance is provided through low interest loans and subgrants. Subgrants are available to non-profits and to governmental entities.

4. Program Budget

The funding for the Portland Brownfields Cleanup Revolving Loan Fund is provided by the U.S. Department of Environmental Protection and authorized by the Portland City Council.

5. Project Threshold Requirement:

- (a) The property to be assisted is located within the City of Portland.
- ~~(b)~~ The project applicant or owner must owe no outstanding property taxes, fees, judgments, or liens to the City;
- ~~(c)~~ The property must meet the definition of a Brownfield and be enrolled in the Maine Voluntary Response Action Program (VRAP) for site cleanup;
- ~~(d)~~ The property must have had adequate environmental assessments completed in order to understand site conditions and necessary remediation (e.g. Phase I Environmental Site Assessment and/or Phase II Environmental Site Assessment);
- ~~(b)(e)~~ The site meets the EPA eligibility requirements;
- ~~(e)(f)~~ The project applicant or owner is not a generator or transporter of contamination to the site;
- ~~(d)(g)~~ The project applicant or owner is not currently suspended, debarred or otherwise ineligible to participate in Federal financial assistance programs; and
- ~~(e)(h)~~ The project applicant or owner is not in environmental non-compliance with Federal or State agencies.

6. Eligible Applicants/Entities

- (a) Publicly owned, either directly by a municipality or indirectly through a quasi- public entity such as a community development corporation; or
- ~~(b)~~ ~~(b)~~ Privately-owned by current or prospective commercial property owners, banks, developers, non-profits, etc.;
- ~~(c)~~ Applicant must own or be in the process of obtaining ownership at the time of application.

7. Eligible Activities

Cleanup actions associated with removing, mitigating, or preventing the release or threat of a release of a hazardous substance, pollutant or contaminant including:

(a) Preparation of a Community Relations Plan (CRP), Analysis of Brownfields Cleanup Alternatives (ABCA); public meeting to present the ABCA; and preparation of meeting minutes;

~~(a)(b)~~ Fences, warning signs or other security or site control precautions;

~~(b)~~ (c) Drainage controls;

~~(de)~~ Stabilization of berms, dikes or impoundments or drainage or closing lagoons;

~~(ed)~~ Capping of contaminated soils;

~~(fe)~~ Using chemicals and other materials to retard the spread of the release or mitigate its effects;

~~(f)~~ (g) Excavation, consolidation, or removal of ~~highly~~ contaminated soils from drainage or other areas ~~the site~~;

~~(hg)~~ Removal of drums, barrels, tanks, or other bulk containers that contain or may contain hazardous substances, pollutants or contaminants;

~~(ih)~~ Containment, treatment, disposal, or incineration of hazardous materials;

~~(ji)~~ Provision of alternative water supply where necessary immediately to reduce exposure to contaminated household water;

~~(kj)~~ Site monitoring activities, including sampling and analysis, that are necessary during the cleanup process, including determination of effectiveness of a cleanup; and

~~(lk)~~ Costs associated with meeting public participation, worker health and safety, and interagency coordination requirements.

(m) Costs associated with removal activities including demolition and/or site preparation that are part of site cleanup

(n) Environmental Insurance Premiums.

8. Ineligible Activities

- (a) Pre-cleanup environmental response activities (i.e., such as site assessment, identification, and characterization); however, the Lead Agency may request EPA approval for limited site assessment on a case-by-case basis when necessary to ensure protection of the environment and public health through cleanup action.
- (b) Cleanup of a naturally occurring substance, products that are part of the structure of and result in exposure within residential building or business or community structures (e.g. interior lead-based paint contamination or asbestos which results in indoor exposure), or public or private drinking water supplies that have deteriorated through ordinary use except as determined on a site-by-site basis and approved by the U.S. EPA Headquarters, consistent with CERCLA 104(1)(3) and (4);
- (c) Monitoring and data collection necessary to apply for, or comply with environmental permits under other federal and state laws, unless such a permit is required as a component of the cleanup action; and
- (d) Development activities that are not removal actions (e.g. construction of a new facility or marketing of property).
- (e) Job training unrelated to performing a specific cleanup at a site covered by a loan or subgrant;
 - (f) To pay for a penalty or fine;
 - (g) To pay a federal cost share requirement (for example, a cost-share required by another Federal subgrant) unless there is specific statutory authority;
 - (h) To pay for response costs at a Brownfields site for which the recipient of the subgrant or loan is potentially liable under CERCLA Section 107;
 - (i) To pay a cost of compliance with any federal law, excluding the cost of compliance with laws applicable for cleanup;
 - (j) Unallowable costs (e.g. lobbying and fund raising) under applicable OMB Circulars.

9. **Financing Terms:**

The following terms will guide the actions of the ~~Downtown Portland Corporation~~ Portland Development Corporation (PDC):

- (a) Loan amount for eligible cleanup activities will be limited to the balance of the loan fund, but generally range from a minimum of \$150,000 to a maximum of \$300,000, and will be negotiated based on project redevelopment needs. Subgrants up to \$200,000 each are available for eligible cleanup activities;
- (b) Maximum loan term is up to will be 105 years, though shorter terms are preferred; The actual term is negotiable on a case-by-case basis, and may

include a longer amortization period with a balloon at the end of the designated term. Projects must justify the need for the maximum term.

- (e) — (c) Interest rate will be determined by the Downtown Portland Corporation PDC, though Brownfields loans are usually lent at a lower interest rate;
- (d) Brownfields site, business assets, outside collateral, and/or personal guaranties may be required as security;
- (d)(e) Environmental indemnification and/or lenders environmental insurance may be required;
- (f) Evidence of a cost share of at least 20% of the loan or subgrant amount will be required of all Applicants/Borrowers; In special circumstances, as determined by the PDC, the cost share may be reduced or waived.
- (g) Cost share monies will be specifically utilized for eligible cleanup activities;
- (h) As applicable, Borrower/Subgrantee will be required to utilize Davis Bacon Wage compliance requirements and provide backup verifying compliance;
- (i) Loan/Subgrant drawdown requests with sufficient backup of eligible cleanup activities will be reimbursed at the PDC approved loan or subgrant proportion to cost share prior to final Drawdown.
- (j) Application fee structure shall be determined by the Downtown Portland Corporation;
- (e)(k) Legal fees for drafting loan documents.

10. Requests for Amendment to Loan Terms:

A one percent fee will be applied for requests for amendments to loan terms, as well as costs for legal fees and recording fees associated with preparing any additional loan documents/modifications. The one percent fee will be based on the current loan balance at the time of the request. This one percent fee will be applied to those loan amendments which require the PDC Assistant Secretary Commercial Loan Officer to bring the request to the DPC-PDC Board of Directors based on substantive changes.

The Commercial Loan Officer PDC Assistant Secretary has the discretion to determine whether requested loan amendments should be brought to the Board or done administratively. If done administratively, the Commercial Loan Officer PDC Assistant Secretary will confer with the Business Programs Manager and the Associate Corporation Counsel the Economic Development Division Director to determine the fee and the fee will then be determined based on hourly rates of pay, as well as recording fees and legal hourly fees.

11. Underwriting Criteria:

Project review will include, but not be limited to, the following factors:

- (a) Location of the in-a Brownfields site within the City of Portland;
- ~~(b) (b)~~ Necessity of loan funds to make the project economically feasible and at the same time has a high potential for economic success.
- ~~(c)~~ Analysis of credit reports and financial documents as well as budget feasibility analysis provided by the RLF Site Manager ((Qualified Environmental Professional (QEP)) to assess that applicant is not a cleanup and/or business risk.

12. Application Review Criteria

The ~~Downtown Portland Corporation~~ PDC, with input and recommendations made by ~~both the~~ the ~~Maine Department of Environmental Protection, EPA, City's QEP and the City's Economic Development Department (EDD) Planning and Urban Development Department,~~ will review project proposals to determine eligibility and negotiate with applicant(s) to determine the least amount of public resources necessary to make the project(s) feasible.

The loan approval process shall be carried out efficiently and pragmatically to insure loans are approved in a timely manner, cleanup plans are implemented and redevelopment projects are completed on schedule to maximize the community benefit goals of the projects. The actions to be taken are:

- ~~(a)~~ The applicant will meet with the City and City's QEP to discuss the project;
- ~~(b)~~ Applicant will complete the City's RLF Application and provide supporting documentation for review by the EDD and QEP;
- ~~(c)~~ The City's QEP and Maine DEP department of Environmental Protection will reviews the environmental assessments and cleanup plan summary. If the Applicant's Borrower, site cleanup activities and preliminary project costs are eligible under the plan, then City's QEP will prepare a summary memo (approval or denial) for review by the the-Maine DE department of Environmental Protection, the EPA and the EDD. prepares an Approval memo signed by both themselves and the Planning and Urban Development Department authorizing the Borrower to prepare a draft Engineering Evaluation Cost Analysis (EE/CA). The Planning and Urban Development Department will then prepare a Community Relations Plan (CRP) and the Downtown Portland Corporation
- ~~(d)~~ The underwriter will proceed with the review and analysis of the financial components of the loan application and prepare a report for the PDC with recommended terms and conditions;
- ~~(a)~~
- ~~(b)~~ (e) The PDC will be presented with the loan report and, bBased on an

favorable analysis of the financial qualifications of the applicant and the merits of the project, the Downtown Portland Corporation PDC will vote to approve or disapprove of the loan/subgrant request including terms and conditions prepares a loan approval memo;

~~(e) Based on the loan approval memo, the Downtown Portland Corporation in cooperation with the Maine Department of Environmental Protection establishes the loan terms and conditions;~~

~~(f) The EDD will prepare a loan commitment letter for the Applicant/Borrower, including terms and conditions.~~

~~(g) Once the commitment letter is fully executed,~~

1. The Applicant/Borrower and their QEP will prepare a Draft Community Relations Plan (CRP) and Draft Analysis of Brownfields Cleanup Alternatives (ABCA). The Draft CRP and Draft ABCA will be submitted to the Maine DEP and EPA for approval and comment. Upon comment receipt and incorporation, the draft ABCA will be presented at a public hearing and will be subject to a 30-day public comment period;

2. The City attorney will draft loan documents which will include but not be limited to the loan agreement, promissory note, mortgage agreement and any other documentation as necessary.

~~(d) The loan approval memo and loan terms and conditions are preliminarily approved by the Downtown Portland Corporation;~~

~~The Downtown Portland Corporation approves the loan subject to a 30-day public comment period on the draft EE/CA and the completion and acceptance of the EE/CA and CRP by the Planning and Urban Development Department EDD;~~

~~(e)-~~

~~(f) The loan documents are prepared (e.g., loan agreement, promissory note, mortgage agreement and other credit enhancement agreements);~~

- (g) ~~The Maine Department of Environmental Protection and the EPA (at their discretion) review the draft EE/CA;~~
- (h) ~~The EPA Community Relations Coordinator approves the CRP and the Planning and Urban Development Department implements the CRP which includes a 30-day public comment period on the draft EE/CA;~~
- (i)(h) Based on the CRP, a final draft of the EE/ABCA is prepared by the Applicant/Borrower, which incorporates comments received by MaineDEP, EPA and the public. and the Maine Department of Environment Protection prepares a Response Summary of public comments and issues an RLF Decision Document noting the cleanup alternative chosen;
- (j)(i) Once the CRP and ABCA has been finalized, Based on the RLF Decision Memo, the Applicant/Borrower prepares a Scope of Work for the cleanup activities, including a detailed budget and work schedule, a Health and Safety Plan, and a Quality Assurance Project Plan (the QAPP will need to be reviewed by Maine DEP and EPA, prior to finalization); and
- (k)(j) The loan agreement, promissory note, mortgage agreement, and any other credit enhancement agreements loan documents -are signed. Any loan fees are paid.

The City will request the following information from the Applicant to make the loan or subgrant this determination:

Applicant Information

- (a) Applicant Overview: name, location, principal owners/stockholders, type of business and products or services, date established;
- (b) Financial Overview: historical financial statements for the past three years, most recent quarter and copies of appropriate IRS Tax Returns;
- (c) Management Overview: resumes of principals; and
- (d) Credit References: financial institutions and other creditors.

Site Conditions

- (a) Environmental assessments (e.g., Phase I and II) in accordance with American Society for Testing and Materials (ASTM) Standards);
- (b) Information regarding the status of the Applicant/borrower as a potentially responsible party at the site;
- (c) Information on environmental compliance history;
- (d) Provide ~~Information~~ on whether or not the Applicant is currently or ever has been subject to any penalties resulting from environmental non-compliance at the site;
- (e) Provide ~~Information~~ on whether or not the Applicant is a generator or transporter of contamination at the site; and
- (f) Provide ~~Information~~ on whether or not the Applicant falls under a statutory exemption from liability; or that the EPA could use its

enforcement discretion and not pursue the party as a responsible party under CERLA if the Applicant is currently the owner/operator of the site.

Cleanup Plan

Cleanup Plan Summary: cleanup plan including a technical description of work to be done, eligible cleanup activities and costs estimates for cleanup and project redevelopment. Cleanup Plan should also document other funding sources for cleanup and eligible activities to be utilized for cost share.

Redevelopment Plan

- (a) Financing Project: a description of the cleanup project and the reuse plan;
- (b) Business Plan: a description of the business goals, strategies and action plans; and
- (c) Financial Plan: pro-forma financial statements which demonstrates the economic viability of the project and identifies the sources of repayment for the loan.

Community Benefits

- Employment Impact: number of current and new jobs, wage levels and job training anticipated to be generated from the cleanup and redevelopment of the site.
- Investment Impact: Serves as an incentive for investment in Brownfields areas.
- Housing Units: Available for the creation of Housing Units located in Brownfields areas.

PORTLAND BROWNFIELDS CLEANUP REVOLVING LOAN FUND

Amended to be applicable City-wide and passed by the City Council on 7/16/07.

Amended by Corporator at 11-17-08 Meeting adding an amendment for Requests for Amendment to Loan Terms.

The Portland Brownfields Cleanup Revolving Loan Fund (BCRLF) provides loans and subgrants to assist those interested in remediating and redeveloping Brownfields sites within the City of Portland. Brownfields are abandoned, idled or underused industrial or commercial properties with real or perceived environmental contamination. The funding for this program comes from the U.S. Environmental Protection Agency (EPA) and is authorized by the City of Portland.

1. Program Goal

To assist in financing the cleanup of Brownfields sites within the City of Portland, thereby making these properties available for redevelopment and contributing to the revitalization of the community, creation of jobs, improving the environment and eliminating the public health risks associated with these sites.

2. Program Objectives

- (a) To create an incentive for private investment in Brownfields properties/sites within the City of Portland;
- (b) To safely clean up Brownfields properties based on end use in order to facilitate their sustainable use;
- (c) To foster development and implementation of financial and administrative approaches that can support self-sustaining efforts to facilitate Brownfields cleanup efforts; and
- (d) To prevent the creation or spread of contamination on or between properties to protect the public health by minimizing exposure to toxic materials in the environment.

3. Program Description

This program is designed to encourage the cleanup of eligible Brownfields sites and activities associated with removing, mitigating, or preventing the release, or threat of a release, of a hazardous substance, pollutant, or contaminant from Brownfields sites. Assistance is provided through low interest loans and subgrants. Subgrants are available to non-profits and governmental entities.

4. Program Budget

The funding for the Portland Brownfields Cleanup Revolving Loan Fund is provided by the U.S. Department of Environmental Protection and authorized by the Portland City Council.

5. Project Threshold Requirement

- (a) The property to be assisted is located within the City of Portland.
- (b) The project applicant or owner must owe no outstanding property taxes, fees, judgments, or liens to the City;
- (c) The property must meet the definition of a Brownfield and be enrolled in the Maine Voluntary Response Action Program (VRAP) for site cleanup;
- (d) The property must have had adequate environmental assessments completed in order to understand site conditions and necessary remediation (e.g. Phase I Environmental Site Assessment and/or Phase II Environmental Site Assessment);
- (e) The site meets the EPA eligibility requirements;
- (f) The project applicant or owner is not a generator or transporter of contamination to the site;
- (g) The project applicant or owner is not currently suspended, debarred or otherwise ineligible to participate in Federal financial assistance programs; and
- (h) The project applicant or owner is not in environmental non-compliance with Federal or State agencies.

6. Eligible Applicants/Entities

- (a) Publicly owned, either directly by a municipality or indirectly through a quasi-public entity such as a community development corporation; or
- (b) Privately-owned by current or prospective commercial property owners, banks, developers, non-profits, etc.;
- (c) Applicant must own or be in the process of obtaining ownership at the time of application.

7. Eligible Activities

Cleanup actions associated with removing, mitigating, or preventing the release or threat of a release of a hazardous substance, pollutant or contaminant including:

- (a) Preparation of a Community Relations Plan (CRP), Analysis of Brownfields Cleanup Alternatives (ABCA); public meeting to present the ABCA; and preparation of meeting minutes;
- (b) Fences, warning signs or other security or site control precautions;
- (c) Drainage controls;
- (d) Stabilization of berms, dikes or impoundments or drainage or closing lagoons;

- (e) Capping of contaminated soils;
- (f) Using chemicals and other materials to retard the spread of the release or mitigate its effects;
- (g) Excavation, consolidation, or removal of contaminated soils from drainage or other areas;
- (h) Removal of drums, barrels, tanks, or other bulk containers that contain or may contain hazardous substances, pollutants or contaminants;
- (i) Containment, treatment, disposal, or incineration of hazardous materials;
- (j) Provision of alternative water supply where necessary immediately to reduce exposure to contaminated household water
- (k) Site monitoring activities, including sampling and analysis, that are necessary during the cleanup process, including determination of effectiveness of a cleanup; and
- (l) Costs associated with meeting public participation, worker health and safety, and interagency coordination requirements.
- (m) Costs associated with removal activities including demolition and/or site preparation that are part of site cleanup
- (n) Environmental Insurance Premiums.

8. Ineligible Activities

- (a) Pre-cleanup environmental response activities (i.e. site assessment, identification, and characterization); however, the Lead Agency may request EPA approval for limited site assessment on a case-by-case basis when necessary to ensure protection of the environment and public health through cleanup action.
- (b) Monitoring and data collection necessary to apply for, or comply with environmental permits under other federal and state laws, unless such a permit is required as a component of the cleanup action; and
- (c) Development activities that are not removal actions (e.g. construction of a new facility or marketing of property).
- (d) Job training unrelated to performing a specific cleanup at a site covered by a loan or subgrant;
- (e) To pay for a penalty or fine;
- (f) To pay a federal cost share requirement (for example, a cost-share required by another Federal subgrant) unless there is specific statutory authority;
- (g) To pay for response costs at a Brownfields site for which the recipient of the subgrant or loan is potentially liable under CERCLA Section 107;
- (h) To pay a cost of compliance with any federal law, excluding the cost of compliance with laws applicable for cleanup;
- (i) Unallowable costs (e.g. lobbying and fund raising) under applicable OMB Circulars.

9. Financing Terms

The following terms will guide the actions of the Portland Development Corporation (PDC):

- (a) Loan amount for eligible cleanup activities will be limited to the balance of the loan fund, but generally range from a minimum of \$150,000 to a maximum of \$300,000, and will be negotiated based on project redevelopment needs. Subgrants up to \$200,000 are available for eligible cleanup activities;
- (b) Maximum loan term is up to 10 years, though shorter terms are preferred; The actual term is negotiable on a case-by-case basis, and may include a longer amortization period with a balloon at the end of the designated term. Projects must justify the need for the maximum term.
- (c) Interest rate will be determined by the PDC, though Brownfields loans are usually lent at a lower interest rate;
- (d) Brownfields site, business assets, outside collateral, and/or personal guaranties may be required as security;
- (e) Environmental indemnification and/or lenders environmental insurance may be required;
- (f) Evidence of a cost share of at least 20% of the loan or subgrant amount will be required of all Applicants/Borrowers; in special circumstances, as determined by the PDC, the cost share may be reduced or waived.
- (g) Cost share monies will be specifically utilized for eligible cleanup activities;
- (h) As applicable, Borrower/Subgrantee will be required to utilize Davis Bacon Wage compliance requirements and provide backup verifying compliance;
- (i) Loan/Subgrant drawdown requests with sufficient backup of eligible cleanup activities will be reimbursed at the PDC approved loan or subgrant proportion to cost share prior to final Drawdown.

10. Requests for Amendment to Loan Terms

A one percent fee will be applied for requests for amendments to loan terms, as well as costs for legal fees and recording fees associated with preparing any additional loan documents/modifications. The one percent fee will be based on the current loan balance at the time of the request. This one percent fee will be applied to those loan amendments which require the PDC Assistant Secretary to bring the request to the PDC Board of Directors based on substantive changes.

The PDC Assistant Secretary has the discretion to determine whether requested loan amendments should be brought to the Board or done administratively. If done administratively, the PDC Assistant Secretary will confer with the Business Programs Manager and the Associate Corporation Counsel to determine the fee based on hourly rates of pay, as well as recording fees and legal hourly fees.

11. Underwriting Criteria

Project review will include, but not be limited to, the following factors:

- (a) Location of the Brownfields site within the City of Portland;
- (b) Necessity of loan funds to make the project economically feasible.
- (c) Analysis of credit reports and financial documents as well as budget feasibility analysis provided by the RLF Site Manager ((Qualified Environmental Professional (QEP)) to assess that applicant is not a cleanup and/or business risk.

12. Application Review Criteria

The PDC, with input and recommendations made by the Maine Department of Environmental Protection, EPA, City's QEP and the City's Economic Development Department (EDD), will review project proposals to determine eligibility and negotiate with applicants to determine the least amount of public resources necessary to make the projects feasible.

The loan approval process shall be carried out efficiently and pragmatically to insure loans are approved in a timely manner, cleanup plans are implemented and redevelopment projects are completed on schedule to maximize the community benefit goals of the projects. The actions to be taken are:

- (a) The applicant will meet with the City and City's QEP to discuss the project;
- (b) Applicant will complete the City's RLF Application and provide supporting documentation for review by the EDD and QEP;
- (c) The City's QEP and Maine DEP will review the environmental assessments and cleanup plan summary. If the Applicant's site cleanup activities and preliminary project costs are eligible, the City's QEP will prepare a summary memo (approval or denial) for review by the Maine DEP, the EPA and the EDD.
- (d) The underwriter will proceed with the review and analysis of the financial components of the loan application and prepare a report for the PDC with recommended terms and conditions;
- (e) The PDC will be presented with the loan report and, based on an analysis of the financial qualifications of the applicant and the merits of the project, the PDC will vote to approve or disapprove of the loan/subgrant request including terms and conditions ;
- (f) The EDD will prepare a loan commitment letter for the Applicant/Borrower, including terms and conditions.
- (g) Once the commitment letter is fully executed:

1. The Applicant/Borrower and their QEP will prepare a Draft

Community Relations Plan (CRP) and Draft Analysis of Brownfields Cleanup Alternatives (ABCA). The Draft CRP and Draft ABCA will be submitted to the Maine DEP and EPA for approval and comment. Upon comment receipt and incorporation, the draft ABCA will be presented at a public hearing and will be subject to a 30-day public comment period;

2. The City attorney will draft loan documents which will include but not be limited to the loan agreement, promissory note, mortgage agreement and any other documentation as necessary.
- (h) Based on the CRP, a final draft of the ABCA is prepared by the Applicant/Borrower, which incorporates comments received by Maine DEP, EPA and the public;
- (i) Once the CRP and ABCA has been finalized, the Applicant/Borrower prepares a Scope of Work for the cleanup activities, including a detailed budget and work schedule, a Health and Safety Plan, and a Quality Assurance Project Plan (the QAPP will need to be reviewed by Maine DEP and EPA, prior to finalization); and
- (j) The loan agreement, promissory note, mortgage agreement, and any other loan documents are signed. Any loan fees are paid.

The City will request the following information from the Applicant to make the loan or subgrant determination:

Applicant Information

- (a) Applicant Overview: name, location, principal owners/stockholders, type of business and products or services, date established;
- (b) Financial Overview: historical financial statements for the past three years, most recent quarter and copies of appropriate IRS Tax Returns;
- (c) Management Overview: resumes of principals; and
- (d) Credit References: financial institutions and other creditors.

Site Conditions

- (a) Environmental assessments (e.g., Phase I and II in accordance with American Society for Testing and Materials (ASTM) Standards);
- (b) Information regarding the status of the Applicant/ as a potentially responsible party at the site;
- (c) Information on environmental compliance history;
- (d) Information on whether or not the Applicant is currently or ever has been subject to any penalties resulting from environmental non-compliance at the site;
- (e) Information on whether or not the Applicant is a generator or transporter

- of contamination at the site; and
- (f) Information on whether or not the Applicant falls under a statutory exemption from liability; or that the EPA could use its enforcement discretion and not pursue the party as a responsible party under CERLA if the Applicant is currently the owner/operator of the site.

Cleanup Plan

Cleanup Plan Summary: cleanup plan including a technical description of work to be done, eligible cleanup activities and costs estimates for cleanup and project redevelopment. Cleanup Plan should also document other funding sources for cleanup and eligible activities to be utilized for cost share.

Redevelopment Plan

- (a) Financing Project: a description of the cleanup project and the reuse plan;
- (b) Business Plan: a description of the business goals, strategies and action plans; and
- (c) Financial Plan: pro-forma financial statements which demonstrates the economic viability of the project and identifies the sources of repayment for the loan.

Community Benefits

- Employment Impact: number of current and new jobs, wage levels and job training anticipated to be generated from the cleanup and redevelopment of the site.
- Investment Impact: Serves as an incentive for investment in Brownfields areas.
- Housing Units: Available for the creation of Housing Units located in Brownfields areas.

ROLL CALL: Mayor Strimling called the meeting to order at 5:30 P.M. (Councilor Mavodones absent).

ANNOUNCEMENTS:

RECOGNITIONS:

“Arts in the Chamber” – Ebenezer Akakpo

APPROVAL OF MINUTES OF PREVIOUS MEETING:

Motion was made by Councilor Costa and seconded by Councilor Batson for passage of the February 6, 2017 City Council Meeting Minutes.
Passage 8-0.

PROCLAMATIONS:

Proc 20-16/17 Proclamation Honoring Michael J. Sauschuck – Sponsored by Mayor Ethan K. Strimling.

Proc 21-16/17 Proclamation Recognizing Black History Month 2017 - Sponsored by Councilor Pious Ali and Co-sponsored by Mayor Ethan K. Strimling, Councilors Belinda S. Ray, Spencer Thibodeau, Brian E. Batson, Justin Costa, David Brenerman, Jill C. Duson, and Nicholas M. Mavodones, Jr.

APPOINTMENTS:

CONSENT ITEMS:

Order 131-16/17 Order Approving Transfer of Funds Under 15 M.R.S. Sections 5824(3) and 5826(6) Re: Andrew Rupard – Sponsored by Jon P. Jennings, City Manager

Order 132-16/17 Order Declaring May 12 and 13, 2017 the Rappel for Rippleffect Festival – Sponsored by Jon P. Jennings, City Manager.

Order 133-16/17 Order Declaring May 29, 2017 the Memorial Day Parade and Ceremony Festival - Sponsored by Jon Jennings, City Manager.

Order 134-16/17 Order Declaring June 24, 2017 the Allagash Street Fair Festival – Sponsored by Jon P. Jennings, City Manager.

Order 135-16/17 Order Declaring July 7, 2017 the Old Port Fitness & Health Exposition and July 8, 2017 the Shipyard Old Port Half Marathon and 5K Road Race Festivals – Sponsored by Jon P. Jennings, City Manager.

Order 136-16/17 Order Declaring Sundays on the Boulevard Festival Days in 2017 – Sponsored by Jon P. Jennings, City Manager.

Order 137-16/17 Order Declaring May 14, 2017 the Portland Sea Dogs Mother’s Day 5K Race Festival - Sponsored by Jon P. Jennings, City Manager.

Councilor Thibodeau disclosed that his firm prepares work for Allagash.

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

LICENSES:

Order 138-16/17 Order Granting Municipal Officers’ Approval of 363 LLC d/b/a Cheevitdee. Application for a Class XI Restaurant/Lounge License at 363 Fore Street – Sponsored by Michael Russell, Permitting and Inspections Director.

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

Order 139-16/17 Order Granting Municipal Officers’ Approval of Bayside Bowl, LLC d/b/a Bayside Bowl. Application to expand Outdoor Dining on Private Property at 58 Alder Street – Sponsored by Michael Russell, Permitting & Inspections Director.

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

Order 140-16/17 Order Granting Municipal Officers’ Approval of Mami Food Truck Restaurant. Application for a Class IV (Malt License at 339 Fore Street - Sponsored by Michael Russell, Permitting and Inspections Director.

Motion was made by Councilor Costa and seconded by Councilor Ray for passage. Passage 8-0.

Order 141-16/17 Order Granting Municipal Officers' Approval of Pom 2007, LLC d/b/a Pom's Thai Taste Restaurant and Noodle House. Application for a Class I FSE at 571 Congress Street – Sponsored by Michael Russell, Permitting and Inspections Director.

Motion was made by Councilor Ray and seconded by Councilor Batson for passage. Passage 8-0.

Order 142-16/17 Order Granting Municipal Officers' Approval of Sun Y. Chung d/b/a Yobo. Application for a Class III & IV (Malt & Vinous) License at 23 Forest Avenue – Sponsored by Michael Russell, Permitting and Inspections Director.

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

Order 143-16/17 Order Granting Municipal Officers' Approval of Lazzari LLC d/b/a Lazzari. Application for a Class XI Restaurant/Lounge License with Outdoor Dining on Public Property at 618 Congress Street – Sponsored by Michael Russell, Permitting and Inspections Director.

Motion was made by Councilor Batson and seconded by Councilor Ray for passage. Passage 8-0.

BUDGET ITEMS:

COMMUNICATIONS:

RESOLUTIONS:

UNFINISHED BUSINESS:

Order 123-16/17 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. This item was postponed at the February 6th City Council meeting.

Motion was made by Councilor Ray and seconded by Councilor Dusen for passage. Passage 8-0.

**Order 126-16/17 Order Approving Agreement between Portland and Maine Department of Transportation Re: Veranda Street Paving – Sponsored by Jon P. Jennings, City Manager.
This item was given first reading at the February 6, 2017.**

Motion was made by Councilor Costa and seconded by Councilor Ray for passage. Passage 8-0.

Order 127-16/17 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. This item was given first reading on February 6, 2017.

Motion was made by Councilor Ray and seconded by Councilor Batson for passage. Passage 8-0.

ORDERS:

Order 144-16/17 Order Approving an Agreement with Revision Energy LLC for Installation of Solar Power Array on Ocean Avenue Landfill – Sponsored by Jon P. Jennings, City Manager.

Motion was made by Councilor Thibodeau and seconded by Councilor Costa to waive the first reading. Passage 8-0.

Motion was made by Councilor Thibodeau and seconded by Councilor Ray for passage. Passage as an emergency 8-0.

Order 145-16/17 Order Approving Agreement between Portland and Maine Department of Transportation RE: West Commercial Street Trail – Sponsored by Jon P. Jennings, City Manager.

This is its first reading.

AMENDMENTS:

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

UNFINISHED BUSINESS CONTINUED:

Order 128-16/17 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. This item was given first reading on February 6, 2017.

Motion was made by Councilor Ray and seconded by Councilor Brenerman to amend Order 128 by changing the date retroactive to February 7, 2017.

Motion was made by Councilor Ray and seconded by Councilor Batson for passage. Passage 8-0.

**Order 129-16/17 Amendment to Zoning Map Re: Fort Sumner Park R6 to ROS
– Sponsored by the Planning Board, Elizabeth Boepple, Chair.
This item was given first reading on February 6, 2017.**

Motion was made by Councilor Ray and seconded by Councilor Costa
to amend Order 129 by changing the date retroactive to February 7, 2017.

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

**Order 130-16/17 Establishment of the Fort Sumner Park Overlay Zone – Sponsored by
the Planning Board – Elizabeth Boepple, Chair.
This item was given first reading on February 6, 2017.**

Motion was made by Councilor Ray and seconded by Councilor Costa
to amend Order 130 by changing the date retroactive to February 7, 2017.

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

Motion was made by Councilor Costa and seconded by Councilor Duson to
adjourn. Passage 8-0, 6:45 P.M.

A TRUE COPY.

Katherine L. Jones, City Clerk

Doc 22-16/17
Tab 4 3-6-17

PROCLAMATION

Honoring

Danny Wilcox

Employee of the Month

January 2017

WHEREAS: **Danny Wilcox** of the Parks, Recreation & Facilities Department has been named the City of Portland Employee of the Month by a committee of his peers and selected for this distinct honor from a workforce of 1,300; and

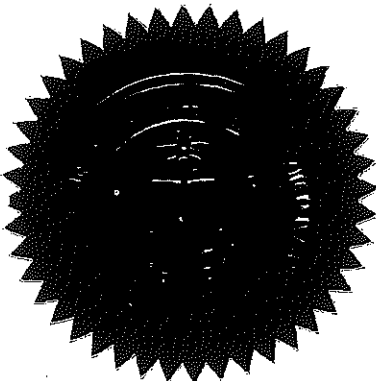
WHEREAS: This award is presented in recognition of **Danny's** work as a Maintenance Worker III with twenty years of City service. Last year, from April to August, the Athletic Facilities division had two of their four employees out on leave. This left the day-to-day responsibilities managing the maintenance, preparation for games and staffing of the School Department and community athletic fields to **Danny**, as the most senior staff; and

WHEREAS: From April to June **Danny** directed a group of one maintenance worker III and three seasonal staff to mow over 100 acres of ballfields, prepare for hundreds of high and middle school practices and games, 28 college games, and hundreds of community field uses. **Danny** took the lead with incredible dedication, efficiency and leadership to help the group perform at a level that was simply outstanding. The fields were not only consistently ready for games and tournaments but the lines were crisp, fields manicured and the infields smooth; and

WHEREAS: **Danny's** efforts were recognized by many college, high school and middle school athletic directors that complimented how wonderful the fields looked and how smooth their spring seasons went. **Danny** truly is an asset to the Parks, Recreation & Facilities Department and to the City.

NOW, THEREFORE, BE IT RESOLVED, THAT I, Ethan K. Strimling, Mayor of the City of Portland, Maine, and the members of the Portland City Council do hereby proclaim honor and recognition to **Danny Wilcox** as **City Employee of the Month, January 2017**.

Signed and Sealed this 6th day of March, 2017



Ethan K. Strimling, Mayor
City of Portland, Maine

*Doc 23-16/17
Tab 5 3-6-17*

PROCLAMATION

HONORING

OFFICER THOMAS KWOK

WHEREAS, **Officer Kwok** joined the Portland Police Department in November 2011. He earned his bachelor's degree in criminal justice from Westfield State University; and

WHEREAS, **Officer Kwok** is a dedicated and dependable police officer. He has been proactive in the Bayside area dealing with numerous public nuisance calls as well as responding to any criminal activity in this neighborhood; and

WHEREAS, **Officer Kwok** is a valued member of the Portland Police honor guard; and

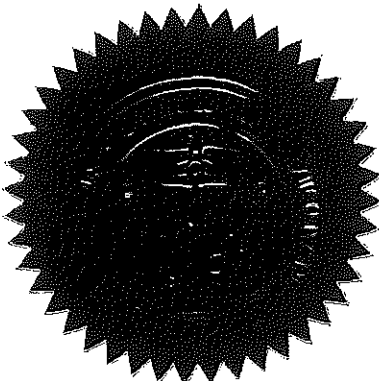
WHEREAS, **Officer Kwok** works diligently with fellow officers and civilians to organize a team for a variety of road races throughout New England; and

WHEREAS **Officer Kwok** consistently strives to make a difference when it comes to serving the citizens of Portland and making Portland a safe place to live and visit; and

WHEREAS, **Officer Kwok** 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 Thomas Kwok as Officer of the Month for January 2017.**

Signed and sealed this 6th day of March 2017



A handwritten signature in black ink, which appears to read "Ethan K. Strimling", is written over a horizontal line. The signature is stylized and fluid.

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

Order 148-16/17
Tab 6 3-6-17

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 APPOINTING MEMBERS TO VARIOUS BOARDS AND COMMITTEES

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

Name	Board or Committee	Term Expires
David Eaton	Planning Board	02/28/2020
Brandon Mazer	Planning Board	02/28/2020
Michael Harris	Police Citizen Review	03/30/2020
Reginald Parson	Police Citizen Review	03/30/2020
Emily West	Police Citizen Review	03/30/2020
Robert Bartels	Zoning Board of Appeals	12/31/2020
Benjamin McCall	Zoning Board of Appeals	12/31/2020
Nick Alfiero	Fish Exchange B	10/31/2019

order 148-16/17
Tab 6 3-6-17

Portland, Maine



Yes. Life's good here.

Office of the City Clerk
Katherine L. Jones, CMC

MEMORANDUM

TO: Mayor Ethan Strimling, and Members of City Council
FROM: Katherine L. Jones
DATE: February 24, 2017
RE: Appointments

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

Name	Board and Committee	Expiration
David Eaton	Planning Board	02/28/2020
Brandon Mazer	Planning Board	02/28/2020
Michael Harris	Police Citizen Review	03/30/2020
Reginald Parson	Police Citizen Review	03/30/2020
Emily West	Police Citizen Review	03/30/2020
Robert Bartels	Zoning Board of Appeals	12/31/2020
Benjamin McCall	Zoning Board of Appeals	12/31/2020
Nick Alfiero	Fish Exchange B	10/31/2020

Brandon J. Mazer, Esq.
45 Eastern Promenade Unit 9F
Portland, Maine 04101

January 13, 2017

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

Dear Mr. Chairman,

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

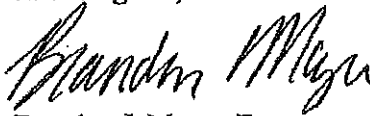
I was recently appointed to the Zoning Board of Appeals and have thoroughly enjoyed my time on the ZBA thus far; however, feel that my strengths may be better served on the Planning Board.

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

Being a young professional who both lives and works in the City would allow me to bring a unique perspective to the Portland Planning Board, one that it currently does not have. I attended the University of Maine School of Law and have been active in a variety of Portland organizations including the Friends of Eastern Promenade and Propel. Through many conversations with my peers in the City, I have come to keenly understand the need to allow growth and development while at the same time want to keep Portland livable.

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

Kind Regards,



Brandon J. Mazer, Esq.

Brandon Mazer, Esq.

brandonmazer@gmail.com

Cell 515-491-5757

45 Eastern Promenade, Unit 9F
Portland, Maine 04101

EDUCATION

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

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

WORK EXPERIENCE

Shipyard Brewing Company, Portland, Maine
General Counsel

2011-Present

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

PROFESSIONAL MEMBERSHIPS and COMMUNITY ENGAGEMENT

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

Secretary of the Friends of the Eastern Promenade (October 2016-Present)

Portland Zoning Board of Appeals (2016-Present)

Member of the Maine State Bar Association

Member of the Munjoy Hill Neighborhood Organization

Member of PROPEL

Brewers' Association Government Affairs Committee (2013-Present)

Board of Directors—Special Olympics Maine

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

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

India Street Neighborhood Advisory Committee (2013-2015)

Candidate Portland City Council (2015)

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

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

Reginald Parson, MPA
132 Marginal Way
Portland, Maine 04101
(920) 642-0877
parson20@uwosh.edu
<http://www.linkedin.com/profile/view>

January 2, 2017

Dear Committee Chairperson Jones,

I am writing to express my interest and consideration of my materials to serve as a Member of the City of Portland Planning Board. Currently I am a Juris Doctor Candidate at the University of Maine School of Law and an Intern with the Portland Housing Authority (PHA).

As a graduate student at the University of Wisconsin Oshkosh, I served as the Chief of Staff in student government with the Oshkosh Student Association (OSA). In this role, I researched information and drafted the *Oshkosh Student Association (OSA) Records, Retention and Disposition Policy*. This policy streamlined the process for archiving historical and recent documents from OSA to be transferred to the University of Wisconsin Oshkosh University Archives Unit. This policy was approved by the State of Wisconsin Public Records Board (PRB) in March 2016 and recognized as an official state policy. I also assisted in drafting twenty-six constitutional amendments to amend the OSA Constitution for review and all were approved by the student body at the University of Wisconsin Oshkosh in December 2015.

I have also served in local government as a member of the City of Oshkosh Board of Zoning Appeals. In this role, I assisted in interpreting the City of Oshkosh Zoning Ordinances and assist in reviewing variance requests, and decisions made by the Zoning Administrator.

Currently as an Intern with the Portland Housing Authority (PHA), I am responsible for reviewing policies within the PHA to ensure there are no potential fair housing issues in the policies. In addition, I am tasked with ensuring compliance of the new *Affirmatively Furthering Fair Housing Rule (AFFH)* issued by the U.S Department of Housing and Urban Development (HUD) in 2015 to ensure the purposes of the Fair Housing Act of 1968 are furthered to eliminate discrimination, segregation and continue to foster more inclusive neighborhoods in relation comes to housing in the Portland community.

I will contact you the week of January 9, 2017 to ensure my materials have been received. Thank you for your consideration to serve the City of Portland and its citizens.

Sincerely,

Reginald Parson

Enclosure: Resume (Police Citizen Review Subcommittee)

Reginald Parson, MPA

132 Marginal Way

Portland, Maine 04101

(920) 642-0877

parson20@uwosh.edu

<http://www.linkedin.com/profile/view>

EDUCATION

University of Maine School of Law, Portland, Maine

Juris Doctor candidate, degree expected May 2019

University of Wisconsin Oshkosh, Oshkosh, Wisconsin

Master of Public Administration, May 2016

- Recipient of Outstanding Student Leadership Award, Titan Graduate National Scholar designation, and Tom Segnitz Leadership Award
- Named to *Who's Who Among Colleges and Universities*, May 2016

Marian University, Fond du Lac, Wisconsin

Bachelor of Science, Homeland Security (Minors: Criminal Justice and Pre-Law), May 2013

- Student Commencement Speaker
- Recipient of Ronald E. McNair Scholar designation
- Named Senator of the Year, Student Senate, April 2013

PROFESSIONAL EXPERIENCE

Portland Housing Authority, Portland, Maine

Intern, January 2017-Present

- Review Portland Housing Authority's (PHA) policies to check for potential fair housing issues.
- Review and study the Affirmatively Furthering Fair Housing Rule (AFFH) to ensure PHA is in compliance with the AFFH rule.
- Accompany PHA Staff in eviction and grievance hearings.

City of Oshkosh Board of Zoning Appeals, Oshkosh, Wisconsin

Board Member, August 2014- June 2016

- Appointed by the City of Oshkosh Mayor and confirmed by the Oshkosh City Council.
- Conducted zoning appeal hearings to consider variance requests under Wisconsin Statutes, the City of Oshkosh Zoning Ordinance, and its adopted Rules and Procedures.

Oshkosh Student Association (OSA), UW Oshkosh, Oshkosh, Wisconsin

Chief of Staff, March 2015-May 2016

- Served as the primary student advisor to the OSA President and Vice President; supervised eleven OSA Directors and Ambassadors; managed operations of student government.
- Assisted in the transition of the incoming student body President, Vice President and Chief of Staff and drafted transition binders to aid in their transition.
- Drafted travel policy and twenty-six constitutional amendments for revision of the student body government constitution and the Assembly and Senate Bylaws.
- Drafted a records retention and disposition schedule approved by the Wisconsin Public Records Board.
- Chaired monthly ad hoc Conference on Shared Governance Committee meetings comprised of leaders from Faculty Senate, Senate for Academic Staff, and University Staff Council.

Oshkosh Student Association, UW Oshkosh, Oshkosh, Wisconsin

Co-Director of Legislative Affairs, September 2014-March 2015

- Served as student advisor and liaison between OSA, UW System officials, UW Oshkosh administration, federal, state, local government officials to collaborate on and communicate pending and current legislation and university policy to students.
- Lobbied state legislators to support funding for the University of Wisconsin System.
- Coordinated and scheduled requests of a U.S Congressman and a representative from a U.S Senator's office to speak with students at statewide meetings per request of the Chair of the UW System Student Representatives Intergovernmental Relations Committee.
- Collaborated with the Oshkosh City Clerk's office and UW Oshkosh administration to lead voter education during the 2014 midterm election cycle and 2015 City of Oshkosh local spring elections.

University of Wisconsin Oshkosh, Oshkosh, Wisconsin

Student Assistant, Office of Equity and Affirmative Action, Spring Semester 2015

- Prepared documents for Title IX trainings under the supervision of the Director
- Processed Voluntary Self-Identification forms and Interview and Hiring Request forms
- Drafted position description for student position in the Office of Equity and Affirmative Action

Office of Governor Pat Quinn, State of Illinois, Springfield, Illinois

Constituent Affairs Intern, Summer 2013

- Served as a liaison between the Governor and Illinois constituents.
- Responded on behalf of the Governor to requests for special recognitions such as wedding anniversaries, birthdays, Boy Scout promotions, and military/law enforcement retirements.
- Communicated with state and federal agencies on specific issues and provided constituents with information on the status of legislative bills before the Illinois General Assembly.

GUEST LECTURES, PRESENTATIONS, AND SPEECHES

Alumni Guest Speaker, "2016 National TRIO Day", Marian University (February 2016)

Creator/Facilitator, "United we Stand Oshkosh-Building Bridges with Law Enforcement" UW Oshkosh (September 2015)

Guest Facilitator, President of the United States and Constitutional Powers, UW Oshkosh (November 2014)

Guest Lecture, Analysis of Racial Stereotypes of African Americans in America, UW Oshkosh (April 2014)

Master of Ceremonies, "19th Annual Dr. Martin Luther King Jr. Community Celebration", UW Oshkosh (January 2014)

Keynote Speaker, "Dr. Martin Luther King Jr. Interfaith Community Breakfast", Marian University (January 2013)

MEDIA PUBLICATIONS

Editorial, "Oshkosh Needs to Adopt the Wheel Tax," *Oshkosh Northwestern* (July 17, 2016)

Editorial, "Whitest Black Person is Almost as Bad as the 'N' Word," *Oshkosh Northwestern* (June 7, 2015)

Column, "UW-Oshkosh Students to Educate Peers on Voter ID Changes," *Oshkosh Northwestern* (September 28, 2014)

Editorial, "Key to my Journey, Civil Rights Act Came Late for my Parents," *Oshkosh Northwestern* (July 12, 2014)

DAVID N. EATON
52 Neal Street, Portland, Maine 04102
david@david-eaton.com
207-775-3568

EXPERIENCE:

Financing Consultant and Mortgage Broker, Portland, ME
Sole Proprietor 5/2015 – Present

- Consultant to developers and property owners, preparing financial modeling and loan proposals for real estate projects.

Housing and Health Care Finance, LLC, Chevy Chase, MD
Senior Development Officer 3/2012 – 4/2015

- Originate lending opportunities eligible for HUD/FHA's financing programs for both market rate and affordable property types.
- Primary responsibilities include initial financial modeling, sizing, structuring, and pricing; analysis of property and borrower financial statements, cash-flow analysis, construction/development budget review, and third party report review.

Oppenheimer Multifamily Housing & Healthcare Finance, Inc.,
North Wales, PA
Senior Vice President – Multifamily & Healthcare Originations – HUD/FHA
5/2008 – 4/2012

- Originate lending opportunities eligible for HUD/FHA's financing programs for both market rate and affordable property types.
- Primary responsibilities include initial financial modeling, sizing, structuring, and pricing; analysis of property and borrower financial statements, cash-flow analysis, construction/development budget review, and third party report review.
- Completed financings include new construction/significant rehabilitation of multifamily and senior healthcare related facilities, as well

as refinancing of market rate and affordable multifamily properties, and healthcare facilities.

- Maintain and build new client relationships throughout the United States visiting property sites, researching markets, and meeting with property owners, developers, and property management firms to present financing options.

Capital Source, Bethesda, MD

Senior Development Officer 1/2006 – 4/2008

- Originate lending opportunities eligible for HUD/FHA's financing programs for both market rate and affordable property types. Underwriter for FHA Insured Housing and Healthcare programs
- Approved underwriter for FHA, MAP and Lean programs.

Suburban Mortgage Associates, Bethesda, MD

Vice President 1/95 – 3/2012

- Originate lending opportunities eligible for HUD/FHA's financing programs for both market rate and affordable property types. Underwriter for FHA Insured Housing and Healthcare programs
- Approved underwriter for FHA, MAP and Lean programs.

Barton, Gingold, Eaton and Anderson, Portland, ME

Principal, 10/87 – 12/94

- Multi Disciplined consulting firm, with focus on strategic planning and public relations for businesses seeking state and local approvals for large development projects.

New England Herald Development Group, Portland, ME

General Manager 5/85 – 9/87

- Supervised development of retail, residential and commercial real estate projects for this private investment group.

Johnson Garner Associates, Portland, ME
Vice President, 1/81 – 7/84

- Loan underwriter and project management consultant and Correspondent to Suburban Mortgage Associates.

York Cumberland Housing Development Corp. Gorham, ME
Project Manager 1/78 – 12/78, Development Director, 1/79-12/80

- Responsible for all aspects of real estate development for this non-profit affordable housing developer and manager, including land use approvals, agency and conventional financing, equity partnership arrangements, and construction management.

EDUCATION

Massachusetts Institute of Technology, 1984, M.S. Real Estate Development
Yale University, 1977 B.A., Urban Studies

PROFESSIONAL ASSOCIATIONS

Member, City of Portland Planning Board. 2/15 - Present

DAVID N. EATON

52 Neal Street, Portland, Maine 04102

david@david-eaton.com

207-775-3568

EXPERIENCE:

Financing Consultant and Mortgage Broker, Portland, ME

Sole Proprietor 5/2015 – Present

- Consultant to developers and property owners, preparing financial modeling and loan proposals for real estate projects.

Housing and Health Care Finance, LLC, Chevy Chase, MD

Senior Development Officer 3/2012 – 4/2015

- Originate lending opportunities eligible for HUD/FHA's financing programs for both market rate and affordable property types.
- Primary responsibilities include initial financial modeling, sizing, structuring, and pricing; analysis of property and borrower financial statements, cash-flow analysis, construction/development budget review, and third party report review.

Oppenheimer Multifamily Housing & Healthcare Finance, Inc.,

North Wales, PA

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Suburban Mortgage Associates, Bethesda, MD

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Project Manager 1/78 – 12/78, Development Director, 1/79-12/80

- Responsible for all aspects of real estate development for this non-profit affordable housing developer and manager, including land use approvals, agency and conventional financing, equity partnership arrangements, and construction management.

EDUCATION

Massachusetts Institute of Technology, 1984, M.S. Real Estate Development
Yale University, 1977 B.A., Urban Studies

PROFESSIONAL ASSOCIATIONS

Member, City of Portland Planning Board. 2/15 - Present

January 3, 2017

To whom it may concern,

I am writing to apply for the opening on the Police Citizen Review Subcommittee. I am a resident of Portland and looking for ways to volunteer in the community and this opportunity is of particular interest to me. I am currently working remotely (in Portland) as a senior research associate at the Institute for State and Local Governance (ISLG) based in New York City.

I joined ISLG last year to work on the Safety and Justice Challenge initiative, funded by the McArthur Foundation. This initiative awarded grants to 20 jurisdictions around the country to develop innovative ways to safely reduce their jail populations. ISLG is the lead data partner in this initiative and I am leading research efforts in seven of these 20 jurisdictions. We are working with each of these jurisdictions to develop and track performance measures which speak directly to the specific strategies that they are implementing.

As part of this work, I have met with various criminal justice agencies, including law enforcement, to learn more about the strategies they are implementing, the challenges they face, and more generally about their relationships with communities and individuals that interface with the criminal justice system. Through this work, I have gained further appreciation for the hard work and dedication that these officers, prosecutors, public defenders, pretrial service providers, judges and others pursue in order to create a more fair and balanced criminal justice system.

Prior to joining ISLG, I was the Research Director at the Innocence Project (IP), a non-profit legal organization dedicated to freeing wrongfully convicted prisoners through DNA testing and reforming the criminal justice system to minimize future injustices. Through this work, I gained extensive knowledge on the causes of wrongful convictions, which most often were not the result of a single bad apple engaged in misconduct, but rather a combination of multiple system errors implicating various overwhelmed criminal justice agencies.

Throughout my career in criminal justice research, I have developed a well-rounded perspective on the system – one that appreciates both the hard work of those who protect the community and hold criminals responsible for their crimes, as well as the hardships that some citizens face who become involved in the criminal justice system.

I applaud Portland for involving citizens in the review of police complaints, as it sends a message to the city that police-community relationships are a priority and citizens' perspectives are welcome. I believe I would bring a balanced, fair, and informed perspective to this committee. In addition to the relevant experience I have described here, I also enjoy working collaboratively with colleagues and taking in different points of view. I grew up here in Portland and returned two years ago after 15 plus years in New York. Because I work remotely, I look forward to gaining more local roots as I find volunteer opportunities here in Portland. I would love the opportunity to join this committee and look forward to hearing from you soon.

Best,

Emily West

Emily M. West, Ph.D.
43 Richardson Street, Portland, ME 04103
917-446-6763 • merrittwest@gmail.com

2008	Ph.D. in Sociology and Criminology	University of Pennsylvania
2006	Master of Arts in Sociology and Criminology	University of Pennsylvania
1996	Bachelor of Arts in Sociology, cum laude	Skidmore College

PROFESSIONAL ACTIVITIES

5/2015-	CUNY Institute for State and Local Governance (ISLG) Senior Research Associate	Portland, ME/ New York, NY
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Leading research efforts in multiple jurisdictions around the country to support a national jail reform project (Safety and Justice Challenge, funded by the MacArthur Foundation). Responsibilities include:

- Managing all initiative-related data activities across seven jurisdictions around the country
- Performing data diagnostic visits to assess local data capacity of key criminal justice agencies and identify ways to expand/enhance data capacity
- Developing and tracking performance measurements for each jurisdiction based on their specific strategies aimed at safely reducing the local jail population
- Collecting, cleaning, and analyzing case-level data from relevant criminal justice agencies
- Creating and presenting progress reports to examine whether jurisdictions are meeting their targets to achieve jail population reductions

10/2008- 9/2014	Innocence Project Research Director	New York, NY
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Led research efforts to allow for comprehensive examination of wrongful convictions. Responsibilities included:

- Identifying and implementing organizational research needs
- Maintaining a comprehensive database on all DNA exonerations
- Overseeing the Innocence Project Research Advisory Board
- Responding to internal and external research/data requests
- Conducting analyses on internal clients and DNA exonerees, writing reports, and presenting findings
- Collaborating with academic scholars, law enforcement, prosecutors, and defense attorneys on various projects/studies
- Presenting at national conferences addressing issues relating to wrongful conviction
- Supervising research staff
- Developing & monitoring the research department budget
- Co-authoring articles relating to DNA exonerees

- 8/2007-8/2008 Owen Consulting New York, NY**
Senior Evaluation Consultant
 Acted as evaluation consultant to support mentoring programs serving disadvantaged youth in NYC. Responsibilities included:
- Helping develop proposals
 - Designing assessment tools
 - Conducting focus groups and administering surveys
 - Creating and managing databases
 - Cleaning and analyzing data using SPSS, writing reports and presenting findings
 - Developing and monitoring project budgets
- 6/2006-6/2007 Public/Private Ventures Philadelphia, PA /New York, NY**
Senior Evaluation Consultant
 Acted as evaluation consultant to support the Ready4Work Prison Reentry Initiative. Responsibilities included:
- Analyzing survey data on participants' health issues, with a focus on HIV/AIDS
 - Obtaining arrest records from 11 cities throughout the country
 - Summarizing and presenting findings
- 8/2002-8/2004 University of Pennsylvania Philadelphia, PA**
Senior Research Coordinator
 Managed the Philadelphia Educational Longitudinal Study (PELS), under the direction of Dr. Frank Furstenberg. Responsibilities included:
- Designing and implementing survey instruments
 - Collecting and managing qualitative data
 - Cleaning, merging and analyzing longitudinal data
 - Writing reports and presenting findings
 - Supervising research assistants
 - Acting as liaison between the university and foundations funding project
- 7/2000-7/2002 Metis Associates, Inc. New York, NY**
Research Analyst
 Supported research activities of various educational programs in NYC. Responsibilities included:
- Planning and designing program models
 - Designing surveys & protocols for interviews, focus groups, and observations
 - Managing field site data collection efforts
 - Conducting interviews and focus groups
 - Creating and managing databases
 - Preparing and analyzing data using SPSS, writing reports and presenting findings
 - Developing and monitoring project budgets
 - Supervising research assistants
 - Providing internal training to staff on SPSS and survey design

9/1996- Philliber Research Associates
7/2000 Research Analyst

Accord, NY
/New York, NY

Supported research activities of various human service programs with responsibilities similar to those presented directly above.

- Major research projects included a broad array of social service sectors including domestic violence, foster care, teen pregnancy prevention, and educational programs

PUBLICATIONS

West, E., Meterko, V. (forthcoming). "DNA Exonerations, 1989-2014: Review of Data and Findings from the First 25 Years." *Albany Law Review*, Volume 79.

Bonventre, C.L., Norris, N.J., & West, E. (2014). "Studying Innocence: Advancing Methods and Data." In *Examining Wrongful Convictions: Stepping Back, Moving Forward*, edited by Allison D. Redlich, James R. Acker, Robert J. Norris, and Catherine L. Bonventre, 301-319. Durham, NC: Carolina Academic Press.

Hampikian, G., West, E., & Akselrod, O. (2011). "The Genetics of Innocence: Analysis of 194 U.S. DNA Exonerations." *Annual Review of Genomics and Human Genetics*, 12, 97-120. doi: 10.1146/annurev-genom-082509-141715

Philliber, S., Kaye, J., Herrling, S. and West, E. (2002). "Preventing Teen Pregnancy and Improving Health Care for Teens: An Evaluation of the Children's Aid Society Carrera Program." *Perspectives on Sexual and Reproductive Health*, 34 (5).

Carrera, M., Kaye, J., Philliber, S. and West, E. (2000). "Knowledge About Reproduction, Contraception, and Sexually Transmitted Infections Among Young Adolescents in American Cities." *Social Policy*, 30, 41-50.

PRESENTATIONS

West, E. (2014). "Trends in DNA Exonerations over Time. Are DNA Exonerations on the Decline?" *Innocence Network Annual Conference*, Portland, OR.

West, E. (2013). "300 and Counting: Trends in DNA Exonerations." Panel Presentation, *American Society of Criminology Annual Meeting*, Atlanta, GA.

West, E. (2012). "Impact of Wrongful Conviction: Needs and Experiences of the Exonerated." Panel Presentation, *American Society of Criminology Annual Meeting*, Chicago, IL.

West, E. (2011). "Misidentification in DNA Exonerations." Guest Lecture for Masters of Criminology students, *University of Pennsylvania*.

West, E. (2011). "What We are Learning About Exonerations in the United States." Panel Presentation, *Innocence Network Annual Conference*, Cincinnati, Oh.

West, E. (2011). "The Past, Present, and Future of Wrongful Conviction Scholarship." Discussant, *American Society of Criminology Annual Meeting*, Washington, DC.

West, E. (2009). "New Research on False Convictions and Exonerations." Panel Presentation, *Law and Society Association Annual Meeting*, Denver, Co.

West, E. (2009). "Systematic DNA Testing." Chair, *Innocence Network Annual Conference*, Houston, Tx.

West, E. (2009). "Addressing Prosecutorial Misconduct: Review of Post-Conviction Appeals Among DNA Exonerates Involving Claims of Prosecutorial Misconduct." Panel Presentation, *Innocence Network Annual Conference*, Houston, Tx.

West, E. (2005). "Family and School Related Predictors of Arrest." Panel Presentation, *American Sociology Association Annual Conference*, Philadelphia, PA.

AWARDS

2011 Jerry Lee Center of Criminology, Criminology in Practice Award, University of Pennsylvania

1996 The Everett V. Stonequist Award for dedication and achievement in Sociology, Skidmore

1995 The Wachenheim Memorial Scholarship for academic achievement, Skidmore

RELATED GRADUATE WORK

- | | |
|-----------------------------|--|
| Dissertation Project | <ul style="list-style-type: none">• "Gender Differences in Predicting Timing of First Arrest: Testing Social Control Theory on a High-Risk Urban Sample."• "Gender Differences in Arrest Frequency Among High-Risk First-Time Offenders."• "School Poverty: Its Role in Predicting Odds of Arrest and Mediating Associated Family and Peer Effects." |
| Competency Exams | <ul style="list-style-type: none">• Criminology Theory; Sociology of the Family |
| Statistics Courses | <ul style="list-style-type: none">• Quantitative Methods I & II; Categorical/Logistic Analysis; Event History; Methodology of Social Research |

References provided upon request.

Michael A. Harris
184 Longfellow Street
Portland, Maine 04103
207-772-6296
michaelharris1116@gmail.com

Summary of Qualifications

- Successful long-term business career with Hannaford Bros. Co. and Delhaize Group serving for fifteen years as VP Risk Management for Delhaize America. Direct accountability for staff of over 200 associates and \$13M annual budget across six United States banners;
- Direct experience and responsibility for all Loss Prevention and Security activities throughout Delhaize US banners, including oversight responsibility for internal investigations and joint investigations with government agencies;
- Extensive experience and responsibility for internal auditing processes and leading investigations into asset losses, security breaches and Code of Business Conduct violations;
- Significant nonprofit board, volunteer and governance experience, including current role as Vice-Chair of Board of Directors for the Good Shepherd Food Bank;
- Thirty-three year resident of Portland, Maine.

Recent Employment History

- VP of Risk Management, Hannaford Bros. Co./Delhaize Group, 2001-2013 (retired in 2013); 145 Pleasant Hill Road, Scarborough, Maine 04107.
- VP Loss Prevention and Security, Hannaford Bros.Co., 1992-2001.
- Director of Corporate Auditing, Hannaford Bros.Co., 1992-1994

Professional Accomplishments

- Successfully directed Risk Management, Emergency Response, Loss Prevention and Security activities in the United States for Delhaize Group, a food retailer headquartered in Brussels, Belgium with annual revenues of \$17.8 ban (2014);
- Developed, tested and implemented crises management and emergency response program for all Delhaize United States based supermarkets (over 1500) and warehouse facilities (6);
- Integrated risk management strategy, functions, systems and policies across six Delhaize United States banners;

Education

BA English, Miami University, Oxford, Ohio.

References Available Upon Request

BENJAMIN T. MCCALL

253 Spring Street #1

Portland, Maine 04102

207-712-4130

benjaminmccall@gmail.com

January 9, 2017

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

To Whom It May Concern:

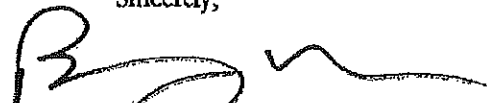
I write this letter to express my interest to become a member of the Portland Board of Appeals. My resume is attached.

Professionally, I work as a private attorney, focusing primarily on land use and municipal law. A large part of my day consists of working with local code enforcement officers during code enforcement proceedings, as well as with developers and landowners in seeking municipal approvals like variances and conditional use permits. This knowledge and skill set, which I will continue to cultivate in the coming years, will be an asset to the Board, especially regarding the technical standards that the Board must apply in its work.

More importantly, however, I believe that the Board of Appeals serves an essential public function, and serving in this capacity would be a perfect opportunity for me to use my professional skills to help the City move forward. Being a proud West End homeowner, I've come to appreciate how our neighborhoods and our city are changing, particularly in terms of the recent increase in residential development. Although the Board of Appeals is not directly involved in the crafting of the City's development policy, its role in ensuring a fair and equitable process for those attempting to improve their land remains vital. Secondly, I've come to appreciate the role that municipal government, particularly the code enforcement process, plays in ensuring that Portland remains a safe and pleasant place to live. The Board's function of ensuring that this process remains honest and well-run is highly consequential to helping this City thrive. I can contribute positively to both of these processes.

In short, being able to serve with the Board, and help the City succeed in the future, is something I am already passionate about, and is a role I am excited to take on. Thank you for considering my application. I look forward to the opportunity to speak with you soon.

Sincerely,



Benjamin T. McCall

BENJAMIN T. MCCALL

253 Spring Street #1
Portland, Maine 04102

207-712-4130

benjamintmccall@gmail.com

EDUCATION

University of Maine School of Law, Portland, Maine

Juris Doctor, summa cum laude, 2016

- Recipient, Wernick Prize for Legal Writing; ALI-CLE Scholarship and Leadership Award; Shur-Fromsko Award for Municipal Law and Local Governance
- Recipient, CALI Excellence for the Future Awards for Excellence in the Administrative Law Practicum, Contracts, Evidence, and Insurance Law (highest grade in all courses)
- *Maine Law Review*: Editor-in-Chief (2015-2016); Staff Member and Online Editor (2014-2015)
- Publication: *The Road Less Travelled: The Maine Energy Cost Reduction Act, Economic Federalism, and a Modern Approach to Preemption Analysis Under the Natural Gas Act of 1938*, 67 Me. L. Rev. 311 (2015)

Bates College, Lewiston, Maine

Bachelor of Arts, magna cum laude, Politics (Minor in Religious Studies), 2011

- Phi Beta Kappa, Arata Scholar for Citizenship, Dana Scholar for Academic Achievement
- Honors Thesis: *The Implications of Public-Private Partnerships for Maine Human Service Nonprofits*

University of Edinburgh, Edinburgh, Scotland

Visiting Exchange Student, Spring 2010

EXPERIENCE

Bergen & Parkinson, LLC, Kennebunk, Maine

Associate Attorney, September 2016-present

- Represent numerous municipal clients in all aspects of municipal law, including ordinance interpretation and drafting, and various land use-related issues.
- Represent private clients in real estate and land use matters including subdivision approvals, abutter issues, and issues related to paper streets.
- Draft opinion letters and legal briefs on behalf of senior attorneys for use in various legal proceedings.

City of Portland, Office of Corporation Counsel, Portland, Maine

Legal Extern, Fall Semester 2015

- Drafted memoranda for Corporation Counsel and the Portland City Council, covering issues including commercial transactions, administrative procedure, and the effect of state regulations on municipal programs.
- Drafted an ordinance pertaining to the charging of municipal impact fees.
- Prepared a suite of informational materials and memoranda in advance of the implementation of a new minimum wage ordinance.

Bernstein, Shur, Sawyer & Nelson, P.A., Portland, Maine

Summer Associate, Summer 2015

- Completed numerous research and writing assignments during rotations through Municipal, Energy, Real Estate, and Legislative practice groups.
- Drafted part of completed comments submitted to the U.S. Environmental Protection Agency.
- Completed pro bono month with Pine Tree Legal Assistance, concentrating in landlord/tenant law and advocating for clients in forcible entry and detainer actions.

State of Maine, Office of the Public Advocate, Hallowell, Maine

Legal Intern, Summer 2014

- Evaluated research and drafted pleadings for matters pending before the Maine Public Utilities Commission.
- Prepared and conducted cross-examination during MPUC proceedings.
- Produced a report on existing low-income assistance programs in preparation for submitting testimony to the MPUC in ongoing rulemaking proceedings.

Katherine Jones, City clerk, CCM,CMC,Registrar
City of Portland
339 Congress St. Portland, Maine 04101

October 5 2016

Dear Katherine,

I am writing this letter as application to join the Board Of Directors of the Portland Fish Exchange. I understand this is a 2 year appointment and that there is a current vacancy. I am submitting a brief resume also.

Regards, Nick Alfiero

Nick Alfiero

Harbor Fish Market
9 Custom House Wharf
Portland, Maine 04101
207-772-6557x104
Email- nick@harborfish.com

41 Pearl Street
Scarborough, Maine 04074
cell 207-232-7003

Employment

Co-owner Harbor Fish Market since 1976
Sales Manager Lever Bros., NYC 1971-1975

Skills

Involved in every aspect of the Seafood Industry in New England with an emphasis on Fish production, purchasing, sales and management.

Personally responsible for every operation in our business, including Finance, HR, advertising, Marketing, IT, Sales (retail, wholesale, internet), Purchasing, Personnel, Transportation.

Professional

A member of the original Board of Directors of the Portland Fish Exchange for 3 years 1985-1988

Personal

Married to Kathleen 45 years, son Rian
Outdoor activities, golf, biking, hiking
Car enthusiast

December 7, 2016

Ann Machado
Zoning Administrator
389 Congress Street, Room 315
City of Portland, Maine 04101

RE: Zoning Board of Appeals Application – R. Bartels

Dear Ann:

As a recent transplant to Portland Maine from Portland Oregon, it is my desire to participate as a member of the Zoning Board of Appeals. My experience working as an engineer for quasi-governmental agencies (Tri-County Metropolitan Transportation District of Oregon and the Portland Water District) as well as with local government on large scale urban development and construction projects gives me a strong background in zoning law and the process to enforce or grant variance from established standards.

As a Licensed Professional Civil Engineer in the State of Maine (PE#14305) I will bring to the team a technical viewpoint that will aid in the proper interpretation of state and local zoning law as it pertains to the City's zoning ordinance.

My resume is attached for your review. Please contact me if you have any questions about my experience or work history.

Sincerely,



Robert Bartels, PE

ROBERT A. BARTELS

EXPERIENCE

Jun '16 – Present **Portland Water District**

Portland, ME

Senior Project Engineer - Asset Management and Planning

- Lead the Main Extension and New Services group of Asset Management and Planning.
- Review plans and requests for new service. Make determinations for service based on established policy and engineering standards.
- Support the District's efforts in the development of Engineering Design Standards, Specifications, and Policies as they relate to the proper development of the public water system.

Jun '14 – Jun '16 **Tri-County Metropolitan Transit District of Oregon**

Portland, OR

Manager/Resident Engineer - eFare Infrastructure Installation Project

- Managed civil and electrical design contracts with engineering consultant (contract value \$250k). Perform lead civil design for the infrastructure of approximately 250 electronic fare machines across 90 rail stations in the greater Portland Metro area.
- Managed Civil and Electrical construction contracts with Construction Manager/General Contractor (total contract value \$10M). Manage TriMet project delivery team comprised of construction inspectors, field engineers, office engineers, and administrative professionals; assign tasks and mentor junior staff.
- Responsible for all aspects of project management including participating in contractor selection boards, negotiating Total Contract Price and all change orders, processing payments and managing budgets, leading progress meetings, maintaining contract documents and all project files, coordinating between internal and external stakeholders, and reporting out project status to executive staff. Make project decisions regarding safety, quality, and cost.

Sep '09 – Jun '14 **Tri-County Metropolitan Transit District of Oregon**

Portland, OR

Utility Engineer - Portland-Milwaukee Light Rail Project

Assistant Resident Engineer - Merlo Bus Fuel/Wash and Lift Project

- Designed public sewer/water and private utility lines (power, gas, telecom.) located within the project alignment. Managed the utility construction contract (total contract value \$3.5M). Performed all daily activities of contract management from inception to project closeout.
- Performed building construction inspection of complex electrical and mechanical systems for an industrial fuel and wash facility. Supported Resident Engineer in the contract administration and project management of office space tenant improvements for a transit dispatch center.

BOBBYBARTELS@GMAIL.COM

85 WESTMINSTER AVE PORTLAND, ME 04103 | (503) 358-8912

Mar '07 – Sep '09 **Tri-County Metropolitan Transit District of Oregon**
Field Engineer - Portland Transit Mall Light Rail Project

Portland, OR

- Performed construction inspection for utilities, structures, and electric rail power and communications systems. Resolved construction issues in the field or when necessary recorded and relayed information to Resident Engineer.
- Maintained daily records, logs, and photos of construction activities and prepared technical memos of construction progress for project management team.

Jan '06 – Mar '07 **WRG Design Inc.**
Project Designer

Portland, OR

- Prepared site layout, grading, drainage, utility, demolition, and civil construction drawings for land development projects using AutoCAD LDD. Completed design calculations to support work. Communicated with project team members, reviewing agencies and jurisdictions, utility contractors, and others as appropriate to the project.

Feb '05 – Jan '06 **Stormwater360**
Project Designer

Portland, OR

- Prepared engineering and cost proposals for stormwater management products. Completed system design and product implementation to meet local client and regulatory requirements. Provided technical assistance to external clients to integrate the product line into the stormwater treatment plan. Worked with suppliers and internal divisions to deliver product to customer.
- Managed a portfolio of 100+ projects in Oregon and Washington.

Sep '98 – May '11 **United States Naval Reserve**
Lieutenant

Pensacola, FL/Portland, OR

- Completed Naval Reserve Officers Training Corps while enrolled at Purdue University.

EDUCATION

Sep '98 – May '03 **Purdue University**
BS Civil Engineering – Construction Engineering and Management

West Lafayette, IN

LICENSES

PE – Oregon #82558PE
PE – Maine #14305

REFERENCES

Available on Request

BOBBYBARTELS@GMAIL.COM

85 WESTMINSTER AVE PORTLAND, ME 04103 | (503) 358-8912

Order 145-16/14
~~Tab 21-828-14~~
Tab 7 3-6-17

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: WEST COMMERCIAL STREET TRAIL**

ORDERED, that the two-party agreement between the Maine Department of Transportation and the City of Portland, for construction of the West Commercial Street Trail, WIN 18865.00, 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: Jeff Levine, Director, Planning and Urban Development Department

DATE: 1/23/17 (Rev 2/27/17)

SUBJECT: Request to Authorize Municipal-State Agreement with MaineDOT for design and construction of West Commercial Street Pathway

SPONSOR: Jeff Levine, Director, Planning and Urban Development Department
(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 2/22/17 Final Action 3/6/17

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

PRESENTATION: (Jeff Levine or Nell Donaldson, 5 minute oral presentation)

I. ONE SENTENCE SUMMARY

This order authorizes the City Manager to sign a Municipal-State Agreement with the MaineDOT for design and construction of the West Commercial Street Trail.

II. AGENDA DESCRIPTION

In 2012, the Maine DOT awarded Transportation Enhancements funding to the City of Portland's Department of Public Works for the design and construction of a portion of the West Commercial Street Trail. The shared use pathway segment, from the Star Match Building west to the Fore River Trail, is a vital link in plans to create a circumferential shared use pathway network around the Portland Peninsula, and the planning work that preceded the application had begun two years earlier, with the *West Commercial Street Trail Feasibility Study*. The city reaffirmed its commitment to completing the pathway segment, within the scope of the broader bicycle and trail planning for the peninsula, in the 2014 *West Commercial Street Multi-Modal Corridor Study*, which placed the pathway first on its list of priority recommendations (See Attachment 2). In June 2013, the City Council unanimously endorsed the funding of this project as part of the 2014 CIP. In 2016, the city agreed to oversee the pathway design and construction as a locally-administered project, and the city's Department of Planning and Urban Development was selected to manage the project.

III. BACKGROUND

See above.

IV. INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED

The Municipal-State Agreement formally commits both the city and MaineDOT to the West Commercial Street Trail project, with a 20%/80% split through the Transportation Enhancements program. The commitment will allow the city to leverage significant state and federal funds to make vital transportation improvements to West Commercial Street and support the development of a transportation system that advances healthy living, minimizes environmental impacts and promotes the local economy by advancing opportunities for mass transit, bicycle use, and walking.

V. FINANCIAL IMPACT

Total Agreement Amount: \$353,488.00

Federal Share: \$282,790.40 (80%)

Municipal Share: \$ 70,697.60 (20%)

The local share for the West Commercial Street Pathway project is \$70,698. \$70,000 of this match is currently programmed in the city's CIP (Project ID# C14P01). Remaining funds are anticipated to come from the MDOT Quality Community Program account (C14114).

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

None.

VII. RECOMMENDATION

Following review by Corporation Counsel, DPW, and Planning staff, Planning staff recommends approval of this agreement between Maine DOT and the City of Portland and authorization of the City Manager's signature.

VIII. LIST ATTACHMENTS

1. MaineDOT Agreement for a Federal-aid Locally Administered Project, West Commercial Street Trail: WIN 018865.00
2. West Commercial Street Multi-Modal Corridor Study Recommendations, 2016

Prepared by: Nell Donaldson

Date: 1/23/17

Bean/agendarequestmemo/rev 11/2015



STATE OF MAINE
DEPARTMENT OF TRANSPORTATION
16 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0016

Paul R. LePage
GOVERNOR

David Bernhardt
COMMISSIONER

January 3, 2017

Helen Donaldson, Senior Planner
City of Portland Planning Division
389 Congress Street
Portland, ME 04101

Subject: Revised Agreement for West Commercial Street Trail, WIN 018865.00

Dear Ms. Donaldson:

Enclosed is the revised agreement between MaineDOT and the City of Portland for a locally administered project to design and construct a multi-use path along West Commercial Street, with federal funding. As you pointed out – and Patrick Adams, the MaineDOT bicycle and pedestrian program coordinator – clarified, the project description on the first page has been revised to include the existing sidewalk in front of the Portland Match Company building.

Once the agreement is approved, signed and dated by your City Manager, please return it as follows:

- ☐ Email a color, high-quality .pdf scan to me at michael.laberge@maine.gov; or
- ☐ Return the signed original to me by mail at the address below:
Michael Laberge, Local Projects Coordinator
Multimodal Program, Bureau of Project Development
16 State House Station
Augusta, ME 04333-0016

MaineDOT looks forward to receiving the signed and dated agreement back at the City's convenience.

Sincerely,

Michael Laberge
Local Projects Coordinator



MaineDOT use only

AMS ID: _____
CSN: _____
TEDOCS #: _____

Agreement for a Federal-aid Locally Administered Project
With the
City of Portland
Regarding
West Commercial Street Trail: WIN 018865.00

Total Agreement Amount: <u>\$353,488</u>	Federal Project #: <u>TAP-1886(500)</u>
Federal Share: <u>\$282,790.40 (80%)</u>	Federal Authorization Date: <u>February 27, 2015</u>
Municipal Share: <u>\$70,697.60 (20%)</u>	City's Vendor ID: <u>VC1000073476</u>
Begin Date: <u>Upon MaineDOT's Signature</u>	City's DUNS® Number: <u>07-174-7802</u>
End Date: <u>Refer to Article 9, "Expiration."</u>	CFDA #20.205: <u>Highway Planning & Construction</u>

This Agreement for a federal-aid project is entered into by the State of Maine Department of Transportation ("**MaineDOT**,"), with its headquarters at 24 Child Street in Augusta, Maine, and the City of Portland ("the **City**,"), with its principal offices located at 389 Congress Street in Portland, Maine. **MaineDOT** and the **City** jointly shall be referred to as the "**Parties**."

WHEREAS, this Agreement shall apply to preliminary engineering, right-of-way, construction, and construction engineering work for a multi-use path along West Commercial Street, beginning at an existing sidewalk at the eastern entrance to the Portland Match Company building and continuing 0.41 mile to the end of the Fore River Parkway Trail (the "**Project**.")

WHEREAS, **MaineDOT** selected the **Project** for federal-aid funding and for inclusion in its Work Plan for calendar years 2016-2018; and

WHEREAS, the **City**, as a sub-recipient of federal-aid funding, shall deliver the **Project** as a Locally Administered Project, subject to oversight by **MaineDOT** to ensure that all federal and state requirements are met.

NOW, THEREFORE, in consideration of the foregoing statements, the **Parties** agree to the following terms and conditions:

The following attachments are hereby incorporated into this Agreement:

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

ARTICLE 1. ROLES AND RESPONSIBILITIES

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

- ☐ Local Project Administrator for **City**: Helen Donaldson, Senior Planner
Email: hcd@portlandmaine.gov
Phone: (207) 874-8723

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

- ☐ Project Manager for **MaineDOT**: Brian Keezer, Senior Project Manager
Email: brian.keezer@maine.gov
Phone: (207) 624-3612

ARTICLE 2. FINANCIAL PROVISIONS

2A. **UPSET LIMIT.** The estimated cost of the **Project** is **\$353,488** ("Upset Limit.") **Project** costs eligible for federal financial participation shall not exceed this Upset Limit without **MaineDOT's** written approval, through an executed modification to this Agreement.

2B. **MAINEDOT SHARE.** **MaineDOT**, with funding from the Federal Highway Administration ("FHWA,") will share in all **Project** costs eligible for federal financial participation at the rate of **80%**, up to a maximum contribution at this rate of **\$282,790.40**.

2C. **LOCAL SHARE.** The **City** shall share in all costs eligible for federal financial participation at the rate of **20%**, or an estimated **\$70,697.60**. Additionally, the **City** shall be fully responsible for costs:

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

2D. **MAINEDOT COSTS.** Costs that **MaineDOT** incurs for services performed for the **Project** shall be charged to the **Project**. The **City** shall share in these costs at the rate in Article 2C, "Local Share." **MaineDOT** will reconcile these costs upon completion of the **Project** and deduct the **City's** share of them from the final invoice payment.

2E. **INVOICING.** **MaineDOT** will reimburse the **City** for eligible costs incurred on the **Project** at the rate in Article 2B, "MaineDOT Share." The **City** shall submit invoices in the format provided in Communication 4 from the LPA Manual, as follows:

1. Invoices shall be submitted no more than monthly and no less than quarterly.
2. Each invoice shall document the charges incurred and proof of payment made.
3. Each invoice shall include a progress report for the service period of the invoice.
4. Each invoice shall show **MaineDOT's** and the **City's** portions of **Project** costs, including a running total of costs incurred to date.
5. The **City** must certify that amounts are correct and not claimed previously.
6. Payment of the final invoice from the **City** shall be contingent upon a final inspection of the completed **Project** to determine the acceptability of the work.

- 2F. FINAL COST. If the actual cost of the **Project** is less than the Upset Limit, the final amounts owed will be adjusted based on the percentages in articles 2B and 2C.
- 2G. REPAYMENT. If the **City** withdraws from the **Project**, leading to cancellation of the **Project** and the loss of federal financial participation, the **City** shall refund all invoice payments from **MaineDOT** and reimburse **MaineDOT** in full for the cost of services performed in connection with the **Project**. Additionally, **MaineDOT** will seek to recover from the **City** any payment made to the **City** for work later deemed ineligible for federal funding under this Agreement.
- 2H. SET-OFF. **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 money due the **City** under a specific contract up to any amounts due and owed to **MaineDOT** with regard to this Agreement any other agreement with **MaineDOT**; money due the **City** any other agreement with any department or agency of the State of Maine, including any agreement for a term commencing before the term of this Agreement; and any amounts due and owed to the State for any reason including, but not limited to, tax delinquencies, fee delinquencies or monetary penalties relative thereto. **MaineDOT** shall exercise its set-off rights in accordance with standard practices of the State including, in cases of set-off pursuant to an audit, the finalization of such audit by **MaineDOT**, its representatives, or the State Controller.
- 2I. NON-APPROPRIATION. By law, all financial obligations assigned to **MaineDOT** in this Agreement are subject to budgetary appropriations. The **City** therefore acknowledges and agrees that if **MaineDOT** receives insufficient resources to support this **Project**, if funds programmed for this **Project** are de-appropriated, or if **MaineDOT** does not receive the legal authority to spend money otherwise programmed for this **Project**, **MaineDOT** shall be released from its obligation to make payment under this Agreement.

ARTICLE 3. PROJECT DEVELOPMENT

- 3A. AUTHORIZATION. The **City** shall receive written notice to proceed from **MaineDOT** before starting reimbursable work or executing any service contract under this Agreement. This notice shall be contingent upon **MaineDOT** receiving authorization for the **Project** from the **FHWA** and executing this Agreement.
- 3B. KICKOFF. The **Parties** shall hold a project kickoff to go over the scope of work, schedule, estimated cost, and legal requirements before reimbursable work may begin.
- 3C. PROGRESS REPORTS. The **City** shall provide **MaineDOT** with progress reports at intervals established by **MaineDOT**'s Project Manager.
- 3D. CORRESPONDENCE. The **City** shall correspond with **MaineDOT** using Communication 1 through Communication 20 from the LPA Manual.
- 3E. CONSULTANT WORK. If the **City** intends to contract for consultant services under this Agreement, the **City** shall use a qualifications-based selection method in compliance with the regulations found in 23 CFR Part 172, "Procurement, Management, and Administration of Engineering and Design Related Services," and the guidance found in Section 2 of the LPA Manual, "Consultant Selection." The **City** agrees that:

1. Using price as a ranking factor in the selection of a consultant will render consultant work ineligible for reimbursement from **MaineDOT**.
 2. The **City** shall obtain the **MaineDOT** Project Manager's written approval before awarding any contract.
 3. The **City** shall include the provisions of the *Consultant General Conditions* in all contracts and insert Form FHWA-1273 into all contracts.
 4. The **City** shall obtain **MaineDOT's** written approval before modifying a contract. Work performed on a contract outside of the original scope of work without an approved and executed modification in place shall be ineligible for reimbursement.
 5. The **City** shall evaluate the performance of a consultant upon completion of its contract with the consultant. A copy of the evaluation shall be provided to **MaineDOT**.
- 3F. DESIGN. The **City**, or its contracted consultant, shall prepare design plans, specifications, estimates and contract documents for the **Project**, in accordance with the appropriate reference publications, including but not limited to **MaineDOT's** *Engineering Instructions*, *Highway Design Guide*, *Standard Specifications* and *Standard Details*, as well as the federal *Manual on Uniform Traffic Control Devices for Streets and Highways*. The design of the **Project** shall comply with the Americans with Disabilities Act (ADA).
1. The **City**, or its contacted consultant, shall submit a preliminary design report, design plan impacts, and the final plans, specifications and estimate package (PS&E) to **MaineDOT** for review and acceptance.
 2. The **City** shall ensure that the contract book for the **Project** references **MaineDOT's** *Standard Specifications* and contains the following documents:
 - a. "Buy America" requirements;
 - b. Davis-Bacon prevailing wage rates;
 - c. Form FHWA-1273; and
 - d. Title VI Assurances.
 3. The **City**, or its consultant, shall address to **MaineDOT's** satisfaction all changes requested or concerns expressed by **MaineDOT** before **MaineDOT** will authorize the **City** to advertise for construction bids. Advertising the **Project** without written authorization from **MaineDOT** shall render the entire **Project** *ineligible* for federal-aid funding.
 4. **MaineDOT's** acceptance of the final PS&E package shall not relieve the Engineer of Record of responsibility for the quality of the engineering work for the **Project**.
- 3G. SURVEY. **MaineDOT** will perform all survey work if the **Project** is located on a state highway. Alternatively, the **City** may hire a surveyor pre-qualified by **MaineDOT** using one of the selection methods in Section 2 of the LPA Manual, "Consultant Selection."
- 3H. PUBLIC PARTICIPATION. The **City** shall give the public and all abutters the opportunity to learn about and comment on the **Project**, using a public process appropriate for the scope of work and acceptable to **MaineDOT's** Project Manager. The **City** shall provide **MaineDOT** with a public process certification, in the format provided in Communication 10 from the LPA Manual, as part of the **Project's** environmental package.

- 3I. ENVIRONMENTAL REVIEW. **MaineDOT** will prepare and submit to the FHWA all documentation required under the National Environmental Policy Act ("NEPA"). The **City** shall provide **MaineDOT** with signed Communication 11 from the LPA Manual and the completed NEPA Documentation Checklist to assist with this work.
- 3J. PERMITS. The **City** shall obtain all approvals, permits and licenses required to carry out the **Project**. The **City** shall provide **MaineDOT** with copies of all such documents and an environmental certification in the format of Communication 12 from the LPA Manual, as part of the final PS&E package for the **Project**.
- 3K. UTILITIES. The **City** shall coordinate the **Project** with any affected utility or railroad. The **City** shall provide **MaineDOT** with a utility certification in the format of Communication 13 from the LPA Manual, as part of the final PS&E package. MaineDOT's Utility Accommodation Rules (2014) shall apply to utility relocations.
- 3L. RIGHT OF WAY. The **Parties** will coordinate acquisition of right-of-way as follows:
1. **MaineDOT** will carry out the right-of-way process for sections of the **Project** located on a state highway, in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 ("Uniform Act.")
 2. The **City** shall carry out the right-of-way process for sections of the **Project** located off of the state highway system. In doing so, the **City** shall:
 - a. Follow the Uniform Act and the regulations found in 49 CFR, Part 24.
 - b. Use the federally approved MaineDOT "Right of Way Manual."
 - c. Provide a right-of-way map showing all rights obtained for the **Project**.
 - d. Provide **MaineDOT** with a signed right-of-way certification in the format of Communication 14 from the LPA Manual, as part of the final PS&E package.
 3. The **City** shall dedicate permanently to the **Project** for public use any municipal property needed for the **Project**.
- 3M. ADVERTISE. Upon receiving written authorization from **MaineDOT**, the **City** shall use competitive bidding to hire a construction contractor, as follows:
1. The **City** shall follow the procedures in MaineDOT's *Standard Specifications* (November 2014 Edition), Section 102, "Bidding."
 2. The **City** shall submit bid tabulations to **MaineDOT** for review and shall obtain written approval from **MaineDOT** before awarding a contract.
- 3N. AWARD. Upon receiving written approval from **MaineDOT**, the **City** shall award a contract to the lowest responsive and responsible bidder in accordance with MaineDOT's *Standard Specifications* (November 2014 Edition), Section 103, "Award and Contracting." The **City** shall administer the contract for the duration of the **Project**.
- 3O. CONSTRUCTION. During construction of the **Project**, the **City** shall:

1. Provide a Project Resident who is either a qualified municipal employee with LPA certification or a consultant hired through a qualifications-based selection method.
 2. Hold a pre-construction / pre-utility meeting with **MaineDOT**, the contractor, utilities and any other parties involved in the construction work before any work begins.
 3. Coordinate materials testing necessary to meet the Minimum Testing Requirements that **MaineDOT** established for the **Project**.
 4. Submit contract modifications to **MaineDOT** for review and comment before they are executed. **MaineDOT** reserves the right not to reimburse the **City** for work under a contract modification executed without **MaineDOT's** review and approval.
 5. If applicable, provide **MaineDOT** with revised as-built plans for the completed **Project**.
- 3P. MAINEDOT OVERSIGHT. **MaineDOT** may inspect construction activities, test materials and review documentation to ensure compliance with the **Project** specifications and terms of the construction contract. **MaineDOT** may reject work or materials out of compliance and withhold reimbursement to the **City** for such work or materials.
- 3Q. MAINTENANCE. The **City** shall maintain the completed **Project** for its standard useful life or 20 years, whichever is longer. Maintenance shall consist of general upkeep and repairs necessary to preserve year-round public access to the facility and maintain a firm, stable and slip-resistant surface in all seasons.

ARTICLE 4 – RECORDS & AUDIT

- 4A. **Project** records are printed or electronic plans, specifications, contracts, reports, notes, or other documents prepared by or for the **City**. The **City** shall retain all such records for at least **3 years** from the date either of **MaineDOT's** acceptance of the final invoice for the **Project** or the termination of this Agreement. If any litigation, claim, negotiation or audit has begun before the end of this retention period, all **Project** records shall be kept at least until all issues arising from any such action are resolved.
- 4B. The **City** and any contracted party working on its behalf shall allow authorized representatives of the Federal Government and the State of Maine to inspect and audit **Project** records, as reasonable times. Copies of records shall be furnished at no cost to the federal or state agencies requesting them.
- 4C. Audits shall be performed in accordance with generally accepted government auditing standards and federal regulation 2 CFR, Section 200, Subpart F - "Audit Requirements."

ARTICLE 5. GENERAL PROVISIONS

- 5A. GOVERNING LAW. The **Parties** agree to comply with all applicable federal, state and local laws, regulations, executive orders and ordinances including, but not limited to, the provisions of Title 23 of the Maine Revised Statutes Annotated (MRSA), "Transportation"; Title 23 in the Code of Federal Regulations (CFR), "Highways"; 49 CFR, "Transportation"; and 2 CFR, Section 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards."

5B. INDEMNIFICATION. To the extent allowed by law, the **City** shall indemnify, defend and hold harmless **MaineDOT**, its officers, agents and employees from all claims, suits or liabilities arising from negligent or wrongful act, error or omission by the **City**, its officers, employees, agents, consultants or contractors. Nothing in this article shall waive any defense, immunity or limitation of liability that may be available to either party under the Maine Tort Claims Act (14 M.R.S. Section 8101 et seq.) or other privileges or immunities provided by law.

5C. CONFIDENTIALITY. The **City** shall protect the confidentiality of right-of-way negotiations, property appraisals, and engineering estimates of the construction cost in accordance with the provisions of 23 M.R.S.A. Section 63, "Confidentiality of Records."

5D. EQUAL EMPLOYMENT OPPORTUNITY. During the performance of this Agreement, the **City** agrees as follows:

1. The **City** shall not discriminate against any employee or applicant for employment relating to this Agreement because of race, color, religious creed, sex, national origin, ancestry, age, physical or mental disability, or sexual orientation, unless related to a bona fide occupational qualification. The **City** shall take affirmative action to ensure that applicants are employed and employees are treated during employment without regard to their race, color, religion, sex, age, national origin, physical or mental disability, or sexual orientation. The **City** agrees to post in conspicuous places available to employees and applicants for employment notices setting forth the provisions of this nondiscrimination clause.
2. The **City** shall state – in all solicitations or advertising for employees placed by or on behalf of the **City** relating to this Agreement – that all qualified applicants shall receive consideration for employment without regard to race, color, religious creed, sex, national origin, ancestry, age, physical or mental disability, or sexual orientation.
3. The **City** shall cause the foregoing provisions to be inserted in any contract for any work covered by this Agreement so that such provisions shall be binding upon each contractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

5E. INDEPENDENT CAPACITY. The **City**, its employees, agents, representatives, consultants and contractors *shall not* act as officers, employees or agents of **MaineDOT**.

5F. FLOW DOWN. Contracts between the **City** and all third parties shall contain or incorporate by reference applicable provisions of this Agreement.

5G. BINDING EFFECT. The **Parties** shall be bound by the terms of this Agreement, which shall apply to its executors, their successors, administrators and legal representatives.

5H. ENTIRE AGREEMENT. This document represents the entire Agreement between the **Parties**. Neither **MaineDOT** nor the **City** shall be bound by any statement, correspondence, agreement or representation not expressly contained in this Agreement.

ARTICLE 6. CONFLICT OF INTEREST

- 6A. No person or entity with a direct or indirect financial or personal interest in any contract or subcontract for the **Project** shall negotiate, make, accept or approve any such contract or subcontract.
- 6B. The **City** shall refrain from hiring any engineer, lawyer, appraiser, inspector or other professional to provide services for the **Project** who has a direct or indirect financial or other personal interest in any contract or subcontract for the **Project**, other than the person's employment or retention by the **City**. No officer or employee of any such engineer, lawyer, appraiser, inspector or other professional retained by the **City** to work on the **Project** shall have a direct or indirect financial or other personal interest in any real property acquired for the **Project** unless such interest is openly disclosed to **MaineDOT** and such officer, employee or person has not participated in such acquisition for and in behalf of the **City**.
- 6C. No person or entity entering into a contract for the **Project** may have a direct or indirect financial or other interest in the **Project** or its outcome – other than the performance of the contract. This prohibition includes, without limitation: a.) any agreement with, or other interest involving, third parties having an interest in the outcome of the **Project** that is the subject to the contract; b.) any agreement providing incentives or guarantees of future work on the **Project** or related matters; and c.) any interest in real property acquired for the **Project** unless such interest is disclosed to **MaineDOT** before the person or entity entered into the contract.

ARTICLE 7. DEBARMENT

- 7A. By signing this Agreement, the **City** certifies to the best of its knowledge and belief that it and its principals are not debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any federal department or agency. If the **City** cannot certify to this statement, it shall attach an explanation to this Agreement. For the term of this Agreement, the **City** shall notify **MaineDOT** promptly if it or its principals are debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this transaction by any federal department or agency.
- 7B. If the **City** contracts with any consultant, contractor or other party pursuant to this Agreement, the **City** shall require that party and its principals to certify that they:
1. Have not within a 3-year period preceding the date of such contract been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with the following: a.) obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; b.) violating federal or state antitrust statutes; and c.) committing embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.
 2. Are not currently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph 1 of this section; and

3. Have not within a 3-year period preceding this Agreement had one or more public transactions (federal, state or local) terminated for cause or default.
- 7C. The **City** agrees that it shall not hire an outside entity that is debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency.

ARTICLE 8 – TERMINATION

- 8A. **DEFAULT.** **MaineDOT** will send the **City** a Notice of Default, in accordance with Article 8B below, if the **City** commits any of the following actions:
1. Withdraws its support for the **Project**, resulting in cancellation of the **Project**;
 2. Fails to advertise the **Project** within 3 years of the execution date of this Agreement;
 3. Takes any action that renders the **Project** ineligible for federal-aid funding;
 4. Uses **Project** funds for a purpose not authorized by this Agreement;
 5. Misrepresents or falsifies any claim for reimbursement;
 6. Fails to meet the standards of performance outlined in this Agreement.
- 8B. **FOR CAUSE.** **MaineDOT** will have just cause to terminate this Agreement in the event of default by the **City**, as defined in Article 8A. **MaineDOT** will give the **City** a cure period of 14 calendar days, effective on the **City**'s receipt of Notice of Default. If the **City** fails to address all defaults within this cure period or such longer period as **MaineDOT** may authorize, **MaineDOT** may terminate this Agreement for cause, with these conditions:
1. **MaineDOT** will recover from the **City** all reimbursements made and costs incurred for work on the terminated **Project**.
 2. The **City** shall forfeit all federal funds remaining in the terminated **Project**.
- 8C. **FOR CONVENIENCE.** The **Parties** may terminate this Agreement for convenience by mutual consent for any reason not defined as "default," as follows:
1. **MaineDOT** will reimburse the **City** for federally eligible work performed under this Agreement until the effective date of termination for convenience. The **City**'s share of **MaineDOT**'s costs for work on the **Project** shall be deducted from the final invoice amount owed to the **City**.
 2. **MaineDOT** will reprogram all federal funds remaining in the **Project**.

ARTICLE 9. EXPIRATION

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

1. Article 3Q, "Maintenance," shall be enforced for at least twenty (20) years.
2. Article 4, "Records & Audit," shall remain in effect until all activity pursuant to this provision is completed.

3. Article 5B, "Indemnification," shall remain in effect until specifically terminated by the **Parties** or negated by law.
4. Article 5C, "Confidentiality," shall remain in effect until negated by law.

ARTICLE 10. AGREEMENT APPROVAL

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

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

City of Portland

Maine Department of Transportation

By: _____
Jon Jennings, City Manager

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

Date: _____

Date: _____

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

Federal Funding Accountability and Transparency Act

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

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

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

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

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

City of Portland, Maine

Sign and Print Legal CCR Name

07-174-7802

DUNS[®] Number

Authorized Representative: _____

Jon Jennings, City Manager

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

DOT Order No. 1050.2A

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

Statutory/Regulatory Authorities

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

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

General Assurances

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

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

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

Specific Assurances

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

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

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

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

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

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

DATED _____

By _____
Jon Jennings, City Manager
City of Portland

Encl.: Appendices A and E

APPENDIX A TO THE TITLE VI ASSURANCES

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

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

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

APPENDIX E TO THE TITLE VI ASSURANCES

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

Pertinent Non-Discrimination Authorities:

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

West Commercial Street Multi-Modal Corridor Study Recommendations, 2016

Attachment 2

SHORT TERM, SIGNAGE & STRIPING PROJECTS:

- 1 Reorient Benny's parking lot to accommodate shared-use path
- 2 Install shared-use path between Benny's and Star Match building
- 3 Expand sidewalk to include shared-use path in front of Star Match building
- 4 Within 50' right-of-way zone, include 11' travel lanes and bike lanes
- 5 In 100' right-of-way zone, include 11' travel lanes, bike lanes (to Maple St), head-in parking, and a wide shoulder for truck parking, loading, and unloading

MEDIUM TERM, PATHWAY ENHANCEMENT & CONNECTION PROJECTS:

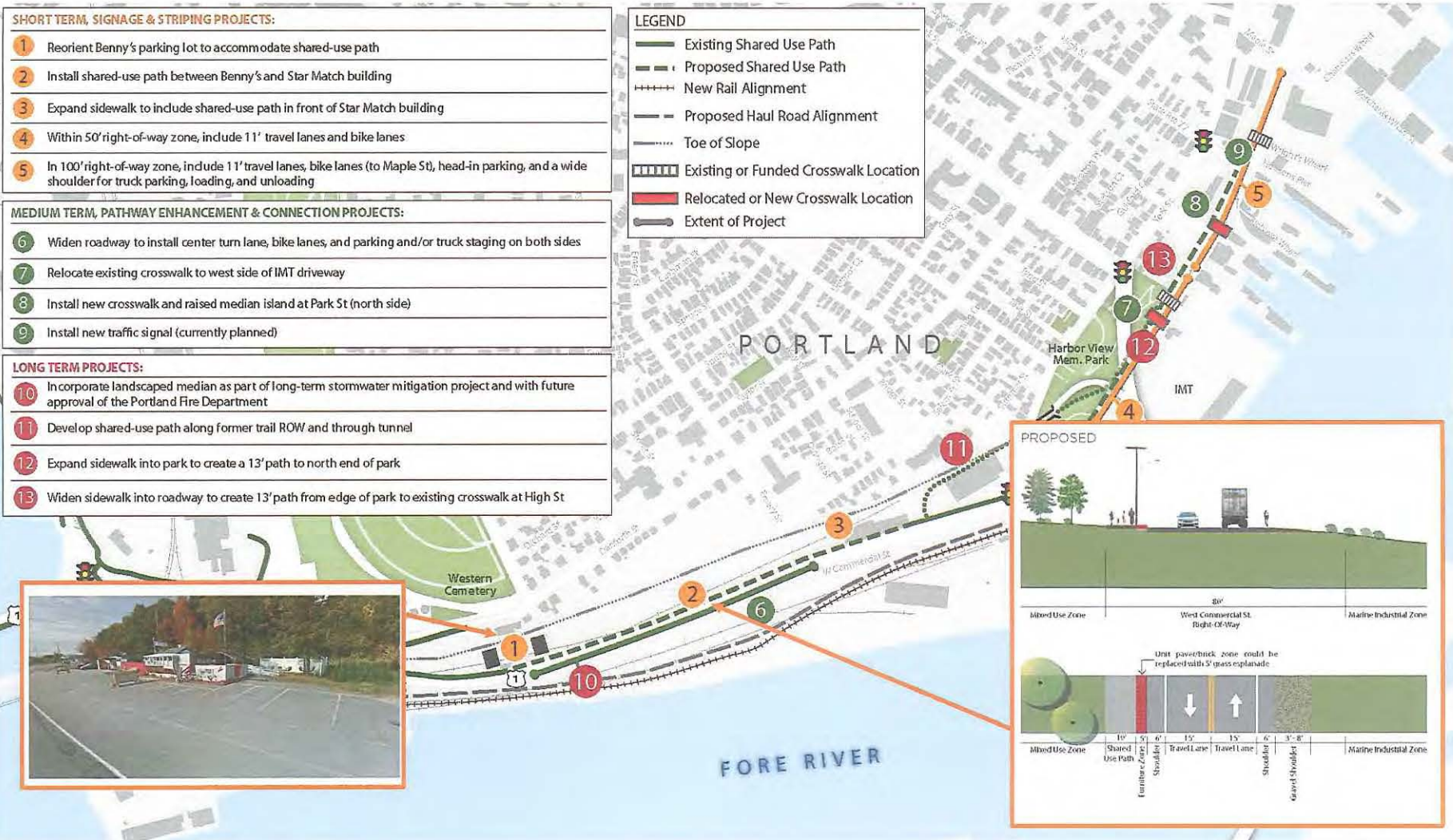
- 6 Widen roadway to install center turn lane, bike lanes, and parking and/or truck staging on both sides
- 7 Relocate existing crosswalk to west side of IMT driveway
- 8 Install new crosswalk and raised median island at Park St (north side)
- 9 Install new traffic signal (currently planned)

LONG TERM PROJECTS:

- 10 Incorporate landscaped median as part of long-term stormwater mitigation project and with future approval of the Portland Fire Department
- 11 Develop shared-use path along former trail ROW and through tunnel
- 12 Expand sidewalk into park to create a 13' path to north end of park
- 13 Widen sidewalk into roadway to create 13' path from edge of park to existing crosswalk at High St

LEGEND

- Existing Shared Use Path
- Proposed Shared Use Path
- New Rail Alignment
- Proposed Haul Road Alignment
- Toe of Slope
- Existing or Funded Crosswalk Location
- Relocated or New Crosswalk Location
- Extent of Project



MEMORANDUM
City Council Agenda Item

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

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

DATE: 1/23/17

SUBJECT: Request to Authorize Municipal-State Agreement with MaineDOT for design and construction of West Commercial Street Pathway

SPONSOR: Jeff Levine, Director, Planning and Urban Development Department
(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 2/22/17 Final Action 3/6/17

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

PRESENTATION: (Jeff Levine or Nell Donaldson, 5 minute oral presentation)

I. ONE SENTENCE SUMMARY

This order authorizes the City Manager to sign a Municipal-State Agreement with the MaineDOT for design and construction of the West Commercial Street Trail.

II. AGENDA DESCRIPTION

In 2012, the Maine DOT awarded Transportation Enhancements funding to the City of Portland's Department of Public Works for the design and construction of a portion of the West Commercial Street Trail. The shared use pathway segment, from the Star Match Building west to the Fore River Trail, is a vital link in plans to create a circumferential shared use pathway network around the Portland Peninsula, and the planning work that preceded the application had begun two years earlier, with the *West Commercial Street Trail Feasibility Study*. The city reaffirmed its commitment to completing the pathway segment, within the scope of the broader bicycle and trail planning for the peninsula, in the 2014 *West Commercial Street Multi-Modal Corridor Study*, which placed the pathway first on its list of priority recommendations. In June 2013, the City Council unanimously endorsed the funding of this project as part of the 2014 CIP. In 2016, the city agreed to oversee the pathway design and construction as a locally-administered project, and the city's Department of Planning and Urban Development was selected to manage the project.

III. BACKGROUND

See above.

IV. INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED

The Municipal-State Agreement formally commits both the city and MaineDOT to the West Commercial Street Trail project, with a 20%/80% split through the Transportation Enhancements program. The commitment will allow the city to leverage significant state and federal funds to make vital transportation improvements to West Commercial Street and support the development of a transportation system that advances healthy living, minimizes environmental impacts and promotes the local economy by advancing opportunities for mass transit, bicycle use, and walking.

V. FINANCIAL IMPACT

Total Agreement Amount: \$353,488.00

Federal Share: \$282,790.40 (80%)

Municipal Share: \$ 70,697.60 (20%)

The local share for the West Commercial Street Pathway project is \$70,698. \$70,000 of this match is currently programmed in the city's CIP (Project ID# C14P01). Remaining funds are anticipated to come from the MDOT Quality Community Program account (C14114).

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

None.

VII. RECOMMENDATION

Following review by Corporation Counsel, DPW, and Planning staff, Planning staff recommends approval of this agreement between Maine DOT and the City of Portland and authorization of the City Manager's signature.

VIII. LIST ATTACHMENTS

1. MaineDOT Agreement for a Federal-aid Locally Administered Project, West Commercial Street Trail: WIN 018865.00

Prepared by: Nell Donaldson

Date: 1/23/17

Bean/agendarequestmemo/rev 11/2015



STATE OF MAINE
DEPARTMENT OF TRANSPORTATION
16 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0016

Paul R. LePage
GOVERNOR

David Bernhardt
COMMISSIONER

January 3, 2017

Helen Donaldson, Senior Planner
City of Portland Planning Division
389 Congress Street
Portland, ME 04101

Subject: Revised Agreement for West Commercial Street Trail, WIN 018865.00

Dear Ms. Donaldson:

Enclosed is the revised agreement between MaineDOT and the City of Portland for a locally administered project to design and construct a multi-use path along West Commercial Street, with federal funding. As you pointed out - and Patrick Adams, the MaineDOT bicycle and pedestrian program coordinator - clarified, the project description on the first page has been revised to include the existing sidewalk in front of the Portland Match Company building.

Once the agreement is approved, signed and dated by your City Manager, please return it as follows:

- ☐ Email a color, high-quality .pdf scan to me at michael.laberge@maine.gov; or
- ☐ Return the signed original to me by mail at the address below:
Michael Laberge, Local Projects Coordinator
Multimodal Program, Bureau of Project Development
16 State House Station
Augusta, ME 04333-0016

MaineDOT looks forward to receiving the signed and dated agreement back at the City's convenience.

Sincerely,

Michael Laberge
Local Projects Coordinator



MaineDOT use only

AMS ID: _____
CSN: _____
TEDOCS #: _____

Agreement for a Federal-aid Locally Administered Project
With the
City of Portland
Regarding
West Commercial Street Trail: WIN 018865.00

Total Agreement Amount: <u>\$353,488</u>	Federal Project #: <u>TAP-1886(500)</u>
Federal Share: <u>\$282,790.40 (80%)</u>	Federal Authorization Date: <u>February 27, 2015</u>
Municipal Share: <u>\$70,697.60 (20%)</u>	City's Vendor ID: <u>VC1000073476</u>
Begin Date: <u>Upon MaineDOT's Signature</u>	City's DUNS® Number: <u>07-174-7802</u>
End Date: <u>Refer to Article 9, "Expiration."</u>	CFDA #20.205: <u>Highway Planning & Construction</u>

This Agreement for a federal-aid project is entered into by the State of Maine Department of Transportation ("**MaineDOT**,"), with its headquarters at 24 Child Street in Augusta, Maine, and the City of Portland ("the **City**,"), with its principal offices located at 389 Congress Street in Portland, Maine. **MaineDOT** and the **City** jointly shall be referred to as the "**Parties**."

WHEREAS, this Agreement shall apply to preliminary engineering, right-of-way, construction, and construction engineering work for a multi-use path along West Commercial Street, beginning at an existing sidewalk at the eastern entrance to the Portland Match Company building and continuing 0.41 mile to the end of the Fore River Parkway Trail (the "**Project**.")

WHEREAS, **MaineDOT** selected the **Project** for federal-aid funding and for inclusion in its Work Plan for calendar years 2016-2018; and

WHEREAS, the **City**, as a sub-recipient of federal-aid funding, shall deliver the **Project** as a Locally Administered Project, subject to oversight by **MaineDOT** to ensure that all federal and state requirements are met.

NOW, THEREFORE, in consideration of the foregoing statements, the **Parties** agree to the following terms and conditions:

The following attachments are hereby incorporated into this Agreement:

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

ARTICLE 1. ROLES AND RESPONSIBILITIES

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

- ☐ Local Project Administrator for **City**: Helen Donaldson, Senior Planner
Email: hcd@portlandmaine.gov
Phone: (207) 874-8723

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

- ☐ Project Manager for **MaineDOT**: Brian Keezer, Senior Project Manager
Email: brian.keezer@maine.gov
Phone: (207) 624-3612

ARTICLE 2. FINANCIAL PROVISIONS

2A. **UPSET LIMIT.** The estimated cost of the **Project** is **\$353,488** ("Upset Limit.") **Project** costs eligible for federal financial participation shall not exceed this Upset Limit without **MaineDOT's** written approval, through an executed modification to this Agreement.

2B. **MAINEDOT SHARE.** **MaineDOT**, with funding from the Federal Highway Administration ("**FHWA**,") will share in all **Project** costs eligible for federal financial participation at the rate of **80%**, up to a maximum contribution at this rate of **\$282,790.40**.

2C. **LOCAL SHARE.** The **City** shall share in all costs eligible for federal financial participation at the rate of **20%**, or an estimated **\$70,697.60**. Additionally, the **City** shall be fully responsible for costs:

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

2D. **MAINEDOT COSTS.** Costs that **MaineDOT** incurs for services performed for the **Project** shall be charged to the **Project**. The **City** shall share in these costs at the rate in Article 2C, "Local Share." **MaineDOT** will reconcile these costs upon completion of the **Project** and deduct the **City's** share of them from the final invoice payment.

2E. **INVOICING.** **MaineDOT** will reimburse the **City** for eligible costs incurred on the **Project** at the rate in Article 2B, "MaineDOT Share." The **City** shall submit invoices in the format provided in Communication 4 from the LPA Manual, as follows:

1. Invoices shall be submitted no more than monthly and no less than quarterly.
2. Each invoice shall document the charges incurred and proof of payment made.
3. Each invoice shall include a progress report for the service period of the invoice.
4. Each invoice shall show **MaineDOT's** and the **City's** portions of **Project** costs, including a running total of costs incurred to date.
5. The **City** must certify that amounts are correct and not claimed previously.
6. Payment of the final invoice from the **City** shall be contingent upon a final inspection of the completed **Project** to determine the acceptability of the work.

- 2F. FINAL COST. If the actual cost of the **Project** is less than the Upset Limit, the final amounts owed will be adjusted based on the percentages in articles 2B and 2C.
- 2G. REPAYMENT. If the **City** withdraws from the **Project**, leading to cancellation of the **Project** and the loss of federal financial participation, the **City** shall refund all invoice payments from **MaineDOT** and reimburse **MaineDOT** in full for the cost of services performed in connection with the **Project**. Additionally, **MaineDOT** will seek to recover from the **City** any payment made to the **City** for work later deemed ineligible for federal funding under this Agreement.
- 2H. SET-OFF. **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 money due the **City** under a specific contract up to any amounts due and owed to **MaineDOT** with regard to this Agreement any other agreement with **MaineDOT**; money due the **City** any other agreement with any department or agency of the State of Maine, including any agreement for a term commencing before the term of this Agreement; and any amounts due and owed to the State for any reason including, but not limited to, tax delinquencies, fee delinquencies or monetary penalties relative thereto. **MaineDOT** shall exercise its set-off rights in accordance with standard practices of the State including, in cases of set-off pursuant to an audit, the finalization of such audit by **MaineDOT**, its representatives, or the State Controller.
- 2I. NON-APPROPRIATION. By law, all financial obligations assigned to **MaineDOT** in this Agreement are subject to budgetary appropriations. The **City** therefore acknowledges and agrees that if **MaineDOT** receives insufficient resources to support this **Project**, if funds programmed for this **Project** are de-appropriated, or if **MaineDOT** does not receive the legal authority to spend money otherwise programmed for this **Project**, **MaineDOT** shall be released from its obligation to make payment under this Agreement.

ARTICLE 3. PROJECT DEVELOPMENT

- 3A. AUTHORIZATION. The **City** shall receive written notice to proceed from **MaineDOT** before starting reimbursable work or executing any service contract under this Agreement. This notice shall be contingent upon **MaineDOT** receiving authorization for the **Project** from the **FHWA** and executing this Agreement.
- 3B. KICKOFF. The **Parties** shall hold a project kickoff to go over the scope of work, schedule, estimated cost, and legal requirements before reimbursable work may begin.
- 3C. PROGRESS REPORTS. The **City** shall provide **MaineDOT** with progress reports at intervals established by **MaineDOT's** Project Manager.
- 3D. CORRESPONDENCE. The **City** shall correspond with **MaineDOT** using Communication 1 through Communication 20 from the LPA Manual.
- 3E. CONSULTANT WORK. If the **City** intends to contract for consultant services under this Agreement, the **City** shall use a qualifications-based selection method in compliance with the regulations found in 23 CFR Part 172, "Procurement, Management, and Administration of Engineering and Design Related Services," and the guidance found in Section 2 of the LPA Manual, "Consultant Selection." The **City** agrees that:

1. Using price as a ranking factor in the selection of a consultant will render consultant work ineligible for reimbursement from **MaineDOT**.
2. The **City** shall obtain the **MaineDOT** Project Manager's written approval before awarding any contract.
3. The **City** shall include the provisions of the *Consultant General Conditions* in all contracts and insert Form FHWA-1273 into all contracts.
4. The **City** shall obtain **MaineDOT's** written approval before modifying a contract. Work performed on a contract outside of the original scope of work without an approved and executed modification in place shall be ineligible for reimbursement.
5. The **City** shall evaluate the performance of a consultant upon completion of its contract with the consultant. A copy of the evaluation shall be provided to **MaineDOT**.

3F. DESIGN. The **City**, or its contracted consultant, shall prepare design plans, specifications, estimates and contract documents for the **Project**, in accordance with the appropriate reference publications, including but not limited to **MaineDOT's** *Engineering Instructions*, *Highway Design Guide*, *Standard Specifications* and *Standard Details*, as well as the federal *Manual on Uniform Traffic Control Devices for Streets and Highways*. The design of the **Project** shall comply with the Americans with Disabilities Act (ADA).

1. The **City**, or its contacted consultant, shall submit a preliminary design report, design plan impacts, and the final plans, specifications and estimate package (PS&E) to **MaineDOT** for review and acceptance.
2. The **City** shall ensure that the contract book for the **Project** references **MaineDOT's** *Standard Specifications* and contains the following documents:
 - a. "Buy America" requirements;
 - b. Davis-Bacon prevailing wage rates;
 - c. Form FHWA-1273; and
 - d. Title VI Assurances.
3. The **City**, or its consultant, shall address to **MaineDOT's** satisfaction all changes requested or concerns expressed by **MaineDOT** before **MaineDOT** will authorize the **City** to advertise for construction bids. Advertising the **Project** without written authorization from **MaineDOT** shall render the entire **Project** *ineligible* for federal-aid funding.
4. **MaineDOT's** acceptance of the final PS&E package shall not relieve the Engineer of Record of responsibility for the quality of the engineering work for the **Project**.

3G. SURVEY. **MaineDOT** will perform all survey work if the **Project** is located on a state highway. Alternatively, the **City** may hire a surveyor pre-qualified by **MaineDOT** using one of the selection methods in Section 2 of the LPA Manual, "Consultant Selection."

3H. PUBLIC PARTICIPATION. The **City** shall give the public and all abutters the opportunity to learn about and comment on the **Project**, using a public process appropriate for the scope of work and acceptable to **MaineDOT's** Project Manager. The **City** shall provide **MaineDOT** with a public process certification, in the format provided in Communication 10 from the LPA Manual, as part of the **Project's** environmental package.

- 3I. ENVIRONMENTAL REVIEW. **MaineDOT** will prepare and submit to the FHWA all documentation required under the National Environmental Policy Act ("NEPA"). The **City** shall provide **MaineDOT** with signed Communication 11 from the LPA Manual and the completed NEPA Documentation Checklist to assist with this work.
- 3J. PERMITS. The **City** shall obtain all approvals, permits and licenses required to carry out the **Project**. The **City** shall provide **MaineDOT** with copies of all such documents and an environmental certification in the format of Communication 12 from the LPA Manual, as part of the final PS&E package for the **Project**.
- 3K. UTILITIES. The **City** shall coordinate the **Project** with any affected utility or railroad. The **City** shall provide **MaineDOT** with a utility certification in the format of Communication 13 from the LPA Manual, as part of the final PS&E package. MaineDOT's Utility Accommodation Rules (2014) shall apply to utility relocations.
- 3L. RIGHT OF WAY. The **Parties** will coordinate acquisition of right-of-way as follows:
1. **MaineDOT** will carry out the right-of-way process for sections of the **Project** located on a state highway, in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 ("Uniform Act.")
 2. The **City** shall carry out the right-of-way process for sections of the **Project** located off of the state highway system. In doing so, the **City** shall:
 - a. Follow the Uniform Act and the regulations found in 49 CFR, Part 24.
 - b. Use the federally approved MaineDOT "Right of Way Manual."
 - c. Provide a right-of-way map showing all rights obtained for the **Project**.
 - d. Provide **MaineDOT** with a signed right-of-way certification in the format of Communication 14 from the LPA Manual, as part of the final PS&E package.
 3. The **City** shall dedicate permanently to the **Project** for public use any municipal property needed for the **Project**.
- 3M. ADVERTISE. Upon receiving written authorization from **MaineDOT**, the **City** shall use competitive bidding to hire a construction contractor, as follows:
1. The **City** shall follow the procedures in MaineDOT's *Standard Specifications* (November 2014 Edition), Section 102, "Bidding."
 2. The **City** shall submit bid tabulations to **MaineDOT** for review and shall obtain written approval from **MaineDOT** before awarding a contract.
- 3N. AWARD. Upon receiving written approval from **MaineDOT**, the **City** shall award a contract to the lowest responsive and responsible bidder in accordance with MaineDOT's *Standard Specifications* (November 2014 Edition), Section 103, "Award and Contracting." The **City** shall administer the contract for the duration of the **Project**.
- 3O. CONSTRUCTION. During construction of the **Project**, the **City** shall:

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

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

3Q. MAINTENANCE. The **City** shall maintain the completed **Project** for its standard useful life or 20 years, whichever is longer. Maintenance shall consist of general upkeep and repairs necessary to preserve year-round public access to the facility and maintain a firm, stable and slip-resistant surface in all seasons.

ARTICLE 4 – RECORDS & AUDIT

4A. **Project** records are printed or electronic plans, specifications, contracts, reports, notes, or other documents prepared by or for the **City**. The **City** shall retain all such records for at least **3 years** from the date either of **MaineDOT's** acceptance of the final invoice for the **Project** or the termination of this Agreement. If any litigation, claim, negotiation or audit has begun before the end of this retention period, all **Project** records shall be kept at least until all issues arising from any such action are resolved.

4B. The **City** and any contracted party working on its behalf shall allow authorized representatives of the Federal Government and the State of Maine to inspect and audit **Project** records, as reasonable times. Copies of records shall be furnished at no cost to the federal or state agencies requesting them.

4C. Audits shall be performed in accordance with generally accepted government auditing standards and federal regulation 2 CFR, Section 200, Subpart F - "Audit Requirements."

ARTICLE 5. GENERAL PROVISIONS

5A. GOVERNING LAW. The **Parties** agree to comply with all applicable federal, state and local laws, regulations, executive orders and ordinances including, but not limited to, the provisions of Title 23 of the Maine Revised Statutes Annotated (MRSA), "Transportation"; Title 23 in the Code of Federal Regulations (CFR), "Highways"; 49 CFR, "Transportation"; and 2 CFR, Section 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards."

- 5B. INDEMNIFICATION. To the extent allowed by law, the **City** shall indemnify, defend and hold harmless **MaineDOT**, its officers, agents and employees from all claims, suits or liabilities arising from negligent or wrongful act, error or omission by the **City**, its officers, employees, agents, consultants or contractors. Nothing in this article shall waive any defense, immunity or limitation of liability that may be available to either party under the Maine Tort Claims Act (14 M.R.S. Section 8101 et seq.) or other privileges or immunities provided by law.
- 5C. CONFIDENTIALITY. The **City** shall protect the confidentiality of right-of-way negotiations, property appraisals, and engineering estimates of the construction cost in accordance with the provisions of 23 M.R.S.A. Section 63, "Confidentiality of Records."
- 5D. EQUAL EMPLOYMENT OPPORTUNITY. During the performance of this Agreement, the **City** agrees as follows:
1. The **City** shall not discriminate against any employee or applicant for employment relating to this Agreement because of race, color, religious creed, sex, national origin, ancestry, age, physical or mental disability, or sexual orientation, unless related to a bona fide occupational qualification. The **City** shall take affirmative action to ensure that applicants are employed and employees are treated during employment without regard to their race, color, religion, sex, age, national origin, physical or mental disability, or sexual orientation. The **City** agrees to post in conspicuous places available to employees and applicants for employment notices setting forth the provisions of this nondiscrimination clause.
 2. The **City** shall state – in all solicitations or advertising for employees placed by or on behalf of the **City** relating to this Agreement – that all qualified applicants shall receive consideration for employment without regard to race, color, religious creed, sex, national origin, ancestry, age, physical or mental disability, or sexual orientation.
 3. The **City** shall cause the foregoing provisions to be inserted in any contract for any work covered by this Agreement so that such provisions shall be binding upon each contractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.
- 5E. INDEPENDENT CAPACITY. The **City**, its employees, agents, representatives, consultants and contractors *shall not* act as officers, employees or agents of **MaineDOT**.
- 5F. FLOW DOWN. Contracts between the **City** and all third parties shall contain or incorporate by reference applicable provisions of this Agreement.
- 5G. BINDING EFFECT. The **Parties** shall be bound by the terms of this Agreement, which shall apply to its executors, their successors, administrators and legal representatives.
- 5H. ENTIRE AGREEMENT. This document represents the entire Agreement between the **Parties**. Neither **MaineDOT** nor the **City** shall be bound by any statement, correspondence, agreement or representation not expressly contained in this Agreement.

ARTICLE 6. CONFLICT OF INTEREST

- 6A. No person or entity with a direct or indirect financial or personal interest in any contract or subcontract for the **Project** shall negotiate, make, accept or approve any such contract or subcontract.
- 6B. The **City** shall refrain from hiring any engineer, lawyer, appraiser, inspector or other professional to provide services for the **Project** who has a direct or indirect financial or other personal interest in any contract or subcontract for the **Project**, other than the person's employment or retention by the **City**. No officer or employee of any such engineer, lawyer, appraiser, inspector or other professional retained by the **City** to work on the **Project** shall have a direct or indirect financial or other personal interest in any real property acquired for the **Project** unless such interest is openly disclosed to **MaineDOT** and such officer, employee or person has not participated in such acquisition for and in behalf of the **City**.
- 6C. No person or entity entering into a contract for the **Project** may have a direct or indirect financial or other interest in the **Project** or its outcome – other than the performance of the contract. This prohibition includes, without limitation: a.) any agreement with, or other interest involving, third parties having an interest in the outcome of the **Project** that is the subject to the contract; b.) any agreement providing incentives or guarantees of future work on the **Project** or related matters; and c.) any interest in real property acquired for the **Project** unless such interest is disclosed to **MaineDOT** before the person or entity entered into the contract.

ARTICLE 7. DEBARMENT

- 7A. By signing this Agreement, the **City** certifies to the best of its knowledge and belief that it and its principals are not debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any federal department or agency. If the **City** cannot certify to this statement, it shall attach an explanation to this Agreement. For the term of this Agreement, the **City** shall notify **MaineDOT** promptly if it or its principals are debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this transaction by any federal department or agency.
- 7B. If the **City** contracts with any consultant, contractor or other party pursuant to this Agreement, the **City** shall require that party and its principals to certify that they:
1. Have not within a 3-year period preceding the date of such contract been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with the following: a.) obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; b.) violating federal or state antitrust statutes; and c.) committing embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.
 2. Are not currently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph 1 of this section; and

3. Have not within a 3-year period preceding this Agreement had one or more public transactions (federal, state or local) terminated for cause or default.

7C. The **City** agrees that it shall not hire an outside entity that is debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency.

ARTICLE 8 – TERMINATION

8A. **DEFAULT.** **MaineDOT** will send the **City** a Notice of Default, in accordance with Article 8B below, if the **City** commits any of the following actions:

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

8B. **FOR CAUSE.** **MaineDOT** will have just cause to terminate this Agreement in the event of default by the **City**, as defined in Article 8A. **MaineDOT** will give the **City** a cure period of 14 calendar days, effective on the **City's** receipt of Notice of Default. If the **City** fails to address all defaults within this cure period or such longer period as **MaineDOT** may authorize, **MaineDOT** may terminate this Agreement for cause, with these conditions:

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

8C. **FOR CONVENIENCE.** The **Parties** may terminate this Agreement for convenience by mutual consent for any reason not defined as "default," as follows:

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

ARTICLE 9. EXPIRATION

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

1. Article 3Q, "Maintenance," shall be enforced for at least twenty (20) years.
2. Article 4, "Records & Audit," shall remain in effect until all activity pursuant to this provision is completed.

3. Article 5B, "Indemnification," shall remain in effect until specifically terminated by the **Parties** or negated by law.
4. Article 5C, "Confidentiality," shall remain in effect until negated by law.

ARTICLE 10. AGREEMENT APPROVAL

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

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

City of Portland

Maine Department of Transportation

By: _____
Jon Jennings, City Manager

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

Date: _____

Date: _____

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

Federal Funding Accountability and Transparency Act

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

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

- A) The total compensation and names of the top five officers if:
- More than 80% of the **City's** annual gross revenues are from the U.S. Federal Government; and
 - Those revenues are greater than \$25 million annually; and
 - Compensation information is not already available through reporting to the U.S. Securities and Exchange Commission (SEC).
- B) Legal name and DUNS® number on file with the Central Contractor Registration (CCR):

City of Portland, Maine

07-174-7802

Sign and Print Legal CCR Name

DUNS® Number

Authorized Representative: _____

Jon Jennings, City Manager

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

DOT Order No. 1050.2A

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

Statutory/Regulatory Authorities

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

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

General Assurances

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

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

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

Specific Assurances

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

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

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

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

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

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

DATED _____

By _____
Jon Jennings, City Manager
City of Portland

Encl.: Appendices A and E

APPENDIX A TO THE TITLE VI ASSURANCES

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

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

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

APPENDIX E TO THE TITLE VI ASSURANCES

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

Pertinent Non-Discrimination Authorities:

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

West Commercial Street Multi-Modal Corridor Study Recommendations, 2016

SHORT TERM, SIGNAGE & STRIPING PROJECTS:

- 1 Reorient Benny's parking lot to accommodate shared-use path
- 2 Install shared-use path between Benny's and Star Match building
- 3 Expand sidewalk to include shared-use path in front of Star Match building
- 4 Within 50' right-of-way zone, include 11' travel lanes and bike lanes
- 5 In 100' right-of-way zone, include 11' travel lanes, bike lanes (to Maple St), head-in parking, and a wide shoulder for truck parking, loading, and unloading

MEDIUM TERM, PATHWAY ENHANCEMENT & CONNECTION PROJECTS:

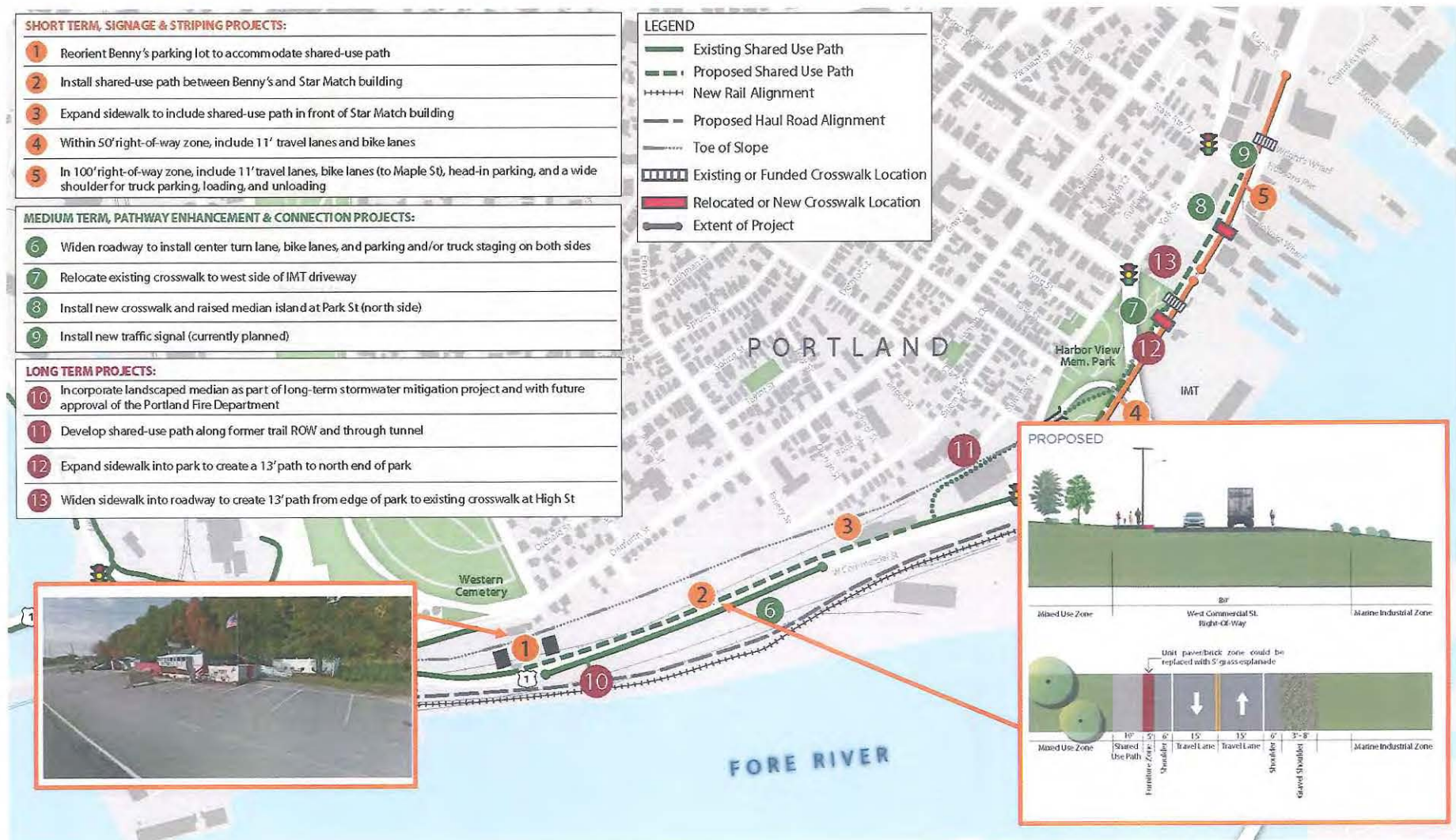
- | | |
|---|---|
| 6 | Widen roadway to install center turn lane, bike lanes, and parking and/or truck staging on both sides |
| 7 | Relocate existing crosswalk to west side of IMT driveway |
| 8 | Install new crosswalk and raised median island at Park St (north side) |
| 9 | Install new traffic signal (currently planned) |

LONG TERM PROJECTS:

- | | |
|----|---|
| 10 | Incorporate landscaped median as part of long-term stormwater mitigation project and with future approval of the Portland Fire Department |
| 11 | Develop shared-use path along former trail ROW and through tunnel |
| 12 | Expand sidewalk into park to create a 13' path to north end of park |
| 13 | Widen sidewalk into roadway to create 13' path from edge of park to existing crosswalk at High St |

LEGEND

-  Existing Shared Use Path
 Proposed Shared Use Path
 New Rail Alignment
 Proposed Haul Road Alignment
 Toe of Slope
 Existing or Funded Crosswalk Location
 Relocated or New Crosswalk Location
 Extent of Project



*Order 149-16/17
Tab 8 3-6-17*

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

**CITY OF PORTLAND
IN THE CITY COUNCIL**

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

**ORDER SETTING PUBLIC HEARINGS ON
FISCAL YEAR 2018 ANNUAL ACTION PLAN
AND APPROPRIATIONS FOR COMMUNITY DEVELOPMENT
BLOCK GRANT PROGRAM, HOME PROGRAM, AND EMERGENCY SOLUTIONS
GRANT PROGRAM**

ORDERED, that public hearings be held on the Fiscal Year 2018 Annual Action Plan and appropriations for the Community Development Block Grant Program, HOME Program, and the Emergency Solutions Grant Program; and

BE IT FURTHER ORDERED, that such hearings be held on March 27, 2017 and April 5, 2017 at Special City Council Meetings held at 5:30 p.m., in Portland City Hall Council Chambers, 389 Congress Street.

MEMORANDUM
City Council Agenda Item

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

FROM: Planning and Urban Development Department

DATE: February 28, 2017

SUBJECT: Order Setting Public Hearing on Fiscal Year 2018 Annual Action Plan and Appropriations for Community Development Block Grant Program, HOME Program and Emergency Solutions Grant Program.

SPONSOR: Jon P. Jennings, City Manager

COUNCIL MEETING DATE ACTION IS REQUESTED: Final Action March 6th

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

Notice of the public hearings must be published two weeks prior to first meeting date.

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

I. ONE SENTENCE SUMMARY

Request to set public hearings for FY2018 Annual Action Plan and appropriation of funding for CDBG, HOME and ESG Programs.

II. AGENDA DESCRIPTION

As required under our HUD approved citizen participation process, Public Hearings are held each spring to consider the City's Housing and Community Development Program proposal for the ensuing year. The CDBG Annual Allocation Committee, appointed by Council, reviewed each application and made funding recommendations. They are given an opportunity to make a presentation to the Council at this meeting, and citizens may comment on the City's annual plan for the use of CDBG, HOME and ESG funds.

Public hearings will be held on March 27, 2017 and on April 5, 2017 at a Special City Council Meeting held at 5:30 p.m., both in Portland City Hall Council Chambers, 389 Congress Street.

The 2017/2018 Housing and Community Development Program will report in the Annual Action Plan to HUD a total budget of \$2,026,448 funded by a Community Development Block Grant allocation of \$1,791,448 plus \$125,000 in program income, along with \$110,000 in CDBG Housing Program Income; a HOME Consortium Program Grant

allocation of \$832,642; HOME Program income of \$200,000; Lead Safe Housing Program Income of \$170,866; local Housing Trust Funds of \$468,551; and an Emergency Solutions Grant Allocation of \$161,232. As of this date, HUD has not provided funding allocation amounts for the 2017/2018 fiscal year. The allocations mentioned herein are estimated based on amounts received in 2016/2017.

III. BACKGROUND

IV. INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED

V. FINANCIAL IMPACT

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

VII. RECOMMENDATION

VIII. LIST ATTACHMENTS

Prepared by: Mary Davis
Date: February 28, 2017 (revised)

*Order 158-16/17
Feb 9 3-6-17*

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 AMENDING THE BYLAWS OF THE
PORTLAND TECHNOLOGY PARK CONDOMINIUM ASSOCIATION**

ORDERED, that the Bylaws of the Portland Technology Park Condominium Association are hereby amended in substantially the form attached.



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: February 16, 2017

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

SUBJECT: Approval of Amendments to By-Laws of Portland Technology Park,
Changing Fiscal Year to July 1 – June 30, from Jan. 1 – Dec. 31 and Date
of Annual Meeting from October to April.

SPONSOR: Jon Jennings, City Manager

COUNCIL MEETING DATE ACTION IS REQUESTED:

One Reading: March 6, 2017

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

PRESENTATION: (Greg Mitchell – 5 minutes)

- I. **ONE SENTENCE SUMMARY:** There are two proposed housekeeping amendments for the Portland Technology Park Condominium Association's (PTPCA) By-Laws, those being to change fiscal year from calendar year to the City's fiscal year, at least while the City remains an owner of available property units in the Park, as well as its annual meeting being proposed to be changed from October to April each year.
- II. **AGENDA DESCRIPTION:** Currently, the PTPCA By-Laws note a fiscal year that ends December 31st. Given that the City will be a member of the PTPCA until the last property unit is sold and that City staff serve as the President and Treasurer positions on its Executive Board, it will be easier if the Association's fiscal year is the same as the City's, that is, July 1 – June 30. It is also being requested that PTPCA's annual meeting be changed from October to April each year.
- III. **BACKGROUND:** The Executive Board was recently approved by the City Council (the Declarant), with Jon Jennings as President, Chris Branch as Treasurer and Eric Swanson (VP at Patrons Oxford Insurance Company) as Secretary. The board will be meeting shortly to adopt and ratify budgets for FY2016/2017 and FY 2017/2018. Modifying the fiscal year is needed prior to adoption and ratification of budgets that conform to the appropriate fiscal

year. Additionally, the PTPCA's dates for its annual meeting is proposed to be changed from October to April each year.

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.

- IV. **INTENDED RESULT:** The modified fiscal year will conform to the City's fiscal year, making is easier for the PTPCA's Executive Board to budget and address payment of invoices for services to the Technology Park.
- V. **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.
- VI. **FINANCIAL IMPACT:** There will be no financial impact in changing the fiscal year of the PTPCA to conform to the City fiscal year.
- VII. **STAFF ANALYSIS:** Changing the fiscal year in the PTPCA By-Laws to be consistent with the City's fiscal year will make is easier to budget for that entity while the City continues to own property units at the Technology Park.
- VIII. **RECOMMENDATION:** Staff recommends changing the fiscal year in the PTPCA By-Laws to July 1 through June 30 to make it consistent with the City's fiscal year.
- IX. **LIST ATTACHMENTS:** PTPCA By-Laws with Indicated Modifications on First Page

Prepared by: Nelle Hanig, Business Programs Manager

Date: February 16, 2017

SCHEDULE E

PORTLAND TECHNOLOGY PARK CONDOMINIUM BYLAWS OF PORTLAND TECHNOLOGY PARK CONDOMINIUM ASSOCIATION

ARTICLE I: Name, Location, and Fiscal Year.

Section 1. Name. The name of the corporation is Portland Technology Park Condominium Association (the "Corporation").

Section 2. Location. The principal office of the Corporation shall be located at Technology Park Drive, Portland, Maine.

Section 3. Fiscal Year. The fiscal year of the Corporation shall, unless otherwise decided by the Board of Directors, end ~~June 30~~ December 31.

ARTICLE II: Purposes.

Section 1. Purposes. The purposes of said Corporation are to act on behalf of its members collectively as their governing body with respect to the administration, maintenance, repair and replacement of certain property which will be submitted to the provisions of Maine Condominium Act, Title 33, Chapter 31, Section 1601-101 *et seq.* and to be known as Portland Technology Park Condominium Association and as such to own and acquire any real estate or interest or rights therein or appurtenances thereto and any and all personal property in connection therewith as may be incidental or necessary to such purpose.

ARTICLE III: Members.

Section 1. Membership. The owner or owners of record from time to time of each Unit of the Condominium, shall constitute one member of the Corporation, and each such member shall have the fraction of common interest, common expenses liabilities and voting rights in the Corporation that are set forth in the Declaration of Condominium of the Portland Technology Park Condominium recorded in the Cumberland County Registry of Deeds, as it may be amended from time to time.

Section 2. Termination of Membership. The membership of each Unit owner shall terminate when he ceases to be a Unit owner, and upon the sale, transfer or other disposition of his ownership interest in the property his membership in the Corporation shall automatically be transferred to the new Unit owner succeeding to such ownership interest.

Section 3. Meetings and Notice. Meetings of members shall be held at the Condominium in Portland, Maine. An annual meeting of the members shall be held on the first Tuesday in ~~April~~ October in each year, commencing with ~~April 4, 2017~~ October 1, 2016 at 4 p.m. Special meetings of the members may be called by the President, the Board of Directors or upon a petition signed by fifty (50) percent of the members. Written notice of any meeting shall be given to each member by the Secretary not less than ten (10) days nor more than thirty (30) days before the meeting by mailing it postage prepaid to the member's mailing address or to any other mailing address designated in writing by the member. The notice shall specify the time and place of the meeting and the items on the agenda.

Section 4. Quorum and Voting. A quorum for any meeting shall be constituted by persons entitled to cast 50 percent of the votes for election of the executive board, attending in person or represented by proxy.

Except as otherwise provided, any specified percentage of Unit Owners means a vote by the Owners of those Units to which are allocated the same specified percentage of the Votes in the Association that are cast in person or by proxy at any meeting of the Association at which a quorum is present in person or by proxy, and for all voting purposes, each Unit Owner shall have a vote equal to the Votes in the Association allocated to its Unit. The approval by a specified percentage of Eligible Mortgage Holders is based upon one (1) vote for each Mortgage held. The terms "majority vote" or "majority of Unit Owners" shall mean a vote by the Owners of those Units to which are allocated more than fifty percent (50%) of the Votes in the Association that are cast in person or by proxy at any meeting of the Association at which a quorum is present in person or by proxy.

The Votes in the Association allocated to a Unit can only be cast as a unit and cannot be split. If a Unit is owned of record by one person, that Unit Owner's right to vote shall be established by the record title to the Unit. If ownership of a Unit is in more than one person, the person who shall be entitled to cast the Votes allocated to that Unit shall be the person named in a certificate executed by all of the Owners of such Unit and filed with the Secretary of the Association. If ownership of a Unit is in a corporation, partnership, limited liability company, trust or estate, the officer or employee of that corporation, partner of that partnership, manager or member of that limited liability company, trustee of that trust, or agent of that estate, entitled to cast for the corporation, partnership, limited liability company, trust or estate the Votes allocated to such Unit shall be designated in a certificate for that purpose executed by the president or a vice president of that corporation, and attested to by the secretary or clerk of that corporation, executed by all the partners of that partnership, by all of the members of that limited liability company, or executed by all the beneficiaries of that trust, or executed by either all the devisees of that estate or by order of the probate court and filed with the Secretary of the Association. Such certificates of multiple owners, corporations, partnerships, limited liability companies, trusts or estates shall be valid until revoked by a subsequent certificate similarly executed and filed with the Secretary of the Association. Wherever the vote, approval or disapproval of a Unit Owner is required by this Declaration or the Act, such vote, approval or disapproval shall be made only by the person who would be entitled pursuant to such certificate to cast at any meeting of the Association the Vote allocated to such Unit. If the person named or designated in said certificate for a particular Unit shall be absent from a meeting of the Association, no person may cast the Vote allocated to that Unit at the meeting, although the presence at the meeting of a non-named or non-designated co-Owner or member, officer or employee of such Owner shall be counted in determining whether a quorum is present. If a multiple Owner of a Unit (that is not a partnership, limited liability company, trust, estate or corporation) has failed to file said certificate with the Secretary of the Association and only one of the multiple Owners is present at a meeting of the Association, he or she shall be entitled to cast at the meeting all the Votes allocated to that Unit without establishing the concurrence of the absent Owner just as though that person were the sole Owner of the Unit. If a multiple Owner of a Unit (that is not a partnership, trust, limited liability company, estate or corporation) has failed to file said certificate with the Secretary and if more than one Owner of that Unit is present at the meeting, the Votes allocated to that Unit may be cast only in accordance with the agreement of a majority of the multiple Owners present at the meeting. Such majority agreement shall be conclusively presumed if any one of those multiple Owners shall cast the Vote allocated to the Unit without protest being promptly made to the person presiding over the meeting by any other Owners of that Unit.

ARTICLE IV: The Board of Directors.

Section 1. Composition. The Board of Directors shall consist of three members initially, and will be increased as Units are sold by the Declarant to reflect the provision in the Declaration that each Unit Owner may elect or appoint one member of the Board of Directors.

Section 2. Election and Term. The directors, except as provided in Article III, Section 5 and Sections 7 and 8 of this Article, shall be elected by the Unit owners at the annual meeting. Each Unit

Owner may elect or appoint one member of the Board of Directors. The directors shall hold office until their successors have been elected.

Section 3. Powers. The business of the Corporation shall be managed by the Board of Directors which shall have and may exercise all the powers of the Corporation, except those powers reserved to the members by the Act or by these Bylaws. The Board shall have the power to engage a managing agent for the property and to fix the term, compensation and authority of the manager or managing agent which, initially, shall be the Declarant.

Section 4. Meetings of Directors. Meetings of the Board of Directors may be held at any time and place upon call by the President or by a majority of the Directors, reasonable notice thereof being given to each Director. Notice that a meeting has been called may be given by the President, Secretary or Assistant Secretary, if one is appointed, or by one of the Directors. Notice of any meeting of the Board of Directors may be waived in writing signed by the person or persons entitled to such notice, whether before or after the time of such meeting, and shall be equivalent to the giving of such notice. Attendance of a Director at such meeting shall constitute a waiver of notice thereof, except where a Director attends a meeting for the express purpose of objecting to the transaction of any business because such meeting is not lawfully convened. Neither the business to be transacted at, nor the purpose of, any meeting of the Board of Directors need be specified in the notice, or waiver of notice, of such meeting.

Section 5. Quorum and Voting. A majority of the directors then in office shall constitute a quorum. A majority of less than a quorum may, from time to time postpone to a new time or place any meeting and the adjourned meeting may be held without further notice. If a quorum exists, a majority of the directors present may take any action, except the removal of a director for cause which shall require a majority vote of all directors then in office.

Section 6. Action by Consent. Any action required or permitted to be taken at any meeting of the Board of Directors may be taken without a meeting if a written consent thereto is signed by all the directors. The Secretary shall file such written consent with the records of the meetings of the Board of Directors. Such consent shall be treated as a vote of the Board of Directors for all purposes.

Section 7. Vacancies. A vacancy in the Board of Directors shall be filled by the owner of the Unit that appointed the Director to hold office for the unexpired term of the director whose place is vacant and until his successor is elected.

Section 8. Removal. A director may be removed from office by a vote of all of the owners of the Unit or Units that elected such Director. A director may be removed for cause by a majority vote of all directors then in office.

Section 9. Compensation. Directors shall not receive compensation for their services except as provided by resolution of a majority of the members of the Corporation. Directors shall be reimbursed for any out-of-pocket expenses incurred which are reasonable and necessary in performing their duties on behalf of the Corporation.

Section 10. Delegation to Managing Agent. The Board of Directors may delegate to a managing agent all of the powers of the Board, except the responsibility of preparing the annual budget and any supplemental budgets and any powers requiring approval of any specified percentage of members.

ARTICLE V: Officers.

Section 1. Designation and Qualification. The officers of the Corporation shall consist of a

President, a Treasurer, a Secretary and such other officers as the Board of Directors may elect. The President and Treasurer shall be members, or spouses of members, or in the case of a Unit owner which is a Corporation, partnership, trust or estate, a designated agent thereof. The Secretary need not be a member, but shall be a resident of Maine.

Section 2. Election and Term. All officers shall be elected by the Board of Directors at its first meeting following the annual meeting of the members and shall hold office until the first meeting of the Board of Directors following the next annual meeting of members and until their successors are elected.

Section 3. President. The President shall be a Director and shall be the chief executive officer of the Corporation. The President shall have general supervision and control of the business of the Corporation subject to the direction of the Board of Directors and shall also have such other powers and duties as the Board of Directors may decide. The President shall preside at all meetings of the members and at all meetings of the Board of Directors. If the President is absent from any meeting of the members or Board of Directors, the Treasurer shall preside at such meeting. The President shall prepare, execute, certify and record amendments to the Declaration on behalf of the Corporation.

Section 4. Treasurer. The Treasurer shall have, subject to the direction of the members or Board of Directors, general charge of the financial affairs of the Corporation and shall keep full and accurate records thereof, which shall always be open to the inspection of any member or holder of a first mortgage on a Unit. He shall render to the President and directors, at the regular meetings of the Board of Directors, or whenever they may require it, a statement of the accounts of his transactions as Treasurer and of the financial condition of the Corporation.

Section 5. Secretary. The Secretary shall record the proceedings of all meetings of the members and of the Board of Directors in books kept for that purpose. Record books of members' meetings shall be open at all reasonable times to the inspection of any member or holder of a first mortgage on a Unit. The Secretary shall also keep the membership transfer books of the Corporation. He shall notify the members and the directors of all meetings in accordance with the Bylaws. If the Secretary is absent from any meeting of the members or the Board of Directors, a Temporary Secretary shall be chosen to exercise the duties of the Secretary at such meeting.

Section 6. Vacancies. A vacancy in any office may be filled by the Board of Directors by the election of a successor to hold office for the unexpired term of the officer whose place is vacant and until his successor is chosen and qualified.

Section 7. Removal. All officers may be removed from their respective offices by the Board of Directors.

Section 8. Resignation. Any officer may at any time resign his office by a resignation in writing delivered to the Corporation at its principal office or to the President or Secretary. Such resignation shall be effective upon receipt and acceptance thereof shall not be necessary to make it effective unless it so states.

Section 9. Compensation. The officers shall receive no compensation for their services unless expressly provided for in a resolution adopted by the majority of the members of the Corporation. The officers shall be reimbursed for any out-of-pocket expenses incurred which are reasonable and necessary in performing their duties on behalf of the Corporation.

ARTICLE VI: Assessments.

Section 1. Budget. The Board of Directors shall cause to be prepared an estimated annual budget

for each fiscal year of the Corporation. Such budget shall take into account the estimated common expenses and cash requirements for the year, including salaries, wages, payroll taxes, supplies, materials, parts, services, maintenance, repairs, replacements, landscaping, insurance, fuel, snow removal, trash pickup and other common expenses (as distinguished from individual mortgage payments, real estate taxes and individual telephone, electricity and other individual utility expenses billed or charged to the separate members on an individual or separate basis rather than a common basis). The Board shall establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of improvements to the common areas and limited common areas. The reserve fund shall be included in the budget and maintained out of regular assessments for common expenses. To the extent that the assessments and other cash income collected during the preceding year shall be more or less than the expenditures for such preceding year, the surplus or deficit, as the case may be, shall also be taken into account in setting the budget and determining assessments for the current year so as to credit to such assessment any surplus from the preceding year or repay to said reserve fund any deficit from the preceding year.

The failure or delay of the Executive Board to prepare or adopt a budget for any fiscal year shall not constitute a waiver or release in any manner of a Unit Owner's obligation to pay its allocable share of the Common Expenses as herein provided whenever the same shall be determined and, in the absence of any annual budget or adjusted budget, each Unit Owner shall continue to pay each monthly installment at the monthly rate established for the previous fiscal year until the new annual or adjusted budget shall have been adopted.

Any provision or limitation on expenditures contained herein or in the Declaration to the contrary notwithstanding, the Executive Board or the manager may, on behalf of the Association and the Owners without prior notice or consent, expend any amount, or incur a contractual obligation in any amount, required to deal with emergency conditions which may involve a danger to life or property or may threaten the safety of the Condominium or the owners or occupants of Units or may threaten the suspension of any necessary service to the Condominium or may involve the immediate damage to or destruction of the Common Elements.

Section 2. Payment. The estimated annual budget for each fiscal year shall be approved by the Board of Directors, and copies thereof shall be furnished to each member and eligible mortgage holder within thirty (30) days of adoption, and in any event not later than 90 days after the beginning of such year. The Board shall set a date for a meeting of the members to consider ratification of the budget not less than fourteen (14) or more than thirty (30) days after mailing of the budget. Notice of said meeting shall accompany the budget. Unless at that meeting all members reject the budget, the budget is deemed ratified, whether or not a quorum is present. In the event the proposed budget is rejected, the periodic budget last ratified by the members shall be continued until such time as the members ratify a subsequent budget proposed by the Board of Directors. On or before the first day of the next quarter and of each succeeding month or quarter of the year covered by the annual budget, each member shall pay, as his respective monthly or quarterly assessment for the common expenses, one-twelfth (1/12) or one-fourth (1/4), as the case may be, of his proportionate share of the common expenses for such year as shown by the annual budget, all as determined by the Board of Directors. Such proportionate share for each member shall be in accordance with his respective ownership interest in the common areas and facilities. No member shall be relieved of his obligation to pay his assessments for common expenses by abandoning or not using his Unit or the common areas and facilities.

Section 3. Statements. Within ninety (90) days after the end of each year covered by an annual budget, or as soon thereafter as shall be practicable, the Treasurer shall cause to be furnished to each member a statement for such year so ended, showing the receipts and expenditures and such other information as he may deem desirable.

Section 4. Separate Accounts. The Treasurer shall cause to be kept a separate account for each member showing the respective assessments charged to and paid by such member, and the status of his account from time to time.

Section 5. Additional Assessments. In the event that during the course of any year, it shall appear to the Treasurer that the monthly assessments, determined in accordance with the estimated annual budget for such year, are insufficient or inadequate to cover the estimated common expenses for the remainder of such year, then the Board of Directors shall prepare and approve a supplemental budget covering the estimated deficiency for the remainder of such year, and shall cause the same to be presented to the members for ratification in the same manner as the budget. Upon ratification of the supplemental budget, a supplemental assessment shall be made to each member for his proportionate share of such supplemental budget.

Section 6. Common Expenses. It shall be the duty of every member to pay his proportionate share of the common expenses, in the same ratio as his fraction of ownership in the common areas and facilities. If any member shall fail or refuse to make any such payment of the common expenses when due, the amount thereof together with interest at the rate established by the Corporation, costs and reasonable attorney's fees shall constitute a lien on such Unit. The Corporation shall have the authority and responsibility to exercise and enforce any and all rights and remedies as provided for in Maine Revised Statutes, Title 33, Chapter 31, the Declaration and these Bylaws, or otherwise available at law or in equity for the collection of all unpaid assessments.

Section 7. Budget Expenses. The President and/or Treasurer, subject to Board direction, shall have the authority to enter into contracts on behalf of the Corporation for work and expenses provided in the budget and to make payment therefor from the funds of the Corporation.

Section 8. Expenses Assessed Subsequent to Conveyance of Unit. A member may not exempt himself from liability for his shares of common expenses subsequently to be assessed by a conveyance of his Unit to the Corporation, except by approval of all of the other members and their first mortgagees.

Section 9. Availability of Documents. The Corporation is required to make available to Unit owners, lenders and the holders, insurers and guarantors of the first mortgage on any Unit current copies of the Declaration, Bylaws and any other rules and regulations governing the condominium and other books, records and financial statements of the Corporation. In addition thereto, the Corporation shall also make available to prospective purchasers current copies of the Declaration, Bylaws, other rules governing the condominium, and the most recent annual audited financial statement, if such is prepared. The Corporation may impose a reasonable charge for copies.

ARTICLE VII: Amendments.

Section 1. Amendment of Bylaws. These Bylaws may be amended or modified from time to time by action or approval of all of the members, except that no amendment may violate the provisions of Maine Revised Statutes, Title 33, Chapter 31.

Section 2. Amendment of Declaration. The Declaration may be amended in accordance with the terms thereof. Except for amendments exercising Development Rights by Declarant, the President and/or Treasurer of the Corporation shall execute a certificate setting forth the text of the amendment, which certificate shall be attested by the Secretary and recorded in the Cumberland County Registry of Deeds.

*Order 151-16/17
Tab 10 3-6-17*

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 APPROPRIATING FUNDS FROM THE
CLEMENT P. WESCOTT TRUST FUND FOR BARRON CENTER
FOR A NEW FIRE ALARM SYSTEM**

ORDERED, that \$180,000 is hereby appropriated from the Clement P. Wescott Trust Fund for costs associated with the purchase and installation of a new fire alarm system at the Barron Center.

MEMORANDUM
City Council Agenda Item

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

FROM: Dawn Stiles

DATE: 2/7/2017

SUBJECT: Use of Westcott Trust Fund to purchase and install a Fire Alarm replacement system at the Barron Center

SPONSOR: Jon Jennings, City Manager

(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 3/6/17 Final Action 3/20/2017

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)

I. ONE SENTENCE SUMMARY

The funds will be used to purchase and install a fire alarm replacement system

II. AGENDA DESCRIPTION

The fire alarm system at the Barron Center is over 30 years old it is increasingly difficult to find replacement parts. Protection professionals are hesitant to work on the system because of the age and limitation of parts.

III. BACKGROUND

The Westcott Trust Fund was left to the City of Portland in 1973 by Doctor Clement P. Westcott to assist in the improvements and additions to the Portland City Hospital. On July 7, 1975 the Portland City Council accepted the trust fund. In Dr. Westcott's Last Will and Testament it was stated that the Trust be used, for improvements in and additions to the buildings thereof, for the acquisition of equipment and other facilities and for any other purposes which shall improve the standard of said hospital and its services.

III. INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED

Broad Council Goal of Housing Safety – This system will enhance safety of the Barron Center Residents and staff.

IV. FINANCIAL IMPACT

The current balance in the fund is \$ 291,205.48 this will be reduced by approximately \$180,000 leaving a remaining balance in the fund of \$ 111,205.48.

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

VI.

If the fire alarm system ceases to function it would put residents and staff at risk of harm. It would also be reported to the State Fire Marshall's office which would prevent our ability to pass licensing inspection. This would jeopardize our state and federal reimbursements.

The Westcott Trust Fund was established to enable enhancements at the Barron Center by providing funds that may otherwise not be available. This is an appropriate use of those funds.

VII. RECOMMENDATION

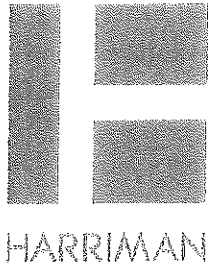
Approval by the Council to utilize the Westcott Trust Fund to purchase and install a fire suppression system.

VIII. LIST ATTACHMENTS

Quotes from Vendors

Prepared by:

Date:



December 5, 2016

Mr. John Key jkey@portlandmaine.gov
Director, Environmental Services
Health and Human Services Department
Barron Center
1145 Brighton Avenue
Portland, ME 04102

Re: Barron Center
Fire Alarm System Upgrade
Portland, ME
No. 16696
Proposal for Professional Services

Dear John:

We are extremely pleased to submit this proposal to provide professional engineering design services to the City of Portland for developing Construction Documents and Construction Administration services for a fire alarm system upgrade for the Barron Center on Brighton Avenue in Portland, ME. We understand that the majority of the existing fire alarm system equipment is original to the buildings (BC1/Faraday conventional, BC2/Siemens addressable), with some equipment approaching 35 years of age. All equipment is becoming outdated and is very difficult to maintain.

46 HARRIMAN DRIVE
AUBURN, ME 04210
207.784.5100

STATEMENT OF UNDERSTANDING

The Barron Center campus consists of three buildings; BC1 is the original nursing home facility, built in the early 80's and has four stories and total of approximately 90,000 sq.-ft., BC2 was built in the early 90's has a single story and approximately 22,000 sq.-ft., and the Laundry facility (original hospital boiler house) is located between BC1 and BC2, has two stories and has approximately 7,000SF. The total building area is approximately 119,000 sq.-ft..

123 MIDDLE STREET
PORTLAND, ME 04101
207.275.0053

We understand that you wish to replace all existing fire alarm system components with new systems and components that operate as a single network and provide a fully code complying system. Systems in all three buildings will be of the same manufacturer and will be fully addressable.

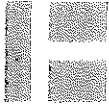
33 JEWELL COURT
SUITE 101
PORTSMOUTH, NH 03801
603.626.1242

SCOPE OF WORK

Construction Documents: Using the PDF plans that were provided on November 22, 2016 Harriman will generate CADD floor plans that can be used for fire alarm system existing conditions drawings and Construction Documents for the fire alarm system work. We have not included time with this proposal to do a complete architectural take-off of the existing buildings and generate architectural as-built plans. If extensive modifications are required to provide accurate architectural plans we will contact you to discuss the additional work.

170 MILK STREET
BOSTON, MA 02109
617.426.5050

www.harriman.com



Mr. John Key
December 5, 2016
Page 2 of 3

We will provide biddable Construction Documents, drawings and specifications, for a fully functional code complying fire alarm system for the buildings on the Barron Center campus that have been coordinated with the State and local officials and meet all code and functional requirements. This work will include basic patching and painting of areas that will be affected by new work or removal of existing work, but, does not include scope for upgrading finishes in the disturbed areas.

Bid Period: Harriman will assist the City of Portland (Mr. John Key) with assembling the bid package and developing advertisements for the project. We will also attend a pre-bid walk-through meeting (if necessary) and respond to any questions prior to the bid date and develop addenda as required. Once the bids have been received we will work with the City of Portland to review the bids and determine the bid that offers the best value.

Construction Administration: Harriman will provide Construction Administration services, including review of submittals, responding to RFI's and site visit observations of completed work.

SCHEDULE

We understand that you would like to have the new fire alarm system installed and functional as soon as possible; and hopefully by mid-year 2017. The fact that the Barron Center is fully occupied will complicate the installation of the new system as well as the removal of the existing system. Patching and painting of disturbed surfaces will be necessary and precautions must be taken to protect occupants from dust and debris. Because of this, we believe that the construction schedule may require more time than exists between now and mid-year 2017. This being said, we are prepared to work diligently to complete the Construction Documents in a timely fashion to accommodate an aggressive construction schedule that will hopefully have the new system installed and functional during the 3rd quarter of 2017.

FEE

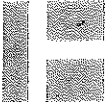
Harriman proposes to complete the work indicated above for a lump sum fee of \$32,000. This proposal does not include costs for any state or local fees for permitting or review.

(*Normal reimbursable expenses such as travel mileage (travel fees are N/A), plan and document reproduction, postage, permits by regulatory agencies and consultants will be billed separately at a 1.1 multiplier and are not included in the lump sum fee. An estimated budget figure of \$1,500 should be carried.)

The quoted fees are based on our current knowledge of the scope of engineering work required for this project. If this project becomes greater in scope than we currently understand, we reserve the right to negotiate a fair increase in fee. Increase from the original scope of work and the respective fee change must be described in writing and be accepted prior to the respective additional work commencing. Increased scope will be billed at our current hourly rates (see attached hourly rates).

If this proposal and the attached Terms and Conditions are satisfactory and acceptable, please signify your acceptance by signing below and returning to my attention.

Again, thank you for the opportunity to submit this proposal and we look forward to working with you. If you have any questions or need additional information, please contact me.



Mr. John Key
December 5, 2016
Page 3 of 3

Sincerely,
Harriman

John W. Tarr, P.E.
Principal
jtarr@harriman.com

Accepted by:

John Key

Date

pjmot

Enclosures: Hourly Rates
 Terms and Conditions

TERMS AND CONDITIONS

Work performed by Harriman will be conducted in a manner consistent with the level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions. No warranty, express or implied is made.

INVOICES, TERMS, AND CHARGES

Harriman will submit invoices to the client on a monthly basis. Billing will usually occur at the end of each month. Payment on each invoice is due 30 days net from the posted date of invoice. Failure to pay invoices within the allotted time will constitute a breach of contract and will result in suspension of work by Harriman until all overdue payments are made in full. A service fee of 1-1/2% of the overdue balance will be charged monthly on all accounts not paid within 30 days of the date of invoice. If a suit is filed, attorney's fees, and other costs incurred in collecting any delinquent account, shall be paid by the client in any judgment in favor of Harriman.

Charges for professional, technical, and administrative personnel are computed by multiplying the hours of labor by the latest personnel rates.

Company and personal vehicles used in conjunction with project work in 2015 will be charged at \$0.56 per mile. Vehicle rental or special vehicle requirements will be charged directly to the client. Reimbursable project-related expenses are billed at cost +10%.

CLAIMS FOR CONSEQUENTIAL DAMAGES

The architect and the owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiving is applicable, without limitations, to all consequential damages due to either party's termination.

OWNERSHIP OF DOCUMENTS

With the exception of the reports supplied to the client as a deliverable, all other documents prepared by Harriman shall remain the property of Harriman as instruments of service. The client agrees that all reports and other work furnished to the client or his agents, that is not paid for, will be returned upon demand and will not be used by the client for any purpose whatever.

ELECTRONIC FILES

In accepting and utilizing any drawings, reports and data on any form of electronic media generated and furnished by Harriman, the client agrees that all such electronic files are instruments of service of Harriman. The client agrees not to reuse these electronic files, in whole or in part, for any purpose other than for the project. The client further agrees to waive all claims against Harriman resulting in any way from any unauthorized changes to or reuse of the electronic files for any other project by anyone other than Harriman. In no event will Harriman be liable for indirect or consequential damages as a result of the client's use or reuse of the electronic files.

THIRD PARTY EXCLUSION

This agreement does not create any right or benefits for parties other than Harriman and the client.

THIRD PARTY RELIANCE

This agreement does not allow any party other than the client to rely on reports or other work furnished to the client without the express permission of Harriman.

DISPUTES

In the event that the client makes a claim or brings action against Harriman for any act arising out of the performance of Harriman work, and fails to prove such a claim or action, then the client will pay all legal and other costs incurred by Harriman in defense of such claim or action.

INDEMNIFICATION

In connection with the services performed by Harriman and its officers, agents, and employees, the client agrees to indemnify and hold harmless Harriman, its officers, agents, and employees, against any and all claims, liability, injury, loss, or damage, and any expense arising therefrom, including loss or damage, and expense arising therefrom, including costs and attorney's fees, except for those claims, injuries, and damages arising out of negligent or willful misconduct of Harriman or its officers, agents and employees acting within the scope of their employment.

LIMITATION OF LIABILITY

The client agrees to limit Harriman liability to the client on the project arising from Harriman professional acts, errors, or omissions, such that the total aggregate liability of Harriman to all those named shall not exceed Harriman total fee for services rendered on the project.

INSURANCE

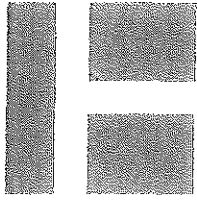
Harriman represents and warrants that it is protected by Workmen's Compensation insurance. Harriman shall not be responsible for any loss, damage, or liability arising from any acts by client, its agents, staff, and other consultants employed by it.

TERMINATION

This agreement may be terminated by either party upon seven (7) days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof. In the event of termination, Harriman shall be paid for services performed to the termination notice date, plus reasonable termination expenses.

MISCELLANEOUS

This agreement shall be governed and construed in accordance with the laws of the States of Maine and New Hampshire.



HARRIMAN

2016 HOURLY RATES

Principal	\$ 175
Architecture & Interior Design	
Senior Architect	120
Architect/Senior Interior Designer	105
Senior Architectural Designer	90
Architectural Designer/Interior Designer	75
Urban Planning & Landscape Architecture	
Senior Landscape Architect/Senior Urban Designer	130
Senior Urban Planner	120
Landscape Architect/Urban Designer	105
Urban Planner	100
Landscape Designer	75
Assistant Urban Planner	70
Engineering	
Senior Engineer	130
Engineer	105
Senior Engineering Designer	90
Engineering Designer	75
Interdepartmental Services	
Senior Project Manager	130
Construction Administrator	100
QA/QC Specialist	100
Graphic Designer	95
Commissioning Agent	90
Administrative Support	60

46 HARRIMAN DRIVE
AUBURN, ME 04210
207.784.5100

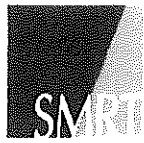
123 MIDDLE STREET
PORTLAND, ME 04101
207.775.0053

33 JEWELL COURT, SUITE 101
PORTSMOUTH, NH 03801
603.626.1242

170 MILK STREET, SUITE 5
BOSTON, MA 02109-3438
617.426.5050

www.harriman.com





September 15, 2016

Mr. John Key
Director, Environmental Services
City of Portland, Maine
Health and Human Services Department
Barron Center
1145 Brighton Avenue
Portland, Maine 04102

Re: Fire Alarm Replacement

Dear John:

It was a pleasure meeting you last Wednesday for a tour of the Barron Center and review of the current fire alarm system. Based on that meeting, SMRT is pleased to provide this proposal for engineering services for the fire alarm system replacement at the Barron Center campus in Portland, Maine. Our understanding of the project is described below. We have broken the fee into three separate line items for your consideration.

Understanding of the Project

SMRT will provide engineering services necessary to develop a budgetary estimate, contract documents and construction administration services associated with replacement of the fire alarm system in all buildings included BC1, BC2 and the boiler/laundry building. This work scope covers the design of fire alarm replacement including milestone review periods.

The Barron Center consists of three buildings including:

- **BC1, the main building:** Full-care nursing home (no assisted living), 3 floors and partial basement. Constructed in 1982. Mostly "resident" rooms with a commercial kitchen, dining areas, assembly hall and support spaces. Approximately 85,000 square feet. The original fire alarm system has been replaced once with a Faraday brand, zoned, analog system. The fire alarm system components consist of a mix of devices ranging from original construction to recent renovations.
- **BC2, the memory care (Alzheimer) building:** Single story, 5 pods. Constructed in 1992. Approximately 25,000 square feet total. It has a newer Siemens brand fire alarm system that appears to be addressable. This system has very limited communication with the main building's fire alarm system.
- **Laundry/boiler building:** Approximately 8000 square feet. It has remnants of a very old fire alarm system. It is unclear if this system is functional and if it is connected with the systems in the other buildings.

We understand that the Barron Center would like to replace the fire alarm systems in each of the buildings with a single, modern, code-compliant, addressable system. Consideration may be given to keeping the existing BC2 building fire alarm system in place and in service, with limited modifications to interface it with the new fire alarm system in BC1 and to add annunciators at each of the five nurse stations in BC2.

Scope of Services

Site Investigation, Concept Design Narrative and Budgetary Estimate Services

- Conduct site survey investigations to review the existing system conditions
- Develop a concept design narrative to define the basis of the design
- Develop a budgetary construction cost estimate with contingency, to help facilitate project funding

Preparation of Construction Documents Services

- Design a new fire alarm system including control panels, power supplies, initiating devices, notification devices, annunciators, interconnection with existing fire suppression systems (sprinkler system, kitchen hoods, etc.) and radio communication equipment (following Portland Fire Department requirements). The design shall include construction drawings and specifications.
- The construction documents shall document the proposed fire alarm system in sufficient detail so that the Barron Center can solicit competitive contractor bids.

Understanding and Assumptions

- Construction documents including drawings and specifications and cost estimates will be submitted to the Barron Center at 90% Construction Documents and 100% Final or Bid Documents for review and approval.

Bidding and Construction Administration Services

- Bidding and construction services will include fielding contractor's questions during bidding, issuing addendums if required to clarify contract documents, review of contractor bids, contractor submittal review, responding to contractor's construction questions (RFIs) and issuing of supplemental instructions if required.
- These services will conclude with review and final approval of contractor-prepared record drawings. These drawings will be based on the contractor's as-built drawings, and will be limited to that information that can be reasonably derived therefrom.

Assumption

It is assumed that Barron Center has electronic CAD drawing files available of each building for use on this project. If CAD drawings are not available, SMRT can work with the Barron Center to create drawing files for an additional fee.

Access to the Barron Center for survey work and similar activities will be during normal business hours (8AM to 5PM). Barron Center personnel will be available during surveys for access to all areas of the building.

Schedule

SMRT is prepared to begin services within two weeks of receipt of written authorization.

Compensation

SMRT proposes to complete the services as follows:

- Site Investigation, Concept Design Narrative and Budgetary Services: \$ 1,500 Fixed Fee
- Construction Documents: \$25,000 Fixed Fee
- Bidding and Construction Services: Time and Expense
(See attached SMRT Rate Sheet.)

This fee proposal is valid for 90 days.

Mr. John Key
September 15, 2016
Page 3 of 3

Professional Staff

The proposed SMRT project team is as follows:

Principal-In-Charge/Project Manager/Electrical Engineer
Electrical Engineer Intern

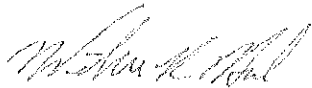
William R. Heil, PE
Robert Brink, EI

Terms and Conditions

The Scope of Work included in this proposal will be executed subject to the SMRT Standard Terms and Conditions, attached and made part of this proposal. If you are in agreement with the Scope of Work included please provide SMRT with Authorization to Proceed by signing and returning one copy of the attached authorization statement.

Thank you for this opportunity to be of service to the Barron Center and the City of Portland.

Sincerely,
SMRT Architects and Engineers



William R. Heil PE, LC, LEED-AP
Principal/Director of Electrical Engineering

144 Fore Street, PO Box 618
Portland, ME 04104
p 207.772.3846 f 207.772.1070 c 207.233.4307 email: wheil@smrtinc.com

cc: DJV, WRH, MJC, SB, File 00010-GV



AUTHORIZATION STATEMENT
For Scope of Professional Services

SMRT Architects and Engineers
P 877.700.7678
W www.smrtinc.com

Ordered By: Mr. John Key
Director, Environmental Services
City of Portland, Maine
Health and Human Services Department
Barron Center
1145 Brighton Avenue
Portland, Maine 04102

Description of Work: Engineering services necessary to develop a budgetary estimate, contract documents and construction administration services associated with replacement of the fire alarm system in all buildings included BC1, BC2 and the boiler/laundry building. (as described in the attached proposal letter dated September 15, 2016).

Fee Basis: SMRT proposes to complete the services as follows:

- Site Investigation, Concept Design Narrative and Budgetary Services:
\$ 1,500 Fixed Fee
- Construction Documents: \$25,000 Fixed Fee
- Bidding and Construction Services: Time and Expense
(See attached SMRT Schedule of Professional Hourly Billing Rates.)

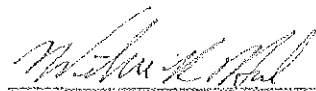
Terms: Terms and Conditions shall be as described in the attached SMRT Standard Terms and Conditions.

Approved and Accepted By: The Barron Center

Signature

Date

SMRT Architects and Engineers



September 15, 2016

Signature

Date



AUTHORIZATION STATEMENT
For Scope of Professional Services

SMRT Architects and Engineers
P 877.700.7678
W www.smrtinc.com

Ordered By: Mr. John Key
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City of Portland, Maine
Health and Human Services Department
Barron Center
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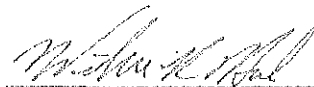
Terms: Terms and Conditions shall be as described in the attached SMRT Standard Terms and Conditions.

Approved and Accepted By: The Barron Center

Signature

Date

SMRT Architects and Engineers



September 15, 2016

Signature

Date



SCHEDULE OF HOURLY BILLING RATES

SMRT Architects and Engineers

P 877.700.7678

W www.smrinc.com

Effective January 1, 2016 through December 31, 2016

Senior Principal/Engineering Director	\$215
Director Engineering Services	\$215
Director Site Design Services	\$160
Principal	\$200
Senior Architect	\$180
Senior Engineer	\$180
Director Environmental Graphics	\$150
Project Architect	\$140
Sr. Interior Designer	\$115
Sr. Commissioning Agent	\$130
Sr. Landscape Architect	\$150
Architect	\$120
Engineer	\$135
Commissioning Services Manager	\$135
Commissioning Agent	\$120
Landscape Architect	\$110
EIT	\$105
Interior Designer	\$ 95
Senior Designer	\$105
Intern Interior Designer	\$ 85
Asst. Project Manager	\$ 85
Designer	\$ 85
Clerical	\$ 75
Senior Consultant/Regulatory Specialist	\$215
Director Special Projects	\$215
Reproductions	Cost plus 10%
Travel	IRS Standard Mileage Reimbursement Rate
Other Reimbursables	Cost plus 10%
Consultants	Cost plus 15%

SMRT reserves the right to adjust its billing rates annually.



SMRT Standard Terms and Conditions

ARTICLE 1 SMRT RESPONSIBILITIES

- 1.1 SMRT shall perform its services consistent with the professional skill and care ordinarily provided by such design professionals practicing in the same or similar locality under the same or similar circumstances. SMRT makes no warranty, express or implied, as to its professional services rendered under this Agreement. Accordingly, the Client should prepare and plan for clarifications and modifications to the construction documents, which may impact both the cost and schedule of the Project.
- 1.2 SMRT's services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Work. SMRT's services consist of those services performed by SMRT, SMRT's employees and SMRT's consultants as may be enumerated in the attached scope of work description.
- 1.3 Upon request of the Client, SMRT shall submit for the Client's approval a schedule for the performance of SMRT's services which may be adjusted as the Project proceeds, and shall include allowances for periods of time required for the Client's review and for approval of submissions by authorities having jurisdiction over the Project.

ARTICLE 2 ADDITIONAL SERVICES

- 2.1 Services additional to attached scope of work descriptions shall be provided if authorized or confirmed in writing by the Client and shall be paid for by the Client as mutually agreed with SMRT.
- 2.2 Client-directed revisions to the Project that necessitate redesign, after the construction document phase has commenced, shall be considered additional services.

ARTICLE 3 CLIENT'S RESPONSIBILITIES

- 3.1 The Client shall provide information which shall set forth the Client's objectives, schedule, constraints, budget with reasonable contingencies, and criteria.
- 3.2 The Client shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, a written legal description of the site and the services of geotechnical engineers or other consultants when such services are requested by SMRT.
- 3.3 SMRT will rely on the Client supplied information in carrying out its services.
- 3.4 The Client shall designate a representative authorized to act on the Client's behalf with respect to the Project. The Client or such authorized representative shall render decisions in a timely manner pertaining to documents submitted by SMRT in order to avoid unreasonable delay in the orderly and sequential progress of SMRT's services.
- 3.5 The Client hereby grants permission, or if the Client is not the record Client of the property, has obtained permission for SMRT to enter upon subject premises to take necessary measurements or perform necessary tests.

ARTICLE 4 USE OF SMRT'S DOCUMENTS

- 4.1 Documents prepared by SMRT, including all electronically created documents, are Instruments of Service for use solely with respect to this Project. SMRT shall retain all common law, statutory and other reserved rights, including the copyright. The Client shall not reuse or permit the reuse of SMRT's documents except by mutual agreement in writing.
- 4.2 SMRT's materials shall not include the Client's confidential or proprietary information if the Client has previously advised SMRT in writing of the specific information considered by the Client to be confidential or proprietary. The Client shall provide professional credit to SMRT in the Client's promotional materials for the Project.

ARTICLE 5 MEDIATION

- 5.1 In an effort to resolve any conflicts that arise during the design or construction of the Project or following the completion of the Project, the Client and SMRT agree that all disputes between them arising out of or relating to this Agreement shall be submitted to mediation as a condition precedent to litigation and within 90 days of discovery unless the parties mutually agree otherwise.

The Client and SMRT further agree to include a similar mediation provision in all agreements with independent contractors and consultants retained for the project and to require all independent contractors and consultants also to include a similar mediation provision in all agreements with subcontractors, subconsultants, suppliers or fabricators so retained, thereby providing for mediation as the primary method for dispute resolution between the parties to those agreements.

- 5.3 All claims, counter claims, disputes and other matters in question between the parties hereto arising out of or relating to this agreement, or the breach thereof, if not settled by mediation, shall be resolved by litigation, unless otherwise agreed by the parties at that time.

- 5.4 Mediation shall be held in the place where the Project is located and all costs of the mediation shall be shared equally by both parties.

ARTICLE 6 TERMINATION, SUSPENSION OR ABANDONMENT

- 6.1 In the event of termination, suspension or abandonment of the Project, SMRT shall be equitably compensated for services performed. Failure of the Client to make payments to SMRT in accordance with this Agreement shall be considered substantial nonperformance and is sufficient cause for SMRT to withhold design documents, suspend or terminate services. Either SMRT or the Client may terminate this agreement after giving no less than seven (7) days written notice if the other party substantially fails to perform in accordance with the terms of this Agreement.

ARTICLE 7 MISCELLANEOUS PROVISIONS

- 7.1 This Agreement shall be governed by the laws of the state where the project is located unless otherwise mutually agreed upon.
- 7.2 The Client and SMRT, respectively, bind themselves, their partners, successors, assigns and legal representatives to this Agreement. Neither party to this Agreement shall assign the contract as a whole without written consent of the other.
- 7.3 SMRT and SMRT's consultants shall have no responsibility for the identification, discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials in any form at the Project site.
- 7.4 In no event shall the total aggregate liability arising from professional acts, errors and omissions exceed the total fee for services rendered on the project.
- 7.5 The Client and SMRT waive consequential damages for claims, disputes or other matters in question arising out of or related to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement.
- 7.6 To the extent damages are covered by property insurance, the Client and SMRT waive all rights against each other and against the contractors, agents, employees of the other for damage. The Client and SMRT shall require contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.
- 7.7 If a required item or component of the Project is omitted from the construction documents, SMRT shall not be responsible for paying the cost required to add such an item or component to the extent that such item or component would have been required and included in the original construction documents. In no event will SMRT be responsible for any cost or expense that provides betterment or upgrades or enhances the value of the Project.

ARTICLE 8 PAYMENTS TO SMRT

- 8.1 An initial payment may be required and described in an attachment to this Agreement. This initial payment shall be credited toward SMRT's final invoice.
- 8.2 Payments on account of SMRT's services, reimbursable expenses and additional services when authorized shall be made monthly upon presentation of SMRT's statement of services rendered or expenses incurred.
- 8.3 Payments are due and payable upon receipt of SMRT's invoice. Amounts unpaid thirty (30) days after the invoice date shall bear interest at the rate of eighteen percent (18%) per annum.

ARTICLE 9 OTHER CONDITIONS AND SERVICES

- 9.1 Purchase Orders, when duly executed by the Client's authorized personnel, shall constitute for SMRT an acceptable notice to proceed with services. Terms and Conditions defined herein shall supersede those defined in any Purchase Order identified with SMRT services. The Purchase Order Number shall be used by SMRT as the Client's project identification number.
- 9.2 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations.

*Order 152-16/17
Tab 11 3-6-17*

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 AMENDING AGREEMENT BETWEEN THE CITY OF PORTLAND AND
MAINE DEPARTMENT OF TRANSPORTATION
RE: FOREST AVENUE AND WOODFORD'S CORNER IMPROVEMENTS**

ORDERED, that the two-party agreement between the City of Portland and the Maine Department of Transportation (MaineDOT), identified as WIN #020543, approved by Order 172-14/15 on March 21, 2016 and , is hereby amended and approved in substantially the form attached as WIN #020543.10, for work on Forest Avenue and at Woodford's Corner; 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: Chris Branch, Director of Public Works
Katherine Earley, PE, Engineering Manager/City Engineer
Jeremiah Bartlett, PE, PTOE, Transportation Systems Engineer

DATE: February 16, 2017 *RVSD Feb 27, 2017*

SUBJECT: Woodford's Corner - Modify Two-Party Agreement with MaineDOT

SPONSOR: Jon Jennings, City Manager

(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 March 6, 2017 **Final Action** March 20, 2017

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

This agreement modification is vital to MaineDOT's ability to proceed with Bid Advertisement on May 15.

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

I. ONE SENTENCE SUMMARY

The scope and costs of the Woodford's Corner project have been increased, therefore we must modify the City/MaineDOT agreement authorized previously by Order #172-14/15.

II. AGENDA DESCRIPTION

City Council action is necessary to **modify** the two-party agreement with MaineDOT for the Woodford's Corner Intersection Improvement project. The original two-party agreement was approved by the City Council on March 21, 2016 (Council Order 172-14/15).

During the design process three (3) utility system upgrades were added to the project scope. Specifically, Unutil, Portland Water District, and City of Portland Water Resources systems will all be upgraded/replaced within the project zone. The resulting level of impact to Forest Avenue and a short section of Deering Avenue will be significant enough to warrant full street reconstruction.

All three (3) utilities will be making their own contributions to this effort through separate agreements with MaineDOT. The additional cost of street reconstruction is outside of the original scope of the project; those additional costs will be borne by the City.

III. BACKGROUND

This intersection improvement project evolved as a specific recommendation of the City's *Transforming Forest Avenue Study* and was initially funded by the 2014/2015 PACTS TIP Program. Specific objectives include improving the multi-modal features and vehicular capacity, reducing cut-thru traffic in the Back Cove neighborhood, neighborhood place-making, and retaining the City's Quiet Zone status. Delays occurred as negotiations with Pan Am took place and the project is now scheduled for 2017 construction. Several meetings with specific stakeholders have taken place, in addition to several public meetings being held. The City's web site has established a link specific to this project at:

<http://www.portlandmaine.gov/1705/Woodfords-Corner>

IV. INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED

This project advances recommendations from the *Transforming Forest Avenue Study* adopted by City Council in 2012 as well as US EPA water quality requirements as part of the City's CSO Program Compliance Order.

V. FINANCIAL IMPACT

The project is now estimated to cost \$3,183,728. The City's Local Share obligations are 10% for the core of the project, i.e. sidewalk, signal and other transportation items. The City has added design, paving, rail crossing work, and street reconstruction not covered by Federal and State shares and therefore pays 100% of those costs (\$987,199.22). Appendix A of the agreement spells out all the details; the total estimated amount owed by the City is \$1,206,852.10, or an increase of \$566,375.

Funding resources for this project are provided by three categories of previously appropriated CIP funds:

- A. FY13 and FY15 CIP accounts for "Transforming Forest Avenue"
- B. FY13, FY14, and FY15 CIP accounts for "Railroad Quiet Zone" compliance
- C. FY17 CIP for "Pavement Preservation"

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

MaineDOT is now concluding right-of-way negotiations process and currently projects a bid advertisement in May 2017. It is noted that this project must commence and conclude in 2017 as we then expect the "USM Roundabouts" project to proceed in 2018. As such, timing remains critical on this project.

This project was originally intended to be constructed in 2015, and then 2016. By fall of 2016, it was clear that this work would conflict with pending utility needs for the City, and the utility and transportation projects would best be served as a single unified effort.

Our funding resources include:

- A. Four specific CIP accounts will supply the funding for the original costs (\$640,477.10) in the existing agreement of March 2016:

➤ Entirety of C13101 (Local Match account for this project) = \$250,000

- Allowance from C13403 (Railroad Quiet Zone) = \$50,000
- Expected surplus from C13102 (Exit 6 project) = \$150,000
- Portion of C15401 (Forest/State/Marginal) = \$190,477.10 (of the \$400,000 total appropriation)

B. To provide the increased value of the City's match (\$566,375) for this modified agreement, the following existing CIP resources are proposed:

- Remainder of C13403 (Railroad Quiet Zone) = \$31,039.72
- Remainder of C14403 (Railroad Quiet Zone) = \$98,233.57
- Portion of C15404 (Railroad Quiet Zone) = \$97,550.93 (of the total \$400,000 appropriation)
- Remainder of C15401 (Forest/State/Marginal) = \$209,522.90
- Portion of C17102, Paving Preservation and Rehabilitation = \$130,027.88

VII. RECOMMENDATION

The Department of Public Works supports the increased scope of Utility and street reconstruction, and strongly recommends authorizing this agreement. Although costs have risen substantially as the project design has progressed, the City still enjoys the benefit of a 62% leveraged Transportation project that implements the #1 priority of the *Transforming Forest Avenue Study*. In addition, this work will now address a major area of concern for our US EPA water quality compliance requirements.

VIII. LIST ATTACHMENTS

- MaineDOT Municipal/State agreement

Prepared by: Jeremiah Bartlett, PE, PTOE

Date: February 16, 2017 RVSD 2/27/17

Internal Use Only

TEDOCS #: _____

DOT Generated #: DOT0516-35945

CSN#: 35945

MODIFICATION # 1 TO MUNICIPAL/STATE AGREEMENT

MaineDOT Program / Division / Office: Multimodal Program

MaineDOT Contact Person: Aurele Gorneau II

Project Location: Portland

State W.I.N. #: 020543.00/020543.10

Federal W.I.N. #: STP-2054(300)/STP-2054(310)

Vendor Customer #: 17A12984

Original Agreement Receivable Amount: \$640,477.10

Current Agreement Receivable Amount: \$640,477.10

Modified Agreement Receivable Amount: \$1,206,852.10 ☐ N/A

Current Agreement Expiration Date: 5/20/2019

Modified Agreement Expiration Date: _____ ☒ N/A

This Modification hereby amends a Municipal/State Agreement (Agreement) that was executed by MaineDOT on 5/20/2016, with the Municipality of PORTLAND for FOREST AVENUE/WOODFORD'S CORNER for the above referenced project as follows:

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

- ☒ Appendix A – Project scope, cost sharing, and payment schedule
- ☐ Appendix B – Bicycle/Pedestrian Facility Maintenance
- ☐ Appendix B – Landscape Maintenance
- ☐ Appendix B – Lighting/Flashing Beacon Operation and Maintenance
- ☐ Appendix B – Traffic Signal Operation and Maintenance
- ☒ Appendix C – Additional work requested by Municipality

☒ **Increased Receivable Amount.** The Municipal Share (estimated receivable amount) of the Agreement shall be increased by: \$566,375.00 from \$640,477.10 to \$1,206,852.10.

☐ **Expiration Date.** The Expiration Date of the Agreement shall be extended from _____ to _____.

☒ **Change in Scope of Work.** The Scope of Services specified in the Agreement shall be modified by CHANGE FROM MILL AND PAVE TO FULL DEPTH CONSTRUCTION.

All other terms and conditions of the original Agreement shall remain in effect. This Modification hereby becomes part of the original Agreement. MaineDOT and the Municipality of PORTLAND, by their duly authorized representatives, have executed this modification to said original Agreement, which shall become effective on the date last signed below.

MUNICIPALITY OF PORTLAND

MAINE DEPARTMENT OF TRANSPORTATION

By: _____
Jon Jennings, City Manager

By: _____
Dale Doughty, Director, Maintenance & Operations

Date

Date

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 FOREST AVENUE/WOODFORD'S CORNER

FEDERAL AID PROJECT NO. STP-2054(300)

STATE PROJECT IDENTIFICATION NUMBER (WIN) 20543.00

Project Scope:

Reconfigure Forest Ave. traffic pattern at Woodford's Corner and Ocean Ave, widen sidewalks, add streetscape aesthetics, extend shared lane bikeways and reduce crossing distances for pedestrians.

Funding Outline:

The Total Project Estimated Cost for WIN 020543.00 is \$ 2,629,126.00 , and the Parties agree to share costs through all stages of the Project under the terms outlined below.

Combined Funding Outline:

The combined total Project Estimated Cost for WIN 020543.00 & WIN020543.10 is \$ 3,183,728.00

Work Element	Municipal Share		Project Share				Total Cost
			MPO	Portion	MaineDOT (State) Portion		
	%	\$	%	\$	%	\$	\$
Preliminary Engineering	10.0%	\$ 22,481.30	80.0%	\$ 179,850.40	10.0%	\$ 22,481.30	\$ 224,813.00
Right of Way	10.0%	\$ 6,250.00	80.0%	\$ 50,000.00	10.0%	\$ 6,250.00	\$ 62,500.00
Construction	10.0%	\$ 148,156.30	80.0%	\$ 1,185,250.40	10.0%	\$ 148,156.30	\$ 1,481,563.00
Construction Engineering	10.0%	\$ 14,987.50	80.0%	\$ 119,900.00	10.0%	\$ 14,987.50	\$ 149,875.00
PROJECT SHARES		\$ 191,875.10		\$ 1,535,000.80		\$ 191,875.10	\$ 1,918,751.00
Total Cost of Additional Work Requested by Municipality (Below)	100.0%	\$ 710,375.00					
TOTAL ESTIMATED MUNICIPAL SHARE (Receivable Amount for WIN's 20543.00/.10)		\$ 1,206,852.10					

APPENDIX A CON'T.
PROJECT SCOPE AND COST SHARING
MAINE DEPARTMENT OF TRANSPORTATION
MUNICIPAL/STATE AGREEMENT
Transportation Improvement Project

MUNICIPALITY OF PORTLAND

PROPOSED IMPROVEMENTS TO FOREST AVENUE/WOODFORD'S CORNER

FEDERAL AID PROJECT NO. STP-2054(310)
STATE PROJECT IDENTIFICATION NUMBER (WIN) 20543.10

Project Scope: Upgrade the Railroad crossing signals and gates to current standards and to meet the new roadway and pedestrian facility widths.

Funding Outline: The Total Project Estimated Cost for WIN 020543.10 is \$ 554,602.00 , 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
	%	\$	Federal	Portion	MaineDOT (State) Portion		
Preliminary Engineering	10.0%	\$ 2,050.00	90.0%	\$ 18,450.00		\$ -	\$ 20,500.00
Right of Way		\$ -		\$ -		\$ -	
Construction	10.0%	\$ 25,562.78	90.0%	\$ 230,065.00		\$ -	\$ 255,627.78
Construction Engineering	10.0%	\$ 165.00	90.0%	\$ 1,485.00		\$ -	\$ 1,650.00
PROJECT SHARES		\$ 27,777.78		\$ 250,000.00		\$ -	\$ 277,777.78
Total Cost of Additional Work	100.0%	\$ 276,824.22					
TOTAL ESTIMATED MUNICIPAL		\$ 304,602.00					

(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	
PE - Design to include Full Construction on Forest Ave. WIN 20543.00		\$	56,250.00
CON - FULL CONSTRUCTION incl. \$90,125 CE WIN 20543.00		\$	654,125.00
CON - Balance of Construction cost for RR Crossing above \$277,777.78 covered in WIN 20543.10		\$	276,824.22
TOTAL COST OF ADDITIONAL WORK REQUESTED BY MUNICIPALITY		\$	987,199.22

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	\$1,112,416.31	5/1/2017
PORTLAND	\$94,435.79	7/1/2018
Total Receivable Amount:	\$1,206,852.10	

APPENDIX C
Additional Work

MAINE DEPARTMENT OF TRANSPORTATION
MUNICIPAL/STATE AGREEMENT
Transportation Improvement Project

MUNICIPALITY OF PORTLAND

PROPOSED IMPROVEMENTS TO FOREST AVENUE/WOODFORD'S CORNER

FEDERAL AID PROJECT NO. STP-2054(300)/STP-2054(310)
STATE PROJECT IDENTIFICATION NUMBER (WIN) 020543.00/020543.10

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

FULL DEPTH RECONSTRUCTION along Forest Ave. from Station 12+50 to 28+50 and upgrade the crossing signals at approximately Station 26+50+/-

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 the Department as set forth in the latest version of its *"Highway Design Guide"* and *"Standard Details for Highways and Bridges"* and comply with the Department's Utility Accommodation Policy as set forth in its *"Policy On Above Ground Utility Locations"*.
- 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 the Department'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 the Department 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 the Department'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 the Department. A copy of the

Department'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 the Department 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 the Department.
- b) If the bid price for such additional work is acceptable to the Municipality, the Municipality shall pay the Department, 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, the Department 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 the Department 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.

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**

*Order 153-16/17
Tab 12 3-6-17*

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

**ORDER AUTHORIZING GENERAL OBLIGATION BONDS
TO FINANCE A PORTION OF THE CITY'S FY18 CAPITAL IMPROVEMENT
PROGRAM IN AN AMOUNT NOT TO EXCEED \$24,340,500**

FOLLOWING a public hearing of the City Council of the City of Portland, Maine, held upon due notice pursuant to Article VII, Section 9 of the City Charter, **IT IS HEREBY ORDERED THAT:**

There be and hereby is authorized and approved the incurring of indebtedness by the City of Portland and the issue and sale of general obligation bonds and notes in anticipation thereof in the aggregate principal amount not to exceed Twenty Four Million Three Hundred Forty Thousand Five Hundred Dollars (\$24,340,500) to finance the items identified in the City's 2018 Capital Improvement Program attached hereto as Exhibit A and all other costs (as defined herein) related and ancillary thereto (the "Projects").

BE IT FURTHER ORDERED:

1. That the Finance Director be and hereby is authorized to prepare, issue, and sell such bonds in the name of and on behalf of the City, in the aggregate amount of \$24,340,500 (the "Bonds") at one time, or from time to time, as one or more separate bond issues, and to determine the date, form, minimum denomination, interest rates (as term bonds or serial bonds or some combination thereof), maturities (with the last maturity not to exceed the maximum term permitted by law) and all other details, terms and provisions, note inconsistent herewith, including the form and manner of their sale and award as he may approve, such approval to be conclusively evidenced by the execution thereof;

2. That the Finance Director be and hereby is authorized to borrow money in anticipation of said Bonds by the issuance and sale of notes or renewal notes in anticipation of said Bonds ("BANs"), and to determine the date, form, minimum denominations, interest rate, maturities (with the last maturity not to exceed 3 years from its date of issuance) and all other details of each issue of BANs, including the form and manner of their sale and award, subject to the provisions of the law, the City Charter and this Order;

3. That the Finance Director be and hereby is authorized to provide that any of the Bonds and BANs hereinbefore authorized be made subject to call for redemption, with or without premium, prior to their stated dates of maturity, as provided in 30-A M.R.S.A. §5772(6), as amended;

4. That the Bonds and BANs issued hereunder shall be signed by the Finance Director and by the Mayor, either or both of whose signatures may be by facsimile to the extent permitted by law, attested to by the City Clerk, under the seal of the City, and shall be in such form and contain such

terms and provisions not inconsistent herewith as they may approve, their approval to be conclusively evidenced by their execution thereof;

5. That the Finance Director is authorized to negotiate, execute, and deliver, in the name of and on behalf of the City such contracts, agreements, instruments and other documents and certificates as may be necessary or appropriate, as determined and approved by the Finance Director, in connection with the financing of the Projects, including a loan agreement in usual and customary form with the Maine Municipal Bond Bank (the "Bond Bank"), to the extent any of the Bonds or BANs authorized herein are issued pursuant to the State of Maine Clean Water Revolving Loan Fund (CWSRF) program established under 30-A M.R.S.A. §6006-A and administered by the Department of Environmental Protection, which contracts, agreements, loan agreements, instruments and other documents and certificates shall be in such form and contain such terms and conditions, not inconsistent herewith, as may be approved by the Finance Director such approval to be conclusively evidenced by his execution thereof;

6. That the Finance Director be and hereby is authorized to select the underwriter for the Bonds or BANs heretofore authorized and the Finance Director be and hereby is authorized and empowered to execute and deliver such contracts or agreements as may be necessary or appropriate in connection therewith;

7. That the Finance Director be and hereby is authorized to prepare, or cause to be prepared, a Preliminary Official Statement and an Official Statement for use in the offering and sale of the Bonds or BANs heretofore authorized, such Preliminary Official Statement and Official Statement to be in such form and contain such information as may be approved by the Finance Director, with the advice of the bond counsel for the City, and that the use and distribution of the Preliminary Official Statement and the Official Statement in the name of and on behalf of the City in connection with offering the Bonds or BANs for sale be and hereby is approved;

8. That the Finance Director be and hereby is authorized to select the registrar, paying agent and transfer agent (the "Transfer Agent") for the Bonds or BANs heretofore authorized and to execute and deliver such contracts and agreements as may be necessary or appropriate to secure their services;

9. That the Bonds or BANs heretofore authorized shall be transferable only on the registration books of the City kept by the Transfer Agent, and said principal amount of the bonds of the same maturity (but not of other maturity) in minimum denominations of \$5,000 and any integral multiple in excess thereof upon surrender thereof at the principal office of the transfer agent, with a written instrument of transfer satisfactory to the transfer agent duly executed by the registered owner or his attorney duly authorized in writing. Upon each exchange or transfer of a bond the City and the Transfer Agent shall make a charge sufficient to cover any tax, fee or any other governmental charge required to be payable with respect to such exchange or transfer, and with respect to such exchange or transfer, and subsequent to the first exchange or transfer, the cost of preparing new bonds upon exchanges or transfer thereof to be paid by the person requesting the same;

10. That the Finance Director be and hereby is authorized to undertake all acts necessary to provide for the issuance and transfer of such Bonds or BANs heretofore authorized in book-entry form pursuant to the Depository Trust Company Book-Entry Only System, as an alternative to the provisions of the foregoing paragraph above regarding physical transfer of Bonds or BANs, and the Finance Director be and hereby is authorized and empowered to enter into a Letter of Representation

or any other contract, agreement or understanding necessary or, in his opinion, appropriate in order to qualify the Bonds or BANs for and participate in the Depository Trust Company Book-Entry Only System;

11. That the Finance Director and Mayor from time to time shall execute such Bonds or BANs as may be required to provide for exchanges or transfers of Bonds or BANs as heretofore authorized, all such Bonds or BANs to bear the original signature of the Finance Director and Mayor, and in case any officer of the City whose signature appears on any Bond or BAN shall cease to be such officer before the delivery of said Bond or BAN, such signature shall nevertheless be valid and sufficient for all purposes, the same as if such officer had remained in office until delivery thereof;

12. That if the Bonds or BANs, or any part of them, are issued on a tax-exempt basis, the Finance Director be and hereby is authorized and directed to covenant and certify on behalf of the City that no part of the proceeds of the issue and sale of the Bonds or BANs authorized to be issued hereunder shall be used directly or indirectly to acquire any securities or obligations, the acquisition of which would cause such Bonds or BANs to be "arbitrage bonds" or "private activity bonds" within the meaning of Sections 148 and 141 of the Internal Revenue Code of 1986, as amended;

13. That if the Bonds or BANs, or any part of them, are issued on a tax-exempt basis, the officers or officials executing the Bonds or BANs be and hereby are individually authorized to covenant and agree, on behalf of the City, for the benefit of the holders of such Bonds or BANs, that the City will file any required reports and take any other action that may be necessary to insure that interest on the notes will remain exempt from federal income taxation, and that the City will refrain from any action that would cause interest on the Bonds or BANs to be subject to federal income taxation;

14. That the officers executing the Bonds or BANs be and hereby are individually authorized to covenant, certify and agree, on behalf of the City, for the benefit of the holders of such Bonds or BANs, that the City will file any required reports, make any annual financial or material event disclosure, and take any other action that may be necessary to insure that the disclosure requirements imposed by Rule 15c2-12 of the Securities and Exchange Commission, if applicable, are met;

15. That any or all of the Bonds or BANs issued hereunder may be consolidated with and become a part of any other issue of temporary notes or general obligation bonds authorized to be issued by any previous or subsequent order of the City Council of the City of Portland;

16. That the term "cost" or "costs" as used herein and applied to the Projects, or any portion thereof, includes, but is not limited to (1) the cost to design, acquire, construct, renovate, improve, furnish and equip the Project, or any portion thereof; (2) the cost of land, easements and other real property interests, landscaping and site preparation, including demolition and environmental remediation work on any existing building or structure and on the property where the Project is located, utility extensions and site improvements, and all appurtenances and other fixtures, facilities, buildings and structures either on, above, or under the ground which are used or usable in connection with the Project; (3) the cost of feasibility studies, surveys, environmental studies and assessments, engineering, plans and specifications, legal and other professional services associated with the Project; (4) issuance costs, including premiums for insurance, capitalized interest and other fees and expenses relating to the financing transaction.

17. That if the actual cost of any Project differs from the estimated cost on the attached Exhibit A, whether due to completion, delay or abandonment of the Project for any other reason, the Finance Director is authorized, in his discretion to reallocate proceeds of the Bonds to any other listed Project or to any other project or improvement that the City Council has approved or may in the future approve as part of the City's annual capital improvement plan;

18. That the Finance Director, Mayor and Clerk and other proper officials of the City be, and hereby are authorized and empowered in its name and on its behalf to do or cause to be done all such acts and things, not inconsistent herewith, as may be necessary or desirable in order to effect the issuance, sale and delivery of the Bonds or BANs hereinabove authorized;

19. That if any of the officers or officials of the City who have signed or sealed the Bonds shall cease to be such officers or officials before the Bonds or BANs so signed and sealed shall have been actually authenticated or delivered by the City, such Bonds or BANs nevertheless may be authenticated, issued, and delivered with the same force and effect as though the person or persons who signed or sealed such Bonds or BANs had not ceased to be such officer or official; and also any such bonds or notes may be signed and sealed on behalf of the City by those persons who, at the actual date of the execution of such Bonds or BANs, shall be the proper officers and officials of the City, although at the nominal date of such Bonds or BANs any such person shall not have been such officer or official;

20. That if the Finance Director, Mayor or Clerk are for any reason unavailable to approve and execute the Bonds or BANs or any other documents necessary or convenient to the issuance, execution and delivery of the Bonds or BANs, the person or persons then acting in any such capacity, whether as an assistant, a deputy, or otherwise, is authorized to act for such official with the same force and effect as if such official had performed such act.

21. That the Bonds or BANs authorized by this Order are in addition to any bonds or notes previously authorized for the same or similar purposes;

22. That to the extent not payable from other funds, an amount sufficient for the payment of the annual payments of principal and interest on the Bonds or any BANs issued hereunder shall be included in the tax levy of each year until the debt represented by said Bonds or BANs is extinguished.

23. That the following resolutions required by Section C(4)(e) of the State of Maine Revolving Loan Fund Rules, Chapter 595, Department of Environmental Protection and Maine Municipal Bond Bank (the "SRF Regulations"), and governing the loan to be made to the City under the State Revolving Loan Fund Program be and hereby are adopted:

- a. That a Project Account shall be created for the Projects which shall be separate from all other accounts of the City. If operating revenues are to be used to retire the debt, a sub-account will be established.
- b. That the Project Account shall be maintained in accordance with standards set forth by the Bond Bank and in accordance with generally accepted government account standards.

- c. That a final accounting shall be made to the Bond Bank of the total cost of each Project upon completion of the Project performance certification as set out in Section G(3) of the SRF Regulations and the City acknowledges that the Bond Bank reserves the right at its sole discretion to be provided with a cost certification of the Project as built.
- d. That an annual audit of the City, prepared by a certified public accountant or licensed public accountant be provided to the Bond Bank for the term of the loan.
- e. That the City shall maintain insurance coverage on the Projects in an amount adequate to protect the Bond Bank's interest for the term of the loan with the Bond Bank named as loss payee.
- f. That the City will comply with any special conditions specified by the Department of Environmental Protection's environmental determination until all financial obligations to the State have been discharged.
- g. That the City certify to the Bond Bank that it has secured all permits, licenses and approvals necessary and that it has a dedicated source of revenue for repayment.
- h. That the City establish a rate, charge or assessment schedule in order to pay principal and interest. Such rate change or schedule shall provide total operations and debt service coverage at a level at which the coverage for the Bond Bank is sufficient.
- i. That the City must demonstrate the ability to pay reasonably anticipated costs of operating and maintaining the financed Project.
- j. That the City abide by the SRF Regulations, as revised and amended and relevant State statutes of the State of Maine.

24. That during the term any of the Bonds (or bonds issued to refund such Bonds) are outstanding, the Finance Director be and hereby is authorized to issue and deliver refunding bonds to refund some or all of the Bonds then outstanding, and to determine the date, form, interest rate, maturities and all other details of such refunding bonds, including the form and manner of their sale and award. The Finance Director be and hereby is further authorized to provide that any of such refunding bonds hereinbefore authorized be made callable, with or without premium, prior to their stated date(s) of maturity, and each refunding bond issued hereunder shall be signed by the Finance Director and by the Mayor, either or both of whose signatures may be by facsimile to the extent permitted by law, attested to by the City Clerk, under the seal of the City, and shall be in such form and contain such terms and provisions not inconsistent herewith as they may approve, their approval to be conclusively evidenced by their execution thereof.

Exhibit A

FY18 CIP - General Fund

	Bonded Amount	Other Funding
Transportation		
<i>PACTS/Match/Other Leveraged Funds</i>		
PACTS TIP Intersection Project - Brighton-Deering-Falmouth (USM Roundabout)	\$ 767,200	
PACTS RTMS (Regional Transportation Management Systems) - Traffic Signals	260,000	
PACTS TIP Congress Street Signals	110,313	
MPI PACTS paving - Allen Avenue	130,500	
PACTS Collector paving: Veranda Street	85,000	
<i>Traffic Signals / Lights</i>		
Traffic Signals at Various Locations	600,000	
Streetlights: Implement LED Conversion	500,000	
Traffic Signal Work in Support of Paving Programs	210,000	
<i>Streets/Sidewalks</i>		
Pavement Preservation Program	2,700,000	200,000
Thames Street Extension Engineering and Construction	1,400,000	-
Sidewalk Rehabilitation/Accessibility	500,000	100,000
CSO Compliance - SRF Ineligibles	600,000	-
Washington Ave Rehabilitation (Cumberland to E. Prom)	250,000	-
Somerset Street Project Phase 1B	-	240,000
Street Rehabilitation Program	200,000	-
Railroad Quiet Zone Improvements	25,000	-
Transportation Total	\$ 8,338,013	\$ 540,000
Facilities		
<i>Buildings/Garages</i>		
Waterproof Decking & Conditional Appraisal Repairs at Spring Street Garage	\$ 350,000	
Dectron Air Handling Replacement for Riverton Pool	300,000	
Three Air Handling Units at Public Safety	300,000	
Temple St Parking Garage Cond. Appraisal Repairs	240,000	
Masonry, Windows, remodel at Munjoy Public Safety building	200,000	
Homeless Shelter Planning	125,000	
Fire Station Paving Projects	50,000	
<i>Marine</i>		
Waterfront Fender Systems	1,000,000	
Floats at Cushing Island, Maine State Pier, East End Beach, Peaks	100,000	
Compass Park - Ongoing pile/pier work	100,000	
<i>School Facilities</i>		
Deering High School Windows		750,000
PATHS/CBHS, Presumpscot, Longfellow, DHS & King Campus Paving		500,000
Lyman Moore - Boiler Replacement		300,000
East End Community School Wall Repair		250,000
Deering High School Functional Life Safety Space	66,040	84,960
Energy Management Control Upgrades		50,000
Deering High School Kitchen Remodel / Upgrade		50,000
Engineering for Roofs		40,000
King - Fire Alarm Replacement Engineering		20,000
Lyman Moore - Fire Alarm Replacement Engineering		20,000
PATHS - Technology / Network Engineering		20,000
Facilities Total	\$ 2,831,040	\$ 2,084,960
Parks, Fields, Trails		
<i>Parks, Fields, Trails</i>		
Lyman Moore Field Upgrades and Drainage	\$ 450,000	
Lincoln Park Fence Repair	300,000	
Amethyst Lot Engineering	300,000	
Congress Square Park	150,000	
Peaks Island, Great Diamond & Cliff Island Playground Replacements	110,200	
Deering Oaks and DHS -Tennis/Basketball Court Resurfacing	100,000	
Riverside Golf Course Culvert Repair/Replacement	50,000	
Parks, Fields, Trails Total	\$ 1,460,200	
Equipment and Vehicles		
<i>Equipment</i>		
District Phone System	225,000	
Chiller Replacement	225,000	
Phone System Upgrade	200,000	

Replace Patient Call System	116,000	
Virtualization, Storage and Redundancy Upgrade	55,000	
EMR and Wi Fi	54,497	
Power Line Connection for Ocean Avenue Solar Array	50,000	
Security Management System	35,000	
Portland Public Library - VOIP Conversion	35,000	
Vehicles		
Engine 6 Replacement - Fire 0279	700,000	
Scheduled Ambulance Replacement	480,000	
Loader 5112 and blower 7112 - DPW Winter	335,000	
Sidewalk Tractors Replacement (2)	280,000	
Police Cruisers (7)) Replacement - Police	266,000	
Rubbish Packer Replacement	265,000	
Rubbish Packer Replacement - Park Barrels 4042	250,000	
TA Dump Truck Replacement - DPW Winter 3098	205,000	
Wheel Loader Replacement - Parks/Winter 5101	195,000	
SA Plow Truck Replacement - Winter 3125	165,000	
SA Plow Truck Replacement - Winter 3036	165,000	
Rolloff Truck Replacement - Solid Waste 4000	150,000	
Replacement School Bus	132,000	
Bucket Truck Replacement - Traffic 5110	125,000	
Mower 16' Replacement - Parks 7155	95,000	
Toolcat DPW Winter 5004	70,000	
1 Ton Utility Truck Replacement - Traffic 2515	55,000	
GPS Locating for Winter Vehicles/Equipment	50,000	
Skidsteer Replacement - Districting/Winter 5102	45,000	
3/4 Ton Pickup Replacement - Barron Center 3908	38,000	
Replace Forestry Chipper	35,000	
3/4 Ton Utility Van (Pickup to Van Replacement) - Trades - 2004	30,000	
3/4 Ton Utility Van (Pickup to Van Replacement) - Trades 2003	30,000	
Refurbished Floor Scrubber for Canco Properties	18,000	
Equipment and Vehicles Total	5,174,497	
Sub-Total FY18 CIP (General Fund)	\$ 17,803,750	\$ 2,624,960

<u>FY18 CIP - Sewer Fund</u>		
Sewer / Stormwater		
CMOM - Inflow and Infiltration Program	\$	260,000
CMOM - Sewer System Renewal		1,100,000
CMOM - Pump Station Rehabilitation		670,000
Engineering Services on Water Resource Projects		300,000
Morrill's Corner Sewer Replacement		250,000
Eastern Waterfront Sewer / Stormwater Extension & Outfall		175,000
Integrated Planning LTCP and Post Construction Monitoring Program		1,000,000
Stormwater Infrastructure Improvements		200,000
Warren Ave Storm Drain - S17 Warren Ave to 659 Warren Ave		990,000
Franklin Street Storm Drain		300,000
Peaks Island Green Infrastructure		50,000
Green Infrastructure		200,000
Smart Cover Systems for SSO's		45,000
Pole Camera		20,000
PACTS Veranda St paving - ineligible Utility costs		18,000
Pavement Preservation Program - Utility costs		200,000
MPI Paving Program - Utility costs		13,750
Street Sweepers Replacement		215,000
Skidsteer w/ Attachments		75,000
Tracked Jet Cleaner		45,000
Midsize Wheel Loader		150,000
Rubber Tired Excavator		200,000
3/4T Pickup Truck		35,000
Tank Truck		25,000
Sewer / Stormwater Total	\$	6,536,750
TOTAL CIP (General Fund & Sewer Fund)	\$	24,340,500
COMBINED TOTAL CIP (General Fund & Sewer Fund)	\$	26,965,460

MEMORANDUM
City Council Agenda Item

TO: Mayor and City Council

FROM: Brendan T O'Connell – Finance Director (submitting on behalf of Finance Committee)

DATE: 2/27/2017

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

SUBJECT: Orders Authorizing and Appropriating the FY18 Capital Improvement Plan Funds

SPONSOR: Jon P. Jennings, City Manager

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st reading ____ 3/6/17 ____ Final Action ____ 3/20/17 ____

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

PRESENTATION: None

I. SUMMARY OF ISSUE (Agenda Description)

On February 16, 2017 and March 2, 2017 the Finance Committee considered the FY18 Capital Improvement Plan ("CIP") proposal to authorize \$17.8M of general fund general obligation bonds and \$6.5M of sewer fund general obligation bonds. Upon recommendation of the FY18 CIP by the Finance Committee this proposal will be taken up by the full City Council in March 2017. Two orders are required, one authorizing the FY18 CIP bonds, and another appropriating the proceeds. A complete listing of the projects being authorized is included within the orders.

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

The City Charter requires the City Manager "To prepare a five (5) year rolling capital improvement plan for annual presentation to the city council". Approval of these orders is a critical component of the one year CIP. City staff is working towards earlier approval of the CIP (last year's CIP was approved in late April 2016). Earlier CIP approval allows the City to get projects out to bid sooner before many of the best contractors have already filled calendars with spring, summer and fall work.

III. INTENDED RESULT

Approval of the FY18 CIP will allow staff to move forward immediately with the include projects, including many City and School projects which are slated to begin during 2017.

IV. COUNCIL GOAL ADDRESSED

As noted previously, the CIP is a requirement of the City Charter and a duty of the City Manager. These actions will trigger compliance with the City Charter requirements.

V. FINANCIAL IMPACT

For the past several fiscal years, the CIP borrowings have been designed to ensure no increases to the overall City budget for debt service. In the current year, a general fund borrowing of \$12.8M would have triggered no increase to the City debt service budget. However, due to an escalating backlog of City capital maintenance, the City manager has pushed forward with a recommendation of an additional \$5M of general fund capital improvement borrowing in the FY18 CIP. This additional general fund borrowing will trigger an approximately 6 cent increase in the mil rate beginning in FY19.

VI. STAFF ANALYSIS

The Capital Improvement Plan is a comprehensive process which began back in fall 2016. Each Department (including the School Department) performs a comprehensive analysis of their capital needs over the upcoming five or ten years. Each Department then ranks their needs based on priority and submits each project. The complete list of City wide needs is then reviewed as a whole, compared to available funding, and a one and five year CIP recommendation is produced. The current FY18 CIP represents the City Manager's recommended CIP after review and presentation of all Department submissions and consideration of input submitted by elected officials.

VII. RECOMMENDATION

We recommend approval of the two FY18 CIP orders.

VIII. LIST ATTACHMENTS

Two City Council orders, each includes an Exhibit A containing the detailed list of FY18 CIP projects

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**

*Order 154-16/17
Tab 13 3-6-17*

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

**ORDER APPROPRIATING BOND PROCEEDS, TIF FUNDS AND COMMITTED FUND
BALANCE IN AN AMOUNT NOT TO EXCEED \$26,965,460 FOR
THE CITY'S FY18 CAPITAL IMPROVEMENT PROGRAM**

IT IS HEREBY ORDERED THAT:

1. The sum of \$26,965,460 be and hereby is appropriated to finance the projects more particularly described in the project list for the City's 2018 Capital Improvement Program attached hereto as Exhibit A (the "2018 CIP Projects"), as follows:
 - a. Subject to paragraph 2 and 3 below, an amount not to exceed \$24,340,500 is appropriated from the proceeds of the City's general obligation bonds to be authorized by the City Council and issued to finance a portion of the costs of the 2018 CIP Projects;
 - b. An amount not to exceed \$540,000 is appropriated from the City's Bayside TIF account to finance a portion of the costs of certain Street / Sidewalk improvements included in the 2018 CIP Projects, as listed on Exhibit A; and
 - c. An amount not to exceed \$2,084,960 is appropriated from the City's Committed Fund Balance to finance a portion of the costs of certain School Facilities improvements included in the 2018 CIP Projects, as listed on Exhibit A;
2. The appropriation set forth in paragraph 1(a) above is and shall be contingent upon the approval by the City Council of general obligation bonds for such purposes (the amount appropriated in said paragraph 1(a) to be adjusted to reflect the principal amount of bonds or notes so authorized) and the issuance and delivery of such bonds or notes in anticipation thereof for such purposes. The foregoing appropriations shall also be applied to issuance costs for such bonds (or notes in anticipation thereof).
3. That if the actual cost of any 2018 CIP Project differs from the estimated cost on the attached Exhibit A, whether due to completion, delay or abandonment of the Project or for any other reason, the Director of Finance is authorized, in his discretion to reallocate proceeds of the bonds issued therefore to any other project listed on the 2018 CIP Project List or to any other project or improvement that the City Council has approved or may in the future approve as part of the City's annual capital improvement plan.

FY18 CIP - General Fund

Exhibit A

	Bonded Amount	Other Funding
Transportation		
<i>PACTS/Match/Other Leveraged Funds</i>		
PACTS TIP Intersection Project - Brighton-Deering-Falmouth (USM Roundabout)	\$ 767,200	
PACTS RTMS (Regional Transportation Management Systems) - Traffic Signals	260,000	
PACTS TIP Congress Street Signals	110,313	
MPI PACTS paving - Allen Avenue	130,500	
PACTS Collector paving: Veranda Street	85,000	
<i>Traffic Signals / Lights</i>		
Traffic Signals at Various Locations	600,000	
Streetlights: Implement LED Conversion	500,000	
Traffic Signal Work in Support of Paving Programs	210,000	
<i>Streets/Sidewalks</i>		
Pavement Preservation Program	2,700,000	200,000
Thames Street Extension Engineering and Construction	1,400,000	-
Sidewalk Rehabilitation/Accessibility	500,000	100,000
CSO Compliance - SRF Ineligibles	600,000	-
Washington Ave Rehabilitation (Cumberland to E. Prom)	250,000	-
Somerset Street Project Phase 1B	-	240,000
Street Rehabilitation Program	200,000	-
Railroad Quiet Zone Improvements	25,000	-
Transportation Total	\$ 8,338,013	\$ 540,000
Facilities		
<i>Buildings/Garages</i>		
Waterproof Decking & Conditional Appraisal Repairs at Spring Street Garage	\$ 350,000	
Dectron Air Handling Replacement for Riverton Pool	300,000	
Three Air Handling Units at Public Safety	300,000	
Temple St Parking Garage Cond. Appraisal Repairs	240,000	
Masonry, Windows, remodel at Munjoy Public Safety building	200,000	
Homeless Shelter Planning	125,000	
Fire Station Paving Projects	50,000	
<i>Marine</i>		
Waterfront Fender Systems	1,000,000	
Floats at Cushing Island, Maine State Pier, East End Beach, Peaks	100,000	
Compass Park - Ongoing pile/pier work	100,000	
<i>School Facilities</i>		
Deering High School Windows		750,000
PATHS/CBHS, Presumpscot, Longfellow, DHS & King Campus Paving		500,000
Lyman Moore - Boiler Replacement		300,000
East End Community School Wall Repair		250,000
Deering High School Functional Life Safety Space	66,040	84,960
Energy Management Control Upgrades		50,000
Deering High School Kitchen Remodel / Upgrade		50,000
Engineering for Roofs		40,000
King - Fire Alarm Replacement Engineering		20,000
Lyman Moore - Fire Alarm Replacement Engineering		20,000
PATHS - Technology / Network Engineering		20,000
Facilities Total	\$ 2,831,040	\$ 2,084,960
Parks, Fields, Trails		
<i>Parks, Fields, Trails</i>		
Lyman Moore Field Upgrades and Drainage	\$ 450,000	
Lincoln Park Fence Repair	300,000	
Amethyst Lot Engineering	300,000	
Congress Square Park	150,000	
Peaks Island, Great Diamond & Cliff Island Playground Replacements	110,200	
Deering Oaks and DHS -Tennis/Basketball Court Resurfacing	100,000	
Riverside Golf Course Culvert Repair/Replacement	50,000	
Parks, Fields, Trails Total	\$ 1,460,200	
Equipment and Vehicles		
<i>Equipment</i>		
District Phone System	225,000	
Chiller Replacement	225,000	
Phone System Upgrade	200,000	

Replace Patient Call System	116,000	
Virtualization, Storage and Redundancy Upgrade	55,000	
EMR and Wi Fi	54,497	
Power Line Connection for Ocean Avenue Solar Array	50,000	
Security Management System	35,000	
Portland Public Library - VOIP Conversion	35,000	
Vehicles		
Engine 6 Replacement - Fire 0279	700,000	
Scheduled Ambulance Replacement	480,000	
Loader 5112 and blower 7112 - DPW Winter	335,000	
Sidewalk Tractors Replacement (2)	280,000	
Police Cruisers (7)) Replacement - Police	266,000	
Rubbish Packer Replacement	265,000	
Rubbish Packer Replacement - Park Barrels 4042	250,000	
TA Dump Truck Replacement - DPW Winter 3098	205,000	
Wheel Loader Replacement - Parks/Winter 5101	195,000	
SA Plow Truck Replacement - Winter 3125	165,000	
SA Plow Truck Replacement - Winter 3036	165,000	
Rolloff Truck Replacement - Solid Waste 4000	150,000	
Replacement School Bus	132,000	
Bucket Truck Replacement - Traffic 5110	125,000	
Mower 16' Replacement - Parks 7155	95,000	
Toolcat DPW Winter 5004	70,000	
1 Ton Utility Truck Replacement - Traffic 2515	55,000	
GPS Locating for Winter Vehicles/Equipment	50,000	
Skidsteer Replacement - Districting/Winter 5102	45,000	
3/4 Ton Pickup Replacement - Barron Center 3908	38,000	
Replace Forestry Chipper	35,000	
3/4 Ton Utility Van (Pickup to Van Replacement) - Trades - 2004	30,000	
3/4 Ton Utility Van (Pickup to Van Replacement) - Trades 2003	30,000	
Refurbished Floor Scrubber for Canco Properties	18,000	
Equipment and Vehicles Total	5,174,497	
Sub-Total FY18 CIP (General Fund)	\$ 17,803,750	\$ 2,624,960

<u>FY18 CIP - Sewer Fund</u>		
Sewer / Stormwater		
CMOM - Inflow and Infiltration Program	\$	260,000
CMOM - Sewer System Renewal		1,100,000
CMOM - Pump Station Rehabilitation		670,000
Engineering Services on Water Resource Projects		300,000
Morrill's Corner Sewer Replacement		250,000
Eastern Waterfront Sewer / Stormwater Extension & Outfall		175,000
Integrated Planning LTCP and Post Construction Monitoring Program		1,000,000
Stormwater Infrastructure Improvements		200,000
Warren Ave Storm Drain - 517 Warren Ave to 659 Warren Ave		990,000
Franklin Street Storm Drain		300,000
Peaks Island Green Infrastructure		50,000
Green Infrastructure		200,000
Smart Cover Systems for SSO's		45,000
Pole Camera		20,000
PACTS Veranda St paving - Ineligible Utility costs		18,000
Pavement Preservation Program - Utility costs		200,000
MPI Paving Program - Utility costs		13,750
Street Sweepers Replacement		215,000
Skidsteer w/ Attachments		75,000
Tracked Jet Cleaner		45,000
Midsize Wheel Loader		150,000
Rubber Tired Excavator		200,000
3/4T Pickup Truck		35,000
Tank Truck		25,000
Sewer / Stormwater Total	\$	6,536,750
TOTAL CIP (General Fund & Sewer Fund)	\$	24,340,500
		\$ 2,624,960
COMBINED TOTAL CIP (General Fund & Sewer Fund)	\$	26,965,460

Order 155-16/17
Tab 14 3-6-17

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 LONGFELLOW, LYSETH, PRESUMPSCOT AND REICHE
ELEMENTARY SCHOOL RENOVATION PROJECTS
WITH TOTAL PROJECT COSTS NOT TO EXCEED \$64,260,000
AND
AUTHORIZING GENERAL OBLIGATION BONDS THEREFORE**

FOLLOWING a public hearing of the City Council of the City of Portland, Maine, held upon due notice pursuant to Article VII, Section 9 of the City Charter, IT IS HEREBY

ORDERED THAT:

There be and hereby is authorized and approved the renovation, furnishing and equipping of Longfellow, Lyseth, Presumpscot and Reiche elementary school with total project costs not to exceed \$64,260,000 (the "Elementary School Projects"), as follows:

Longfellow Elementary	\$15,388,000
Lyseth Elementary	17,998,000
Presumpscot Elementary	13,628,000
Reiche Elementary	17,246,000
Total	\$64,260,000

and that there be and hereby is authorized the issue and sale of the City's general obligation bonds in the aggregate principal amount not to exceed \$64,260,000 to finance the costs of such Project.

BE IT FURTHER ORDERED

1. That the Director of Finance be and hereby is authorized to prepare, issue, and sell such bonds in the name of and on behalf of the City, in the aggregate amount of \$64,260,000 (the "Bonds") at one time, or from time to time, as one or more separate bond issues, and to determine the date, form, minimum denomination, interest rates (as term bonds or serial bonds or some combination thereof), maturities (with the last maturity not to exceed the maximum term permitted by law) and all other details, terms and provisions, not inconsistent herewith, including the form and manner of their sale and award as he may approve, such approval to be conclusively evidenced by the execution thereof;

2. That the Director of Finance be and hereby is authorized to borrow money in anticipation of said Bonds by the issuance and sale of one or more notes or renewal notes in anticipation of said Bonds ("BANs"), and to determine the date, form, minimum denominations, interest rate, maturities (with the last maturity of any BAN not to exceed 3 years from its date of issuance) and all other details of each issue of BANs, including the form and manner of their sale and award, subject to the provisions of the law, the City Charter and this Order;

3. That the Director of Finance be and hereby is authorized to provide that any of the Bonds and BANs hereinbefore authorized be made subject to call for redemption, with or without premium, prior to their stated dates of maturity, as provided in 30-A M.R.S.A. §5772(6), as amended;

4. That any Bond or BAN issued hereunder shall be signed by the Director of Finance and by the Mayor, either or both of whose signatures may be by facsimile to the extent permitted by law, attested to by the City Clerk, under the seal of the City, and shall be in such form and contain such terms and provisions not inconsistent herewith as they may approve, their approval to be conclusively evidenced by their execution thereof;

5. That the Director of Finance is authorized to negotiate, execute, and deliver, in the name of and on behalf of the City such contracts, agreements, and other documents, including leases, instruments and certificates as may be necessary or appropriate as determined and approved by the Director of Finance in connection with the financing of the Elementary School Projects, which documents shall be in such form and contain such terms and conditions, not inconsistent herewith, as may be approved by the Director of Finance such approval to be conclusively evidenced by his execution thereof;

6. That the Director of Finance be and hereby is authorized to select the underwriter for the Bonds or BANs heretofore authorized and the Director of Finance be and hereby is authorized and empowered to execute and deliver such contracts or agreements as may be necessary or appropriate in connection therewith;

7. That the Director of Finance be and hereby is authorized to prepare, or cause to be prepared, a Preliminary Official Statement and an Official Statement for use in the offering and sale of the Bonds or BANs heretofore authorized, such Preliminary Official Statement and Official Statement to be in such form and contain such information as may be approved by the Director of Finance, with the advice of the bond counsel for the City, and that the use and distribution of the Preliminary Official Statement and the Official Statement in the name of and on behalf of the City in connection with offering the Bonds or BANs for sale be and hereby is approved;

8. That the Director of Finance be and hereby is authorized to select the registrar, paying agent and transfer agent (the "Transfer Agent") for the Bonds or BANs heretofore authorized and to execute and deliver such contracts and agreements as may be necessary or appropriate to secure their services;

9. That the Bonds or BANs heretofore authorized shall be transferable only on the registration books of the City kept by the Transfer Agent, and said principal amount of the bonds of the same maturity (but not of other maturity) in minimum denominations of \$5,000 and any integral multiple in excess thereof upon surrender thereof at the principal office of the transfer agent, with a written instrument of transfer satisfactory to the transfer agent duly executed by the registered owner or his attorney duly authorized in writing. Upon each exchange or transfer of a bond the City and the Transfer Agent shall make a charge sufficient to cover any tax, fee or any other governmental charge required to be payable with respect to such exchange or transfer, and with respect to such exchange or transfer, and subsequent to the first exchange or transfer, the cost of preparing new bonds upon exchanges or transfer thereof to be paid by the person requesting the same;

10. That the Director of Finance be and hereby is authorized to undertake all acts necessary to provide for the issuance and transfer of such Bonds or BANs heretofore authorized in book-entry form pursuant to the Depository Trust Company Book-Entry Only System, as an alternative to the provisions of the foregoing paragraph above regarding physical transfer of Bonds or BANs, and the Director of

Finance be and hereby is authorized and empowered to enter into a Letter of Representation or any other contract, agreement or understanding necessary or, in his opinion, appropriate in order to qualify the Bonds or BANs for and participate in the Depository Trust Company Book-Entry Only System;

11. That the Director of Finance and Mayor from time to time shall execute such Bonds or BANs as may be required to provide for exchanges or transfers of Bonds or BANs as heretofore authorized, all such Bonds or BANs to bear the original signature of the Director of Finance and Mayor, and in case any officer of the City whose signature appears on any Bond or BAN shall cease to be such officer before the delivery of said Bond or BAN, such signature shall nevertheless be valid and sufficient for all purposes, the same as if such officer had remained in office until delivery thereof;

12. That if the Bonds or BANs, or any part of them, are issued on a tax exempt basis, the Director of Finance be and hereby is authorized and directed to covenant and certify on behalf of the City that no part of the proceeds of the issue and sale of the Bonds or BANs authorized to be issued hereunder shall be used directly or indirectly to acquire any securities or obligations, the acquisition of which would cause such Bonds or BANs to be "arbitrage bonds" or "private activity bonds" within the meaning of Sections 148 and 141 of the Internal Revenue Code of 1986, as amended;

13. That if the Bonds or BANs, or any part of them, are issued on a tax exempt basis, the officers or officials executing the Bonds or BANs be and hereby are individually authorized to covenant and agree, on behalf of the City, for the benefit of the holders of such Bonds or BANs, that the City will file any required reports and take any other action that may be necessary to insure that interest on the notes will remain exempt from federal income taxation, and that the City will refrain from any action that would cause interest on the Bonds or BANs to be subject to federal income taxation;

14. That the officers executing the Bonds or BANs be and hereby are individually authorized to covenant, certify and agree, on behalf of the City, for the benefit of the holders of such Bonds or BANs, that the City will file any required reports, make any annual financial or material event disclosure, and take any other action that may be necessary to insure that the disclosure requirements imposed by Rule 15c2-12 of the Securities and Exchange Commission, if applicable, are met;

15. That any or all of the Bonds or BANs issued hereunder may be consolidated with and become a part of any other issue of temporary notes or general obligation bonds authorized to be issued by any previous or subsequent order of the City Council of the City of Portland;

16. That the term "cost" or "costs" as used herein and applied to the Elementary School Projects, or any portion thereof, includes, but is not limited to (1) the cost to design, acquire, construct, renovate, improve, furnish and equip the Elementary School Projects, or any portion thereof; (2) the cost of land, easements and other real property interests, landscaping and site preparation, including demolition and environmental remediation work on any existing building or structure and on the property where the Elementary School Projects is located, utility extensions and site improvements, and all appurtenances and other fixtures, facilities, buildings and structures either on, above, or under the ground which are used or usable in connection with the Elementary School Projects; (3) the cost of feasibility studies, surveys, environmental studies and assessments, engineering, plans and specifications, legal and other professional services associated with the Elementary School Projects; (4) issuance costs, including premiums for insurance, capitalized interest and other fees and expenses relating to the financing transaction.

17. That if the actual cost of any Elementary School Project differs from the estimated cost set forth herein, whether due to completion, delay or abandonment of said Elementary School Project for any other reason, the Director of Finance is authorized, in his discretion to allocate or reallocate proceeds of the Bonds to any other listed Elementary School Project;

18. That the Director of Finance, Mayor and Clerk and other proper officials of the City be, and hereby are authorized and empowered in its name and on its behalf to do or cause to be done all such acts and things, not inconsistent herewith, as may be necessary or desirable in order to effect the issuance, sale and delivery of the Bonds or BANs hereinabove authorized;

19. That if any of the officers or officials of the City who have signed or sealed the Bonds shall cease to be such officers or officials before the Bonds or BANs so signed and sealed shall have been actually authenticated or delivered by the City, such Bonds or BANs nevertheless may be authenticated, issued, and delivered with the same force and effect as though the person or persons who signed or sealed such Bonds or BANs had not ceased to be such officer or official; and also any such bonds or notes may be signed and sealed on behalf of the City by those persons who, at the actual date of the execution of such Bonds or BANs, shall be the proper officers and officials of the City, although at the nominal date of such Bonds or BANs any such person shall not have been such officer or official;

20. That if the Director of Finance, Mayor or Clerk are for any reason unavailable to approve and execute the Bonds or BANs or any other documents necessary or convenient to the issuance, execution and delivery of the Bonds or BANs, the person or persons then acting in any such capacity, whether as an assistant, a deputy, or otherwise, is authorized to act for such official with the same force and effect as if such official had performed such act.

21. That the Bonds or BANs authorized by this Order are in addition to any bonds or notes previously authorized for the same or similar purposes;

22. That to the extent not payable from other funds, an amount sufficient for the payment of the annual payments of principal and interest on the Bonds or any BANs issued hereunder shall be included in the tax levy of each year until the debt represented by said Bonds or BANs is extinguished.

23. That during the term any of the Bonds (or bonds issued to refund such Bonds) are outstanding, the Director of Finance be and hereby is authorized to issue and deliver refunding bonds to refund some or all of the Bonds then outstanding, and to determine the date, form, interest rate, maturities and all other details of such refunding bonds, including the form and manner of their sale and award. The Director of Finance be and hereby is further authorized to provide that any of such refunding bonds hereinbefore authorized be made callable, with or without premium, prior to their stated date(s) of maturity, and each refunding bond issued hereunder shall be signed by the Director of Finance and by the Mayor, either or both of whose signatures may be by facsimile to the extent permitted by law, attested to by the City Clerk, under the seal of the City, and shall be in such form and contain such terms and provisions not inconsistent herewith as they may approve, their approval to be conclusively evidenced by their execution thereof.

MEMORANDUM
City Council Agenda Item

TO: Mayor and City Council

FROM: Brendan T O'Connell – Finance Director

DATE: March 1, 2017

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

SUBJECT: \$64M Finance Committee Recommendation on School Capital Renovations – Three Orders

SPONSOR: Jon P. Jennings, City Manager

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st reading 3/6/17 Final Action 3/20/17

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

PRESENTATION: (Brendan T O'Connell – Finance Director – 5 minutes)

I. SUMMARY OF ISSUE (Agenda Description)

On February 23, 2017 the Finance Committee voted to recommend a \$64.26M proposal to substantially renovate four elementary schools (2-0). The Finance Committee made their recommendations after an extensive process which included a Portland Public Schools Board of Education recommendation (6/21/16, 6-2 for a \$70.59M bond), a School Facilities Ad-Hoc Committee amendment and recommendation (1/19/17, 7-1 for a \$61M bond) and another Portland Public Schools Board of Education recommendation (1/31/17, 8-0 for a \$61M bond). The schools and amounts included in the current Finance Committee recommendation are:

Presumpscot: Modularity eliminated and classroom space added. Separate gym and cafeteria created. Adequate OT, PT, ELL, music, art, library, kitchen and restroom space added. Improved security and sightlines for the entrance. More functional parent drop off/bus loop constructed. Upgraded learning technology, plumbing, electrical and sprinklers installed. LEED Certified. *Cost: \$13,628,000*

Longfellow: Building made fully ADA compliant with new, more secure entrance. Full asbestos abatement. Separate gym and cafeteria created. Adequate reading, ELL, Gifted & Talented, music, art, library, and kitchen space. Upgraded learning technology, plumbing, electrical and sprinklers installed. LEED Certified. *Cost: \$15,388,000*

Reiche: Acoustic and lighting problems corrected. Enclose classroom corridor walls and provide operable partitions. Maintains ability for open spaces for collaborative learning. Appropriate health station created. Rightsize art, music and reading spaces. Pre-K, Title I, OT, PT and Reading 180 spaces added. Upgraded learning technology, plumbing, electrical and sprinklers installed. Solar heater for the pool. LEED Certified. *Cost: \$17,246,000*

Lyseth: Modularity eliminated and classroom space added. Pre-K, Kindergarten and Gifted & Talented space created. Adequate ELL, speech, art, music, library, nurse's station and social worker space added. Separate gym

and cafeteria created. Upgraded learning technology, plumbing, electrical and sprinklers installed. LEED Certified. *Cost: \$17,998,000*

It should be noted that the allocation for each school is an estimate and the Finance Director will have the flexibility to adjust amounts between schools as long as the total bond is not exceeded.

The proposal from the School Board did not recommend any specific order / timing of school construction. The proposal does include an estimated timetable for construction from Oak Point Associates with School 1 estimated completion in fall 2020, School 2 in fall 2021, School 3 in fall 2023, and School 4 in fall 2024. The proposal includes beginning design on the first school by the end of 2017 and therefore a 2017 referendum is required. It is important to note that any projects approved during a local referendum would become ineligible for State of Maine Department of Education Major Capital School Construction Funding. Applications for a new round of State funding are due on April 14, 2017. Given the tight timeline and not knowing what action will be taken by the City Council, or ultimately might be taken by the voters, the School Department is applying for funding for these four schools. Sixteen projects were completed from the State's current priority list. Had the State continued with the list, Longfellow School and Reiche were #2 and #3. A preliminary priority list from this next funding round is expected in April 2018.

Additional details on the proposal including presentation provided to the Finance Committee and all additional materials requested and considered by the Committee are attached.

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

Article VII, Section 16(a)(1) of the City Charter, states that any orders or resolves "authorizing the issuance of general obligation securities of the city in a principal amount greater than five one-hundredths of one (1) percent of the last certified state valuation of the city for a single capital improvement" must be submitted for voter referendum. Based on the City's most recent State Valuation, this limit is approximately \$3.99M and therefore three orders must be approved by City Council in order for this item to move forward. A bond order (requires seven votes for approval), an appropriation order (requires five votes for approval) and an order sending the bond order to referendum (requires five votes for approval).

III. INTENDED RESULT

Achieve substantial renovations at Longfellow, Lyseth, Presumpscot and Reiche.

IV. COUNCIL GOAL ADDRESSED

The City Council has a stated goal of "Question on the ballot regarding elementary school renovations."

V. FINANCIAL IMPACT

It's anticipated that the \$64.26M would be borrowed over a six year time period. This would result in an estimated \$92M in debt service payments, principal and interest, spread over the next 26 years. The tax rate would rise an estimated 3.1% by FY24 due to these debt service payments. For a taxpayer with an average home value (\$240,000) there would be an estimated \$2,707 of total additional taxes over the 26 year life of the bonds, an average of approximately \$104 per year.

VI. STAFF ANALYSIS

No staff recommendation has been requested on the proposal.

VII. RECOMMENDATION

None requested

VIII. LIST ATTACHMENTS

- 1) \$64M Bond Recommendation from Finance Committee – Backup Materials for 3-6 and 3-20

**\$64M Bond Proposal Backup Materials - Finance Committee questions
from 2/16/17 (updated) and 2/23/17 with responses in italics
PPS Presentation from 2/16 plus 2/23 amendment also attached (F)**

1. What would an alternative proposal to address the elementary school needs while not sacrificing our best chances at State funding look like?

Based on the condition assessment recently performed on school facilities by Lavallee Brensinger Architects, the following schools were rated as having the best individual chances at state funding:

1. Reiche (72)
2. Longfellow (69)
3. PATHS (63)**
4. Lyseth (63)
5. Portland High (62)
6. Presumpscot (59)

This preliminary scoring is based only on the portions of the application dealing with the physical condition of the buildings, not those dealing with enrollments and program, which were beyond the scope of the assessment.

Applications for State funding are due to the Department of Education on April 14, 2017. Given the tight timeline and not knowing what action will be taken by the City Council, or ultimately might be taken by the voters, the school department is moving forward with applications on all 6 schools.

*If any of the schools are put to referendum **and** approved by the voters, they will no longer be eligible for state funding.*

*The State's proposed timeline for consideration of applications is attached (**Attachment A**). We would be notified of our positions on the State's priority list by April of 2018 and the list will be finalized in the summer. Recent history of priority list rankings is attached (**Attachment A-1**).*

***NOTE – Although no specific score was provided, Lavallee Brensinger recommended that 1) a joint PATHS / Casco Bay application should be submitted for State Funding along with 2) Reiche, 3) Longfellow, 4) Portland High School, 5) Lyseth*

2. Have there been any significant changes in the scoring for the applications in the current ratings cycle that would improve or detract from our chances to move up the State list??

In general there have been no significant changes to the State DOE's criteria for Major Capital School reconstruction. Response from State DOE website FAQ included below noting that only "slight" changes have been made scoring criteria:

<http://www.maine.gov/doe/facilities/construction/faqs2017-18ratingcyclequestionsanswers.html>

*"A large volume of interest has been expressed throughout the State for this new rating cycle leading us to believe that there will be an extensive application pool. It is not possible to predict any school's rating on the list until all applications have been received and scored. In each new rating cycle there are always new applicants and some could demonstrate greater or less need than any applicant from a previous rating cycle. Each rating cycle generates its own priority list; previous placement on the list does not dictate one's placement on the new list. However, **unless there have been significant changes aligned with the scoring system in a building, repeat applications typically fall within similar scoring ranges on the new proposed priority list compared with their placement on the previous priority list. After the 2010 – 2011 rating cycle slight changes to the scoring system occurred through the major substantive process. Those changes are listed below.***

Changes to Scoring on the Major Capital Improvement Application

Eliminated "other" in all categories – no longer in Chapter 61

Priority A: Buildings and Grounds – total possible points from 85 to 90
Obsolete, Insufficient, and/or Unsuitable – 30 to 35 points
Group 1: Program Related Facility Deficiencies and Inefficiencies - 21 to 20 points
Group 2: Mechanical & Building System Deficiencies - 9 to 15 points

Priority B: School Population – total possible points 50 to 45
Overcrowding – 30 to 27 points
Group 1: Instructional Areas – 15 to 14 points
Group 2: Program Scheduling – 15 to 13 points
Enrollment Estimates and Population Shifts – 20 to 18 points
Group 1: Enrollment Estimates – 12 to 10 points
Group 2: Population Shifts – same (8 points)

Priority C: Program and Planning – same possible 65 points”

3. Can we obtain estimates of construction start and completion dates for each of the elementary schools included in the School Board recommendation and also prepare an “apples to apples” comparison of these dates with a two school referendum leaving open the possibility for potential state aid for two of the elementary schools?

Staff reached out to Oak Point for assistance with this request. The first scenario in the attached schedule (**Attachment B**) shows the schedule going forward for Hall School plus the proposed start/end dates for each of the four schools included in the referendum. The schedule was designed so that no more than two schools were in the design-construction cycle at any one time. Although this is not as fast as originally proposed, it is still an ambitious schedule.

Also noted on the schedule, in yellow, is the date for release of the State priority list which would occur during the design process for the first school.

The second scenario is the “apples to apples” comparison of a two school referendum plus waiting to see where the City places on the State DOE priority list. There are no major differences in potential school completion dates when comparing a 2017 four school referendum vs a 2017 two school referendum. The City would be able to retain the same construction timeline for Schools 1 and 2 (Presumpscot and Lyseth as presented by Oak Point) regardless of whether a four school referendum occurs in 2017 or a two school referendum occurs in 2017 with two more schools paid for by the State DOE or via second local referendum. The State DOE timeline has indicated a Summer 2018 release date of the Final Priority List. Under the “four schools in one referendum” scenario, we would not begin third school (Reiche) design until November 2020 and fourth school (Longfellow) design until November 2021. If we took the “wait and see” approach, and if Reiche and/or Longfellow schools are not deemed to be high enough on the new State funding list a second referendum could take place anytime between fall 2018 and spring 2020 and we’d still be on the same schedule as if all four schools had been in a single referendum. If one of the two rated well on the state list, it would also be possible to fund one additional school locally and meet the original schedule for 4 schools.

4. **Question:** Could we have staff prepare details on the financial impact of the bond, i.e what is the total impact to the operating budget / tax levy of the life of the bonds? These calculations should reflect Mayor Strimling's amendments to include everything not currently in the CIP.

Cost of a \$64M Bond to fund four schools – Executive Summary from Finance Director

*The bond package (as amended) will rise to \$64M+ after amendments. A \$64 million bond package would increase the mil rate by approximately 69 cents by 2024. Including principal and estimated interest, the total fixed costs added to the overall City tax levy would be approximately \$92 million over the life of the bonds. As a property owner, the estimated impact to your tax bill can most easily be calculated using your property valuation. For every \$100,000 of property you own, your taxes will go up by approximately \$1,128 over the life of the bonds. If you own a \$500,000 home, the impact would be 5x larger, and your taxes would increase by approximately \$5,639 over the life of the bonds. As of early 2017, the average property value within Portland is approximately \$240,000, so for an average homeowner the bond would increase taxes by \$2,707 over the bond life. For complete details please see the attached memo (**Attachment C**) which includes more details of the estimated impact and tax increases by fiscal year.*

5. **Could we get an update on the Pension Obligation Bond?**

*Response from Finance Director: See **Attachment D**, a debt service schedule for our Pension Obligation Bond. The FY18 budget will include \$13.6M of debt service related to the pension obligation bond, and this number increases by approximately \$900M annually until FY26 when our final debt service payments of \$22.3M are due.*

6. **Could we get a high level overview of our debt management policy and applicable State limits?**

*Response from Finance Director: See **Attachment E**, a summary memo from our Bond Adviser detailing our State and local debt limitations. In summary even if we borrowed \$64M to fund four elementary school constructions we wouldn't be at risk of violating any State or local rules around debt limits. Although we are not pushing up against any of our current limits there is a very low likelihood we could ever borrow to capacity due to the detrimental impact on the tax rate. An additional page has been added showing "capacity" before hitting each limit.*

7. **Why is the \$61M School Board recommendation on these four elementary schools not being included along with the City FY18-FY22 Capital Improvement Plan and measured against all of the other capital needs of the entire City?**

Response from Mayor Strimling: The school bond isn't included in the 5-year CIP because it will have to be voted upon by the electorate. Any borrowing for a specific item that is over (approximately \$3-4M) must be sent to the voters. This is the same process as was used in 1993 when \$15M, and then an additional \$1.2M, was allocated to rebuild our Middle Schools. However, all borrowing ultimately comes from the same pot, so City side needs and School side needs should be weighed together. That is why both are in front of the Finance Committee."

8. How much of the \$61M in projects as recommended by the School Board were deemed to be immediate / Year 1-5 needs in the November 2016 "Facilities Assessment of School Buildings" as performed by Sebago Technics and Lavalee/Brensinger? Which other items / schools in the "immediate / Year 0-5" needs are not being included in the proposed School Bond and potentially being "crowded out" of City debt borrowings?

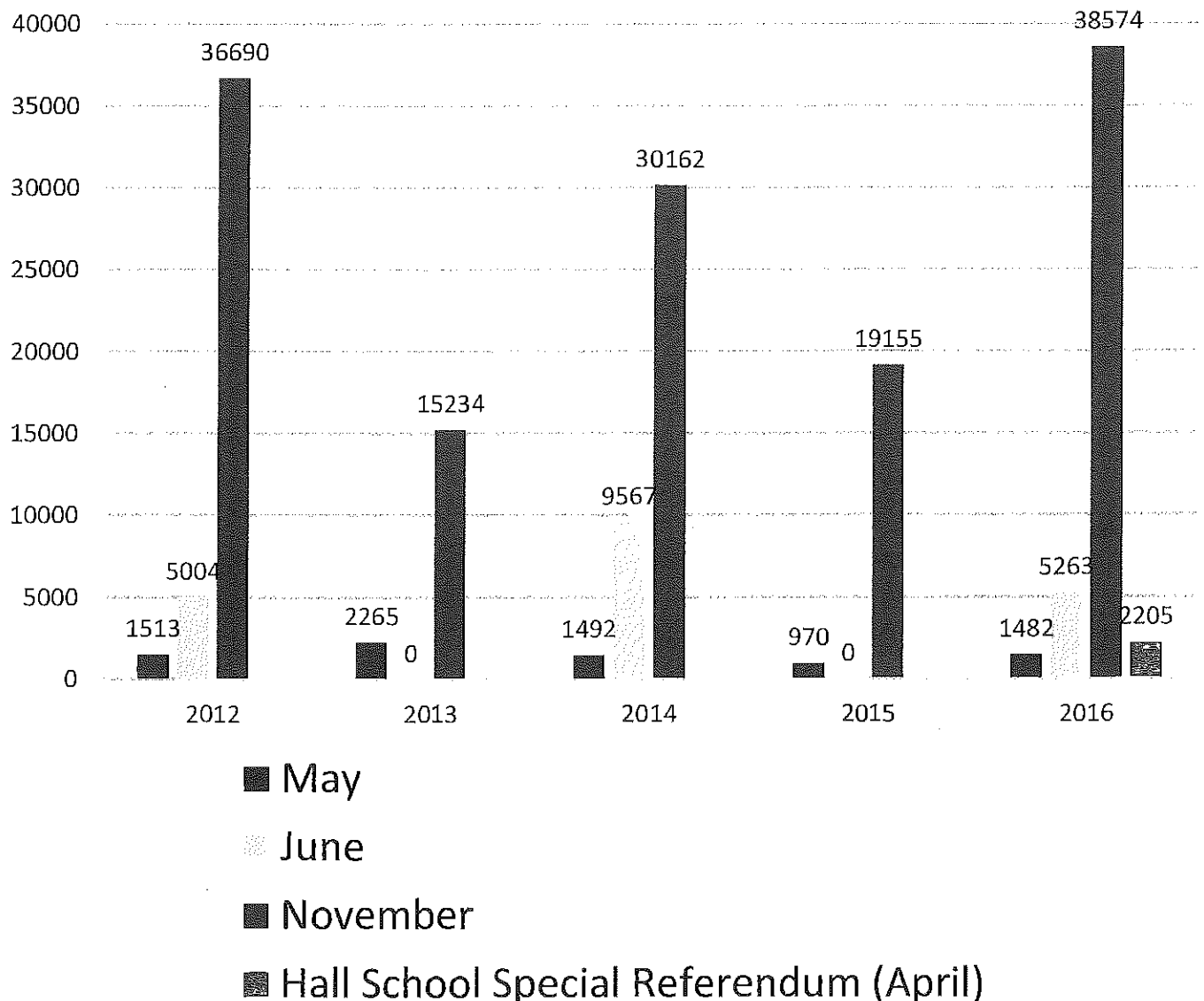
Excerpt from the facilities assessment noting Year 0-5 needs is attached below. As noted by the external engineers, only approximately \$0.89M of work is recommended at Presumpscot in the next five years compared to \$13.63M as proposed by the School Board. Approximately \$1.94M is being recommended by the external engineers at Lyseth over the next five years compared to \$17.98M as proposed by the School Board. For Reiche, \$2.38M is being recommended by the engineers over the next five years compared to \$17.25M as proposed by the School Board. For Longfellow, \$2.92M is being recommended by the engineers over the next five years compared to \$15.39M as proposed by the School Board. Although staff cannot stote with certainty which other projects may be crowded out by the large bonding being proposed, the schedule below approximates all Year 0-5 needs at each City school.

	Immediate Recommendations	Short Term Recommendations	
	Year 0 2017	Years 1 - 5 2018 - 2022	Years 0-5 TOTAL
Elementary Schools			4 Schools in \$64M bond
Cliff Island	\$78,260	\$184,923	
East End Community	\$59,600	\$394,626	
Longfellow	\$132,597	\$2,789,969	\$2,922,566
Lyseth	\$6,023	\$1,936,873	\$1,942,896
Ocean Avenue	\$0	\$96,241	
Peaks Island	\$88,795	\$675,474	
Presumpscot	\$755	\$888,701	\$889,456
Reiche	\$33,905	\$2,347,145	\$2,381,050
Riverton	\$940	\$1,215,099	
Elementary Schools Subtotal	\$400,875	\$10,529,051	\$8,135,968
Middle Schools			
King	\$276,125	\$1,377,356	
Lincoln	\$40,859	\$1,824,068	
Moore	\$0	\$1,324,115	
Middle Schools Subtotal	\$316,984	\$4,525,539	
High Schools			
Portland Arts & Technology (PATHS)	\$169,702	\$6,480,694	
Deering	\$93,210	\$3,776,921	
Portland	\$491,480	\$2,882,423	
High Schools Subtotal	\$754,392	\$13,140,038	
Other Buildings			
District Office / Bayside Learning	\$20,000	\$577,336	
Central Kitchen	\$0	\$100,621	
Subtotal	\$20,000	\$677,958	
General District Items			
General District Items (from PPS 5-yr CIP)	\$0	\$6,337,065	
TOTAL	\$1,492,251	\$35,209,651	

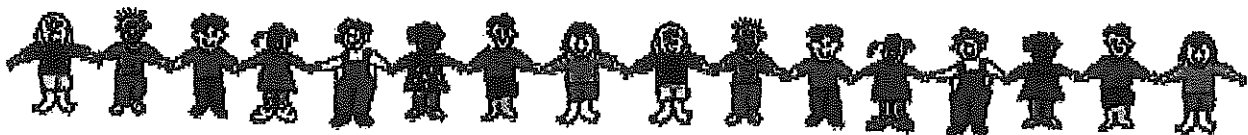
9. Can staff provide details of voter turnout in recent elections (5 year history is fine). Which elections have traditionally produced the highest levels of participation from the community?

See below for election turnout by month. If letting the voters decide by maximizing voter turnout is a desired outcome, a November 2017 election date should be selected. Spring elections have produced poor turnout amongst Portland voters. As noted previously by Oak Point, the school construction on the first school in the \$64M bond proposal would not begin until February 2018 so there is adequate time for a November 2017 referendum. A June referendum (assuming no State ballot questions) also adds significant unbudgeted costs to the City budget.

City of Portland Election Turnout 2012 through 2016



2017-2018 Rating Cycle Proposed Timeline

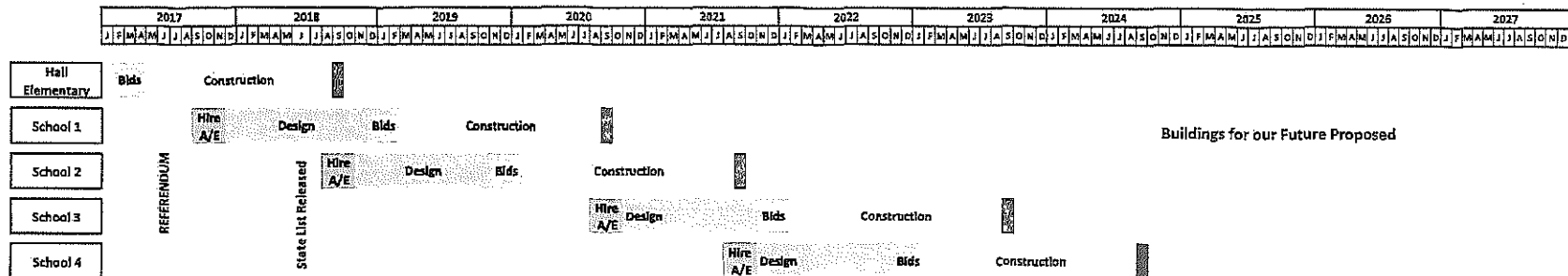


**Major Capital Improvement Program
Summary of Last Three State Rating Cycles**

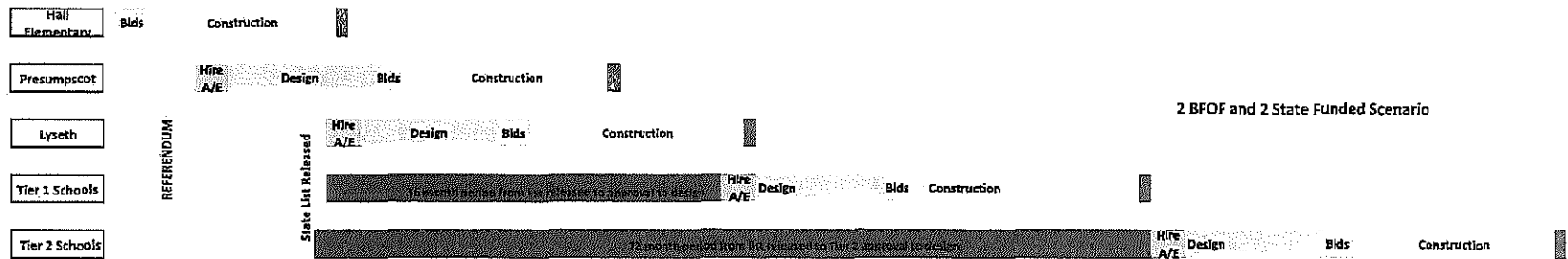
	2001-2002	2004-2005	2010-2011
Projects Evaluated	92	66	71
Scoring Rubric - Total Points	180	200	200
# of Funded Projects	12	20	16
Highest Score	139.13	136.7	144.67
Lowest Funded Score	122.72	116.72	125.02
Priority Ranking # (Rubric Score)			
Hall Elementary	58 (83.1)	55 (90.86)	12 (128.73)
Longfellow Elementary	73 (70.24)	48 (95.08)	18 (124.06) (up to #2 on priority list)
Lyseth Elementary	51 (88.64)	53 (91.52)	43 (104.90)
Presumpscot Elementary	62 (79.09)	61 (85.39)	33 (117.50)
Reiche Elementary	67 (76.37)	23 (115.24)	21 (123.39) (up to #3 on priority list)

Attachment A-1

Scenario #1
All 4 Schools
in single
\$64M local
referendum



Scenario #2
1 Schools, 2 in
\$32M 2017
referendum,
State funds for
other schools
OR 2nd
referendum



The City would be able to retain the same construction timeline for Schools 1 and 2 (Presumpscot and Lyseth as presented by Oak Point) regardless of whether a four school referendum occurs in 2017 or a two school referendum occurs in 2017 with two more schools paid for by the State DOE or via second local referendum. The State DOE timeline has indicated a Summer 2018 release date of the Final Priority List. Under the "four schools in one referendum" scenario, we would not begin third school design until November 2020 and fourth school design until November 2021. If we took the "wait and see" approach, and if Reiche and/or Longfellow schools are not deemed to be high enough on the new State funding list a second referendum could take place anytime between fall 2018 and spring 2020 (a two year period) and we'd still be on the same schedule as if all four schools had been in a single referendum. If one of the two rated well on the state list, it would also be possible to fund one additional school locally and meet the original schedule for 4 schools.

Attachment B

Impact of \$64M Buildings for our Future on Tax Rate (includes proposed amendment from 2/23/17)

	FY2017	FY2018	FY2019	FY2020	FY2021	FY2022	FY2023	FY2024
Valuation (as projected)	7,780,000,000	7,800,000,000	7,830,000,000	7,860,000,000	7,890,000,000	7,920,000,000	7,950,000,000	7,980,000,000
City Tax Levy (as projected)	83,862,689	87,116,012	90,998,732	94,299,153	99,247,580	104,707,427	107,805,150	110,038,220
City Tax Rate (as projected)	\$10.78	\$11.17	\$11.62	\$12.00	\$12.58	\$13.22	\$13.56	\$13.79
Rate Increase		0.39	0.45	0.38	0.58	0.64	0.34	0.23
% Increase		3.6%	4.1%	3.2%	4.8%	5.1%	2.6%	1.7%
School Tax Levy (as projected)	80,331,376	84,516,375	89,774,725	94,947,212	99,517,935	103,530,735	108,914,333	114,577,878
School Tax Rate (as projected)	\$10.33	\$10.84	\$11.47	\$12.08	\$12.61	\$13.07	\$13.70	\$14.36
Rate Increase		0.51	0.63	0.61	0.53	0.46	\$0.63	\$0.66
% Increase		4.9%	5.8%	5.4%	4.4%	3.6%	4.8%	4.8%
Total Tax Rate (as projected)	\$21.11	\$22.00	\$23.09	\$24.08	\$25.19	\$26.29	\$27.26	\$28.15
Rate Increase		0.89	1.08	0.99	1.11	1.10	0.97	0.89
% Increase		4.2%	4.9%	4.3%	4.6%	4.4%	3.7%	3.3%
Cumulative increase related to BFOF	\$ -	\$ -	\$ 0.12	\$ 0.24	\$ 0.36	\$ 0.47	\$ 0.58	\$ 0.69
Cumulative % increase related to BFOF			0.6%	1.1%	1.6%	2.2%	2.7%	3.1%
Increased Annual Taxes per \$100,000 of property value			\$ 12.41	\$ 24.46	\$ 36.14	\$ 47.45	\$ 58.42	\$ 69.02
Estimated Total Amount of Additional Taxes per \$100,000 of property value due to BFOF over life of the bonds								\$ 1,128
(If your home value was \$200,000, the impact to you would be 2x the numbers above. If your home value was \$500k, the impact would be 5x the above)								
Increased Annual Taxes on \$240,000 home (per tax year)			\$ 29.79	\$ 58.70	\$ 86.73	\$ 113.89	\$ 140.20	\$ 165.65
Estimated Total Amount of Additional Taxes on a \$240,000 home due to BFOF over the life of bonds								\$ 2,707

*Assumes no additional borrowing other than the \$64M BFOF project, included to illustrate the tax rate impact of the project

Attachment C

Attachment D

City of Portland, Maine
Multi-Modal Taxable General Obligation Bonds
Debt Service Schedule as of 07/17/2001

Date	Principal	Coupon	Interest	Debt Service	Annual Interest	Annual Debt Service	UAAL	Savings	Balance Outstanding
7/19/01									
12/1/01	-	4.919%	2,016,462	2,016,462	-	-	-	-	111,800,000
6/1/02	-	4.919%	2,749,721	2,749,721	4,766,183	4,766,183	5,717,120	950,937	111,800,000
12/1/02	-	4.664%	2,607,176	2,607,176	-	-	-	-	111,800,000
6/1/03	-	4.664%	2,607,176	2,607,176	5,214,352	5,214,352	6,060,148	845,796	111,800,000
12/1/03	-	4.989%	2,788,851	2,788,851	-	-	-	-	111,800,000
6/1/04	-	4.989%	2,788,851	2,788,851	5,577,702	5,577,702	6,423,756	846,054	111,800,000
12/1/04	-	5.334%	2,981,706	2,981,706	-	-	-	-	111,800,000
6/1/05	-	5.334%	2,981,706	2,981,706	5,963,412	5,963,412	6,809,182	845,770	111,800,000
12/1/05	-	5.610%	3,135,990	3,135,990	-	-	-	-	111,800,000
6/1/06	100,000	5.610%	3,135,990	3,235,990	6,271,980	6,371,980	7,217,732	845,752	111,800,000
12/1/06	-	6.003%	3,352,676	3,352,676	-	-	-	-	111,700,000
6/1/07	100,000	6.003%	3,352,676	3,452,676	6,705,351	6,805,351	7,650,796	845,445	111,700,000
12/1/07	-	6.419%	3,581,802	3,581,802	-	-	-	-	111,600,000
6/1/08	100,000	6.419%	3,581,802	3,681,802	7,163,604	7,263,604	8,109,844	846,240	111,600,000
12/1/08	-	6.862%	3,825,565	3,825,565	-	-	-	-	111,500,000
6/1/09	100,000	6.862%	3,825,565	3,925,565	7,651,130	7,751,130	8,596,436	845,306	111,500,000
12/1/09	-	7.331%	4,083,367	4,083,367	-	-	-	-	111,400,000
6/1/10	100,000	7.331%	4,083,367	4,183,367	8,166,734	8,266,734	9,112,222	845,488	111,400,000
12/1/10	-	7.829%	4,356,839	4,356,839	-	-	-	-	111,300,000
6/1/11	100,000	7.829%	4,356,839	4,456,839	8,713,677	8,813,677	9,658,954	845,277	111,300,000
12/1/11	-	8.357%	4,646,492	4,646,492	-	-	-	-	111,200,000
6/1/12	100,000	8.357%	4,646,492	4,746,492	9,292,984	9,392,984	10,238,492	845,508	111,200,000
12/1/12	-	8.903%	4,945,617	4,945,617	-	-	-	-	111,100,000
6/1/13	115,000	8.903%	4,945,617	5,060,617	9,891,233	10,006,233	10,852,800	846,567	111,100,000
12/1/13	-	8.903%	4,940,497	4,940,497	-	-	-	-	110,985,000
6/1/14	775,000	8.903%	4,940,497	5,715,497	9,880,995	10,655,995	11,503,968	847,973	110,985,000
12/1/14	-	8.903%	4,905,998	4,905,998	-	-	-	-	110,210,000
6/1/15	1,535,000	8.903%	4,905,998	6,440,998	9,811,996	11,346,996	12,194,206	847,210	110,210,000
12/1/15	-	8.903%	4,837,668	4,837,668	-	-	-	-	108,675,000
6/1/16	2,400,000	8.903%	4,837,668	7,237,668	9,675,335	12,075,335	12,925,858	850,523	108,675,000
12/1/16	-	8.903%	4,730,832	4,730,832	-	-	-	-	106,275,000
6/1/17	3,390,000	8.903%	4,730,832	8,120,832	9,461,663	12,851,663	13,701,410	849,747	106,275,000
12/1/17	-	8.903%	4,579,926	4,579,926	-	-	-	-	102,885,000
6/1/18	4,515,000	8.903%	4,579,926	9,094,926	9,159,852	13,674,852	14,523,494	848,642	102,885,000
12/1/18	-	8.903%	4,378,941	4,378,941	-	-	-	-	98,370,000
6/1/19	5,790,000	8.903%	4,378,941	10,168,941	8,757,881	14,547,881	15,394,904	847,023	98,370,000
12/1/19	-	8.903%	4,121,199	4,121,199	-	-	-	-	92,580,000
6/1/20	7,230,000	8.903%	4,121,199	11,351,199	8,242,397	15,472,397	16,318,598	846,201	92,580,000
12/1/20	-	8.903%	3,799,355	3,799,355	-	-	-	-	85,350,000
6/1/21	8,850,000	8.903%	3,799,355	12,649,355	7,598,711	16,448,711	17,297,714	849,004	85,350,000
12/1/21	-	8.903%	3,405,398	3,405,398	-	-	-	-	76,500,000
6/1/22	10,675,000	8.903%	3,405,398	14,080,398	6,810,795	17,485,795	18,335,578	849,783	76,500,000
12/1/22	-	8.903%	2,930,200	2,930,200	-	-	-	-	65,825,000
6/1/23	12,725,000	8.903%	2,930,200	15,655,200	5,860,400	18,585,400	19,435,712	850,312	65,825,000
12/1/23	-	8.903%	2,363,747	2,363,747	-	-	-	-	53,100,000
6/1/24	15,025,000	8.903%	2,363,747	17,388,747	4,727,493	19,752,493	20,601,856	849,363	53,100,000
12/1/24	-	8.903%	1,694,909	1,694,909	-	-	-	-	38,075,000
6/1/25	17,600,000	8.903%	1,694,909	19,294,909	3,389,817	20,989,817	21,837,966	848,149	38,075,000
12/1/25	-	8.903%	911,445	911,445	-	-	-	-	20,475,000
6/1/26	20,475,000	8.903%	911,445	21,386,445	1,822,889	22,297,889	23,148,244	850,355	20,475,000
Total	111,800,000		180,578,566	292,378,566	180,578,566	292,378,566	313,666,990	21,288,424	

In FY27, the City operating budget will no longer have any debt service related to the Pension Obligation Bond. The final debt service payments of \$22.2M represents an overall debt principal reduction of \$20.4M and the complete \$111.8M POB will have been repaid. This debt reduction could be replaced with new debt, the annual debt service could be moved into an operating account for capital maintenance paid with operating funds (instead of debt), or the City could choose not to replace the expenditure and simply reduce the mill rate by approximately \$2.87. These decisions and many others, including potential restructuring of the bonds, will be investigated over the next several fiscal years.

Memo

To: Brendan O'Connell, Director of Finance
Anita R. LaChance, Deputy City Manager

From: Jim Saffian, Bond Counsel

Date: October 27, 2016

Re: School Debt Issues

This memorandum discusses the following issues pertaining to the Portland School Department's proposed "Buildings for Our Future" school projects (the "Proposed School Projects") with an estimated requested bond authorization of \$70.5 million (the "Bonds").

- Bond Debt Limit
- Referendum Requirements
- Impact of Local Referendum
- Timing Issues
- Local Funding vs. State School Construction Subsidy
- Form of Referendum Question / Bonding Flexibility

I. Bond Debt Limit

- Debt Limit – State Law

Title 30-A, Section 5702¹ of the Maine Revised Statutes establishes various municipal debt limits, including a limitation for schools, based on a municipality's then-current state valuation, as certified by the Secretary of State. The City's current (2016) state valuation is \$7,996,350,000. Based on this, the City is subject to the following debt limitations under Section 5702:

1. School debt limit: \$799,635,000 (10% of State Valuation)

¹Note that Title 30-A, Section 5703 excludes certain types of debt from the Section 5702 debt limit, including but not limited to State subsidized school debt and revenue bonds (such as the revenue bonds issued for the Jetport) issued under Chapter 213 of Title 30-A.

- | | |
|---|-----------------------------|
| 2. Sewer debt limit: | \$599,726,250 (7.5%) |
| 3. Water/airport/special purpose district debt limit: | \$239,890,500 (3%) |
| 4. <u>Other debt limit:</u> | <u>\$599,726,250 (7.5%)</u> |
| 5. Total debt limit: | \$1,199,452,500 (15%) |

As of June 30, 2015, the City had \$36,050,000² of school debt outstanding. Thus, under the State law debt limit, this leaves the City with \$734,670,000 of school project bonding capacity.

• Debt Limit – City Debt Management Policy

In addition to the State law debt limit, the City's Debt Management Policy (the "Policy") adopted in 2011, establishes a separate debt limit and other debt issuance requirements. While the Policy confirms that City will comply with the above-discussed State law debt limit under Title 30-A, the Policy also establishes a more restrictive debt limit, stating that the City's total debt should not exceed 5% of the City's state valuation. This more restrictive debt limit limits the City's total debt outstanding to \$399,817,500. As of June 30, 2016, the City's total debt outstanding was \$294,405,698.

In addition, the Policy requires that the City evaluate each bond issue under the following criteria: Demand, Capacity, Affordability, Term and Payment Structure.

1. *Demand*— evaluates the need for borrowing, measured by the City's Capital Plan and other capital investment opportunities.
2. *Capacity*— evaluates the maximum amount to borrow, based on (a) current and projected annual debt service level, (b) current outstanding debt, (c) market conditions (including opportunities to participate in low interest programs) and (d) economic conditions, including cost of construction.
3. *Affordability*—evaluates the fiscal impact, based on a projection of annual debt service impact including both budgetary impact and tax impact. This element lists the following debt service metrics:
 - a. Net debt service³ should not exceed 15% of general fund expenditures. Currently the City's net debt service is \$27,518,651, 9.49% of FY17 general fund expenditures.
 - b. Net debt service should not exceed 1.5% of per capita income. Currently the City's net debt service is 0.9% of per capita income.
 - c. Net debt per capita should not exceed the "moderate" range by Moody's (currently \$5,000). Currently the City's debt per capita is \$3,174.

²This amount includes the City's Ocean Avenue School Bonds, which were approved for State school construction subsidy. Thus a portion of this debt (\$10,650,000 principal amount outstanding as of June 30, 2015) need not be included in the State law debt limit calculation.

³Net of Enterprise Funds and State reimbursed School Debt Service.

4. *Term*—establishes the goal of the shortest economically feasible payback period.

5. *Payment Structure*—establishes a preference for level principal amortization.

II. Referendum Requirements

• Referendum Requirements

City Charter: Article VII, Section 16(a) of the City Charter, states that:

(a) The city council shall submit the following to voter referendum:

- (1) Orders or resolves authorizing the issuance of general obligation securities of the city in a principal amount greater than five one-hundredths of one (1) percent of the last certified state valuation of the city for a single capital improvement or item of capital equipment; or

Based on the City's current 2016 state valuation, a bond order in the amount of \$3,998,175 or more for a single capital improvement or item of capital equipment, unless excepted under Article VII, Section 16(b), triggers the referendum requirement.

Article VII, Section 16(b) provides for the following three exceptions to the referendum requirement: (i) refunding bonds, (ii) street, storm water and sewer bonds and (iii) bonds for a declared emergency.

(b) The provisions of this section shall not be applicable to any order or resolve authorizing (i) the refunding of any securities or other obligations of the city; (ii) the issuance of general obligation securities, or other direct or indirect obligations, of the city for streets, sidewalks, or storm or sanitary sewers; or (iii) any construction or financing of improvements or equipment needed as a result of fire, flood, disaster or other declared emergency. For purposes of this section, the city council may by vote of at least seven (7) of its members adopt emergency orders or resolves authorizing construction or financing of improvements or equipment needed as a result of fire, flood, disaster or other emergency and such orders or resolves shall contain a section in which the emergency is set forth and defined; provided, however, that the declaration of such emergency by the city council shall be conclusive.

Thus, the proposed school Bonds would need to be submitted to a referendum vote unless the City Council were to determine that the Proposed School Projects were so critical that emergency circumstances existed. In that event, the proposed school Bonds would be exempt from the Charter referendum requirement and could be authorized in the usual process by City Council action.

State Law Referendum Requirement for School Construction Projects: There is no requirement under the general Maine statutes that municipal bond questions be submitted to a referendum vote. However, State law does establish a referendum vote in some specific circumstances. One such circumstance applies to school construction projects that have been approved for State subsidy. If any or all of the Proposed School Projects are approved for State subsidy, then the project must comply with the specific approval and referendum requirements under Title 20-A, Section 15904(1) of the Maine Revised Statutes. Please also note, that Title 20-A imposes a variety of approval steps and requirements on a State subsidized project. Thus, if any of the Proposed School Projects are approved for State subsidy, that project would need to be submitted to a referendum vote on a stand-alone basis and not as part of a larger aggregated, bond referendum question.

III. Impact of Local Referendum

Based on conversations with the Department of Education, if a school construction project obtains a local funding approval, it is not eligible for inclusion on the Department's State subsidy Approved Projects List. This has been the State's policy for the last decade. No application will be reviewed and, if the project is already on the list, it will be removed.

Therefore, if the City obtains referendum approval for the Longfellow and Reiche School Projects (currently on the Approved Projects List), this will cause the State to remove those projects from the Approved Projects List and end the possibility of obtaining State subsidy for those projects. Thus, proceeding to a local referendum now would remove the possibility of State school construction subsidy approval for any of the Proposed School Projects, including those already on the list.

IV. Timing Issues

Once a non-State subsidized project is approved by the voters, there is no specific time limit in which the authorized bonds must be issued. If the Bond Order or referendum question does not establish an "issue by" date, the authority to issue the Bonds remains in effect for an indefinite period of time. As long as the project has not been abandoned (a non-specific term of art), the authority will remain in place. For example, if all four Proposed School Projects were approved at referendum, it would be reasonable to assume that those projects would be constructed over some extended period of time. There would be no issue with issuing the authorized over this time frame.

Conversely, a State subsidized project is built off of the date the State has approved for when the debt subsidy will start. So, for example, if the State approves a project for State school construction subsidy, with the debt service subsidy to start in the fall of 2019, then the bonds for that project must be issued in either the spring or the fall of 2018. The Rules impose various other time-requirements. I've attached a pro-forma project schedule that assumes a fall 2019 bond issue.

V. Local Funding vs. State School Construction Subsidy

As discussed above under the "State Law Referendum Requirement" paragraph, State law imposes its own referendum requirement on a State subsidized project. In addition, the State School Construction Rules lay out a detailed project schedule that sets out various project benchmarks

(design approval, public hearings, straw votes, funding approval, etc.) that do not apply to non-State subsidized debt. These involve design review and approval, approval by the State Board of Education and final funding approval by the Commissioner of the Department of Education. The School Construction Rules also establish various time requirements for the project approvals to be put in place.

VI. Form of Referendum Question / Bonding Flexibility

For non-State subsidized projects, the City has a great deal of flexibility in framing the referendum question. The scenarios run the gamut from (a) each project getting its own referendum question to (b) all the projects being submitted in a single question but each with its own bonding amount to (c) all projects being submitted at once with a single aggregate, lump-sum bonding amount that can then be allocated among the various projects at an City administrative level. The underlying Bond Order adopted by the City Council (and submitted to the voters) would specify who has the authority to allocate bonds among the various Proposed School Projects.

In contrast, a State subsidized project must be submitted as a stand-alone question. In addition, the question must be presented in a form established by State law and must be framed to establish: (i) approval of the project and location, (ii) total project costs, (iii) total state subsidized costs and local costs, and (iv) total bonding amount.

I hope this information is helpful to you as you complete your planning for the Proposed School Projects. Please do not hesitate to contact me if you have any further questions.

Debt Management Policy - As of June 30, 2016

	Target	Current	Status	Capacity until Limit Reached
1. Net debt service* payments should not exceed 15% of general fund expenditures	15%	9.49%	OK	\$15.9M of additional debt service
2. Net debt service* payments(should not exceed 1.5% of per capita income**	1.5%	0.89%	OK	\$18.8M of additional debt service
3. Net Debt per capita should not exceed the "moderate" range by Moody's, currently at \$5,000	\$5,000	\$3,174	OK	\$120.8M of borrowing capacity
4. Total outstanding debt should not exceed 5% of the State equalized valuation of the City	5%	2.63%	OK	\$189.6M of borrowing capacity
A. Comply with State law (limits long term debt outstanding to 15% of state equalized valuation)	15%	2.63%	OK	\$989.2M of borrowing capacity

*Net Debt Service equals budgeted debt service net of Enterprise Funds and State reimbursed School DebtService

**Per Capita Personal Income, as published by the U.S. Bureau of Economic Analysis (BEA), Bearfacts, forPortland-South Portland-Biddeford region.

School Facilities Ad Hoc Committee Official Proposal 2/16/17

On January 19th, after eight public meetings including tours of all four schools and two public hearings, the School Facilities Ad Hoc Committee (SFC), consisting of the Mayor, three Councillors and four School Board Members, formally endorsed a modified school bond to renovate Presumpscot, Longfellow, Reiche and Lyseth. The proposal addresses significant deferred maintenance at all four schools, creates equity and modernizes learning environments. The vote was 7-1 (Mavodones opposed). On Jan. 31, the school board, after a public hearing, unanimously endorsed the same. The vote was 9-0, plus the three HS reps.

The SFC proposal trims the original package of \$70,967,00 by just over 14% to \$60,958,164. While the specific borrowing schedule will undoubtedly shift, the projected cumulative tax increase from the proposed bond is 3% phased in over six years. On an average (\$225,000) home, the total tax increase would be \$148.11 over the six years, or around \$25 (.5%) per year. For the projected life of the borrowing (27 years), the cost would be \$2,406 or \$89 a year on an average home.

The modified proposal upgrades the four schools in the following ways (highlights):

Presumpscot: Modularity eliminated and over 9,000ft² of classroom space added. Separate gym and lunchrooms created. Adequate OT, PT, ELL, music, art, library, kitchen and restroom space added. Improved security and sightlines for the entrance. More functional parent drop off/bus loop constructed. Upgraded learning technology, plumbing, electrical and sprinklers installed. Significant deferred maintenance addressed. LEED Certified. Cost: \$13,628,178

Longfellow: Building made fully ADA compliant with new, more secure entrance. Full asbestos abatement. Separate gym and lunchrooms created. Adequate reading, ELL, Gifted & Talented, music, art, library, and kitchen space. Upgraded learning technology, plumbing, electrical and sprinklers installed. Significant deferred maintenance addressed. LEED Certified. Cost: \$13,783,644

Reiche: Acoustic and lighting problems corrected. Enclose classroom corridor walls and provide operable partitions. Maintains ability for open spaces for collaborative learning. Appropriate health station created. Rightsize art, music and reading spaces. Pre-K, Title I, OT, PT and Reading 180 spaces added. Upgraded learning technology, plumbing, electrical and sprinklers installed. Solar heater for the pool. Significant deferred maintenance addressed. LEED Certified. Cost: \$17,246,276

2/16/17
Lyseth: Modularity eliminated and classroom space added. Pre-K, Kindergarten and Gifted & Talented space created. Adequate ELL, speech, art, music, library, nurse's station and social worker space added. Separate gym and lunchrooms created. Upgraded learning technology, plumbing, electrical and sprinklers installed. Significant deferred maintenance addressed. LEED Certified. Cost: \$16,300,065

Proposed Changes From the Original Package

The modifications from the original Buildings for Our Future proposal were developed in concert with school principals to ensure that the schools are maximizing learning environments, while making budget adjustments that did not have an adverse impact on the educational experience for future students. The modifications are:

- Realize savings through bulk purchasing of movable and built-in equipment.
- Reduce gyms to elementary size and remove locker rooms (Lys, Pre, Long).
- Eliminate playground upgrades and outdoor learning improvements.
- Shift some site and electrical work to state application or CIP.
- Add full time Project Coordinator to each school to lead renovation.
- Add operable partitions for collaborative instruction as appropriate.
- Eliminate 2nd floors from Lyseth and Presumpscot (retain ability for future additions).



OAK POINT
ASSOCIATES

architecture
engineering
planning

Buildings for Our Future
Committee Co-Chair Four School Proposal
January 19, 2017

	Longfellow	Wash	Presumpscot	Reble	Total
A CONSTRUCTION					
1 Construction Estimate					
Renovation/Reconfiguration					
Structural/Architectural	\$2,347,330	\$1,694,590	\$1,194,543	\$3,257,532	\$8,583,995
Mechanical/Plumbing/Sprinkler	\$2,162,112	\$1,315,899	\$883,160	\$3,469,076	\$8,420,946
Electrical	\$1,342,928	\$939,067	\$589,972	\$2,417,651	\$5,623,618
Renovation non-equity model	\$1,539,264	\$1,639,502	\$424,113	\$2,691,806	\$6,438,735
New Construction/Addition	\$9,232,078	\$7,783,515	\$7,500,983	\$1,235,621	\$19,701,898
Demolition	\$0	\$20,744	\$0	\$0	\$20,744
Built-in Equipment	\$699,444	\$529,007	\$570,878	\$481,236	\$2,835,965
Site Development	\$1,135,151	\$2,955,215	\$1,319,436	\$804,736	\$5,815,600
Elevator (CIP Project)	\$0	\$0	\$0	\$380,000	\$380,000
Subtotal	\$12,558,306	\$13,791,612	\$12,493,085	\$13,658,517	\$54,441,221
B ADMINISTRATIVE COSTS & RESERVES					
2 Land Purchase and Related Costs	\$0	\$0	\$0	\$0	\$0
3 Moveable Equipment	\$1,028,034	\$1,159,232	\$1,005,628	\$1,180,835	\$4,441,859
4 Advertising and Legal	\$55,000	\$55,000	\$55,000	\$55,000	\$220,000
5 Percent for Art	\$0	\$0	\$0	\$0	\$0
6 Project Reserves	\$35,000	\$35,000	\$35,000	\$35,000	\$140,000
7 Project Contingency	\$1,253,631	\$1,503,151	\$1,249,309	\$1,365,852	\$5,441,822
Subtotal	\$2,373,915	\$2,697,422	\$2,344,937	\$2,636,687	\$10,216,962
C FEES AND SERVICES					
8 Architect/Engineer Basic Services	\$1,112,237	\$1,285,410	\$999,319	\$1,286,869	\$4,689,635
9 Architect/Engineer Additional Services	\$10,000	\$10,000	\$10,000	\$10,000	\$40,000
10 Architect/Engineer Reimbursables	\$39,400	\$39,400	\$39,400	\$39,400	\$157,600
11 Site Selection	\$0	\$0	\$0	\$0	\$0
12 Permitting & Approvals	\$18,750	\$18,750	\$18,750	\$18,750	\$75,000
13 Survey and Soils	\$39,500	\$39,500	\$39,500	\$39,500	\$157,000
14 Construction Testing	\$15,000	\$15,000	\$15,000	\$15,000	\$60,000
15 PPS/City Project Manager	\$125,000	\$125,000	\$125,000	\$125,000	\$500,000
16 Clerk of the Works	\$84,000	\$84,000	\$84,000	\$84,000	\$336,000
17 Commissioning	\$65,000	\$65,000	\$65,000	\$65,000	\$260,000
18 Other Professional Services	\$0	\$0	\$0	\$0	\$0
Subtotal	\$1,508,397	\$1,741,612	\$1,390,979	\$1,698,329	\$6,541,047
D TOTAL PROJECT COST	\$16,441,119	\$16,534,572	\$16,229,081	\$17,993,533	\$70,568,229
E PROPOSED ADJUSTMENTS FROM BFOF					
19 Proposed adjustments (see individual project budgets)	<u>\$2,657,474</u>	<u>\$4,000,312</u>	<u>\$2,600,822</u>	<u>\$747,256</u>	<u>\$10,010,065</u>
F PROPOSED TOTAL PROJECT COSTS	\$13,783,644	\$16,300,885	\$13,628,178	\$17,246,278	\$80,558,164

2/17

157
Order ~~1006~~ -16/17
Tab 15 3-6-17

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 SUBMITTING ELEMENTARY SCHOOL RENOVATION PROJECTS
BOND ORDER TO REFERENDUM**

WHEREAS, contemporaneously herewith the City Council adopted an order authorizing the the renovation, furnishing and equipping of Longfellow, Lyseth, Presumpscot and Reiche elementary school with total project costs not to exceed \$64,260,000 (the "Elementary School Projects"), and further authorizing issuance of the City's bonds in an amount not to exceed \$64,260,000 to finance the costs of the Project (the "Elementary School Order") and

WHEREAS, Article VII, Section 16 of the City Charter requires that the Elementary School Order be submitted to the voters of the City following a public hearing;

WHEREAS, the City Council held a public hearing on the Elementary School Order at its regular meeting held March 20, 2017;

NOW, THEREFORE, BY THE CITY COUNCIL OF THE CITY OF PORTLAND BE IT HEREBY ORDERED:

THAT the question of whether the voters approve and ratify Elementary School Order be submitted to the voters of the City of Portland in accordance with Article VII, Section 16 of the City Charter, at a municipal election to be held on June 13, 2017, substantially in the form attached hereto as Exhibit A.

THAT the City Manager, Director of Finance and Clerk be and hereby are authorized and directed to undertake all action necessary or appropriate to finalize the form of the referendum question, with such other information as may be required by law or, in the discretion of the Director of Finance, as may be permitted by law, and to place said Elementary School Order before the voters at such election.

Exhibit A

Question __: Shall the Order entitled "ORDER APPROVING LONGFELLOW, LYSETH, PRESUMPCOT AND REICHE ELEMENTARY SCHOOL RENOVATION PROJECTS WITH TOTAL PROJECT COSTS NOT TO EXCEED \$64,260,000 AND AUTHORIZING GENERAL OBLIGATION BONDS THEREFORE", with provisions for early redemption as set forth in said Order be Approved?

156
Order ~~1500~~ - 16/17
Tab 16 3-6-17

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 APPROPRIATING \$64,260,000 OF BOND PROCEEDS

IT IS HEREBY ORDERED THAT:

1. Subject to paragraph 2 below, the sum of \$64,260,000 hereby is appropriated to finance the renovation, furnishing and equipping of Longfellow, Lyseth, Presumpscot and Reiche elementary school with total project costs not to exceed \$64,260,000 (the "Elementary School Projects"), as follows:

Longfellow Elementary	\$15,388,000
Lyseth Elementary	17,998,000
Presumpscot Elementary	13,628,000
Reiche Elementary	17,246,000
Total	\$64,260,000

2. The appropriation set forth in paragraph 1 above is and shall be contingent upon the approval by the City Council (and, as necessary, the voters of the City of Portland) of general obligation bonds for such purpose (the amount appropriated to be adjusted to reflect the principal amount of bonds so authorized) and the issuance and delivery of such bonds or notes in anticipation thereof for such purposes. The foregoing appropriations shall also be applied to issuance costs for such bonds (or notes in anticipation thereof).
3. That if the actual cost of any Elementary School Project differs from the estimated cost set forth herein, whether due to completion, delay or abandonment of said Elementary School Project for any other reason, the Director of Finance is authorized, in his discretion to allocate or reallocate proceeds of the Bonds to any other listed Elementary School Project.

Proposed amendment to the Buildings for Our Future (BFOF) bond:

2/23/17

Adding \$1,080,484 for installation of an elevator and \$524,000 for masonry restoration, to the Longfellow School project for a new total of \$15,388,128, and

Adding \$1,697,489 for site improvements to the Lyseth project, for a new total of \$17,997,554.

Bringing the new total for the BFOF project to \$64,260,000

Passed 2-0 at Finance Committee on 2/23/17 (Mavodones absent)

Order 158-16/17
Tab 17 3-6-17

ETHAN K. STRIMLING (MAYOR)
BELINDA S. RAY (1)
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**CITY OF PORTLAND
IN THE CITY COUNCIL**

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

**AMENDMENT TO PORTLAND CITY CODE
CHAPTER 14 LAND USE, ARTICLE V. SITE PLAN
Re: Repeal of Zoning Determination Provision**

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

*That Chapter 14, Section 14-465 of the Portland City Code
is hereby amended to be repealed as follows:*

~~Sec. 14-465. Zoning Determination Fee.~~

~~Upon request of any person and payment of a \$250.00, the
building authority shall issue a written decision, determination
or interpretation regarding the zoning code. The fee shall not
apply to any such decision, determination or interpretation made
in regard to a single-family residence which is owned and
occupied by the person making the request.~~

BE IT FURTHER ORDAINED that this amendment is enacted as an
Emergency, pursuant to Article II, Section 11 of the
Portland City Charter, to be effective immediately in
order to improve the response time in the Zoning
Administrator's office for building permit review.

MEMORANDUM
City Council Agenda Item

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

FROM: Michael Russell, Director, Permitting and Inspections
Jeff Levine, Director, Planning and Urban Development

DATE: February 23, 2017

SUBJECT: Elimination of Zoning Determination Fee

SPONSOR: Elizabeth Boepple, Chair, Planning Board
(If sponsored by a Council committee, include the date the committee met and the results of the vote.)

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st reading March 6 Final Action March 6, 2017

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

Staff is recommending the second reading be waived and the amendment be passed as an emergency action because it addresses immediate resource, liability and customer service issues.

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

Michael Russell, Director, Permitting and Inspections – brief oral presentation and to answer questions.

I. ONE SENTENCE SUMMARY

The Planning Board unanimously recommends to City Council a text amendment that strikes Section 14-465 Zoning Determination Fee from the Land Use Code in order to be consistent with the Maine Municipal Association's opinion to refrain from issuing such advisory letters and to enable the Permitting and Inspections Department staff to focus on the core service of reviewing building permits for improved customer service.

II. AGENDA DESCRIPTION

On February 14, 2017, the Planning Board voted unanimously (7-0) to recommend to City Council to delete the Zoning Determination fee (Sec. 14-465) from the Land Use Code. Michael Russell, Director, Permitting and Inspections Department, proposed the elimination of Section 14-465 as a means of streamlining the permitting process. The zoning determination fee (Section 14-465) was adopted on May 15, 2000 and states that the building authority will provide

a written decision, determination or interpretation upon request and payment of a fee. Providing advisory opinions is a discretionary function for the Department. Striking Section 14-465 will not reduce or hinder public access to the information used for zoning research and interpretation. The information used for written determinations will remain available to the public and those who frequently request zoning determinations, such as appraisers, realtors, attorneys, and others.

II. BACKGROUND

According to Mr. Russell, Section 14-465 was adopted by the City Council on May 15, 2000 with the intent of recouping some of the cost for staff time used in researching and writing zoning determinations. The estimated staff time to prepare a zoning opinion is between 1 and 5 hours and over the past six months, the Zoning Administrator processed over 60 letters representing 60 to 300 staff hours. The most frequent customers are title attorneys, land use consultants, and real estate agents and brokers, who are seeking this information for real estate transactions.

There is no State requirement to offer this public service and in fact, the Maine Municipal Association (MMA) counsels against code enforcement officers writing advisory opinion letters due to the potential liability for a community. The following is an excerpt from page 49 of the Maine Municipal Association's, "Manual for Local Code Enforcement Officers: A Legal Perspective":

"Generally, [Code Enforcement Officers] CEOs should not place themselves in the position of certifying that property is in compliance with codes or that a land use activity which a prospective buyer or landowner is thinking about would be something the CEO would approve. Title attorneys, land use consultants, surveyors, and home inspection companies are in the business of offering opinions for a fee and have the necessary insurance coverage to back them up if they make a mistake."

Corporation Counsel concurs with MMA's advice, thus the Permitting and Inspections Department is proposing to eliminate this provision from the Land Use Code and the Planning Board recommends eliminating the zoning determination provision from the Land Use Code. The proposed amendment is as follows:

~~Sec. 14-465. Zoning Determination Fee.~~

~~Upon request of any person and payment of a \$250.00, the building authority shall issue a written decision, determination or interpretation regarding the zoning code. The fee shall not apply to any such decision, determination or interpretation made in regard to a single family residence which is owned and occupied by the person making the request.~~

III. INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED

Economic Development:

- Create a more efficient permitting process with specifics; computer tracking.

Eliminating the zoning determination letter requirement will create a significant amount of time for the Zoning Administrator to review building permits. This will enhance the efficiency of the review process and decrease the number and frequency of negative complaints.

IV. FINANCIAL IMPACT

Loss of \$20,000 in annual revenue.

It provides the potential for more revenue by creating a positive reputation for swift and accurate zoning review of building permits and reverses the long-term negative customer service complaint trend about the long length of time for zoning reviews.

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

The Zoning Administrator is the most knowledgeable and experienced staff member and currently spends most of her time researching and writing determination letters, responding to public inquiries and attending meetings. In addition to creating more time for permit review by eliminating the determination letter provision, priorities will be shifted to make reviewing permits the Zoning Administrator's top priority. The Zoning Specialist will be the primary person for responding to public inquiries and secondary on reviewing permits.

VII. RECOMMENDATION

On February 14, 2017, the Planning Board unanimously found that the proposed text amendment to eliminate Section 14-465 is consistent with Comprehensive Plan for the City of Portland; and recommends to City Council adoption of the proposed text amendment to eliminate Section 14-456. Zoning Determination Fee.

VIII. LIST ATTACHMENTS

Prepared by: Michael Russell, Director, Permitting and Inspections Department and
Barbara Barhydt, Development Review Services Manager
Date: February 15, 2017

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

Order 159-16/17
Tab 18 3-6-17

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

Re: Community Business B-2 Zone

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

That Chapter 14, Sections 14-182, 14-183, 14-184 and 14-185 of the Portland City Code are hereby amended as follows:

Sec. 14-182. Permitted Table of uses.

~~The following uses are permitted in the B-2, B-2b and B-2c zones except that any use involving a drive-through is prohibited in these zones unless otherwise provided in section 14-183:~~

~~(a) Residential:~~

- ~~1. Attached single-family and two-family dwellings;~~
- ~~2. Multi-family dwellings;~~
- ~~3. Handicapped family units;~~
- ~~4. Combined living/working spaces including, but not limited to, artist residences with studio space, and~~

~~(b) Business:~~

- ~~1. General, business and professional offices, as defined in section 14-47;~~
- ~~2. Personal services, as defined in section 14-47;~~
- ~~3. Offices of building tradesmen;~~
- ~~4. Retail establishments;~~

- ~~5. Restaurants, except that restaurants shall close for all purposes including the service of alcohol no later than 11:00 p.m.;~~
- ~~6. Drinking establishments, except that drinking establishment as defined in section 14-47, and bars as defined in section 14-217.5 (a) (1), shall not be permitted in the B-2c zone;~~
- ~~7. Billiard parlors;~~
- ~~8. Mortuaries or funeral homes;~~
- ~~9. Miscellaneous repair services, excluding motor vehicle repair services;~~
- ~~10. Communication studios or broadcast and receiving facilities;~~
- ~~11. Health clubs and gymnasiums;~~
- ~~12. Veterinary hospitals, but excluding outdoor kennels;~~
- ~~13. Theaters and performance halls;~~
- ~~14. Hotels or motels of less than one hundred fifty (150) rooms;~~
- ~~15. Dairies in existence as of November 15, 1999;~~
- ~~16. Bakeries in existence as of November 15, 1999;~~
- ~~17. Bakeries established after November 15, 1999, provided the bakeries include retail sales within the principal structures. Bakeries in the B-2b zone shall be no greater than seven thousand (7,000) square feet in size;~~
- ~~18. Drive-throughs associated with a permitted use in the B-2 zone provided that such do not include drive-throughs on any lot adjacent to any residential use or zone. For purposes of this section, only, "adjacent to" shall include uses across a street if within 100 feet of the subject lot boundary;~~

~~19. Registered medical marijuana dispensaries; and~~

~~20. Commercial kitchens provided the commercial kitchen includes retail sales or a tasting room within the principal structure. Commercial kitchens in the B-2b shall be no greater than 7,000 square feet in floor area.~~

~~(c) Institutional:~~

~~1. Long term, extended and intermediate care facility;~~

~~2. Clinics, as defined in section 14-47;~~

~~3. Places of assembly;~~

~~4. Kindergarten, elementary, middle and secondary schools;~~

~~5. College, university, trade schools; and~~

~~6. Municipal buildings and uses.~~

~~(d) Other:~~

~~1. Lodging houses;~~

~~2. Day care facilities or babysitting services;~~

~~3. Utility substations, as defined in section 14-47, subject to the requirements of article V (site plan), sections 14-522 and 14-523 notwithstanding;~~

~~4. Accessory uses, as provided in section 14-404;~~

~~5. Bed and breakfast, subject to the standards of article V (site plan), sections 14-522 and 14-523 notwithstanding. A bed and breakfast may include a meeting facility if the facility meets the following standards:~~

~~a. The meeting facility shall be limited to the following types of uses:~~

- ~~i. Private parties.~~
- ~~ii. Business meetings.~~
- ~~iii. Weddings.~~
- ~~iv. Reception.~~
- ~~v. Seminars.~~
- ~~vi. Business and educational conferences.~~

~~b. The building in which the bed and breakfast and the meeting facility will be located was in existence on March 3, 1997, and was greater than four thousand (4,000) square feet in floor area on that date.~~

~~6. Studios for artists and craftspeople, provided that the area of such studios does not exceed four thousand (4000) square feet for each studio space.~~

~~7. Hostels, provided the applicant submits a site plan and operations plan demonstrating compliance with the following conditions:~~

~~a. All applicable provisions of Article V of this chapter shall be met.~~

~~b. Parking shall be provided in compliance with Division 20 of this Article.~~

~~c. No unaccompanied minors under the age of eighteen (18) shall be permitted in the facility.~~

~~d. The length of stay for transient guests shall not exceed fifteen (15) days out of any sixty-day period.~~

~~e. The building shall meet the applicable occupant load requirements as defined by the International Building Code and the NFPA Life Safety Code, as such codes are amended or adopted by the city.~~

~~8. Wind energy systems, as defined and allowed in Article X, Alternative Energy.~~

Group ¹	Use	B-2 ²	B-2b	B-2c
R	Single family home	<u>Y</u>	<u>Y</u>	<u>Y</u>
R	Two family home	<u>Y</u>	<u>Y</u>	<u>Y</u>
R	Three family home	<u>Y</u>	<u>Y</u>	<u>Y</u>
R	Multifamily housing	<u>Y</u>	<u>Y</u>	<u>Y</u>
R	<u>Combined live/work spaces provided the living space is at least 33% of the total net floor area</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>B</u>	<u>General business and professional offices, as defined in section 14-47, and offices of trades</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>B</u>	<u>Personal services, as defined in section 14-47</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>B</u>	<u>General retail establishments</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>B</u>	<u>Pharmacies with retail sales</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>B</u>	<u>Banking Facilities</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>B</u>	<u>Restaurants, except that restaurants shall close for all purposes including the service of alcohol no later than 11:00 p.m. unless otherwise authorized by the City Council</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>B</u>	<u>Drinking establishments, as defined in section 14-47</u>	<u>Y</u>	<u>Y</u>	<u>N</u>
<u>B</u>	<u>Billiard parlors</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>B</u>	<u>Funeral homes</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>B</u>	<u>Miscellaneous repair services, excluding motor vehicle repair services</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>B</u>	<u>Communication studios or broadcast and receiving facilities</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>B</u>	<u>Health clubs and gymnasiums</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>B</u>	<u>Veterinary hospitals and clinics provided there is no outdoor kennel</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>B</u>	<u>Theaters and performance halls</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>B</u>	<u>Hotels, Motels and Inns</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>B</u>	<u>Bakeries, breweries, distilleries, commercial kitchens and similar uses with a retail component and with a total floor area under 10,000 net sf.</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>B</u>	<u>Bakeries, breweries, distilleries,</u>	<u>Y</u>	<u>N</u>	<u>N</u>

Group ¹	Use	B-2 ²	B-2b	B-2c
	<u>commercial kitchens and similar uses with a retail component and with a total floor area of 10,000 net sf. or greater</u>			
<u>B</u>	<u>Expansion of existing dairies</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>I</u>	<u>Long term, extended and intermediate care facility</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>I</u>	<u>Clinics, as defined in section 14-47</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>I</u>	<u>Places of assembly</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>I</u>	<u>Kindergarten, elementary, middle and secondary schools</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>I</u>	<u>College, university, trade schools</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>I</u>	<u>Municipal buildings and uses</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>O</u>	<u>Lodging houses</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>O</u>	<u>Day care facilities</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>O</u>	<u>Accessory uses, as provided in section 14-404³</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>O</u>	<u>Bed and breakfast, subject to the standards of article V (site plan), sections 14-522 and 14-523 notwithstanding. A bed and breakfast may include a meeting facility if for weddings, seminars, receptions, business meetings and the like and if the facility is less than 4,000 net sf.</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>O</u>	<u>Studios for artists and craftspeople, less than 4,000 net sf. per space</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>W</u>	<u>Wind energy systems, as defined and allowed in Article X, Alternative Energy</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>U</u>	<u>Utility substations, as defined in section 14-47, subject to the requirements of article V (site plan), sections 14-522 and 14-523 notwithstanding</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>A</u>	<u>Drive-throughs associated with a permitted or conditional use⁴</u>	<u>C</u>	<u>N</u>	<u>C</u>
<u>A</u>	<u>Auto service stations</u>	<u>C</u>	<u>N</u>	<u>N</u>
<u>A</u>	<u>Expansion of auto service stations in existence as of November 15, 1999</u>	<u>C</u>	<u>C</u>	<u>C</u>

Group ¹	Use	B-2 ²	B-2b	B-2c
A	Car washes	<u>C</u>	<u>C</u>	<u>C</u>
A	Automobile dealerships	<u>C</u>	<u>C</u>	<u>C</u>
<u>M</u>	Printing and publishing establishments of 10,000 gross sf. or less	<u>C</u>	<u>C</u>	<u>C</u>
<u>M</u>	Expansion of existing printing and publishing establishments of greater than 10,000 gross sf. in existence since April 4, 1988	<u>C</u>	<u>C</u>	<u>C</u>
<u>M</u>	Wholesale distribution establishments of 10,000 gross sf. or less	<u>C</u>	<u>C</u>	<u>C</u>
<u>M</u>	Research and development and related production establishments of 10,000 gross sf. or less	<u>C</u>	<u>C</u>	<u>C</u>

1 Uses within the same group lettering may be substituted without being considered a change of use under zoning, provided all dimensional and other requirements of this section are met. Other reviews may be required under City regulations, including but not limited to building permit, subdivision and site plan reviews. However, no additional parking shall be required for changes within the same use group for a change in total floor area up to 10,000 sf, except for the provision of additional housing units.

Use Groups include the following:

R = Residential

B = Business

I = Institutional

O = Other

U = Utility

A = Auto related

M = Manufacturing/Processing/and other Industrial

2 Y-Permitted N-Not Permitted

C-Conditional use, see section 14-183 for specific standards in addition to the general conditional use standards

3 Expansion of accessory uses into space used by a permitted use shall not be considered a change of use

4 In the B-2b and B-2c zones drive-throughs are only allowed as outlined in 14-183(b) 8.

Sec. 14-183. Conditional uses.

The following uses are permitted in the B-2, B-2b and B-2c zone, as provided in section 14-474 (conditional uses), if they meet the following requirements:

- (a) "A" group conditional uses. Notwithstanding section 14-474(a) of this article or any other provision of this code, the Planning Board shall be substituted for the Board of Appeals as the reviewing authority and shall apply the following standards in addition to the provisions of section 14-474: Business. Any of the following conditional uses, provided that, notwithstanding section 14-474(a) of this article or any other provision of this code, the Planning Board shall be substituted for the board of appeals as the reviewing authority over conditional business uses:
 - 1. Signs: Signs shall not adversely affect visibility at intersections or access drives. Such signs shall be constructed, installed and maintained so as to ensure the safety of the public. Such signs shall advertise only services or goods available on the premises. Major and minor auto service stations in the B-2 zone, only;
 - 2. Circulation: No ingress and egress driveways shall be located within thirty (30) feet from an intersection. No entrance or exit for vehicles shall be in such proximity to a playground, school, church, other places of public assembly, or any residential zone that the nearness poses a threat or potential danger to the safety of the public. Major or minor auto service stations in the B-2b zone in existence as of November 15, 1999;
 - 3. Car washes; Conditions specific to major or minor auto service stations, car washes and automobile dealerships:
 - a. A landscaped buffer, no less than 5 feet wide, shall be located along street frontages (excluding driveways). The buffer

shall consist of a variety of plantings in accordance with the City of Portland Technical Manual;

b. Car washes shall be designed to avoid the tracking of residual waters into the street.

4. ~~Reserved. Drive-throughs in the B-2 zone which are adjacent to any residential use or zone; and~~

5. ~~Reserved. Automobile dealerships.~~

~~In addition to approval by the Planning Board with respect to the requirements of article V (site plan), sections 14-522 and 14-523 notwithstanding, these uses shall comply with the following conditions and standards in addition to the provisions of section 14-474:~~

a. ~~Signs: Signs shall not adversely affect visibility at intersections or access drives. Such signs shall be constructed, installed and maintained so as to ensure the safety of the public. Such signs shall advertise only services or goods available on the premises.~~

b. ~~Circulation: No ingress and egress driveways shall be located within thirty (30) feet from an intersection. No entrance or exit for vehicles shall be in such proximity to a playground, school, church, other places of public assembly, or any residential zone that the nearness poses a threat or potential danger to the safety of the public.~~

6. Drive-throughs,: Notwithstanding section 14-474(a) of this article or any other provision of this code, the Planning Board shall be substituted for the Board of Appeals as the reviewing authority and shall apply the following standards in addition to the provisions of section 14-474: where permitted, shall also specifically comply with the following conditions:

- a. Location of Drive-throughs: Features, such as windows, vacuum cleaners and menu/order boards, stacking lanes, must be placed, where practicable, to the side and rear of the principal building except where such placement will be detrimental to an adjacent residential zone or use, and shall be located no nearer than forty (40) feet from any adjoining property located in a residential zone. This distance shall be measured from the outermost edge of the outside drive-through feature to such property line. In addition, drive-through features shall not extend nearer than twenty-five (25) feet to the street line. The site must have adequate stacking capacity for vehicles waiting to use these service features without impeding vehicular circulation or creating hazards to vehicular circulation on adjoining streets.
- b. Noise: Any speakers, intercom systems, or other audible means of communication shall not play prerecorded messages. Any speakers, intercom systems, audible signals, computer prompts, or other noises generated by the drive-through services or fixtures shall not exceed 55 dB or shall be undetectable above the ambient noise level as measured by a noise meter at the property line, whichever is greater.
- c. Lighting: Drive-through facilities shall be designed so that site and vehicular light sources shall not unreasonably spill over or be directed onto adjacent residential properties and shall otherwise conform to the lighting standards set forth in 14-526.
- d. Screening and Enclosure: Where automobiles may queue, waiting for drive-through services, their impacts must be substantially mitigated to protect adjacent residential properties from headlight glare, exhaust fumes, noise, etc. As deemed necessary by the reviewing authority,

mitigation measures shall consist of installation of solid fencing with landscaping along any residential property line which is exposed to the drive-through or the enclosure of the drive-through fixtures and lanes so as to buffer abutting residential properties and to further contain all associated impacts; and

e. Pedestrian access: Drive-through lanes shall be designed and placed to minimize crossing principal pedestrian access-ways or otherwise impeding pedestrian access.

f. Hours of Operation: The Board, as part of its review, may take into consideration the impact hours of operation may have on adjoining uses.

g. In the B2b and B2c zones, drive-throughs are only permitted when associated with banking and pharmacy uses and in buildings of three or more stories. Drive-throughs associated with restaurant, automotive or uses other than pharmacies and banking are prohibited. The drive-through use be located as much as practicable under the upper levels of the building. Conditions specific to major or minor auto service stations, car washes and automobile dealerships:

~~i. A landscaped buffer, no less than five (5) feet wide, shall be located along street frontages (excluding driveways). The buffer shall consist of a variety of plantings in accordance with the City of Portland Technical Manual;~~

~~ii. Car washes shall be designed to avoid the tracking of residual waters into the street.~~

(b) ~~Other:~~ Use Group "M": Notwithstanding section 14-474(a) of this article or any other provision of this code, the Planning Board shall be substituted for the Board of Appeals as the reviewing authority and shall apply the following standards in addition to the

provisions of section 14-474:

1. ~~Printing and publishing establishments except as provided in subsection b. below;~~ Traffic circulation: The site shall have an adequate traffic circulation pattern designed to avoid hazards to vehicular circulation on adjoining streets. All stacking of motor vehicles shall be on site, and loading facilities shall be located to the rear of the building and shall not be visible from the street.
2. ~~Printing and publishing establishments in continuous operation at their current location since April 4, 1988, or earlier and which exceeded ten thousand (10,000) square feet of aggregate gross floor area at that time;~~ Building and site design: The exterior design of the structures, including architectural style, facade materials, roof pitch, building form, established setbacks and height, shall be of a commercial rather than industrial character. The site shall contain screening and landscaping which shall meet the requirements of section 14-526 for screening between land uses and the City of Portland Technical Manual.
3. ~~Wholesale distribution establishments; and~~
4. ~~Research and development and related production establishments.~~

~~Uses listed in this paragraph (b) (other) 1, 3 and 4 shall be limited to ten thousand (10,000) square feet of aggregate gross floor area, and uses listed in this paragraph (b) (other) 1, 2, 3 and 4 shall be subject to the following conditions and standards in addition to the provision of section 14-474:~~

- a. ~~Traffic circulation: The site shall have an adequate traffic circulation pattern designed to avoid hazards to vehicular circulation on adjoining streets. All stacking of motor vehicles shall be on site, and loading facilities shall be located to the rear of the building and shall not be visible from the street.~~

- ~~b. Building and site design: The exterior design of the structures, including architectural style, facade materials, roof pitch, building form, established setbacks and height, shall be of a commercial rather than industrial character. The site shall contain screening and landscaping which shall meet the requirements of section 14-526 for screening between land uses and the City of Portland Technical Manual.~~
- ~~5. Temporary wind anemometer towers, as defined in Sec 14-47, are permitted provided the following standards are met in addition to Sec 14-430:~~
 - ~~a. Towers may be installed for the purpose of wind data collection for no more than two (2) years after the issuance of a Certificate of Occupancy for the tower. At the conclusion of the aforementioned two (2) years, the tower must be dismantled and removed from the site within sixty (60) days; and~~
 - ~~b. Towers shall be constructed according to plans and specifications stamped by a licensed professional engineer, which shall be provided to the Board of Appeals with the application; and~~
 - ~~c. Towers shall be set back from habitable buildings by a distance equal to 1.1 times the tower height; and~~
 - ~~d. The applicant shall provide a safety report prepared and stamped by a licensed professional engineer to the Board of Appeals with their application for conditional use, which demonstrates how the proposed temporary wind anemometer tower is safe in terms of strength, stability, security, grounding, icing impacts and maintenance; and~~
 - ~~e. The applicant shall provide evidence of commercial general liability insurance, such insurance to be satisfactory to Corporation Counsel and cover damage or injury resulting from construction, operation or dismantling of any part of the temporary wind anemometer tower; and~~

- ~~f. Towers and associated guy wires shall be sited to minimize their prominence from and impacts on public ways (including pedestrian ways); and~~
- ~~g. Towers shall be used for installing anemometers and similar devices at a range of heights from the ground to measure wind characteristics (speed, direction, frequency) and related meteorological data, but shall not be used for any other purpose; and~~
- ~~h. A performance guarantee shall be required for the cost of removal of the tower, guy wires and anchors. This requirement may be satisfied by surety bond, letter of credit, escrow account or by evidence, acceptable to the City, or the financial and technical ability and commitment of the applicant or its agents to remove the facility at the end of the use period.~~

~~6. Wind energy systems, as defined and allowed in Article X, Alternative Energy.~~

- (c) Temporary wind anemometer towers, as defined in Sec 14-47, are permitted provided the same conditional use standards as listed in Section 14-163 for temporary wind anemometer towers are met in addition to Sec 14-430.

Sec. 14-184. Prohibited and Performance-based uses.

Uses not enumerated in sections 14-182 and 14-183 as either permitted uses or conditional uses are prohibited. Uses not expressly permitted as provided in section 14-182 and 14-183 are prohibited unless the use may be permitted subject to meeting the following performance based conditions and standards:

- (a) The proposed use is consistent with the purposes of this zone.
- (b) The proposed use is similar to a permitted use.
- (c) The proposed development is designed and operated so that it will prevent undue adverse environmental impacts, substantial diminution of the value or utility of neighboring structures, or significant hazards to

the health or safety of neighboring residents by controlling noise levels, emissions, traffic, lighting, odor, and any other potential negative impacts of the proposal.

The Planning Authority shall determine whether the uses not listed as permitted or conditional uses meet the above conditions and standards. The Planning Authority may impose reasonable conditions of approval on the proposed use to ensure that it is similar in character and impact to a use on the table.

If it is determined that the use does not meet the above criteria, it shall not be permitted. The determination of the Planning Authority may be appealed within 30 days of the written determination by the property owner, lessee of the space, or property owner within 100 feet of the proposed use. That appeal shall be heard by the Planning Board in a public hearing.

Sec. 14-185. Dimensional requirements.

In addition to the provisions of division 25 (space and bulk regulations and exceptions) of this article, lots in the B-2, B-2b, and B-2c zones shall meet the following dimensional requirements:

Minimum Lot Size	None
Minimum Street Frontage	20 feet
Front Yard Setback Minimum	None
Rear Yard Setback Minimum	10 feet, except as provided for below: a. 5 feet for accessory structures
Side Yard Setback Minimum	None required, except as provided for below: a. 5 feet for accessory structures
Side Yard on Side Street Setback Minimum	None

Front Yard Maximum¹	No more than 10 feet, except that the Planning Board or Planning Authority may approve a different amount for irregularly shaped lots or lots with frontage less than 40 feet provided this standard is met to the maximum extent practicable.² <u>The Planning Board or Planning Authority may waive the front yard maximum for utility substations and alternative energy installations.</u>
Structure Stepbacks	Portions of a structure above 35 feet shall be no closer than 5 feet from the side property line and no closer than 15 feet from the rear property line when such property line abuts a residential zone.
Height maximum	45 feet except as provided for below: a. 50 feet if first floor is partially or wholly occupied by a commercial use. b. 65 feet in B-2 and B-2c zones on lots >5 acres provided that all setbacks, except for front yard setbacks and side yard on side street setbacks, increase by 1 foot for each foot of height over 45 feet. c. 65 feet within 65 feet of Franklin St.
Maximum Impervious Surface Ratio	a. For residential uses: None b. For all other permitted uses: 80% in B-2 and B-2c c. For all other permitted uses: 90% in B-2b
Minimum Lot Area per Dwelling Unit	a. Off-peninsula locations, as defined in section 14-47: 1,500 square feet, except as provided for in (b) below. b. On-peninsula locations (as per 14-47) and projects with active street frontages, as defined in section 14-188, below: 435 square feet.

-
1. Building additions do not have to meet this section.
 2. If lot has less than 40 feet of frontage and is more than 100 feet deep then no maximum setback is required. If existing structures are within 20 feet of the street or meet the front yard maximum, and remainder of lot has less than 40 feet of frontage, then no maximum setback is required. Where setbacks exceed 10 feet, a continuous, attractive, and pedestrian-scaled edge treatment shall be constructed along the street, consisting of street trees spaced at no more than 15 feet on center, approved by City arborist, and a combinations of landscaping no less than 4 feet deep, ornamental brick or stone walls or ornamental fencing.
- |

MEMORANDUM
City Council Agenda Item

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

FROM: Jeff Levine, Director, Planning and Urban Development

DATE: February 15, 2017

SUBJECT: Community Business B-2 Text Amendments

SPONSOR: Elizabeth Boepple, Chair, Planning Board
(If sponsored by a Council committee, include the date the committee met and the results of the vote.)

COUNCIL MEETING DATE ACTION IS REQUESTED:
1st reading March 6, 2017 **Final Action** March 20, 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)
Elizabeth Boepple, Chair - 1 minute introduction
Stuart O'Brien, Planning Director, 3 minute overview of changes

I. ONE SENTENCE SUMMARY

The Planning Board unanimously recommends to the City Council adoption of proposed amendments to the Community Business Zone (B-1, B-2b and B-2c) which simplify the structure of text by inserting a use table, regroup uses, streamline the change of use between similar uses, establish an option for performance based uses, and create a waiver from the maximum front yard setback for utility substations and alternative energy installations.

II. AGENDA DESCRIPTION

On December 20, 2016, Luke Davidson of Maine Craft Distilling submitted a Zoning Text Amendment which asked to amend the allowed uses in the B-2 zone to allow his facility to move from Fox St. in the IL-B to a facility at Washington Avenue in the B-2. As the B-2 zone is currently structured, his distillery and tasting room would be prohibited from moving to the B-2 on Washington Avenue, because distilleries are not allowed uses.. Planning staff and the applicant collaborated to propose a revised use approach in the B-2, which would serve as a pilot project for larger holistic changes to treating uses citywide.

The key components of proposal; however, have not changed and as amended are:

1. Simplification of the structure of the B-2 by inserting a use table, regrouping uses and reformatting. The proposal reduces the length of the section from 9 to 4 pages;
2. Making change of use between similar uses much more straightforward than previously allowed;
3. Creating a more permissive structure to uses not specifically listed in the code. Recognizing that

with the beneficial innovation occurring in the City that allowing additional flexibility could provide a substantial benefit to entrepreneurs looking to establish a business in the B-2 zone in Portland.

III. BACKGROUND

The B-2 and B-2b zones play a critical role in governing the form and function of much of the commercial and mixed-use development in the city. These zones provide locations for varied commercial and residential development along the city's major arterials, such as Washington Avenue, Forest Avenue, and outer Congress Street. Many of the city's key corridors and nodes are located in the B-2 and B-2b zones.

Luke Davidson of Maine Craft Distilling sought to amend the allowed uses in the B-2 zone to allow his distillery to move from Fox St. in the IL-B to a facility at Washington Avenue in the B-2. As the B-2 zone is currently structured, his distillery and tasting room would be prohibited from moving to the B-2 on Washington Avenue, because distilleries are not allowed uses. Mr. Davidson is questioning the policy rationale for this considering the fact that bars, restaurants, commercial kitchens, bakeries, dairies and other uses with similar profiles would be allowed. In addition, Mr. Davidson expressed his concern with what he felt was a frustrating and confusing structure for allowed uses in the B-2 zone. Rather than just add distilleries to the list of permitted uses, the Planning staff and the applicant agreed to propose a revised use approach in the B-2, which would serve as a pilot project for larger holistic changes to treating uses citywide. The intent is to simplify and clarify the B-2 zone, by creating

IV. INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED

The Planning Board found the proposed text amendments consistent with the Comprehensive Plan's Economic Development goals to accommodate a range of functionally and physically defined commercial centers and to promote revitalization of commercial centers. The proposal is consistent with general Council goals for economic development.

V. FINANCIAL IMPACT

The amendments support business development and reuse in the City with no direct financial obligation on the city.

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

VII. RECOMMENDATION

Planning Board unanimously (7-0) found that the proposed text amendments are consistent with Comprehensive Plan for the City of Portland; and the Planning Board recommends to City Council adoption of the proposed text amendments to the Community Business B-2 zone, which include a new table of uses that adds distilleries, updated conditional uses, a provision for performance based uses, and a waiver of maximum setbacks for utility substations/alternative energy installation in the dimensional standards.

VIII. LIST ATTACHMENTS

1. Proposed Text Amendments
2. Planning Board Report to Council

Prepared by: Stuart O'Brien, Planning Director
Date: February 15, 2017

A. Proposed Amendment: Delete all of Section 14-182 and substitute Table of Uses – S3c. 14-182

Sec. 14-182. Table of Uses

Group ¹	Use	B-2 ²	B-2b	B-2c
R	Single family home	Y	Y	Y
R	Two family home	Y	Y	Y
R	Three family home	Y	Y	Y
R	Multifamily housing	Y	Y	Y
R	Combined live/work spaces provided the living space is at least	Y	Y	Y
<u>€ B</u>	General business and professional offices, as defined in section 14-47, and offices of trades	Y	Y	Y
<u>€ B</u>	Personal services, as defined in section 14-47	Y	Y	Y
<u>€ B</u>	General retail establishments	Y	Y	Y
<u>€ B</u>	Pharmacies with retail sales	Y	Y	Y
<u>€ B</u>	Banking Facilities	Y	Y	Y
<u>€ B</u>	Restaurants, except that restaurants shall close for all purposes including the service of alcohol no later than 11:00 p.m. unless otherwise authorized by the City Council	Y	Y	Y
<u>€ B</u>	Drinking establishments, as defined in section 14-47 and bars as defined in section 14-217.5 (a)(1)	Y	Y	N
<u>€ B</u>	Billiard parlors	Y	Y	Y
<u>€ B</u>	Funeral homes	Y	Y	Y
<u>€ B</u>	Miscellaneous repair services, excluding motor vehicle repair services	Y	Y	Y
<u>€ B</u>	Communication studios or broadcast and receiving facilities	Y	Y	Y
<u>€ B</u>	Health clubs and gymnasiums	Y	Y	Y
<u>€ B</u>	Veterinary hospitals and clinics provided there is no outdoor kennel	Y	Y	Y
<u>€ B</u>	Theaters and performance halls	Y	Y	Y
<u>€ B</u>	Hotels, Motels and Inns	Y	Y	Y
<u>€ B</u>	Bakeries, breweries, distilleries, <u>commercial kitchens</u> and similar uses with a retail component <u>and with a total floor area</u> , under 10,000 net sf.	Y	Y	Y
<u>€ B</u>	Bakeries, breweries, distilleries, <u>commercial kitchens</u> and similar uses with a retail component <u>and with a total floor area of</u> , 10,000 net sf. or greater	Y	N	N
<u>€ B</u>	Expansion of existing dairies	Y	Y	Y
<u>€</u>	Drive-throughs associated with a permitted or conditional	<u>€</u>	<u>€</u>	<u>€</u>

¹ Uses within the same group lettering may be substituted without being considered a change of use under zoning, provided all dimensional and other requirements of this section are met. Other reviews may be required under City regulations, including but not limited to building permit, subdivision and site plan reviews. However, no additional parking shall be required for changes within the same use group for a change in total floor area up to 10,000 sf, except for the provision of additional housing units.

Use Groups include the following:

R = Residential

B = Business

I = Institutional

O = Other

U = Utility

A = Auto related

M = Manufacturing/Processing/and other Industrial

²Y-Permitted N-Not Permitted

C-Conditional use, see section 14-183 for specific standards in addition to the general conditional use standards

	use ²			
C B	Registered medical marijuana dispensaries	Y	C	C
C	Commercial kitchens provided the commercial kitchen includes retail sales or a tasting room within the principal structure, under 7,000 net sf.	Y	Y	Y
C	Commercial kitchens provided the commercial kitchen includes retail sales or a tasting room within the principal structure, 7,000 net sf. or greater	Y	N	N
I	Long term, extended and intermediate care facility	Y	Y	Y
I	Clinics, as defined in section 14-47	Y	Y	Y
I	Places of assembly	Y	Y	Y
I	Kindergarten, elementary, middle and secondary schools	Y	Y	Y
I	College, university, trade schools	Y	Y	Y
I	Municipal buildings and uses	Y	Y	Y
O	Lodging houses	Y	Y	Y
O	Day care facilities	Y	Y	Y
O	Utility substations, as defined in section 14-47, subject to the requirements of article V (site plan), sections 14-522 and 14-523 notwithstanding	Y	Y	Y
O	Accessory uses, as provided in section 14-404 ³	Y	Y	Y
O	Bed and breakfast, subject to the standards of article V (site plan), sections 14-522 and 14-523 notwithstanding. A bed and breakfast may include a meeting facility if for weddings, seminars, receptions, business meetings and the like and if the facility is less than 4,000 net sf.	Y	Y	Y

O	Studios for artists and craftspeople, less than 4,000 net sf. per space	Y	Y	Y
W	Wind energy systems, as defined and allowed in Article X, Alternative Energy	Y	Y	Y
U	<u>Utility substations, as defined in section 14-47, subject to the requirements of article V (site plan), sections 14-522 and 14-523 notwithstanding</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
A	<u>Drive-throughs associated with a permitted or conditional use⁴</u>	<u>C</u>	<u>N</u>	<u>C</u>
A	Auto service stations	C	N	N
A	Expansion of auto service stations in existence as of November 15, 1999	C	C	C
A	Car washes	C	C	C
A	Automobile dealerships	C	C	C
<u>P M</u>	Printing and publishing establishments of 10,000 gross sf. or less	C	C	C
<u>P M</u>	Expansion of existing printing and publishing establishments of greater than 10,000 gross sf. in existence since April 4, 1988	C	C	C
<u>P M</u>	Wholesale distribution establishments of 10,000 gross sf. or less	C	C	C
<u>P M</u>	Research and development and related production establishments of 10,000 gross sf. or less	C	C	C

³Expansion of accessory uses into space used by a permitted use shall not be considered a change of use

⁴In the B-2b and B-2c zones drive-throughs are only allowed as outlined in 14-183(b) 8.

~~Y- Permitted~~ ~~N- Not permitted~~

~~C- Conditional use, see section 14-183 for specific standards in addition to the general conditional use standards~~

B. Proposed Amendment: Amend by deleting Section 14-483 and substitute the following Section 14-183:

14-183 Conditional Uses

The following uses are permitted in the B-2, B-2b and B-2c zone, as provided in section 14-474 (conditional uses), if they meet the following requirements:

- a) "A" group conditional uses. Notwithstanding section 14-474(a) of this article or any other provision of this code, the Planning Board shall be substituted for the ~~Board~~ of ~~Appeals~~ as the reviewing authority and shall apply the following standards in addition to the provisions of section 14-474:
 - i. Signs: Signs shall not adversely affect visibility at intersections or access drives. Such signs shall be constructed, installed and maintained so as to

ensure the safety of the public. Such signs shall advertise only services or goods available on the premises.

- ii. Circulation: No ingress and egress driveways shall be located within thirty (30) feet from an intersection. No entrance or exit for vehicles shall be in such proximity to a playground, school, church, other places of public assembly, or any residential zone that the nearness poses a threat or potential danger to the safety of the public.

iii. Conditions specific to major or minor auto service stations, car washes and automobile dealerships:

- 1. A landscaped buffer, no less than 5 feet wide, shall be located along street frontages (excluding driveways). The buffer shall consist of a variety of plantings in accordance with the City of Portland Technical Manual;
- 2. Car washes shall be designed to avoid the tracking of residual waters into the street.

- b) Drive-throughs: Notwithstanding section 14-474(a) of this article or any other provision of this code, the Planning Board shall be substituted for the ~~b~~Board of ~~a~~Appeals as the reviewing authority and shall apply the following standards in addition to the provisions of section 14-474:

- i. Location of Drive-throughs: Features, such as windows, vacuum cleaners and menu/order boards, stacking lanes, must be placed, where practicable, to the side and rear of the principal building except where such placement will be detrimental to an adjacent residential zone or use, and shall be located no nearer than forty (40) feet from any adjoining property located in a residential zone. This distance shall be measured from the outermost edge of the outside drive-through feature to such property line. In addition, drive-through features shall not extend nearer than twenty-five (25) feet to the street line. The site must have adequate stacking capacity for vehicles waiting to use these service features without impeding vehicular circulation or creating hazards to vehicular circulation on adjoining streets.
- ii. Noise: Any speakers, intercom systems, or other audible means of communication shall not play prerecorded messages. Any speakers, intercom systems, audible signals, computer prompts, or other noises generated by the drive-through services or fixtures shall not exceed 55 dB or shall be undetectable above the ambient noise level as measured by a noise meter at the property line, whichever is greater.
- iii. Lighting: Drive-through facilities shall be designed so that site and vehicular light sources shall not unreasonably spill over or be directed onto

adjacent residential properties and shall otherwise conform to the lighting standards set forth in 14-526.

- iv. Screening and Enclosure: Where automobiles may queue, waiting for drive-through services, their impacts must be substantially mitigated to protect adjacent residential properties from headlight glare, exhaust fumes, noise, etc. As deemed necessary by the reviewing authority, mitigation measures shall consist of installation of solid fencing with landscaping along any residential property line which is exposed to the drive-through or the enclosure of the drive-through fixtures and lanes so as to buffer abutting residential properties and to further contain all associated impacts; and
- v. Pedestrian access: Drive-through lanes shall be designed and placed to minimize crossing principal pedestrian access-ways or otherwise impeding pedestrian access.
- vi. Hours of Operation: The Board, as part of its review, may take into consideration the impact hours of operation may have on adjoining uses.

~~vii. Conditions specific to major or minor auto service stations, car washes and automobile dealerships:~~

- ~~1. A landscaped buffer, no less than 5 feet wide, shall be located along street frontages (excluding driveways). The buffer shall consist of a variety of plantings in accordance with the City of Portland Technical Manual;~~
- ~~2. Car washes shall be designed to avoid the tracking of residual waters into the street~~

viii. In the B2b and B2c zones, drive-throughs are only permitted when associated with banking and pharmacy uses and in buildings of three or more stories. Drive-throughs associated with restaurant, automotive or uses other than pharmacies and banking are prohibited. The drive-through use be located as much as practicable under the upper levels of the building.

- c) Use Group "PM": Notwithstanding section 14-474(a) of this article or any other provision of this code, the Planning Board shall be substituted for the ~~b~~Board of ~~a~~Appeals as the reviewing authority and shall apply the following standards in addition to the provisions of section 14-474:

- i. Traffic circulation: The site shall have an adequate traffic circulation pattern designed to avoid hazards to vehicular circulation on adjoining streets. All stacking of motor vehicles shall be on site, and loading facilities shall be located to the rear of the building and shall not be visible from the street.
 - ii. Building and site design: The exterior design of the structures, including architectural style, facade materials, roof pitch, building form, established setbacks and height, shall be of a commercial rather than industrial character. The site shall contain screening and landscaping which shall meet the requirements of section 14-526 for screening between land uses and the City of Portland Technical Manual.
- d) Temporary wind anemometer towers, as defined in Sec 14-47, are permitted provided the same conditional use standards as listed in Section 14-163 for temporary wind anemometer towers are ~~outlined in the [B-1 zone?]~~ are met in addition to Sec 14-430.

C. Proposed Amendment: Amend by deleting Section 14-484 Prohibited uses and substitute the following Section 14-484 Performance based uses.

Sec. 14-184. Prohibited and Performance based uses.

Uses not expressly permitted as provided in section 14-182 and 14-183 are prohibited unless the use may be permitted subject to meeting the following performance based conditions and standards:

- (a) The proposed use is consistent with the purposes of this zone.
- (b) The proposed use is similar to a permitted use.
- (c) The proposed development is designed and operated so that it will prevent undue adverse environmental impacts, substantial diminution of the value or utility of neighboring structures, or significant hazards to the health or safety of neighboring residents by controlling noise levels, emissions, traffic, lighting, odor, and any other potential negative impacts of the proposal.

The Planning Authority shall determine whether the uses not listed as permitted or conditional uses meet the above conditions and standards. The Planning Authority may impose reasonable conditions of approval on the proposed use to ensure that it is similar in character and impact to a use on the table.

If it is determined that the use ~~does not meet the above criteria, is not similar to any of those uses,~~ it shall not be permitted. The determination of the Planning Authority may be appealed within 30 days of the written determination by the property owner, lessee of the space, or property owner within 100 feet of the proposed use. That appeal shall be heard by the Planning Board in a public hearing.

D. Proposed Amendment: Amend Section 14-485 dimensional requirement to exempt utility substations from meeting the maximum front yard setback.

Sec. 14-185. Dimensional requirements.

In addition to the provisions of division 25 (space and bulk regulations and exceptions) of this article, lots in the B-2, B-2b, and B-2c zones shall meet the following dimensional requirements:

Minimum Lot Size	None
Minimum Street Frontage	20 feet
Front Yard Setback Minimum	None
Rear Yard Setback Minimum	10 feet, except as provided for below: a. 5 feet for accessory structures
Side Yard Setback Minimum	None required, except as provided for below: a. 5 feet for accessory structures
Side Yard on Side Street Setback Minimum	None
Front Yard Maximum¹	No more than 10 feet, except that the Planning Board or Planning Authority may approve a different amount for irregularly shaped lots or lots with frontage less than 40 feet provided this standard is met to the maximum extent practicable. ² <u>The Planning Board or Planning Authority may waive the front yard maximum for utility substations and alternative energy installations.</u>
Structure Stepbacks	Portions of a structure above 35 feet shall be no closer than 5 feet from the side property line and no closer than 15 feet from the rear property line when such property line abuts a residential zone.
Height maximum	45 feet except as provided for below: a. 50 feet if first floor is partially or wholly occupied by a commercial use. b. 65 feet in B-2 and B-2c zones on lots >5 acres provided that all setbacks, except for front yard setbacks and side yard on side street setbacks, increase by 1 foot for each foot of height over 45 feet. c. 65 feet within 65 feet of Franklin St.
Maximum Impervious Surface Ratio	a. For residential uses: None b. For all other permitted uses: 80% in B-2 and B-2c c. For all other permitted uses: 90% in B-2b

City of Portland Code of
Ordinances Sec. 14-218

Minimum Lot Area per Dwelling Unit	a. Off-peninsula locations, as defined in section 14-47: 1,500 square feet, except as provided for in (b) below. b. On-peninsula locations (as per 14-47) and projects with active street frontages, as defined in section 14-188, below: 435 square feet.
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¹ Building additions do not have to meet this section.

² If lot has less than 40 feet of frontage and is more than 100 feet deep then no maximum setback is required. If existing structures are within 20 feet of the street or meet the front yard maximum, and remainder of lot has less than 40 feet of frontage, then no maximum setback is required. Where setbacks exceed 10 feet, a continuous, attractive, and pedestrian-scaled edge treatment shall be constructed along the street, consisting of street trees spaced at no more than 15 feet on center, approved by City arborist, and a combinations of landscaping no less than 4 feet deep, ornamental brick or stone walls or ornamental fencing.



PLANNING BOARD REPORT TO CITY COUNCIL PORTLAND, MAINE

Zoning Text Amendment

Changes to the Use Requirements in the B-2 zone Addition of Distilleries to Allowed Uses (Zoning Modernization Pilot Project)

Luke Davidson, Maine Craft Distilling and City of Portland, Applicant

Submitted to: Portland City Council From: Portland Planning Board Public Hearing Date: March 20, 2017	Prepared by: Tuck O'Brien, City Planning Director Date: February 16, 2017
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I. INTRODUCTION

The B-2 and B-2b zones play a critical role in governing the form and function of much of the commercial and mixed-use development in the city. These zones provide locations for varied commercial and residential development along the city's major arterials, such as Washington Avenue, Forest Avenue, and outer Congress Street. Many of the city's key corridors and nodes are located in the B-2 and B-2b zones.

On December 20, 2016, Luke Davidson of Maine Craft Distilling submitted a Zoning Text Amendment which asked to amend the allowed uses in the B-2 zone to allow his facility to move from Fox St. in the IL-B to a facility at Washington Avenue in the B-2. As the B-2 zone is currently structured, his distillery and tasting room would be prohibited from moving to the B-2 on Washington Avenue, because distilleries are not allowed uses. Mr. Davidson is questioning the policy rationale for this considering the fact that bars, restaurants, commercial kitchens, bakeries, dairies and other uses with similar profiles would be allowed. In addition, Mr. Davidson expressed his concern with what he felt was a frustrating and confusing structure for allowed uses in the B-2 zone. Staff described the plan to implement a simplified use methodology as part of revisions to the Land Use Ordinance after the comprehensive plan is completed. After further discussions related to challenges with schedules relating to Mr. Davidson's tenancy on Washington Ave, staff and the applicant agreed to propose a revised use approach in the B-2, which would serve as a pilot project for larger holistic changes to treating uses citywide.

The Planning Board held a workshop on the proposal on January 13, 2017 and a public hearing on February 14, 2017. The Board unanimously (7-0) recommends adoption of the proposed text amendments to the City Council. The mark-up of the ordinance draft is included as *Attachment 1*.

The key components of proposal are as follows:

1. Simplification of the structure of the B-2 by inserting a use table, regrouping uses and reformatting. The proposal reduces the length of the section from 9 to 4 pages;
2. Making change of use between similar uses much more straightforward than previously allowed;
3. Creating a more permissive structure to uses not specifically listed in the code. Recognizing that with

the beneficial innovation occurring in the City that allowing additional flexibility could provide a substantial benefit to entrepreneurs looking to establish a business in the B-2 zone in Portland.

II. PROPOSED TEXT AMENDMENTS

Text amendments are proposed for the Community Business B-2 zone, which includes B-1, B-2b, and B-2c zones. The proposed changes include formatting of the ordinance, simplification and clarification of text and the treatment of uses. Additional language is proposed to provide a waiver from the required maximum front yard setbacks for utility installations.

A. Re- formatting the 14-182 “Permitted Use” section in the B-2 zone

The Planning Board supports the proposal to replace the existing Permitted Use section with a Table of Uses as included in *Attachment 1*. The proposed language also corrects some formatting and typographical errors in the body of the ordinance and reorganizes the section for increase ease of comprehension, especially related to the conditional use section.

B. Addition of Breweries and Distilleries as allowed uses and simplification of use conversion language

The proposed language seeks to provide predictability, clarity and transparency to how uses are treated in the B-2 by adding language expanding the number of allowed uses to reflect trends in the Portland economy and the similar performance profiles between similar uses.

Over the past two decades multiple new uses have been introduced into the B-2 to address specific proposals from example in 2015 the use of “commercial kitchen” was added to the code. The rationale for adding the use was described as follows:

A commercial kitchen (with a requirement of retail sales or tasting room) is similar to other permitted uses in the B-2/B-2b such as bakeries and restaurants. The provision for retail sales or tasting room supports the “people activity” inherent in a B-2/B-2b retail district. A commercial kitchen as described in this report is a relatively new use which is not reflected in the existing text.

The B-2b purpose section states it is intended to “provide neighborhood and community retail and service establishments” while the B-2 is intended to “provide a broad range of goods and services and general businesses with a mixture of large and small buildings such a grocery stores, shops and services located in major shopping centers and along arterial streets”. Commercial kitchens appear to be consistent with and supportive of these purpose statements.

The B-2b provides a 7,000 square foot floor area limitation on commercial kitchens which is consistent with the existing treatment of bakeries. This provision guards against larger facilities that would more appropriately be located in off-peninsula areas or in industrial zones.

In recognition of the benefit of allowing a diversity of vibrant uses to strengthen our community centers, the proposed amendment seeks to add additional flexibility to the zone to facilitate the introduction of new uses with similar characteristics as enumerated uses. Accordingly, Staff is proposing deleting the existing Sec. 14-484 Prohibited Uses, which read, “Uses not enumerated in Sections 14-182 and 14-183 as either permitted uses or conditional uses are prohibited”.

The proposed amendments replace the above with:

Sec. 14-184. Prohibited and Performance based uses.

Uses not expressly permitted as provided in section 14-182 and 14-183 are prohibited unless the use may be permitted subject to meeting the following performance based conditions and standards:

- (a) The proposed use is consistent with the purposes of this zone.
- (b) The proposed use is similar to a permitted use.
- (c) The proposed development is designed and operated so that it will prevent undue adverse environmental impacts, substantial diminution of the value or utility of neighboring structures, or significant hazards to the health or safety of neighboring residents by controlling noise levels, emissions, traffic, lighting, odor, and any other potential negative impacts of the proposal.

The Planning Authority shall determine whether the uses not listed as permitted or conditional uses meet the above conditions and standards. The Planning Authority may impose reasonable conditions of approval on the proposed use to ensure that it is similar in character and impact to a use on the table.

If it is determined that the use does not meet the above criteria, it shall not be permitted. The determination of the Planning Authority may be appealed within 30 days of the written determination by the property owner, lessee of the space, or property owner within 100 feet of the proposed use. That appeal shall be heard by the Planning Board in a public hearing.

C. Increasing Ease of Moving Between Similar Uses

In the proposed B-2/ B-2b Permitted Use Table included in *Attachment 1*, uses are grouped into Use categories such as Residential (R), Business (B), Institutional (I), Automobile (A) etc. Uses within the same group may be changed substituted without being considered a change of use. The proposed ordinance reads:

Uses within the same group lettering may be substituted without being considered a change of use under zoning, provided all dimensional and other requirements of this section are met. Other reviews may be required under City regulations, including but not limited to building permit, subdivision and site plan reviews. However, no additional parking shall be required for changes within the same use group for a change in total floor area up to 10,000 sf,

except for the provision of additional housing units.

This language is intended to bring the B-2 zone in-line with the site plan ordinance which the definition of Change of Use (Sec. 14-522).

D. Changes After the January 17th Workshop Draft

Several other minor changes include:

- Allowing the Planning Board to grant dimensional relief from the front yard setback requirements for utility substations and alternative energy facilities, which may be better situated to the rear of lots in some cases.
- Combining commercial kitchen uses with bakeries, breweries, distilleries etc.
- Reverting to the existing approach to drive-through uses

III. COMPREHENSIVE PLAN

The proposed text amendments have been designed to allow the B-2 zones to better accomplish its purpose as a community business zone, particularly as they relate to uses with similar impact profiles which would serve the purpose of decreasing the auto dependence of uses in these zones. In this, the amendments comport with the city's Comprehensive Plan.

The Comprehensive Plan, adopted in November 2002, updated in 2005, provides a policy framework for managing growth in the city, and clearly advocates dense commercial and mixed-use development that both serves and suits the neighborhood context.

The proposed amendment is also in compliance with the following goals and policies of the COMMUNITY COMMERCIAL POLICIES AND LAND USE PLAN – September 1987-1988, which was adopted as part of the comprehensive plan:

Development Goals

- Accommodate the City's commercial activity within a range of functionally and physically defined commercial centers.
- Promote preservation and revitalization of its existing commercial centers and maintain a scale within them that is compatible and integrated with other land use.

Similarly, the final *Sustainable Portland* report includes policies such as “support[ing] and enhanc[ing] a citywide system of neighborhood business districts that are neighborhood-oriented, provide local services within a walkable distance from neighborhood population centers, and are linked by transit.”

IV. PUBLIC COMMENT

No public comments were received on this proposal.

V. PLANNING BOARD RECOMMENDATION

On February 14, 2017, the Planning Board found with a unanimous vote (7-0) that the proposed text amendments to the B-2 zone, Sections 14-182, 183, 184 and 185 are consistent with Portland's Comprehensive Plan for the City of Portland; and therefore, the Planning Board recommends to City Council adoption of the proposed text amendments to the Community Business B-2 zone, which include a new table of uses that adds distilleries, updated conditional uses, a provision for performance based uses, and a waiver of maximum setbacks for utility substations/alternative energy installation in the dimensional standards.

ATTACHMENTS

1. Proposed Text Amendments to Portland Land Use Code, Div. 10. B 2 and B 2b Community Business Zones

A. Proposed Amendment: Delete all of Section 14-182 and substitute Table of Uses – S3c. 14-182

Sec. 14-182. Table of Uses

Group ¹	Use	B-2 ²	B-2b	B-2c
R	Single family home	Y	Y	Y
R	Two family home	Y	Y	Y
R	Three family home	Y	Y	Y
R	Multifamily housing	Y	Y	Y
R	Combined live/work spaces provided the living space is at least	Y	Y	Y
<u>€ B</u>	General business and professional offices, as defined in section 14-47, and offices of trades	Y	Y	Y
<u>€ B</u>	Personal services, as defined in section 14-47	Y	Y	Y
<u>€ B</u>	General retail establishments	Y	Y	Y
<u>€ B</u>	Pharmacies with retail sales	Y	Y	Y
<u>€ B</u>	Banking Facilities	Y	Y	Y
<u>€ B</u>	Restaurants, except that restaurants shall close for all purposes including the service of alcohol no later than 11:00 p.m. unless otherwise authorized by the City Council	Y	Y	Y
<u>€ B</u>	Drinking establishments, as defined in section 14-47 and bars as defined in section 14-217.5 (a)(1)	Y	Y	N
<u>€ B</u>	Billiard parlors	Y	Y	Y
<u>€ B</u>	Funeral homes	Y	Y	Y
<u>€ B</u>	Miscellaneous repair services, excluding motor vehicle repair services	Y	Y	Y
<u>€ B</u>	Communication studios or broadcast and receiving facilities	Y	Y	Y
<u>€ B</u>	Health clubs and gymnasiums	Y	Y	Y
<u>€ B</u>	Veterinary hospitals and clinics provided there is no outdoor kennel	Y	Y	Y
<u>€ B</u>	Theaters and performance halls	Y	Y	Y
<u>€ B</u>	Hotels, Motels and Inns	Y	Y	Y
<u>€ B</u>	Bakeries, breweries, distilleries, <u>commercial kitchens</u> and similar uses with a retail component <u>and with a total floor area</u> , under 10,000 net sf.	Y	Y	Y
<u>€ B</u>	Bakeries, breweries, distilleries, <u>commercial kitchens</u> and similar uses with a retail component <u>and with a total floor area of</u> , 10,000 net sf. or greater	Y	N	N
<u>€ B</u>	Expansion of existing dairies	Y	Y	Y
<u>€</u>	Drive-throughs associated with a permitted or conditional	<u>€</u>	<u>€</u>	<u>€</u>

¹ Uses within the same group lettering may be substituted without being considered a change of use under zoning, provided all dimensional and other requirements of this section are met. Other reviews may be required under City regulations, including but not limited to building permit, subdivision and site plan reviews. However, no additional parking shall be required for changes within the same use group for a change in total floor area up to 10,000 sf, except for the provision of additional housing units.

Use Groups include the following:

R = Residential

B = Business

I = Institutional

O = Other

U = Utility

A = Auto related

M = Manufacturing/Processing/and other Industrial

²Y-Permitted N-Not Permitted

C-Conditional use, see section 14-183 for specific standards in addition to the general conditional use standards

	use ²			
C B	Registered medical marijuana dispensaries	Y	C	C
C	Commercial kitchens provided the commercial kitchen includes retail sales or a tasting room within the principal structure, under 7,000 net sf.	Y	Y	Y
C	Commercial kitchens provided the commercial kitchen includes retail sales or a tasting room within the principal structure, 7,000 net sf. or greater	Y	N	N
I	Long term, extended and intermediate care facility	Y	Y	Y
I	Clinics, as defined in section 14-47	Y	Y	Y
I	Places of assembly	Y	Y	Y
I	Kindergarten, elementary, middle and secondary schools	Y	Y	Y
I	College, university, trade schools	Y	Y	Y
I	Municipal buildings and uses	Y	Y	Y
O	Lodging houses	Y	Y	Y
O	Day care facilities	Y	Y	Y
O	Utility substations, as defined in section 14-47, subject to the requirements of article V (site plan), sections 14-522 and 14-523 notwithstanding	Y	Y	Y
O	Accessory uses, as provided in section 14-404 ³	Y	Y	Y
O	Bed and breakfast, subject to the standards of article V (site plan), sections 14-522 and 14-523 notwithstanding. A bed and breakfast may include a meeting facility if for weddings, seminars, receptions, business meetings and the like and if the facility is less than 4,000 net sf.	Y	Y	Y

O	Studios for artists and craftspeople, less than 4,000 net sf. per space	Y	Y	Y
W	Wind energy systems, as defined and allowed in Article X, Alternative Energy	Y	Y	Y
U	<u>Utility substations, as defined in section 14-47, subject to the requirements of article V (site plan), sections 14-522 and 14-523 notwithstanding</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
A	<u>Drive-throughs associated with a permitted or conditional use⁴</u>	<u>C</u>	<u>N</u>	<u>C</u>
A	Auto service stations	C	N	N
A	Expansion of auto service stations in existence as of November 15, 1999	C	C	C
A	Car washes	C	C	C
A	Automobile dealerships	C	C	C
P M	Printing and publishing establishments of 10,000 gross sf. or less	C	C	C
P M	Expansion of existing printing and publishing establishments of greater than 10,000 gross sf. in existence since April 4, 1988	C	C	C
P M	Wholesale distribution establishments of 10,000 gross sf. or less	C	C	C
P M	Research and development and related production establishments of 10,000 gross sf. or less	C	C	C

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³Expansion of accessory uses into space used by a permitted use shall not be considered a change of use

⁴In the B-2b and B-2c zones drive-throughs are only allowed as outlined in 14-183(b) 8.

~~Y- Permitted~~ ~~N- Not permitted~~

~~C- Conditional use, see section 14-183 for specific standards in addition to the general conditional use standards~~

B. Proposed Amendment: Amend by deleting Section 14-483 and substitute the following Section 14-183:

14-183 Conditional Uses

The following uses are permitted in the B-2, B-2b and B-2c zone, as provided in section 14-474 (conditional uses), if they meet the following requirements:

- a) "A" group conditional uses. Notwithstanding section 14-474(a) of this article or any other provision of this code, the Planning Board shall be substituted for the ~~Board~~ of ~~Appeals~~ as the reviewing authority and shall apply the following standards in addition to the provisions of section 14-474:
 - i. Signs: Signs shall not adversely affect visibility at intersections or access drives. Such signs shall be constructed, installed and maintained so as to

ensure the safety of the public. Such signs shall advertise only services or goods available on the premises.

- ii. Circulation: No ingress and egress driveways shall be located within thirty (30) feet from an intersection. No entrance or exit for vehicles shall be in such proximity to a playground, school, church, other places of public assembly, or any residential zone that the nearness poses a threat or potential danger to the safety of the public.

iii. Conditions specific to major or minor auto service stations, car washes and automobile dealerships:

- 1. A landscaped buffer, no less than 5 feet wide, shall be located along street frontages (excluding driveways). The buffer shall consist of a variety of plantings in accordance with the City of Portland Technical Manual;
- 2. Car washes shall be designed to avoid the tracking of residual waters into the street.

- b) Drive-throughs: Notwithstanding section 14-474(a) of this article or any other provision of this code, the Planning Board shall be substituted for the ~~b~~Board of ~~a~~Appeals as the reviewing authority and shall apply the following standards in addition to the provisions of section 14-474:

- i. Location of Drive-throughs: Features, such as windows, vacuum cleaners and menu/order boards, stacking lanes, must be placed, where practicable, to the side and rear of the principal building except where such placement will be detrimental to an adjacent residential zone or use, and shall be located no nearer than forty (40) feet from any adjoining property located in a residential zone. This distance shall be measured from the outermost edge of the outside drive-through feature to such property line. In addition, drive-through features shall not extend nearer than twenty-five (25) feet to the street line. The site must have adequate stacking capacity for vehicles waiting to use these service features without impeding vehicular circulation or creating hazards to vehicular circulation on adjoining streets.
- ii. Noise: Any speakers, intercom systems, or other audible means of communication shall not play prerecorded messages. Any speakers, intercom systems, audible signals, computer prompts, or other noises generated by the drive-through services or fixtures shall not exceed 55 dB or shall be undetectable above the ambient noise level as measured by a noise meter at the property line, whichever is greater.
- iii. Lighting: Drive-through facilities shall be designed so that site and vehicular light sources shall not unreasonably spill over or be directed onto

adjacent residential properties and shall otherwise conform to the lighting standards set forth in 14-526.

- iv. Screening and Enclosure: Where automobiles may queue, waiting for drive-through services, their impacts must be substantially mitigated to protect adjacent residential properties from headlight glare, exhaust fumes, noise, etc. As deemed necessary by the reviewing authority, mitigation measures shall consist of installation of solid fencing with landscaping along any residential property line which is exposed to the drive-through or the enclosure of the drive-through fixtures and lanes so as to buffer abutting residential properties and to further contain all associated impacts; and
 - v. Pedestrian access: Drive-through lanes shall be designed and placed to minimize crossing principal pedestrian access-ways or otherwise impeding pedestrian access.
 - vi. Hours of Operation: The Board, as part of its review, may take into consideration the impact hours of operation may have on adjoining uses.
 - ~~vii. Conditions specific to major or minor auto service stations, car washes and automobile dealerships:~~
 - ~~1. A landscaped buffer, no less than 5 feet wide, shall be located along street frontages (excluding driveways). The buffer shall consist of a variety of plantings in accordance with the City of Portland Technical Manual;~~
 - ~~2. Car washes shall be designed to avoid the tracking of residual waters into the street~~
 - viii. In the B2b and B2c zones, drive-throughs are only permitted when associated with banking and pharmacy uses and in buildings of three or more stories. Drive-throughs associated with restaurant, automotive or uses other than pharmacies and banking are prohibited. The drive-through use be located as much as practicable under the upper levels of the building.
- c) Use Group "PM": Notwithstanding section 14-474(a) of this article or any other provision of this code, the Planning Board shall be substituted for the ~~Board of~~ Appeals as the reviewing authority and shall apply the following standards in addition to the provisions of section 14-474:

- i. Traffic circulation: The site shall have an adequate traffic circulation pattern designed to avoid hazards to vehicular circulation on adjoining streets. All stacking of motor vehicles shall be on site, and loading facilities shall be located to the rear of the building and shall not be visible from the street.
 - ii. Building and site design: The exterior design of the structures, including architectural style, facade materials, roof pitch, building form, established setbacks and height, shall be of a commercial rather than industrial character. The site shall contain screening and landscaping which shall meet the requirements of section 14-526 for screening between land uses and the City of Portland Technical Manual.
- d) Temporary wind anemometer towers, as defined in Sec 14-47, are permitted provided the same conditional use standards as listed in Section 14-163 for temporary wind anemometer towers are ~~outlined in the [B-1 zone?]~~ are met in addition to Sec 14-430.

C. Proposed Amendment: Amend by deleting Section 14-484 Prohibited uses and substitute the following Section 14-484 Performance based uses.

Sec. 14-184. Prohibited and Performance based uses.

Uses not expressly permitted as provided in section 14-182 and 14-183 are prohibited unless the use may be permitted subject to meeting the following performance based conditions and standards:

- (a) The proposed use is consistent with the purposes of this zone.
- (b) The proposed use is similar to a permitted use.
- (c) The proposed development is designed and operated so that it will prevent undue adverse environmental impacts, substantial diminution of the value or utility of neighboring structures, or significant hazards to the health or safety of neighboring residents by controlling noise levels, emissions, traffic, lighting, odor, and any other potential negative impacts of the proposal.

The Planning Authority shall determine whether the uses not listed as permitted or conditional uses meet the above conditions and standards. The Planning Authority may impose reasonable conditions of approval on the proposed use to ensure that it is similar in character and impact to a use on the table.

If it is determined that the use does not meet the above criteria, ~~is not similar to any of those uses~~, it shall not be permitted. The determination of the Planning Authority may be appealed within 30 days of the written determination by the property owner, lessee of the space, or property owner within 100 feet of the proposed use. That appeal shall be heard by the Planning Board in a public hearing.

D. Proposed Amendment: Amend Section 14-485 dimensional requirement to exempt utility substations from meeting the maximum front yard setback.

Sec. 14-185. Dimensional requirements.

In addition to the provisions of division 25 (space and bulk regulations and exceptions) of this article, lots in the B-2, B-2b, and B-2c zones shall meet the following dimensional requirements:

Minimum Lot Size	None
Minimum Street Frontage	20 feet
Front Yard Setback Minimum	None
Rear Yard Setback Minimum	10 feet, except as provided for below: a. 5 feet for accessory structures
Side Yard Setback Minimum	None required, except as provided for below: a. 5 feet for accessory structures
Side Yard on Side Street Setback Minimum	None
Front Yard Maximum¹	No more than 10 feet, except that the Planning Board or Planning Authority may approve a different amount for irregularly shaped lots or lots with frontage less than 40 feet provided this standard is met to the maximum extent practicable. ² <u>The Planning Board or Planning Authority may waive the front yard maximum for utility substations and alternative energy installations.</u>
Structure Stepbacks	Portions of a structure above 35 feet shall be no closer than 5 feet from the side property line and no closer than 15 feet from the rear property line when such property line abuts a residential zone.
Height maximum	45 feet except as provided for below: a. 50 feet if first floor is partially or wholly occupied by a commercial use. b. 65 feet in B-2 and B-2c zones on lots >5 acres provided that all setbacks, except for front yard setbacks and side yard on side street setbacks, increase by 1 foot for each foot of height over 45 feet. c. 65 feet within 65 feet of Franklin St.
Maximum Impervious Surface Ratio	a. For residential uses: None b. For all other permitted uses: 80% in B-2 and B-2c c. For all other permitted uses: 90% in B-2b

City of Portland Code of
Ordinances Sec. 14-218

Minimum Lot Area per Dwelling Unit	a. Off-peninsula locations, as defined in section 14-47: 1,500 square feet, except as provided for in (b) below. b. On-peninsula locations (as per 14-47) and projects with active street frontages, as defined in section 14-188, below: 435 square feet.
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¹ Building additions do not have to meet this section.

² If lot has less than 40 feet of frontage and is more than 100 feet deep then no maximum setback is required. If existing structures are within 20 feet of the street or meet the front yard maximum, and remainder of lot has less than 40 feet of frontage, then no maximum setback is required. Where setbacks exceed 10 feet, a continuous, attractive, and pedestrian-scaled edge treatment shall be constructed along the street, consisting of street trees spaced at no more than 15 feet on center, approved by City arborist, and a combinations of landscaping no less than 4 feet deep, ornamental brick or stone walls or ornamental fencing.

*Order 160-16/17
Tab 19 3-6-17*

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

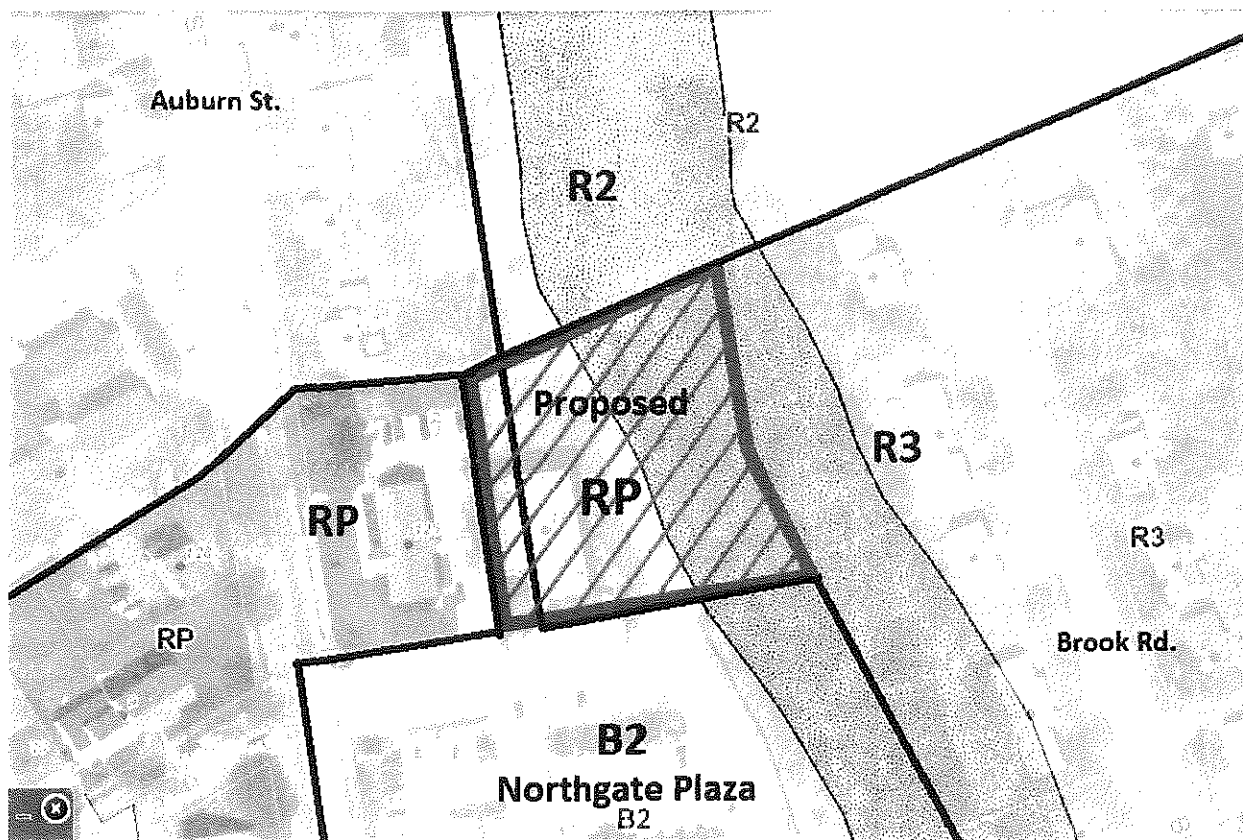
**CITY OF PORTLAND
IN THE CITY COUNCIL**

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

**AMENDMENT TO ZONING MAP
RE: 117 AUBURN STREET**

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

That the Zoning Map of the City of Portland, dated December 2000, as amended and on file in the Department of Planning and Urban Development, and incorporated by reference into the Zoning Ordinance by §14-49, be and hereby is amended by adopting the following map change amendment and specifically rezoning 117 Auburn Street to the Residence-Professional Zone (R-P), as shown in the figure below.



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: February 16, 2017

SUBJECT: Map Amendment to Zoning Code re property at 117 Auburn Street

SPONSOR: Elizabeth Boepple, Chair, Portland Planning Board

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st reading March 6, 2017 **Final Action** March 20, 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)

Short presentation by Planning Board Chair. Short presentation by Planning Staff (if necessary).

I. ONE SENTENCE SUMMARY

Macdermot LLC (Mike Cloutier) is seeking a map amendment to the City's Zoning Code in order to rezone a parcel at 117 Auburn Street from the R3/B2 zones to the RP (Residence-Professional) zone in order to reinstate the legal use(s) of the existing 2 story office building on the property.

II. AGENDA DESCRIPTION

The Planning Board recommends a zoning map amendment to change 117 Auburn Street, which is currently zoned part Residential (R3) and part Business Community (B2), to the Residence Professional (RP) zone. The application was submitted by MacDermot LLC to facilitate the reuse of the property, which includes a vacant 2 story office building constructed in 1980 and most recently used as medical offices.

On February 14, 2017 the Planning Board voted unanimously (7-0) that the proposed rezoning to the Residence Professional (RP) zone for the property located at 117 Auburn Street is consistent with the Comprehensive Plan for the City of Portland, and recommended adoption of the proposed map amendment to the City Council.

III. BACKGROUND

The existing office building on this parcel previously had the status of a legally non conforming use within the R3 part of the site. As the building has been vacant for over a year this status has been lost per the City's ordinance regarding the discontinuance of uses. The zoning history of the property is unclear, so the application for a map amendment is necessary to allow this building to be legally reused for offices/medical offices.

IV. INTENDED RESULT OR COUNCIL GOAL ADDRESSED

The proposed map amendment would allow the existing building to be relet or sold and used for offices/medical offices.

V. FINANCIAL IMPACT

The proposal would allow the owner to relet or sell the existing property, and would provide the community with a convenient medical facility.

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

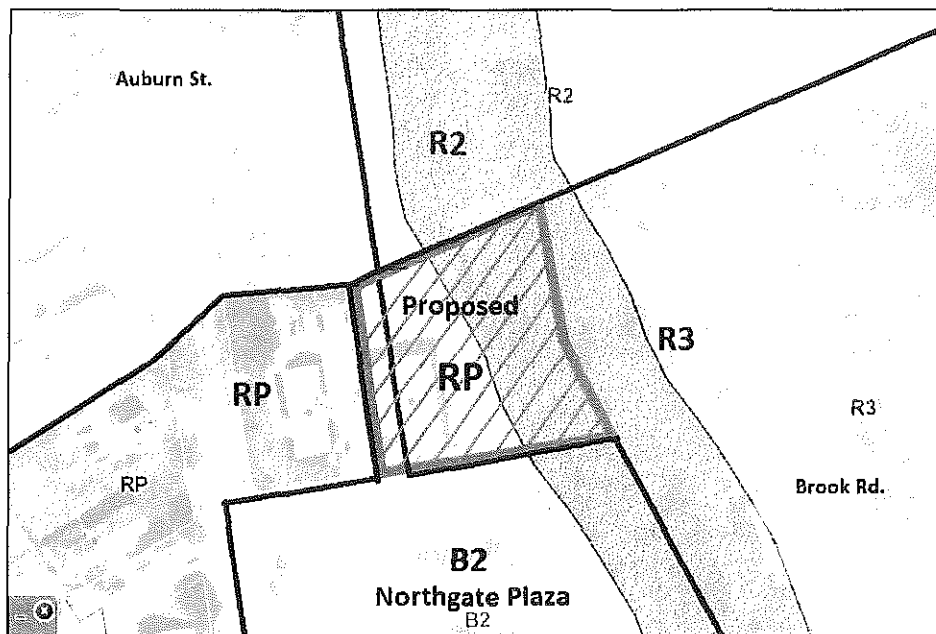
The parcel is located between the Northgate Shopping Plaza and the Lyman Moore school complex, with access from the signaled intersection that serves the rest of the Plaza. The parcel is mostly zoned R3, with a sliver of B2 and the eastern 2/3 is also in the Fall Brook Stream Protection Zone. The parcel and its vicinity have been subject to a number of zone map amendments over the years that appear to have inadvertently left this site with an odd pattern of zone boundaries.

The proposed map amendment from R3/B2 to the Residence-Professional (RP) zone allows a zoning buffer to remain between the B2 shopping plaza and the surrounding homes and school, but also allows the existing building to be reused for offices, medical offices and business services in line with the applicant's intent. The property between this parcel and Auburn Street is also zoned RP so creating a continuous buffer along the north of the Plaza.

VII. RECOMMENDATION

On February 14, 2017 the Planning Board voted unanimously (7-0) that on the basis of plans and materials submitted by the applicant, the City of Portland Zoning Code, Portland's Comprehensive Plan, public comment, the information provided in public hearing on February 14, 2017 for the project #2016-272 (117 Auburn Street), and/or other findings as follows:

- The Planning Board finds that the proposed rezoning to the Residence Professional (RP) zone for the property located at 117 Auburn Street is consistent with the Comprehensive Plan for the City of Portland; and
- Therefore, the Planning Board recommends to the City Council approval of the zoning map amendment for 117 Auburn Street from R3 Residential/B2 Business Community to Residence Professional (RP) Zone for the area shown hatched below.



VIII. LIST ATTACHMENTS

A. Planning Board Report to City Council with Attachments

Prepared by: Jean Fraser, Planner

Date: February 16, 2017

PLANNING BOARD REPORT TO CITY COUNCIL PORTLAND, MAINE



Map Amendment B2 and R3 to Residence Professional (RP) Zone
117 Auburn Street (Fallbrook Professional Building)

MacDermot LLC, Applicant
Project #: 2016-272 CBL: 375 – O- 39

Submitted to: Portland City Council
First Reading: March 6th, 2017
Second Reading: March 20th, 2017

From: Portland Planning Board
Prepared by: Jean Fraser, Planner
Date: February 16th, 2017

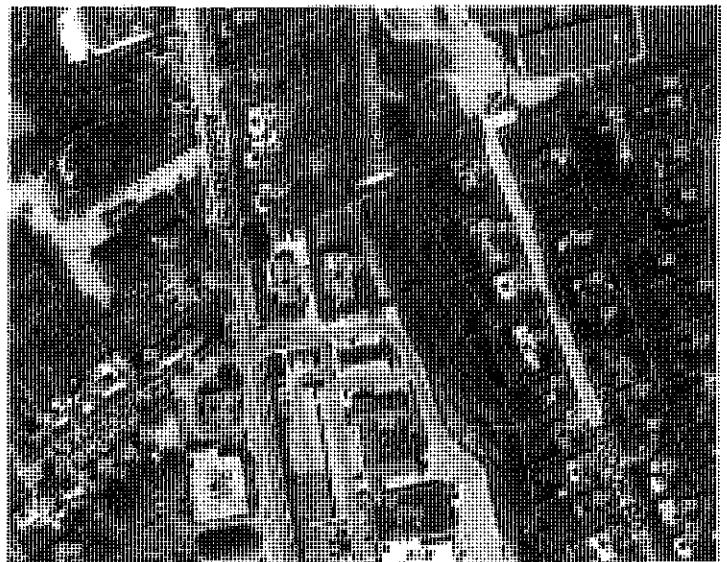
I. INTRODUCTION

MacDermot LLC has requested a map amendment to rezone the property at 117 Auburn Street to the Residence-Professional (RP) Zone. The .9 acre site was developed in 1980 for a 2-story medical office building, with a rear parking area. The site is located at the north end of Northgate Plaza, behind the H&R Block building and across from the CVS. The parcel is shown on the current zoning map as mostly R3 with a sliver of B2 (see section V below).

Most recently the existing building (approximately 10,000 sq ft) was occupied by Mercy as a medical office building, which was considered a legally non-conforming use in the R3 zone. This legal status is no longer in place because the building remained vacant for more than one year and the under the land use code the non-conforming status is lost (14-387 of the Land Use Code).

The applicant intends to lease the existing building for professional /medical office use and has submitted basic information (Plans P1 to P3) that illustrate the existing site development; no changes or improvements are proposed.

Use for medical offices or offices is not allowed in the R3 zone. These uses are allowed in both of the abutting zones of B2 and RP (Residence-Professional) and the applicant has requested the map amendment to the RP.



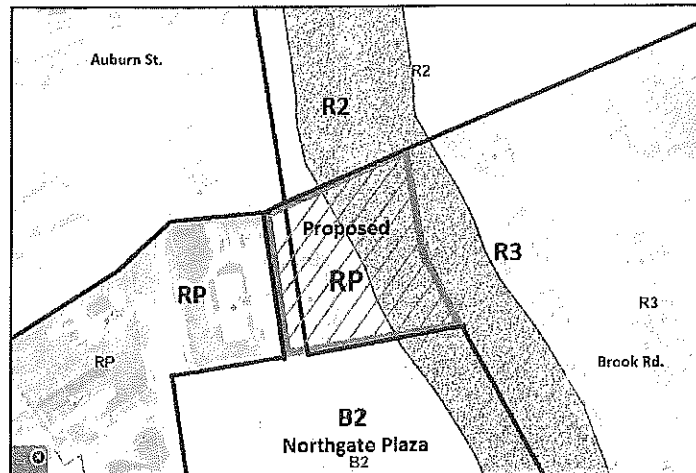
The building was constructed in 1980 and the zoning history is not conclusive. The map amendment is being pursued by the applicant as the only way to definitively confirm what uses are legally allowable in the existing building.

Applicant: MacDermot LLC, Kevin McQuinn, Representative
Property Owner: MacDermot LLC (Mike Cloutier)

II. PLANNING BOARD RECOMMENDATION

On February 14, 2017 the Planning Board voted unanimously (7-0) that on the basis of plans and materials submitted by the applicant, the City of Portland Zoning Code, Portland's Comprehensive Plan, public comment, the information provided in public hearing on February 14, 2017 for the project #2016-272 (117 Auburn Street), and/or other findings as follows:

- The Planning Board finds that the proposed rezoning to the Residence Professional (RP) zone for the a property located at 117 Auburn Street is consistent with the Comprehensive Plan for the City of Portland; and
- Therefore, the Planning Board recommends to the City Council approval of the zoning map amendment for 117 Auburn Street from R3 Residential/B2 Business Community to Residence Professional (RP) Zone for the area shown hatched below.

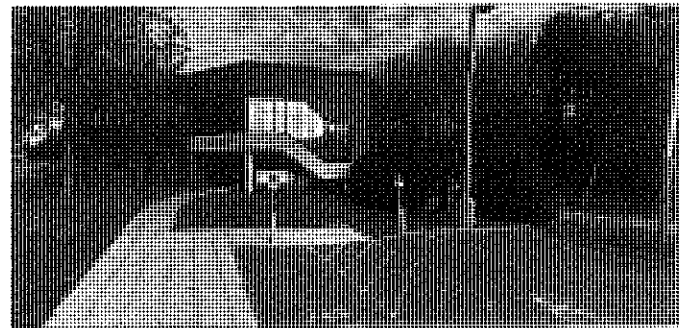


III. EXISTING CONDITIONS

The site comprises an existing 2-story (approximately 10,000 sq ft) office building dating from 1980, and parking at the rear of the building. The developed part of the site is approximately the western 2/3 of the parcel, with the Fall Brook Stream Protection linear zone covering the eastern part of the parcel. To the east and north are mainly single family homes, with a corner of the Lyman Moore/Lyseth School complex (elementary and middle) abutting the site to the northeast.

To the south of the site is the CVS, the northern-most retail unit in the Northgate Plaza, and to the west is the H&R Block building which was recently refurbished. (See submitted Plans P2 Site Plan and P3 Vicinity Map).

The existing building (photo right) was most recently a medical office building and it has been vacant for more than a year.



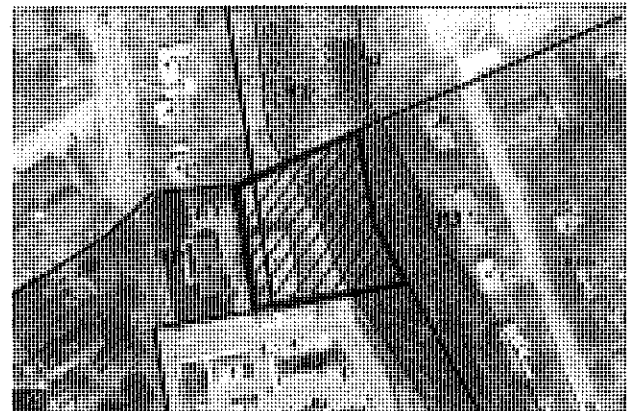
IV. PUBLIC COMMENT

The proposed map amendment has been advertised and noticed to the 221 nearby property owners and interested citizens in accordance with the ordinance requirements. No public comments have been received on this proposal at the Planning Board meetings, and none have been received at the time of preparing this Report.

V. ZONING BACKGROUND and PROPOSED MAP AMENDMENT

The parcel at 117 Auburn Street is mostly within the R3 Residential Zone which does not allow office uses. The eastern part is also within the Stream Protection Overlay Zone (shown stipled on the map) which limits development. The existing office building was constructed in 1980 and has been considered a legally nonconforming use within the R3 zone, although a small part of the building is within the B2 Business Community zone. The legally non-conforming status was lost because the building remained vacant for more than 12 months and the City's zoning (14-387 of the Land Use Code) determines that the discontinuance of the use constitutes an abandonment of the use.

It has been difficult to document the zoning that was in place at the time of construction (which allowed for the existing building to be constructed in what is now zoned R3) and whether there is evidence of a scrivener's error regarding the extent of the R3 zone across this lot. Building permits that relate to the building note that it is in the B2 zone, but the building straddles the B2 and R3 zones so this information does not document the status of the entire parcel. The research into the tax maps dating from 1975 concluded that the bulk of the site has been zoned residential from the time the building was constructed.



The proposed map amendment therefore appears the best approach for confirming the legal uses of the subject site. The logical options for a map amendment are either B2 or RP, as the site abuts both zones and both allow for the proposed uses. The RP zone is a better option as it maintains the buffer zone between the Northgate Plaza and the residential neighborhood, and because the RP zone does not introduce the range of B2 commercial and high intensity uses that could prove incompatible with the surrounding residential and school neighborhood (as illustrated in the table below).

<u>B2 ZONE</u>	<u>RP ZONE</u>
<u>PERMITTED USES</u> <u>Residential</u> Attached single-family & two-family dwellings; Multi-family dwellings; Handicapped family units; Combined living/working spaces <u>Business</u> General, business & professional offices; Personal services; Offices of building tradesmen; Retail establishments; Restaurants; Drinking establishments; Billiard parlors; Mortuaries or funeral homes; Miscellaneous repair services, excluding motor vehicle repair; Communication studios or broadcast and receiving facilities; Health clubs and gymnasiums; Veterinary hospitals; Theaters; Hotels; Dairies and bakeries; Drive-throughs associated with a permitted use if not adjacent to residential zone; Commercial kitchens with retail/tasting room Registered medical marijuana dispensaries; <u>Institutional</u> Long term, extended and intermediate care facilities; Clinics; Places of assembly; Schools; College, university or trade schools; Municipal buildings and uses. <u>Other</u> Lodging houses; Day care facilities or babysitting services Utility substations; Accessory uses; Bed and breakfasts; Studios for artists and craftspeople; Hostels; Wind energy systems.	<u>PERMITTED USES</u> <u>Residential</u> Any residential use as is permitted in the residential zone abutting the lot (R2 and R3) <u>Business</u> Professional offices, incl. the offices & facilities of health care and related laboratory and pharmacy services and health care administration, but excluding personal services, retail establishments and veterinarians; Business services, as defined in 14-47 except copy services; Adult day care services; Mortuaries or funeral homes <u>Other</u> Utility substations; Accessory uses ref 14-404; Wind energy systems.
<u>CONDITIONAL USES</u> Auto service stations; Car washes; Drive-throughs where adj. residential; Automobile dealerships; Printing and publishing; Wholesale distribution; Research and development & related production; Temporary wind anemometers; Wind energy systems.	<u>CONDITIONAL USES</u> Such other offices which have characteristics similar to but no more objectionable than those generally associated with professional offices (defined in text); With the exception of day care facilities below, any conditional use that is allowed as a conditional use in any residential zone abutting the lot; Temporary wind anemometers; Day care facilities or home babysitting services not otherwise permitted as a home occupation under section 14-410, and nursery schools and kindergartens; Wind energy systems.

VI. ANALYSIS

The parcel is in a transition location between the more intense commercial and business uses of the B2 zone to the south and the residential uses and zones to the north and east. Originally the H&R Block building was part of the B2 zone and that was changed to the RP zone and created a less intense buffer for the residential properties to the north.

Staff consider the existing building and proposed use at 117 Auburn Street to be a relatively quiet and low intensity use that provides a buffer between the more active retail uses of the Northgate Plaza and the residential area to the east and north. The proposed map amendment extends the RP zone (currently immediately to the west of the parcel) to encompass the parcel and complete the buffer zone. The proposal for a map amendment to the RP zone provides the applicant with potential uses that they seek and which are suitable for the existing building, while also limiting the potential impacts on the surrounding residential neighborhood.

VII. COMPREHENSIVE PLAN

Volume One of the Portland Comprehensive Plan includes references to the Portland strategic plans which have been compiled as components of the comprehensive plan and how each of them addresses State Growth Management Goals. Goals and policies of both the state and the City, as described in the City strategic plans that comprise the Portland Comprehensive Plan, which are relevant to the proposed map amendment have been included below. Staff consider that the proposed map amendment is consistent with the Comprehensive Plan.

STATE GOAL A: *To encourage orderly growth and development in appropriate areas of each community, while protecting the State's rural character, making efficient use of public services and preventing development sprawl.*

INTRODUCTION A TIME OF CHANGE: PORTLAND TRANSPORTATION PLAN - July 1993

Transportation Plan Guiding Principle: *Provide maximum mobility in a balanced transportation system, which encompasses all modes, to support the economic vitality and quality of life of the Portland community.*

Transportation Policies

- *Vibrant neighborhoods include nearby, small-scale commercial areas that provide both convenient service and natural meeting places. Provide routine, daily services within walking distance of residents of all neighborhoods, as long as the businesses providing the services are small-scale, are designed compatibly with residences, and fit into the fabric of the neighborhood.*
- *Encourage businesses to locate in established employment centers, including Downtown, that are served by public transportation or that have the critical mass necessary to support alternative modes of transportation.*

STATE GOAL C: *To promote an economic climate, which increases job opportunities and overall economic well being.*

The introduction to this goal cites the INDUSTRY AND COMMERCE PLAN (also referred to as the ICPAC Report) as a source document. Specific strategies to achieve this goal include the following:

- *Improve the Quality of Life*
 - *Make Portland attractive to new residents and businesses*
- *Revise Zoning (including):*
 - *Protecting neighboring residential zones*
 - *Providing thoughtful flexibility for emerging industries*
- *Create financial Incentives (including):*
 - *Be creative, responsive and work hard to retain existing business*
 - *Enhance the City's ability to attract economic development*

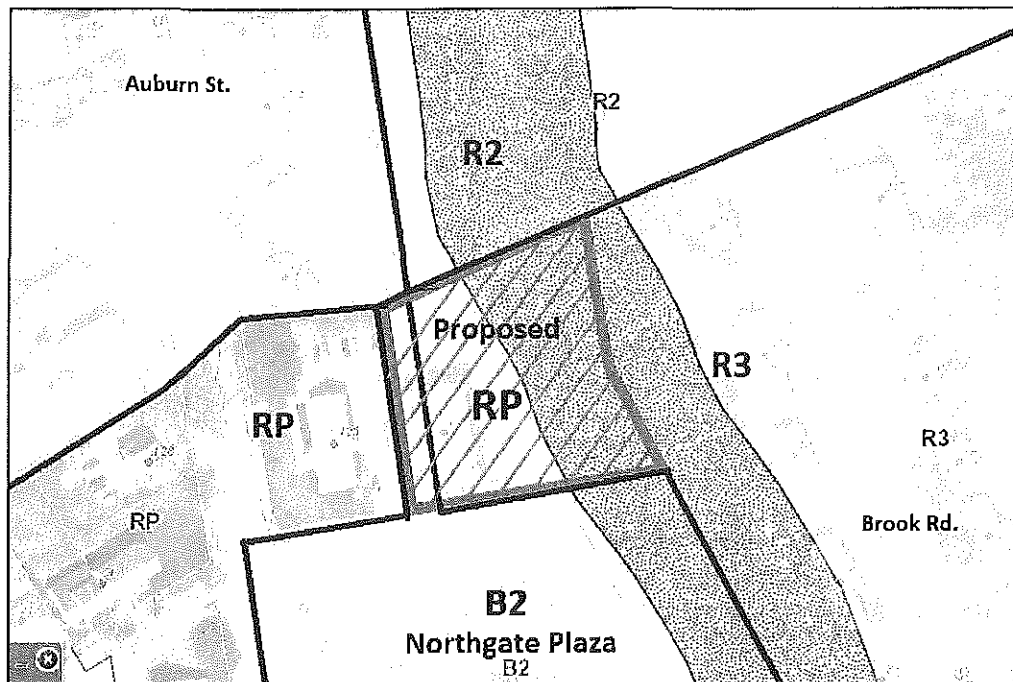
VIII. PLANNING BOARD RECOMMENDATION

The Planning Board held a workshop on the proposal on January 17, 2017 and a Hearing on February 14, 2017. The Board were advised that the applicant considers there may have been a scrivener's error regarding the zoning map, but the Board confirmed that this was not within the jurisdiction of the Planning Board and supported the map amendment as a way of clarifying the allowed uses. The Board supported the amendment to the RP zone as this zone is

appropriate as a buffer between commercial and residential areas. The Board also supported the inclusion of the entire parcel as this would avoid further questions over the zoning boundary lines, noting that the eastern part of the site was already protected from development by its inclusion in the Stream Protection Zone (Fall Brook).

On February 14, 2017 the Planning Board voted unanimously (7-0) that on the basis of plans and materials submitted by the applicant, the City of Portland Zoning Code, Portland's Comprehensive Plan, public comment, the information provided in public hearing on February 14, 2017 for the project #2016-272 (117 Auburn Street), and/or other findings as follows:

- The Planning Board finds that the proposed rezoning to the Residence Professional (RP) zone for the a property located at 117 Auburn Street is consistent with the Comprehensive Plan for the City of Portland; and
- Therefore, the Planning Board recommends to the City Council approval of the zoning map amendment for 117 Auburn Street from R3 Residential/B2 Business Community to Residence Professional (RP) Zone for the area shown hatched below.



IX. ATTACHMENTS

Report Attachments (none)

Public comments (none)

Applicants Submittal

- A. Application
- B. Deed and Assessor's information
- C. 'For Lease' flyer

Plans

- P1 Zoning Map
- P2. Site Plan
- P3. Vicinity Map

PROJECT NAME:

Fallbrook Professional Building

PROPOSED DEVELOPMENT ADDRESS:

117 Auburn Street, Portland

PROJECT DESCRIPTION:

REZONE - Map Amendment

30 YEAR EXISTING OFFICE BUILDING B2 & R3 change to R.P ZONE

CHART/BLOCK/LOT: 375-C-39

CONTACT INFORMATION:

Applicant - must be owner, Lessee or Buyer Name: <u>MacDermot LLC</u> Business Name, if applicable: Address: <u>117 Auburn St.</u> City/State: <u>Portland</u> Zip Code: <u>04103</u>	Applicant Contact Information Work #: <u>207-671-9905</u> Home #: <u>SAME</u> Cell #: <u>SAME</u> Fax#: e-mail: <u>mmclouti2@gmail.com</u>
Owner - (if different from Applicant) Name: <u>Mike Cloutier</u> Address: <u>2 Cloutier Lane</u> City/State: <u>Cape Elizabeth, ME</u> Zip Code: <u>04107</u>	Owner Contact Information Work #: <u>SAME AS ABOVE</u> Home #: Cell #: Fax#: e-mail:
Agent/ Representative Name: <u>Kevin McQuinn</u> Address: <u>5 Milk St.</u> City/State: <u>Portland</u> Zip Code: <u>04101</u>	Agent/ Representative Contact information Work #: <u>207-450-8700</u> Home #: <u>same</u> Cell #: <u>same</u> Fax#: e-mail: <u>kmcquinn@maine.or.com</u>
Billing Information Name: <u>Mike Cloutier</u> Address: <u>2 Cloutier Lane</u> City/State: <u>Cape Elizabeth, ME</u> Zip Code: <u>04107</u>	Billing Information Work #: <u>SAME AS ABOVE</u> Home #: Cell #: Fax#: e-mail:

COPY

Engineer Name: Address: City/State : Zip Code:	Engineer Contact Information Work #: Home #: Cell #: Fax#: e-mail:
Surveyor Name: Address: City/State : Zip Code:	Surveyor Contact Information Home #: Work #: Cell #: Fax#: e-mail:
Architect Name: Address: City/State : Zip Code:	Architect Contact Information Work #: Home #: Cell #: Fax#: e-mail:
Attorney Name: Address: City/State : Zip Code:	Attorney Contact Information Work #: Home #: Cell #: Fax#: e-mail:
Designated person/person(s) for uploading to e-Plan: Name: e-mail: Name: e-mail: Name: e-mail:	

Right, Title, or Interest: Please identify the status of the applicant's right, title, or interest in the subject property:

The applicant Mac Dermot LLC is the
sole owner of the property.

Provide documentary evidence, attached to this application, of applicant's right, title, or interest in the subject property.
(For example, a deed, option or contract to purchase or lease the subject property.)

Vicinity Map: Attach a map showing the subject parcel and abutting parcels, labeled as to ownership and/or current use.
(Applicant may utilize the City Zoning Map or Parcel Map as a source.)

Existing Use: Describe the existing use of the subject property:

professional office building

Current Zoning Designation(s): BZ-R3 see attached

Proposed Use of Property: Please describe the proposed use of the subject property. If construction or development is proposed, please describe any changes to the physical condition of the property.

professional office building

NO CHANGES TO THE PROPERTY

Site Plan: On a separate sheet, please provide a site plan of the property showing existing and proposed improvements, including such features as buildings, parking, driveways, walkways, landscape and property boundaries. This may be a professionally drawn plan, or a carefully drawn plan, to scale, by the applicant. (Scale to suit, range from 1" = 10' to 1" = 50'.) Contract and conditional rezoning applications may require additional site plans and written material that address physical development and operation of the property to ensure that the rezoning and subsequent development are consistent with the comprehensive plan, meet applicable land use regulations, and compatible with the surrounding neighborhood.

APPLICATION FEES:

Zoning Map Amendment _____ \$3,000.00 (from _____ zone to _____ zone) Zoning Text Amendment _____ \$3,000.00 (to Section 14- _____) Combination Zoning Text Amendment and Zoning Map Amendment _____ \$4,000.00 Conditional or Contract Zone _____ \$5,000.00 (A conditional or contract rezoning map be requested by an applicant in cases where limitations, conditions, or special assurances related to the physical development and operation of the property are needed to ensure that the rezoning and subsequent development are consistent with the comprehensive plan, meet applicable land use regulations, and compatible with the surrounding neighborhood. Please refer to Division 1.5, Sections 14-60 to 62.)	The City invoices separately for the following: • Notices (\$.75 each) • Legal Ad (% of total Ad) • Planning Review (\$50.00 hour) • Legal Review (\$75.00 hour) Third party review fees are assessed separately. Any outside reviews or analysis requested from the Applicant as part of the development review, are the responsibility of the Applicant and are separate from any application or invoice fees.
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WARRANTY DEED – SHORT FORM DEEDS ACT
33 M.R.S.A. §§ 761 et seq.

KNOW ALL BY THESE PRESENTS, that MacDermot Parking Company, LLC, a Limited Liability Company existing under the laws of the State of Maine, with a principal place of business in, Portland, Cumberland County, State of Maine, by Thomas J. Cloutier, its Manager thereunto duly authorized, for valuable consideration received, hereby grants to MacDermot, LLC of Scarborough, Cumberland County, State of Maine, with **WARRANTY COVENANTS**, that certain lot or parcel of land, with any improvements thereon, located at 117 Auburn Street, Portland, Cumberland County, Maine, as more fully described in Exhibit A attached hereto and fully incorporated herein by reference.

IN WITNESS WHEREOF, the said MacDermot Parking Company, LLC, has caused this deed to be executed under its hand and seal by its above-named officer, thereunto duly authorized, on May 08, 2008.

Witness

By: Thomas J. Cloutier
Its: Manager

STATE OF MAINE
Cumberland, ss.:

On May 08, 2008, personally appeared the above-named Thomas J. Cloutier, the Manager of MacDermot Parking Company, LLC and acknowledged the foregoing deed to be his/her free act and deed, to be his/her free act and deed in his/her said capacity, and to be the free act and deed of said corporation, .

Before me,

Notary Public/ Attorney At Law

Type or Print Name

Assessor's Office | 389 Congress Street | Portland, Maine 04101 | Room 115 | (207) 874-8486

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 Best viewed at
 800x600, with
 Internet Explorer

CBL 375 C039001
Land Use Type OFFICE & BUSINESS SERVICE
 Verify legal use with
 Inspections Division
Property Location 117 AUBURN ST
Owner Information MACDERMOT LLC
 201 US ROUTE 1 # 303
 SCARBOROUGH ME 04074
Book and Page 26056/043
Legal Description 375-C-39
 AUBURN ST R 121-131

39709 SF

Current Rental Registration**Acres** 0.9116**Current Assessed Valuation:**

TAX ACCT NO.	38528	OWNER OF RECORD AS OF APRIL 2016
LAND VALUE	\$348,000.00	MACDERMOT LLC
BUILDING VALUE	\$857,900.00	
NET TAXABLE - REAL ESTATE	\$1,205,900.00	201 US ROUTE 1 # 303 SCARBOROUGH ME 04074
TAX AMOUNT	\$25,456.56	

 Any information concerning tax payments should be directed to the
 Treasury office at 874-8490 or [e-mailed](#).
Building Information:**Building 1**

Year Built 1980
Style/Structure Type
Units 1
Square Feet 10038

[View Sketch](#)
[View Map](#)
[View Picture](#)
Exterior/Interior Information:**Building 1**

Levels 01/01
Size 5140
Use OFFICE BUILDING
Height 11
Walls BRICK/STONE
Heating HOT AIR
A/C CENTRAL

Building 1

Levels 02/02
Size 4898
Use OFFICE BUILDING
Height 11
Walls BRICK/STONE
Heating HOT AIR
A/C CENTRAL

Other Features:**Building 1**

Structure ELEVATOR - HYD.
PASSENGER
Size 2100X125

Building 1
Structure SPRINKLER - WET
Size 10126X1

Outbuildings/Yard Improvements:

Building 1
Year Built 1980
Structure ASPHALT PARKING
Size 15000
Units 1
Grade C
Condition 3

Sales Information:

Sale Date	Type	Price	Book/Page
5/16/2008	LAND + BUILDING	\$0.00	26056/43
10/19/2007	LAND + BUILDING	\$1,790,000.00	25554/145
11/1/2003	LAND + BUILDING	\$1,625,000.00	20586/96
7/27/2000	LAND + BUILDING	\$0.00	15319/13
2/4/2000	LAND + BUILDING	\$1,500,000.00	15309/57
2/28/1994	LAND + BUILDING	\$0.00	11322/198

New Search!



FOR LEASE
MEDICAL OFFICE SPACE

AVAILABLE SPACE: 10,000± SF

LOCATION: Just off Washington Avenue with
easy access from I-275

CONSTRUCTION: Two-story brick building

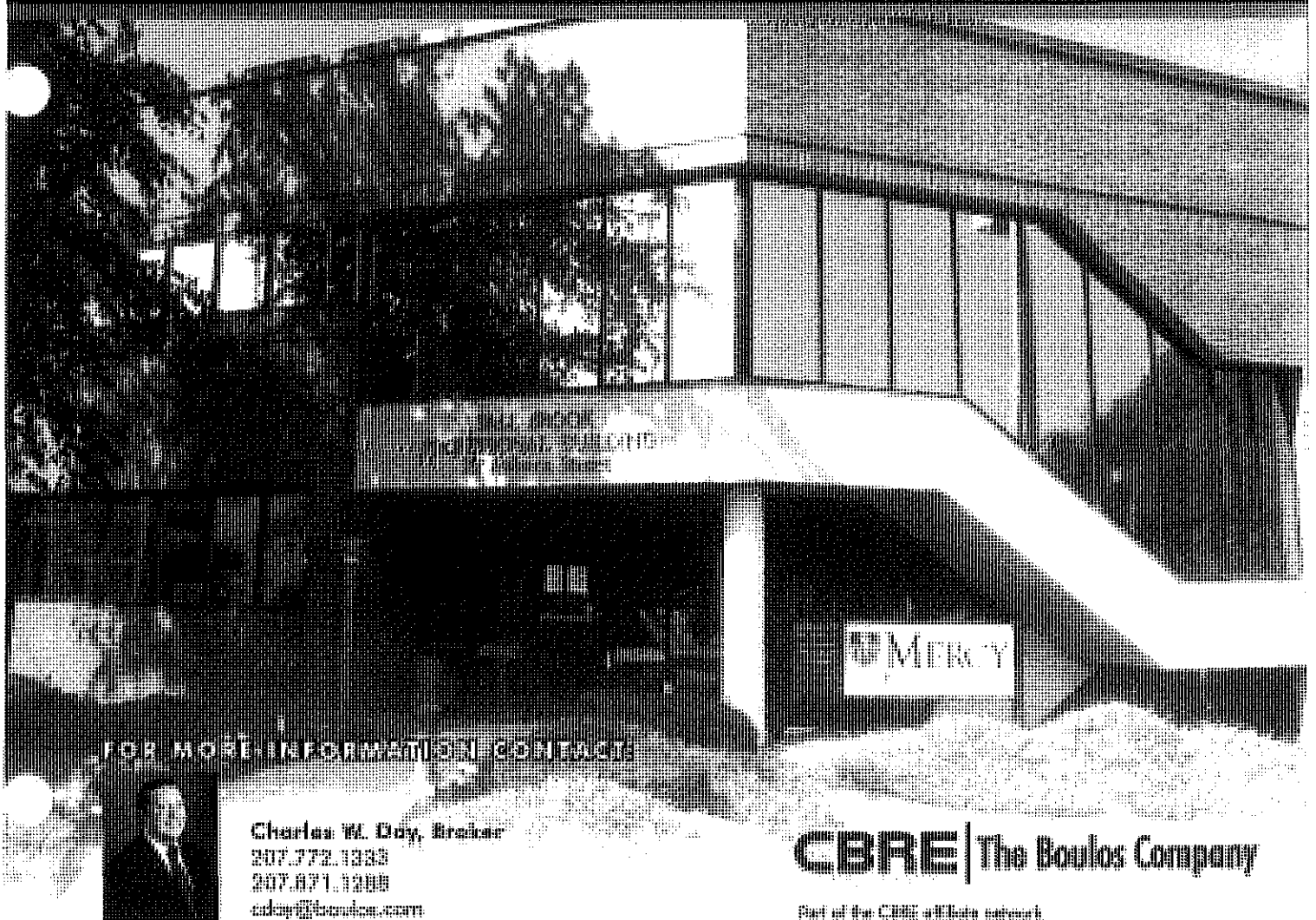
PARKING: 30± car and parking spaces

LEASE RATE: \$0.00/sf/month

117

**ALDEN
STREET**

PORTLAND, ME



FOR MORE INFORMATION CONTACT:



Charles M. Day, Broker
207.772.1333
207.871.1200
cdlay@cbre.com

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Auburn St
H.R. Block Bldg

Parking

2 STORY
Bldg.

Driveway

ENTER

Landscaping

Parking

A
2
4
L

LINE

Proposed

↑
School

↓
C/S

