

AGENDA
REGULAR CITY COUNCIL MEETING
MARCH 20, 2017

1. Agenda Only 03-20-17

Documents:

[AGENDA ONLY 03-20-17.PDF](#)

2. Agenda And Packet 2017-03-20.Pdf

Documents:

[AGENDA AND PACKET 2017-03-20.PDF](#)

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

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

AGENDA
REGULAR CITY COUNCIL MEETING
MARCH 20, 2017

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

PLEDGE OF ALLEGIANCE:

ROLL CALL:

ANNOUNCEMENTS:

RECOGNITIONS:

APPROVAL OF MINUTES OF PREVIOUS MEETING:

(Tab 1) March 6, 2017, Regular City Council Meeting Minutes

PROCLAMATIONS:

APPOINTMENTS:

CONSENT ITEMS:

**Order 161-16/17 Order Changing Polling Place for District 1 Precinct 3 from the
(Tab 2) Peaks Island Community Center to St. Christopher's Catholic Church
 – Sponsored by Katherine L. Jones, City Clerk.**

Peaks Island Community Center, which is the current Peaks Island polling place, is having renovations that will not be finished for the upcoming June and November elections 2017 and for May and June elections in 2018, so a temporary location needs to be found.

St. Christopher's Catholic Church, located at 15 Central Avenue, is available to use for a temporary location. It is a two-minute walk from the Community Center, 129 Island Avenue. St. Christopher's meets ADA requirement and has been inspected by the City's Trade Supervisor.

**Order 162-16/17 Order Declaring April 22, 2017 through October 31, 2017 the In the
(Tab 3) Square Festival - Sponsored by Jon P. Jennings, City Manager.**

This order authorizes The Friends of Congress Square Park In the Square Festival from April 22 – October 31, 2017. The event season will include a wide variety of community activities such as art interactions, dance performances, live music, films and community gatherings. Most events will be held on Wednesday, Friday, & Saturdays and some Sundays will be used for Movies in the Park.

In order to hold the events on city property, some areas of the parking lane on Congress Street directly beside the park will need to be posted “No Parking” on event days.

**Order 163-16/17
(Tab 4)**

Order Declaring August 11 to 13, 2017 the 92nd Annual St. Peter’s Bazaar and Italian Street Festival – Sponsored by Jon P. Jennings, City Manager.

This order declares the 92nd Annual St. Peters to be held on Friday, Saturday and Sunday, August 11, 12, 13, 2017 from 4:00 p.m. to 10:00 p.m. on a portion of Federal Street (India Street to Franklin Street).

**Order 164-16/17
(Tab 5)**

Order Declaring June 22 to 24, 2017 the 2017 Greek Heritage Food Festival - Sponsored by Jon P. Jennings, City Manager.

This order declares the Greek Heritage Food Festival to be held on Holy Trinity Greek Orthodox Church grounds and a portion of Pleasant Street on June 22, 24, 25, 2016, from 11:30 p.m. to 9:30 p.m.

Street closures are included in the agenda backup.

**Order 165-16/17
(Tab 6)**

Order Declaring June 24, 2017 the Rock Lobster Relay Festival – Sponsored by Jon P. Jennings, City Manager.

The Rock Lobster Relay is a two-hundred (200) mile relay race from Bar Harbor to Portland. Runners will have staggered start times out of Bar Harbor on Friday June 23, 2017 between 6:00 a.m. and 3:30 p.m.

The overnight race is split into 36 (11.0 – 20.6 mile) legs. Each team will consist of 6-12 runners. The maximum number of teams is 200 (=2400 runners). Each runner will run 3 legs of the course. Exchange points are set up along the course route at schools, parks and businesses. Teams should finish between 20 and 36 hours after their start times.

In Portland, the final hand off (exchange #35) will take place at Martin’s Point Healthcare on US Rte. 1 with a finish line at Ocean Gateway Amethyst Lot.

It is estimated that finishers will be crossing the finish line between 10:00 a.m. and 6:30 p.m. on Saturday June 24, 2017.

**Order 166-16/17
(Tab 7)**

Order Declaring the Craft Brew Race Festival 2017 – Sponsored by Jon P. Jennings, City Manager.

This order declares Saturday, July 1, 2017 as the Craft Brew Race Festival. The race is held around Back Cove and utilizes Payson Park Grass Triangle as the festival area. The race registration is at 11:00 a.m., and the race begins at 12:00 noon.

The festival portion of the event takes place at Payson Park (Triangle Grass area) and runs from noon to 4:00 p.m.

Street closures are included in the agenda backup.

**Order 167-16/17
(Tab 8)**

Order Declaring The Friends of Eastern Promenade 2017 Summer Community Concert Series Festival – Sponsored by Jon P. Jennings, City Manager.

For many decades the city organized and sponsored a weekly, summer concert series at Fort Allen Park with the assistance from the Friends of Eastern Promenade.

This year the Friends of Eastern Promenade are completely taking over the series, which will include nine concerts at the Fort Allen Park Gazebo Bandstand, Thursday evenings, July 6 through August 31, from 6:30 to 7:30 p.m. At each concert a variety of food trucks will be on site. During some of the concerts, the park roadway may need to be closed down to vehicles.

Funds for running the concert series will come mainly from fundraising efforts by the Friends of Eastern Promenade. The city will fund two of the concerts from the Willey Trust and the Betty Winterhalter Trust.

**Order 168-16/17
(Tab 9)**

Order Declaring July 13 to August 5, 2017 the Chekhov in the Park Festival – Sponsored by Jon P. Jennings, City Manager.

The Fenix Theatre Company will hold performances of Chekhov's "Three Sisters" on Thursday, Friday, and Saturday (except July 29) from 6:30 to 8:00 p.m. on July 13, 14, 15, 20, 21, 22, 27, 28 and August 3, 4, and 5, 2017. In lieu of the July 29th performance, a matinee performance will be held on Sunday, July 30, from 2:00 to 3:30 p.m. The performances will take place at the Deering Oaks Park Bandstand and surrounding grass area. There will be rehearsals during the month of June.

**Order 169-16/17
(Tab 10)**

Order Declaring August 26, 2017 the Portland Fine Craft Show Festival - Sponsored by Jon P. Jennings, City Manager.

The Portland Fine Craft Show organized by the Maine Crafts Association will be held on Congress Street from 9:00 a.m. to 4:00 p.m. on Saturday, August 26, 2017.

Festival organizers are requesting that Congress Street from High Street to State Street be closed to vehicular traffic.

High Street at the intersection of Congress Street and State Street at the intersection of Congress would stay open to commuters. Further street closures are included in the agenda backup.

**Order 170-16/17
(Tab 11)**

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

This order authorizes the City Council to approve the transfer of \$785.00 in forfeited assets from the State of Maine to the City of Portland from the case of the State of Maine v. Tina Trent

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

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

LICENSES:

BUDGET ITEMS:

COMMUNICATIONS:

RESOLUTIONS:

UNFINISHED BUSINESS:

**Order 151-16/17
(Tab 12)**

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.

City staff is hereby requesting that \$188,000 from the Westcott Trust Fund be appropriated to replace the fire alarm system. The remaining balance in the fund will be \$111,205.48.

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. It was given a first reading on March 6, 2017. Five affirmative votes are required for passage after public comment.

**Order 152-16/17
(Tab 13)**

Order Amending Agreement between the City of Portland and Maine Department of Transportation Re: Forest Avenue and Woodford's Corner Improvements - Sponsored by Jon P. Jennings, City Manager.

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"

This item must be read on two separate days. It was given a first reading on March 6, 2017. Five affirmative votes are required for passage after public comment.

**Order 159-16/17
(Tab 14)**

**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. It was given a first reading on March 6, 2017. Staff is requesting that this order be passed as an emergency to allow the owner of Maine Craft Distilling to facilitate the relocation of his business. Emergency enactment requires seven affirmative votes.

**Order 160-16/17
(Tab 15)**

**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. It was given a first reading on March 6, 2017. Staff is requesting that this order be passed to facilitate the getting permits for immediate renovation. Emergency enactment requires seven affirmative votes.

ORDERS:

**Order 171-16/17
(Tab 16)**

Order Approving Substantial Amendment to the Fiscal Year 2017 Housing and Urban Development Annual Action Plan Re: Reallocation to Community Development Block Grant Funding to State Street Pedestrian Safety Improvements – Sponsored by Jon P. Jennings, City Manager.

CDBG regulations require entitlement communities, like Portland, to carry out its CDBG activities in a timely manner. On May 2nd of each year, Portland cannot have more than 1.5 times our entitlement grant for the current program year in our CDBG Treasury account.

In light of this requirement, staff is requesting that CDBG funds in the amount of \$408,861 that were previously allocated to Marginal Way/Bayside Roadway/Sidewalk Improvements & Related Work project be reallocated to a new project - State Street Pedestrian Safety and Related Work. The State Street Pedestrian Safety and Related Work project will address pedestrian crossing and safety concerns along State Street between Cumberland Avenue and Deering Oaks Park and will complement and coordinate with the City's Combined Sewer Overflow (CSO)/sewer separation project in this area.

If the Marginal Way project funds are not reallocated to the State Street project, Portland may be in jeopardy of not meeting this timeliness deadline. Additionally, the CSO project is funded primarily by State Revolving Loan funds which cannot be used for these pedestrian system safety features. Absent the CDBG fund transfer this project would be unable to provide truly comprehensive public improvements.

Five affirmative votes are required for passage after public comment.

**Order 172-16/17
(Tab 17)**

Order Amending the Portland Company Historic District and the Map of Historic Districts - Sponsored by the Planning Board, Elizabeth Boepple, Chair.

The Planning Board met on January 17, 2017, and with a recommendation from the Historic Preservation Board, voted 5-0, (Whited recused and Boepple absent) to forward this item to the City Council with a recommendation for passage.

The Planning Board is recommending that the boundary of the Portland Company Historic District be amended to facilitate the relocation of Building 12 to a new location immediately abutting the western edge of the public access easement on the 58 Fore Street property. The boundary change will also create a single, contiguous district boundary.

The boundary amendment was made at the request of property owner CPB2 to move Building 12 away from the future connector road linking Thames Street and Fore Street and closer to the other remaining historic Portland Company structures. The 58 Fore Street Master Development Plan recently approved by the Planning Board anticipated the relocation of Building 12 and amendment of the district boundaries.

The relocation and boundary revision were recommended to the Planning Board by the Historic Preservation Board. The district boundary around Building 12's current footprint will be extinguished when the building is relocated.

Five affirmative votes are required for passage after public comment.

**Order 173-16/17
(Tab 18)**

Order Establishing the Dr. Martin Luther King Recognition Task Force - Sponsored by the Sustainability and Transportation Committee, Councilor Spencer Thibodeau, Chair.

The Sustainability and Transportation met on February 28 and voted 3-0 to forward this item to the City Council with a recommendation for passage.

During their meeting on February 28, the Sustainability and Transportation committee voted (3-0) to ask the City Council to empanel a task force charged with recommending an appropriate way to honor the life and legacy of Dr. Martin Luther King, Jr. This group may consider naming or renaming a street or park but may also consider other means as they deem appropriate.

The task force shall complete its work within 60 days and report its findings to the Sustainability and Transportation Committee in June. The task force shall be comprised of between five and seven people and shall be chaired by a City Councilor.

Five affirmative votes are required for passage after public comment.

**Order 174-16/17
(Tab 19)**

Order Approving Traffic Schedule Amendment Re: Cove Street to Two-Hour and No Parking - Sponsored by Jon P. Jennings, City Manager.

The Department of Public Works requests City Council approval to amend the Traffic Schedule to convert 15 spaces along the east side of Cove Street (from Anderson Street to the northern extent of the 71 Cove Street frontage) from unrestricted parking to two-hour parking.

This item must be read on two separate days. This is its first reading. The second reading will be held on Wednesday, April 5.

**Order 175-16/17
(Tab 20)**

Order Approving Riverside Street Utility Receivable Agreement between the City of Portland and Maine Department of Transportation – Sponsored by Jon P. Jennings, City Manager.

This agreement between Maine Department of Transportation (MaineDOT) and the City of Portland obligates MaineDOT to adjust the City's sanitary sewer manhole frames and covers, as necessary, when MaineDOT's contractor paves Riverside Street. The agreement obligates the City to pay MaineDOT for the manhole frame and cover adjustment work, which is estimated to cost \$6,000.00.

The City is obligated to pay 100% of the cost of adjusting sanitary sewer manhole frames and covers in the project area. The cost of this work, estimated to be \$6,000.00, would be paid from a CIP account established for this project.

This item must be read on two separate days. This is its first reading. The second reading will be held on Wednesday, April 5.

**Order 176-16/17
(Tab 21)**

Order Approving Agreement between Portland and Maine Department of Transportation Re: Franklin Street and Marginal Way Bayside Trail Enhancement – Sponsored by Jon P. Jennings, City Manager.

This order authorizes the City Manager to sign the Municipal-State Agreement (WIN 18363.01) with the Maine Department of Transportation (MaineDOT) for up to \$122,000 for enhancements to the Bayside Trail. Local match (20%, \$24,400) will be provided from the Bayside Trail Endowment.

The council passed an order in 2013 that funded the preliminary design and right-of-way acquisition needed for the project by the MaineDOT. This new agreement authorizes the final design, bid package preparation and construction. The project will widen the current sidewalk from 5' to create an 11' shared use pathway from the intersection and redesign the corner and curb ramps to achieve ADA accessibility.

This item must be read on two separate days. This is its first reading. The second reading will be held on Monday, March 27.

**Order 177-16/17
(Tab 22)**

**Order Approving Agreement between Portland and Maine
Department of Transportation Re: Bayside Trail and Eastern
Promenade Intersection Improvements – Sponsored by Jon
P. Jennings, City Manager.**

This order authorizes the City Manager to sign the Municipal-State Agreement (WIN 18886.00) with the MaineDOT for up to \$152,300 for enhancements to the Bayside Trail at its junction with the Eastern Promenade Trail. Local match (20%, \$30,460) will be provided from the Bayside Trail Endowment.

The council passed an order in 2013 that funded the preliminary design of the junction. This new agreement authorizes the final design, bid package preparation and construction. The project will create an attractive trail junction, create a safe crossing of the driveway into the Portland Water District water treatment plant and correct the poor drainage in this vicinity.

This item must be read on two separate days. This is its first reading. The second reading will be held on Monday, March 27.

**Order 178-16/17
(Tab 23)**

**Order Approving Agreement between Portland and the Maine
Department of Transportation Re: Washington Avenue between
Congress Street and Cumberland Avenue – Sponsored by Jon P.
Jennings, City Manager.**

Portland Area Comprehensive Transportation System (PACTS) approved funding in 2016 for the preliminary design of a portion of Washington Avenue from Congress Street to Cumberland Avenue, inclusive of roadway, sidewalk and signal design. Council Order 51-16/17, effective September 29, 2016, enacted the three-party funding agreement for this design-only project; at that time MaineDOT had responsibility to administer the project. This order assigns that responsibility to the City of Portland.

As per the previous three-party agreement, the financial responsibilities have been set forth, with a total funding of \$131,700 coming from PACTS and state/federal funds, and the remaining \$43,900 coming from local funding sources.

This item must be read on two separate days. This is its first reading. The second reading will be held on Wednesday, April 5.

AMENDMENTS:

**Order 179-16/17
(Tab 24)**

**Amendment to Portland City Code Chapter 6 and Chapter 14
Re: Short Term Rentals - Sponsored by the Housing Committee,
Councilor Jill C. Duson, Chair.**

On February 8, 2017, the Housing Committee voted unanimously (3-0) to forward this item to the City Council with a recommendation for passage.

On February 28, 2017, the Planning Board voted unanimously (6-0) to amend Chapter 14 to revise the definition of “Dwelling” consistent with the Housing Committee’s recommendation.

The Housing Committee is recommending revisions to Chapter 6 and Chapter 14 to register and regulate the emergence of Short Term Rentals (STRs) through websites such as Airbnb.

The proposed amendments would allow all property owners to rent out their primary residences as STRs. No non-owner occupied single family home or condominium would be allowed to be rented as STRs, except on the islands. Multi-family and mixed-use buildings will be required to register units at escalating registration fees with a cap on total number of STR units per building based on the charts outlined in the memo’s attachments.

In an effort to reduce the potential impacts of STRs on Portland’s long term housing stock, a cap of 300 non-owner occupied STR units will be enforced on Portland’s mainland and a city-wide limit of no more than five STR units per person. A cap on non-owner occupied STR units on the islands may be examined at a later date.

Any problem STR properties will be subject to the Disorderly House Ordinance as it exists in Chapter 6

This item must be read on two separate days. This is its first reading. The second reading will be held on Monday, March 27.

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

UNFINISHED BUSINESS: continued

**Order 153-16/17
(Tab 25) 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. It was given a first reading on March 6, 2017. The public hearing on this item will be taken at this evening's meeting. Council comment and action will be taken on April 5th. Seven affirmative votes will be required for passage after public comment.

**Order 154-16/17
(Tab 26)**

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. It was given a first reading on March 6, 2017. The public hearing on this item will be taken at this evening's meeting. Council comment and action will be taken on April 5th. Five affirmative votes will be required for passage after public comment.

**Order 155-16/17
(Tab 27)**

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. It was given a first reading on March 6, 2017. Seven affirmative votes are required for passage after public comment.

**Order 156-16/17
(Tab 28)**

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. It was given a first reading on March 6, 2017. Five affirmative votes are required for passage after public comment.

**Order 157-16/17
(Tab 29)**

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 on two separate days. It was given a first reading on March 6, 2017. Five affirmative votes are required for passage after public comment.

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MARCH 20, 2017

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(Tab 4)**

Order Declaring August 11 to 13, 2017 the 92nd Annual St. Peter’s Bazaar and Italian Street Festival – Sponsored by Jon P. Jennings, City Manager.

This order declares the 92nd Annual St. Peters to be held on Friday, Saturday and Sunday, August 11, 12, 13, 2017 from 4:00 p.m. to 10:00 p.m. on a portion of Federal Street (India Street to Franklin Street).

**Order 164-16/17
(Tab 5)**

Order Declaring June 22 to 24, 2017 the 2017 Greek Heritage Food Festival - Sponsored by Jon P. Jennings, City Manager.

This order declares the Greek Heritage Food Festival to be held on Holy Trinity Greek Orthodox Church grounds and a portion of Pleasant Street on June 22, 24, 25, 2016, from 11:30 p.m. to 9:30 p.m.

Street closures are included in the agenda backup.

**Order 165-16/17
(Tab 6)**

Order Declaring June 24, 2017 the Rock Lobster Relay Festival – Sponsored by Jon P. Jennings, City Manager.

The Rock Lobster Relay is a two-hundred (200) mile relay race from Bar Harbor to Portland. Runners will have staggered start times out of Bar Harbor on Friday June 23, 2017 between 6:00 a.m. and 3:30 p.m.

The overnight race is split into 36 (11.0 – 20.6 mile) legs. Each team will consist of 6-12 runners. The maximum number of teams is 200 (=2400 runners). Each runner will run 3 legs of the course. Exchange points are set up along the course route at schools, parks and businesses. Teams should finish between 20 and 36 hours after their start times.

In Portland, the final hand off (exchange #35) will take place at Martin’s Point Healthcare on US Rte. 1 with a finish line at Ocean Gateway Amethyst Lot.

It is estimated that finishers will be crossing the finish line between 10:00 a.m. and 6:30 p.m. on Saturday June 24, 2017.

**Order 166-16/17
(Tab 7)**

Order Declaring the Craft Brew Race Festival 2017 – Sponsored by Jon P. Jennings, City Manager.

This order declares Saturday, July 1, 2017 as the Craft Brew Race Festival. The race is held around Back Cove and utilizes Payson Park Grass Triangle as the festival area. The race registration is at 11:00 a.m., and the race begins at 12:00 noon.

The festival portion of the event takes place at Payson Park (Triangle Grass area) and runs from noon to 4:00 p.m.

Street closures are included in the agenda backup.

**Order 167-16/17
(Tab 8)**

Order Declaring The Friends of Eastern Promenade 2017 Summer Community Concert Series Festival – Sponsored by Jon P. Jennings, City Manager.

For many decades the city organized and sponsored a weekly, summer concert series at Fort Allen Park with the assistance from the Friends of Eastern Promenade.

This year the Friends of Eastern Promenade are completely taking over the series, which will include nine concerts at the Fort Allen Park Gazebo Bandstand, Thursday evenings, July 6 through August 31, from 6:30 to 7:30 p.m. At each concert a variety of food trucks will be on site. During some of the concerts, the park roadway may need to be closed down to vehicles.

Funds for running the concert series will come mainly from fundraising efforts by the Friends of Eastern Promenade. The city will fund two of the concerts from the Willey Trust and the Betty Winterhalter Trust.

**Order 168-16/17
(Tab 9)**

Order Declaring July 13 to August 5, 2017 the Chekhov in the Park Festival – Sponsored by Jon P. Jennings, City Manager.

The Fenix Theatre Company will hold performances of Chekhov's "Three Sisters" on Thursday, Friday, and Saturday (except July 29) from 6:30 to 8:00 p.m. on July 13, 14, 15, 20, 21, 22, 27, 28 and August 3, 4, and 5, 2017. In lieu of the July 29th performance, a matinee performance will be held on Sunday, July 30, from 2:00 to 3:30 p.m. The performances will take place at the Deering Oaks Park Bandstand and surrounding grass area. There will be rehearsals during the month of June.

**Order 169-16/17
(Tab 10)**

Order Declaring August 26, 2017 the Portland Fine Craft Show Festival - Sponsored by Jon P. Jennings, City Manager.

The Portland Fine Craft Show organized by the Maine Crafts Association will be held on Congress Street from 9:00 a.m. to 4:00 p.m. on Saturday, August 26, 2017.

Festival organizers are requesting that Congress Street from High Street to State Street be closed to vehicular traffic.

High Street at the intersection of Congress Street and State Street at the intersection of Congress would stay open to commuters. Further street closures are included in the agenda backup.

**Order 170-16/17
(Tab 11)**

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

This order authorizes the City Council to approve the transfer of \$785.00 in forfeited assets from the State of Maine to the City of Portland from the case of the State of Maine v. Tina Trent

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

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

LICENSES:

BUDGET ITEMS:

COMMUNICATIONS:

RESOLUTIONS:

UNFINISHED BUSINESS:

**Order 151-16/17
(Tab 12)**

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.

City staff is hereby requesting that \$188,000 from the Westcott Trust Fund be appropriated to replace the fire alarm system. The remaining balance in the fund will be \$111,205.48.

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. It was given a first reading on March 6, 2017. Five affirmative votes are required for passage after public comment.

**Order 152-16/17
(Tab 13)**

Order Amending Agreement between the City of Portland and Maine Department of Transportation Re: Forest Avenue and Woodford's Corner Improvements - Sponsored by Jon P. Jennings, City Manager.

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"

This item must be read on two separate days. It was given a first reading on March 6, 2017. Five affirmative votes are required for passage after public comment.

**Order 159-16/17
(Tab 14)**

**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. It was given a first reading on March 6, 2017. Staff is requesting that this order be passed as an emergency to allow the owner of Maine Craft Distilling to facilitate the relocation of his business. Emergency enactment requires seven affirmative votes.

**Order 160-16/17
(Tab 15)**

**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. It was given a first reading on March 6, 2017. Staff is requesting that this order be passed to facilitate the getting permits for immediate renovation. Emergency enactment requires seven affirmative votes.

ORDERS:

**Order 171-16/17
(Tab 16)**

Order Approving Substantial Amendment to the Fiscal Year 2017 Housing and Urban Development Annual Action Plan Re: Reallocation to Community Development Block Grant Funding to State Street Pedestrian Safety Improvements – Sponsored by Jon P. Jennings, City Manager.

CDBG regulations require entitlement communities, like Portland, to carry out its CDBG activities in a timely manner. On May 2nd of each year, Portland cannot have more than 1.5 times our entitlement grant for the current program year in our CDBG Treasury account.

In light of this requirement, staff is requesting that CDBG funds in the amount of \$408,861 that were previously allocated to Marginal Way/Bayside Roadway/Sidewalk Improvements & Related Work project be reallocated to a new project - State Street Pedestrian Safety and Related Work. The State Street Pedestrian Safety and Related Work project will address pedestrian crossing and safety concerns along State Street between Cumberland Avenue and Deering Oaks Park and will complement and coordinate with the City's Combined Sewer Overflow (CSO)/sewer separation project in this area.

If the Marginal Way project funds are not reallocated to the State Street project, Portland may be in jeopardy of not meeting this timeliness deadline. Additionally, the CSO project is funded primarily by State Revolving Loan funds which cannot be used for these pedestrian system safety features. Absent the CDBG fund transfer this project would be unable to provide truly comprehensive public improvements.

Five affirmative votes are required for passage after public comment.

**Order 172-16/17
(Tab 17)**

Order Amending the Portland Company Historic District and the Map of Historic Districts - Sponsored by the Planning Board, Elizabeth Boepple, Chair.

The Planning Board met on January 17, 2017, and with a recommendation from the Historic Preservation Board, voted 5-0, (Whited recused and Boepple absent) to forward this item to the City Council with a recommendation for passage.

The Planning Board is recommending that the boundary of the Portland Company Historic District be amended to facilitate the relocation of Building 12 to a new location immediately abutting the western edge of the public access easement on the 58 Fore Street property. The boundary change will also create a single, contiguous district boundary.

The boundary amendment was made at the request of property owner CPB2 to move Building 12 away from the future connector road linking Thames Street and Fore Street and closer to the other remaining historic Portland Company structures. The 58 Fore Street Master Development Plan recently approved by the Planning Board anticipated the relocation of Building 12 and amendment of the district boundaries.

The relocation and boundary revision were recommended to the Planning Board by the Historic Preservation Board. The district boundary around Building 12's current footprint will be extinguished when the building is relocated.

Five affirmative votes are required for passage after public comment.

**Order 173-16/17
(Tab 18)**

Order Establishing the Dr. Martin Luther King Recognition Task Force - Sponsored by the Sustainability and Transportation Committee, Councilor Spencer Thibodeau, Chair.

The Sustainability and Transportation met on February 28 and voted 3-0 to forward this item to the City Council with a recommendation for passage.

During their meeting on February 28, the Sustainability and Transportation committee voted (3-0) to ask the City Council to empanel a task force charged with recommending an appropriate way to honor the life and legacy of Dr. Martin Luther King, Jr. This group may consider naming or renaming a street or park but may also consider other means as they deem appropriate.

The task force shall complete its work within 60 days and report its findings to the Sustainability and Transportation Committee in June. The task force shall be comprised of between five and seven people and shall be chaired by a City Councilor.

Five affirmative votes are required for passage after public comment.

**Order 174-16/17
(Tab 19)**

Order Approving Traffic Schedule Amendment Re: Cove Street to Two-Hour and No Parking - Sponsored by Jon P. Jennings, City Manager.

The Department of Public Works requests City Council approval to amend the Traffic Schedule to convert 15 spaces along the east side of Cove Street (from Anderson Street to the northern extent of the 71 Cove Street frontage) from unrestricted parking to two-hour parking.

This item must be read on two separate days. This is its first reading. The second reading will be held on Wednesday, April 5.

**Order 175-16/17
(Tab 20)**

Order Approving Riverside Street Utility Receivable Agreement between the City of Portland and Maine Department of Transportation – Sponsored by Jon P. Jennings, City Manager.

This agreement between Maine Department of Transportation (MaineDOT) and the City of Portland obligates MaineDOT to adjust the City's sanitary sewer manhole frames and covers, as necessary, when MaineDOT's contractor paves Riverside Street. The agreement obligates the City to pay MaineDOT for the manhole frame and cover adjustment work, which is estimated to cost \$6,000.00.

The City is obligated to pay 100% of the cost of adjusting sanitary sewer manhole frames and covers in the project area. The cost of this work, estimated to be \$6,000.00, would be paid from a CIP account established for this project.

This item must be read on two separate days. This is its first reading. The second reading will be held on Wednesday, April 5.

**Order 176-16/17
(Tab 21)**

Order Approving Agreement between Portland and Maine Department of Transportation Re: Franklin Street and Marginal Way Bayside Trail Enhancement – Sponsored by Jon P. Jennings, City Manager.

This order authorizes the City Manager to sign the Municipal-State Agreement (WIN 18363.01) with the Maine Department of Transportation (MaineDOT) for up to \$122,000 for enhancements to the Bayside Trail. Local match (20%, \$24,400) will be provided from the Bayside Trail Endowment.

The council passed an order in 2013 that funded the preliminary design and right-of-way acquisition needed for the project by the MaineDOT. This new agreement authorizes the final design, bid package preparation and construction. The project will widen the current sidewalk from 5' to create an 11' shared use pathway from the intersection and redesign the corner and curb ramps to achieve ADA accessibility.

This item must be read on two separate days. This is its first reading. The second reading will be held on Monday, March 27.

**Order 177-16/17
(Tab 22)**

**Order Approving Agreement between Portland and Maine
Department of Transportation Re: Bayside Trail and Eastern
Promenade Intersection Improvements – Sponsored by Jon
P. Jennings, City Manager.**

This order authorizes the City Manager to sign the Municipal-State Agreement (WIN 18886.00) with the MaineDOT for up to \$152,300 for enhancements to the Bayside Trail at its junction with the Eastern Promenade Trail. Local match (20%, \$30,460) will be provided from the Bayside Trail Endowment.

The council passed an order in 2013 that funded the preliminary design of the junction. This new agreement authorizes the final design, bid package preparation and construction. The project will create an attractive trail junction, create a safe crossing of the driveway into the Portland Water District water treatment plant and correct the poor drainage in this vicinity.

This item must be read on two separate days. This is its first reading. The second reading will be held on Monday, March 27.

**Order 178-16/17
(Tab 23)**

**Order Approving Agreement between Portland and the Maine
Department of Transportation Re: Washington Avenue between
Congress Street and Cumberland Avenue – Sponsored by Jon P.
Jennings, City Manager.**

Portland Area Comprehensive Transportation System (PACTS) approved funding in 2016 for the preliminary design of a portion of Washington Avenue from Congress Street to Cumberland Avenue, inclusive of roadway, sidewalk and signal design. Council Order 51-16/17, effective September 29, 2016, enacted the three-party funding agreement for this design-only project; at that time MaineDOT had responsibility to administer the project. This order assigns that responsibility to the City of Portland.

As per the previous three-party agreement, the financial responsibilities have been set forth, with a total funding of \$131,700 coming from PACTS and state/federal funds, and the remaining \$43,900 coming from local funding sources.

This item must be read on two separate days. This is its first reading. The second reading will be held on Wednesday, April 5.

AMENDMENTS:

**Order 179-16/17
(Tab 24)**

**Amendment to Portland City Code Chapter 6 and Chapter 14
Re: Short Term Rentals - Sponsored by the Housing Committee,
Councilor Jill C. Duson, Chair.**

On February 8, 2017, the Housing Committee voted unanimously (3-0) to forward this item to the City Council with a recommendation for passage.

On February 28, 2017, the Planning Board voted unanimously (6-0) to amend Chapter 14 to revise the definition of “Dwelling” consistent with the Housing Committee’s recommendation.

The Housing Committee is recommending revisions to Chapter 6 and Chapter 14 to register and regulate the emergence of Short Term Rentals (STRs) through websites such as Airbnb.

The proposed amendments would allow all property owners to rent out their primary residences as STRs. No non-owner occupied single family home or condominium would be allowed to be rented as STRs, except on the islands. Multi-family and mixed-use buildings will be required to register units at escalating registration fees with a cap on total number of STR units per building based on the charts outlined in the memo’s attachments.

In an effort to reduce the potential impacts of STRs on Portland’s long term housing stock, a cap of 300 non-owner occupied STR units will be enforced on Portland’s mainland and a city-wide limit of no more than five STR units per person. A cap on non-owner occupied STR units on the islands may be examined at a later date.

Any problem STR properties will be subject to the Disorderly House Ordinance as it exists in Chapter 6

This item must be read on two separate days. This is its first reading. The second reading will be held on Monday, March 27.

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

UNFINISHED BUSINESS: continued

**Order 153-16/17
(Tab 25)**

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. It was given a first reading on March 6, 2017. The public hearing on this item will be taken at this evening's meeting. Council comment and action will be taken on April 5th. Seven affirmative votes will be required for passage after public comment.

**Order 154-16/17
(Tab 26)**

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. It was given a first reading on March 6, 2017. The public hearing on this item will be taken at this evening's meeting. Council comment and action will be taken on April 5th. Five affirmative votes will be required for passage after public comment.

**Order 155-16/17
(Tab 27)**

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. It was given a first reading on March 6, 2017. Seven affirmative votes are required for passage after public comment.

**Order 156-16/17
(Tab 28)**

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. It was given a first reading on March 6, 2017. Five affirmative votes are required for passage after public comment.

**Order 157-16/17
(Tab 29)**

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 on two separate days. It was given a first reading on March 6, 2017. Five affirmative votes are required for passage after public comment.

IN COUNCIL REGULAR MEETING MARCH 6, 2017 VOL. 133 PAGE 64

ROLL CALL: Mayor Strimling called the meeting to order at 5:30 P.M. (All Councilors present).

ANNOUNCEMENTS: Councilor Ray announced that the Health and Human Services Committee will meet on March 28th, 2017 at City Hall to hear public comment on Shelter Expansion.

RECOGNITIONS:

"Arts in the Chamber" - Sarah Juli – Dance Performance Artist.

SPECIAL MEETING OF THE PORTLAND DEVELOPMENT CORPORATION

Motion was made by Councilor Duson and seconded by Councilor Brenerman to recess the meeting of the City Council and convene a Special meeting of the Corporation of the Portland Development Corporation. Passage 9-0, 5:35 P.M.

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

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

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

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

Motion was made by Councilor Costa and seconded by Councilor Baton to adjourn the meeting of the Corporation of the Portland Development Corporation and reconvene the regular meeting of the City Council. Passage 9-0, 5:45 P.M.

APPROVAL OF MINUTES OF PREVIOUS MEETING:

Motion was made by Councilor Duson and seconded by Councilor Brenerman to approve the minutes of February 22, 2017 Special City Council Meeting. Passage 9-0.

PROCLAMATIONS:

- Proc 22-16/17 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 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 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
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

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

CONSENT ITEMS:

LICENSES:

BUDGET ITEMS:

COMMUNICATIONS:

RESOLUTIONS:

UNFINISHED BUSINESS:

- 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 item was given first reading on February 22, 2017.**

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

ORDERS:

- Order 149-16/17 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 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.

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

- Order 150-16/17 Order Amending the Bylaws of the Portland Technology Park Condominium Association – Sponsored by Jon P. Jennings, City Manager.**

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

- Order 151-16/17 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.**

This is its first reading.

- Order 152-16/17 Order Amending Agreement between the City of Portland and Maine Department of Transportation Re: Forest Avenue and Woodford's Corner Improvements - Sponsored by Jon P. Jennings, City Manager.**

This is its first reading.

- Order 153-16/17 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.**

This is its first reading.

- Order 154-16/17 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 its first reading.

Order 155-16/17 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.

This is its first reading.

Order 156-16/17 Order Appropriating \$64,260,000 of Bond Proceeds – Sponsored by the Finance Committee, Councilor Nicholas M. Mavodones, Jr., Chair.

This is its first reading.

Order 157-16/17 Order Submitting Elementary School Renovation Projects Bond Order to Referendum – Sponsored by the Finance Committee, Councilor Nicholas M. Mavodones, Jr., Chair.

This is its first reading.

AMENDMENTS:

Order 158-16/17 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.

Motion was made by Councilor Ray and seconded by Councilor Thibodeau to waive the second reading of Order 158. Passage 9-0.

Motion was made by Councilor Mavodones to pass Order 158 as an emergency. Passage 8-1 (Duson).

Motion was made by Councilor Mavodones and seconded by Councilor Duson for passage. Passage 9-0.

Order 159-16/17 Amendment to City Chapter 14 Re: Community Business B-2 Zone – Sponsored by the Planning Board, Elizabeth Boepple, Chair.

This is its first reading

Order 160-16/17 Amendment to Zoning Map Re: 117 Auburn Street – Sponsored by the Planning Board, Elizabeth Boepple, Chair.

This is its first reading.

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

IN COUNCIL REGULAR MEETING MARCH 6, 2017 VOL. 133 PAGE 66

Councilor Mavodones announced that the Finance Committee will be having a public hearing on the Bonds for the CIP on March 20, 2017. March 23 will be a Finance Committee meeting for the CIP and sending it to the full City Council on April 5th for Council action.

Motion was made by Councilor Ray and seconded by Councilor Costa to adjourn. Passage 9-0, 6:30 P.M.

A TRUE COPY.

Katherine L. Jones, City Clerk

*Order 61-16/17
Tab 2 3-20-17*

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 CHANGING POLLING PLACE FOR
DISTRICT 1 PRECINCT 3 FROM
THE PEAKS ISLAND COMMUNITY CENTER
TO ST. CHRISTOPHER'S CATHOLIC CHURCH**

ORDERED, that the polling place for District 1 Precinct 3 is hereby changed from the Peaks Island Community Center, 129 Island Avenue, Peaks Island, to St. Christopher's Catholic Church, 15 Central Avenue, Peaks Island, for the June and November 2017 and May and June 2018 elections; and

BE IT FURTHER ORDERED, that the above polling place change shall be temporary only for the June and November 2017 and May and June 2018 elections, and that the District 1 Precinct 3 shall be the Peaks Island Community Center, 129 Island Avenue, Peaks Island following those elections.



Office of the City Clerk
Katherine L. Jones, CMC

TO: Mayor Strimling and Members of the City Council
FROM: Katherine Jones, City Clerk
DATE: March 1, 2017
RE: Change of Polling Place

Peaks Island Community Center is having renovations that will not be finished for the upcoming elections, June & November Election 2017, and for May & June Elections in 2018. I will need to move the current polling place, Peaks Island Community Center, to a temporary location.

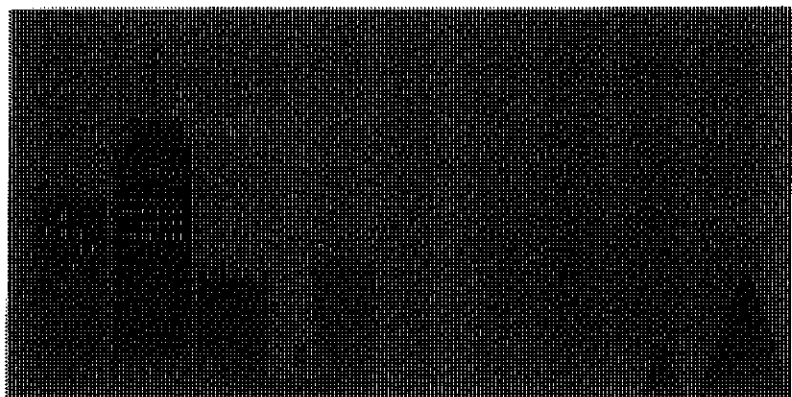
It was brought to my attention by the Warden, Fred O'Keefe that we can use St. Christopher's Catholic Church located at 15 Central Avenue, it is a two minute walk from the Community Center, 129 Island Avenue. St. Christopher's meets ADA requirement and has been inspected by the City's Trade Supervisor.

I am recommending that we move temporarily the polling place from the Peaks Island Community Center to St. Christopher's Church.

Google Maps 15 Central Ave



Imagery ©2017 DigitalGlobe, Maine GeoLibrary, U.S. Geological Survey, Map data ©2017 Google 50 ft



15 Central Ave
Peaks Island, ME 04108

*Order 162-16/17
Tab 3 3-20-17*

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 DECLARING APRIL 22, 2017 THROUGH OCTOBER 31, 2017
THE IN THE SQUARE FESTIVAL**

ORDERED, that the period beginning April 22, 2017 and ending on October 31, 2017 is hereby declared to be the In the Square Festival, sponsored by the Friends of Congress Square Park; and

BE IT FURTHER ORDERED, that the In the Square Festival area, which is Congress Square Park and adjoining sidewalks of Congress and High streets, shall be closed to licensed street vendors on the days of scheduled In the Square Festival events as provided in §19-17 of the City Code; and

BE IT FURTHER ORDERED, that vehicles in violation of "no parking" signs in the spaces next to the adjacent sidewalks shall be towed at owner's expense; and

BE IT FURTHER ORDERED, that the City Manager is authorized to issue a revocable permit to Friends of Congress Square Park under §25-27 of the City Code to conduct said Festival, subject to the direction and control of the City Manager and to the following specific conditions:

1. The Friends of Congress Square Park shall defend, indemnify and hold harmless the City of Portland, its officers and employees, from and against all claims arising out of or resulting from the Festival and/or use of City streets and property for said Festival, and shall procure and maintain public liability insurance in the minimum amount of \$400,000 per occurrence for personal or bodily injury, death or property damage and covering the obligation of indemnification hereunder. The Friends of Congress Square Park shall provide the City with a certificate showing evidence of such insurance and showing the City as an additional insured on said insurance;
2. No alcoholic beverages may be sold on the streets or public property during the Festival within the Festival area;
3. Conditions for use of grounds and requirements for food service, vending sales, and other items specified in a permit issued from the Public Assembly Facilities Division shall be adhered to;

4. The Friends of Congress Square Park shall have sole authority over which vendors may participate in the festival during the scheduled events except for any Food Trucks awarded a contract with the City authorizing operation in Congress Square Park. The Friends of Congress Square Park may charge a fee to those vendors chosen by the Friends to operate at the In the Square Festival;
5. The Public Assembly Facility Division permit fees for the use of Congress Square are waived, but other fees to city departments may be due. Business Licensing Office shall charge the usual fees for licensing food vendors, street goods vendors, and other needed licenses for the Festival to those vendors the Organizer has agreed shall participate, including an annual concert license fee; and
6. If a proposed event requires the assistance of city staff, the Friends of Congress Square Park will hire and pay for that city staff assistance; and
7. Any and all amplified music and public announcements shall be maintained at a reasonable noise level (under 92 decibels) and be configured by the event organizer to focus volume away from residential housing and neighboring business, limiting any impact in the area by the sound level; and

BE IT FURTHER ORDERED, that the City Manager is authorized to waive fees and to issue such other temporary licenses, including licenses for food service establishments, as may be required by the City Code, provided that all other applicable Code requirements for the operation of the Festival have been met.



Gregory A. Mitchell
Director, Economic Development Department

Sally L. DeLuca

Andrew J. Downs

Director

Director

Department of Parks, Recreation & Facilities

Public Assembly Facilities Division

TO: Jon Jennings, City Manager
FROM: Sally DeLuca, Director of Parks, Recreation & Facilities Management
DATE: March 3, 2017
RE: **Council Agenda Item – Friends of Congress Square Park
“In the Square Festival”**

I am requesting that the following order be placed on the next City Council agenda:

**Order declaring Friends of Congress Square Park “In the Square Festival”
as a weekly festival event: April 22 – October 31, 2017.**

Since 2014, the Friends of Congress Square Park have scheduled and organized on-going events for Congress Square Park. Last year's events were very well received by the public. Visitor attendance to the park has increased dramatically since the friends began organizing events there.

This year the Friends of Congress Square Park have again submitted a request to organize and host events at the park (titled: “In the Square Festival”). The event season (Spring, Summer & Fall) will include a wide variety of community activities such as art interactions, dance performances, live music, films and community gatherings. Most events will be held on Wednesday, Friday & Saturdays (with some Sundays being used: Movies in the Park). A complete calendar of events will be published by April 1st. Dances and concerts at the park will end by 9pm. The Friends of Congress Square Park - through the city's Public Assembly Facilities Division, will work with other groups during this time so that other agencies and events, other than FoCSP organized activities, may take place in the park.

Funds for running the “In the Square Festival” will come directly from fundraising efforts by the Friends of Congress Square Park. There is no admission charge to the events: concerts and activities/events are free to the public.

The festival zone for the “In the Square Festival” is all of Congress Square Park and the sidewalks bordering the park (Congress Street & High Street sidewalks).

The Order should include the following items:

Friends of Congress Square Park “In the Square Festival” be authorized for Spring, Summer & Fall (April 22 – October 31, 2017), at Congress Square Park area.

(continued)



Gregory A. Mitchell
Director, Economic Development Department

Sally L. DeLuca

Director

Department of Parks, Recreation & Facilities

Andrew J. Downs

Director

Public Assembly Facilities Division

This festival area will be closed to street vendors pursuant to Section 19-17 of the Portland City Code and is reserved for the use of festival organizers for the purpose of conducting the "In the Square Festival," subject to the direction and control of the City Manager.

In order to hold the events on city property, some areas of the parking lane on Congress Street (directly beside the park), need to be posted "No Parking" on event days. Vehicles in violation of the "No Parking" signs shall be towed at owner's expense.

The City Manager is authorized to issue a revocable permit under Section 25-27 of the Municipal Code to the Friends of Congress Square Park for the use of the above-described area for said Festival subject to the following conditions:

- The Friends of Congress Square Park shall indemnify the City and hold it harmless from and against all claims arising out of activities during said Festival, and shall take out and maintain public liability insurance coverage in the amount of at least **\$400,000** per occurrence for personal or bodily injury, death or property damage for said purpose. This insurance certificate will also list the City of Portland as an additional insured in regards to the "In the Square Festival", and the City be endorsed on the policy;
- The Friends of Congress Square Park shall have sole authority over participating vendors at the events and may charge a fee to vendors for the opportunity to vend at the "In the Square Festival;"
- Conditions for use of grounds, specified in a permit issued from Public Assembly Facilities Division, shall be adhered to;
- Under no circumstances may alcoholic beverages be consumed or sold on the streets or park areas of said area during said festival;
- Any and all amplified music/public announcements shall be maintained at a reasonable level (under 92dBs) and be configured by the event organizer to focus volume away from residential housing and neighboring businesses, limiting any sound impacts in the area; and
- Public Assembly Facility Division permit fees for use of the area are waived; other fees to city departments may be due (as specified in the 2015 Memorandum of Understanding between City of Portland and Friends of Congress Square Park).

(continued)



Gregory A. Mitchell
Director, Economic Development Department

Sally L. DeLuca

Andrew J. Downs

Director

Director

Department of Parks, Recreation & Facilities

Public Assembly Facilities Division

The City Manager is also authorized to issue such other temporary licenses, including licenses for food service establishments, as may be required by the Portland City Code, provided that all other applicable requirements of said Code have been met regarding the operation of said Festival/Event.

Document prepared by Ted Musgrave, PAFD Event Coordinator



**CITY OF PORTLAND, PUBLIC ASSEMBLY FACILITIES DIVISION
PUBLIC PARK & SPACE APPLICATION (3 pages)
212 Canco Rd. ~ Portland ~ ME ~ 04103
207-808-5400**

For uses of city property, there are typically: **1. fees charged for use of the area**
2. a security deposit required **3. insurance required**
(There may be fees due and applications required from other City Departments)

TODAY'S DATE	January 11, 2017 Revised: 2-10, 2-21	ORGANIZATION NAME	Friends of Congress Square Park				
ORGANIZATION ADDRESS	80 High Street, #1	CITY	Portland	STATE	ME	ZIP	04101
CONTACT NAME(S)	Bree LaCasse, Executive Director David LaCasse, Operations Committee Board Chair						
HOME #	WORK	CELL	FAX				
EMAIL	breeillacasse@gmail.com		EMAIL	Davidlacasse@congresssquarepark.org			

PARK AREA OR PUBLIC SPACE REQUESTED	Congress Square Park				
EVENT DAY & DATE(S)	April 22 - October 31, 2017 (see attached)	RAIN DAY & DATE(S) (50% added fee)	Possibly (TBD)		
EVENT START TIME (i.e. set-up start time)	Varied (see attached)	EVENT END TIME (i.e. when event cleanup is complete)	varies	ACTUAL START & END TIME OF EVENT	varies

EVENT NAME	EXPECTED ATTENDANCE
"in the Square Festival" in Congress Square Park	Will vary by event from 50-350

DESCRIPTION OF EVENT:		
The Friends of Congress Square Park will program a series of events and activities to occur between April 22nd and October 31st, primarily on Wednesday, Friday and Sunday evenings, with some Saturday daytime events. The events and activities will be free to the public (no charge for admittance to the square). This fourth season continues the community led creative placemaking that has successfully activated Congress Square Park through free public amenities and events. The event season will include a wide variety of community activities such as art interactions, dance performances, live music, films and community gatherings. All activities will be scheduled in advance with Ted Musgrave at the PAFD Office. <i>A complete calendar of events will be published by April 1st.</i> (Organizers will also work with other groups during this time so that other agencies or events, other than FoCSP events, can also take place in the square/park.) Similar to previous years (and under the Memorandum of Understanding between City of Portland and Friends of Congress Square Park – expiration date: April 15, 2018), tables and chairs will be set up on the sunken plaza area, portable planters brought into the park, banners and Festive Lights hung in the trees. Electricity will be needed during some events. Musical equipment and PA (and movie screen) set up on the stage area. Events, dances and concerts at the park will end at (or by) 9pm. A concert license (covering the season's events) will be procured from the Business Licensing Office for \$100.		
<table border="1"> <tr> <td>IS THERE A REGISTRATION FEE/PLEDGES COLLECTED FOR THIS EVENT?</td> <td>NO. All events are FREE of charge & open to the public.</td> </tr> </table>	IS THERE A REGISTRATION FEE/PLEDGES COLLECTED FOR THIS EVENT?	NO. All events are FREE of charge & open to the public.
IS THERE A REGISTRATION FEE/PLEDGES COLLECTED FOR THIS EVENT?	NO. All events are FREE of charge & open to the public.	

WHAT WILL BE THE ANTICIPATED NEED FOR PARKING AND WHAT IS YOUR PARKING PLAN? <i>A few reserved spaces per event.</i>

PLEASE CHECK OFF AND ANSWER:

PLEASE SEE ATTACHED FEE SCHEDULE / DEPT. INFORMATION IF YOU ANSWER YES

	X-YES	X-NO	X-NOT SURE
* Are you setting up a canopy(s)? (canopy is 10x10 size) How many:		X	

*	Do you wish to set up a tent(s) ? A canopy or tent larger than 10x10 needs to be approved by PAFD Office and a Tent Permit issued from Inspections Division.		X	
*	Will you be setting up tables and/or chairs ? How many tables: chairs:	EXISTIN G		
*	Are other items or equipment being placed on City property?		X	
*	Will there be refreshments at the event? Do you wish to sell food ? (If so, you will need approval from PAFD and possibly a Temporary Food Service License from Business Licensing Office) List food and drink / Food Trucks, etc.: PLEASE NOTE: A Temporary Food Service License is NOT needed when: 1. Food Vendors have a current City of Portland Food License 2. Just pre-packaged refreshments, or food & drink items are purchased or donated from a licensed establishment 3. Bottled water / water is served PLEASE give the BL Office at least a 2-week notice (874-8557). A TFSL is needed when food vendors are not licensed, or when food is being prepared and cooked at the event.	X – WE MAY APPLY FOR TFSL FOR SOME EVENT S		
*	Do you wish to sell non-food items (like T-shirts, crafts, cd's, etc.)?		X	
*	Are you setting up a PA (sound) system ? Are you planning on having Amplified Music ? Y Band ? Y DJ ? Y Boom Box ? Y If so, your event may require a concert license from BL Office (874-8557). (Just voice – i.e. Press Conference, would not require the license because it is not music). However, a Sound Security Deposit may also be required for amplification. For amplified music/speech, there are time restrictions for the Downtown Parks & Squares (music limited to 11:45am – 1:15pm, and 1 hour between 5pm - 8pm).	X		
*	Will your event require electricity ? Electricity is available at Congress Square. It is turned	X		
*	Are you planning on bringing a Grill for a Barbecue ?		X	
*	Will the event require reserved parking spaces / parking meters ? How many? "No Parking" signs may be purchased at PAFD Office, 212 Canco Rd.	X		
*	Will your event need safety vests, signs, barricades and/or cones ?		X	
*	Will your event require street closures ?		X	
*	Will your event require Police assistance?		X	
*	Will your event require Fire/EMS assistance?		X	
*	Will your event require porta-restroom rental(s) or need existing porta-restrooms cleaned?		X	

INSURANCE CERTIFICATE INFORMATION			
*	Will your event require liability Insurance? (Commercial liability insurance is required for a walkathon, race, festival, press conference, concert, etc. Product liability insurance is also required if the event has been approved for serving food.)	X ON FILE	
♦ If you answered YES, you shall procure and maintain commercial and/or product liability insurance in an amount of at least \$400,000 combined single limit, covering claims for bodily injury, death, and property damage at your event. You shall name the City of Portland as an additional insured or shall obtain a general liability extension endorsement for coverage for the event, only in those areas where governmental immunity has been expressly waived by 14 M.R.S.A. § 8104-A, as limited by § 8104-B, and § 8111. The terms of this permit shall not be deemed a waiver of any immunities or limitations of damages available under the Maine Tort Claims Act, other Maine statutory law, judicial precedent, or common law. ♦ The insurance certificate shall be sent to tvm@portlandmaine.gov and must state with no exceptions one of the following: 1) The policy is endorsed to name the City of Portland as an additional insured pursuant to the date of the event (and rain date). 2) The policy contains a general liability extension endorsement by which the City of Portland is made an additional insured pursuant to the date of the event (and rain date).			

PUBLIC ASSEMBLY FACILITIES DIVISION POLICIES

ELECTRICITY

All cords in the public way must be covered by rugs, mats or orange cones to avoid public hazard. If weather is inclement (drizzle, rain, snow, etc.) we require that you **not use** electricity, unless all connections and equipment are covered and protected from the elements.

PORTA-RESTROOMS / BATHROOM FACILITIES

Porta-Restrooms are required for large events and events where food is being served. For some of the planned events, restrooms may be required. If over 150 people are expected to attend the event, a \$25 user fee is required (paid to PAFD). The restrooms are cleaned M, W, & F. If you would like to guarantee that they are cleaned just prior to your event, then you need to call the porta-restroom company (Associated Septic / Royal Flush, 207-799-1980, M-F) to request and pay for a cleaning. If renting units, event organizer **MUST** rent from Associated Septic / Royal Flush.

TRASH

All groups must abide by our Carry In/ Carry Out Policy. Please bring extra trash bags and/or trash receptacles and remove all trash. Do not use existing trash barrels or the metal liners inside. You will need to haul all of your trash out of the park/public space or forfeit the security deposit(s). Please recycle whenever possible, (please do not use Styrofoam - it is NOT recyclable). The area will be checked following your event; if park is clean and conditions for use adhered to, your security deposit will be returned to you. Thank you in advance!

MARKING OF GROUNDS

Event Organizers must not use Spray Paint or Spray Chalk when marking city property.
Children's Art Chalk can be used with permission from PAFD Office.

ADA COMPLIANCE

Event organizer must comply with the Americans with Disabilities Act (ADA) and the Maine Human Rights Act (MHRA), including maintaining the permitted use area and all public rights-of-way accessible during the entirety of the permitted event. In the event the permitted area is rendered inaccessible to disabled persons, and/or by request of PAFD staff, the organizer shall act immediately to provide accessibility. All requests to provide interpretive services shall be the responsibility of the organizer to provide and pay for such services. The organizer shall defend, indemnify, and hold the City harmless from any and all liability and damages resulting from alleged violations of the ADA and/or MHRA.

PARKING ON GRASS AREAS / SIDEWALKS / ILLEGALLY PARKED VEHICLES

PAFD has a strict policy that prohibits vehicles from parking on grass areas/sidewalks/park streets (unless specifically approved by city staff). \$10 will be deducted from your security deposit for each vehicle parked on grass/sidewalk areas or vehicles parked illegally. **Any tire ruts/damage to the grass areas would mean a forfeit of your security deposits.**

SMOKE-FREE ZONES

By city ordinance, smoking a cigar, cigarette, pipe, electronic cigarette, electronic cigar, electronic pipe, or other similar product that relies on vaporization or aerosolization, is prohibited at and within 20 feet of the following outdoor recreation and event areas: downtown squares and plazas, trails, parks, playgrounds, beaches, and athletic facilities. Please make sure you pass this information along to participants / spectators at the event.

NOTIFICATION

Please keep a copy of this permit on site at all times. City staff may require proof of permit.

REVOCABLE PERMIT

- ♦ The City reserves the unconditional right to control or cancel events to protect and/or prohibit damage to public property.
- ♦ The City reserves the unconditional right to revoke or revise an issued permit.

I HAVE READ AND UNDERSTAND ALL OF THE ABOVE POLICIES	TYPE INITIALS	BAL	DATE	1/11/17
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ASSUMPTION OF RISK & LIABILITY

Users of the area agree to accept the grounds in an "as is" condition and shall be responsible for all risk and liability in using the park/public space area for the said event. By returning this form (should permission be granted to use city property), the above parties agree to indemnify and hold harmless the City of Portland, its employees and agents, from and against all claims arising out of activities during said event.

I have read the Assumption of Risk & Liability Agreement	TYPE INITIALS	BAL	DATE	1/11/17
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FEE SCHEDULE – UPDATED JULY 1, 2015

Fees are tiered and assigned based on the level of demand placed on City resources and impact on City infrastructure.

Simple Event (no registration fee): \$50/hour Event with registration or pledges & attendance 25 – 300: \$100/hr Event with registration or pledges & attendance 301+: \$200/hr Public Space/Park Security Deposit/Sound Security Deposit: \$100 - \$1000	Impact/Street Closure Fee (variable based on impact): \$0-\$500 Admin/Staff Fee (support for events): \$30/hour Porta Restroom User Fee (if attendance is 150+): \$25
--	---

CREDIT CARD INFORMATION

Visa or MasterCard Number					Exp Date (Mon/Yr)		
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CREDIT CARD WILL ONLY BE CHARGED FOR SECURITY DEPOSIT(S) AS NEEDED

PLEASE MAKE CHECKS PAYABLE TO "CITY OF PORTLAND"

- ♦ Please make out security deposit checks separate from permit fees.

TOTAL AMOUNT(S) DUE TO PUBLIC ASSEMBLY FACILITIES DIVISION (Please make all security deposit checks out separately)

Permit Fee for use of area: \$50 - \$200 per hour (i.e. a 3 hour event at \$50 totals \$150) includes use of	\$ N/A Friends	Vest/Cone Deposit: \$10 per/item Barricade Deposit: \$25 per/item	\$ N/A
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elec. If your event is rained out / cancelled, the bulk of the fee is returned (however \$50 is non-refundable) Number of Hours of Use:	Group		
Admin/Staff Fee (support for events): \$30/hour	\$ N/A	Public Space / Park Security Deposit: Sound Security Deposit \$100 - \$1000	\$???
Key Deposit: \$50 per key	\$ NEED ?	Other (Porta-Restroom User Fee: \$25, etc.)	\$ N/A
Impact/Street Closure Fee (variable based on impact): \$100-\$500	\$ N/A		

FOR OFFICE USE ONLY									
DATE REC'D APPLICATION	1-18-17	DATE REC'D INSURANCE	NEED	PERMIT FEE AMT REC'D	\$ N/A	SECURITY DEPOSIT	\$ NEED		
PAYMENT TYPE									
VISA	\$	MC	\$	CK #		CK AMOUNT	\$	CASH AMT	\$

*Order 163-16/17
Tab 4 3-20-17*

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 DECLARING AUGUST 11 TO 13, 2017
THE 92ND ANNUAL ST. PETER'S BAZAAR
AND ITALIAN STREET FESTIVAL**

ORDERED, that August 11, 12 and 13, 2017 is hereby declared to be the 92nd Annual St. Peter's Bazaar and Italian Street Festival, sponsored by St. Peter's Church and Friary; and

BE IT FURTHER ORDERED, that the 92nd Annual St. Peter's Bazaar and Italian Street Festival area shall be Federal Street from India Street to Franklin Street and adjoining sidewalks; and

BE IT FURTHER ORDERED, that Federal Street from India Street to Franklin Street shall be closed to traffic from 12:00 p.m. to 12:00 a.m. on August 11, 12 and 13, 2017; and

BE IT FURTHER ORDERED, that vehicles in violation of the "no parking" signs in the Festival Area shall be towed at owner's expense; and

BE IT FURTHER ORDERED, that the 92nd Annual St. Peter's Bazaar and Italian Street Festival area shall be closed to licensed street vendors as provided in §19-17 of the City Code; and

BE IT FURTHER ORDERED, that the City Manager is authorized to issue a revocable permit to St. Peter's Church and Friary under §25-27 of the City Code to conduct said Festival, subject to the direction and control of the City Manager and to the following specific conditions:

1. St. Peter's Church and Friary shall defend, indemnify and hold harmless the City of Portland, its officers and employees, from and against all claims arising out of or resulting from the Festival and/or use of City streets and property for said Festival, and shall procure and maintain public liability insurance in the minimum amount of \$400,000 per occurrence for personal or bodily injury, death or property damage and covering the obligation of indemnification hereunder. St. Peter's Church and Friary shall provide the City with a certificate showing evidence of such insurance and showing the City as an additional insured on said insurance;

2. No alcoholic beverages may be sold on the streets or public property during the Festival within the Festival area;
3. St. Peter's Church and Friary shall be responsible for all fees for a permit issued from the Public Assembly Facilities Division Conditions for use of grounds, and requirements for food service, vending sales, tent and stage installations and other items specified in that permit shall be adhered to;
4. St. Peter's Church and Friary shall be solely responsible for trash clean-up at the festival and is required to leave a Security Deposit on file at the Public Assembly Facilities Division Office;
5. St. Peter's Church and Friary shall have sole authority over participating vendors at the festival and may charge a fee to vendors for the opportunity to vend at the 91st Annual St. Peter's Bazaar and Italian Street Festival;
6. The Business Licensing Office shall charge the usual fees for licensing food vendors, street goods vendors, and other needed licenses for the Festival to those vendors the St. Peter's Church and Friary has agreed shall participate;
7. Any and all amplified music and public announcements shall be maintained at a reasonable noise level (under 92 decibels) and be configured by the event organizer to focus volume away from residential housing and neighboring business, limiting any impact in the area by the sound level; and
8. St. Peter's Church and Friary shall be responsible for any costs incurred by city departments for facilitating the festival, including, but not limited to, staff assistance from the Police Department, Public Assembly Facility Division, and the Parking Division; and

BE IT FURTHER ORDERED, that the City Manager is authorized to waive fees and to issue such other temporary licenses, including licenses for food service establishments, as may be required by the City Code, provided that all other applicable Code requirements for the operation of the Festival have been met.



Gregory A. Mitchell
Director, Economic Development Department

Sally L. DeLuca
Director
Department of Parks, Recreation & Facilities

Andrew J. Downs
Director
Public Assembly Facilities Division

TO: Jon Jennings, City Manager
FROM: Sally DeLuca, Director of Parks, Recreation & Facilities Management
DATE: March 3, 2017
RE: **Council Agenda Item – 92nd Annual St. Peters Bazaar and Italian Street Festival**

I am requesting that the following order be placed on the next City Council agenda:
**Order declaring Friday, Saturday and Sunday, August 11, 12 and 13, 2017 as
"92nd Annual St. Peter's Bazaar and Italian Street Festival."**

St. Peter's Church and Friary has sponsored this Bazaar & Festival for many years. The festival blends Italian epicurean delights with games for children and teenagers, games of chance and music and dancing in the evening hours. Attendance at the festival is estimated at 1,500 per night.

Those attending the 3-day Festival may purchase meals and desserts. Games of chance will also cost a nominal fee. Proceeds are to benefit the church. The stage area, activities and booths are set up in the street. Organizers may request that a Festival banner be hung across Congress Street at the City Hall location.

In order for this festival to be held, a portion of Federal Street (India Street to Franklin Street) needs to be closed to vehicular traffic on **Friday, Saturday and Sunday, August 11, 12 and 13, 2017, from 12 noon to 12 midnight** and posted "No Parking." Vehicles in violation of the "No Parking" signs shall be towed at owner's expense.

Hours for the festival are: Friday, Saturday + Sunday: 4pm – 10pm. Some setup for the festival on the street and sidewalks, is on Friday morning/afternoon.
There are no rain dates.

The festival zone is Federal Street (India to Franklin Street) and the adjoining sidewalks. The Festival area will be closed to street vendors pursuant to Section 19-17 of the Portland City Code and is reserved for the use of St. Peter's Church, for the purpose of conducting the Festival, subject to the direction and control of the City Manager.

The City Manager is authorized to issue a revocable permit under Section 25-27 of the Municipal Code to the St. Peter's Festival organizers for the use of the above-described area for said Festival, subject to the following conditions:

- St. Peter's Festival organizers shall be responsible for any costs incurred by City departments for the purposes of facilitating the Festival, including, but not limited to: Police Department charges, Public Assembly Facility Division fees, Parking Control fees, Inspection Services fees, and Business Licensing fees;

(continued)



Gregory A. Mitchell
Director, Economic Development Department

Sally L. DeLuca
Director
Department of Parks, Recreation & Facilities

Andrew J. Downs
Director
Public Assembly Facilities Division

- The St. Peter's Festival organizers shall be solely responsible for trash cleanup at the festival and shall be required to leave a Park Security Deposit (amount determined by the Public Assembly Facility Division Director or designee) on file at the PAFD Office;
- Under no circumstances may alcoholic beverages be sold or consumed on the streets or public property of said area during said festival;
- The St. Peter's Festival organizers shall have sole authority over participating vendors at the event and may charge a fee to vendors for the opportunity to vend at the Festival;
- Any and all amplified music/public announcements shall be maintained at a reasonable level (under 92dBs) and be configured by the event organizer to focus volume away from residential housing and neighboring businesses, limiting any sound impacts in the area;
- Conditions for use of grounds and requirements for food service, vending sales, tent and stage installations, and other items specified in a permit issued from PAFD Office, shall be adhered to; and
- The St. Peter's Festival organizers shall indemnify the City and hold it harmless from and against all claims arising out of activities during said Festival, and shall take out and maintain public liability insurance coverage in the amount of at least **\$400,000** per occurrence for personal or bodily injury, death or property damage for said purpose. This insurance certificate will also list the City of Portland as an additional insured in regards to the "St. Peter's Bazaar and Italian Street Festival" activities, and the City be endorsed on the policy.

The City Manager is also authorized to issue such other temporary licenses, including licenses for food service establishments, as may be required by the Portland City Code, provided that all other applicable requirements of said Code have been met regarding the operation of said Festival/Event.

Document prepared by Ted Musgrave, Event Coordinator
Public Assembly Facilities Division



**CITY OF PORTLAND, PUBLIC ASSEMBLY FACILITIES DIVISION
PUBLIC PARK & SPACE APPLICATION (4 pages)**

212 Canco Rd. ~ Portland ~ ME ~ 04103

207-808-5400

Ted Musgrave tm@portlandmaine.gov

For uses of city property, there are typically: 1. fees charged for use of the area

2. a security deposit required 3. insurance required

(There may be fees due and applications required from other City Departments)

TODAY'S DATE	February 17, 2017	ORGANIZATION NAME	St. Peter's Bazaar Committee / St. Peter's Catholic Church				
ORGANIZATION ADDRESS	307 Congress Street	CITY	Portland	STATE	ME	ZIP	04101
Physical Address: 72 Federal Street, Portland							
CONTACT NAME(S)	Sal Bonetti, Chair Denis Lafreniere, Business Manager						
HOME #	Church Office 773-7746 x101	CELL		FAX	N/A		
EMAIL	salvatorebonetti@yahoo.com		EMAIL	denis.lafreniere@portlanddiocese.org			

PARK AREA OR PUBLIC SPACE REQUESTED	Federal Street (Franklin Arterial to India Street)				
EVENT DAY & DATE(S)	Friday, Saturday & Sunday, August 11 th -13 th 2017	RAIN DAY & DATE(S) (50% added fee)	N/A		
	Set-up on Friday, August 11 th 2017				
EVENT START TIME (i.e. set-up start time)	Noon	EVENT END TIME (i.e. when event cleanup is complete)	Midnight	ACTUAL START & END TIME OF EVENT	4 – 10pm

EVENT NAME	EXPECTED ATTENDANCE
2 nd Annual St. Peter's Bazaar and Italian Street Festival	1,500+ expected each day

DESCRIPTION OF EVENT: Please be specific regarding area of public space/park and describe Event in detail.

Fundraiser for the upkeep of St. Peter's Catholic Church.

Federal Street (from Franklin Arterial to India Street) is scheduled to be closed to vehicular traffic on Friday, Saturday and Sunday August 11-13 (as well as Friday, August 11th for setup) in order to hold the 92nd Annual St. Peter's Bazaar/Street Festival.

(Barricades would be placed at India Street, as well as across Hampshire Street.)

Hours for the festival are Friday, Saturday & Sunday (approx. 4 – 10pm). Setup for the festival is on Friday morning/afternoon. The street (Federal Street) may be closed to traffic from Noon – Midnight each day (for more setup time and breakdown time) – if needed. Booths STAY on the SIDE OF the street during the overnight hours.

There will be food booths, games for the children, games of chance, and music in the street during the afternoon and evenings. Free admittance into Festival Grounds. There is a fee for Refreshments and games.

IS THERE A REGISTRATION FEE/PLEDGES COLLECTED FOR THIS EVENT?	Please check: ☐ N/A ☐ FEE ☐ N/A ☐ PLEDGES
--	---

WHAT WILL BE THE ANTICIPATED NEED FOR PARKING AND WHAT IS YOUR PARKING PLAN? *Parking at area lots, Cathedral Parish, Rite-Aid and on the street*

PLEASE CHECK OFF AND ANSWER:

PLEASE SEE ATTACHED FEE SCHEDULE / DEPT. INFORMATION IF YOU ANSWER YES

	X-YES	X-NO	X-NOT SURE
* Are you setting up a canopy(s) ? (canopy is 10x10 size) How many:	X		
* Do you wish to set up a tent(s) ? (A canopy or tent larger than 10x10 needs to be approved by PAFD Office and a Tent Permit issued from Inspections Division; please call Inspections – 874-8703 – (buildinginspections@portlandmaine.gov) for information on their application process / PLEASE give them at least a 2-week notice). PAFD will contact Inspections once the tent location is approved so that the Tent Permit Application may go forward. State size(s):		X	

	Exact Location(s) of Tent Placement Requested: In order to drive tent stakes into the ground, DIG SAFE must be contacted: 888-344-7233.			
*	Will you be setting up tables and/or chairs ? How many tables: 60 chairs: 400	X		
*	Are other items or equipment being placed on City property? (i.e. Moon Bounce, Dunk Tank, Radio Station Van, Helium Tank, etc.) Please List:	X		
*	Will there be refreshments at the event? Do you wish to sell food ? (If so, you will need approval from PAFD and possibly a Temporary Food Service License from Business Licensing Office) List food and drink / Food Trucks, etc.: PLEASE NOTE: A Temporary Food Service License is NOT needed when: 1. Food Vendors have a current City of Portland Food License 2. Just pre-packaged refreshments, or food & drink items are purchased or donated from a licensed establishment 3. Bottled water / water is served PLEASE give the BL Office at least a 2-week notice (874-8557). A TFSL is needed when food vendors are not licensed, or when food is being prepared and cooked at the event.	X		
*	Do you wish to sell non-food items (like T-shirts, crafts, cd's, etc.)? If so, you will need approval from PAFD Office, and you will need to apply for a Street Goods Vendor License(s) at the Business Licensing Office (874-8557) – 2 week notice. List items you wish to sell:	X		
*	Are you setting up a PA (sound) system ? Yes Are you planning on having Amplified Music ? Band? DJ? Yes Boom Box? If so, your event may require a concert license from BL Office (874-8557). (Just voice – i.e. Press Conference, would not require the license because it is not music). However, a Sound Security Deposit may also be required for amplification. For amplified music/speech, there are time restrictions for the Downtown Parks & Squares (music limited to 11:45am – 1:15pm, and 1 hour between 5pm - 8pm).	X		
*	Will your event require electricity ? Electricity is available at some of the parks & squares (Deering Oaks Park, Monument Square, Congress Square, Tommy's Park, Post Office Park, Payson Park, Preble Street Grass Area, Eastern Prom, Fort Allen Park). Elec. at these areas is turned off and needs to be turned on.	X FROM PARISH		
*	Are you planning on bringing a Grill for a Barbecue ? Only Gas Grills are allowed in the parks (NO CHARCOAL). Grilling is subject to weather conditions and possibly Fire Dept. review.	X		
*	Will the event require reserved parking spaces / parking meters ? How many? "No Parking" signs may be purchased at PAFD Office, 212 Canco Rd.	X		
*	Will your event need safety vests, signs, barricades and/or cones ? Please list what you would like to borrow: A few orange vests and cones may usually be borrowed from PAFD Office. Barricades and signs are borrowed from Public Works, Customer Service.	X		
*	Will your event require street closures ? (Please be specific under "Description of Event") Will your event affect METRO BUS ROUTES ? NO	X		
*	Will your event require Police assistance? An event such as a road race, march or parade	X		
*	Will your event require Fire/EMS assistance? (For a large walk/race, it is recommended.)		X	
*	Will your event require porta-restroom rental(s) or need existing porta-restrooms cleaned? (Some of the parks already have porta-restrooms. Event participants may use these, but a \$25 fee is assessed for events where attendance is 150 or more.) For renting porta-restrooms, event organizers must rent from the company contracted with the city.	X		
*	Do you wish to have a banner over the street to advertise your event? (Banners hung over Congress St. or Baxter Blvd). Banner inquiries directed to PAFD: 808-5400.		X	

INSURANCE CERTIFICATE INFORMATION				
*	Will your event require liability Insurance? (Commercial liability insurance is required for a walkathon, race, festival, press conference, concert, etc. Product liability insurance is also required if the event has been approved for serving food.)	X		
♦ If you answered YES, you shall procure and maintain commercial and/or product liability insurance in an amount of at least \$400,000 combined single limit, covering claims for bodily injury, death, and property damage at your event. You shall name the City of Portland as an additional insured or shall obtain a general liability extension endorsement for coverage for the event, only in those areas where governmental immunity has been expressly waived by 14 M.R.S.A. § 8104-A, as limited by § 8104-B, and § 8111. The terms of this permit shall not be deemed a waiver of any immunities or limitations of damages available under the Maine Tort Claims Act, other Maine statutory law, judicial precedent, or common law. ♦ The insurance certificate shall be sent to tvm@portlandmaine.gov and must state with no exceptions one of the following: 1) The policy is endorsed to name the City of Portland as an additional insured pursuant to the date of the event (and rain date). 2) The policy contains a general liability extension endorsement by which the City of Portland is made an additional insured pursuant to the date of the event (and rain date).				

PUBLIC ASSEMBLY FACILITIES DIVISION POLICIES

ELECTRICITY

Power cords in the public way must be covered by rugs, mats or orange cones to avoid public hazard. If weather is inclement (drizzle, rain, snow, etc.) we require that you **not use** electricity, unless all connections and equipment are covered and protected from the elements.

BARBECUES - GAS GRILLS ONLY

Only GAS GRILLS are allowed in parks/public spaces – i.e. No Charcoal Grills or open burning. Barbecuing must first be approved by PAFD Office and is subject to weather conditions, and possible further review by the Fire Dept. Grills must be set up away from children's activities. You must bring a fire extinguisher with you to the grilling area.

PORTA-RESTROOMS / BATHROOM FACILITIES

Porta-Restrooms are required for large events and events where food is being served. Organizer will rent facilities.

TRASH

All groups must abide by our Carry In/ Carry Out Policy. Please bring extra trash bags and/or trash receptacles and remove all trash. Do not use existing trash barrels or the metal liners inside. You will need to haul all of your trash out of the park/public space or forfeit the security deposit(s). Please recycle whenever possible, (please do not use Styrofoam - it is NOT recyclable). The area will be checked following your event; if park is clean and conditions for use adhered to, your security deposit will be returned to you. Thank you in advance!

MARKING OF GROUNDS

Event Organizers must not use Spray Paint or Spray Chalk when marking city property. Children's Art Chalk can be used with permission from PAFD Office.

ADA COMPLIANCE

Event organizer must comply with the Americans with Disabilities Act (ADA) and the Maine Human Rights Act (MHRA), including maintaining the permitted use area and all public rights-of-way accessible during the entirety of the permitted event. In the event the permitted area is rendered inaccessible to disabled persons, and/or by request of PAFD staff, the organizer shall act immediately to provide accessibility. All requests to provide interpretive services shall be the responsibility of the organizer to provide and pay for such services. The organizer shall defend, indemnify, and hold the City harmless from any and all liability and damages resulting from alleged violations of the ADA and/or MHRA.

PARKING ON GRASS AREAS / SIDEWALKS / ILLEGALLY PARKED VEHICLES

PAFD has a strict policy that prohibits vehicles from parking on grass areas/sidewalks/park streets (unless specifically approved by city staff). \$10 will be deducted from your security deposit for each vehicle parked on grass/sidewalk areas or vehicles parked illegally. **Any tire ruts/damage to the grass areas would mean a forfeit of your security deposits.**

SMOKE-FREE ZONES

By city ordinance, smoking a cigar, cigarette, pipe, electronic cigarette, electronic cigar, electronic pipe, or other similar product that relies on vaporization or aerosolization, is prohibited at and within 20 feet of the following outdoor recreation and event areas: downtown squares and plazas, trails, parks, playgrounds, beaches, and athletic facilities. Please make sure you pass this information along to participants / spectators at the event.

NOTIFICATION

Please keep a copy of this permit on site at all times. City staff may require proof of permit.

REVOCABLE PERMIT

- ♦ The City reserves the unconditional right to control or cancel events to protect and/or prohibit damage to public property.
- ♦ The City reserves the unconditional right to revoke or revise an issued permit.

I HAVE READ AND UNDERSTAND ALL OF THE ABOVE POLICIES

TYPE INITIALS

DJL

DATE

2-17-17

ASSUMPTION OF RISK & LIABILITY

Users of the area agree to accept the grounds in an "as is" condition and shall be responsible for all risk and liability in using the park/public space area for the said event. By returning this form (should permission be granted to use city property), the above parties agree to indemnify, defend, and hold harmless the City of Portland, its employees and agents, from and against all claims arising out of activities during said event.

I have read the Assumption of Risk & Liability Agreement

TYPE INITIALS

DJL

DATE

2-17-17

FEE SCHEDULE – UPDATED JULY 1, 2015

Fees are tiered and assigned based on the level of demand placed on City resources and impact on City infrastructure.

Simple Event (no registration fee): \$50/hour
 Event with registration or pledges & attendance 25 – 300:
 \$100/hr
 Event with registration or pledges & attendance 301+: \$200/hr

Impact/Street Closure Fee (variable based on impact): \$0-\$500
 Admin/Staff Fee (support for events): \$30/hour
 Porta Restroom User Fee (if attendance is 150+): \$25

Public Space/Park Security Deposit/Sound Security Deposit: \$100 - \$1000	
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CREDIT CARD INFORMATION

Visa or MasterCard Number					Exp Date (Mon/Yr)		
CREDIT CARD WILL ONLY BE CHARGED FOR SECURITY DEPOSIT(S) AS NEEDED							

PLEASE MAKE CHECKS PAYABLE TO "CITY OF PORTLAND"

- ◆ Please make out security deposit checks separate from permit fees.

TOTAL AMOUNT(S) DUE TO PUBLIC ASSEMBLY FACILITIES DIVISION (Please make all security deposit checks out separately)

Permit Fee for use of area: \$50 - \$200 per hour (i.e. a 3 hour event at \$50 totals \$150) includes use of elec. If your event is rained out / cancelled, the bulk of the fee is returned (however \$50 is non-refundable) Number of Hours of Use: 3 days use	\$ 300 flat fee per day: \$900 due	Vest/Cone Deposit: \$10 per/item Barricade Deposit: \$25 per/item	\$?
Admin/Staff Fee (support for events): \$30/hour	\$	Public Space / Park Security Deposit: Sound Security Deposit \$100 - \$1000	\$ 100 due
Key Deposit: \$50 per key	\$	Other (Porta-Restroom User Fee: \$25, etc.)	\$
Impact/Street Closure Fee (variable based on impact): \$100-\$500	\$ 100 due		

FOR OFFICE USE ONLY

DATE REC'D APPLICATION	2-21-2017	DATE REC'D INSURANCE	NEED	PERMIT FEE AMT REC'D	\$ NEED	SECURITY DEPOSIT	\$ NEED	
PAYMENT TYPE								
VISA	\$	MC	\$	CK #	CK AMOUNT	\$	CASH AMT	\$

*Order 164-16/17
Tab 5 3-20-17*

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 DECLARING JUNE 22 TO JUNE 24, 2017
THE 2017 GREEK HERITAGE FOOD FESTIVAL**

ORDERED, that June 22, 2017 through June 24, 2017, from 11:30 a.m. to 9:30 p.m., is hereby declared the 2017 Greek Heritage Food Festival, sponsored by Holy Trinity Greek Orthodox Church; and

BE IT FURTHER ORDERED, that the Greek Heritage Food Festival area shall be the grounds of Holy Trinity Greek Orthodox Church, the sidewalk and the portion of Pleasant Street in front of the church; and

BE IT FURTHER ORDERED, that vehicles in violation of the “no parking” signs in the Festival Area shall be towed at owner’s expense, but that parking on the East side of Pleasant Street shall be permitted during the Festival when the no-parking rule on that side of the street is waived; and

BE IT FURTHER ORDERED, that the Greek Heritage Food Festival Area shall be closed to licensed street vendors as provided in §19-17 and §19-22 of the Portland City Code; and

BE IT FURTHER ORDERED, that the City Manager is authorized to issue a revocable permit to Holy Trinity Greek Orthodox Church under §§25-26—25-28 of the Portland City Code to conduct said Festival, subject to the direction and control of the City Manager and to the following specific conditions:

1. Holy Trinity Greek Orthodox Church shall defend, indemnify and hold harmless the City of Portland, its officers and employees, from and against all claims arising out of or resulting from the Festival and/or use of City streets and property for said Festival, and shall procure and maintain public liability insurance in the minimum amount of \$400,000 per occurrence for personal or bodily injury, death or property damage and covering the obligation of indemnification hereunder. Holy Trinity Greek Orthodox Church shall provide the City with a certificate showing evidence of such insurance and showing the City as an additional insured on said insurance;
2. The Holy Trinity Greek Orthodox Church is authorized to locate tent stakes on the right-hand side of Pleasant Street during the period of the Festival, provided that the Holy Trinity Greek Orthodox Church shall be solely responsible

for filling in the stake holes at the close of the Festival, said work to be done to the satisfaction of the City; said tent may be erected on June 21, and will be taken down no later than June 27

3. Under no circumstances may alcoholic beverages be sold or consumed on the streets or public right-of-way of said area during said Festival, but sales of alcoholic beverages may be allowed on church property in the areas approved by the Department of Permitting and Inspections and subject to meeting all liquor licensing requirements;

4. Conditions for use of grounds and requirements for food service, vending sales, and other items specified in a permit issued by the Public Assembly Facilities Division shall be adhered to;

5. Holy Trinity Greek Orthodox Church shall have sole authority over participating vendors at the Festival and may charge a fee to vendors for the opportunity to vend at the Greek Heritage Food Festival;

6. In addition, the Business Licensing Office shall charge the usual fees for licensing food vendors, street goods vendors, and concert licenses for the Festival to those vendors the Holy Trinity Greek Orthodox Church has agreed shall participate;

7. Any and all amplified music and public announcements shall be maintained at a reasonable noise level (under 92 decibels) and be configured by the event organizer to focus volume away from residential housing and neighboring business, limiting any impact in the area by the sound level; and

8. Holy Trinity Greek Orthodox Church shall be responsible for paying associated city costs, such as for staff assistance from the Police Department, Public Works, Business Licensing fees and Public Assembly Facilities Division Permit fees and No Parking sign fees; and

BE IT FURTHER ORDERED, that the City Manager is authorized to waive fees and to issue such other temporary licenses, including licenses for food service establishments, as may be required by the Portland City Code, provided that all other applicable Code requirements for the operation of the Festival have been met.



Gregory A. Mitchell
Director, Economic Development Department

Sally L. DeLuca
Director
Department of Parks, Recreation & Facilities

Andrew J. Downs
Director
Public Assembly Facilities Division

TO: Jon Jennings, City Manager
FROM: Sally DeLuca, Director of Parks, Recreation & Facilities Management
DATE: March 1, 2017
RE: **Council Agenda Item – 2017 Greek Heritage Food Festival**

I am requesting that the following order be placed on the next City Council agenda:
Order declaring June 22, 23 & 24, 2017, as the 2017 Greek Heritage Food Festival - to be held on Holy Trinity Greek Orthodox Church grounds and a portion of Pleasant Street.

The Holy Trinity Greek Orthodox Church has held the Greek Heritage Food Festival for the past 35 years (this is the 36th annual). The majority of events, entertainment and vending of food takes place on church grounds (alcohol service area is strictly on church grounds). However, one of the tents extends about 5 – 7 feet onto Pleasant Street. Therefore, the organizers are requesting permission to use a portion of the street beside church property. No street closure would be required. The tent will go up on **Tuesday, June 20** and will be taken down on **Monday, June 26**, so the church would like use of the street (parking lane) during these dates. The hours of the Greek Heritage Food Festival are **11:30 a.m. – 9:30 p.m., June 22 – 24, 2017.**

The Order should include the following items:

The **2017 Greek Heritage Food Festival** be authorized for **June 22, 23 & 24, 2017**, to be held on church grounds and on a portion of Pleasant Street in front of the church.

Festival Zone/grounds include church property, the parking lane of Pleasant Street and the sidewalk area beside the church. This festival area will be closed to street vendors pursuant to Section 19-17 of the Portland City Code and is reserved for the use of festival organizers for the purpose of conducting the Greek Heritage Food Festival, subject to the direction and control of the City Manager.

In order to hold the event on city property, some parking spaces on Pleasant Street beside the church need to be posted "No Parking." Vehicles in violation of the "No Parking" signs shall be towed at owner's expense.

To assist with parking in the immediate area, organizers have permission to park vehicles on the east side of Park Street during the times of the festival (currently that side of the street is posted as "No Parking").

(continued)



Gregory A. Mitchell
Director, Economic Development Department

Sally L. DeLuca
Director
Department of Parks, Recreation & Facilities

Andrew J. Downs
Director
Public Assembly Facilities Division

This area of Pleasant Street and Pleasant Street sidewalks area will be closed to street vendors pursuant to Section 19-17 of the Portland City Code and is reserved for the use of festival organizers, for the purpose of conducting the 2017 Greek Heritage Food Festival, subject to the direction and control of the City Manager.

The City Manager is authorized to issue a revocable permit under Sections 25-26 thru 25-30 of Portland City Code to the festival organizers subject to the following conditions:

- Under no circumstances may alcoholic beverages be sold or consumed on City of Portland right-of-ways during said event (alcohol service area for this event is on church property only);
- The Holy Trinity Greek Orthodox Church shall indemnify the city and hold it harmless from and against all claims arising out of activities during said festival, and shall take out and maintain public liability insurance coverage in the amount of at least **\$400,000** per occurrence for personal or bodily injury, death or property damage for said purpose. This insurance certificate will also list the City of Portland as an additional insured in regards to the Greek Heritage Food Festival;
- The Holy Trinity Greek Orthodox Church shall be responsible for filling in the tent stake holes at the close of the festival and said work shall be completed to the satisfaction of the City;
- Any and all amplified music/public announcements shall be maintained at a reasonable level (under 92dBs) and be configured by the event organizer to focus volume away from residential housing and neighboring businesses, limiting any sound impacts in the area;
- Conditions for use of grounds, specified in a permit issued from Public Assembly Facilities Division, shall be adhered to; and
- Festival organizer is responsible for paying associated city costs (such as Police assistance, Public Works assistance, Business Licensing fees and Public Assembly Facilities Division Permit fees / "No Parking" sign fees).

The City Manager is also authorized to issue such other temporary licenses, including licenses for food service establishments, as may be required by the Portland City Code, provided that all other applicable requirements of said Code have been met regarding the operation of said Festival/Event.

Document prepared by Ted Musgrave, Event Coordinator
Public Assembly Facilities Division



**CITY OF PORTLAND, PUBLIC ASSEMBLY FACILITIES DIVISION
PUBLIC PARK & SPACE APPLICATION (4 pages)**
212 Canco Rd. ~ Portland ~ ME ~ 04103
207-808-5400

For uses of city property, there are typically:
 1. fees charged for use of the area
 2. a security deposit required
 3. insurance required
 (There may be fees due and applications required from other City Departments)

TODAY'S DATE		1/21/2017 Revised: 1-23, 1-27	ORGANIZATION NAME		HOLY TRINITY GREEK ORTHODOX CHURCH					
ORGANIZATION ADDRESS			133 PLEASANT ST.		CITY	PORTLAND	STATE	ME	ZIP	04103
CONTACT NAME(S)		GREGORY TSELIKIS		TITLE	FESTIVAL CHAIRMAN		Meg Handlin			
HOME #	WORK			CELL	FAX					
EMAIL	gtselikis@aol.com			EMAIL	mhandlin@maine.rr.com					

PARK AREA OR PUBLIC SPACE REQUESTED		Pleasant Street (sidewalk area & the parking lane in front of the Church)				
EVENT DAY & DATE(S)		THU 6-22, FRI 6-23 & SAT 6-24-2017		RAIN DAY & DATE(S) (50% added fee)		NONE
EVENT START TIME (i.e. set-up start time)	11:30AM Tent goes up TUES in the street	EVENT END TIME (i.e. when event cleanup is complete)	9:30PM Tent removed by MON	ACTUAL START & END TIME OF EVENT		11:30am - 9:30pm

EVENT NAME	EXPECTED ATTENDANCE
Greek Heritage Food Festival - 36 th Annual	5,000+ over 3 days

DESCRIPTION OF EVENT: Please be specific regarding **area of public space/park** and describe Event in detail.

Our 36th annual Greek Heritage Festival is scheduled for Thursday, Friday and Saturday, June 22, 23 and 24, 2017, and is a fundraiser for the church. As we did last year and previous years, we would like permission to reserve and close the sidewalk and parking lane section of Pleasant Street directly in front of the Church parking lot during our Greek Heritage Festival. Traffic will still flow on both lanes of Pleasant Street during these days.

We are planning to set up a large tent in our parking lot (TUES June 20). The tent stakes will extend 5 to 7 feet into Pleasant Street. For safety, we would place cones or barricades around the tent stakes. We would assume responsibility for the cones or barricades around the tent stakes and in filling the stake holes upon removal of the tent. The tent and barricades would be identical to what the city gave us permission to do last year. The reserved section of Pleasant Street PARKING LANE will need to be posted "No Parking."

We will be serving/selling food (including a Grill for gyros) and will have a live band (amplified sound) on all 3 of the dates (Music approx. 6 – 9:00pm). In addition, we have **applied for a liquor license for incorporated civic organizations**. If approved we will be serving alcohol as we have done in previous years (area on Church Property).

IS THERE A REGISTRATION FEE/PLEDGES COLLECTED FOR THIS EVENT?	NO
--	----

WHAT WILL BE THE ANTICIPATED NEED FOR PARKING AND WHAT IS YOUR PARKING PLAN?
<i>All parking is on the street and adjacent parking lots.</i>

PLEASE CHECK OFF AND ANSWER:

PLEASE SEE ATTACHED FEE SCHEDULE / DEPT. INFORMATION IF YOU ANSWER YES

	X-YES	X-NO	X-NOT SURE
Are you setting up a canopy(s) ? (canopy is 10x10 size) ON OUR OWN LOT	X		
* Do you wish to set up a tent(s) ? (A canopy or tent larger than 10x10 needs to be approved by PAFD Office and a Tent Permit issued from Inspections Division; please call Inspections – 874-8703 – (buildinginspections@portlandmaine.gov) for information on their application process / PLEASE give them at least a 2-week notice). PAFD will contact Inspections once	X		

	the tent location is approved so that the Tent Permit Application may go forward. State size(s): Exact Location(s) of Tent Placement Requested: ON OUR OWN LOT In order to drive tent stakes into the ground, DIG SAFE must be contacted: 888-344-7233.			
*	Will you be setting up tables and/or chairs ? How many tables: 60 chairs: 300	X		
*	Are other items or equipment being placed on City property?		X	
*	Will there be refreshments at the event? Do you wish to sell food ? (If so, you will need approval from PAFD and possibly a Temporary Food Service License from Business Licensing Office) List food and drink / Food Trucks, etc.: PLEASE NOTE: A Temporary Food Service License is NOT needed when: 1. Food Vendors have a current City of Portland Food License 2. Just pre-packaged refreshments, or food & drink items are purchased or donated from a licensed establishment 3. Bottled water / water is served PLEASE give the BL Office at least a 2-week notice (874-8557). A TFSL is needed when food vendors are not licensed, or when food is being prepared and cooked at the event.	X		
*	Do you wish to sell non-food items (like T-shirts, crafts, cd's, etc.)?		X	
*	Are you setting up a PA (sound) system ? ON OUR OWN LOT Are you planning on having Amplified Music ? Y Band ? Y DJ ? N Your event DOES NOT require a concert license from BL Office (874-8557). However, a Sound Security Deposit will be required for amplification.	X		
*	Will your event require electricity ? HAVE OUR OWN SOURCE	X		
*	Are you planning on bringing a Grill for a Barbecue ? GRILL IS ON OUR LOT	X		
*	Will the event require reserved parking spaces / parking meters ? How many? 5 "No Parking" signs may be purchased at PAFD Office, 212 Canco Rd.	X		
*	Will your event need safety vests, signs, barricades and/or cones ? Please list what you would like to borrow: N/A - WE PROVIDE OUR OWN CONES.	X		
*	Will your event require street closures ?		X	
*	Will your event require Police assistance ? Overnight (midnight-8:00am)	X		
*	Will your event require Fire/EMS assistance ?		X	
*	Will your event require porta-restroom rental(s) or need existing porta-restrooms cleaned? ORGANIZER RENTS UNITS	X		

INSURANCE CERTIFICATE INFORMATION

*	Will your event require liability Insurance? (Commercial liability insurance is required for a walkathon, race, festival, press conference, concert, etc. Product liability insurance is also required if the event has been approved for serving food.)	X		
---	---	----------	--	--

♦ If you answered YES, you shall procure and maintain commercial and/or product liability insurance in an amount of at least \$400,000 combined single limit, covering claims for bodily injury, death, and property damage at your event. You shall name the City of Portland as an additional insured or shall obtain a general liability extension endorsement for coverage for the event, only in those areas where governmental immunity has been expressly waived by 14 M.R.S.A. § 8104-A, as limited by § 8104-B, and § 8111. The terms of this permit shall not be deemed a waiver of any immunities or limitations of damages available under the Maine Tort Claims Act, other Maine statutory law, judicial precedent, or common law.

♦ The insurance certificate shall be sent to tvm@portlandmaine.gov and must state with no exceptions one of the following:
1) The policy is endorsed to name the City of Portland as an additional insured pursuant to the date of the event (and rain date).
2) The policy contains a general liability extension endorsement by which the City of Portland is made an additional insured pursuant to the date of the event (and rain date).

PUBLIC ASSEMBLY FACILITIES DIVISION POLICIES

ELECTRICITY

All cords in the public way must be covered by rugs, mats or orange cones to avoid public hazard. If weather is inclement (drizzle, rain, snow, etc.) we require that you **not use** electricity, unless all connections and equipment are covered and protected from the elements.

BARBECUES - GAS GRILLS ONLY

Only GAS GRILLS are allowed in parks/public spaces – i.e. No Charcoal Grills or open burning. Barbecuing must first be approved by PAFD Office and is subject to weather conditions, and possible further review by the Fire Dept. Grills must be set up away from children's activities. You must bring a fire extinguisher with you to the grilling area.

PORTA-RESTROOMS / BATHROOM FACILITIES

Porta-Restrooms are required for large events and events where food is being served. Organizer supplying.

TRASH

All groups must abide by our Carry In/ Carry Out Policy. Please bring extra trash bags and/or trash receptacles and remove all trash. Do not use existing trash barrels or the metal liners inside. You will need to haul all of your trash out of the park/public space or forfeit the security deposit(s). Please recycle whenever possible, (please do not use Styrofoam - it is NOT recyclable). The area will be checked following your event; if park is clean and conditions for use adhered to, your security deposit will be returned to you. Thank you in advance!

MARKING OF GROUNDS

Event Organizers must not use Spray Paint or Spray Chalk when marking city property. Children's Art Chalk can be used with permission from PAFD Office.

ADA COMPLIANCE

Event organizer must comply with the Americans with Disabilities Act (ADA) and the Maine Human Rights Act (MHRA), including maintaining the permitted use area and all public rights-of-way accessible during the entirety of the permitted event. In the event the permitted area is rendered inaccessible to disabled persons, and/or by request of PAFD staff, the organizer shall act immediately to provide accessibility. All requests to provide interpretive services shall be the responsibility of the organizer to provide and pay for such services. The organizer shall defend, indemnify, and hold the City harmless from any and all liability and damages resulting from alleged violations of the ADA and/or MHRA.

PARKING ON GRASS AREAS / SIDEWALKS / ILLEGALLY PARKED VEHICLES

PAFD has a strict policy that prohibits vehicles from parking on grass areas/sidewalks/park streets (unless specifically approved by city staff). \$10 will be deducted from your security deposit for each vehicle parked on grass/sidewalk areas or vehicles parked illegally. **Any tire ruts/damage to the grass areas would mean a forfeit of your security deposits.**

SMOKE-FREE ZONES

By city ordinance, smoking a cigar, cigarette, pipe, electronic cigarette, electronic cigar, electronic pipe, or other similar product that relies on vaporization or aerosolization, is prohibited at and within 20 feet of the following outdoor recreation and event areas: downtown squares and plazas, trails, parks, playgrounds, beaches, and athletic facilities. Please make sure you pass this information along to participants / spectators at the event.

NOTIFICATION

Please keep a copy of this permit on site at all times. City staff may require proof of permit.

REVOCABLE PERMIT

- ◆ The City reserves the unconditional right to control or cancel events to protect and/or prohibit damage to public property.
- ◆ The City reserves the unconditional right to revoke or revise an issued permit.

I HAVE READ AND UNDERSTAND ALL OF THE ABOVE POLICIES

TYPE INITIALS

GAT

DATE

1/27/2017

ASSUMPTION OF RISK & LIABILITY

Users of the area agree to accept the grounds in an "as is" condition and shall be responsible for all risk and liability in using the park/public space area for the said event. By returning this form (should permission be granted to use city property), the above parties agree to indemnify and hold harmless the City of Portland, its employees and agents, from and against all claims arising out of activities during said event.

I have read the Assumption of Risk & Liability Agreement

TYPE INITIALS

GAT

DATE

1/27/2017

FEE SCHEDULE – UPDATED JULY 1, 2015

Fees are tiered and assigned based on the level of demand placed on City resources and impact on City infrastructure.

Simple Event (no registration fee): \$50/hour
Event with registration or pledges & attendance 25 – 300:
\$100/hr
Event with registration or pledges & attendance 301+: \$200/hr
Public Space/Park Security Deposit/Sound Security Deposit:
\$100 - \$1000

Impact/Street Closure Fee (variable based on impact): \$0-\$500
Admin/Staff Fee (support for events): \$30/hour
Porta Restroom User Fee (if attendance is 150+): \$25

CREDIT CARD INFORMATION

Visa or MasterCard Number

Exp Date (Mon/Yr)

CREDIT CARD WILL ONLY BE CHARGED FOR SECURITY DEPOSIT(S) AS NEEDED

PLEASE MAKE CHECKS PAYABLE TO "CITY OF PORTLAND"

- ◆ Please make out security deposit checks separate from permit fees.

TOTAL AMOUNT(S) DUE TO PUBLIC ASSEMBLY FACILITIES DIVISION (Please make all security deposit checks out separately)

Permit Fee for use of area: \$50 - \$200 per hour (i.e. a 3 hour event at \$50 totals \$150) includes use of elec. If your event is rained out / cancelled, the bulk of the fee is returned (however \$50 is non-refundable) Number of Days of Use: 3	\$ 100 flat fee per day \$300 due	Vest/Cone Deposit: \$10 per/item Barricade Deposit: \$25 per/item	\$ N/A – Organizer Has Own Cones
Admin/Staff Fee (support for events): \$30/hour	\$ N/A	Public Space / Park Security Deposit: Sound Security Deposit \$100 - \$1000	\$ 100 due
Key Deposit: \$50 per key	\$ N/A	Other (Porta-Restroom User Fee: \$25, etc.)	\$ N/A
Impact/Street Closure Fee (variable based on impact): \$100-\$500	\$ N/A		

FOR OFFICE USE ONLY							
DATE REC'D APPLICATION	1-23-2017	DATE REC'D INSURANCE	NEED	PERMIT FEE AMT REC'D	\$ NEED	SECURITY DEPOSIT	\$ NEED
PAYMENT TYPE							
VISA	\$	MC	\$	CK #	CK AMOUNT	\$	CASH AMT \$

*Order 165-16/17
Tab 6 3-20-17*

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 DECLARING JUNE 24, 2017
THE ROCK LOBSTER RELAY FESTIVAL**

ORDERED, that June 24, 2017 is hereby declared to be the Rock Lobster Relay Festival, sponsored by GiddyUp Productions, LLC; and

BE IT FURTHER ORDERED, that the Rock Lobster Relay Festival area shall be the Eastern Prom Trail, the Amethyst Lot and Moon Tide Park at Ocean Gateway; and

BE IT FURTHER ORDERED, that the Rock Lobster Relay Festival area shall be closed to licensed street vendors as provided in §19-17 of the City Code; and

BE IT FURTHER ORDERED, that the City Manager is authorized to issue a revocable permit to GiddyUp Productions, LLC under §25-27 of the City Code to conduct said Festival, subject to the direction and control of the City Manager or the Acting City Manager and to the following specific conditions:

1. GiddyUp Productions, LLC shall defend, indemnify and hold harmless the City of Portland, its officers and employees, from and against all claims arising out of or resulting from the Festival and/or use of City streets and property for said Festival, and shall procure and maintain public liability insurance in the minimum amount of \$400,000 per occurrence for personal or bodily injury, death or property damage and covering the obligation of indemnification hereunder. GiddyUp Productions, LLC shall provide the City with a certificate showing evidence of such insurance and showing the City as an additional insured on said insurance;
2. No alcoholic beverages may be sold on the streets or public property during the Festival within the Festival area, except in an enclosed Beer and Wine Garden for people 21-years-old and older, located in Moon Tide Park, to be run and staffed by Public Assembly Facilities Division staff;
3. GiddyUp Productions, LLC shall be responsible for all fees for a permit issued from the Public Assembly Facilities Division Conditions for use of grounds, and requirements for food service, vending sales, tent and stage installations and other items specified in that permit shall be adhered to;

4. GiddyUp Productions, LLC shall pay for any city staff assistance required, including from Public Assembly Facilities Division and the Police Department;

5. GiddyUp Productions, LLC shall have sole authority over participating vendors at the festival and may charge a fee to vendors for the opportunity to vend at the Rock Lobster Relay Festival;

7. Any and all amplified music and public announcements shall be maintained at a reasonable noise level (under 92 decibels) and be configured by the event organizer to focus volume away from residential housing and neighboring business, limiting any impact in the area by the sound level; and

6. In addition, the Business Licensing Office shall charge the usual fees for licensing food vendors, street goods vendors, and other needed licenses for the Festival to those vendors the GiddyUp Productions, LLC has agreed shall participate; and

BE IT FURTHER ORDERED, that the City Manager is authorized to waive fees and to issue such other temporary licenses, including licenses for food service establishments, as may be required by the City Code, provided that all other applicable Code requirements for the operation of the Festival have been met.



Sally L. DeLuca
Director
Department of Parks, Recreation & Facilities

Andrew J. Downs
Director
Public Assembly Facilities Division

TO: Jon Jennings, City Manager
FROM: Sally DeLuca, Director of Parks, Recreation & Facilities Management
DATE: March 3, 2017
RE: **Council Agenda Item – 2017 Rock Lobster Relay**

I am requesting that the following order be placed on the next City Council agenda:
Order declaring June 24, 2017, the Giddy Up Productions, LLC 2017 Rock Lobster Relay a festival.

The Rock Lobster Relay is a for-profit event, however, local non-profit organization, Candace Cares and twenty (20) other non-profit charities will benefit from the Rock Lobster Relay proceeds.

This is the second year of the Rock Lobster Relay.

The Rock Lobster Relay is a two-hundred (200) mile relay race from Bar Harbor to Portland. Runners will have staggered start times out of Bar Harbor on Friday June 23rd, 2017 between 6:00 am and 3:30 pm.

The overnight race is split into 36 (11.0 – 20.6 mile) legs. Each team will consist of 6-12 runners. The maximum number of teams is 200 (=2400 runners). Each runner will run 3 legs of the course. Exchange points are set up along the course route at schools, parks and businesses. Teams should finish between 20 and 36 hours after their start times.

In Portland, the final hand off (exchange #35) will take place at Martin's Point Healthcare on US Rte. 1 with a finish line at Ocean Gateway Amethyst Lot.

It is estimated that finishers will be crossing the finish line between 10:00 am and 6:30 pm on Saturday June 24th, 2017.

The order should include the following three major items:

- (1) The Rock Lobster Relay be authorized for Saturday June 24th 2017 from 10:00 am thru 6:30 pm, in Portland, along City streets and trails.
- (2) A beer garden to be authorized in Moon Tide Garden, the park adjacent to the Ocean Gateway Receiving building from 10:00 am thru 6:30 pm on Saturday June 24th 2017. The 21+ beer garden will be staffed by the City Public Assembly Facilities Division. Local non-profit, Candace Cares – which supports cancer programs in Portland will be the beer garden sponsor.

(continued)



Sally L. DeLuca
Director

Department of Parks, Recreation & Facilities

Andrew J. Downs
Director

Public Assembly Facilities Division

- (3) Control of vendors - all vendors will be required to have the appropriate permits and licenses.

All Security will be provided by Public Assembly Facilities Division Staff.

The route for the Rock Lobster Relay is as follows:

- At mile 197 runners enter Portland from Falmouth on Rte. 1 (South) via Martin's Point Bridge.
- Runners will continue to Rte. 1 (staying on left sidewalk facing traffic), taking a left on Marine Hospital Rd (Martin's Point Healthcare Driveway) and stop at Exchange #35 - Martin's Point Health Care.
- After the exchange, runners will continue on internal sidewalks back to Rte. 1. At traffic light, they will take a left on Rte. 1 South via the crosswalk.
- Runners will bear right on Veranda Street (staying on right sidewalk with traffic),
- Left on Washington Ave after using crosswalks to cross over Washington Ave and then Bates Street,
- Merge onto Back Cove Trail, passing underneath the I-295 ramps,
- Continue on the trail going south across Tukey's Bridge, taking a right on Eastern Prom Trail, again, passing under Tukey's Bridge,
- Continuing on the Eastern Prom Trail all the way to the finish line at the Amethyst Parking lot.

This race will require no street closures.

While running in the busy part of town, runners will be on sidewalks and not in the roads.

Runners will use crosswalks at every intersection and abide by traffic light signals.

Runners will be directed by various types of navigation signs placed on sidewalks and roadsides at key intersections along the course - not volunteers. Each sign will consist of a 42" tall delineator cone with an 8" wide by 40" tall coroplast sign attached vertically.

The City Manager is authorized to issue a revocable permit under Section 25-26 thru 25-30 of Portland City Code to the race organizer subject to the following conditions:

- Under no circumstances may alcoholic beverages be sold or consumed on City of Portland right of ways during said event, other than what is approved by the City Council (Saturday Beer Garden), taking place at Moon Tide Garden under the Direction of Public Assembly Facilities staff;
- Giddy Up Productions, LLC will be providing a PA system for pre-recorded music and announcements on Saturday June 24th (10:00 am thru 6:30 pm) in Ocean Gateway Amethyst lot and Moon Tide Garden. Any and all public announcements and amplified music shall be maintained at a reasonable level and be configured by the event organizer and the City to focus volume away from residential housing, limiting any sound impacts in residential areas;

(continued)



Sally L. DeLuca
Director

Department of Parks, Recreation & Facilities

Andrew J. Downs
Director

Public Assembly Facilities Division

- Race organizer shall indemnify the City and hold it harmless from and against all claims arising out of activities during said event and shall take out and maintain public liability insurance coverage (as well as alcohol liability coverage) in the amount of at least \$400,000.00 per occurrence for personal or bodily injury, death or property for said purposes;
- Conditions for use of grounds specified in the Operating Agreement from Public Assembly Facilities shall be adhered to;
- Race organizers shall have sole authority over participating vendors at the events and may charge a fee to vendors for the opportunity to vend at the Festival;
- City permit fees and license fees and cost for City Staff assistance will be paid by the race organizer.

This is the second year for this event. City staff confidently feel we can manage this event and recommend its approval.

Document prepared by Peter McFarland, Event Coordinator
Public Assembly Facilities Division



CITY OF PORTLAND, PUBLIC ASSEMBLY FACILITIES DIVISION
PUBLIC PARK & SPACE APPLICATION (4 pages)
 212 Canco Rd. ~ Portland ~ ME ~ 04103
 207-808-5400
 Ted Musgrave tvm@portlandmaine.gov

For uses of city property, there are typically: 1. fees charged for use of the area
2. a security deposit required 3. insurance required
(There may be fees due and applications required from other City Departments)

TODAY'S DATE	09/28/16 Revised: 11-17, 11-18	ORGANIZATION NAME	GiddyUp Productions, LLC				
ORGANIZATION ADDRESS	141 School St	CITY	South Portland	STATE	ME	ZIP	04106
CONTACT NAME(S)	Erik Boucher	TITLE:	President	EC:			
HOME #		CELL	210-8655	FAX	N/A		
EMAIL	erik@justgiddyup.com		EMAIL				

PARK AREA OR PUBLIC SPACE REQUESTED	Moontide Park, Amethyst Lot, Thames St Lot (city streets & trails)				
EVENT DAY & DATE(S)	SAT 6-24-17		RAIN DAY & DATE(S)	N/A	
EVENT START TIME (i.e. set-up start time)	7:00 AM Tent setup on Fri 6/23	EVENT END TIME (i.e. when event cleanup is complete)	8:00 PM	ACTUAL START & END TIME OF EVENT	10:00 AM start 5:30 PM end

EVENT NAME	EXPECTED ATTENDANCE
Rock Lobster Relay	1,200

DESCRIPTION OF EVENT: (See attached presentation also)

The Rock Lobster Relay is a 200-mile relay race that starts in Bar Harbor and ends in Portland. Teams of 6 to 12 people compete against other teams. One person from each team runs a leg of the course at a time. The runner stops at an exchange point and hands a baton to another runner who runs the next leg. Participants will start on Friday 6/23/17, run throughout the night, and finish on Saturday 6/24/17.

- Event capacity: 200 teams
- Allowable team sizes: 6 to 12 people/ team
- Maximum Registrants (year 2): 2,400
- Start & Finish: Friday 6/23/17 & Saturday 6/24/17
- Start Location: Athletic Fields (near YMCA), Bar Harbor
- Finish Location: Ocean Gateway, Portland

How It Works

1. Twelve friends form a team and travel together in 2 passenger vans
2. Van#1 transports team members 1 to 6; Van#2 transports members 7 to 12
3. Each team determines their team pace (miles/minute) based on the average of each team member's best 10km or half marathon time
4. Each team is assigned a start wave time slot based on their team pace
5. The first wave starts at 6:00am and the last wave at 3:30pm
6. The race course is split into 36 segments (legs) each leg is 2.5 to 9.3 miles
7. Exchange points (where one leg ends and another starts) are set up along the course at places like schools, YMCAs, parks, and businesses
8. Team member #1 runs leg #1 and then hands-off a slap bracelet to team member#2 who runs leg #2. The process continues to leg #12, then repeats
9. Team member #1 runs leg #13, member #2 runs leg #14, etc.
10. Each team member runs a total of 3 legs for a total of 11.0 to 20.6 miles
11. The race ends when each team completes the 200 mile course
12. The fastest team will finish in 20 hours, the slowest team in 36 hours

How Wave Starts Work

Not everyone will start at the same time. Each team will be assigned a start wave time-slot based on their predicted team pace. At 6:00am the first wave of runners will start. There will be no more than 20 runners per wave. Each wave will be separated by 30 minutes. The last wave of runners will start at 3:30pm. The wave start schedule is designed to ensure that runners are spread out on the course. Normally a runner will be by themselves on the road with lots of space in-between each person.

Amethyst and Thames St Lots

The Amethyst Lot and the Thames St Lot will be used for the sole purpose of parking team vans and staff members. One or both of these lots would be needed depending on the number of teams that register for the race.

Moontide Park

The finish line for this race will be set up inside Moontide Park. Runners will approach from the Eastern Prom trail and then onto the sidewalk before entering the park. **A beer garden will be setup inside the park.** A 20'x40' tent will be setup in the park on Friday 6/23. Portable restrooms will be placed underneath the Visitor's Center pavilion. **A PA system will be setup** in the park and a race announcer will play music and make announcements. Events at Moontide Park run approx. 11am – 5:30pm.

Course Description

Please see the attached presentation for further detail and maps showing the course route. Runners will be so spread out over the course that they will have no impact on vehicular traffic or pedestrian use of the trails or sidewalks.

PLS KNOW – there is a wedding scheduled for Ocean Gateway (Sat June 24).

IS THERE A REGISTRATION FEE/PLEDGES COLLECTED FOR THIS EVENT?	Please check: ☒ FEE ☐ PLEDGES	
IF YES FOR FEES, HOW MUCH?	FEE	\$90 per person
	STUDENT FEE	\$

WHAT WILL BE THE ANTICIPATED NEED FOR PARKING AND WHAT IS YOUR PARKING PLAN?

Staff and participants will park in the Amethyst Lot and Thames St lot. They will be spread out throughout the day.

PLEASE CHECK OFF AND ANSWER:

PLEASE SEE ATTACHED FEE SCHEDULE / DEPT. INFORMATION IF YOU ANSWER YES

		X-YES	X-NO	X-NOT SURE
*	Are you setting up a canopy(s) ? (canopy is 10x10 size) How many: 4	X		
*	Do you wish to set up a tent(s) ? (A canopy or tent larger than 10x10 needs to be approved by PAFD Office and a Tent Permit issued from Inspections Division; please call Inspections – 874-8703 – (buildinginspections@portlandmaine.gov) for information on their application process / PLEASE give them at least a 2-week notice). PAFD will contact Inspections once the tent location is approved so that the Tent Permit Application may go forward. State size(s): 20'x40' Exact Location(s) of Tent Placement Requested: In order to drive tent stakes into the ground, DIG SAFE must be contacted: 888-344-7233.	X		
*	Will you be setting up tables and/or chairs ? How many tables: 40 chairs: 200	X		
*	Are other items or equipment being placed on City property? Please List: Inflatable arch and PA sound system	X		
*	Will there be refreshments at the event? Do you wish to sell food ? (If so, you will need approval from PAFD and possibly a Temporary Food Service License from Business Licensing Office) List food and drink / Food Trucks, etc.: PLEASE NOTE: A Temporary Food Service License is NOT needed when: 1. Food Vendors have a current City of Portland Food License 2. Just pre-packaged refreshments, or food & drink items are purchased or donated from a licensed establishment 3. Bottled water / water is served PLEASE give the BL Office at least a 2-week notice (874-8557). A TFSL is needed when food vendors are not licensed, or when food is being prepared and cooked at the event.	X		
*	Do you wish to sell non-food items (like T-shirts, crafts, cd's, etc.)? If so, you will need approval from PAFD Office, and you will need to apply for a Street Goods Vendor License(s) at the Business Licensing Office (874-8557). List items you wish to sell: T-shirts	X		
*	Are you setting up a PA (sound) system ? Yes Are you planning on having Amplified Music ? Yes Band ? No DJ ? Yes If so, your event requires a concert license from the Business Licensing Office (874-8557). (Just voice – i.e. Press Conference, would not require the license because it is not music).	X		

	For amplified music/speech, there are time restrictions for the Downtown Parks & Squares (music limited to 11:45am – 1:15pm, and 1 hour between 5pm - 8pm).			
*	Will your event require electricity ? Electricity is available at Moontide Park (via Visitor Cetner). You will need to bring your own extension cords to facilitate.	X		
*	Are you planning on bringing a Grill for a Barbecue ?		X	
	Will the event require reserved parking spaces / parking meters ?		X	
	Will your event need safety vests, signs, barricades and/or cones ?		X	
*	Will your event require street closures ?		X	
*	Will your event require Police assistance?		X	
*	Will your event require Fire/EMS assistance?		X	
*	Will your event require porta-restroom rental(s) or need existing porta-restrooms cleaned?	X		

INSURANCE CERTIFICATE INFORMATION

*	Will your event require liability Insurance? (Commercial liability insurance is required for a walkathon, race, festival, press conference, concert, etc. Product liability insurance is also required if the event has been approved for serving food.)	X ON FILE		
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♦ If you answered YES, you shall procure and maintain commercial and/or product liability insurance in an amount of at least \$400,000 combined single limit, covering claims for bodily injury, death, and property damage at your event. You shall name the City of Portland as an additional insured or shall obtain a general liability extension endorsement for coverage for the event, only in those areas where governmental immunity has been expressly waived by 14 M.R.S.A. § 8104-A, as limited by § 8104-B, and § 8111. The terms of this permit shall not be deemed a waiver of any immunities or limitations of damages available under the Maine Tort Claims Act, other Maine statutory law, judicial precedent, or common law.

♦ The insurance certificate shall be sent to tvm@portlandmaine.gov and must state with no exceptions one of the following:

- 1) The policy is endorsed to name the City of Portland as an additional insured pursuant to the date of the event (and rain date).
- 2) The policy contains a general liability extension endorsement by which the City of Portland is made an additional insured pursuant to the date of the event (and rain date).

PUBLIC ASSEMBLY FACILITIES DIVISION POLICIES

ELECTRICITY

All cords in the public way must be covered by rugs, mats or orange cones to avoid public hazard. If weather is inclement (drizzle, rain, snow, etc.) we require that you **not use** electricity, unless all connections and equipment are covered and protected from the elements.

PORTA-RESTROOMS / BATHROOM FACILITIES

Porta-Restrooms are required for large events and events where food is being served. Within Portland parks, porta-restroom units **MUST** be rented from Associated Septic / Royal Flush (207-799-1980).

TRASH

All groups must abide by our Carry In/ Carry Out Policy. Please bring extra trash bags and/or trash receptacles and remove all trash. Do not use existing trash barrels or the metal liners inside. You will need to haul all of your trash out of the park/public space or forfeit the security deposit(s). Please recycle whenever possible, (please do not use Styrofoam - it is NOT recyclable). The area will be checked following your event; if park is clean and conditions for use adhered to, your security deposit will be returned to you. Thank you in advance!

MARKING OF GROUNDS

Event Organizers must not use Spray Paint or Spray Chalk when marking city property. Children's Art Chalk can be used with permission from PAFD Office.

PARKING ON GRASS AREAS / SIDEWALKS / ILLEGALLY PARKED VEHICLES

PAFD has a strict policy that prohibits vehicles from parking on grass areas/sidewalks/park streets (unless specifically approved by city staff). \$10 will be deducted from your security deposit for each vehicle parked on grass/sidewalk areas or vehicles parked illegally. **Any tire ruts/damage to the grass areas would mean a forfeit of your security deposits.**

SMOKE-FREE ZONES

By city ordinance, smoking a cigar, cigarette, pipe, electronic cigarette, electronic cigar, electronic pipe, or other similar product that relies on vaporization or aerosolization, is prohibited at and within 20 feet of the following outdoor recreation and event areas: downtown squares and plazas, trails, parks, playgrounds, beaches, and athletic facilities. Please make sure you pass this information along to participants / spectators at the event.

NOTIFICATION

Please keep a copy of this permit on site at all times. City staff may require proof of permit.

REVOCABLE PERMIT

♦ The City reserves the unconditional right to control or cancel events to protect and/or prohibit damage to public property.

♦ The City reserves the unconditional right to revoke or revise an issued permit.

I HAVE READ AND UNDERSTAND ALL OF THE ABOVE POLICIES	TYPE INITIALS	EB	DATE	09/28/16
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ASSUMPTION OF RISK & LIABILITY

Users of the area agree to accept the grounds in an "as is" condition and shall be responsible for all risk and liability in using the park/public space area for the said event. By returning this form (should permission be granted to use city property), the above parties agree to indemnify and hold harmless the City of Portland, its employees and agents, from and against all claims arising out of activities during said event.

I have read the Assumption of Risk & Liability Agreement	TYPE INITIALS	EB	DATE	09/28/16
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FEE SCHEDULE – UPDATED JULY 1, 2015

Fees are tiered and assigned based on the level of demand placed on City resources and impact on City infrastructure.

Simple Event (no registration fee): \$50/hour	Impact/Street Closure Fee (variable based on impact): \$0-\$500
Event with registration or pledges & attendance 25 – 300: \$100/hr	Admin/Staff Fee (support for events): \$30/hour
Event with registration or pledges & attendance 301+: \$200/hr	Porta Restroom User Fee (if attendance is 150+): \$25
Public Space/Park Security Deposit/Sound Security Deposit: \$100-\$1000	

CREDIT CARD INFORMATION

Visa or MasterCard Number			8612	Exp Date (Mon/Yr)	08	20
CREDIT CARD WILL ONLY BE CHARGED FOR SECURITY DEPOSIT(S) AS NEEDED						

TOTAL AMOUNT(S) DUE TO PUBLIC ASSEMBLY FACILITIES DIVISION (Please make all security deposit checks out separately)

Permit Fee for use of area: \$50 - \$200 per hour (i.e. a 3 hour event at \$50 totals \$150) includes use of elec. If your event is rained out / cancelled, the bulk of the fee is returned (however \$50 is non-refundable)	\$? TBD	Vest/Cone Deposit: \$10 per/item	\$?
Number of Hours of Use: Friday set up / SAT event		Barricade Deposit: \$25 per/item	
Admin/Staff Fee (support for events): \$30/hour	\$ N/A	Public Space / Park Security Deposit:	\$? TBD
/ Deposit: \$50 per key	\$ N/A	Sound Security Deposit \$100 - \$1000	
Impact/Street Closure Fee (variable based on impact): \$100-\$500	\$ N/A	Other (Porta-Restroom User Fee: \$25, etc.)	\$ N/A – Renting Units

FOR OFFICE USE ONLY

DATE REC'D APPLICATION	11-17-2016	DATE REC'D INSURANCE	11-17-2016	PERMIT FEE AMT REC'D	\$ CC on file	SECURITY DEPOSIT	\$ CC on file
PAYMENT TYPE							
VISA	\$	MC	\$	CK #	CK AMOUNT	\$	CASH AMT
							\$

ROCK LOBSTER RELAY

BAR HARBOR

PORTLAND



200 MILES OF SCENIC MAINE COASTLINE

What is it?

The Rock Lobster Relay is a 200-mile relay race that starts in Bar Harbor and ends in Portland. Teams of 6 to 12 people compete against other teams. One person from each team runs a leg of the course at a time. The runner stops at an exchange point and hands a baton to another runner who runs the next leg. Participants will start on Friday 6/23/17, run throughout the night, and finish on Saturday 6/24/17.

Rock Lobster Relay

- Event capacity: 200 teams
- Allowable team sizes: 6 to 12 people/ team
- Maximum Registrants (year 1): 2,400
- Start & Finish: Friday 6/23/17 & Saturday 6/24/17
- Start Location: Athletic Fields (near YMCA), Bar Harbor
- Finish Location: Ocean Gateway, Portland
- Sunset On Friday: 8:24pm (Twilight @9:00pm)
- Sunrise On Saturday: 4:55am (Twilight @4:18am)

Rock Lobster Relay Course



How It Works

1. Twelve friends form a team and travel together in 2 passenger vans
2. Van#1 transports team members 1 to 6; Van#2 transports members 7 to 12
3. Each team determines their team pace (miles/minute) based on the average of each team member's best 10km or half marathon time
4. Each team is assigned a start wave time slot based on their team pace
5. The first wave starts at 6:00am and the last wave at 3:30pm
6. The race course is split into 36 segments (legs) each leg is 2.5 to 9.3 miles
7. Exchange points (where one leg ends and another starts) are set up along the course at places like schools, YMCAs, parks, and businesses
8. Team member #1 runs leg #1 and then hands-off a slap bracelet to team member#2 who runs leg #2. The process continues to leg #12, then repeats
9. Team member #1 runs leg #13, member #2 runs leg #14, etc.
10. Each team member runs a total of 3 legs for a total of 11.0 to 20.6 miles
11. The race ends when each team completes the 200 mile course
12. The fastest team will finish in 20 hours, the slowest team in 36 hours

How Wave Starts Work

Not everyone will start at the same time. Each team will be assigned a start wave time-slot based on their predicted team pace. At 6:00am the first wave of runners will start. There will be no more than 20 runners per wave. Each wave will be separated by 30 minutes. The last wave of runners will start at 3:30pm. The wave start schedule is designed to ensure that runners are spread out on the course. Normally a runner will be by themselves on the road with lots of space in-between each person.

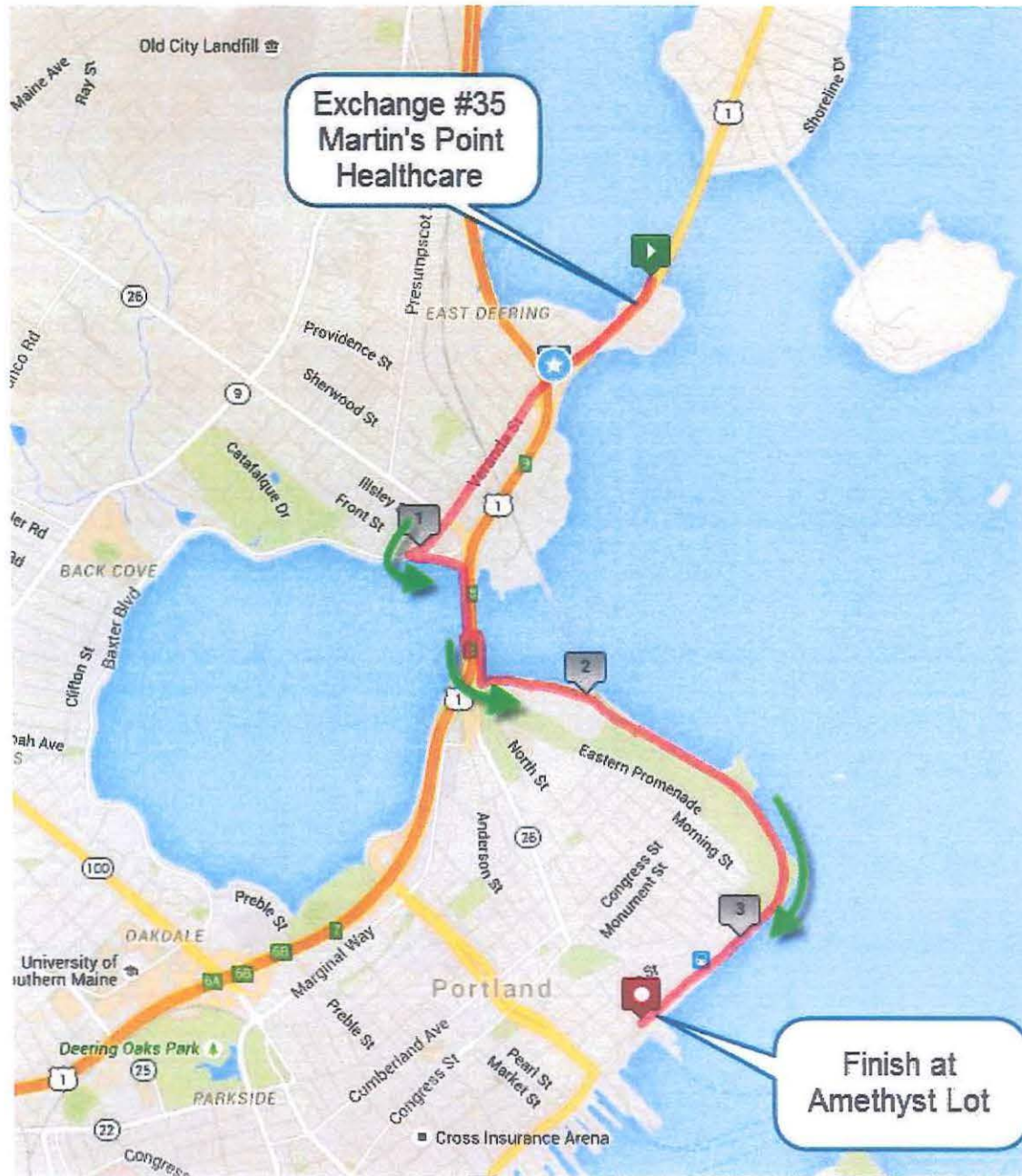
Basic Rules Of The Road (Runners)

- Run in the left lane facing traffic unless directed otherwise
- Stop at all traffic lights, go when light is green
- Use crosswalks when directed
- Carry all trash in vans and dispose in designated areas at exchange points
- Participants must be courteous and respectful of residences in each town
- Starting at 7:30pm on Friday 6/23 until 4:30am on Saturday 6/24 all participants outside a van will be required to wear reflective vests, a forward facing light, and a flashing light on their back

Basic Rules Of The Road (Team Vans)

- Vans may not park in the road or in any place where parking is not permitted
- Vans may not block private driveways or commercial entrances
- Vans may not slow down traffic behind them by shadowing a runner
- Vans must adhere to all applicable local vehicle safety laws
- There must be enough seat belts for all passengers
- Vehicles wider than 6'6" or longer than 20' are not permitted
- Motor-homes, RV's, campers, trailers, buses or limos are not permitted

Portland Route



Turn-By-Turn Directions

- At Mile 197 runners enter Portland from Falmouth on Rt 1 (South) via Martin's Point Bridge
- Continue on Rt 1 (staying on left sidewalk facing traffic)
- Left on Marine Hospital Rd (Martin's Point Healthcare driveway)
- **Stop at Exchange #35 – Martin's Point Healthcare**
- Continue on internal sidewalks back to Rt 1 at traffic light
- Left on Rt 1 South after using crosswalk to get to other side (staying on right sidewalk with traffic)
- Bear right on Veranda Ave (staying on right sidewalk with traffic)
- Left on Washington Ave after using crosswalks to cross over Washington Ave and then Bates St
- Merge onto Back Cove Trail that passes underneath the I-295 ramps
- Continue on trail South across Tukey's Bridge
- Right on Eastern Prom trail that passes under Turkey's Bridge
- Continue on the Eastern Prom trail all the way to the Ocean Gateway
- End race in Amethyst Park (lot)

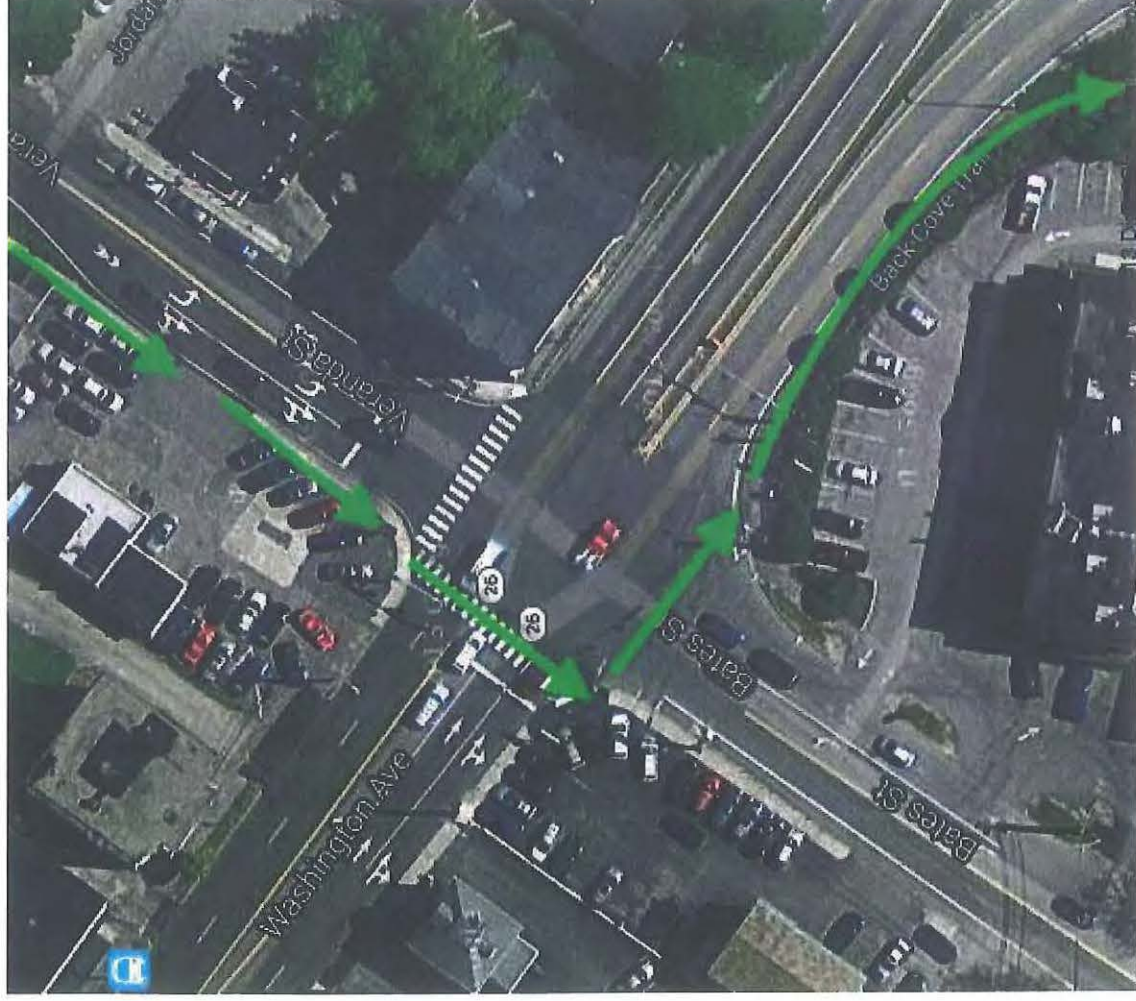
Exchange #35 – Martin's Point Healthcare



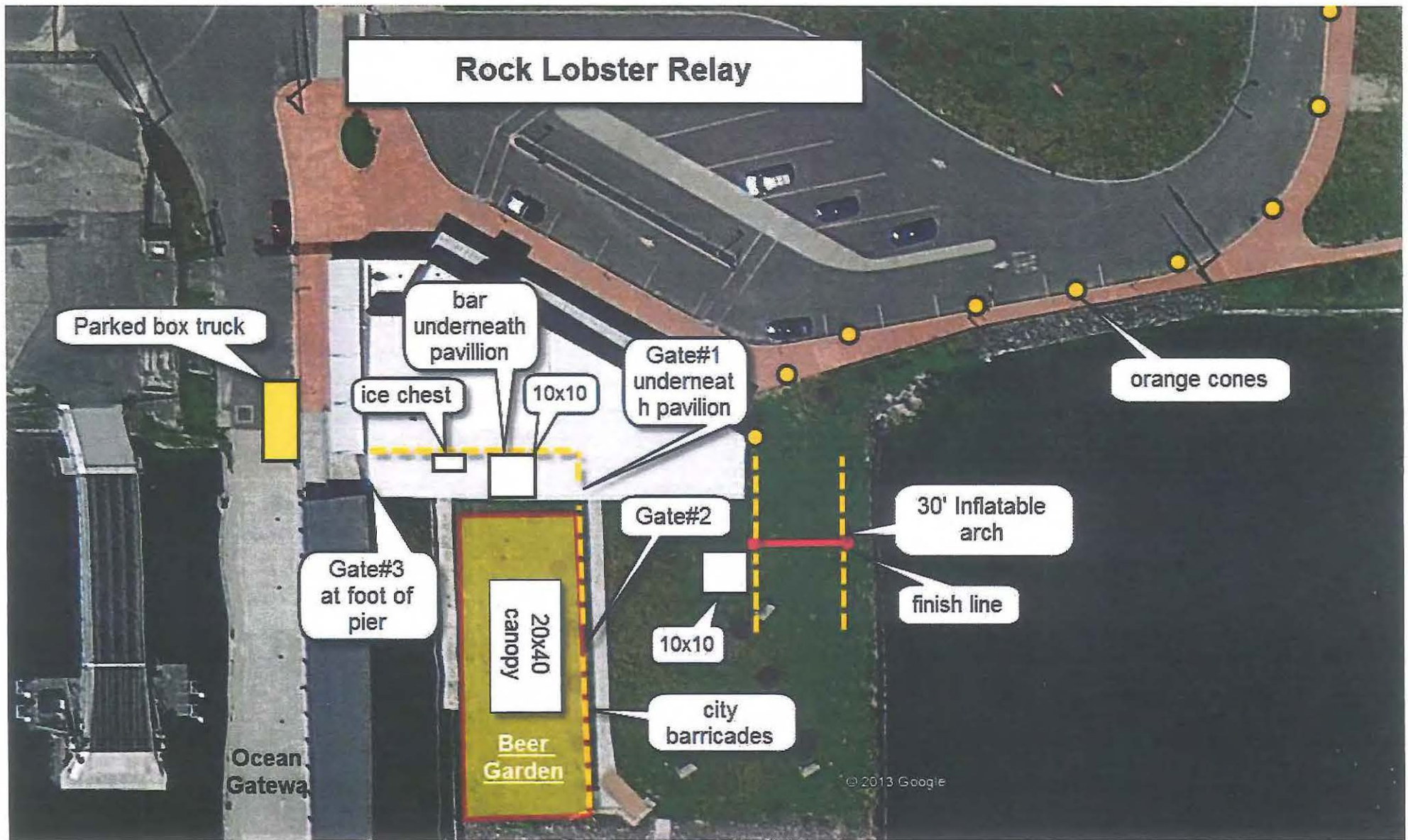
Exchange #35 – Martin's Point Healthcare

- Exchange #35 is located near Mile 197 at the Martin's Point Healthcare center
- Runners will pass through the exchange from 10:00am to 6:30pm on Saturday 6/24/17
- A relay exchange zone will be set up on a sidewalk inside the hospital grounds using orange 42" delineator cones and caution tape
- Two runners from each team will hand-off a baton in the zone
- All other participants will be required to stand behind a cordoned-off area around the exchange zone and not in the road
- Vans will be continuously entering and exiting the parking area
- A maximum of 26 vans will flow in and out of the zone during a 30 minute period. In the first year the number will be much less.
- Additional portable toilets will be set up near the parking lot
- While in the busy part of town runners will be on the sidewalk and not the roads
- Runners will use crosswalks at every intersection and abide by traffic light signals

Washington Ave & Bates St intersection



Ocean Gateway Finish

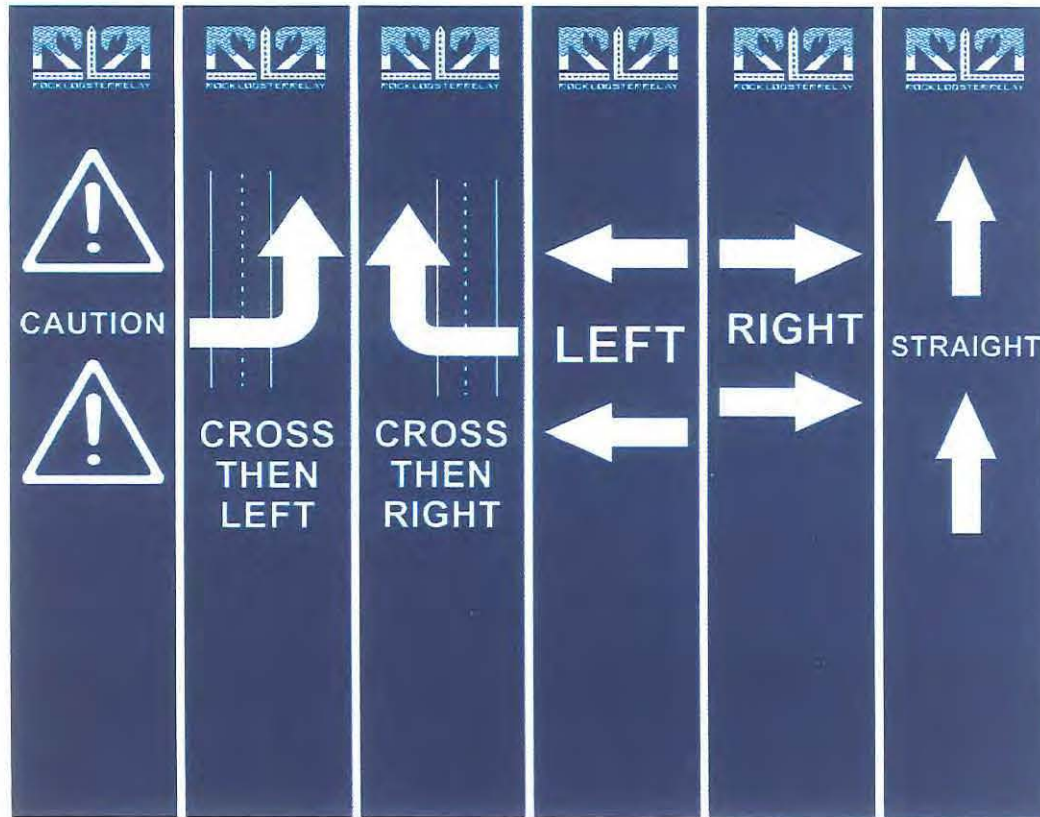


Parking Plan

- Participants will be finishing at different times throughout the day on Saturday 6/24/17
- Participants parking in Amethyst Lot with parking pass
- Additional participant parking in Thames St lot

Navigation Signs

Runners will be directed by various types of navigation signs placed on sidewalks and roadsides at key intersections along the course -- not volunteers. A sign will consist of a 42" tall delineator cone with an 8" wide x 40" tall coroplast sign attached vertically. **Additional maps showing the precise location of each cone are available.**



Examples of navigation signs



Order 166-16/17
Tab 7 3-20-17

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 DECLARING THE CRAFT BREW RACE FESTIVAL 2017

ORDERED, that Saturday, July 1, 2017 is hereby declared to be the Craft Brew Race Festival 2017; and

BE IT FURTHER ORDERED, that the Festival area for the Craft Brew Race Festival 2017 will be the grass triangle area at Payson Park and Payson Park itself from Ocean Avenue to Baxter Boulevard; and

BE IT FURTHER ORDERED, that the Craft Brew Race Festival area will be reserved for concert attendees and that music stages will be set up on the grass for the Festival, which will be held from noon to 4:00 p.m.; and

BE IT FURTHER ORDERED, that the following streets shall be closed to traffic on Saturday, July 1, 2017, during the Craft Brew Race at the beginning of the Festival:

- Baxter Boulevard (from Bates Street/I-295 Ramp to Vannah Avenue) from 11:30 a.m. to 1:30 p.m.; and

BE IT FURTHER ORDERED, that the Craft Brew Race Festival area shall be closed to licensed street vendors pursuant to §19-17 of the City Code and is reserved for the use of the event organizers for the purpose of permitting vendors for the event, subject to the direction and control of the City Manager; and

BE IT FURTHER ORDERED, that the City Manager is authorized to issue a revocable permit to the Organizer, Gray Matter Marketing, pursuant to §25-27 of the City Code to conduct said Festival, subject to the direction and control of the City Manager and to the following specific conditions:

1. Gray Matter Marketing shall defend, indemnify and hold harmless the City of Portland, its officers and employees, from and against all claims arising out of or resulting from the Festival and/or use of City streets and property for said Festival, and shall procure and maintain public liability insurance in the minimum amount of \$400,000 per occurrence for personal or bodily injury, death or property damage and covering the obligation of indemnification hereunder. Gray Matter Marketing shall provide the City with a certificate showing evidence of such insurance and showing the City as an additional insured on said insurance;

2. A Beer Garden, fenced off within the festival area, will allow 21-year-old and older participants only inside; city staff (from Public Assembly Facilities) will oversee this fenced-in area; and Maine Brewers Guild, the festival sponsor, will apply for and hold the State License allowing sales of alcohol at the event. Under no circumstances may alcoholic beverages be sold on public property during said event except inside the Beer Garden area;
3. ORGANIZER shall be responsible for all fees for a permit issued from the Public Assembly Facilities Division Conditions for use of grounds, and requirements for food service, vending sales, tent and stage installations and other items specified in that permit shall be adhered to;
4. Gray Matter Marketing shall have sole authority over participating vendors at the festival and may charge a fee to vendors for the opportunity to vend at the Craft Brew Race Festival;
5. Any and all amplified music and public announcements shall be maintained at a reasonable noise level (under 92 decibels) and be configured by the event organizer to focus volume away from residential housing and neighboring business, limiting any impact in the area by the sound level; and
6. Gray Matter Marketing will reimburse City Departments for the expenses incurred by City Departments to assist at said event; and

BE IT FURTHER ORDERED, the City Manager is also authorized to issue such other temporary licenses and temporary permits, including licenses for food service establishments and permits for sales of non-food related items, as may be required by the Portland City Code, provided that all applicable requirements of said code have been met regarding the operation of said event.



Gregory A. Mitchell
Director, Economic Development Department

Sally L. DeLuca
Director
Department of Parks, Recreation & Facilities

Andrew J. Downs
Director
Public Assembly Facilities Division

TO: Jon Jennings, City Manager
FROM: Sally DeLuca, Director of Parks, Recreation & Facilities Management
DATE: March 3, 2017
RE: **Council Agenda Item – Craft Brew Race Festival**

I am requesting that the following order be placed on the next City Council agenda:
**Order Authorizing the Craft Brew Race Festival 2017, scheduled for
Saturday, July 1, 2017.**

This will be the 4th Annual Craft Brew Race (taking place Saturday, July 1, 2017). Like last year, the race is held around Back Cove, and utilizes Payson Park Grass Triangle as the Festival area. The organizer works with the non-profit Maine Brewers Guild (the organization sponsoring the Beer Garden area). 1300 Runners are expected for this year's race.

For the race portion of the event, runners will assemble in Payson Park (Triangle Grass area) for registration/picking up bib numbers, etc., at 11am. Race start is at Noon. Baxter Blvd. (from Bates St./295 Ramp to Vannah Ave.) will be closed down to traffic from 11:30am – 1:30pm. Police and Parking Control Officers assist with the road closure. A little before Noon, runners step out onto Baxter Blvd. for the start. They then head counter-clockwise on the roadway. Prior to reaching Vannah Ave., runners get up onto the Back Cove Pathway, continue running around Back Cove, crossing over Tukey's Bridge, and then moving back out onto Baxter Blvd., finishing just before reaching the Grass Triangle at Payson Park. Runners then move up onto the grass area at the Park, where the awards ceremony is held.

The Festival portion of the event takes place at Payson Park (Triangle Grass area) and runs from Noon – 4pm. A Band with PA System is setup on the grass (for awards and music), and a Beer Garden is also fenced off at the Triangle Grass area. The Beer Garden is a 21+ only event, with city staff (Public Assembly Facilities) overseeing this fenced in area. The Maine Brewers Guild will be applying for the State License. Organizers may also invite a few local Food Trucks to participate in the event. Organizers will start setup the day before (Friday, June 30).

The Festival area will also be closed to street vendors pursuant to Section 19 -17 / 19-22 of the Portland City Code and is reserved for the use of event organizers for the purpose of permitting vendors for the event, subject to the direction and control of the City Manager.

(continued)



Gregory A. Mitchell
Director, Economic Development Department

Sally L. DeLuca
Director
Department of Parks, Recreation & Facilities

Andrew J. Downs
Director
Public Assembly Facilities Division

Festival grounds/zone are as follows:

Payson Park, from Ocean Ave. to Baxter Blvd. (Organizer understands that there will be games and tennis matches taking place at the upper fields and courts of the park.)

Race/Festival organizers will work with METRO to ensure impacts to transit services is kept to a minimum.

The City Manager is authorized to issue a revocable permit under Section 25-27 of the Municipal Code to the Festival organizers for the use of the above-described area for said race and festival, subject to the following conditions:

- Organizers (Gray Matter Marketing), shall indemnify the city and hold it harmless from and against all claims arising out of activities during said race and festival, and shall take out and maintain public liability insurance coverage (alcohol liability included) in the amount of at least \$400,000 per occurrence for personal or bodily injury, death or property damage for said purpose. This insurance certificate will also list the City of Portland as an additional insured in regards to the Craft Brew Race Festival,
- Any and all amplified music/public announcements shall be maintained at a reasonable level (under 92dBs) and be configured by the event organizer to focus volume away from residential housing, limiting any sound impacts in the area;
- Organizers (Gray Matter Marketing), shall have sole authority over participating vendors at the event and may charge a fee to vendors for the opportunity to vend at the Festival;
- Conditions for use of grounds and requirements for food service, vending sales, tent and stage installations, and other items specified in a permit issued from PAFD Office, shall be adhered to;
- Expenses incurred by City Departments for said event, shall be paid by organizer), and
- Under no circumstances may alcoholic beverages be sold or consumed on public property during said event (except for the Beer Garden area – which has been expressly approved by Portland City Council).

(continued)



Gregory A. Mitchell
Director, Economic Development Department

Sally L. DeLuca
Director
Department of Parks, Recreation & Facilities

Andrew J. Downs
Director
Public Assembly Facilities Division

The City Manager is also authorized to issue such other temporary licenses and temporary permits, including licenses for food service establishments and permits for sales of non-food related items, as may be required by the Portland City Code, provided that all applicable requirements of said code have been met regarding the operation of said event.

Document prepared by Ted Musgrave, Event Coordinator
Public Assembly Facilities Division



**CITY OF PORTLAND, PUBLIC ASSEMBLY FACILITIES DIVISION
PUBLIC PARK & SPACE APPLICATION (4 pages)**
212 Canco Rd. ~ Portland ~ ME ~ 04103
207-808-5400

For uses of city property, there are typically: 1. fees charged for use of the area
2. a security deposit required 3. insurance required
(There may be fees due and applications required from other City Departments)

TODAY'S DATE		10/26/16 Revised: 10-27, 3-2		ORGANIZATION NAME		Gray Matter Marketing					
ORGANIZATION ADDRESS				200 Highpoint Ave, Unit B5		CITY	Portsmouth	STATE	RI	ZIP	02871
CONTACT NAME(S)		Matt Gray Jon White		TITLE	President Director of Operations	EC assigned: _____					
HOME #	WORK			CELL	FAX						
EMAIL	matt@graymattermarketing.com jwhite@graymattermarketing.com				EMAIL	sean@mainebrewersguild.com heather@risingtidebrewing.com					

PARK AREA OR PUBLIC SPACE REQUESTED		Edward Payson Park (Grass Triangle) / Back Cove Trail Baxter Blvd Closed (11:30AM – 1:30PM) from Bates Street to Preble Street Some Parking Lots in Park + Dyers Flat Parking					
EVENT DAY & DATE(S)		SAT 7-1-2017		RAIN DAY & DATE(S) (50% added fee)		Rain or Shine	
EVENT START TIME (i.e. set-up start time)	9:00AM (setup on grass on Friday)	EVENT END TIME (i.e. when event cleanup is complete)	6:00PM (Sat July1)	ACTUAL START & END TIME OF EVENT		12:00PM – 4:00PM Race Start Noon (7/1/2017)	

EVENT NAME		EXPECTED ATTENDANCE	
Craft Brew Races Portland		1300	
DESCRIPTION OF EVENT:			
5k road race (For Profit) starting on Baxter Blvd. Following the road race there will be a craft beer festival, held in Edward Payson Park. Race Route: Start Line on Baxter Blvd (West of Payson Park, nearer to Cheverus), runners head west on Baxter Blvd (counter-clockwise), get onto Back Cove Trail (prior to reaching Vannah Ave), then Finish on Baxter Blvd in Front of Edward Payson Park. *See attached map. We would like to close Baxter Blvd for the duration of the road race portion of the event: 11:30AM – 1:30PM Baxter Blvd closed down to traffic from Bates St / 295 Ramp to Preble Street. (Seaside Health would need to use their Front St. Entrance/Exit). Traffic coming into Payson Park will need to be detoured away from the Triangle Grass Area. Police / PCO's need to be hired. Canopies set up on Triangle Grass Area. Tables & Chairs. PA System set up (generator powered) – ELEC is at the Grass Triangle. Food Trucks invited in (parked on side of Payson Park Road – 1st Entrance). Beer Garden. Porta-restrooms to be rented. Beer Garden Info: A perimeter barricade will be set up for the beer service area with security details to check ID's for 21+. We will have a liquor license pulled through our non-profit partner, the Maine Brewers Guild (Sean Sullivan / Heather Sanborn). The beer garden will be open to runners, festival-only ticket holders and designated-driver ticket holders, starting at 12:30PM and ending at 4PM. City PAF Staff will need to staff this area. We would like to rent Edward Payson Park for two days. Set up will be on Friday June 30. We will be bringing in snow fencing, tables, canopies, etc. We will hire overnight security to watch over area and our set up.			
IS THERE A REGISTRATION FEE/PLEDGES COLLECTED FOR THIS EVENT?		Please check: ☒ FEE ☐ PLEDGES	
IF YES FOR FEES, HOW MUCH?		FEE \$ 45-55	

WHAT WILL BE THE ANTICIPATED NEED FOR PARKING AND WHAT IS YOUR PARKING PLAN?

Anticipating a need for 600 cars – parking on nearby streets (Dyers Flats for Payson Park – up until BLVD is closed down to traffic)

PLEASE CHECK OFF AND ANSWER:

PLEASE SEE ATTACHED FEE SCHEDULE / DEPT. INFORMATION IF YOU ANSWER YES

	X-YES	X-NO	X-NOT SURE
* Are you setting up a canopy(s) ? (canopy is 10x10 size) How many: 20	X		
* Do you wish to set up a tent(s) ? A canopy or tent larger than 10x10 needs to be		X	
* Will you be setting up tables and/or chairs ? How many tables: chairs:	X		
* Are other items or equipment being placed on City property?		X	
* Will there be refreshments at the event? Do you wish to sell food ? (If so, you will need approval from PAFD and possibly a Temporary Food Service License from Business Licensing Office.) List food and drink / Food Trucks, etc.: LOCAL FOOD TRUCKS INVITED ??? PLEASE NOTE: A Temporary Food Service License is NOT needed when: 1. Food Vendors have a current City of Portland Food License 2. Just pre-packaged refreshments, or food & drink items are purchased or donated from a licensed establishment 3. Bottled water / water is served PLEASE give the BL Office at least a 2-week notice (874-8557). A TFSL is needed when food vendors are not licensed, or when food is being prepared and cooked at the event.	X		
* Do you wish to sell non-food items (like T-shirts, crafts, cd's, etc.)? If so, you will need approval from PAFD Office, and you will need to apply for a Street Goods Vendor License(s) at the Business Licensing Office (874-8557). List items you wish to sell:	X		
* Are you setting up a PA (sound) system ? Are you planning on having Amplified Music ? X Band ? X DJ ? X If so, your event may require a concert license from BL Office (874-8557). (Just voice – i.e. Press Conference, would not require the license because it is not music). However, a Sound Security Deposit may also be required for amplification.	X		
* Will your event require electricity ? Electricity is available at Payson Park.	X		
* Are you planning on bringing a Grill for a Barbecue ?		X	
* Will the event require reserved parking spaces / parking meters ?		X	
* Will your event need safety vests, signs, barricades and/or cones ? Please list what you would like to borrow: BARRICADES A few orange vests and cones may usually be borrowed from PAFD Office. Barricades and signs are borrowed from Public Works, Customer Service.	X		
* Will your event require street closures ? (SEE "Description of Event") Will your event affect METRO BUS ROUTES ? (If service is affected, organizer needs to work directly with METRO for endorsement / feedback). Please check with Glenn Fenton, METRO: 517-3029 (gffenton@gpmetrobus.com) to discuss.	X		
* Will your event require Police assistance? An event such as a road race, march or parade in the street, would typically require police assistance.	X		
* Will your event require Fire/EMS assistance? (For a large walk/race, it is recommended.)	X		
* Will your event require porta-restroom rental(s) or need existing porta-restrooms cleaned? (Some of the parks already have porta-restrooms. Event participants may use these, but a \$25 fee is assessed for events where attendance is 150 or more.) For renting porta-restrooms, event organizers must rent from the company contracted with the city.	X RENTAL		

INSURANCE CERTIFICATE INFORMATION

* Will your event require liability Insurance? (Commercial liability insurance is required for a walkathon, race, festival, press conference, concert, etc. Product liability insurance is also required if the event has been approved for serving food.)	X		
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♦ If you answered YES, you shall procure and maintain commercial and/or product liability insurance in an amount of at least \$400,000 combined single limit, covering claims for bodily injury, death, and property damage at your event. You shall name the City of Portland as an additional insured or shall obtain a general liability extension endorsement for coverage for the event, only in those areas where governmental immunity has been expressly waived by 14 M.R.S.A. § 8104-A, as limited by § 8104-B, and § 8111. The terms of this permit shall not be deemed a waiver of any immunities or limitations of damages available under the Maine Tort Claims Act, other Maine statutory law, judicial precedent, or common law.

♦ The insurance certificate shall be sent to tvm@portlandmaine.gov and must state with no exceptions one of the following:

- 1) The policy is endorsed to name the City of Portland as an additional insured pursuant to the date of the event (and rain date).
- 2) The policy contains a general liability extension endorsement by which the City of Portland is made an additional insured pursuant to the date of the event (and rain date).

PUBLIC ASSEMBLY FACILITIES DIVISION POLICIES

ELECTRICITY

All cords in the public way must be covered by rugs, mats or orange cones to avoid public hazard. If weather is inclement (drizzle, rain, snow, etc.) we require that you **not use** electricity, unless all connections and equipment are covered and protected from the elements.

PORTA-RESTROOMS / BATHROOM FACILITIES

Porta-Restrooms are required for large events and events where food is being served. Some of Portland's parks already have portable restrooms (*Preble Street Grass Area at the Preble Street Parking Lot -- across from Hannafords, *Entrance to Dyer's Flat -- beside Payson Park). If over 150 people are expected to attend the event, a \$25 user fee is required (paid to PAFD). The restrooms are cleaned M, W, & F. If you would like to guarantee that they are cleaned just prior to your event, then you need to call the porta-restroom company (Associated Septic / Royal Flush, 207-799-1980, M-F) to request and pay for a cleaning. If renting units, event organizer **MUST** rent from Associated Septic / Royal Flush.

TRASH

All groups must abide by our Carry In/ Carry Out Policy. Please bring extra trash bags and/or trash receptacles and remove all trash. Do not use existing trash barrels or the metal liners inside. You will need to haul all of your trash out of the park/public space or forfeit the security deposit(s). Please recycle whenever possible, (please do not use Styrofoam - it is NOT recyclable). The area will be checked following your event; if park is clean and conditions for use adhered to, your security deposit will be returned to you. Thank you in advance!

MARKING OF GROUNDS

Event Organizers must not use Spray Paint or Spray Chalk when marking city property. Children's Art Chalk can be used with permission from PAFD Office.

PARKING ON GRASS AREAS / SIDEWALKS / ILLEGALLY PARKED VEHICLES

PAFD has a strict policy that prohibits vehicles from parking on grass areas/sidewalks/park streets (unless specifically approved by city staff). \$10 will be deducted from your security deposit for each vehicle parked on grass/sidewalk areas or vehicles parked illegally. **Any tire ruts/damage to the grass areas would mean a forfeit of your security deposits.**

SMOKE-FREE ZONES

By city ordinance, smoking a cigar, cigarette, pipe, electronic cigarette, electronic cigar, electronic pipe, or other similar product that relies on vaporization or aerosolization, is prohibited at and within 20 feet of the following outdoor recreation and event areas: downtown squares and plazas, trails, parks, playgrounds, beaches, and athletic facilities. Please make sure you pass this information along to participants / spectators at the event.

NOTIFICATION

Please keep a copy of this permit on site at all times. City staff may require proof of permit.

REVOCABLE PERMIT

- ♦ The City reserves the unconditional right to control or cancel events to protect and/or prohibit damage to public property.
- ♦ The City reserves the unconditional right to revoke or revise an issued permit.

I HAVE READ AND UNDERSTAND ALL OF THE ABOVE POLICIES	TYPE INITIALS	JW	DATE	10/26/16
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ASSUMPTION OF RISK & LIABILITY

Users of the area agree to accept the grounds in an "as is" condition and shall be responsible for all risk and liability in using the park/public space area for the said event. By returning this form (should permission be granted to use city property), the above parties agree to indemnify and hold harmless the City of Portland, its employees and agents, from and against all claims arising out of activities during said event.

I have read the Assumption of Risk & Liability Agreement	TYPE INITIALS	JW	DATE	10/26/16
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FEE SCHEDULE – UPDATED JULY 1, 2015

Fees are tiered and assigned based on the level of demand placed on City resources and impact on City infrastructure.

Simple Event (no registration fee): \$50/hour Event with registration or pledges & attendance 25 – 300: \$100/hr Event with registration or pledges & attendance 301+: \$200/hr Public Space/Park Security Deposit/Sound Security Deposit: \$100-\$1000	Impact/Street Closure Fee (variable based on impact): \$0-\$500 Admin/Staff Fee (support for events): \$30/hour Porta Restroom User Fee (if attendance is 150+): \$25
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CREDIT CARD INFORMATION

Visa or MasterCard Number			Exp Date (Mon/Yr)	
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CREDIT CARD WILL ONLY BE CHARGED FOR SECURITY DEPOSIT(S) AS NEEDED

PLEASE MAKE CHECKS PAYABLE TO "CITY OF PORTLAND"

◆ Please make out security deposit checks separate from permit fees.

TOTAL AMOUNT(S) DUE TO PUBLIC ASSEMBLY FACILITIES DIVISION (Please make all security deposit checks out separately)			
Permit Fee for use of area: \$50 - \$200 per hour (i.e. a 3 hour event at \$50 totals \$150) includes use of elec. If your event is rained out / cancelled, the bulk of the fee is returned (however \$50 is non-refundable) Number of Hours of Use: Approx 9 hours	\$ 1800 due	Vest/Cone Deposit: \$10 per/item Barricade Deposit: \$25 per/item	\$???
Admin/Staff Fee (support for events): \$30/hour	\$???	Public Space / Park Security Deposit: Sound Security Deposit \$100 - \$1000	\$???
Key Deposit: \$50 per key	\$ N/A	Other (Porta-Restroom User Fee: \$25, etc.)	\$ N/A – Renting Units
Impact/Street Closure Fee (variable based on impact): \$100-\$500	\$ 200 ?		

FOR OFFICE USE ONLY									
DATE REC'D APPLICATION	10-26-16	DATE REC'D INSURANCE	NEED	PERMIT FEE AMT REC'D	\$ NEED	SECURITY DEPOSIT	\$ NEED		
PAYMENT TYPE									
VISA	\$	MC	\$	CK #	CK AMOUNT	\$	CASH AMT	\$	

*Order 167-16/17
Tab 8 3-20-17*

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 DECLARING THE FRIENDS OF EASTERN PROMENADE 2017
SUMMER COMMUNITY CONCERT SERIES FESTIVAL**

ORDERED, that Thursday evenings from 5:00 p.m. to 9:00 p.m. from July 6, 2017 through August 31, 2017 is hereby declared to be the 2017 Summer Community Concert Series Festival, sponsored by The Friends of Eastern Promenade; and

BE IT FURTHER ORDERED, that the 2017 Summer Community Concert Series Festival area shall be Fort Allen Park, the sidewalks bordering the park, the park road and the parking spaces bordering the park; and

BE IT FURTHER ORDERED, that the Fort Allen Park road may be closed to traffic during the evenings from 5:00 p.m. to 9:00 p.m. from July 6, 2017 through August 31, 2017, and areas of the Fort Allen Park parking lot and parking spaces bordering the park and on the Eastern Promenade may be posted "No Parking" on Festival evenings; and

BE IT FURTHER ORDERED, that vehicles in violation of the "no parking" signs in the Festival Area shall be towed at owner's expense; and

BE IT FURTHER ORDERED, that the 2017 Summer Community Concert Series Festival Area shall be closed to licensed street vendors as provided in §19-17 and §19-22 of the Portland City Code; and

BE IT FURTHER ORDERED, that the City Manager is authorized to issue a revocable permit to The Friends of Eastern Promenade under §§25-26—25-28 of the Portland City Code to conduct said Festival, subject to the direction and control of the City Manager and to the following specific conditions:

1. The Friends of Eastern Promenade shall defend, indemnify and hold harmless the City of Portland, its officers and employees, from and against all claims arising out of or resulting from the Festival and/or use of City streets and property for said Festival, and shall procure and maintain public liability insurance in the minimum amount of \$400,000 per occurrence for personal or bodily injury, death or property damage and covering the obligation of indemnification hereunder. The Friends of Eastern Promenade shall provide the City with a certificate showing evidence of such insurance and showing the City as an additional insured on said insurance;

2. No alcoholic beverages may be sold on the streets or public property during the Festival within the Festival Area;
3. Conditions for use of grounds and requirements for food service, vending sales, and other items specified in a permit issued by the Public Assembly Facilities Division shall be adhered to;
4. The Friends of Eastern Promenade shall have sole authority over participating vendors at the Festival and may charge a fee to vendors for the opportunity to vend at the 2017 Summer Community Concert Series;
5. In addition, the Business Licensing Office shall charge the usual fees for licensing food vendors, street goods vendors, and concert licenses for the Festival to those vendors The Friends of Eastern Promenade has agreed shall participate;
6. Public Assembly Facilities Division permits fees are waived, but other fees to other city departments may be due to the city; and
7. Any and all amplified music and public announcements shall be maintained at a reasonable noise level (under 92 decibels) and be configured by the event organizer to focus volume away from residential housing and neighboring business, limiting any impact in the area by the sound level; and

BE IT FURTHER ORDERED, that the City Manager is authorized to waive fees and to issue such other temporary licenses, including licenses for food service establishments, as may be required by the Portland City Code, provided that all other applicable Code requirements for the operation of the Festival have been met.



Gregory A. Mitchell
Director, Economic Development Department

Sally L. DeLuca
Director
Department of Parks, Recreation & Facilities

Andrew J. Downs
Director
Public Assembly Facilities Division

TO: Jon Jennings, City Manager
FROM: Sally DeLuca, Director of Parks, Recreation & Facilities Management
DATE: March 3, 2017
RE: **Council Agenda Item – Friends of Eastern Promenade “2017 Summer Community Concert Series”**

I am requesting that the following order be placed on the next City Council agenda:

Order declaring “Friends of Eastern Promenade 2017 Summer Community Concert Series” as a weekly festival event: every Thursday evening, July 6 – August 31, 2017, 5 – 9pm.

For many decades, the city organized and sponsored a weekly, summer concert series at Fort Allen Park, with assistance from the Friends of Eastern Promenade. Over the years, attendance has grown so that currently an average of 500+ people are in attendance for each concert.

This year the Friends of Eastern Promenade are completely taking over the series, which will include: 9 concerts at the Fort Allen Park Gazebo Bandstand, Thursday evenings (July 6 – August 31, 6:30 – 7:30pm). Styles of music will include: jazz, rock, blues, folk, and marching tunes (Chandler’s Community Band). At each concert, a variety of Food Trucks will be on site to sell refreshments and dinner to spectators. During some of the concerts, the park roadway may need to be closed down to vehicles. Funds for running the concert series will come mainly from fundraising efforts by the Friends of Eastern Promenade; the city will fund 2 of the concerts via The Willey Trust and the Betty Winterhalder Trust (city’s gift catalog). There is no admission charge to the concerts: concerts are free to the public.

The festival zone for the concert series is all of Fort Allen Park, sidewalks bordering the park, the park roadway, and parking spaces on the Eastern Prom, directly beside and bordering the park.

The Order should include the following items:

Friends of Eastern Promenade 2017 Summer Community Concert Series Festival be authorized for Thursday evenings, July 6 – August 31, 5 – 9pm, at the Eastern Prom, Fort Allen Park area.

This festival area will be closed to street vendors pursuant to Section 19-17 of the Portland City Code and is reserved for the use of festival organizers for the purpose of conducting the Summer Community Concert Series, subject to the direction and control of the City Manager.

(continued)



Gregory A. Mitchell
Director, Economic Development Department

Sally L. DeLuca
Director
Department of Parks, Recreation & Facilities

Andrew J. Downs
Director
Public Assembly Facilities Division

In order to hold the event on city property, some areas of the parking lot at Fort Allen Park and some parking spaces on the Eastern Prom roadway need to be posted "No Parking" on concert days. Vehicles in violation of the "No Parking" signs shall be towed at owner's expense.

The City Manager is authorized to issue a revocable permit under Section 25-27 of the Municipal Code to the Friends of Eastern Promenade for the use of the above-described area for said Festival subject to the following conditions:

- The Friends of Eastern Promenade shall indemnify the City and hold it harmless from and against all claims arising out of activities during said Festival, and shall take out and maintain public liability insurance coverage in the amount of at least **\$400,000** per occurrence for personal or bodily injury, death or property damage for said purpose. This insurance certificate will also list the City of Portland as an additional insured in regards to the "Summer Community Concert Series" activities, and the City be endorsed on the policy.
- Summer Community Concert Series organizers shall have sole authority over participating vendors at the events and may charge a fee to vendors for the opportunity to vend at the Summer Community Concert Series;
- Conditions for use of grounds, specified in a permit issued from Public Assembly Facilities Division, shall be adhered to;
- Under no circumstances may alcoholic beverages be consumed or sold on the streets or park areas of said area during said festival;
- Any and all amplified music/public announcements shall be maintained at a reasonable level (under 92dBs) and be configured by the event organizer to focus volume away from residential housing, limiting any sound impacts to neighbors nearby; and
- Public Assembly Facility Division permit fees for use of the area are waived; other fees to city departments may be due.

The City Manager is also authorized to issue such other temporary licenses, including licenses for food service establishments, as may be required by the Portland City Code, provided that all other applicable requirements of said Code have been met regarding the operation of said Festival/Event.

Document prepared by Ted Musgrave, PAFD Event Coordinator



**CITY OF PORTLAND, PUBLIC ASSEMBLY FACILITIES DIVISION
PUBLIC PARK & SPACE APPLICATION (4 pages)**
212 Canco Rd. ~ Portland ~ ME ~ 04103
207-808-5400

For uses of city property, there are typically: **1. fees charged for use of the area**
2. a security deposit required **3. insurance required**
(There may be fees due and applications required from other City Departments)

TODAY'S DATE	February 17, 2017	ORGANIZATION NAME	St. Peter's Bazaar Committee / St. Peter's Catholic Church					
ORGANIZATION ADDRESS	307 Congress Street		CITY	Portland	STATE	ME	ZIP	04101
Physical Address: 72 Federal Street, Portland								
CONTACT NAME(S)	Sal Bonetti, Chair Denis Lafreniere, Business Manager							
HOME #	Church Office 773-7746 x101		CELL			FAX	N/A	
EMAIL	salvatorebonetti@yahoo.com		EMAIL	denis.lafreniere@portlanddiocese.org				

PARK AREA OR PUBLIC SPACE REQUESTED	Federal Street (Franklin Arterial to India Street)		
EVENT DAY & DATE(S)	Friday, Saturday & Sunday, August 11 th -13 th 2017	RAIN DAY & DATE(S) (50% added fee)	N/A
Set-up on Friday, August 11 th 2017			
EVENT START TIME (i.e. set-up start time)	Noon	EVENT END TIME (i.e. when event cleanup is complete)	Midnight
ACTUAL START & END TIME OF EVENT		4 – 10pm	

EVENT NAME	EXPECTED ATTENDANCE
2 nd Annual St. Peter's Bazaar and Italian Street Festival	1,500+ expected each day

DESCRIPTION OF EVENT: Please be specific regarding **area of public space/park** and describe Event in detail.

Fundraiser for the upkeep of St. Peter's Catholic Church.
Federal Street (from Franklin Arterial to India Street) is scheduled to be closed to vehicular traffic on Friday, Saturday and Sunday August 11-13 (as well as Friday, August 11th for setup) in order to hold the **92nd Annual St. Peter's Bazaar/Street Festival**.
(Barricades would be placed at India Street, as well as across Hampshire Street.)
Hours for the festival are Friday, Saturday & Sunday (approx. 4 – 10pm). Setup for the festival is on Friday morning/afternoon. The street (Federal Street) may be closed to traffic from Noon – Midnight each day (for more setup time and breakdown time) – if needed. Booths **STAY** on the **SIDE OF** the street during the overnight hours.
There will be food booths, games for the children, games of chance, and music in the street during the afternoon and evenings. Free admittance into Festival Grounds. There is a fee for Refreshments and games.

IS THERE A REGISTRATION FEE/PLEDGES COLLECTED FOR THIS EVENT?	Please check: <u> </u> N/A <u> </u> FEE <u> </u> N/A <u> </u> PLEDGES
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WHAT WILL BE THE ANTICIPATED NEED FOR PARKING AND WHAT IS YOUR PARKING PLAN? *Parking at area lots, Cathedral Parish, Rite-Aid and on the street*

PLEASE CHECK OFF AND ANSWER:

PLEASE SEE ATTACHED FEE SCHEDULE / DEPT. INFORMATION IF YOU ANSWER YES

	X-YES	X-NO	X-NOT SURE
* Are you setting up a canopy(s) ? (canopy is 10x10 size) How many:	X		
* Do you wish to set up a tent(s) ? (A canopy or tent larger than 10x10 needs to be approved by PAFD Office and a Tent Permit issued from Inspections Division; please call Inspections – 874-8703 – (buildinginspections@portlandmaine.gov) for information on their application process / PLEASE give them at least a 2-week notice). PAFD will contact Inspections once the tent location is approved so that the Tent Permit Application may go forward. State size(s):		X	

	Exact Location(s) of Tent Placement Requested: In order to drive tent stakes into the ground, DIG SAFE must be contacted: 888-344-7233.			
*	Will you be setting up tables and/or chairs ? How many tables: 60 chairs: 400	X		
*	Are other items or equipment being placed on City property? (i.e. Moon Bounce, Dunk Tank, Radio Station Van, Helium Tank, etc.) Please List:	X		
*	Will there be refreshments at the event? Do you wish to sell food ? (If so, you will need approval from PAFD and possibly a Temporary Food Service License from Business Licensing Office) List food and drink / Food Trucks, etc.: PLEASE NOTE: A Temporary Food Service License is NOT needed when: 1. Food Vendors have a current City of Portland Food License 2. Just pre-packaged refreshments, or food & drink items are purchased or donated from a licensed establishment 3. Bottled water / water is served PLEASE give the BL Office at least a 2-week notice (874-8557). A TFSL is needed when food vendors are not licensed, or when food is being prepared and cooked at the event.	X		
*	Do you wish to sell non-food items (like T-shirts, crafts, cd's, etc.)? If so, you will need approval from PAFD Office, and you will need to apply for a Street Goods Vendor License(s) at the Business Licensing Office (874-8557) – 2 week notice. List items you wish to sell:	X		
*	Are you setting up a PA (sound) system ? Yes Are you planning on having Amplified Music ? Band? DJ? Yes Boom Box? If so, your event may require a concert license from BL Office (874-8557). (Just voice – i.e. Press Conference, would not require the license because it is not music). However, a Sound Security Deposit may also be required for amplification. For amplified music/speech, there are time restrictions for the Downtown Parks & Squares (music limited to 11:45am – 1:15pm, and 1 hour between 5pm - 8pm).	X		
*	Will your event require electricity ? Electricity is available at some of the parks & squares (Deering Oaks Park, Monument Square, Congress Square, Tommy's Park, Post Office Park, Payson Park, Preble Street Grass Area, Eastern Prom, Fort Allen Park). Elec. at these areas is turned off and needs to be turned on.	X FROM PARISH		
*	Are you planning on bringing a Grill for a Barbecue ? Only Gas Grills are allowed in the parks (NO CHARCOAL). Grilling is subject to weather conditions and possibly Fire Dept. review.	X		
*	Will the event require reserved parking spaces / parking meters ? How many? "No Parking" signs may be purchased at PAFD Office, 212 Canco Rd.	X		
*	Will your event need safety vests, signs, barricades and/or cones ? Please list what you would like to borrow: A few orange vests and cones may usually be borrowed from PAFD Office. Barricades and signs are borrowed from Public Works, Customer Service.	X		
*	Will your event require street closures ? (Please be specific under "Description of Event") Will your event affect METRO BUS ROUTES ? NO	X		
*	Will your event require Police assistance? An event such as a road race, march or parade	X		
*	Will your event require Fire/EMS assistance? (For a large walk/race, it is recommended.)		X	
*	Will your event require porta-restroom rental(s) or need existing porta-restrooms cleaned? (Some of the parks already have porta-restrooms. Event participants may use these, but a \$25 fee is assessed for events where attendance is 150 or more.) For renting porta-restrooms, event organizers must rent from the company contracted with the city.	X		
*	Do you wish to have a banner over the street to advertise your event? (Banners hung over Congress St. or Baxter Blvd). Banner inquiries directed to PAFD: 808-5400.		X	

INSURANCE CERTIFICATE INFORMATION				
*	Will your event require liability Insurance? (Commercial liability insurance is required for a walkathon, race, festival, press conference, concert, etc. Product liability insurance is also required if the event has been approved for serving food.)	X		
♦ If you answered YES, you shall procure and maintain commercial and/or product liability insurance in an amount of at least \$400,000 combined single limit, covering claims for bodily injury, death, and property damage at your event. You shall name the City of Portland as an additional insured or shall obtain a general liability extension endorsement for coverage for the event, only in those areas where governmental immunity has been expressly waived by 14 M.R.S.A. § 8104-A, as limited by § 8104-B, and § 8111. The terms of this permit shall not be deemed a waiver of any immunities or limitations of damages available under the Maine Tort Claims Act, other Maine statutory law, judicial precedent, or common law. ♦ The insurance certificate shall be sent to tvm@portlandmaine.gov and must state with no exceptions one of the following: 1) The policy is endorsed to name the City of Portland as an additional insured pursuant to the date of the event (and rain date). 2) The policy contains a general liability extension endorsement by which the City of Portland is made an additional insured pursuant to the date of the event (and rain date).				

PUBLIC ASSEMBLY FACILITIES DIVISION POLICIES

ELECTRICITY

All cords in the public way must be covered by rugs, mats or orange cones to avoid public hazard. If weather is inclement (drizzle, rain, snow, etc.) we require that you **not use** electricity, unless all connections and equipment are covered and protected from the elements.

BARBECUES - GAS GRILLS ONLY

Only GAS GRILLS are allowed in parks/public spaces – i.e. No Charcoal Grills or open burning. Barbecuing must first be approved by PAFD Office and is subject to weather conditions, and possible further review by the Fire Dept. Grills must be set up away from children's activities. You must bring a fire extinguisher with you to the grilling area.

PORTA-RESTROOMS / BATHROOM FACILITIES

Porta-Restrooms are required for large events and events where food is being served. Organizer will rent facilities.

TRASH

All groups must abide by our Carry In/ Carry Out Policy. Please bring extra trash bags and/or trash receptacles and remove all trash. Do not use existing trash barrels or the metal liners inside. You will need to haul all of your trash out of the park/public space or forfeit the security deposit(s). Please recycle whenever possible, (please do not use Styrofoam - it is NOT recyclable). The area will be checked following your event; if park is clean and conditions for use adhered to, your security deposit will be returned to you. Thank you in advance!

MARKING OF GROUNDS

Event Organizers must not use Spray Paint or Spray Chalk when marking city property. Children's Art Chalk can be used with permission from PAFD Office.

ADA COMPLIANCE

Event organizer must comply with the Americans with Disabilities Act (ADA) and the Maine Human Rights Act (MHRA), including maintaining the permitted use area and all public rights-of-way accessible during the entirety of the permitted event. In the event the permitted area is rendered inaccessible to disabled persons, and/or by request of PAFD staff, the organizer shall act immediately to provide accessibility. All requests to provide interpretive services shall be the responsibility of the organizer to provide and pay for such services. The organizer shall defend, indemnify, and hold the City harmless from any and all liability and damages resulting from alleged violations of the ADA and/or MHRA.

PARKING ON GRASS AREAS / SIDEWALKS / ILLEGALLY PARKED VEHICLES

PAFD has a strict policy that prohibits vehicles from parking on grass areas/sidewalks/park streets (unless specifically approved by city staff). \$10 will be deducted from your security deposit for each vehicle parked on grass/sidewalk areas or vehicles parked illegally. **Any tire ruts/damage to the grass areas would mean a forfeit of your security deposits.**

SMOKE-FREE ZONES

By city ordinance, smoking a cigar, cigarette, pipe, electronic cigarette, electronic cigar, electronic pipe, or other similar product that relies on vaporization or aerosolization, is prohibited at and within 20 feet of the following outdoor recreation and event areas: downtown squares and plazas, trails, parks, playgrounds, beaches, and athletic facilities. Please make sure you pass this information along to participants / spectators at the event.

NOTIFICATION

Please keep a copy of this permit on site at all times. City staff may require proof of permit.

REVOCABLE PERMIT

- ♦ The City reserves the unconditional right to control or cancel events to protect and/or prohibit damage to public property.
- ♦ The City reserves the unconditional right to revoke or revise an issued permit.

I HAVE READ AND UNDERSTAND ALL OF THE ABOVE POLICIES

TYPE INITIALS

DJL

DATE

2-17-17

ASSUMPTION OF RISK & LIABILITY

Users of the area agree to accept the grounds in an "as is" condition and shall be responsible for all risk and liability in using the park/public space area for the said event. By returning this form (should permission be granted to use city property), the above parties agree to indemnify, defend, and hold harmless the City of Portland, its employees and agents, from and against all claims arising out of activities during said event.

I have read the Assumption of Risk & Liability Agreement

TYPE INITIALS

DJL

DATE

2-17-17

FEE SCHEDULE – UPDATED JULY 1, 2015

Fees are tiered and assigned based on the level of demand placed on City resources and impact on City infrastructure.

Simple Event (no registration fee): \$50/hour
 Event with registration or pledges & attendance 25 – 300:
 \$100/hr
 Event with registration or pledges & attendance 301+: \$200/hr

Impact/Street Closure Fee (variable based on impact): \$0-\$500
 Admin/Staff Fee (support for events): \$30/hour
 Porta Restroom User Fee (if attendance is 150+): \$25

Public Space/Park Security Deposit/Sound Security Deposit:
\$100 - \$1000

CREDIT CARD INFORMATION

Visa or MasterCard Number _____ Exp Date (Mon/Yr) _____

CREDIT CARD WILL ONLY BE CHARGED FOR SECURITY DEPOSIT(S) AS NEEDED

PLEASE MAKE CHECKS PAYABLE TO "CITY OF PORTLAND"

◆ Please make out security deposit checks separate from permit fees.

TOTAL AMOUNT(S) DUE TO PUBLIC ASSEMBLY FACILITIES DIVISION (Please make all security deposit checks out separately)

Permit Fee for use of area: \$50 - \$200 per hour (i.e. a 3 hour event at \$50 totals \$150) includes use of elec. If your event is rained out / cancelled, the bulk of the fee is returned (however \$50 is non-refundable) Number of Hours of Use: 3 days use	\$ 300 flat fee per day: \$900 due	Vest/Cone Deposit: \$10 per/item Barricade Deposit: \$25 per/item	\$?
Admin/Staff Fee (support for events): \$30/hour	\$	Public Space / Park Security Deposit: Sound Security Deposit \$100 - \$1000	\$ 100 due
Key Deposit: \$50 per key	\$	Other (Porta-Restroom User Fee: \$25, etc.)	\$
Impact/Street Closure Fee (variable based on impact): \$100-\$500	\$ 100 due		

FOR OFFICE USE ONLY

DATE REC'D APPLICATION	2-21-2017	DATE REC'D INSURANCE	NEED	PERMIT FEE AMT REC'D	\$ NEED	SECURITY DEPOSIT	\$ NEED
PAYMENT TYPE							
VISA	\$	MC	\$	CK #	CK AMOUNT	\$	CASH AMT
							\$

Order 168-16/17
Tab 9 3-20-17

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 DECLARING JULY 13 TO AUGUST 5, 2017 THE
CHEKHOV IN THE PARK FESTIVAL**

ORDERED, that July 13, 2017 to August 5, 2017 is hereby declared to be the Chekhov in the Park Festival, sponsored by the Fenix Theatre Company, a non-profit Company, doing business as Fenix Theatre Company; and

BE IT FURTHER ORDERED, that the Chekhov in the Park Festival area shall be the Deering Oaks Park Bandstand, surrounding grass area and the Farmers Market Roadway; and

BE IT FURTHER ORDERED, that Fenix Theatre Company is scheduled to hold performances on Thursday, Friday and Saturday (except July 29) from 6:30 to 8:00 p.m. on July 13, 14, 15, 20, 21, 22, 27, 28, and August 3, 4, and 5, 2017, and on July 30 from 2:00 to 3:30 p.m. at the Deering Oaks Park Bandstand and surrounding grass area, and will also rehearse through the month of June; and

BE IT FURTHER ORDERED, that the Chekhov in the Park Festival area shall be closed to licensed street vendors as provided in §19-17 of the City Code; and

BE IT FURTHER ORDERED, that the City Manager is authorized to issue a revocable permit to Fenix Theatre Company under §25-27 of the City Code to conduct said Festival, subject to the direction and control of the City Manager or the Acting City Manager and to the following specific conditions:

1. Fenix Theatre Company shall defend, indemnify and hold harmless the City of Portland, its officers and employees, from and against all claims arising out of or resulting from the Festival and/or use of City streets and property for said Festival, and shall procure and maintain public liability insurance in the minimum amount of \$400,000 per occurrence for personal or bodily injury, death or property damage and covering the obligation of indemnification hereunder. Fenix Theatre Company shall provide the City with a certificate showing evidence of such insurance and showing the City as an additional insured on said insurance;
2. No alcoholic beverages may be sold on the streets or public property during the Festival within the Festival area;

3. Conditions for use of grounds and requirements for food service, vending sales, and other items specified in a permit issued from the Public Assembly Facilities Division shall be adhered to;
4. The Public Assembly Facilities Division permit fee is waived, and electricity shall be provided without charge by the City, which is a co-sponsor of the Chekhov in the Park Festival;
5. Fenix Theatre Company shall have sole authority over participating vendors at the festival and may charge a fee to vendors for the opportunity to vend at the Chekhov in the Park Festival;
6. Any and all amplified music and public announcements shall be maintained at a reasonable noise level (under 92 decibels) and be configured by the event organizer to focus volume away from residential housing and neighboring business, limiting any impact in the area by the sound level; and
7. In addition, the Business Licensing Office shall charge the usual fees for licensing food vendors, street goods vendors, and other needed licenses for the Festival to those vendors the Fenix Theatre Company has agreed shall participate; and

BE IT FURTHER ORDERED, that the City Manager is authorized to waive fees and to issue such other temporary licenses, including licenses for food service establishments, as may be required by the City Code, provided that all other applicable Code requirements for the operation of the Festival have been met.



Sally L. DeLuca
Director

Department of Parks, Recreation & Facilities

Andrew J. Downs
Director

Public Assembly Facilities Division

TO: Jon Jennings, City Manager
FROM: Sally DeLuca, Director of Parks, Recreation & Facilities Management
DATE: March 1, 2017
RE: **Council Agenda Item – Fenix Theatre Company's 2017 "Chekhov in the Park"**

I am requesting that the following order be placed on the next City Council agenda:
Order declaring Fenix Theatre Company's "Chekhov in the Park" (Chekhov's "Three Sisters"), running Thursday, Friday, & Saturday (July 13 thru August 5, 2017 (excluding July 29) and adding a Sunday, July 30, 2017, performance at Deering Oaks Park, **as a festival**.

The Fenix Theatre Company has requested use of Deering Oaks Park so that they may bring back their summer theatre performances to Portland. In the past, they have typically presented works by Shakespeare, including last summer's production of "Much Ado About Nothing," which was very well received. This summer, they will present the Chekhov play, "Three Sisters." I.E. the title of the series: Chekhov in the Park..!

The City's Parks, Recreation & Facilities Management Dept. is a co-sponsor of the performances. These will be family-friendly performances. Schedule as follows: Thursdays, Fridays & Saturdays – except for Saturday July 29 (6:30 – 8pm): July 13, 14, 15, 20, 21, 22, 27, 28 and August 3, 4, and 5, 2017. In lieu of the July 29 performance, a matinee (2-3:30pm) performance will be held on Sunday, July 30. These performances are to be staged at the Oaks Bandstand area and surrounding grass areas. There is no admission fee charged, but donations will be accepted. 150 People are expected at each performance.

A simple set will be used. PA system will be used at the Bandstand.

Rehearsals are scheduled for the month of June (other areas of the park will be utilized if the bandstand areas are being used).

Friends of Deering Oaks has endorsed the festival.

The festival zone for the performance series is Deering Oaks Park Bandstand area, grass areas bordering the bandstand, and Farmers Market Roadway. This festival area will be closed to street vendors pursuant to Section 19-17 of the Portland City Code and is reserved for the use of festival organizers for the purpose of conducting the "Chekhov in the Park" Performance Series, subject to the direction and control of the City Manager.

(continued)



Sally L. DeLuca
Director

Department of Parks, Recreation & Facilities

Andrew J. Downs
Director

Public Assembly Facilities Division

The City Manager is authorized to issue a revocable permit under Section 25-27 of the Municipal Code to the Fenix Theatre Company for the use of the above-described area for said Festival subject to the following conditions:

- Fenix Theatre Company shall indemnify the city and hold it harmless from and against all claims arising out of activities during said events, and shall take out and maintain public liability insurance coverage in the amount of at least \$400,000 per occurrence for personal or bodily injury, death or property damage for said purpose. This insurance certificate will also list the City of Portland as an additional insured in regards to the performances and activities;
- Under no circumstances may alcoholic beverages be consumed or sold on the streets or park areas of said area during said festival;
- Fenix Theatre Company shall have sole authority over participating vendors at the events and may charge a fee to vendors for the opportunity to vend at the festival;
- Any and all amplified music/public announcements shall be maintained at a reasonable level (under 92dBs) and be configured by the event organizer to focus volume away from residential housing and neighboring businesses, limiting any sound impacts in the area;
- Public Assembly Facility Division permit fees for use of the area are waived (Parks, Recreation & Facilities Management Dept. is a co-sponsor of the event); and
- Conditions for use of grounds, specified in a permit issued from Public Assembly Facilities Division, shall be adhered to.

The City Manager is also authorized to issue such other temporary licenses, including licenses for food service establishments, as may be required by the Portland City Code, provided that all other applicable requirements of said Code have been met regarding the operation of said Festival/Event.

Document prepared by Ted Musgrave, Event Coordinator
Public Assembly Facilities Division



CITY OF PORTLAND, PUBLIC ASSEMBLY FACILITIES DIVISION
PUBLIC PARK & SPACE APPLICATION (3 pages)
 212 Canco Rd. ~ Portland ~ ME ~ 04103
 207-808-5400

For uses of city property, there are typically:
 1. fees charged for use of the area
 2. a security deposit required
 3. insurance required
 (There may be fees due and applications required from other City Departments)

TODAY'S DATE		1/5/17 Revised: 1-6, 2-24		ORGANIZATION NAME		Fenix Theatre Company					
ORGANIZATION ADDRESS				28 Woodmoor Rd		CITY	South Portland	STATE	ME	ZIP	04106
CONTACT NAME(S)		Robert Cameron		TITLE		Artistic Director					
HOME #	WORK			CELL	FAX						
EMAIL	rob@fenixtheatre.com			EMAIL	Rcameron76@yahoo.com						

PARK AREA OR PUBLIC SPACE REQUESTED		Deering Oaks Park Bandstand Stage and Grass area									
EVENT DAY & DATE(S)		Thurs/Fri/Sat evenings July 13- August 5, 2017 + Sun 7-30-17 (2pm show) NO SHOW Sat 7-29		RAIN DAY & DATE(S) (50% added fee)		No Rain Dates					
EVENT START TIME (i.e. set-up start time)		6pm		EVENT END TIME (i.e. when event cleanup is complete)		9pm		ACTUAL START & END TIME OF EVENT		7pm-8:30pm	

EVENT NAME	EXPECTED ATTENDANCE
ne Three Sisters	150 per night on average

DESCRIPTION OF EVENT:

We would like to present Anton Chekhov's play *The Three Sisters* on the band shell area of Deering Oaks. *The Three Sisters* was written in 1900 and first performed in 1901 at the Moscow Art Theatre. The play follows the lives of three sisters as they lose their house and sense of home, navigating the personal, cultural and political changes that rocked Russia at the end of the 19th Century. Over one hundred years later, we identify with the very humanness of Chekhov's figures as they search for meaning in their lives. We recognize a likeness between America's current plight – economic recession, a disappearing middle class, gridlock in government, a cultural sense of apathy and powerlessness – and the circumstances of Chekhov's Russia. The world of *The Three Sisters* is familiar to us. There is a collective sense of anxiety. The characters are stuck between a romantic longing for an unrealistic past and an idealistic dream of the future. They seem to be paralyzed to take any action in the present. The people in this world try desperately to unglue themselves from the floor of their existence, but remain stuck in notions of the way things were or how they should be, rather than seeing how they are.

PA gear and Props up on the bandstand stage. Gear may need to be stored in back of bandstand (key needed). ELEC needed. R, P & FM Dept. will co-sponsor performances. Will cover cost of Porta-Restroom at the park.

NOTE: In lieu of show Sat. 7-29, matinee performance will be held Sun. 7-30 (1-4pm; 2pm show time).
 Festival of Nations is in park on 7-29.

IS THERE A REGISTRATION FEE/PLEDGES COLLECTED FOR THIS EVENT?	NO
--	----

WHAT WILL BE THE ANTICIPATED NEED FOR PARKING AND WHAT IS YOUR PARKING PLAN?	Parking as available.
---	-----------------------

PLEASE CHECK OFF AND ANSWER:

PLEASE SEE ATTACHED FEE SCHEDULE / DEPT. INFORMATION IF YOU ANSWER YES

	X-YES	X-NO	X-NOT SURE
Are you setting up a canopy(s) ? (canopy is 10x10 size) How many:		X	
* Do you wish to set up a tent(s) ? A canopy or tent larger than 10x10 needs to be		X	
* Will you be setting up tables and/or chairs ? How many tables: chairs:		X	
* Are other items or equipment being placed on City property?		X	

*	Will there be refreshments at the event?		X	
*	Do you wish to sell non-food items (like T-shirts, crafts, cd's, etc.)?		X	
*	Are you setting up a PA (sound) system ? FLOOR MICROPHONES WILL BE USED, SAME AS IN MUCH ADO ABOUT NOTHING LAST SUMMER.	X		
*	Will your event require electricity ? ELECTRICITY TO RUN MICORPHONES, AMPS AND LIGHT STANDS.	X		
*	Are you planning on bringing a Grill for a Barbecue ?		X	
*	Will the event require reserved parking spaces / parking meters ?		X	
*	Will your event need safety vests, signs, barricades and/or cones ?		X	
*	Will your event require street closures ?		X	
*	Will your event require Police assistance?		X	
*	Will your event require Fire/EMS assistance?		X	
*	Will your event require porta-restroom rental(s) or need existing porta-restrooms cleaned? (Some of the parks already have porta-restrooms. Event participants may use these, but a \$25 fee is assessed for events where attendance is 150 or more.) For renting porta-restrooms, event organizers must rent from the company contracted with the city. ADDITIONAL PORTA-RESTROOM NEAR THE STAGE AREA WILL BE VERY APPRECIATED. ??? CITY SPONSORING ???	X		

INSURANCE CERTIFICATE INFORMATION

*	Will your event require liability Insurance? (Commercial liability insurance is required for a walkathon, race, festival, press conference, concert, etc. Product liability insurance is also required if the event has been approved for serving food.)	X		
♦ If you answered YES, you shall procure and maintain commercial and/or product liability insurance in an amount of at least \$400,000 combined single limit, covering claims for bodily injury, death, and property damage at your event. You shall name the City of Portland as an additional insured or shall obtain a general liability extension endorsement for coverage for the event, only in those areas where governmental immunity has been expressly waived by 14 M.R.S.A. § 8104-A, as limited by § 8104-B, and § 8111. The terms of this permit shall not be deemed a waiver of any immunities or limitations of damages available under the Maine Tort Claims Act, other Maine statutory law, judicial precedent, or common law. ♦ The insurance certificate shall be sent to tvm@portlandmaine.gov and must state with no exceptions one of the following: 1) The policy is endorsed to name the City of Portland as an additional insured pursuant to the date of the event (and rain date). 2) The policy contains a general liability extension endorsement by which the City of Portland is made an additional insured pursuant to the date of the event (and rain date).				

PUBLIC ASSEMBLY FACILITIES DIVISION POLICIES

ELECTRICITY

All cords in the public way must be covered by rugs, mats or orange cones to avoid public hazard. If weather is inclement (drizzle, rain, snow, etc.) we require that you **not use** electricity, unless all connections and equipment are covered and protected from the elements.

PORTA-RESTROOMS / BATHROOM FACILITIES

Porta-Restrooms are required for large events and events where food is being served. Some of Portland's parks already have portable restrooms (*Deering Oaks Park – Playground + Ravine). If over 150 people are expected to attend the event, a \$25 user fee is required (paid to PAFD). The restrooms are cleaned M, W, & F. If you would like to guarantee that they are cleaned just prior to your event, then you need to call the porta-restroom company (Associated Septic / Royal Flush, 207-799-1980, M-F) to request and pay for a cleaning. If renting units, event organizer **MUST** rent from Associated Septic / Royal Flush.

TRASH

All groups must abide by our Carry In/ Carry Out Policy. Please bring extra trash bags and/or trash receptacles and remove all trash. Do not use existing trash barrels or the metal liners inside. You will need to haul all of your trash out of the park/public space or forfeit the security deposit(s). Please recycle whenever possible, (please do not use Styrofoam - it is NOT recyclable). The area will be checked following your event; if park is clean and conditions for use adhered to, your security deposit will be returned to you. Thank you in advance!

MARKING OF GROUNDS

Event Organizers must not use Spray Paint or Spray Chalk when marking city property. Children's Art Chalk can be used with permission from PAFD Office.

ADA COMPLIANCE

Event organizer must comply with the Americans with Disabilities Act (ADA) and the Maine Human Rights Act (MHRA), including maintaining the permitted use area and all public rights-of-way accessible during the entirety of the permitted event. In the event the permitted area is rendered inaccessible to disabled persons, and/or by request of PAFD staff, the organizer shall act immediately to provide accessibility. All requests to provide interpretive services shall be the responsibility of the organizer to provide and pay for such services. The organizer shall defend, indemnify, and hold the City harmless from any and all liability and damages resulting from

alleged violations of the ADA and/or MHRA.

PARKING ON GRASS AREAS / SIDEWALKS / ILLEGALLY PARKED VEHICLES

PAFD has a strict policy that prohibits vehicles from parking on grass areas/sidewalks/park streets (unless specifically approved by city staff). \$10 will be deducted from your security deposit for each vehicle parked on grass/sidewalk areas or vehicles parked illegally. **Any tire ruts/damage to the grass areas would mean a forfeit of your security deposits.**

SMOKE-FREE ZONES

By city ordinance, smoking a cigar, cigarette, pipe, electronic cigarette, electronic cigar, electronic pipe, or other similar product that relies on vaporization or aerosolization, is prohibited at and within 20 feet of the following outdoor recreation and event areas: downtown squares and plazas, trails, parks, playgrounds, beaches, and athletic facilities. Please make sure you pass this information along to participants / spectators at the event.

NOTIFICATION

Please keep a copy of this permit on site at all times. City staff may require proof of permit.

REVOCABLE PERMIT

- ♦ The City reserves the unconditional right to control or cancel events to protect and/or prohibit damage to public property.
- ♦ The City reserves the unconditional right to revoke or revise an issued permit.

I HAVE READ AND UNDERSTAND ALL OF THE ABOVE POLICIES

TYPE INITIALS

RC

DATE

1/5/17

ASSUMPTION OF RISK & LIABILITY

Users of the area agree to accept the grounds in an "as is" condition and shall be responsible for all risk and liability in using the park/public space area for the said event. By returning this form (should permission be granted to use city property), the above parties agree to indemnify and hold harmless the City of Portland, its employees and agents, from and against all claims arising out of activities during said event.

I have read the Assumption of Risk & Liability Agreement

TYPE INITIALS

RC

DATE

1/5/17

FEE SCHEDULE – UPDATED JULY 1, 2015

Fees are tiered and assigned based on the level of demand placed on City resources and impact on City infrastructure.

Simple Event (no registration fee): \$50/hour
Event with registration or pledges & attendance 25 – 300:
\$100/hr
Event with registration or pledges & attendance 301+: \$200/hr
Public Space/Park Security Deposit/Sound Security Deposit:
\$100 - \$1000

Impact/Street Closure Fee (variable based on impact): \$0-\$500
Admin/Staff Fee (support for events): \$30/hour
Porta Restroom User Fee (if attendance is 150+): \$25

CREDIT CARD INFORMATION

Visa or MasterCard Number

Exp Date (Mon/Yr)

CREDIT CARD WILL ONLY BE CHARGED FOR SECURITY DEPOSIT(S) AS NEEDED

PLEASE MAKE CHECKS PAYABLE TO "CITY OF PORTLAND"

- ♦ Please make out security deposit checks separate from permit fees.

TOTAL AMOUNT(S) DUE TO PUBLIC ASSEMBLY FACILITIES DIVISION (Please make all security deposit checks out separately)

Permit Fee for use of area: \$50 - \$200 per hour (i.e. a 3 hour event at \$50 totals \$150) includes use of elec.

If your event is rained out / cancelled, the bulk of the fee is returned (however \$50 is non-refundable)

Number of Hours of Use: 36 (12 nights @ 3hrs/ea.)

Admin/Staff Fee (support for events): \$30/hour

Key Deposit: \$50 per key

Impact/Street Closure Fee (variable based on impact): \$100-\$500

\$ N/A
City Dept a
co-
sponsor

\$ N/A

\$ 100 due

\$ N/A

Vest/Cone Deposit: \$10 per/item
Barricade Deposit: \$25 per/item

Public Space / Park Security Deposit:
Sound Security Deposit \$100 - \$1000

Other (Porta-Restroom User Fee: \$25, etc.)

\$ N/A

\$???

\$ N/A

FOR OFFICE USE ONLY

DATE REC'D APPLICATION	1-6-17	DATE REC'D INSURANCE	NEED	PERMIT FEE AMT REC'D	\$ N/A	SECURITY DEPOSIT	\$ NEED
PAYMENT TYPE							
VISA	\$	MC	\$	CK #	CK AMOUNT	\$	CASH AMT \$

*Order 169-16/17
Tab 10 3-20-17*

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 DECLARING AUGUST 26, 2017
THE PORTLAND FINE CRAFT SHOW FESTIVAL**

ORDERED, that Saturday, August 26, 2017 is hereby declared the Portland Fine Craft Show Festival, sponsored by the Maine Crafts Association; and

BE IT FURTHER ORDERED, that the Portland Fine Craft Show Festival area shall be Congress Street from High Street to State Street, abutting side streets and adjoining sidewalks; and

BE IT FURTHER ORDERED, that Congress Street between High Street and State Street, and the blocks of Avon Street, Vernon Place and Park Street adjacent to Congress Street shall be closed to traffic from 6:00 a.m. to 6:00 p.m. on August 26, 2017; and

BE IT FURTHER ORDERED, that vehicles in violation of the "no parking" signs in the Festival Area shall be towed at owner's expense; and

BE IT FURTHER ORDERED, that the Portland Fine Craft Show Festival area shall be closed to licensed street vendors as provided in §19-17 of the City Code; and

BE IT FURTHER ORDERED, that the City Manager is authorized to issue a revocable permit to Maine Crafts Association under §25-27 of the City Code to conduct said Festival, subject to the direction and control of the City Manager and to the following specific conditions:

1. Maine Crafts Association shall defend, indemnify and hold harmless the City of Portland, its officers and employees, from and against all claims arising out of or resulting from the Festival and/or use of City streets and property for said Festival, and shall procure and maintain public liability insurance in the minimum amount of \$400,000 per occurrence for personal or bodily injury, death or property damage and covering the obligation of indemnification hereunder. Maine Crafts Association shall provide the City with a certificate showing evidence of such insurance and showing the City as an additional insured on said insurance;
2. No alcoholic beverages may be sold on the streets or public property during the Festival within the Festival area;

3. Maine Crafts Association shall be responsible for all fees for a permit issued from the Public Assembly Facilities Division Conditions for use of grounds, and requirements for food service, vending sales, tent and stage installations and other items specified in that permit shall be adhered to;
4. Maine Crafts Association shall be solely responsible for trash clean-up at the festival and is required to leave a Security Deposit on file at the Public Assembly Facilities Division Office;
5. Maine Crafts Association shall be responsible for reimbursing the Police Department, the Parking Division, and the Public Works Department for services;
6. Maine Crafts Association shall have sole authority over participating vendors at the festival and may charge a fee to vendors for the opportunity to vend at the Portland Fine Craft Show Festival;
7. In addition, the Business Licensing Office shall charge the usual fees for licensing food vendors, street goods vendors, and other needed licenses for the Festival to those vendors the Maine Crafts Association has agreed shall participate; and

BE IT FURTHER ORDERED, that the City Manager is authorized to waive fees and to issue such other temporary licenses, including licenses for food service establishments, as may be required by the City Code, provided that all other applicable Code requirements for the operation of the Festival have been met.



Gregory A. Mitchell
Director, Economic Development Department

Sally L. DeLuca
Director
Department of Parks, Recreation & Facilities

Andrew J. Downs
Director
Public Assembly Facilities Division

TO: Jon Jennings, City Manager
FROM: Sally DeLuca, Director of Parks, Recreation & Facilities Management
DATE: March 3, 2017
RE: **Council Agenda Item – Maine Crafts Association Portland Fine Craft Show**

I am requesting that the following order be placed on the next City Council agenda:
Order declaring the "Portland Fine Craft Show" to be held on Congress Street from 9am-4pm on Saturday, August 26, 2017, as a festival. There is no Rain Date.

Please note: this year, the WCSH Sidewalk Art Festival (which would usually take place on this same date: Saturday, August 26, and extend down Congress Street, from High to Elm Street) has been canceled, though there may be other parties interested in organizing and continuing this event in some form.

The Portland Fine Craft Show is organized by the Maine Crafts Association (MCA). This is the third year their event will be held here on Congress Street. Festival organizers are requesting that Congress Street (from High Street to State Street) again be closed to vehicular traffic; High Street, at the intersection of Congress Street, would stay open to commuters (same with State Street). Individual vendors will set up 110 10'x10' canopy booth spaces on Congress Street. Sidewalks remain open for pedestrians. Emergency Lane kept open in the middle of street. 5000 attendees are expected for this event. Vendors will sell their crafts to the general public. Organizers will invite 2 or 3 Food Trucks into the festival zone (park on Congress Street near Longfellow Square).

In order for this festival to be held, a portion of Congress Street and abutting side streets need to be closed to vehicular traffic and posted "No Parking." The street closures will extend along Congress Street - High Street to State Street (Longfellow Square) and also include the following side streets: Avon St., Park St., and Vernon Pl. leading up to Congress Street. Streets would be closed from **6:00 a.m. – 6:00 p.m. on Saturday, August 26, 2017 (Festival runs 9am – 4pm)**. The parking ban would extend the same distance and continue from **5am until 6pm, Saturday, August 26, 2017**.

The Festival area (Congress Street itself and the abutting side streets, sidewalks and squares between and including High Street to State Street) will be closed to street vendors and artists pursuant to Section 19-17 of the Portland City Code and is reserved for the use of MCA, for the purpose of conducting the Festival, subject to the direction and control of the City Manager.

Vehicles in violation of the "no parking" signs in the Festival Zone (interior roadways) shall be towed at owner's expense.

(continued)



Gregory A. Mitchell
Director, Economic Development Department

Sally L. DeLuca
Director
Department of Parks, Recreation & Facilities

Andrew J. Downs
Director
Public Assembly Facilities Division

The City Manager is authorized to issue a revocable permit under Section 25-27 of the Municipal Code to the MCA Portland Downtown Craft Show organizers for the use of the above-described area for said Festival, subject to the following conditions:

- **MCA shall be responsible for reimbursing the Police Dept. and Parking Control Office for services, the Public Works Dept. for services, the Public Assembly Facilities Division for staff fees and permit fee for use of the street, and the Business Licensing Office for licenses;**
- The MCA Portland Fine Craft Show organizers shall be solely responsible for trash cleanup at the festival and shall be required to leave a Park Security Deposit (amount determined by the Public Assembly Facilities Director or designee) on file at the PAFD Event Office;
- Under no circumstances may alcoholic beverages be sold or consumed on the streets or public property of said area during said festival;
- The MCA Portland Fine Craft Show organizers shall have sole authority over participating vendors at the event and may charge a fee to vendors for the opportunity to vend at the Festival;
- Conditions for use of grounds and requirements for food service, vending sales, tent and stage installations, and other items specified in a permit issued from PAFD Office, shall be adhered to; and
- The MCA Portland Fine Craft Show organizers shall indemnify the City and hold it harmless from and against all claims arising out of activities during said Festival, and shall take out and maintain public liability insurance coverage in the amount of at least **\$400,000** per occurrence for personal or bodily injury, death or property damage for said purpose. This insurance certificate will also list the City of Portland as an additional insured in regards to the "MCA Portland Fine Craft Show" activities, and the City be endorsed on the policy.

The City Manager is also authorized to issue such other temporary licenses, including licenses for food service establishments, as may be required by the Portland City Code, provided that all other applicable requirements of said Code have been met regarding the operation of said Festival/Event.

Document prepared by Ted Musgrave, Event Coordinator
Public Assembly Facilities Division



CITY OF PORTLAND, PUBLIC ASSEMBLY FACILITIES DIVISION
PUBLIC PARK & SPACE APPLICATION (4 pages)
 212 Canco Rd. ~ Portland ~ ME ~ 04103
 207-808-5400

For uses of city property, there are typically: 1. fees charged for use of the area
 2. a security deposit required 3. insurance required
 (There may be fees due and applications required from other City Departments)

Ted Musgrave tvm@portlandmaine.gov

TODAY'S DATE		1/11/17 Revised: 1-12, 3-2		ORGANIZATION NAME		Maine Crafts Association					
ORGANIZATION ADDRESS				PO Box 342		CITY	Gardiner	STATE	ME	ZIP	04345
CONTACT NAME(S)		Sadie Bliss Dorothy Royle		TITLE		Director Program Manager (& Show Director)					
HOME #		WORK		CELL		FAX					
EMAIL	sbliss@mainecrafts.org			EMAIL	Dorothy@mainecrafts.org 245-5880						

PARK AREA OR PUBLIC SPACE REQUESTED		Congress Street (both lanes) – between High and State					
EVENT DAY & DATE(S)		SAT 8/26/17		RAIN DAY & DATE(S) (50% added fee)		n/a	
EVENT START TIME (i.e. set-up start time)		6am	EVENT END TIME (i.e. when event cleanup is complete)		6pm	ACTUAL START & END TIME OF EVENT	9-4

EVENT NAME	EXPECTED ATTENDANCE
Portland Fine Craft Show	5,000

DESCRIPTION OF EVENT:

NOTE: For a number of years, the Sidewalk Art Festival has been held on Congress Street (High to Elm). This year WCSH has stated they are canceling the Sidewalk Art Festival. There may be interest from other parties to continue this festival; organizers are meeting in March 2017 to discuss possible options.

A for-profit festival.

The PFCS will take place on Congress Street: Both lanes closed to vehicles: High to State (the "west" side of High Street). High Street stays open to traffic; State Street stays open to traffic.
 PFCS will have 100 exhibitors in their own booths selling their handmade goods. Individual vendors will set up 10x10 booth spaces on Congress street (closed to vehicular traffic from 6am-6pm) between High and State streets. A parking ban along Congress Street and the side streets (just one block...?) leading into Congress Street is needed, from 5am to 6pm.
 Sidewalks remain open for pedestrians. EMERGENCY LANE kept open in middle of street.

Some Food Trucks will be invited in to participate (parking in the parking lane). IF A FOOD TRUCK IS PARKED NEAR THE STATE STREET INTERSECTION, IT WILL BE POSITIONED FURTHER BACK – at ONE LONGFELLOW PARKING METERS.

Vehicles in violation of the "no parking" signs in the Festival Zone (interior roadways) shall be towed at owner's expense.
Organizer is covering Police costs (High Street and at State Street), and hiring a PCO to cover the intersection of Park & Spring. Volunteers (+ PAFD Security Guest Services Staff will be hired by Event Organizer) to staff the barricades.

Porta-restrooms rented by organizer, placed at various locations along Congress St.
 There may be a live music performance at Congress Sq. (arranged and coordinated by Friends of Congress Sq.) in the afternoon.

Organizer will contact **ZIP CAR** organization to discuss getting car relocated for the day.

CONSTRUCTION at 667 Congress Street Apts. (Joe's Smoke Shop) should be wrapped up by end of August 2017.

IS THERE A REGISTRATION FEE/PLEDGES COLLECTED FOR THIS EVENT?	Not to attend, but vendors pay to participate.	
YES FOR FEES, HOW MUCH?	FEE	\$155 members, \$185 non-members

WHAT WILL BE THE ANTICIPATED NEED FOR PARKING AND WHAT IS YOUR PARKING PLAN?
Parking will be in lots and on the street. Many attendees also use public transportation or walk

PLEASE CHECK OFF AND ANSWER:

PLEASE SEE ATTACHED FEE SCHEDULE / DEPT. INFORMATION IF YOU ANSWER YES

	X-YES	X-NO	X-NOT SURE
* Are you setting up a canopy(s) ? (canopy is 10x10 size) How many: 110	X		
* Do you wish to set up a tent(s) ? A canopy or tent larger than 10x10 needs to be approved		X	
* Will you be setting up tables and/or chairs ? ONLY INSIDE THE CANOPIES	X		
* Are other items or equipment being placed on City property?		X	
* Will there be refreshments at the event? Do you wish to sell food ? YES (If so, you will need approval from PAFD and possibly a Temporary Food Service License from Business Licensing Office) List food and drink / Food Trucks, etc.: MAINLY BURGERS, MAINLY TREATS, LITTLE JAMAICA & BOTTLED WATER PLEASE NOTE: A Temporary Food Service License is NOT needed when: 1. Food Vendors have a current City of Portland Food License 2. Just pre-packaged refreshments, or food & drink items are purchased or donated from a licensed establishment 3. Bottled water / water is served PLEASE give the BL Office at least 2-weeks' notice (874-8557). A TFSL is needed when food vendors are not licensed, or when food is being prepared and cooked at the event.	X		
* Do you wish to sell non-food items (like T-shirts, crafts, cd's, etc.)? If so, you will need approval from PAFD Office, and you will need to apply for a Street Goods Vendor License(s) at the Business Licensing Office (874-8557) – 2 weeks' notice. List items you wish to sell: Crafts	X		
* Are you setting up a PA (sound) system ?		X	
* Will your event require electricity ?		X	
* Are you planning on bringing a Grill for a Barbecue ?		X	
* Will the event require reserved parking spaces / parking meters ? How many? 30 "No Parking" signs may be purchased at PAFD Office, 212 Canco Rd.	X		
* Will your event need safety vests, signs, barricades and/or cones ? Please list what you would like to borrow: barricades as required by city A few orange vests and cones may usually be borrowed from PAFD Office. Barricades and signs are borrowed from Public Works, Customer Service.	X		
* Will your event require street closures ? (Please be specific under "Description of Event") Will your event affect METRO BUS ROUTES ? (If service is affected, organizer needs to work directly with METRO for endorsement / feedback). Please check with Glenn Fenton, METRO: 517-3029 (gfenton@gpmetrobus.com) to discuss.	X X		
* Will your event require Police assistance?	X		
* Will your event require Fire/EMS assistance?		X	
* Will your event require porta-restroom rental(s) or need existing porta-restrooms cleaned?	X		

INSURANCE CERTIFICATE INFORMATION

* Will your event require liability Insurance? (Commercial liability insurance is required for a walkathon, race, festival, press conference, concert, etc. Product liability insurance is also required if the event has been approved for serving food.)	X		
--	---	--	--

♦ If you answered YES, you shall procure and maintain commercial and/or product liability insurance in an amount of at least \$400,000 combined single limit, covering claims for bodily injury, death, and property damage at your event. You shall name the City of Portland as an additional insured or shall obtain a general liability extension endorsement for coverage for the event, only in those areas where governmental immunity has been expressly waived by 14 M.R.S.A. § 8104-A, as limited by § 8104-B, and § 8111. The terms of this permit shall not be deemed a waiver of any immunities or limitations of damages available under the Maine Tort Claims Act, other Maine statutory law, judicial precedent, or common law.

♦ The insurance certificate shall be sent to tvm@portlandmaine.gov and must state with no exceptions one of the following:
 1) The policy is endorsed to name the City of Portland as an additional insured pursuant to the date of the event (and rain date).
 2) The policy contains a general liability extension endorsement by which the City of Portland is made an additional insured pursuant to the date of the event (and rain date).

PUBLIC ASSEMBLY FACILITIES DIVISION POLICIES

PORTA-RESTROOMS / BATHROOM FACILITIES

Porta-Restrooms are required for large events and events where food is being served. Organizer will rent units. **Please be advised: event organizer MUST rent from Associated Septic / Royal Flush (207-799-1980, M-F).**

TRASH

All groups must abide by our Carry In/ Carry Out Policy. Please bring extra trash bags and/or trash receptacles and remove all trash. Do not use existing trash barrels or the metal liners inside. You will need to haul all of your trash out of the park/public space or forfeit the security deposit(s). Please recycle whenever possible, (please do not use Styrofoam - it is NOT recyclable). The area will be checked following your event; if park is clean and conditions for use adhered to, your security deposit will be returned to you. Thank you in advance!

MARKING OF GROUNDS

Event Organizers must not use Spray Paint or Spray Chalk when marking city property. Children's Art Chalk can be used with permission from PAFD Office.

ADA / MHRA COMPLIANCE

Event organizer must comply with the Americans with Disabilities Act (ADA) and the Maine Human Rights Act (MHRA), including maintaining the permitted use area and all public rights-of-way accessible during the entirety of the permitted event. In the event the permitted area is rendered inaccessible to disabled persons, and/or by request of PAFD staff, the organizer shall act immediately to provide accessibility. All requests to provide interpretive services shall be the responsibility of the organizer to provide and pay for such services. The organizer shall defend, indemnify, and hold the City harmless from any and all liability and damages resulting from alleged violations of the ADA and/or MHRA.

PARKING ON GRASS AREAS / SIDEWALKS / ILLEGALLY PARKED VEHICLES

PAFD has a strict policy that prohibits vehicles from parking on grass areas/sidewalks/park streets (unless specifically approved by city staff). \$10 will be deducted from your security deposit for each vehicle parked on grass/sidewalk areas or vehicles parked illegally. **Any tire ruts/damage to the grass areas would mean a forfeit of your security deposits.**

SMOKE-FREE ZONES

By city ordinance, smoking a cigar, cigarette, pipe, electronic cigarette, electronic cigar, electronic pipe, or other similar product that relies on vaporization or aerosolization, is prohibited at and within 20 feet of the following outdoor recreation and event areas: downtown squares and plazas, trails, parks, playgrounds, beaches, and athletic facilities. Please make sure you pass this information along to participants / spectators at the event.

NOTIFICATION

Please keep a copy of this permit on site at all times. City staff may require proof of permit.

REVOCABLE PERMIT

- ♦ The City reserves the unconditional right to control or cancel events to protect and/or prohibit damage to public property.
- ♦ The City reserves the unconditional right to revoke or revise an issued permit.

I HAVE READ AND UNDERSTAND ALL OF THE ABOVE POLICIES	TYPE INITIALS	SB	DATE	1/11/2017
---	----------------------	-----------	-------------	------------------

ASSUMPTION OF RISK & LIABILITY

Users of the area agree to accept the grounds in an "as is" condition and shall be responsible for all risk and liability in using the park/public space area for the said event. By returning this form (should permission be granted to use city property), the above parties agree to indemnify and hold harmless the City of Portland, its employees and agents, from and against all claims arising out of activities during said event.

I have read the Assumption of Risk & Liability Agreement	TYPE INITIALS	SB	DATE	1/11/2017
---	----------------------	-----------	-------------	------------------

FEE SCHEDULE – UPDATED JULY 1, 2015

Fees are tiered and assigned based on the level of demand placed on City resources and impact on City infrastructure.

Simple Event (no registration fee): \$50/hour Event with registration or pledges & attendance 25 – 300: \$100/hr Event with registration or pledges & attendance 301+: \$200/hr Public Space/Park Security Deposit/Sound Security Deposit: \$100 - \$1000	Impact/Street Closure Fee (variable based on impact): \$0-\$500 Admin/Staff Fee (support for events): \$30/hour Porta Restroom User Fee (if attendance is 150+): \$25
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CREDIT CARD INFORMATION

Visa or MasterCard Number		8355	Exp Date (Mon/Yr)	12	18
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CREDIT CARD WILL ONLY BE CHARGED FOR SECURITY DEPOSIT(S) AS NEEDED

TOTAL AMOUNT(S) DUE TO PUBLIC ASSEMBLY FACILITIES DIVISION (Please make all security deposit checks out separately)			
Permit Fee for use of area: \$50 - \$200 per hour (i.e. a 3 hour event at \$50 totals \$150) includes use of elec. If your event is rained out / cancelled, the bulk of the fee is returned (however \$50 is non-refundable) Number of Hours of Use: 12 hours	\$ 2400 CC to be charged following event	Vest/Cone Deposit: \$10 per/item Barricade Deposit: \$25 per/item	\$???
Admin/Staff Fee (support for events): \$30/hour	\$ PAFD will be hired	Public Space / Park Security Deposit: Sound Security Deposit \$100 - \$1000	\$ 500 CC on file
Key Deposit: \$50 per key	\$ N/A	Other (Porta-Restroom User Fee: \$25, etc.)	\$ N/A – renting units
Impact/Street Closure Fee (variable based on impact): \$100-\$500	\$ 500 CC on file		

FOR OFFICE USE ONLY									
DATE REC'D APPLICATION	1-12-17	DATE REC'D INSURANCE	NEED	PERMIT FEE AMT REC'D	\$ CC to be charged	SECURITY DEPOSIT	\$ CC on file		
PAYMENT TYPE									
VISA	\$	MC	\$	CK #	CK AMOUNT	\$	CASH AMT	\$	

Order 170-16/17
Tab 11 3-20-17

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

CITY OF PORTLAND
IN THE CITY COUNCIL

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

ORDER APPROVING TRANSFER OF FUNDS UNDER
15 M.R.S. SECTIONS 5824(3) AND 5826(6)
RE: TINA TRENT

ORDERED, that the City Council hereby accepts the amount of \$785.00 in forfeited assets in the case of State of Maine vs. Tina Trent from the State of Maine to the City of Portland, pursuant to 15 M.R.S. Sections 5824(3) and 5826(6) and as provided in the attached Approval of Transfer.

MEMORANDUM
City Council Agenda Item

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

FROM: Michael J. Sauschuck, Chief of Police

DATE: February 27, 2017

SUBJECT: Approval of Transfer

SPONSOR: Police Department

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st reading next available **Final Action** _____

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

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

- I. ONE SENTENCE SUMMARY.** The State requires Council approval of the transfer of forfeited cash to the Portland Police Department. (See attached approval form)
- II. AGENDA DESCRIPTION** *State v. Tina Trent, CR-16-5502 and seven hundred eighty-five dollars (\$785.00 US Currency)*
- III. BACKGROUND.** The State Forfeiture Statute, 15 M.R.S.A. § 5824 (3) and § 5826(6), requires that before any forfeitable item may be transferred to a State agency, County or municipality, the legislative body of that entity must publicly vote to accept the item.
- IV. INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED.** Funds may be transferred to the Portland Police Department for deposit in the drug investigations account.
- V. FINANCIAL IMPACT.** The money is used to offset the costs of drug investigations, such as drug analysis, drug purchases, covert surveillance, surveillance equipment, drug training and protective gear, such as body armor.
- VI. STAFF ANALYSIS AND BACKGROUND THAT WILL NOT APPEAR IN THE AGENDA DESCRIPTION**
- VII. RECOMMENDATION**
- VIII. LIST ATTACHMENTS**

Prepared by: Michael J. Sauschuck
Date: February 27, 2017



**OFFICE OF THE DISTRICT ATTORNEY
CUMBERLAND COUNTY**

Stephanie Anderson
District Attorney

142 Federal Street, Portland, Maine, 04101
101 Meadows Road, West Bath, Maine, 04530-9704

Portland
(207) 871-8384

February 10, 2017

Bath
(207) 443-5104

Chief Michael Sauschuck
Portland Police Department
109 Middle Street
Portland, ME 04101

RE: State v. Tina Trent, CR-16-5502
City of Portland Approval

Dear Chief:

Enclosed please find a City of Portland Approval form for the forfeiture of the money seized in this case. As you can see, the City/Town Council, or a representative thereof, needs to sign this form and return it to me so that I can provide you with a court order that will transfer the money that was seized to the City/Town. Please let me know if you have any questions for me.

Thank you.

Sincerely,

DEPARTMENT OF THE ATTORNEY GENERAL

State of Maine

By: *Lea-Anne Sutton*

Lea-Anne Sutton

Assistant Attorney General

8786

STATE OF MAINE
Cumberland, SS

State of Maine

v.

Tina Trent,
Defendant

AND

\$785.00 US CURRENCY

DEFENDANT IN REM #1

UNIFIED CRIMINAL DOCKET
Criminal Action
Docket No. CR-16-5502

}
}
}
}
}
}
}
}

City/Town Of Portland
Approval Of Transfer
15 M.R.S.A. §5824(3)
and §5826(6)

NOW COMES the City/Town of Portland, Maine, by and through its legislative body, the City/Town Council, and does hereby grant approval pursuant to Section 5824(3) and Section 5826(6) of Title 15 of the Maine Revised Statutes Annotated, to the transfer of the above captioned Defendant(s) *In Rem*, namely \$785.00 US Currency, on grounds that the City/Town of Portland Police Department did make a substantial contribution to the investigation of this or a related criminal case.

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

Dated: _____

Chairperson/Mayor/Selectman/Clerk

(Impress Legislative Body Seal Here)

Order 151-16/17
~~Feb 10 3-6-17~~
Feb 12 3-20-17

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: ☒ 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

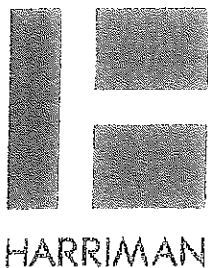
Approval by the Council to utilize the Westcott Trust Fund to purchase and install a fire suppression system.

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.

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..

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.

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.

46 HARRIMAN DRIVE
AUBURN, ME 04210
207.784.5100

123 MIDDLE STREET
PORTLAND, ME 04101
207.775.0853

33 JEWELL COURT
SUITE 101
PORTSMOUTH, NH 03801
603.626.1242

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

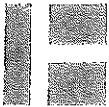
Harriman proposes to complete the work indicated above for a lump sum fee of \$32,000. This proposal does not include costs for any state or local fees for permitting or review.

(*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

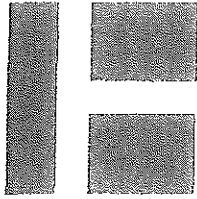
Harriman represents and warrants that it is protected by Workmen's Compensation insurance. Harriman shall not be responsible for any loss, damage, or liability arising from any acts by client, its agents, staff, and other consultants employed by it.

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.

Assumptions

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

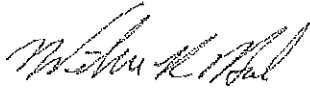
William R. Heil, PE
Robert Brink, EI

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.

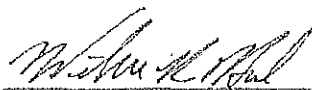
Approved and Accepted By:

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
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

Signature

September 15, 2016

Date



SCHEDULE OF HOURLY BILLING RATES

SMRT Architects and Engineers

p 877.700.7678

w www.smrtinc.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

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.

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 152-16/17
~~Tab 11 3-6-17~~
Tab 13 3-20-17

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, 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.

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.

Order 159-16/14
~~Tab 18 - 36-14~~
~~Tab 14 380-14~~

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

CITY OF PORTLAND
IN THE CITY COUNCIL

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

AMENDMENT TO PORTLAND CITY CODE
CHAPTER 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. Receptions.~~
- ~~v. Seminars.~~
- ~~vi. Business and educational conferences.~~

~~b. The building in which the bed and breakfast and the meeting facility will be located was in existence on March 3, 1997, and was greater than four thousand (4,000) square feet in floor area on that date.~~

~~6. Studios for artists and craftspeople, provided that the area of such studios does not exceed four thousand (4000) square feet for each studio space.~~

~~7. Hostels, provided the applicant submits a site plan and operations plan demonstrating compliance with the following conditions:~~

~~a. All applicable provisions of Article V of this chapter shall be met.~~

~~b. Parking shall be provided in compliance with Division 20 of this Article.~~

~~c. No unaccompanied minors under the age of eighteen (18) shall be permitted in the facility.~~

~~d. The length of stay for transient guests shall not exceed fifteen (15) days out of any sixty-day period.~~

~~e. The building shall meet the applicable occupant load requirements as defined by the International Building Code and the NFPA Life Safety Code, as such codes are amended or adopted by the city.~~

~~8. Wind energy systems, as defined and allowed in Article X, Alternative Energy.~~

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>
<u>R</u>	<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>
M	Printing and publishing establishments of 10,000 gross sf. or less	<u>C</u>	<u>C</u>	<u>C</u>
M	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>
M	Wholesale distribution establishments of 10,000 gross sf. or less	<u>C</u>	<u>C</u>	<u>C</u>
M	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.

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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.

**AMENDMENT TO ORDER 159-16/17
PREPARED BY PLANNING DEPARTMENT
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. 14182. 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 33% of the total net floor area	Y	Y	Y
B	General business and professional offices, as defined in section 14-47, and offices of trades	Y	Y	Y
B	Personal services, as defined in section 14-47	Y	Y	Y
B	General retail establishments	Y	Y	Y
B	Pharmacies with retail sales	Y	Y	Y
B	Banking Facilities	Y	Y	Y
B	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
B	Drinking establishments, as defined in section 14-47	Y	Y	N
B	Billiard parlors	Y	Y	Y
B	Funeral homes	Y	Y	Y
B	Miscellaneous repair services, excluding	Y	Y	Y

	motor vehicle repair services			
B	Communication studios or broadcast and receiving facilities	Y	Y	Y
B	Health clubs and gymnasiums	Y	Y	Y
B	Veterinary hospitals and clinics provided there is no outdoor kennel	Y	Y	Y
B	Theaters and performance halls	Y	Y	Y
B	Hotels, Motels and Inns	Y	Y	Y
B	Bakeries, breweries, distilleries, commercial kitchens and similar uses with a retail component and with a total floor area under 10,000 net sf.	Y	Y	Y
B	Bakeries, breweries, distilleries, commercial kitchens and similar uses with a retail component and with a total floor area of 10,000 net sf. or greater	Y	N	N
B	Expansion of existing dairies	Y	Y	Y
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	Accessory uses, as provided in section 14-4043	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.	Y	Y	Y

	per space			
W	Wind energy systems, as defined and allowed in Article X, Alternative Energy	Y	Y	Y
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	Y	Y	Y
A	Drive-throughs associated with a permitted or conditional use ¹	C	N	C
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
M	Printing and publishing establishments of 10,000 gross sf. or less	C	C	C
M	Expansion of existing printing and publishing establishments of greater than 10,000 gross sf. in existence since April 4, 1988	C	C	C
M	Wholesale distribution establishments of 10,000 gross sf. or less	C	C	C
M	Research and development and related production establishments of 10,000 gross sf. or less	C	C	C

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. 14183. 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:

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.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.3. 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.
- 5. Reserved.
- 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:
 - 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.~~

(b) ~~Use Group "M"~~ "M" 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:

1. 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. 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.

(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.

(d) Wind energy systems, as defined and allowed in Article X, Alternative Energy.

Sec. 14184. 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.

Sec. 14185. 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 Maximum^{1,2}	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 The Planning Board or Planning Authority may waive the front yard maximum for utility substations and alternative energy installations.

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.
 3. The Planning Board or Planning Authority may waive the front yard maximum for utility substations and alternative energy installations.

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
CB	General business and professional offices, as defined in section 14-47, and offices of trades	Y	Y	Y
CB	Personal services, as defined in section 14-47	Y	Y	Y
CB	General retail establishments	Y	Y	Y
CB	Pharmacies with retail sales	Y	Y	Y
CB	Banking Facilities	Y	Y	Y
CB	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
CB	Drinking establishments, as defined in section 14-47 and bars as defined in section 14-217.5 (a)(1)	Y	Y	N
CB	Billiard parlors	Y	Y	Y
CB	Funeral homes	Y	Y	Y
CB	Miscellaneous repair services, excluding motor vehicle repair services	Y	Y	Y
CB	Communication studios or broadcast and receiving facilities	Y	Y	Y
CB	Health clubs and gymnasiums	Y	Y	Y
CB	Veterinary hospitals and clinics provided there is no outdoor kennel	Y	Y	Y
CB	Theaters and performance halls	Y	Y	Y
CB	Hotels, Motels and Inns	Y	Y	Y
CB	Bakeries, breweries, distilleries, <u>commercial kitchens</u> and similar uses with a retail component and with a total floor area, under 10,000 net sf.	Y	Y	Y
CB	Bakeries, breweries, distilleries, <u>commercial kitchens</u> and similar uses with a retail component and with a total floor area of, 10,000 net sf. or greater	Y	N	N
CB	Expansion of existing dairies	Y	Y	Y
C	Drive-throughs associated with a permitted or conditional	C	C	C

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

<u>use²</u>				
<u>C B</u>	Registered medical marijuana dispensaries	Y	C	C
<u>C</u>	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
<u>C</u>	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
<u>O</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	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</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>
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 ~~bB~~ Board of ~~aA~~ 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

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 combination 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, 2007 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
C B	General business and professional offices, as defined in section 14-47, and offices of trades	Y	Y	Y
C B	Personal services, as defined in section 14-47	Y	Y	Y
C B	General retail establishments	Y	Y	Y
C B	Pharmacies with retail sales	Y	Y	Y
C B	Banking Facilities	Y	Y	Y
C B	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
C B	Drinking establishments, as defined in section 14-47 and bars as defined in section 14-217.5 (a)(1)	Y	Y	N
C B	Billiard parlors	Y	Y	Y
C B	Funeral homes	Y	Y	Y
C B	Miscellaneous repair services, excluding motor vehicle repair services	Y	Y	Y
C B	Communication studios or broadcast and receiving facilities	Y	Y	Y
C B	Health clubs and gymnasiums	Y	Y	Y
C B	Veterinary hospitals and clinics provided there is no outdoor kennel	Y	Y	Y
C B	Theaters and performance halls	Y	Y	Y
C B	Hotels, Motels and Inns	Y	Y	Y
C B	Bakeries, breweries, distilleries, <u>commercial kitchens</u> and similar uses with a retail component and with a total floor area, under 10,000 net sf.	Y	Y	Y
C B	Bakeries, breweries, distilleries, <u>commercial kitchens</u> and similar uses with a retail component and with a total floor area of, 10,000 net sf. or greater	Y	N	N
C B	Expansion of existing dairies	Y	Y	Y
C	Drive throughs associated with a permitted or conditional	C	C	C

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

	<u>use²</u>			
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</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>
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 ~~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. 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.

*Order 160-16/17
Feb 19 3-6-17
Feb 15 3-20-17*

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

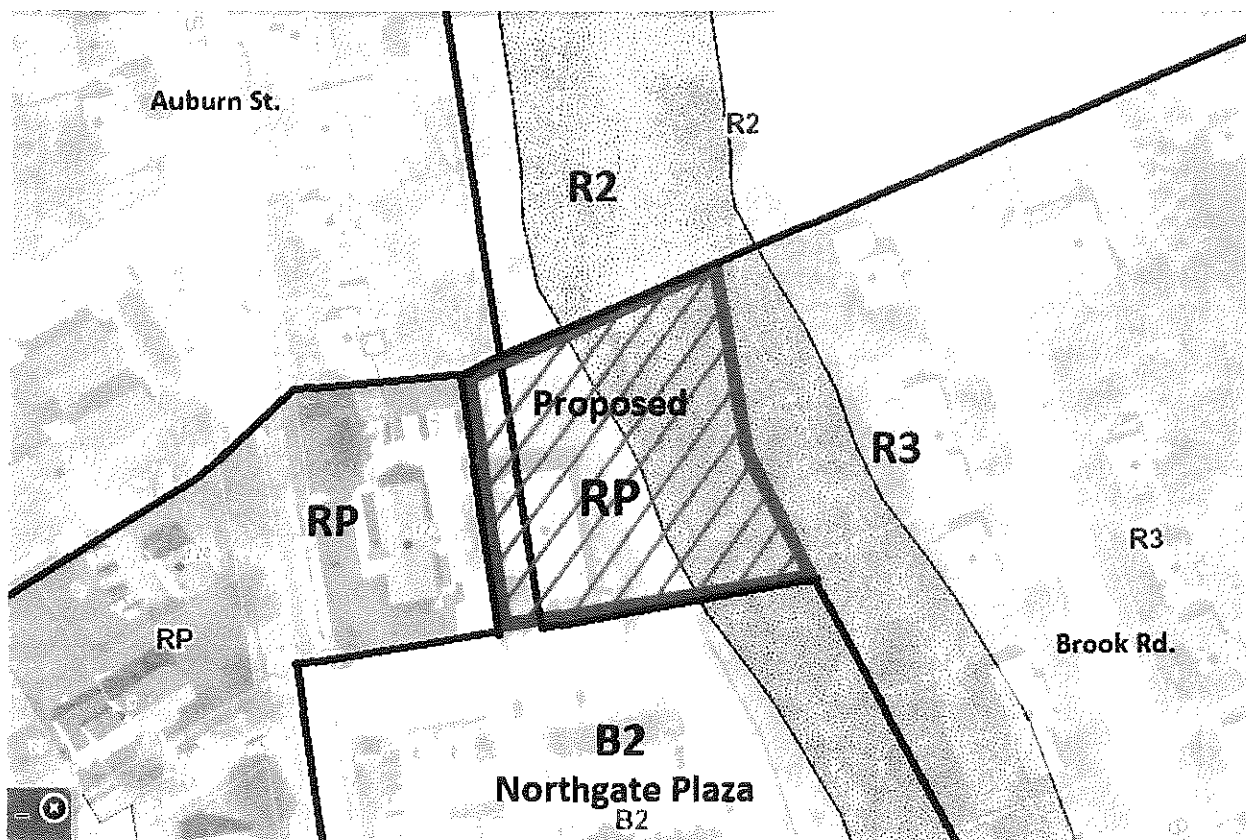
**CITY OF PORTLAND
IN THE CITY COUNCIL**

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
(updated re need for emergency action)

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: March 3, 2017 to update the one circulated 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 **And the Applicant has requested this be considered as EMERGENCY ACTION on March 20, 2017 to facilitate getting permits for immediate renovation.**

Can action be taken at a later date: Yes **X** 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.

The Applicant (Cloutiers) has requested this be considered as EMERGENCY ACTION at the Council's second reading to facilitate getting permits for immediate renovation.

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

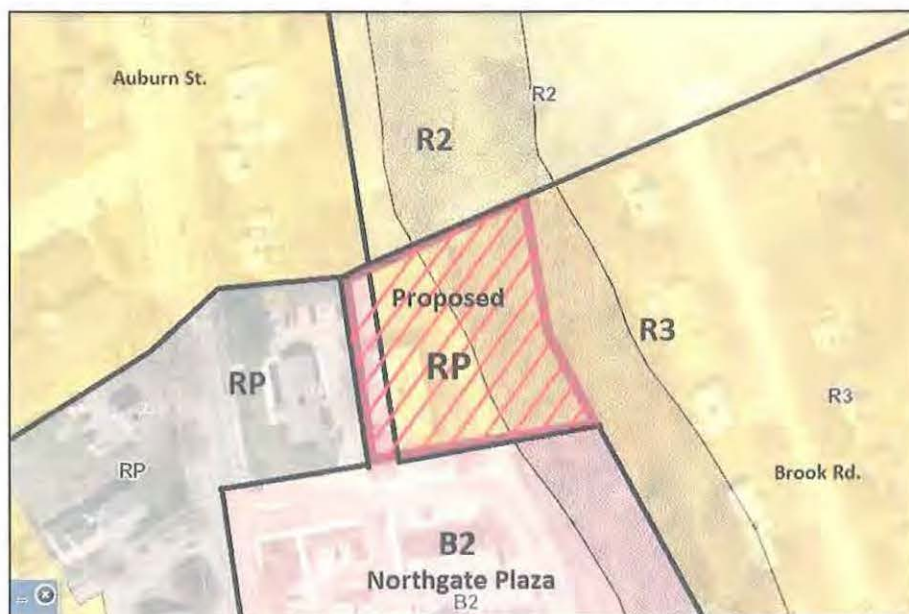
The parcel is located between the Northgate Shopping Plaza and the Lyman Moore school complex, with access from the signaled intersection that serves the rest of the Plaza. The parcel is mostly zoned R3, with a sliver of B2 and the eastern 2/3 is also in the Fall Brook Stream Protection Zone. The parcel 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 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.



VIII. LIST ATTACHMENTS

- A. Planning Board Report to City Council with Attachments (previously circulated)

Prepared by: Jean Fraser, Planner

Date: February 16, 2017, as updated March 3, 2017 regarding recent request from applicant for emergency action

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

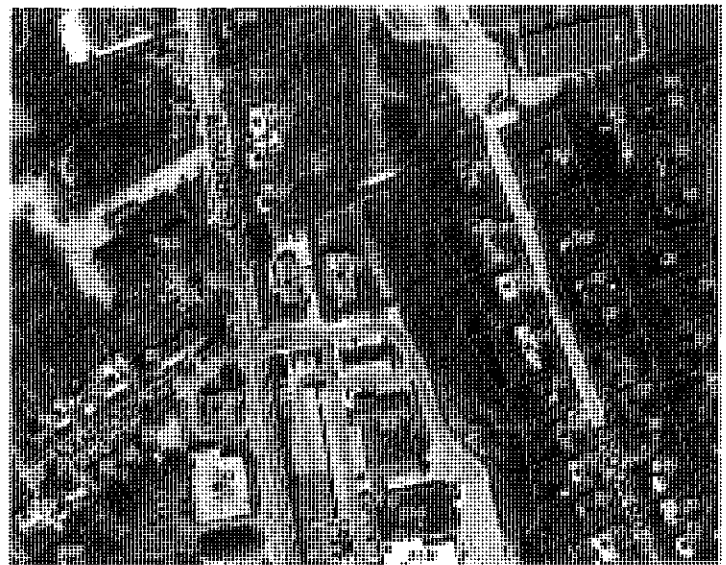
I. INTRODUCTION

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.



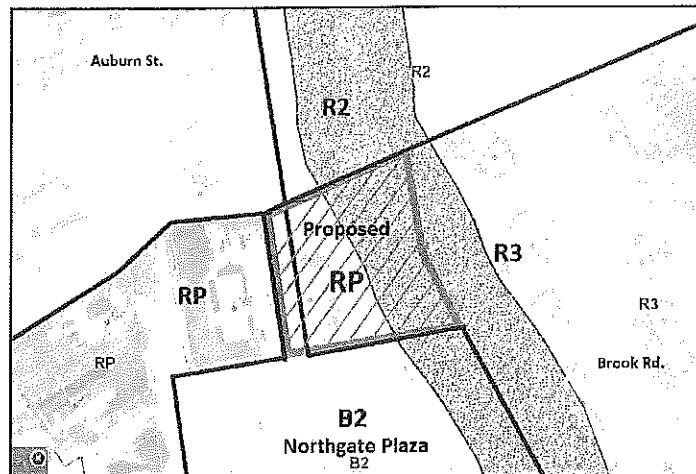
The building was constructed in 1980 and the zoning history is not conclusive. The map amendment is being pursued by the applicant as the only way to definitively confirm what uses are legally allowable in the existing building.

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.

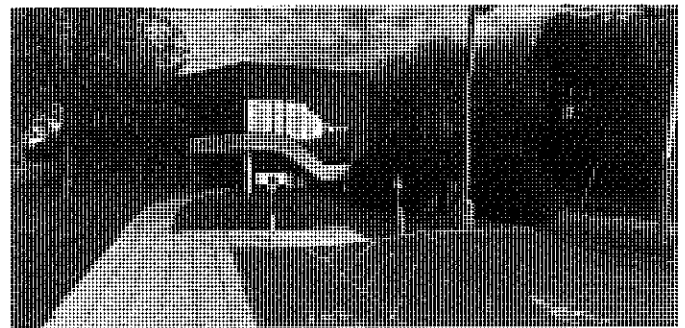


III. EXISTING CONDITIONS

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.



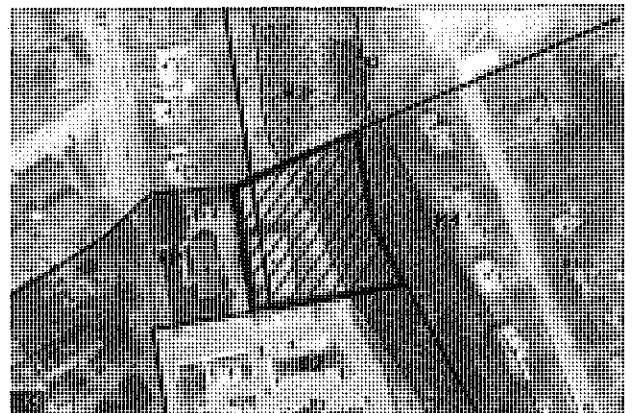
IV. PUBLIC COMMENT

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 <u>excluding</u> 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*

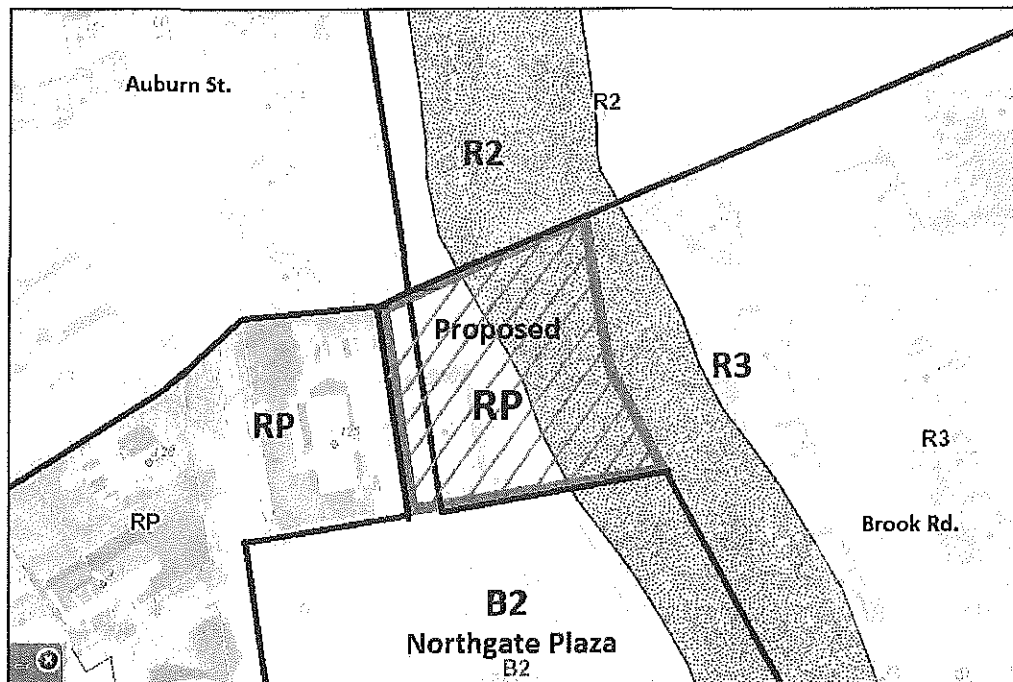
VIII. PLANNING BOARD RECOMMENDATION

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:

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- 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)

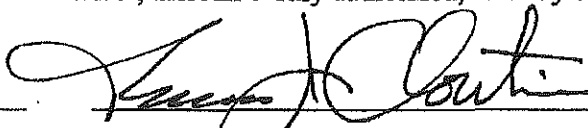
Third party review fees are assessed separately. Any outside reviews or analysis requested from the Applicant as part of the development review, are the responsibility of the Applicant and are separate from any application or invoice fees.

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.

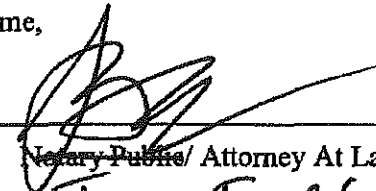
Witness

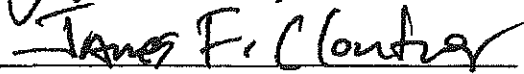

By: Thomas J. Cloutier
Its: Manager

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

[City](#)
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This page contains a detailed description of the Parcel ID you selected.

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[Applications](#)
[Doing Business](#)
[Maps](#)
[Tax Relief](#)
[Tax Roll](#)
[Q & A](#)
[browse city services a-z](#)
[browse facts and links a-z](#)


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

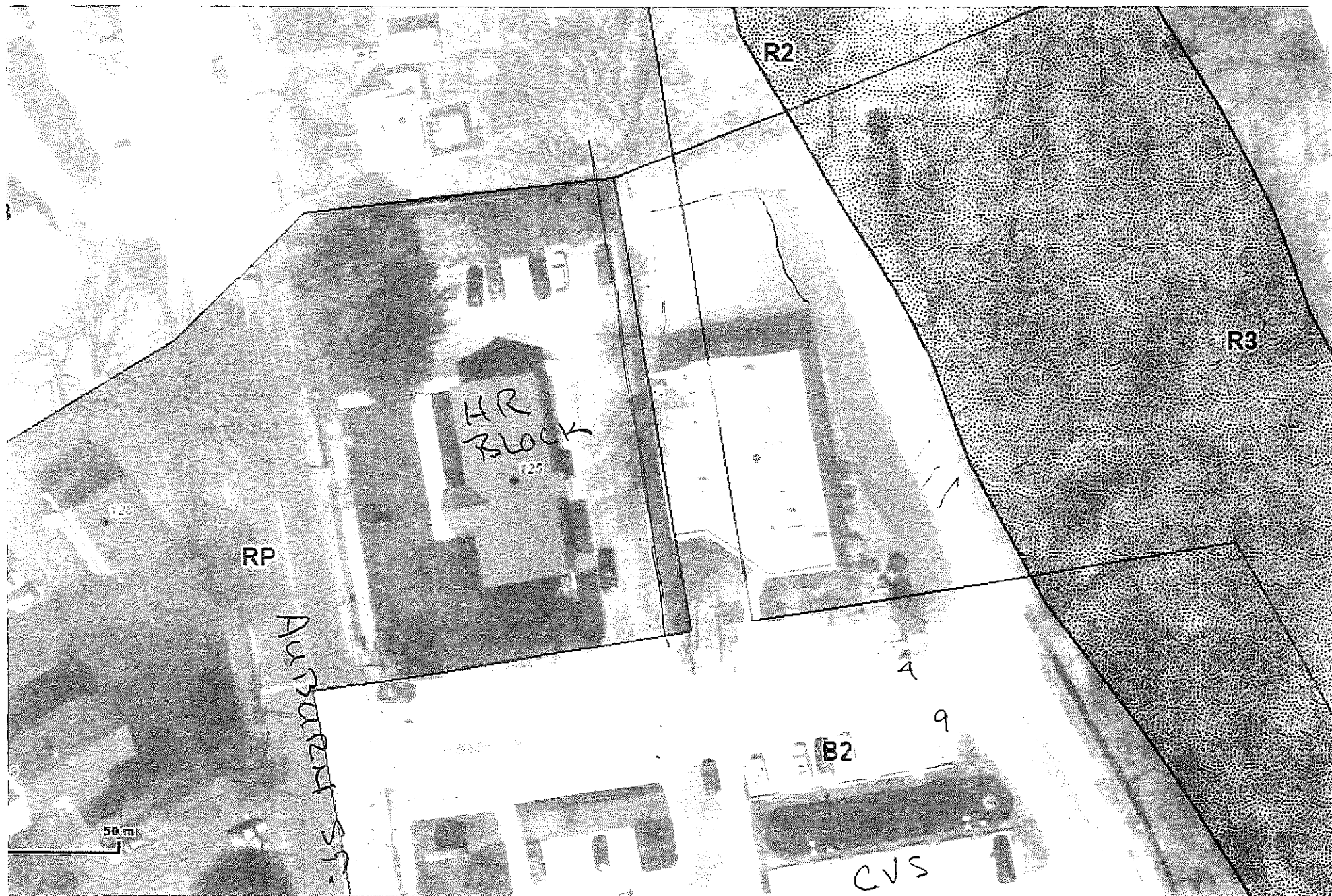
Outbuildings/Yard Improvements:

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

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FOR LEASE
MEDICAL OFFICE SPACE

AVAILABLE SPACE: 10,000 ± SF

LOCATION: Just off Washington Avenue with
easy access from I-295

CONSTRUCTION: Two-story brick building

PARKING: 35+ car-stops parking spaces

LEASE RATE: \$8.00/SF/NNN

117

**ALBURN
STREET**

PORTLAND, ME



FOR MORE INFORMATION CONTACT:



Charles W. Day, Broker
207.372.1333
207.871.1288
cday@cbre.com

CBRE | The Boulos Company

Part of the CBRE affiliate network.

Auburn St
H.R. Block Bldg

Parking

2 STORY
Bldg.

Driveway

ENTER

Landscaping

Parking

A
2
4
L

Firepost

LINE

↑
School

↓
C.S.



*Order 141-16/17
Tab 16 3-20-17*

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 SUBSTANTIAL AMENDMENT TO THE
FISCAL YEAR 2017 HOUSING AND URBAN DEVELOPMENT ANNUAL ACTION
PLAN RE: REALLOCATION TO
COMMUNITY DEVELOPMENT BLOCK GRANT FUNDING TO
STATE STREET PEDESTRIAN SAFETY IMPROVEMENTS**

ORDERED, that Community Development Block Grant funding allocated to Marginal Way, Bayside Roadway and Sidwalk Improvements under Order 91-15/16 as part of the Fiscal Year 2017 Housing and Urban Development Annual Action Plan in the amount of \$408, 861 is hereby reallocated to State Street Pedestrian Safety Improvements between Cumberland Avenue and Deering Oaks Park; 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: Planning and Urban Development Department

DATE: March 6th, 2017

SUBJECT: Substantial amendment to the FY16/17 CDBG allocation.

SPONSOR: Jon P. Jennings, City Manager

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st reading _____ Final Action 03/20/2017

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

Timeline of the public bid process does not allow for action to be taken at a later date.

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

I. ONE SENTENCE SUMMARY

Reallocate \$408,861 from the FY16/17 CDBG Marginal Way Sidewalk and Related Work project to the State Street Pedestrian Safety project

II. AGENDA DESCRIPTION

Funding allocated to Marginal Way/Bayside Improvements and Related Work via the 16/17 CDBG Program was intended to complement, and coordinate with, both the "MidTown" site development project Traffic Movement Permit requirements and the "Back Cove South" CSO conduit project along Marginal Way. Since the award of CDBG Streetscape funds, these Utility and Development projects have significantly altered course. We now recommend the best & highest use of these CDBG Streetscape funds will be to complement and coordinate with the City's CSO/sewer separation project along State Street and Marginal Way. This action would result in the highest likelihood for project completion this calendar year to meet HCD-HUD timeliness goals

III. BACKGROUND

CDBG 16/17 funds in the amount of \$408,861 were appropriated in CD1708 for "Phase 1" of the Marginal Way/Bayside Streetscape project. The application material stated goals for its use would be streetscape improvements concentrated on Marginal Way between Preble and Franklin Streets. *See Attachment 1.* The improvements themselves were to be based on the October 2016 recommendations from the "Bayside Transportation Master Plan" final report. Because these funds were awarded in July 2016, they are expected to be fully utilized by December 2017 to meet HUD timeliness goals. Design efforts have not yet commenced for

this project mainly due to significant timing alterations for the associated major initiatives named above.

Since the award of these CDBG funds, the MidTown development has been significantly delayed, and the strategy for the City's CSO abatement initiatives has changed course. Both projects are no longer viable within the CDBG funding use deadline period.

The City is pursuing a CSO abatement/sewer separation project along State Street and Marginal Way. *See Attachment 2.* Additionally, the City is pursuing goals related to a Safety Audit conducted by MaineDOT along State and High Streets. Staff had recommended FY18 CIP funding for necessary Streetscape improvements for this and other CSO projects; however it appears that those funds ("CSO ineligible") will not be fully funded.

Because the State Street-Marginal Way Sewer Separation Project is expected to be completed in the 2017 construction season and will include significant roadway construction, we highly recommend reallocating CD1708 funds into this project. Doing so will achieve many of the safety and accessibility goals laid out in the Safety Audit and previous needs assessments within Deering Oaks Park.

IV. INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED

To expend CDBG 16/17 funds allocated to pedestrian safety related work within the HUD timeline goals.

V. FINANCIAL IMPACT

If CDBG funds are not expended within the timeline provided to HUD, the City becomes at risk of losing those funds. By reallocating CD1708 funds to State Street, the State Street CSO/sewer separation project will have the necessary funding to complete pedestrian safety and related work. (*See Attachment 3*).

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

CDBG regulations require entitlement communities, like Portland, to carry out its CDBG activities in a timely manner. On May 2nd of each year, Portland cannot have more than 1.5 times our entitlement grant for the current program year in our CDBG Treasury account. If the Marginal Way project (CD708) is not reallocated to the State Street project, Portland may be in jeopardy of not meeting this timeliness deadline. Additionally, the CSO project is funded primarily by State Revolving Loan funds which cannot be used for these pedestrian system safety features. Absent the CDBG fund transfer this project would be unable to provide truly comprehensive public improvements.

VII. RECOMMENDATION

HCD Staff recommend the reallocation of CDBG 16/17 funds in the amount of \$408,861 from CD1708 Marginal Way/Bayside Roadway/Sidewalk Improvements and Related Work to State Street Pedestrian Safety and Related Work.

VIII. LIST ATTACHMENTS

Attachment 1: Location of Marginal Way project

Attachment 2. Location of proposed work

Attachment 3: Budget for State Street Pedestrian Safety and Related Work project

Prepared by: Kristin Styles

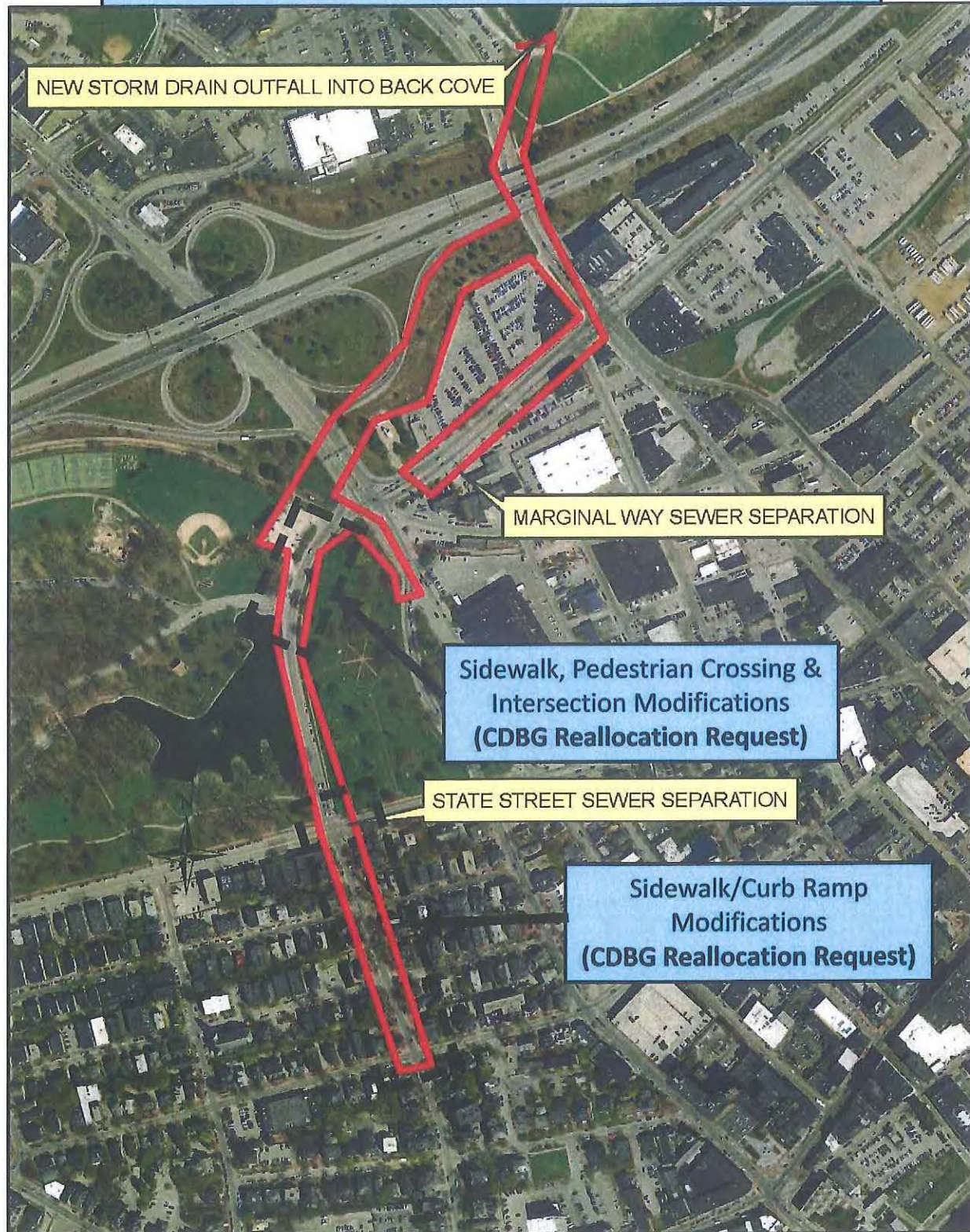
Date: 03/06/2017

**CDBG CD1708:
Marginal Way / Bayside Roadway / Sidewalk Improvements & Related Work**



State Street Pedestrian Safety, Sidewalk & Curb Ramp/ADA Accessibility Project

Attachment 2

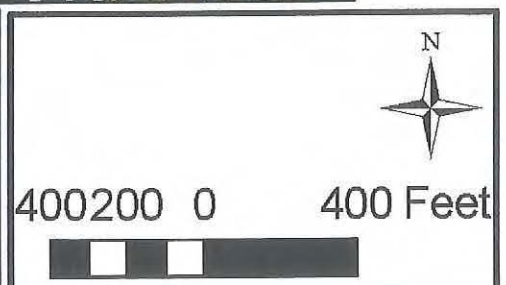


State Street, Marginal Way, Forest Avenue
Storm Drain

Aerial Location Map
FIGURE 1



FEBRUARY 2, 2017



State Street Pedestrian Safety, Sidewalk & Curb Ramp/ADA Accessibility Project



Job Number: 2835.21
 Project Location: Portland-State Street, Deering Oaks, Park Avenue, Grant Street, Sherman Street, Cumberland Avenue
 Comments: Pedestrian Improvements
 Date: 2/9/2017 OOC
 Calculated By: JWA
 Checked By:

- Notes:
1. Opinion of cost does not include Legal or Engineering Costs.
 2. Opinion of cost does not include the remediation or removal of any special or hazardous materials such as Asbestos, PCB's, etc.
 3. Opinion of cost does not include costs associated with right of way
 4. Opinion of cost does not include costs associated with wetlands
 5. Opinion of cost is based on MDOT unit prices and past Portland CSO bid prices.
 6. Opinion of cost does not include utility relocations
 7. Bio cell included in sewer separation opinion of cost
 8. Sidewalk from Forest Ave to Deering Oaks pedestrian improvements included in this opinion of cost.

Item	Item Description	Unit	Quantity	Unit Price	Amount
202.2	REM BITUMINOUS CONCRETE PAVEMENT	SY	561	\$ 6.00	\$ 3,366.67
203.20	COMMON EXCAVATION	CY	75	\$ 22.00	\$ 1,650.00
203.24	COMMON BORROW	CY	25	\$ 21.53	\$ 538.25
203.28	TEST PIT EXCAVATION	VF	6	\$ 75.00	\$ 450.00
304.09	AGGREGATE BASE COURSE - TYPE B	CY	406	\$ 39.00	\$ 15,840.32
403.207	HOT MIX ASPHALT 19 MM	T	153	\$ 144.00	\$ 22,015.10
608.15	BRICK SIDEWALK WITH BITUMINOUS BASE	SY	1305	\$ 130.00	\$ 169,693.33
608.27	CURB RAMP DETECTABLE WARNING FIELD	SF	340	\$ 78.00	\$ 26,520.00
609.11	TYPE 1 VERTICAL CURB	LF	689	\$ 40.00	\$ 27,560.00
609.12	TYPE 1 VERTICAL CURB (CIRCULAR)	LF	303	\$ 51.00	\$ 15,453.00
609.234	TERMINAL CURB TYPE 1, 4' LENGTH	EA	15	\$ 166.76	\$ 2,501.40
609.237	TERMINAL CURB TYPE 1, 7' LENGTH	EA	59	\$ 282.58	\$ 16,672.22
609.38	RESET TYPE 1 CURB	LF	157	\$ 26.00	\$ 4,082.00
609.441	CURBING REMOVED AND STACKED	LF	1007	\$ 10.00	\$ 10,070.00
615.071	LOAM, SEED, AND MULCH	SY	541	\$ 10.00	\$ 5,406.67
623.09	REMOVE AND RESET MONUMENT	EA	3	\$ 2,200.00	\$ 6,600.00
627.75	WHITE OR YELLOW PVMT AND CURB MARK	SF	2272	\$ 3.10	\$ 7,043.20
629.05	HAND LABOR, STRAIGHT TIME	HR	10	\$ 45.00	\$ 450.00
629.06	MASON, STRAIGHT TIME	HR	10	\$ 55.00	\$ 550.00
631.15	ROLLER EARTH BASE CRS (INC OP)	HR	10	\$ 90.00	\$ 900.00
631.12	ALL PURPOSE EXCAVATOR (INC OPERATOR)	HR	10	\$ 135.00	\$ 1,350.00
631.13	BULLDOZER (INCLUDING OPERATOR)	HR	10	\$ 95.00	\$ 950.00
631.172	TRUCK - LARGE (INCLUDING OPERATOR)	HR	10	\$ 70.00	\$ 700.00
631.22	FRONT END LOADER (INCLUDING OPERATOR)	HR	10	\$ 105.00	\$ 1,050.00
631.36	FOREPERSON	HR	10	\$ 60.00	\$ 600.00
636.01	SAWCUT	LF	130	\$ 3.00	\$ 390.00
643.62	RECTANGULAR RAPID FLASHING BEACON	EA	2	\$ 8,000.00	\$ 16,000.00
643.71	SIGNAL MODIFICATIONS FOR PEDESTRIAN CROSSING	EA	18	\$ 3,500.00	\$ 63,000.00
652.36	MAINTENANCE OF TRAFFIC CONTROL	LS	1	\$ 25,000.00	\$ 25,000.00
652.38	FLAGGER	HR	200	\$ 24.00	\$ 4,800.00
656.75	TEMPORARY SOIL EROSION AND WATER POLLUTION CONTROL	LS	1	\$ 10,000.00	\$ 10,000.00
				SUBTOTAL	\$ 461,202.16
				CONTINGENCY (10%)	\$ 46,120.22
				TOTAL	\$ 507,322.37

*Order 172-16/17
Feb 17 3-20-17*

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
PORTLAND COMPANY HISTORIC DISTRICT
AND THE MAP OF HISTORIC DISTRICTS**

ORDERED that, pursuant to Chapter 14, Section 622, the Portland City Council by Order 147-15/16 designated a portion of the former Portland Company complex at 58 Fore Street the Portland Company Historic District ("District"), and now hereby amends that designation by revising the boundaries of that District as shown in the attached map; and

BE IT FURTHER ORDERED, that the area of Building 12 remains as part of the Portland Company Historic District until such time that Building 12 is relocated within the District, and upon that relocation the area on which Building 12 had been located will be removed from the District.

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 7, 2017

SUBJECT: Amendment to Portland Company Historic District boundary

SPONSOR: Planning Board, upon recommendation of the Historic Preservation Board

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st reading na Final Action 3/20/17

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)

Planning Board Chair Elizabeth Boepple. 5-minute oral presentation

I. ONE SENTENCE SUMMARY

The Planning Board and Historic Preservation Board are recommending that the boundary of the Portland Company Historic District be amended to allow for the relocation of Building 12 to a location just outside the current boundary and abutting the western edge of the public access easement on site.

II. AGENDA DESCRIPTION

The Planning Board is recommending that the boundary of the Portland Company Historic District be amended to facilitate the relocation of Building 12 to a new location immediately abutting the western edge of the public access easement on the 58 Fore Street property. The boundary change will also create a single, contiguous district boundary. The boundary amendment was made at the request of property owner CPB2 to move Building 12 away from the future connector road linking Thames Street and Fore Street and closer to the other remaining historic Portland Company structures. The 58 Fore Street Master Development Plan recently approved by the Planning Board anticipated the relocation of Building 12 and amendment of the district boundaries. The relocation and boundary revision were recommended to the Planning Board by the Historic Preservation Board. The district boundary around Building 12's current footprint will be extinguished at such time the building is relocated.

III. BACKGROUND

The Portland Company Historic District as approved by the Council in February 2016 consists of two separate areas. The core of the district is comprised of six historic structures on the east side of the current entrance yard. The footprint of Building 12, which is physically separated from the core and located at the western property line, is also designated as part of the historic district. (See ATTACHMENT 1 for approved district boundaries.)

In developing their master development plan for 58 Fore Street, CPB2 determined that it would be desirable to relocate Building 12 to a position closer to the remaining historic buildings within the newly-designated Portland Company Historic District. The relocation was prompted by two factors. First, the future connector road linking Thames Street and Fore Street, which would immediately abut Building 12, would significantly impact Building 12, as the grade of the road would be well above the grade of the building. Second, given the fact that Building 12 in its current location would be surrounded by large-scale new development, the historical relationship between the building and the other Portland Company structures would no longer be evident. Relocating the building to a position immediately west of the proposed 50' public plaza and directly across from the other historic buildings would reinforce the historic connection between the remaining Portland Company structures.

Although moving historic structures is generally not encouraged, Portland's preservation ordinance includes a review process and criteria for considering proposals for relocation. After reviewing the particular circumstances of Building 12 and the likelihood of it being physically and visually stranded from the balance of the remaining Portland Company structures, the Historic Preservation Board determined that relocation was appropriate in this instance. The Board was also assured that the building could be structurally reinforced to survive the move. Another advantage of relocation in this instance is that the historic district can be consolidated into one contiguous area, consistent with best practices.

Because the optimal new location for the building is just outside the southern boundary of the historic district, the boundary must be amended to accommodate the move. As proposed, the boundary will be revised to include the future location and the current footprint of Building 12 will remain a part of the historic district until such time that the Building is moved.

The Planning Board supported the applicant's proposal and the Historic Preservation Board's analysis and is recommending approval of the district boundary amendment.

IV. INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED

The district boundary change and building relocation were integral to CPB2's recently approved Master Development Plan for 58 Fore Street. Both the Planning Board and

Historic Preservation Board found that the amendment was advantageous on two levels. First, the amendment would result in a single, contiguous historic district, which is consistent with National Park Service recommendations. Second, relocating Building 12 will ensure that the former pattern storehouse's historic relationship to other remaining Portland Company buildings is clearly evident. Left in its current position and surrounded by new development, it would be visually and physically separated from the core of the historic complex.

V. FINANCIAL IMPACT

Not applicable.

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

The proposed boundary amendment will facilitate implementation of CPB2's master development plan for its 58 Fore Street property and benefit the Portland Company Historic District by moving one of the key contributing structures closer to the core of the district.

VII. RECOMMENDATION

Staff recommends approval of boundary amendment.

VIII. LIST ATTACHMENTS

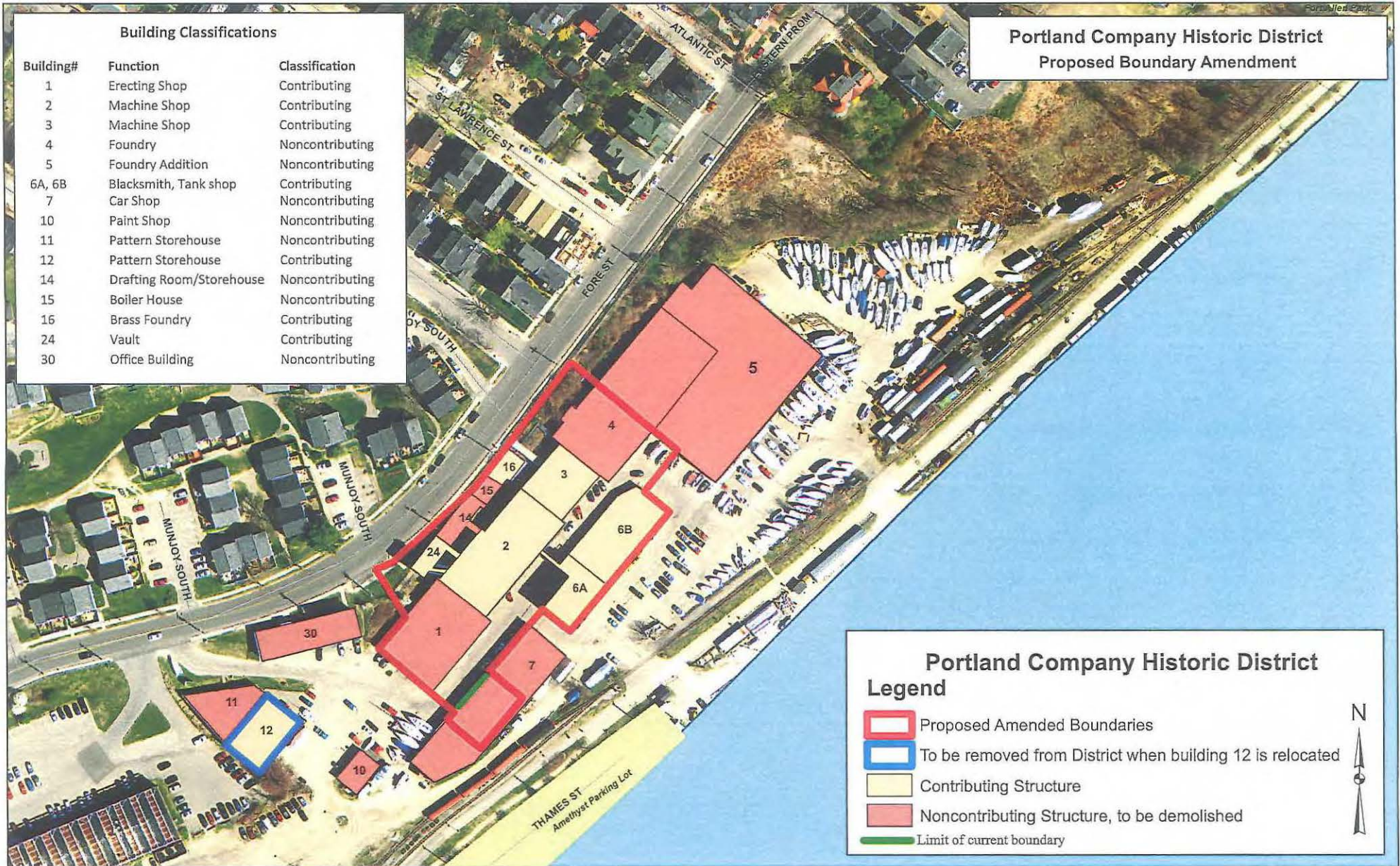
Prepared by: Deborah Andrews, Historic Preservation Program Manager

Date: February 8, 2017

Building Classifications

Building#	Function	Classification
1	Erecting Shop	Contributing
2	Machine Shop	Contributing
3	Machine Shop	Contributing
4	Foundry	Noncontributing
5	Foundry Addition	Noncontributing
6A, 6B	Blacksmith, Tank shop	Contributing
7	Car Shop	Noncontributing
10	Paint Shop	Noncontributing
11	Pattern Storehouse	Noncontributing
12	Pattern Storehouse	Contributing
14	Drafting Room/Storehouse	Noncontributing
15	Boiler House	Noncontributing
16	Brass Foundry	Contributing
24	Vault	Contributing
30	Office Building	Noncontributing

Portland Company Historic District Proposed Boundary Amendment



*Order 173-16/17
Tab 18 3-20-17*

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 ESTABLISHING THE DR. MARTIN LUTHER KING
RECOGNITION TASK FORCE**

WHEREAS, the life of Dr. Martin Luther King shines like a beacon of justice through the years that have followed his death, showing the world a way forward in the midst of racial strife; and

WHEREAS, the City Council of the City of Portland wishes to find a way to honor the life and legacy of Dr. Martin Luther King in the City of Portland, perhaps by renaming a street or a park in his honor;

THEREFORE, BE IT ORDERED, that the Dr. Martin Luther King Recognition Task Force is hereby established to consider how the life and legacy of the Civil Rights Leader Dr. Martin Luther King may be best acknowledged and recognized by the City of Portland; and

BE IT FURTHER ORDERED, that five to seven members including one City Councilor as chair shall be appointed to the Dr. Martin Luther King Recognition Task Force by the Mayor which as per the City Charter may be overridden by six votes of the City Council; and

BE IT FURTHER ORDERED, that the Dr. Martin Luther King Recognition Task Force shall report back to City Council's Energy and Sustainability Committee within 60 days of being appointed or at the latest by June, 2017, and formally present its recommendation to the City Council by August 31, 2017; however, the Task Force may request extension by the City Council of both dates, which request, if reasonable, shall not be denied; and

BE IT FURTHER ORDERED, that the Dr. Martin Luther King Recognition Task Force will terminate on December 31, 2017 unless its term is extended by order of the City Council, however the Task Force may request extension by the City Council of the termination date, which request, if reasonable, shall not be denied.

MEMORANDUM
City Council Agenda Item

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

FROM: Troy Moon, Sustainability Coordinator

DATE: 3/6/2017

SUBJECT: Dr. Martin Luther King Recognition Task Force

SPONSOR: Councilor Thibodeau, Chair of the Sustainability and Transportation Committee

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st reading _____ Final Action X

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

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

I. ONE SENTENCE SUMMARY:

This order creates a task force to recommend a means to recognize the memory of Dr. Martin Luther King, Jr.

II. AGENDA DESCRIPTION:

During their meeting on February 28, the Sustainability and Transportation committee voted (3-0) to ask the City Council to empanel a task force charged with recommending an appropriate way to honor the life and legacy of Dr. Martin Luther King, Jr. This group may consider naming or renaming a street or park but may also consider other means as they deem appropriate. The task force shall complete its work within 60 days and report its findings to the Sustainability and Transportation Committee in June. The task force shall be comprised of between 5 – 7 people and be chaired by a City Councilor.

III. BACKGROUND:

The City of Portland does not currently have a memorial or other means of recognizing the legacy of Dr. King. The Sustainability and Transportation Committee considered renaming Franklin Street in his honor during their meeting in February. After public comment, the committee members agreed to table this proposal and to recommend the creation of a task force that includes diverse community members in order to gather additional input. Any recommendations made by the task force shall come back to the Sustainability and

Transportation Committee for review. After considering the work of the task force, the Sustainability and Transportation Committee shall make a recommendation to the full City Council.

IV. INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED:

Approving the order will create a task force charged with recommending a way to honor the legacy of Dr. Martin Luther King, Jr.

V. FINANCIAL IMPACT:

None

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

VII. RECOMMENDATION:

Staff recommends approval of this order.

VIII. LIST ATTACHMENTS

Prepared by: Troy Moon, Sustainability Coordinator
Date: 3/6/2017

*Order 174-16/17
Feb 19 3-20-17*

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)

**TRAFFIC SCHEDULE AMENDMENT
RE: COVE STREET TO TWO-HOUR AND NO PARKING**

ORDERED, that the City of Portland's Traffic Schedule be and hereby is amended as follows:

By adding under Cove Street:

East Side, from a point 70 from Anderson Street to a point 170 feet from Anderson Street

➤ **Schedule XVIII** – 2 hour parking

East Side, from a point 170 from Anderson Street to a point 210 feet from Anderson Street

➤ **Schedule I** – No parking anytime

East Side, from a point 210 from Anderson Street to a point 410 feet from Anderson Street

➤ **Schedule XVIII** – 2 hour parking

East Side, from a point 410 from Anderson Street to a point 485 feet from Anderson Street

➤ **Schedule I** – No parking anytime

MEMORANDUM
City Council Agenda Item

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

FROM: Jeremiah Bartlett, PE, PTOE
Transportation Systems Engineer, Department of Public Works

CC: John Peverada, Parking Division
Mike Murray, Assistant to the City Manager
Christopher Branch, Director of Public Works
Kathi Earley, Engineering Manager, Public Works
Jeff Levine, Director of Planning & Urban Development

DATE: March 6, 2017

SUBJECT: Traffic Schedule Amendment: Convert Part of Cove Street to 2-Hour Parking

SPONSOR: Jon Jennings, City Manager

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st reading March 20, 2016 **Final Action:** April 5, 2016

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

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

I. ONE SENTENCE SUMMARY

The Department of Public Works requests City Council approval to amend the Traffic Schedule to convert 15 spaces along the east side of Cove Street (from Anderson Street to the northern extent of the Angela Adams frontage) from unrestricted parking to two-hour parking.

II. AGENDA DESCRIPTION

Cove Street is a street connecting Anderson Street to Marginal Way in the East Bayside neighborhood. The Council action would change the traffic schedule to make the east side of Cove Street from Anderson Street to the north end of the Angela Adams frontage, currently an unrestricted street, to a two hour parking street. (Please see Attachment 2 for a graphic of the affected area.

III. BACKGROUND

Changing land uses for businesses have driven a neighborhood desire for turnover parking, something Cove Street does not currently have.

IV. INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED

The intended result of this change is to provide parking turnover during the day, in support of a growing number of businesses that desire access to street parking. In addition, if this portion of a Cove Street change proves successful, future turnover proposals for additional parts of East Bayside may be brought forward for Council review.

V. FINANCIAL IMPACT

The financial impact will be staff time and the placement of signage along the street, approximately \$500 for staff time and another \$500 in materials related to signage, and Dig Safe fees from On Target.

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

The original request came from the owner of Portland Power Yoga at 84 Cove Street, and additional support has come from the owner of Angela Adams at 65-71 Cove Street.

VII. RECOMMENDATION

DPW staff, with concurrence from Parking Division, recommend this change.

VIII. LIST ATTACHMENTS

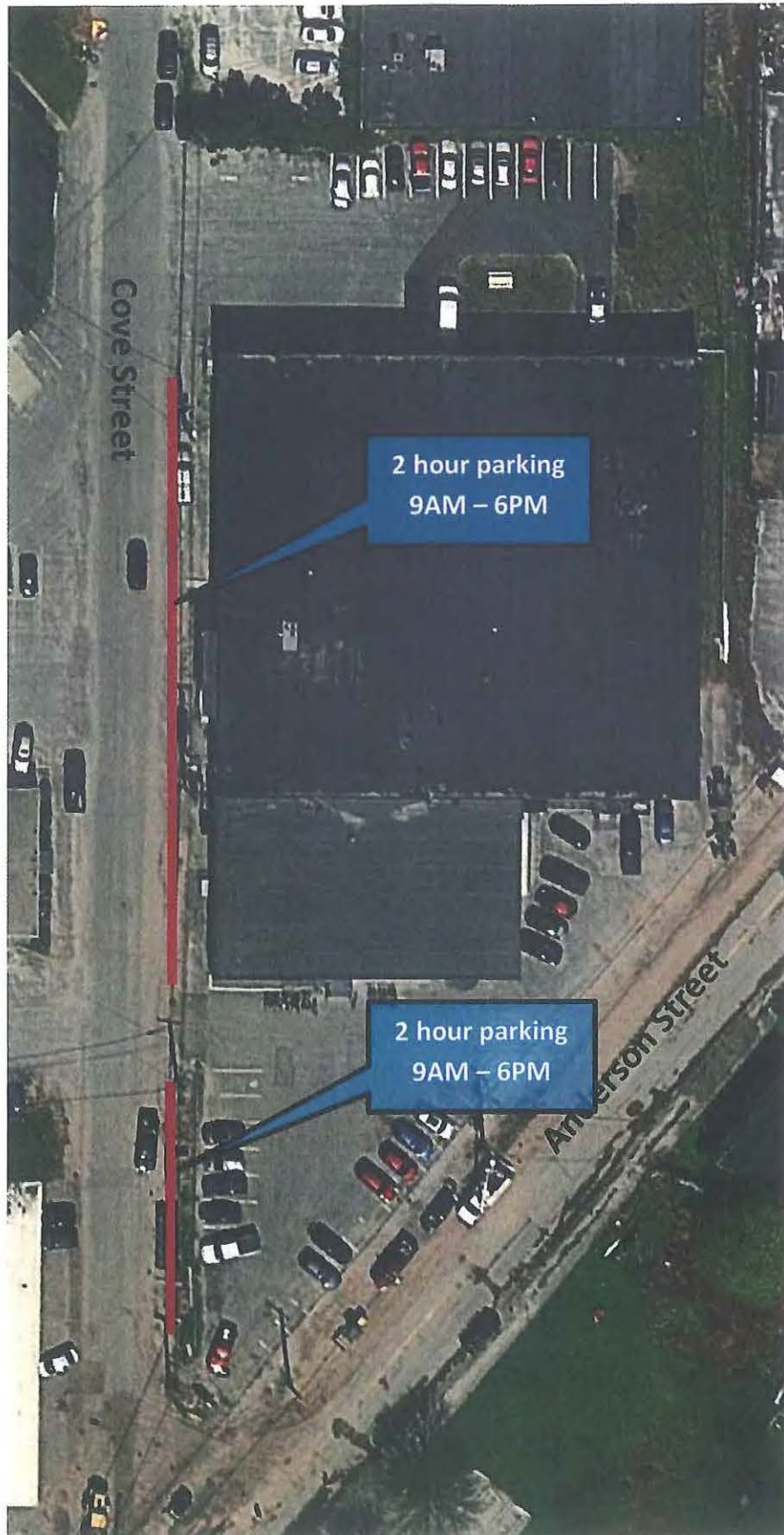
1. Draft Council Order
2. Graphic

Prepared by: Jeremiah Bartlett

Date: 3/06/17

O:\PWSHARE\City Council info and Agenda Requests\Agenda Requests\Cove Street Parking Change (2 hr)\Cove_Street_Parking_Change_Council_Agenda_3-06-2017.docx

Parking Change Proposed for Cove Street



*Order 175-16/17
Tab 20 3-20-17*

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 RIVERSIDE STREET UTILITY RECEIVABLE
AGREEMENT BETWEEN THE CITY OF PORTLAND AND
MAINE DEPARTMENT OF TRANSPORTATION**

ORDERED, that the two-party agreement between the City of Portland and the Maine Department of Transportation (MaineDOT), for City of Portland payment for sewer manhole frames and covers required during the Maine DOT Riverside Street paving project, is hereby approved; 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: Michael Farmer, Senior Engineer, Department of Public Works

DATE: March 7, 2017

SUBJECT: Maine Department of Transportation Utility Receivable Agreement - Riverside Street Paving Project

SPONSOR: Jon P. Jennings, City Manager
(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: 3/20/2017 **Final Action:** 4/5/2017

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

This agreement must be approved by City Council and signed by the City Manager by 4/19/2017 to allow Maine Department of Transportation (MaineDOT) to meet its target bid date and target construction start date for this project.

PRESENTATION: (List the presenter(s), type and length of presentation)
Not Applicable

I. ONE SENTENCE SUMMARY

City Council is being asked to approve this Utility Agreement and authorize the City Manager to sign it, which would allow MaineDOT to move ahead with its plans to pave Riverside Street between Brighton Avenue and the Home Depot Driveway in 2017.

II. AGENDA DESCRIPTION

This agreement, between MaineDOT and the City of Portland, obligates MaineDOT to adjust the City's sanitary sewer manhole frames and covers, as necessary, when MaineDOT's contractor paves Riverside Street. The agreement obligates the City to pay MaineDOT for the manhole frame and cover adjustment work, which is estimated to cost \$6,000.00.

III. BACKGROUND

The Riverside Street paving project is part of MaineDOT's 2017 work plan. The scope of work include milling and paving with a 1 ½ inch hot mix asphalt overlay. Construction work on this project is scheduled to begin after June 15, 2017 and be completed in 2017. This project is classified as a pavement preservation project on an arterial street. As such, MaineDOT will

pay 100% of the cost of paving. The City will be responsible for only the cost of making adjustments to its sanitary sewer facilities in the project area.

IV. INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED

The Riverside Street paving project will improve the pavement surface and ride quality on a regionally important arterial roadway. Federal and State funds will pay for 100% of the paving costs.

V. FINANCIAL IMPACT

The City is obligated to pay 100% of the cost of adjusting sanitary sewer manhole frames and covers in the project area. The cost of this work, estimated to be \$6,000.00, would be paid from a FY17 CIP account established for this project: C17513.

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

Arterial paving projects such as this one, where MaineDOT pays 100% of the paving costs, are one of the best alternatives for the City in terms of getting the most street paving done for the least expense of City funds.

A site plan for the Dirigo Plaza development was recently approved by the Portland Planning Board. The project area straddles the Portland-Westbrook municipal boundary just south of the intersection of Riverside Street and Brighton Avenue. The site plan approval requires the developer to prepare plans for specific street and sidewalk improvements to Riverside Street, gain approval of the plans, and construct the improvements. City staff and MaineDOT staff are engaged in ongoing communications with the developer's team of consultants to assist the developer in meeting these requirements before MaineDOT's contractor completes the Riverside Street paving project.

VII. RECOMMENDATION

The Department of Public Works recommends approving and signing the subject agreement to allow MaineDOT to pave Riverside Street (from Brighton Avenue to Home Depot's driveway) in 2017.

VIII. LIST ATTACHMENTS

MaineDOT Utility Receivable Agreement for WIN # 18791.00

Prepared by: Michael Farmer

Date: March 7, 2017

MaineDOT Use Only

TEDOCS #: _____
CT#: _____
CSN#: _____
Program: _____

MAINE DEPARTMENT OF TRANSPORTATION UTILITY RECEIVABLE AGREEMENT

(MaineDOT Use Only)

Project Location: <u>Portland</u>	Estimated Agreement Amount: \$ <u>\$6,000.00</u>
State WIN #: <u>18791.00</u>	Vendor Customer #: _____
Federal Aid Project #: <u>NHPP-1879(100)</u>	Agreement Begin Date: _____
	Forecasted Agreement End Date: <u>10/31/2017</u>

THIS AGREEMENT, in duplicate originals entered into the last date signed herein at the end of this agreement, between the **Maine Department Of Transportation** (hereafter the "Department") and **City of Portland**, duly authorized and existing under the Laws of the State of Maine and having an office in the **City of Portland** County of **Cumberland** (the "Utility") (the Department and the Utility are collectively referred to as the "Parties").

1. The Department is implementing a transportation project identified as Federal Aid Project Number NHPP-1879(100); WIN: 18791.00 (the "Project") for highway improvements in the City of Portland, Cumberland County;
2. In connection with the Project, the Department has prepared plans and specification for the Project that resulted in the following determination:

 X The Department has identified the locations of existing utility facilities owned and maintained by the Utility and lawfully installed within the limits of the public highway right-of-way and the impact limits of the Project that must be relocated to accommodate the Project (the "Affected Facilities");

 The Utility has expressed an interest in installing new utility facilities within the limits of the public highway right-of-way and the impact limits of the Project (the "Affected Facilities").

3. The Affected Facilities consist of Sewer System Manholes.
4. The Utility has prepared and provided to the Department the scope of work necessary for relocating or installing the Affected Utilities (the "Utility Work") and the estimated costs

associated therewith, which are outlined in **Appendix A**, attached hereto and made a part hereof. The costs associated with the Utility Work are the sole responsibility of the Utility.

5. The Parties wish to establish a process for including the Utility Work in the Department's construction contract for the Project.

NOW, THEREFORE, the Parties agree as follows:

6. Plans, Specifications and Estimate:

- a. The Utility shall, at its own expense, perform and provide all engineering, design and related services related to the Utility Work necessary to enable the Department and/or its consultant to generate construction plans, specifications and an estimate of material quantities for the Utility Work to be included in the Project contract. The Utility will be responsible for locating and recording the location of all Utility Work, including services and other appurtenances within the Project area. To the extent possible and consistent with laws, practices and policies of the Department and the industry, the Utility Work shall be performed in accordance with the plans and specifications provided by the Utility and, if applicable, the most recent version of the Department's Standard Specifications.
- b. All plans shall be on sheets of the same size used by the Department and be reproducible by black and white printing. Specifications shall be on 8 ½ x 11-inch paper, suitable for binding with the Department's specifications. The estimate of quantities shall be in the form prescribed by the Department. In the event of field changes to the Utility Work, the Utility shall prepare any additional plans and specifications and the Department shall prepare a Project change order and amend this Agreement incorporating any changes therein. All plans and specifications will be marked with the Federal Aid Project Number referenced in this Agreement.
- c. The Utility will provide the Department with the plans, specifications and an updated estimate as described in Appendix A no later than one month prior to the scheduled advertise date for the Project.
- d. The Utility shall be responsible for obtaining a Utility Location Permit from the Department in accordance with Title 35-A M.R.S.A. Chapter 25 and for recording the location of all utilities in a manner and form to be specified by the Department.
- e. **Standard Approach:** The Department will prepare the Project contract documents to include the Utility Work specified in Appendix A. The Utility agrees to have these items included in the Department's Project construction contract. Bidders will be required to bid both the Project work and the Utility Work. The Utility Work will be paid for by the Utility, and any changes that increase the Utility Work estimate or

amount will be paid for through a written modification of this agreement approved by both the Utility and the Department.

7. Inspection:

- a. The Utility shall be responsible for providing all engineering and inspection associated with the Utility Work including computing quantities for payment and other incidental and related work unless otherwise stated herein. By the end of each work day, whenever Utility Work is performed, the Utility will provide the Department's on-site representative with an itemized summary of all the Utility Work completed.
- b. The Department shall provide inspection of the quality and compaction of backfill installed in connection with the construction contract, excluding bedding and other special backfills and materials used in the installation of the Utility Work.
- c. If the Utility Work is included in the Project contract pursuant to Section 6.e. above, the Utility agrees to the following:
 - i. Should the Utility find the Project contractor's materials or workmanship to be insufficient in any way, the Utility agrees to inform the Department's on-site representative as soon as possible, but no later than the end of the day in which the problem is identified.
 - ii. As administrator to the construction contract, the Department's on-site representative shall be responsible for authorizing all payments relating to the Utility Work, issuing all directives to the Project's contractor and making the final determination in the event of any disagreements.

8. Ownership of Completed Utilities: Upon completion of the Utility Work the Utility shall assume complete ownership of, and responsibility for, the utility facilities installed in connection with the Utility Work.

9. Claims: The Utility shall be responsible for the prompt review and settlement of any claims arising from or related to the Utility Work or its impact on the Project.

10. Indemnification: The Utility shall indemnify, defend and hold harmless the Department and its officers, employees, agents and assigns, from and against any and all claims, liability or expenses, including but not limited to reasonable attorney's fees and litigation costs (the "Claims"), to the extent such Claims are caused, or alleged to have been caused, by acts or omissions of the Utility or any of its officers, employees, agents, representatives, supervisors, contractors, subcontractors or consultants in connection with the performance of its obligations under this Agreement. Nothing in this Agreement is intended or shall be construed to waive any defense, immunity or limitation of liability that may be available to

the Department or the Utility pursuant to the Maine Tort Claims Act (14 M.R.S. § 8101 *et seq.*) or any other privileges or immunities provided by law. The terms outlined in this section shall survive any termination or expiration of this Agreement.

11. **Buy America Requirements:** This agreement is subject to the requirements of Buy America in accordance with Federal Regulation 23 CFR 635.410 Section 1518. Specific requirements are presented in MaineDOT Standard Specification Section 100, Appendix A, Section 3.A., Buy America which are incorporated and made a part hereof by reference.
12. **Subsequent Excavations and/or Installations:** Except in the case of an emergency, the Utility acknowledges and agrees to refrain from applying for a permit for the excavation of the highway within the limits of the Project for a period of at least **(3)** years following the completion of the Project, and agrees to make all necessary notifications to abutters and occupants of the highway as otherwise required of any municipal government under the provisions of 23 M.R.S.A. § 3351. In all cases, whether an excavation moratorium as described above applies, or as in the case of Light Capital Paving projects where no excavation moratorium applies, the Utility further acknowledges and agrees that all subsequent excavations and/or installations within the right-of-way of the Project limits shall be regulated and controlled in the manner specified by the most recent version of the Department's "*Utility Accommodation Rules*", which are incorporated and made a part hereof by reference. The terms outlined in this section shall survive any termination or expiration of this Agreement.
13. **Non-Appropriation and Termination:** Anything herein to the contrary notwithstanding, the Utility acknowledges and agrees that, although the execution of this Agreement by the Department manifests the Department's intent to honor its terms and to seek funding to fulfill any obligations arising hereunder, by law any such obligations are subject to available budgetary appropriations by the Maine Legislature and, therefore, this Agreement does not create any obligation on behalf of the Department in excess of such appropriations. In the event of unanticipated impacts on the Project, such as, changes in the Project design, or a loss in Project funding, or a delay in advertising or awarding of the contract, the Department may postpone, suspend, abandon or otherwise terminate this Agreement upon thirty (30) days written notice to the Utility and in no event shall any such action be deemed a breach of contract.
14. **Payment:** If the Utility Work is included in the Project contract pursuant to Section 6.e. above, the Utility agrees to reimburse the Department for the full amount of the cost of the utility work. A detailed breakdown of the anticipated cost of the Utility Work is attached hereto and incorporated herein as Appendix A. The Department will issue a final invoice after all the Utility Work is complete, all quantities are verified and any required adjustments have been made. The Department, at its sole discretion, may issue periodic invoices for portions of the Utility Work as it is being completed. The final invoice will include any

remaining costs or credits. The Utility shall submit payment to the Department within 30 days from the invoice date.

15. Contact Information:

For the Department:

Name: David Lycette
Address: Maine DOT
16 State House Station
Augusta, ME 04333
E-mail: david.lycette@maine.gov
Telephone: (207) 592-1378

For the Utility:

Name: Michael Farmer
Address: Department of Public Services
55 Portland Street
Portland, ME 04101
E-mail: mfarmer@portlandmaine.gov
Telephone: (207) 874-8845

16. No Relief of Responsibilities: Nothing in this agreement is intended, nor shall be interpreted, to relieve the Utility of any responsibilities or duties imposed upon it by law.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement in duplicate on the day and year first above written by its duly authorized representatives.

IN THE PRESENCE OF:

CITY OF PORTLAND

Witness

By: _____

Print Name: _____

Title: _____
Duly Authorized

DATE: _____

**STATE OF MAINE
DEPARTMENT OF TRANSPORTATION**

Witness

By: _____

Print Name: _____

Title: _____
Duly Authorized

DATE: _____

APPENDIX A
PROJECT SCOPE

MAINE DEPARTMENT OF TRANSPORTATION
UTILITY RECEIVABLE AGREEMENT

CITY OF PORTLAND – DEPARTMENT OF PUBLIC SERVICES

FEDERAL AID PROJECT NO. **NHPP-1879(100)**
STATE PROJECT IDENTIFICATION NUMBER (WIN) **18791.00**

Project Scope: Lower all sewer manholes on the project if needed for milling and raise all sewer manholes on the project after shim to match new final surface paving.

ESTIMATE OF UTILITY WORK:

Item #	Pay Item	Estimated Quantity /Unit	Unit Price	Utility Cost
812.162	Adjusting Sewer Manhole to Grade	6 Each	\$1,000.00	\$6,000.00
		Total Cost:		\$6,000.00

ESTIMATED PAYMENT SCHEDULE:

Utility	Payment Amount	Estimated Invoice Date
City of Portland	\$6,000.00	After utility work is complete. On or after 6/15/2017.

*Order 176-16/17
Feb 21 3:20-17*

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: FRANKLIN STREET AND MARGINAL WAY BAYSIDE TRAIL ENHANCEMENT**

ORDERED, that the two-party agreement between the Maine Department of Transportation and the City of Portland, for design and construction of the Franklin Street and Marginal Way Bayside Trail Enhancement 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: Bruce Hyman, Transportation Program Manager

DATE: March 6, 2017

SUBJECT: Municipal State Agreement (WIN 18364.01) – Planet Dog/Franklin-Marginal Pathway Enhancement

SPONSOR: Jon Jennings, City Manager
(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 3/20/17 Final Action 3/27/17

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

Bidding the project in late May/early June for construction in 2017 necessitates having up to two full months (April and May) for design and bid package preparation.

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

None anticipated.

I. ONE SENTENCE SUMMARY

This project will construct a pathway enhancement to increase the usability and attractiveness of the Bayside Trail along Planet Dog at the Marginal Way/Franklin Street intersection using disbursements from the Bayside Trail Endowment Fund for the 20% (\$24,400) local match of federal and MaineDOT funding (80%, \$97,600).

II. AGENDA DESCRIPTION

Passage of the council order authorizes the City Manager to sign the Municipal-State Agreement (WIN 18364.01) with the MaineDOT for up to \$122,000 for enhancements to the Bayside Trail. Local match (20%, \$24,400) will be provided from the Bayside Trail Endowment.

III. BACKGROUND

The council passed an order in 2013 that funded the preliminary design and right-of-way acquisition needed for the project by the MaineDOT. This new agreement authorizes the final design, bid package preparation and construction. The project will widen the current sidewalk from 5' to create an 11' shared use pathway from the intersection and redesign the corner and curb ramps to achieve ADA-accessibility.

IV. INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED

This projects will significantly improve the usability and attractiveness of the Bayside Trail along Planet Dog at the Marginal Way/Franklin Street intersection, implementing activities that will help achieve the city's livability and sustainability goals.

V. FINANCIAL IMPACT

The local match (up to \$24,400) will be drawn from non-general revenue funds in the Bayside Trail endowment. The Bayside Trail Endowment was established in 2011 with \$500,000 in funds from the Trust for Public Land and is administered by the Maine Community Foundation. The City gets an annual disbursement of approximately \$21,000 with the current balance of the funds that have been disbursed to the city for its use totaling approximately \$71,000.

The endowment fund's proceeds are "... for the exclusive purposes of

(i) operating, maintaining, repairing, replacing and/or enhancing that certain 1.2 mile greenway commencing at the junction of the Back Cove, Eastern Prom and Loring Memorial Trails ("the current Bayside Trail") and/or

(ii) designing, constructing, installing, operating, maintaining, repairing, replacing and/or enhancing any future extension of the Bayside Trail which would connect said trail to Deering Oaks Park....".

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

This projects will significantly improve the functionality and attractiveness of this important pedestrian-way and bikeway location on the Bayside Trail. The current crossing is poorly configured and is not ADA-compliant.

VII. RECOMMENDATION

Staff recommend approval of the Municipal State Agreement.

VIII. LIST ATTACHMENTS

#1. Planet Dog at Marginal Way- Franklin Street-Bayside Trail enhancement preliminary design graphic by Ransom Consulting.

Prepared by: Bruce Hyman, Transportation Program Manager, Dept. of Planning and Urban Development

Date: March 6, 2017



MaineDOT use only

AMS ID: _____
CSN: _____
TEDOCS #: _____

MAINE DEPARTMENT OF TRANSPORTATION
Agreement for a Federal-aid Locally Administered Project
With the
City of Portland
Regarding
Improvements to the Bayside Trail: WIN 018364.01

Upset Limit: \$122,000	Federal Project #: TAP-1836(401)
Federal Share: \$97,600	Federal Award Date: August 22, 2016
Municipal Share: \$24,400	Portland's Vendor ID: VC1000073476
Effective Date: _____	Portland's DUNS® #: 07-174-7802
Expiration Date: _____	CFDA #20.205: Highway Planning & Construction

This Agreement for a Federal-aid Project to connect the Bayside Trail to a crosswalk at Marginal Way in Portland, Maine ("the **Project**") is between the Maine Department of Transportation, an agency of the State of Maine with headquarters at 24 Child Street in Augusta, Maine ("**MaineDOT**") and the City of Portland, a body corporate and politic with its primary offices at 389 Congress Street in Portland, Maine ("the **City**").

This Agreement contains the following attachments:

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

WHEREAS, preliminary engineering and right-of-way work necessary for the **Project** were performed under a separate agreement – CTM20130711000000000045 / CSN 31851; and

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

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

ARTICLE 1. ROLES AND RESPONSIBILITIES

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

- ☐ The following employee of the **City** shall serve as Local Project Administrator:

Name: Bruce Hyman, Transportation Program Manager
Phone: (207) 874-8717
Email: bhyman@portlandmaine.gov

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

☐ **MaineDOT** has assigned the following individual to serve as Project Manager:

Name: John Rodrigue
Email Address: john.rodrigue@maine.gov
Phone Number: (207) 592-0428

ARTICLE 2. PROJECT FINANCES

2A. UPSET LIMIT. The estimated total cost of the **Project** is **\$122,000** ("Upset Limit.") **Project** costs eligible for federal financial participation shall not exceed this Upset Limit without **MaineDOT's** written approval, through an executed modification to this Agreement.

2B. FEDERAL SHARE. **MaineDOT**, with Transportation Alternatives funding from the Federal Highway Administration ("FHWA"), will share in all **Project** costs eligible for such federal participation at the rate of **80%**, up to a maximum contribution at this rate of **\$97,600**.

2C. LOCAL SHARE. The **City**, with funding other than from the U.S. Department of Transportation, shall share in all **Project** costs eligible for federal participation at the rate of **20%**, or an estimated **\$24,400**. The **City** shall be fully responsible for all expenditures:

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

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

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

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

6. Payment of the final invoice from the **City** shall be contingent upon a final inspection of the completed **Project** to determine the acceptability of the work.

2F. FINAL COST. If the final cost of the **Project** is less than the Upset Limit in Article 2A, reimbursement to the **City** will be capped at the percentage of actual costs in Article 2B, "Federal Share." The **City** shall refund any overpayment to **MaineDOT**.

2G. REPAYMENT. If the **City** withdraws from the **Project**, leading to termination of this Agreement for cause, the **City** shall refund all invoice payments from **MaineDOT** and reimburse **MaineDOT** fully for costs incurred for work in the **Project**.

2H. SET-OFF. **MaineDOT** will have the option to exercise its common law, equitable and statutory rights of set-off to recover payment made to the **City** for work later deemed ineligible for federal funding. These rights will include, but will not be limited to, **MaineDOT's** option to withhold money owed to the **City** under this Agreement and any other agreement with **MaineDOT** or any other agency of the State of Maine, including any contract starting before the effective date of this Agreement.

ARTICLE 3. PROJECT DEVELOPMENT

3A. SCOPE OF WORK. This Agreement shall apply to a **Project** consisting of final design, construction and construction engineering work for pedestrian safety improvements to connect the Bayside Trail to a crosswalk at Marginal Way. Any substantial change shall require **MaineDOT's** written approval to be eligible for financial assistance from **MaineDOT**.

3B. AUTHORIZATION. The **City** shall receive written notice to proceed from **MaineDOT** before starting any reimbursable work on the **Project** under this Agreement.

3C. PROGRESS REPORTS. The **City** shall provide **MaineDOT** with regular progress reports at intervals established by **MaineDOT's** Project Manager.

3D. CONSULTANT SERVICES. If the **City** intends to contract for consultant services under this Agreement, the **City** shall:

1. Use a qualifications-based selection method and not the lowest price. Using price as a selection factor will render consultant work on the **Project** ineligible for federal funding.
2. Obtain the **MaineDOT** Project Manager's written approval before awarding a contract.
3. Incorporate "Consultant General Conditions for Local Public Agencies" into contracts.
4. Obtain **MaineDOT's** written approval before modifying a contract. Work that is performed on a consultant contract outside of the original scope of work without an approved and executed modification in place shall be ineligible for reimbursement.
5. Evaluate the performance of its consultant upon completion of the contract in accordance Section 2.10 of the LPA Manual, "Consultant Evaluations."

3E. DESIGN WORK. Design plans, specifications, estimates and contract documents for the **Project** shall be developed in accordance with **MaineDOT's** *Engineering Instructions*, *Highway Design Guide*, *Standard Specifications* and *Standard Details*, as applicable.

1. The **City** shall submit the final plans, specifications and estimate (PS&E) to **MaineDOT** for review and acceptance.
2. The **City** shall address to **MaineDOT's** satisfaction all changes requested or concerns expressed before **MaineDOT** will authorize the **City** to advertise for construction bids. Advertising for bids or proceeding to the construction stage without **MaineDOT's** written authorization shall render the entire **Project** *ineligible* for federal funding.
3. **MaineDOT's** acceptance of the final PS&E package shall not relieve the Engineer of Record, whether a **Municipal** employee or consultant, of responsibility for the quality of the engineering documents for the **Project**.

3F. ENVIRONMENTAL REVIEW. The National Environmental Policy Act ("NEPA") process was completed under WIN 018364.00, and that work was part of a separate contract, CTM20130711000000000045 / CSN 31851.

3G. PERMITS. The **City** shall obtain all approvals, permits and licenses for the **Project**. The **City** shall provide **MaineDOT** with copies of all such documents and an environmental certification in the format shown in Communication 12 of the LPA Manual, as part of the final PS&E package for the **Project**.

3H. UTILITIES. The **City** shall coordinate the **Project** with any utility and railroad that may be affected. The **City** shall provide **MaineDOT** with a utility certification in the format shown in Communication 13 of the LPA Manual, as part of the final PS&E package. **MaineDOT's** Utility Accommodation Rules (2014) shall apply to required utility relocations.

3I. RIGHT OF WAY. All right-of-way acquisitions required for the **Project** were completed under **MaineDOT** WIN 018364.00, and that work was part of a separate contract, CTM20130711000000000045 / CSN 31851.

3J. SOLICITATION OF BIDS. Upon written authorization from **MaineDOT**, the **City** shall advertise for competitive bids, as follows:

1. The **City** shall follow the procedures in **MaineDOT's** Standard Specifications (November 2014 Edition), Section 102, "Bidding."
2. The **City** shall submit bid tabulations to **MaineDOT** for review and shall obtain **MaineDOT's** written approval before awarding a contract.
3. The **City** shall ensure that the **Project** contract book contains the following documents:
 - a. Davis-Bacon prevailing wage rates;
 - b. Form FHWA 1273 (Appendix A to Division 100: Section 1, Bidding Provisions); and
 - c. Signed Title VI Assurances.

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

3L. 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 a set of revised as-built plans within 90 days of completion of construction.

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

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

ARTICLE 4 – TERMINATION

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

1. **MaineDOT** shall recover from the **City** all reimbursements made and costs incurred for work on the terminated **Project**.
2. **MaineDOT** shall be held harmless against any claim of breach of contract filed against the **City** by any third party in accordance with Article 6B, "Indemnification."
3. The **City** shall forfeit all federal funds remaining in the terminated **Project**.

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

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

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

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

ARTICLE 5 – RECORDS & AUDIT

- 5A. **Project** records are printed or electronic plans, specifications, contracts, reports, notes, or other documents prepared by or for the **City**. The **City** shall retain all such records for at least **5 years** from the date either of **MaineDOT's** acceptance of the final invoice for the **Project** or the termination of this Agreement. If any litigation, claim, negotiation or audit has begun before the end of this **5-year** period, all **Project** records shall be kept at least until all issues arising from any such action are resolved.
- 5B. The **City** and any consultant or contractor working on its behalf shall allow authorized representatives of the Federal Government and the State of Maine to inspect and audit **Project** records at reasonable times. Copies shall be furnished at no cost to the Federal Government or to the State of Maine.
- 5C. Audits shall be performed in accordance with generally accepted government auditing standards and federal regulation 2 CFR, Section 200, Subpart F - "Audit Requirements."

ARTICLE 6. GENERAL PROVISIONS

- 6A. GOVERNING LAW. The laws of the State of Maine shall govern this Agreement. Additionally, the **Parties** shall comply with all federal regulations that apply to the **Project**, including but not limited to 23 CFR, "Highways"; 49 CFR, "Transportation"; and 2 CFR, Section 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards."
- 6B. CONFIDENTIALITY. The **City** shall protect the confidentiality of right-of-way negotiations, property appraisals, and engineering estimates of the construction cost in accordance with the provisions of Title 23 of the Maine Revised Statutes Annotated (MRSA), Section 63: "Confidentiality of Records."
- 6C. INDEMNIFICATION. To the extent allowed by law, the **City** shall indemnify, defend and hold harmless **MaineDOT**, its officers, agents and employees from all claims, suits or liabilities arising from negligent or wrongful act, error or omission by the **City**, its officers, employees, agents, consultants or contractors. Nothing in this article shall waive any defense, immunity or limitation of liability that may be available to either party under the Maine Tort Claims Act (14 M.R.S. Section 8101 et seq.) or other privileges or immunities provided by law. *Any other provision of this Agreement to the contrary notwithstanding, this provision shall survive the termination or expiration of this Agreement.*
- 6D. INDEPENDENT CAPACITY. The **City**, its employees, agents, representatives, consultants and contractors *shall not* act as officers, employees or agents of **MaineDOT**.

- 6E. **EQUAL EMPLOYMENT OPPORTUNITY.** The **City** and all consultants and contractors hired pursuant to this Agreement shall not discriminate against any employee or applicant for employment because of race, color, religious creed, sex, national origin, ancestry, age, sexual orientation or disability unless related to a bona fide occupational qualification. The **City** and all consultants and contractors hired pursuant to this Agreement shall take affirmative action to ensure that all such applicants are employed and that all such employees are treated regardless of their race, color, religious creed, sex, national origin, ancestry, age, sexual orientation or disability during any period of employment under this Agreement.
- 6F. **FLOW DOWN.** Contracts between the **City** and all third parties shall contain or incorporate by reference applicable provisions of this Agreement.
- 6G. **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.
- 6H. **ENTIRE AGREEMENT.** This document represents the entire Agreement between the **Parties**. Neither **MaineDOT** nor the **City** shall be bound by any statement, correspondence, agreement or representation not expressly contained in this Agreement.

ARTICLE 7. DEBARMENT

- 7A. 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 this transaction by the Federal Government. If the **City** cannot certify to this statement, it shall attach an explanation to this Agreement. For the term of this Agreement, the **City** shall notify **MaineDOT** promptly if it or its principals is debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this transaction by the Federal Government.
- 7B. The **City** agrees that it shall not hire an outside entity that is debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by the Federal Government.

ARTICLE 8. CONFLICT OF INTEREST

- 8A. The **City** agrees that 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.
- 8B. The **City** shall refrain from hiring any engineer, lawyer, appraiser, inspector or other professional to provide services for **Project** who has a direct or indirect financial or other personal interest in any contract or subcontract for the **Project**, other than the person's employment or retention by the **City**. No officer or employee of any such engineer, lawyer, appraiser, inspector or other professional retained by the **City** to work on the **Project** shall have a direct or indirect financial or other personal interest in any real property acquired for the **Project** unless such interest is openly disclosed to the **City** and such officer, employee or person has not participated in such acquisition for and on behalf of the **City**.

8C. The **City** agrees that 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 the **City** before the person or entity enters into the contract.

ARTICLE 9. EXPIRATION

This Agreement shall expire upon **MaineDOT's** payment of the final invoice from the **City** for the **Project** or **three (3) years** from the final day of the month in which this Agreement was executed, whichever occurs first, except as follows:

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

ARTICLE 10. AGREEMENT APPROVAL

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

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

City of Portland

Maine Department of Transportation

By: _____
Jon Jennings, City Manager

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

Date: _____

Date: _____

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

Federal Funding Accountability and Transparency Act

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

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

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

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

Statutory/Regulatory Authorities

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

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

General Assurances

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

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

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

Specific Assurances

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

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

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

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

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

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

DATED _____

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

Encl.: Appendices A and E

APPENDIX A TO THE TITLE VI ASSURANCES

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

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

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

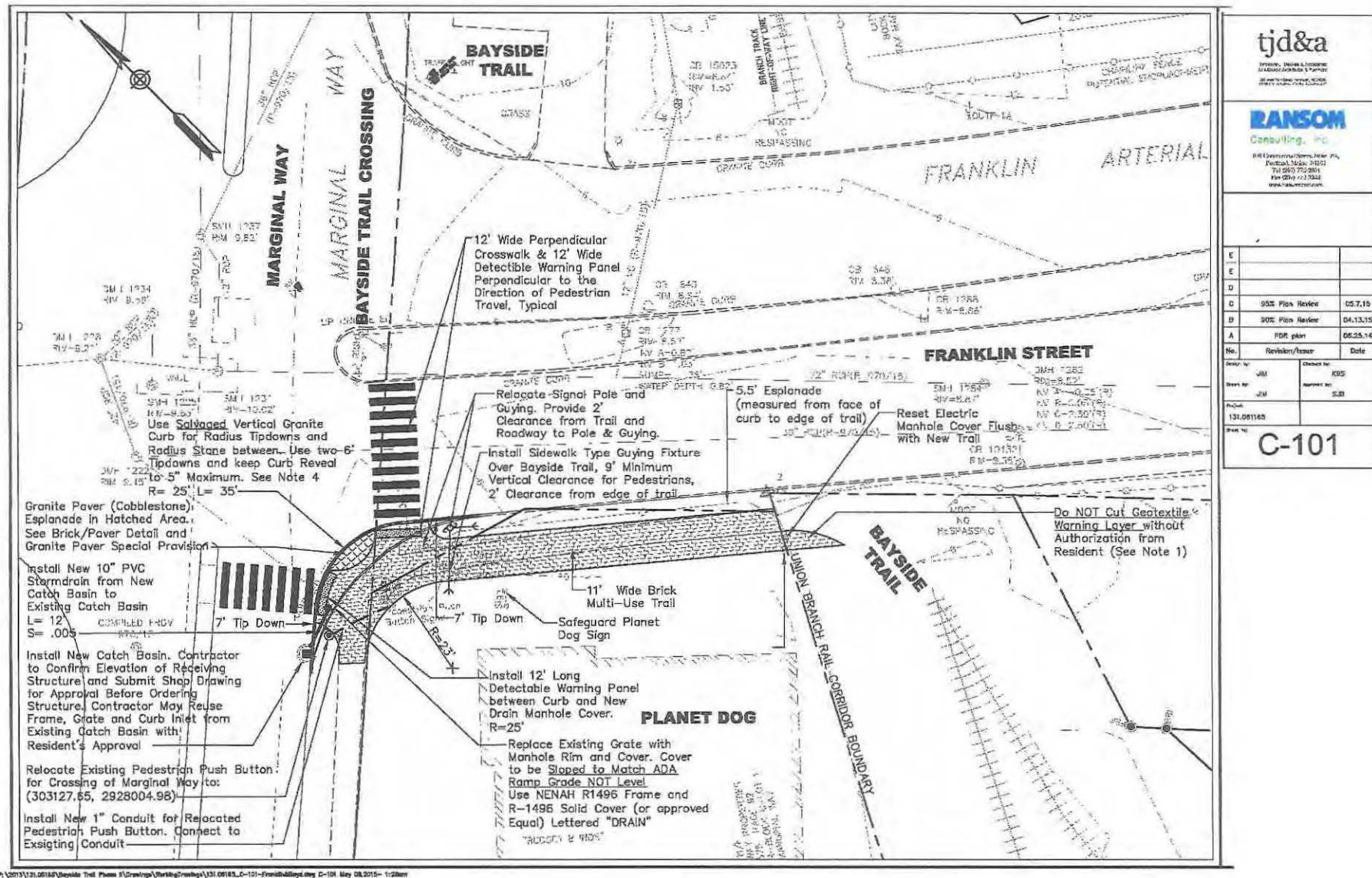
APPENDIX E TO THE TITLE VI ASSURANCES

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

Pertinent Non-Discrimination Authorities:

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

Planet Dog – Marginal/Franklin Trail Enhancement Project (WIN 18364.01)



*Order 177-16/17
Tab 22 · 3-20-17*

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: BAYSIDE TRAIL AND EASTERN PROMENADE
INTERSECTION IMPROVEMENTS**

ORDERED, that the two-party agreement between the Maine Department of Transportation and the City of Portland, for design and construction of the Bayside Trail and Eastern Promenade Intersection Improvements 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: Bruce Hyman, Transportation Program Manager

DATE: March 6, 2017

SUBJECT: Municipal State Agreement (WIN 18886.00) – Bayside Trail-Eastern Prom Trail Junction Enhancement Project

SPONSOR: Jon Jennings, City Manager
(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 3/20/17 Final Action 3/27/17

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

Bidding the project in late May/early June for construction in 2017 necessitates having up to two full months (April and May) for design and bid package preparation.

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

None anticipated.

I. ONE SENTENCE SUMMARY

This project will construct a pathway enhancement to increase the usability and attractiveness of the Bayside Trail at its junction with the Eastern Promenade Trail using disbursements from the Bayside Trail Endowment Fund for the 20% (\$30,460) local match of federal and MaineDOT funding (80%, \$97,600).

II. AGENDA DESCRIPTION

Passage of the council order authorizes the City Manager to sign the Municipal-State Agreement (WIN 18886.00) with the MaineDOT for up to \$152,300 for enhancements to the Bayside Trail at its junction with the Eastern Prom Trail. Local match (20%, \$30,460) will be provided from the Bayside Trail Endowment.

III. BACKGROUND

The council passed an order in 2013 that funded the preliminary design of the junction. This new agreement authorizes the final design, bid package preparation and construction. The project will create an attractive trail junction, create a safe crossing of the driveway into the PWD water treatment plan and correct the poor drainage in this vicinity.

IV. INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED

This projects will significantly improve the usability and attractiveness of the Bayside Trail at its junction with the Eastern Prom Trail, implementing activities that will help achieve the city's livability and sustainability goals.

V. FINANCIAL IMPACT

The local match (up to \$30,460) will be drawn from non-general revenue funds in the Bayside Trail endowment. The Bayside Trail Endowment was established in 2011 with \$500,000 in funds from the Trust for Public Land and is administered by the Maine Community Foundation. The City gets an annual disbursement of approximately \$21,000 with the current balance of the funds that have been disbursed to the city for its use totaling approximately **\$71,000.**

The endowment fund's proceeds are "... for the exclusive purposes of
(i) operating, maintaining, repairing, replacing and/or enhancing that certain 1.2 mile greenway commencing at the junction of the Back Cove, Eastern Prom and Loring Memorial Trails ("the current Bayside Trail") and/or
(ii) designing, constructing, installing, operating, maintaining, repairing, replacing and/or enhancing any future extension of the Bayside Trail which would connect said trail to Deering Oaks Park....".

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

This projects will significantly improve the functionality and attractiveness of this important pedestrian-way and bikeway location on the Bayside Trail at its junction with the Eastern Prom Trail.

VII. RECOMMENDATION

Staff recommend approval of the Municipal State Agreement.

VIII. LIST ATTACHMENTS

#1. Trail Junction Preliminary Design of the Bayside Trail-Eastern Prom Trail Junction by TJD&A/Ransom Consulting.

Prepared by: Bruce Hyman, Transportation Program Manager, Dept. of Planning and Urban Development

Date: March 6, 2017



MaineDOT use only

AMS ID: _____
CSN: _____
TEDOCS #: _____

MAINE DEPARTMENT OF TRANSPORTATION
Agreement for a Federal-aid Locally Administered Project

With the
City of Portland

Regarding

Intersection of Bayside Trail and Eastern Promenade Trail: WIN 018886.00

Total Agreement Amount: \$152,300	Federal Project #: TAP-1888(600)
Federal Share: \$121,840 (80%)	Federal Award Date: March 5, 2015
Municipal Share: \$30,460 (20%)	Portland Vendor ID: VC1000073476
Effective Date: _____	Portland DUNS® #: 07-174-7802
Expiration Date: _____	CFDA #20.205: Highway Planning & Construction

This Agreement for a federal-aid project to improve the intersection of the Bayside Trail and the Eastern Promenade Trail in Portland, Maine ("the **Project**") is between the Maine Department of Transportation, an agency of the State of Maine with headquarters at 24 Child Street in Augusta, Maine ("**MaineDOT**") and the City of Portland, a body corporate and politic with its primary offices at 389 Congress Street in Portland, Maine ("the **City**").

This Agreement contains the following attachments:

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

WHEREAS, the **City** performed preliminary engineering work on the **Project** under a separate agreement: CTM20130711000000000045 / CSN 31851; and

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

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

ARTICLE 1. ROLES AND RESPONSIBILITIES

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

- ☐ The following employee of the **City** shall serve as Local Project Administrator:
Name: Bruce Hyman, Transportation Program Manager
Phone: (207) 874-8717
Email: bhyman@portlandmaine.gov

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

☐ **MaineDOT** has assigned the following individual to serve as Project Manager:

Name: John Rodrigue

Email Address: john.rodrigue@maine.gov

Phone Number: (207) 592-0428

ARTICLE 2. PROJECT FINANCES

2A. UPSET LIMIT. The estimated total cost of the **Project** is **\$152,300** (the "Upset Limit.") **Project** costs eligible for federal participation shall not exceed this Upset Limit without **MaineDOT's** written approval, through an executed modification to this Agreement.

2B. FEDERAL SHARE. **MaineDOT**, with funding from the Federal Highway Administration ("the FHWA"), will share in all **Project** costs eligible for such federal participation at the rate of **80%**, up to a maximum contribution at this rate of **\$121,840**.

2C. LOCAL SHARE. The **City**, with funding other than from the U.S. Department of Transportation, shall share in all **Project** costs eligible for federal participation at the rate of **20%**, or an estimated **\$30,460**. The **City** shall be fully responsible for all expenditures:

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

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

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

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

2F. FINAL COST. If the final cost of the **Project** is less than the Upset Limit in Article 2A, reimbursement to the **City** will be capped at the percentage of actual costs in Article 2B, "Federal Share." The **City** shall refund any overpayment to **MaineDOT**.

2G. REPAYMENT. If the **City** withdraws from the **Project**, leading to termination of this Agreement for cause, the **City** shall refund all invoice payments from **MaineDOT** and reimburse **MaineDOT** fully for costs incurred for work in the **Project**.

2H. SET-OFF. **MaineDOT** will have the option to exercise its common law, equitable and statutory rights of set-off to recover payment made to the **City** for work later deemed ineligible for federal funding. These rights will include, but will not be limited to, **MaineDOT's** option to withhold money owed to the **City** under this Agreement and any other agreement with **MaineDOT** or any other agency of the State of Maine, including any contract starting before the effective date of this Agreement.

ARTICLE 3. PROJECT DEVELOPMENT

3A. SCOPE OF WORK. This Agreement shall apply to a **Project** consisting of final design, construction and construction engineering work for improvements to the intersection of the Bayside Trail and the Eastern Promenade Trail. Any substantial change shall require **MaineDOT's** written approval to be eligible for financial assistance from **MaineDOT**.

3A. AUTHORIZATION. The **City** shall receive written notice to proceed from **MaineDOT** before starting any reimbursable work on the **Project** under this Agreement.

3B. PROGRESS REPORTS. The **City** shall provide **MaineDOT** with regular progress reports at intervals established by **MaineDOT's** Project Manager.

3C. CONSULTANT SERVICES. If the **City** intends to contract for consultant services under this Agreement, the **City** shall:

1. Use a qualifications-based selection method and not the lowest price. Using price as a selection factor will render consultant work on the **Project** ineligible for federal funding.
2. Obtain the **MaineDOT** Project Manager's written approval before awarding a contract.
3. Incorporate "Consultant General Conditions for Local Public Agencies" into contracts.
4. Obtain **MaineDOT's** written approval before modifying a contract. Work that is performed on a consultant contract outside of the original scope of work without an approved and executed modification in place shall be ineligible for reimbursement.
5. Evaluate the performance of its consultant upon completion of the contract in accordance Section 2.10 of the LPA Manual, "Consultant Evaluations."

3D. DESIGN WORK. Design plans, specifications, estimates and contract documents for the **Project** shall be developed in accordance with **MaineDOT's** *Engineering Instructions*, *Highway Design Guide*, *Standard Specifications* and *Standard Details*, as applicable.

1. The **City** shall submit the final plans, specifications and estimate (PS&E) to **MaineDOT** for review and acceptance.

2. The **City** shall address to **MaineDOT's** satisfaction all changes requested or concerns expressed before **MaineDOT** will authorize the **City** to advertise for construction bids. Advertising for bids or proceeding to the construction stage without **MaineDOT's** written authorization shall render the entire **Project** *ineligible* for federal funding.
3. **MaineDOT's** acceptance of the final PS&E package shall not relieve the Engineer of Record, whether a **Municipal** employee or consultant, of responsibility for the quality of the engineering documents for the **Project**.

3E. ENVIRONMENTAL REVIEW. The National Environmental Policy Act ("NEPA") process was completed under WIN 018364.00, and that work was part of a separate contract, CTM20130711000000000045 / CSN 31851.

3F. PERMITS. The **City** shall obtain all approvals, permits and licenses for the **Project**. The **City** shall provide **MaineDOT** with copies of all such documents and an environmental certification in the format shown in Communication 12 of the LPA Manual, as part of the final PS&E package for the **Project**.

3G. UTILITIES. The **City** shall coordinate the **Project** with any utility and railroad that may be affected. The **City** shall provide **MaineDOT** with a utility certification in the format shown in Communication 13 of the LPA Manual, as part of the final PS&E package. **MaineDOT's** Utility Accommodation Rules (2014) shall apply to required utility relocations.

3H. RIGHT OF WAY. Acquisition of rights-of-way is not necessary for the **Project**.

3I. SOLICITATION OF BIDS. Upon written authorization from **MaineDOT**, the **City** shall advertise for competitive bids, as follows:

1. The **City** shall follow the procedures in **MaineDOT's** Standard Specifications (November 2014 Edition), Section 102, "Bidding."
2. The **City** shall submit bid tabulations to **MaineDOT** for review and shall obtain **MaineDOT's** written approval before awarding a contract.
3. The **City** shall ensure that the **Project** contract book contains the following documents:
 - a. Davis-Bacon prevailing wage rates;
 - b. Form FHWA 1273 (Appendix A to Division 100: Section 1, Bidding Provisions); and
 - c. Signed Title VI Assurances.

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

3K. 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 a set of revised as-built plans within 90 days of completion of construction.
- 3L. MAINEDOT OVERSIGHT. **MaineDOT** will inspect construction activities, test materials and review documentation to ensure compliance with the **Project** specifications and terms of the construction contract. **MaineDOT** may reject work or materials out of compliance and withhold reimbursement to the **City** for such work or materials.
- 3M. MAINTENANCE. The **City** shall maintain the completed **Project** year-round for its standard useful life or 20 years, whichever is longer. Maintenance work shall consist of upkeep and repairs needed to maintain a firm, stable and slip-resistant surface, including snow removal. Maintenance shall not be delegated to any other party without specific, written approval from **MaineDOT**, which shall be attached to this Agreement.

ARTICLE 4 – TERMINATION

- 4A. FOR CAUSE. **MaineDOT** will have just cause to terminate this Agreement in the event of default by the **City**, as defined in Article 4B. **MaineDOT** will afford the **City** a cure period of fourteen (14) calendar days, effective on the **City's** receipt of Notice of Default. If the **City** fails to address all defaults within this cure period, **MaineDOT** may terminate this Agreement for cause, with these conditions:
1. **MaineDOT** shall recover from the **City** all reimbursements made and costs incurred for work on the terminated **Project**.
 2. **MaineDOT** shall be held harmless against any claim of breach of contract filed against the **City** by any third party in accordance with Article 6B, "Indemnification."
 3. The **City** shall forfeit all federal funds remaining in the terminated **Project**.
- 4B. DEFAULT. **MaineDOT** shall send the **City** a Notice of Default if the **City**:
1. Withdraws its support for the **Project**; or
 2. Takes any action that renders the **Project** ineligible for federal-aid funding; or
 3. Uses **Project** funds for a purpose not authorized by this Agreement; or
 4. Misrepresents or falsifies of any claim for reimbursement; or
 5. Fails to meet standards of performance outlined in this Agreement.
- 4C. FOR CONVENIENCE. The **Parties** may terminate this Agreement for convenience by mutual consent for any reason not defined as "default," as follows:

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

ARTICLE 5 – RECORDS & AUDIT

- 5A. **Project** records are printed or electronic plans, specifications, contracts, reports, notes, or other documents prepared by or for the **City**. The **City** shall retain all such records for at least **5 years** from the date either of **MaineDOT's** acceptance of the final invoice for the **Project** or the termination of this Agreement. If any litigation, claim, negotiation or audit has begun before the end of this **5-year** period, all **Project** records shall be kept at least until all issues arising from any such action are resolved.
- 5B. The **City** and any consultant or contractor working on its behalf shall allow authorized representatives of the Federal Government and the State of Maine to inspect and audit **Project** records at reasonable times. Copies shall be furnished at no cost to the Federal Government or to the State of Maine.
- 5C. Audits shall be performed in accordance with generally accepted government auditing standards and federal regulation 2 CFR, Section 200, Subpart F - "Audit Requirements."

ARTICLE 6. GENERAL PROVISIONS

- 6A. GOVERNING LAW. The laws of the State of Maine shall govern this Agreement. Additionally, the **Parties** shall comply with all federal regulations that apply to the **Project**, including but not limited to 23 CFR, "Highways"; 49 CFR, "Transportation"; and 2 CFR, Section 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards."
- 6B. CONFIDENTIALITY. The **City** shall protect the confidentiality of right-of-way negotiations, property appraisals, and engineering estimates of the construction cost in accordance with the provisions of Title 23 of the Maine Revised Statutes Annotated (MRSA), Section 63: "Confidentiality of Records."
- 6C. INDEMNIFICATION. To the extent allowed by law, the **City** shall indemnify, defend and hold harmless **MaineDOT**, its officers, agents and employees from all claims, suits or liabilities arising from negligent or wrongful act, error or omission by the **City**, its officers, employees, agents, consultants or contractors. Nothing in this article shall waive any defense, immunity or limitation of liability that may be available to either party under the Maine Tort Claims Act (14 M.R.S. Section 8101 et seq.) or other privileges or immunities provided by law. *Any other provision of this Agreement to the contrary notwithstanding, this provision shall survive the termination or expiration of this Agreement.*
- 6D. INDEPENDENT CAPACITY. The **City**, its employees, agents, representatives, consultants and contractors *shall not* act as officers, employees or agents of **MaineDOT**.

- 6E. EQUAL EMPLOYMENT OPPORTUNITY. The **City** and all consultants and contractors hired pursuant to this Agreement shall not discriminate against any employee or applicant for employment because of race, color, religious creed, sex, national origin, ancestry, age, sexual orientation or disability unless related to a bona fide occupational qualification. The **City** and all consultants and contractors hired pursuant to this Agreement shall take affirmative action to ensure that all such applicants are employed and that all such employees are treated regardless of their race, color, religious creed, sex, national origin, ancestry, age, sexual orientation or disability during any period of employment under this Agreement.
- 6F. FLOW DOWN. Contracts between the **City** and all third parties shall contain or incorporate by reference applicable provisions of this Agreement.
- 6G. 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.
- 6H. ENTIRE AGREEMENT. This document represents the entire Agreement between the **Parties**. Neither **MaineDOT** nor the **City** shall be bound by any statement, correspondence, agreement or representation not expressly contained in this Agreement.

ARTICLE 7. DEBARMENT

- 7A. 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 this transaction by the Federal Government. If the **City** cannot certify to this statement, it shall attach an explanation to this Agreement. For the term of this Agreement, the **City** shall notify **MaineDOT** promptly if it or its principals is debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this transaction by the Federal Government.
- 7B. The **City** agrees that it shall not hire an outside entity that is debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by the Federal Government.

ARTICLE 8. CONFLICT OF INTEREST

- 8A. The **City** agrees that 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.
- 8B. The **City** shall refrain from hiring any engineer, lawyer, appraiser, inspector or other professional to provide services for **Project** who has a direct or indirect financial or other personal interest in any contract or subcontract for the **Project**, other than the person's employment or retention by the **City**. No officer or employee of any such engineer, lawyer, appraiser, inspector or other professional retained by the **City** to work on the **Project** shall have a direct or indirect financial or other personal interest in any real property acquired for the **Project** unless such interest is openly disclosed to **MaineDOT** and such officer, employee or person has not participated in such acquisition for and in behalf of the **City**.

8C. The **City** agrees that 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 the **City** before the person or entity enters into the contract.

ARTICLE 9. EXPIRATION

This Agreement shall expire upon **MaineDOT's** payment of the final invoice from the **City** for the **Project** or **three (3) years** from the final day of the month in which this Agreement was executed, whichever occurs first, except as follows:

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

ARTICLE 10. AGREEMENT APPROVAL

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

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

City of Portland

Maine Department of Transportation

By: _____
Jon Jennings, City Manager

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

Date: _____

Date: _____

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

Federal Funding Accountability and Transparency Act

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

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

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

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

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

Statutory/Regulatory Authorities

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

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

General Assurances

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

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

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

Specific Assurances

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

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

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

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

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

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

DATED _____

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

Encl.: Appendices A and E

APPENDIX A TO THE TITLE VI ASSURANCES

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

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

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

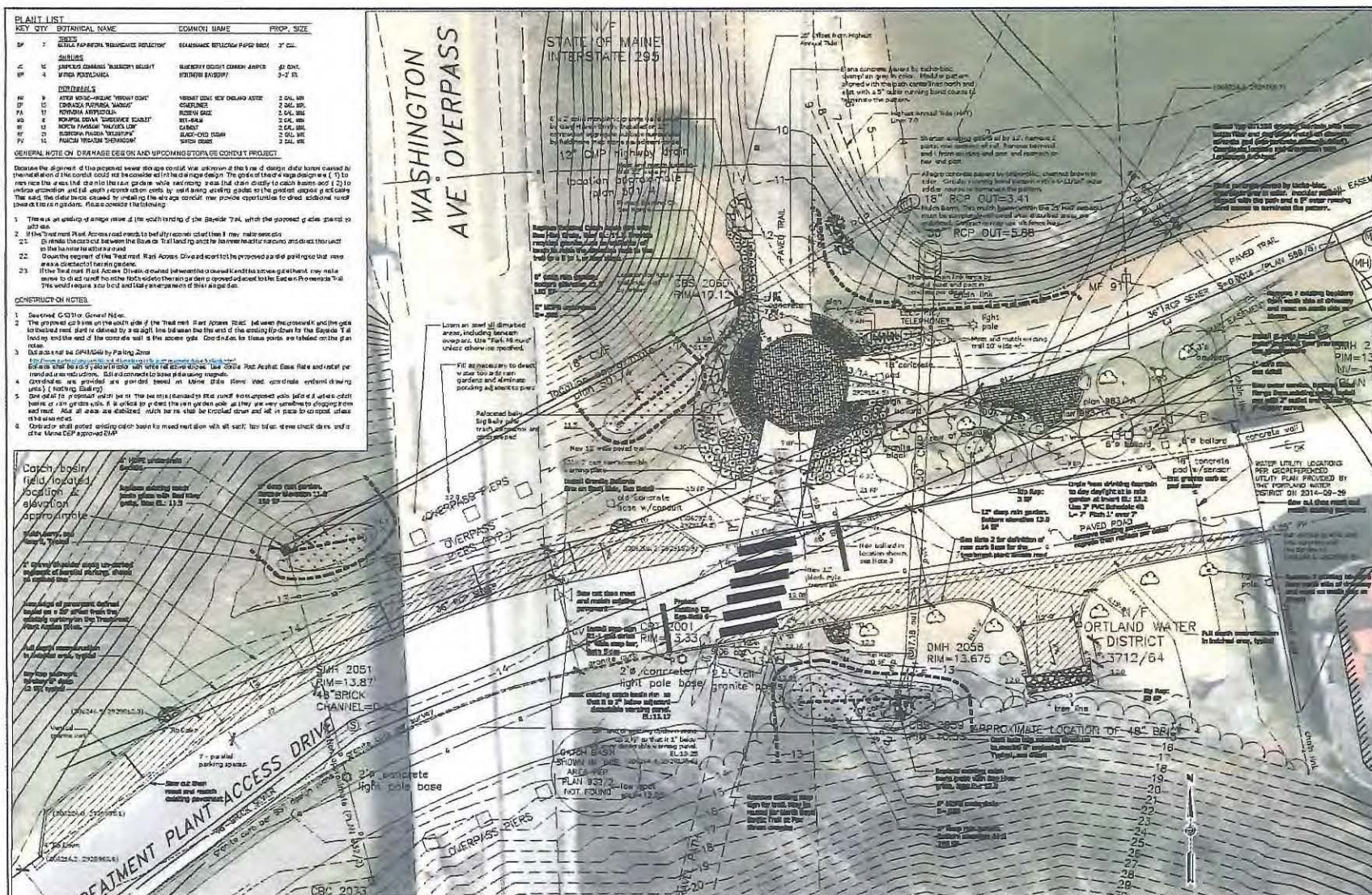
APPENDIX E TO THE TITLE VI ASSURANCES

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

Pertinent Non-Discrimination Authorities:

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

Bayside Trail – Eastern Prom Trail Junction Enhancement Project (WIN 18886.00)



Note: This plan was developed in 2015 in conjunction with the Back Cove South Storage Conduit project which has been put on hold for further assessment. Many of the curb and roadway paving aspects of the project will be scaled back significantly and other aspects of the design will be reassessed as well during the final design phase.

Preliminary Design, 2015

Bayside Trail Improvements Portland, Maine			
The City of Portland Portland, Maine 04101			
  SCALE 1" = 10' 			
 THE JONES & ALLEN ASSOCIATES LANDSCAPE ARCHITECTS 400 West Street, Suite 100 Portland, Maine 04101 Tel: (207) 755-9991 Fax: (207) 755-9992 www.tjdand.com			
 455 Commercial Street, Suite 404 Portland, Maine 04101 Tel: (207) 755-9991 Fax: (207) 755-9992 www.ransominc.com			
Trails Junction Plan			
E			
E			
D			
C			
B	600' Plot Re/Use		04.13.
A	PQR plan		06.25.
Rev.	Revising/Issued	Date	
Design by	FBS	Checked by	JM
Drawn by	JM	Approved by	SJE
Project: 121.0611BS			
Sheet No: C-102			

*Order 178-16/17
Tab 23 3-20-17*

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: WASHINGTON AVENUE BETWEEN CONGRESS STREET AND CUMBERLAND
AVENUE**

ORDERED, that the two-party agreement between the Maine Department of Transportation and the City of Portland, for design of traffic improvements to Washington Avenue between Congress Street and Cumberland Avenue, a project previously approved by a three-party agreement now in effect involving the Portland Area Comprehensive Transportation System by Order 51-16/17, is hereby approved in substantially the form attached hereto to include local administration; 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: Jon Jennings, Ethan K. Strimling, Anita LaChance, Sonia Bean,
Danielle West-Chuhta, Nancy English, Julianne Sullivan,

FROM: Jeremiah Bartlett, PE, PTOE
Transportation Systems Engineer, Department of Public Works

CC: Kathi Earley, Engineering Manager, Public Works
Christopher Branch, Director of Public Works
Brucy Hyman, Transportation Program Manager
Jeff Levine, Director of Planning & Urban Development
Mike Murray, Assistant to the City Manager

DATE: March 6, 2017

SUBJECT: Two-Party (City-MaineDOT) Agreement for Washington Avenue Preliminary
Engineering

SPONSOR: Jon Jennings, City Manager

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st reading March 20, 2016 **Final Action:** April 5, 2016

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

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

I. ONE SENTENCE SUMMARY

The Department of Public Works requests that the City Council approve a two-party agreement with MaineDOT to allow the City to locally manage the preliminary design only (PDR) project of Washington Avenue from Congress Street to Cumberland Avenue.

II. AGENDA DESCRIPTION

PACTS approved funding in 2016 for the preliminary design of a portion of Washington Avenue from Congress Street to Cumberland Avenue, inclusive of roadway, sidewalk and signal design. Council action 51-16/17, effective September 29, 2016 enacted the three-party funding agreement for this design-only project; at that time MaineDOT had responsibility to administer the project.

III. BACKGROUND

It has now been determined that City staff will manage the design project. This new agreement is required to set forth roles and responsibilities for project management.

IV. INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED

The intended result of this action is to allow local staff to manage this project.

V. FINANCIAL IMPACT

As per the previous three-party agreement, the financial responsibilities have been set forth, with a total funding of \$131,700 coming from PACTS and state/federal funds, and the remaining \$43,900 coming from local funding sources.

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

The City has also requested FY18 CIP funds for \$250,000 to pay for design of Washington Avenue to the north of Cumberland Avenue, and applied to PACTS for funding of the same. DOT staff supports such a design approach, as it evaluates the entirety of Washington Avenue north of Cumberland Avenue all the way to Eastern Prom if these FY18 CIP funds are approved.

VII. RECOMMENDATION

DPW staff recommends approval of this Agreement to allow staff to proceed with a Request for Proposal for design services.

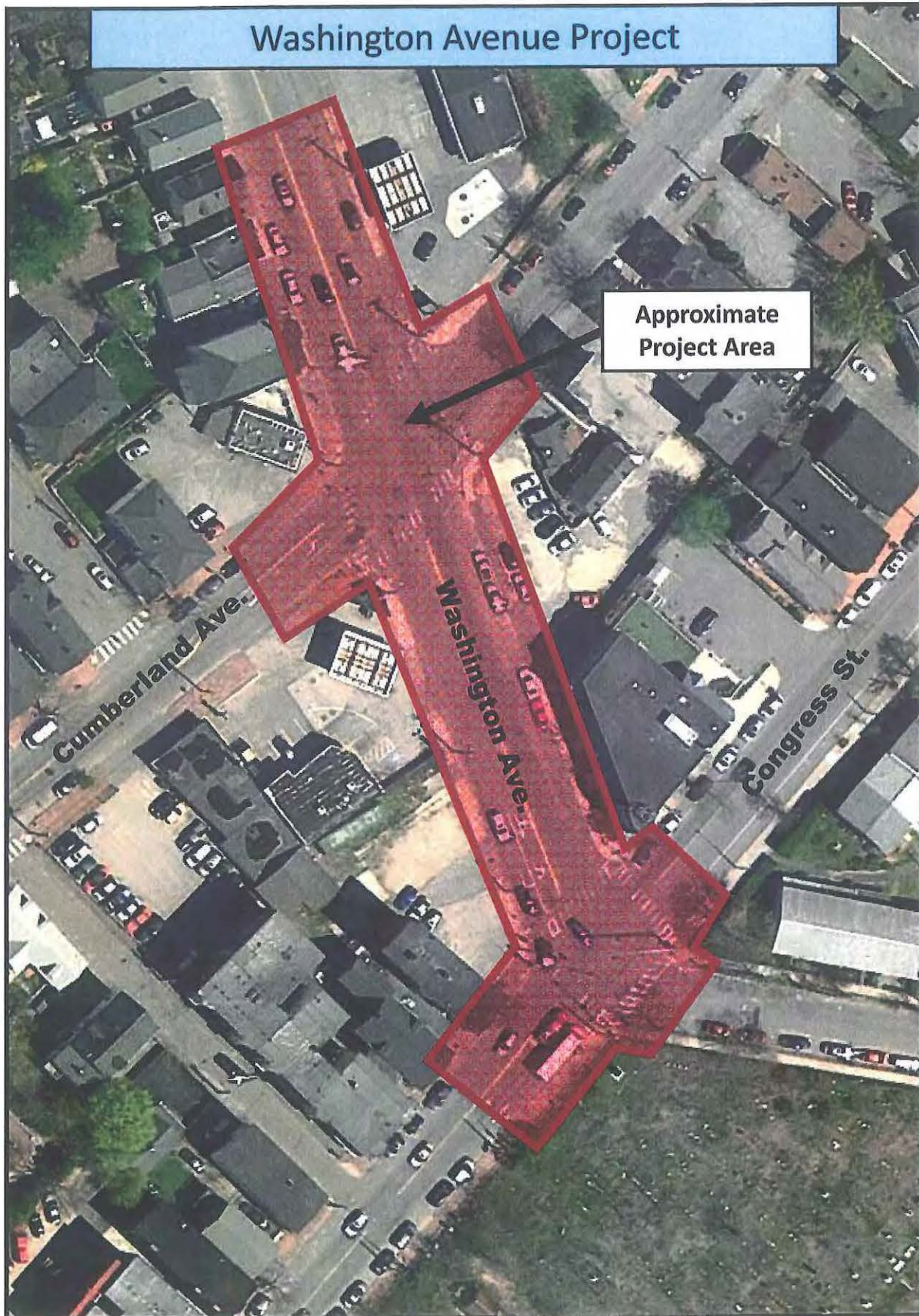
VIII. LIST ATTACHMENTS

1. LAP Agreement for WIN #22134.00

Prepared by: Jeremiah Bartlett

Date: 3-6-17

Washington Avenue Project



Project Scope Area





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

Paul R. LePage
GOVERNOR

David Bernhardt
COMMISSIONER

March 2, 2017

Jeremiah Bartlett, Transportation Systems Engineer
City of Portland Public Works
55 Portland Street
Portland, Maine, 04101

Subject: Washington Avenue Agreement, WIN 22134.00

Dear Mr. Bartlett:

Enclosed is an agreement between MaineDOT and the City of Portland for preliminary engineering and right-of-way work for reconstruction of a portion of Washington Avenue, from Congress Street to Cumberland Avenue.

Once the agreement is approved, signed and dated, please return it to me 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



<i>MaineDOT use only</i>	
AMS ID:	_____
CSN:	_____
TEDOCS #:	_____

Agreement for a Locally Administered Federal-aid Project
With the
City of Portland
Regarding
Reconstruction of a portion of Washington Avenue: WIN 22134.00

Agreement Upset Limit: <u>\$175,600</u>	Federal Project Number: <u>2213400</u>
Federal Share: <u>\$131,700 (75%)</u>	Federal Authorization Date: <u>February 15, 2017</u>
Municipal Share: <u>\$43,900 (25%)</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>December 31, 2021</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 390 Congress Street in Portland, Maine, which jointly shall be referred to as the "**Parties**."

WHEREAS, this Agreement shall apply to reconstruction of a portion of Washington Avenue, beginning at Congress Street and extending 0.06 of a mile to Cumberland Avenue, with signal improvements at the Congress/Cumberland intersection (the "**Project**"); and

WHEREAS, the **Project** was programmed for the **MaineDOT** Work Plan by the Portland Area Comprehensive Transportation System, the metropolitan planning organization for the Portland Urbanized Area, with its offices at 970 Baxter Boulevard in Portland, Maine ("the **MPO**"); and

WHEREAS, the **City** 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);
- ☒ Requirements for operation and maintenance of traffic signals.

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.

- ☐ **City** Local Project Administrator: Jeremiah Bartlett, Transportation Systems Engineer
Email Address: jbartlett@portlandmaine.gov
Phone Number: 207-874-8801

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**: John Rodrigue, Project Manager I
Email: john.rodrigue@maine.gov
Phone: (207) 592-0428

ARTICLE 2. FINANCIAL PROVISIONS

2A. **UPSET LIMIT.** The **MPO** programmed for preliminary engineering and right-of-way a total of **\$175,600** ("Upset Limit.") **Project** costs eligible for federal participation shall not exceed this Upset Limit without written approval from the **MPO** and **MaineDOT**.

2B. **MAINEDOT SHARE.** **MaineDOT**, using federal funding programmed by the **MPO**, will share in all **Project** costs eligible for federal participation at the rate of **75%**, up to a maximum contribution at this rate of **\$131,700**.

2C. **LOCAL SHARE.** The **City** shall share in all costs eligible for federal participation at the rate of **25%**, or **\$43,900**. Additionally, the **City** shall be fully responsible for expenditures:

1. Exceeding the Upset limit of this Agreement;
2. Incurred before the date of notice to proceed; and
3. Deemed ineligible for federal 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 **Project** costs eligible for federal financial participation 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 loss of federal participation, the **City** shall refund all invoice payments from **MaineDOT** and reimburse **MaineDOT** for the cost of services performed for the **Project**. Additionally, **MaineDOT** will seek to recover from the **City** any invoice payment made for work deemed to have been ineligible for reimbursement 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, the State's option to withhold for the purposes of set-off any monies due to the **City** under this Agreement up to any amounts due and owing to the State with regard to this Agreement or any other agreement with **MaineDOT**; any other agreement with any state department or agency, including any agreement for a term commencing prior to the term of this agreement; and any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. **MaineDOT** shall exercise its set-off rights in accordance with standard state practices 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 otherwise programmed for this **Project** are de-appropriated, or if **MaineDOT** does not receive the legal authority to spend money programmed for this **Project**, **MaineDOT** shall be released from its obligation to make payment under this Agreement.
- 2J. REMAINING FUNDS. **MaineDOT** shall make available to the **MPO** all federal funds remaining in the completed **Project**, once **MaineDOT** has paid the final invoice from the **City**. Additionally, any federal funds returned to **MaineDOT** by the **City** shall be made available to the **MPO** for reprogramming upon closeout of the **Project**.

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 Federal Highway Administration ("FHWA") and executing this Agreement.
- 3B. KICKOFF. The **Parties** shall hold a project kickoff to go over the scope of work, estimated cost, schedule, and legal requirements before design 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 process 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 on the **Project** 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**, in coordination with its contracted consultant if applicable, shall be responsible for preparing all design plans, specifications, estimates and contract documents for the **Project**, in accordance with appropriate reference publications that may include, but are not limited to, MaineDOT's Engineering Instructions, Highway Design Guide, Standard Specifications and Standard Details. The design of the **Project** shall comply with the Americans with Disabilities Act (ADA) and all other applicable regulations. Furthermore:

1. The **City** shall submit the following to **MaineDOT** for review and comment: a preliminary design report; design plan impacts; and final plans, specifications and estimate package (PS&E).
2. The **City**, in coordination with its contracted consultant if applicable, shall ensure that the contract book for the **Project** references MaineDOT's *Standard Specifications* and contains the following documents:
 - a. Davis-Bacon prevailing wage rates;
 - b. Form FHWA-1273; and
 - c. Signed Title VI Assurances.
3. **MaineDOT** will enforce all laws, regulations, construction standards and specifications that apply to the **Project** and will require changes if they are not met.
4. **MaineDOT** will give the **City** authorization to advertise for construction once the **City** addresses all comments from **MaineDOT** and **MaineDOT** accepts the final PS&E package as complete. Advertising the **Project** without written authorization from **MaineDOT** shall render the entire **Project** ineligible for federal-aid funding.

3G. SURVEY. **MaineDOT** will perform all survey work if the **Project** is located on a state highway. Alternatively, the **City** may hire a surveyor that has been pre-qualified by **MaineDOT**, using an appropriate selection method outlined in the LPA Manual.

- 3H. QUALITY CONTROL. The **City** or its contracted consultant, if applicable, shall be responsible for meeting all engineering standards and regulatory requirements that apply to the **Project**. The receipt of construction authorization from **MaineDOT** shall not relieve the **City** and its consultant, if applicable, of responsibility for meeting all such engineering standards and regulatory requirements.
- 3I. 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.
- 3J. 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.
- 3K. PERMITS. The **City** shall obtain all approvals, permits and licenses for the **Project**. The **City** shall provide **MaineDOT** with copies of all such documents and an environmental certification in the format of Communication 12 from the LPA Manual, as part of the final PS&E package for the **Project**.
- 3L. 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.
- 3M. 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**.
- 3N. ADVERTISE. The **City** shall use competitive bidding to hire a construction contractor upon receiving written authorization to advertise from **MaineDOT**, 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.

3O. 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**.

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

1. Provide a Project Resident who is either a qualified municipal employee with LPA certification or a consultant hired through a qualifications-based selection method.
2. Hold a pre-construction meeting with notice of at least 5 working days with representatives of **MaineDOT**, the contractor, utilities and any other parties involved in or affected by the work.
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**.

3Q. MAINE DOT 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.

3R. MAINTENANCE. The **City** shall operate and maintain the improvements under the terms of Attachment 3, "Requirements for Operation and Maintenance of Traffic Signals."

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, at 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 – in all solicitations or advertising for employees placed by or on behalf of the **City** relating to this Agreement – state 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 on 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 third 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** shall send the **City** a written Notice of Default, in accordance with Article 8B, if the **City**:

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 afford 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**, in accordance with Article 2G, "Repayment."
2. **MaineDOT** will make available to the **MPO** all federal funds remaining in the terminated **Project**, as well as all federal funds recovered from the **City**, in accordance with Article 2J, "Remaining Funds."

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 eligible work performed 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 make available to the **MPO** all federal funds remaining in the **Project**, in accordance with Article 2J, "Remaining Funds."

ARTICLE 9. EXPIRATION

This Agreement shall expire upon **MaineDOT's** payment of the final invoice from the **City** for the **Project** or **December 31, 2021**, whichever occurs first, except as follows:

1. Article 3R, "Maintenance," shall be enforced as set forth in Attachment 3 to this Agreement.
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 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 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.).

OPERATION & MAINTANCE OF TRAFFIC SIGNALS

- A. The **City of Portland** (“City”) agrees to operate and maintain all traffic signals and related equipment installed pursuant to this Agreement to function as designed and installed as part of the above-referenced Locally Administered Project, unless approved otherwise as hereinafter provided or as necessary as follows:
1. All malfunctions and deficiencies in the traffic signal or any equipment appurtenant thereto shall be repaired or corrected expeditiously in accordance with the Institute of Transportation Engineer’s (ITE) “Traffic Signal Installation and Maintenance Manual.” Any failure to correct the traffic **signal to function as designed could, upon written notification from the MaineDOT**, result in the **MaineDOT** making all necessary repairs at the **City’s** expense.
 2. The visibility of the traffic signal shall be preserved and maintained at all times by removing any visual impairment thereto.
 3. No change in operation or modification to the traffic signal or any equipment appurtenant thereto shall be made without the express written approval of the **MaineDOT**.
 4. The **MaineDOT** shall be notified in writing prior to any removal or replacement of the traffic signal or any equipment and appurtenant thereto. Upon removal, such traffic signal or equipment so removed shall be disposed of as deemed appropriate by mutual agreement of the MaineDOT and City without any cost to the **MaineDOT**, unless agreed otherwise in writing.
- B. The **City** agrees to be responsible for the electrical service for the traffic signals and agrees to execute any necessary documentation required to establish such service and provide any local permits necessary for the installation of such service.
- C. The **City** agrees to maintain all pavement markings (including stop bars, lane use arrows and all striping necessary to delineate the turning lane) and all traffic control signs as furnished under the project.
- D. The **City** agrees to allow the contractor for the project to control all traffic within all designated work areas at such times and in such a manner necessary to permit construction of the project and the installation of the traffic signal as specified in the traffic control plan approved by the **MaineDOT**.

Order 179-16/17
Tab 24 3-20-17

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

**CITY OF PORTLAND
IN THE CITY COUNCIL**

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

**AMENDMENT TO PORTLAND CITY CODE
CHAPTER 6 AND CHAPTER 14
Re: Short Term Rentals**

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

1. *That Chapter 6, Article VI., Sections 6-150 to 6-157 of the Portland City Code is hereby amended as follows:*

**ARTICLE VI. DISCLOSURE OF BUILDING OWNERSHIP RESIDENTIAL RENTAL
UNIT REGISTRATION REQUIREMENTS**

Sec. 6150. Purpose.

The proliferation of real estate proprietorships, partnerships, and trusts having undisclosed, anonymous or otherwise unidentifiable principals, owning large numbers of residential rental properties, sometimes managed through unresponsive property management companies, has impeded the proper enforcement of this chapter, chapter 12 and other ordinances of the city. This article is intended to require the disclosure of the ownership of such property, the regulation of renting of property within the City, and to make owners and persons responsible for the maintenance of property more accessible and accountable with respect to the premises, and to ensure that owners and tenants comply with chapters 6 and 10 of the City Code.

Sec. 6150.1. Definitions.

The definitions in 6-106 apply to this Article. The following words and phrases, when used in this article, shall have the meanings respectively ascribed to them:

Island Short Term Rental shall mean a short term rental located on one of the following islands in the City of Portland: Peaks Island, Great Diamond Island, Cushing Island, Little Diamond Island, House Island, and/or Cliff Island.

Long Term Rental shall mean the letting of a rental unit in whole or in part for thirty (30) days or more.

Mainland Short Term Rental shall mean a short term rental located within the limits of the City of Portland, but not on Peaks Island, Long Island, Great Diamond Island, Cushing Island, Little Diamond Island, House Island and/or Cliff Island.

Multi-Unit shall mean a single, detached building in common ownership interest containing more than one (1) residential or commercial unit, as determined by the Director of the Permitting and Inspections Department.

Owner-Occupied shall mean a rental unit owned and occupied by the registrant as his or her primary residence.

Owner shall mean each individual person or entity including, without limitation, all partners, officers, or trustees of any real estate trust; all members or managers of a limited liability company; and all officers and directors of a corporation; that is the record owner of a building or property.

Primary Residence shall mean the dwelling in which a person resides as his or her legal residence for more than one half of a year and registers as his or her address for tax and government identification purposes.

Registrant shall mean the owner of a rental unit, or a tenant, with permission from the owner, seeking to register a rental unit.

Rental unit is a portion of any residential structure that is rented or available for rent to any individual or individuals for any length of time. Any portion of a Single-Family Home, Condominium, or Apartment that is rented or available to be rented to an individual or individuals who are not the owner or owners shall be considered a rental unit. Dwelling units and rooming units as defined in §6-106 are, without limitation, rental units. A Single-Family Home, Condominium, or Apartment that is occupied by the owner or owners, and of which no portion is rented or available for rent, is not a rental unit.

Short Term Rental is the letting of a rental unit, in whole or in part, for less than thirty (30) days.

Single Family Home shall mean a detached residential

dwelling or a single condominium unit containing one dwelling unit.

Tenant-Occupied shall mean a rental unit in which the registrant is not the record owner of the rental unit, but lawfully occupies the rental unit as his or her primary residence.

Sec. 6151. Registration required.

~~(a) For purposes of this Article, a rental unit is a portion of any residential structure that is rented or available for rent to any individual or individuals for any length of time. A Single-Family Home, Condominium, or Apartment that is occupied by the owner or owners, and of which no portion is rented or available for rent, is not a rental unit. Any portion of a Single-Family Home, Condominium, or Apartment that is rented to or available to be rented to an individual or individuals who are not the owner or owners is a rental unit. Dwelling units and rooming units as defined in §6-106 are, without limitation, rental units.~~

(a) Registration of Ownership.

-

1. Rental units must be registered in accordance with this Article by January 1st of each year. Registration must be renewed annually, on or before January 1st, including updating all changes in previously submitted registration information.
2. If a rental unit is rented as both a short term and long term rental, it must be separately registered for each type of rentals.
3. Each owner, manager, or person/entity otherwise responsible for the rental unit, such as a property manager, shall be obligated under this Article. Any new owner, manager, or responsible person/entity must register within thirty (30) days of purchase of the rental unit or transfer of management or responsibility.
4. A rental unit shall not be considered registered until all information and fees are provided to the satisfaction of the City's Permitting and Inspections Department or its designee.
5. As a condition of registration, all owners must allow

onsite inspections of their property including, without limitation, all rental units.

(b) Information/Documentation Required. Registration must be completed on forms supplied by the City's Permitting and Inspections Department or their designee and must provide, at a minimum, the following information:

1. The street address of the building;
2. The unit number of the rental unit;
3. The tax assessor's chart, block and lot of the property on which the building is located;
4. The owner of the property, including the owners' name, address, telephone number, and email address. If the owner is anything other than a natural person, the following information must also be included:
 - a. Each individual person that has an ownership interest in any entity that is the record owner. This includes, without limitation, all partners, officers, or trustees of any real estate trusts; any members or managers of a limited liability company; and all officers and directors of a corporation; and
 - b. The residential street address, e-mail address and home phone number of at least one (1) such individual person;
5. The manager of the property or the person or persons responsible for its regular maintenance or repair, as well as a name, address, telephone number, and email address for that person or entity.
6. The person designated as the agent of the owner or owners for the service of notices and civil process by the city, as well as their name, address, telephone number, and e-mail address. Service of notice and process upon the person so designated shall be deemed conclusive service upon the owner or owners.

(c) Additional Information Required for Short Term Rentals. A short term rental shall not be considered registered unless and until the registrant has submitted a complete application together with all information required by this article, paid the fee required by Sec 6-153, and a registration number has been issued.

In addition to the information required in Section 6-152(5)(b), a Short Term Rental registrant must provide at a minimum the following information and any other information requested by the City's Permitting and Inspections Department or their designee::

1. A short term rental application;
2. Whether the rental unit is owner-occupied, tenant-occupied, or non-owner occupied;
 - a. For Short Term Rental units that are owner-occupied, the registrant must provide a notarized primary residence affidavit, on forms provided by the City.
 - b. For Short Term Rental units that are tenant-occupied, the registrant must provide a notarized primary residence affidavit, a notarized statement of permission by his/her landlord, both on forms supplied by the City.
3. The address and tax assessor's chart, block, and lot number of all other short term rentals in the City in which the registrant has an ownership interest;

(d) Display of Short Term Rental Registration Number Required. Once registration is approved by the City, each short term rental shall be given a registration number, which must be displayed in the rental unit and in any and all advertisements for the rental unit.

(e) Upon request by the City, at any time, all registrants and/or agents of short term rental units must provide the City with their registration information, rental history, and upcoming reservation information. Failure of short term rental unit owners, tenants, and/or their representatives to adequately respond to inquiries by the City within a forty-eight (48) hour period shall be considered a violation under this ordinance.

~~(b) Registration of ownership. The owner or owners of all buildings containing one (1) or more rental units within the city shall register their ownership interest, address, telephone number, and e-mail address, as well as the name, address and telephone number of the person or entity responsible for managing the property with a housing safety official designated by the city manager as provided in section 6152 by January 1, 2016 or within thirty (30) days of purchase of the property and/or building, whichever occurs later.~~

~~(c) Fee for Registration. The owner or owners shall pay to a housing safety official designated by the city manager a fee of \$35 per rental unit at the time of registration. Failure to pay this fee by January 1, 2016 shall constitute a violation pursuant to section 6-153.~~

~~(d) Annual Renewal and Fee. The owner or owners shall renew their registration annually by updating the information provided in their initial registration and by payment to the City through a housing safety official designated by the City Manager of a fee of \$35 per rental unit. Failure to update information or pay the annual renewal fee by January 1 shall constitute a violation pursuant to section 6-153.~~

~~(e) Registration of management companies. Any individual, firm, corporation or purchaser under a land installment contract pursuant to Title 13 M.R.S.A. § 481 et seq. as may be amended from time to time, managing property subject to the registration requirements of subsection (a) shall register with the building authority its management responsibility by January 1, 2016 or within thirty (30) days of assuming management responsibility. Any filing shall be updated, at least annually, if there are any changes whatsoever with regard to the information supplied. Failure to register management responsibility or update the information supplied regarding such management responsibility shall constitute a violation pursuant to section 6-153.~~

~~(f) Registration and Renewal Fee Discounts. In recognition that there are certain actions that owners of rental units may take that reduce the safety risk and decrease the financial burden upon the City, the following discounts to the registration fee and renewal fee are available:~~

- ~~(1) \$10 discount for each rental unit within a fully-sprinkled building as verified by a testing-report, maintenance report or a maintenance-~~

~~contract, which shall be provided at the time of registration and upon each renewal;~~

- ~~(2) \$7.50 discount for each rental unit within a building with a centrally-monitored fire alarm as verified by Fire Department logs or an alarm contract, which shall be provided at the time of registration and upon each renewal;~~
- ~~(3) \$5.00 for a rental unit that has been subject to and has passed a Housing and Urban Development Housing Quality Standard (HQS) inspection within the preceding year as verified by the HQS inspection report, which shall be provided at the time of registration and upon each renewal;~~
- ~~(4) \$10.00 for a rental unit that has been subject to and has passed a Housing and Urban Development Uniform Physical Condition Standard (UPCS) inspection within the preceding year as verified by the UPCS inspection report, which shall be provided at the time of registration and upon each renewal;~~
- ~~(5) \$2.50 for a rental unit that is subject to a signed lease which prohibits smoking by tenants as verified by a copy of the current lease, which shall be provided at the time of registration and upon each renewal. The existence of and enforcement of such provision may also be verified through inspections or upon spot checks of the rental unit.~~

~~The total amount of discounts from the annual registration or renewal fee as described above shall not exceed \$20.00, and the minimum annual fee for registration or renewal shall be \$15.00 per unit.~~

~~6-152. Registration form; information. Registration Fees.~~

~~A housing safety official designated by the city manager shall provide forms to be completed by the owners and managers of properties subject to registration under this article and shall maintain a file containing all registrations made under this article.~~

- ~~(a) The registration form for owners shall include, at a~~

~~minimum, the following:~~

- ~~1. The street address of the building;~~
 - ~~2. The assessor's chart, block and lot of the property on which the building is located;~~
 - ~~3. The names, addresses, telephone numbers, and e-mail addresses of all individual persons having any ownership interest in the property including, without limitation, all partners, all officers or trustees of any real estate trusts; and including the residential street address, e-mail address and home phone number of at least one (1) such individual person;~~
 - ~~4. The name, address and telephone number of the manager of the property or the person or persons responsible for its regular maintenance or repair;~~
 - ~~5. The name, address, and e-mail address of a person designated as the agent of the owner or owners for the service of notices and civil process by the city. Service of notice and process upon the person so designated shall be deemed conclusive service upon the owner or owners designating that person in any litigation pertaining to the premises.~~
- ~~(b) The registration form for managers of property shall include, at a minimum, the following:~~
- ~~1. The name, address, e-mail address and local telephone number of the management company and of at least one (1) such individual, including the residential street address, e-mail address and home telephone number of that individual; and~~
 - ~~2. A list of all buildings for which the person or firm is responsible, including the street address and chart, block and lot description of the property and the name of the owner of that building.~~

(a) Annual Registration Fee. Upon initial registration and by January 1st of each year, registrants shall pay the City

a registration fee for each rental unit, in the amounts set forth below. A rental unit shall not be considered registered unless and until this fee is paid in full.

(b) Long Term Rental Registration Fee. The registrant of a long term rental shall pay thirty five dollars (\$35.00) to the City by January 1st of each year.

(c) Short Term Rental Registration Fee Structure. The registrant of a short term rental shall pay the fee specified in the chart below. All fees will be cumulative and will increase based on the number of total units registered by the owner. The fee total will accumulate first by counting any short term rental units operating in a single family home or owner occupied multi-family buildings and then fees will be attributed at the higher rate for any units located in non-owner occupied buildings. If an owner registers units in both owner occupied and non-owner occupied buildings then the owner occupied fees will be considered the first unit under the fee structure starting with the 1st unit fee as described in the chart below regardless of the order in which the units are registered.

<u>Owner Occupied Single Family Home, or Tenant Occupied</u>	<u>\$100</u>
<u>Multi-Unit Owner Occupied Building</u> <u>Island Short Term Rentals</u>	<u>1st Unit - \$100</u> <u>2nd Unit - \$250</u> <u>3rd Unit - \$500</u> <u>4th Unit - \$1,000</u> <u>5th Unit - \$2,000</u>
<u>Multi-Unit Non-Owner Occupied Building</u>	<u>1st Unit - \$200</u> <u>2nd Unit - \$500</u> <u>3rd Unit - \$1,000</u> <u>4th Unit - \$2,000</u> <u>5th Unit - \$4,000</u>

(d) Registration and Renewal Fee Discounts. The following discounts shall apply to the registration and renewal fees:

- (1) \$10 discount for each rental unit within a fully-sprinkled building as verified by a testing report, maintenance report or a maintenance

contract, which shall be provided at the time of registration and upon each registration renewal;

- (2) \$7.50 discount for each rental unit within a building with a centrally-monitored fire alarm as verified by Fire Department logs or an alarm contract, which shall be provided at the time of registration and upon each registration renewal;
- (3) \$5.00 for a rental unit that has been subject to and has passed a Housing and Urban Development Housing Quality Standard (HQS) inspection within the preceding year as verified by the HQS inspection report, which shall be provided at the time of registration and upon each registration renewal;
- (4) \$10.00 for a rental unit that has been subject to and has passed a Housing and Urban Development Uniform Physical Condition Standard (UPCS) inspection within the preceding year as verified by the UPCS inspection report, which shall be provided at the time of registration and upon each registration renewal;
- (5) \$2.50 for a rental unit that is subject to a signed lease which prohibits smoking by tenants as verified by a copy of the current lease, which shall be provided at the time of registration and upon each registration renewal. The existence of and enforcement of this provision may be verified through an inspections of each rental unit.

The total amount of discounts from the annual registration or renewal fee as described above shall not exceed \$20.00, and the minimum annual fee for registration or renewal shall be \$15.00 per unit.

Sec. 6153. Violations.Limitations on Short Term Rentals.

- (a) Any person business entity or other organization failing to timely file the required registration or failing to timely pay, in full, the registration fee or annual renewal fee, or failing to timely file any required update to the registration shall be in violation of this Article for which a fine of \$100.00 per day each day the violation continues shall be

~~assessed.~~

- ~~(b) Any person providing false information with respect to registration shall be in violation of this article for which a fine of \$1,000.00 shall be assessed.~~
- ~~(c) It shall be a violation of this article for which a fine of \$100.00 per day each day the violation continues shall be assessed for any owner or manager to rent any apartment or other portion of any building subject to registration, not registered under this article, or to permit the occupancy of such premises.~~
- ~~(d) No certificate of occupancy shall be issued for property subject to the registration requirements which is not registered in accordance with this article.~~
- (d) Occupancy Limit. Overnight short term rental guest occupancy in each rental unit will be limited to two (2) guests per bedroom plus no more than two (2) additional guests.
- (e) Limitation on Total Number of Short Term Rentals. No more than 300 non-owner occupied mainland short term rental units shall be registered in any one calendar year.
- (f) Limitations on number of Short Term Rentals an Individual or Entity May Register. An individual or entity may only register up to five (5) short term rentals in the City, including the Islands, in any one (1) calendar year. For purposes of this section, short term rentals registered by an entity in which the registrant has an ownership interest shall be counted towards this limit.
- (g) No individual or entity may register a short term rental in any single family home unless it is owner-occupied; tenant-occupied with permission of the owner; or located on an Island.

(e) The number of short term rental units that may be operated in a multi-unit building are as follows:

<u>Total # of Units in a Building</u>	<u># of Short Term Rental Units Allowed in a Building</u>	
	<u>Owner Occupied</u>	<u>Non-Owner Occupied</u>
<u>2</u>	<u>2</u>	<u>1</u>
<u>3</u>	<u>3</u>	<u>2</u>
<u>4</u>	<u>4</u>	<u>2</u>
<u>5</u>	<u>5</u>	<u>2</u>
<u>6-9</u>	<u>5</u>	<u>4</u>
<u>10+</u>	<u>5</u>	<u>5</u>

Tenant-occupied units, where the tenant is the registrant, shall not be counted towards these limits.

Sec. 6-154. Reserved-Allocation of Short Term Rentals.

The limitations on the allocation of short term rental units identified in section 6-154(b) shall be allocated each year on a first come, first registered basis. Once the total number of units identified in section 6-154(b) has been reached a waitlist will be formed to help gauge market demand. The City Manager or his/her designee, may institute a lottery process at his/her discretion.

Sec. 6155. Reserved-Violations.

Specific violations of this article, subject to the provisions of § 6-1, include, but are not limited to:

- (a) Any person, business entity, or other organization failing to timely register a rental unit, including providing all required information and paying the required registration fee.
- (b) Any person, business entity, or other organization providing false information with respect to registration. Notwithstanding the provisions of § 6-1, the penalty for such violation shall be \$1,000.00.
- (c) Any person, business entity, or other organization renting any rental unit that is not registered under this article, or to permit the occupancy of such premises without registration.
- (d) Failure of short term rental unit owners, tenants, and/or their representatives to adequately respond to inquiries by the City pursuant to 6-152(e) within a forty-eight (48) hour period.

- (e) Any person business entity or other organization failing to timely file the required registration or failing to timely pay, in full, the registration fee or annual renewal fee, or failing to timely file any required update to the registration shall be in violation of this Article for which a fine of \$100.00 per day each day the violation continues shall be assessed.
- (f) Any person providing false information with respect to registration shall be in violation of this article for which a fine of \$1,000.00 shall be assessed.
- (g) It shall be a violation of this article for which a fine of \$100.00 per day each day the violation continues shall be assessed for any owner or manager to rent any apartment or other portion of any building subject to registration, not registered under this article, or to permit the occupancy of such premises.
- (d) No certificate of occupancy shall be issued for property subject to the registration requirements which is not registered in accordance with this article.

Sec. 6-156. Reserved-Enforcement.

(a) The building authority as defined in section 6-1 or his/her designee is authorized to institute, or cause to be instituted by and through the office of the corporation counsel, in the name of the city, any and all actions, legal or equitable, that may be appropriate or necessary for the enforcement of the provisions of this article.

(b) No certificate of occupancy shall be issued for property that is subject to the registration requirements of this article, but is not registered in accordance with this article.

(c) Any short term rental at a property that is designated by the City as a disorderly house and fails to meet the requirements of section 6-202, shall, at the discretion of the City Manager or this/her designee, have its registration revoked and be ineligible for registration for a period of twelve (12) months. Any registration after revocation shall be considered a new registration and not a renewal.

(d) Fines may be attributed to Property Management firms

found operating short term rental units in violation of this article. These fines may be in addition to fines levied against owners of property.

Sec. 6-157. Reserved Revenue Allocation.

Notwithstanding §6-1(b), all revenue generated from short term rental registration fees and penalties shall be used to first fund short term rental related administrative costs. Any remaining revenue shall be deposited in the Housing Trust Fund, as defined in Sec. §14-489.

2. That Chapter 14, Sections 14-47 of the Portland City Code is hereby amended as follows:

Sec. 1447. Definitions.

The following words shall be defined as set forth below for use in this article. Definitions set forth in the building code of the city shall apply to words not herein defined:

Accessory uses: Uses which are customarily incidental and subordinate to the location, function and operation of permitted uses.

...

Drive-through features: Features associated with drive-throughs including but not limited to designated travel or stacking lanes, intercom systems, menu boards, service windows, kiosks, mechanical devices, etc.

Dwelling: A building or portion thereof used exclusively for residential occupancy, including singlefamily, twofamily and multifamily dwellings, but not including hotels, lodging houses, sheltered care group homes or tourist homes. Occupancy of dwellings for periods of less than thirty (30) days are subject to the requirements of Portland City Code Chapter 6, Article VI.

Dwelling, onefamily: A detached building used exclusively for occupancy by one (1) family.

...

Use: The purpose for which land or structures thereon is designed, arranged or intended to be occupied or used, or for

which it is occupied, maintained, rented or leased. The use of a property is not altered solely as the result of the property being rented, leased, or let, on a transient or long-term basis, by an individual or entity other than the owner, for purposes of engaging in the same use.

Utility substation: Any sewage or water pumping station, electric power substation, transformer station, telephone equipment enclosures, or other similar structures owned or operated by a public utility.

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
Tyler Norod, Housing Planner

DATE: February 14, 2017

SUBJECT: Short Term Rentals

SPONSOR: Housing Committee; February 8th, 2017, Voted 3-0 in favor

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st reading: March 20, 2017 Final Action: March 26, 2017

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

PRESENTATION: Director of Planning & Urban Development, Jeff Levine & Housing Planner, Tyler Norod – brief oral presentation

I. ONE SENTENCE SUMMARY

Amendment to Portland City Codes Chapter 6 Buildings & Building Regulations, Article VI, and Chapter 14 Land Use, Article III Re: Residential Rental Unit Registration Requirements for Short Term Rentals.

II. AGENDA DESCRIPTION

The Housing Committee is recommending revisions to Chapter 6 and Chapter 14 to register and regulate the emergence of Short Term Rentals (STRs) through websites such as Airbnb.

The proposed amendments would allow all property owners to rent out their primary residences as STRs. No non-owner occupied single family home or condominium would be allowed to be rented as STRs, except on the islands. Multi-family and mixed-use buildings will be required to register units at escalating registration fees with a cap on total number of STR units per building based on the charts outlined in the memo's attachments.

In an effort to reduce the potential impacts of STRs on Portland's long term housing stock, a cap of 300 non-owner occupied STR units will be enforced on Portland's

mainland and a city-wide limit of no more than 5 STR units per person. A cap on non-owner occupied STR units on the islands may be examined at a later date.

Any problem STR properties will be subject to the Disorderly House Ordinance as it exists in Chapter 6. Additional details of the proposed amendments can be found in the attached regulatory framework and proposed ordinance language.

III. BACKGROUND

On February 8, 2017, the Housing Committee met and voted unanimously, 3-0 to forward this item to the City Council with a recommendation for passage. On February 28, 2017, the Planning Board met and voted 6-0 with a recommendation for passage of the definition amendments for Dwelling and Use in Chapter 14.

The Housing Committee met seven times between October 2016 and February 2017 to craft the regulatory language presented within this memorandum. The attached framework was developed through extensive discussions by Committee members. At the direction of the Committee, staff drafted the attached proposed ordinance amendments in Chapter 6 and Chapter 14.

IV. INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED

To provide clarity to existing City regulations regarding the letting of residential space within the context of the emerging sharing economy.

V. FINANCIAL IMPACT

The enforcement of regulations governing STRs will be complex and will require additional attention from the City. STRs also have the potential to negatively distort the long term housing market in Portland. As such any revenue collected in the form of registration fees or penalties are recommended to be allocated specifically to covering administrative costs for overseeing residential rental regulations. Any remaining revenue would be allocated to Portland's Housing Trust Fund.

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

The Committee's discussion around STRs largely revolved around the attached framework outlining the goals and regulatory provision for the proposed amendments to the City Code.

VII. RECOMMENDATION

The Housing Committee recommends the Council adopt the proposed amendments to Chapter 6 and Chapter 14 to clarify regulations for Short Term Rentals in Portland.

VIII. LIST ATTACHMENTS

Attachment A: STR Regulatory Framework

Attachment B: Amendments to Chapter 14, Article III definition of Dwelling and Use

Attachment C: Amendments to Chapter 6, Article VI Residential Rental Unit Registration Requirements

Prepared by: Tyler Norod, Housing Planner

Date: February 14, 2017

Attachment A – STR Regulatory Framework

Draft STR Regulatory Framework: Updated February 1, 2017

1. A Short Term Rental (STR) is a dwelling unit or rooming unit for transient guests for less than 30 days;
2. Property owners and their agents (Hosts) may not operate an STR without annually registering with the Housing Safety Office each unit or rooming unit;
3. The City will reevaluate the STR policy six months after registration begins and annually thereafter to understand the STR market impact on Portland's housing stock;
4. A cap of 300 units will be made available for all STR units that are not located on the islands and are not a host's primary residence. No cap for non-owner occupied units will initially be set for the islands.
 - a. Once caps have been reached a wait list will be formed to help gauge market demand;
 - b. The City will reevaluate the STR cap for both the islands and mainland six months after registration begins and annually thereafter to understand the STR market impact on Portland's housing stock and whether adjustments should be made to either cap;
5. Regardless of ownership structure, individuals shall not be allowed to register more than five (5) STR units across any buildings in Portland in which they have a financial interest;
6. Due to accountability and effective enforcement concerns only property owners will be able to register STRs, with the exception that a renter may register one apartment provided that:
 - a. The apartment is their primary dwelling and the tenant submits a primary residence affidavit and associated documents;
 - b. Along with their registration application and fee tenants must provide a notarized copy of the city drafted landlord-tenant STR permission letter signed by their landlord. The letter will include:
 - i. Landlord and tenant's contact information;
 - ii. A notarized statement of permission by landlord allowing tenant to rent apartment as STR including an acknowledgment by the owner of their liability under the Disorderly House Ordinance, inspections, and any fees or code violations;
7. A violation of the Disorderly House Ordinance will, at the discretion of the City Manager or their designee, result in an immediate revocation of the registration and 12 month suspension from registering again;
8. All Island rentals will continue to register with the Housing Safety Office. Because these rentals are typically rented seasonally the registration fee structure will follow the registration fees for owner-occupied multi-family buildings. Also, given the type of housing stock on the islands non-owner occupied single family homes shall be allowed to operate as STRs so long as they meet all other requirements;
9. Under the STR regulations condominiums will be considered single family homes subject to the same fees and STR limitations as outlined in the chart below;

- a. For clarity, the City's STR regulations will not supersede condominium bylaws pertaining to subletting or offering STR and each condominium association may enforce its own STR restrictions as the association deems appropriate;
10. STR will be addressed similarly to all other applicable building and land use violations as described under Section 6.1 of the City Code and the Disorderly House Ordinance;
11. All registration fees and penalties associated with STRs will be allocated to administrative costs for regulating STRs. Once the administrative needs have been met any remaining revenue will be allocated to the Housing Trust Fund.
12. Property management firms found operating STR's without proper registration may be fined. These fines may be in addition to fines levied against the property owner;
13. Where applicable, hosts must sign an affidavit that the registered unit is their primary residence and provide copies of documents approved by the City demonstrating compliance with this residency requirement, including government ID's, Homestead Exemption, voter registration, current business license, and/or any other documents deemed appropriate by City staff;
14. Hosts must complete the Owner's Pre-Inspection Checklist or similar document provided by the Housing Safety Office as part of the registration process;
15. As a condition of registration, STR's must allow onsite inspections, as well as upon request present their registration information, rental history and upcoming reservations;
16. A registration number will be given to each host per dwelling unit; this registration number shall be displayed in the dwelling unit and be featured in ads;
17. Failure of hosts or their representatives to adequately respond to inquiries by the City within a 48 hour period shall be considered a violation of these regulations and be subject to penalties under Section 6.1;
18. Overnight STR guest occupancy will be limited to two guests per bedroom plus no more than two additional guests who may utilize other sleeping space in another area of the dwelling unit such as a pullout couch. For example, a one bedroom dwelling unit could be rented for a total of four guests, whereas a two bedroom dwelling unit could be rented to a total of six guests; and
19. The number of STR units that may be operated in a building and their associated registration fees will depend on whether or not the building is owner occupied as further detailed in the chart on the next page.
 - a. Fees will be cumulative and will increase based on the number of total units and each unit fee will relate to whether or not it is in an owner occupied or non-owner occupied building.
 - b. Fees will be calculated by first using any STRs operating in single family homes or owner occupied multi-family buildings and then fees will be attributed at a higher rate for any units in non-owner occupied buildings. It will not matter what order the units are registered in as money owed will be adjusted accordingly to accurately reflect the

total registration fee due based on the number of total units and building typology represented.

- i. If a property owner registers STRs in more than one building the registration fees will escalate based on the total number of STR's that they register rather than resetting the escalating fees for each building. For example, if a person owns two non-owner occupied three unit buildings and can register two units in each building the registration fee charged would be a total of \$3,700 as fees rise even if registered STR units are not in the same building. If an owner also operates STRs in an owner occupied multi family or single family building the registration fees will accumulate the owner occupied unit first, no matter the timing of registration and the fee for the number of STR units in non-owner occupied buildings will start in a step above the number of STR units operated in a single family home or owner occupied multifamily building.
- ii. If we look at the example above where an owner has two three unit properties -- one of which is owner occupied -- and chooses to register two STRs in each building, the STRs in the owner occupied building would be calculated first for a total of \$350. The two units in the non-owner occupied building would trigger higher fees of \$1,000 and \$2,000 because they are the third and fourth STR units registered under that owner and these units are in a non-owner occupied building. In this scenario the total registration fee for both buildings would be \$3,350.
- iii. The order of units registered will not affect the total fee that is required as part of registration. The fees owed will be adjusted as units are registered to reflect the correct total amount. Owner occupied single family homes and units in owner occupied multifamily homes will always be tallied as the first units even if registered at a later date from units in non-owner occupied buildings. For example, if an owner registers two units in a non-owner occupied building for \$700 and then a month later returns to register two units in a owner-occupied building the fee calculated will consider the units in the owner occupied buildings to be at the first and second unit rates and the units in the non-owner occupied building will be considered the third and fourth units for higher fees resulting in a total registration cost of \$3,350. The previously paid amount of \$700 will act as a credit towards the \$3,350 owed and at the time of the second registration the owner would owe the remaining balance of \$2,650.

Attachment B - Chapter 14 Ordinance Language

Chapter 14 LAND USE*

*Cross reference(s)--Buildings and building regulations, Ch. 6; parks, recreation and public buildings, Ch. 18; sewers, Ch. 24; streets, sidewalks and other public places, Ch. 25; vegetation, Ch. 29.

State law reference(s)--Planning, zoning and development, 30 M.R.S.A. Sec. 4501 et seq.

- Art. I. In General, § 14-1--14-15**
Art. II. Planning Board, § 14-16--14-45
Art. III. Zoning, § 14-46--14-490
- Div. 1. Generally, § 14-46--14-59
Div. 1.5 Conditional or Contract Zoning, §
14-60--14-65
- Div. 2. R-1 Residential Zone, § 14-66--14-75
Div. 3. R-2 Residential Zone, § 14-76--14-85
Div. 4. R-3 Residential Zone, § 14-86--14-93
Div. 4.5. FH Flexible Housing Zone, § 14-94--14-100
Div. 5. R-4 Residential Zone, § 14-101--14-115
Div. 6. R-5 Residential Zone., § 14-116--14-125
Div. 6.5. R-5A Residential Zone, § 14-126--14-134
Div. 7. R-6 and R-6A Residential Zone, § 14-135--14-
140
- Div. 7.01 R-7 Compact Urban Residential Overlay Zone, §
14-141--14-144
Div. 7.1. IR-1 Island Residential Zone, § 14-145.1--14-
145.6
Div. 7.2. IR-2 Island Residential Zone, § 14-145.7--14-
145.12
Div. 7.3. IR-3 Island Residential Zone, § 14-145.13--14-
145.19
Div. 7.5. Island Transfer Station Overlay Zone, § 14-
145.20--14-145.22
Div. 8. R-P Residence-Professional Zone, § 14-146--14-
152
Div. 8.1 USM University of Southern Maine Overlay Zone
14-152--14-152.9
Div. 8.5. R-OS Recreation and Open Space Zone, § 14-153--
14-160
Div. 9. B-1 and B-1b Neighborhood Business Zones, §
14-161--14-180
Div. 10. B-2 and B-2b Community Business Zone, § 14-
181--14-195
Div. 11. A-B Airport Business Zone, § 14-196--14-215
Div. 12. B-3, B-3b and B-3c Downtown Business Zones, §

Day care facility: A facility which provides a regular program of care and protection for children under the age of sixteen (16), for consideration, for any part of the day.

Drinking establishment: Means and includes any establishment required to be licensed to sell alcoholic beverages for on-premises consumption, which is not regularly used for the purpose of providing full-course meals, as defined in Title 28-A of the Maine Revised Statutes, on the premises.

Drive-through facility: A commercial facility which provides a service directly to a motor vehicle occupant and where the customer drives a motor vehicle onto the premises and to a window or mechanical device through or by which the customer is served with or without exiting the vehicle. Drive-throughs do not include major or minor auto service stations.

Drive-through features: Features associated with drive-throughs including but not limited to designated travel or stacking lanes, intercom systems, menu boards, service windows, kiosks, mechanical devices, etc.

Dwelling: A building or portion thereof used exclusively for residential occupancy, including single-family, two-family and multifamily dwellings, but not including hotels, lodging houses, sheltered care group homes or tourist homes. Occupancy of dwellings for periods of less than 30 days are subject to the requirements of Chapter 6, Article XI.

Dwelling, one-family: A detached building used exclusively for occupancy by one (1) family.

Dwelling, two-family: A single building containing two dwelling units used exclusively for occupancy by two (2) families living independently of each other.

Dwelling, multifamily: A building or portion thereof containing three (3) or more dwelling units.

Dwelling unit: One (1) or more rooms with private bath and kitchen facilities comprising an independent self-contained dwelling unit.

Earth moving activity means any removal or placement, excavation, filling, stockpiling or grading of soil, earth,

vegetation but such vegetation is dominated by woody stems that are six (6) meters approximately.

Use: The purpose for which land or structures thereon is designed, arranged or intended to be occupied or used, or for which it is occupied, maintained, rented or leased. The use of a property is not altered solely as the result of the property being rented, leased, or let, on a transient or long-term basis, by an individual or entity other than the owner, for purposes of engaging in the same use.

Utility substation: Any sewage or water pumping station, electric power substation, transformer station, telephone equipment enclosures, or other similar structures owned or operated by a public utility.

Vegetation: All live trees, shrubs, ground cover, and other plants including, without limitation, trees both over and under four (4) inches in diameter, measured at four and one-half (4 1/2) feet above ground level.

Warehousing: The storage of goods, wares and merchandise in a warehouse.

Water body: Any river or stream.

Watercourse: Any natural or artificial stream, river, creek, ditch, channel, swale, canal, conduit, culvert, drain, waterway, gully, ravine or wash in which water flows in a definite direction or course, either continuously or intermittently, or which has a definite channel, bed and banks, and includes any area adjacent thereto subject to inundation by reason of overflow or floodwater.

Water-dependent uses: Those uses that require, for their primary purpose, location on submerged lands or that require direct access to, or location in, coastal or inland waters and which cannot be located away from these waters.

Wetlands associated with shoreland zones: a freshwater or coastal wetland.

Wetlands: Those areas which have two (2) or more of the following:

- (a) A water table at or near the surface during the

Chapter 14 LAND USE*

*Cross reference(s)--Buildings and building regulations, Ch. 6; parks, recreation and public buildings, Ch. 18; sewers, Ch. 24; streets, sidewalks and other public places, Ch. 25; vegetation, Ch. 29.

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Div. 6.5. R-5A Residential Zone, § 14-126--14-134
Div. 7. R-6 and R-6A Residential Zone, § 14-135--14-
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- Div. 7.01 R-7 Compact Urban Residential Overlay Zone, §
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145.20--14-145.22
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Div. 10. B-2 and B-2b Community Business Zone, § 14-
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Div. 12. B-3, B-3b and B-3c Downtown Business Zones, §

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Drive-through facility: A commercial facility which provides a service directly to a motor vehicle occupant and where the customer drives a motor vehicle onto the premises and to a window or mechanical device through or by which the customer is served with or without exiting the vehicle. Drive-throughs do not include major or minor auto service stations.

Drive-through features: Features associated with drive-throughs including but not limited to designated travel or stacking lanes, intercom systems, menu boards, service windows, kiosks, mechanical devices, etc.

Dwelling: A building or portion thereof used exclusively for residential occupancy, including single-family, two-family and multifamily dwellings, but not including hotels, lodging houses, sheltered care group homes or tourist homes. Occupancy of dwellings for periods of less than 30 days are subject to the requirements of Chapter 6, Article XI.

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Dwelling, multifamily: A building or portion thereof containing three (3) or more dwelling units.

Dwelling unit: One (1) or more rooms with private bath and kitchen facilities comprising an independent self-contained dwelling unit.

Earth moving activity means any removal or placement, excavation, filling, stockpiling or grading of soil, earth,

vegetation; or where the soils support the growth of wetland vegetation but such vegetation is dominated by woody stems that are six (6) meters approximately.

Use: The purpose for which land or structures thereon is designed, arranged or intended to be occupied or used, or for which it is occupied, maintained, rented or leased. The use of a property is not altered solely as the result of the property being rented, leased, or let, on a transient or long-term basis, by an individual or entity other than the owner, for purposes of engaging in the same use.

Utility substation: Any sewage or water pumping station, electric power substation, transformer station, telephone equipment enclosures, or other similar structures owned or operated by a public utility.

Vegetation: All live trees, shrubs, ground cover, and other plants including, without limitation, trees both over and under four (4) inches in diameter, measured at four and one-half (4 1/2) feet above ground level.

Warehousing: The storage of goods, wares and merchandise in a warehouse.

Water body: Any river or stream.

Watercourse: Any natural or artificial stream, river, creek, ditch, channel, swale, canal, conduit, culvert, drain, waterway, gully, ravine or wash in which water flows in a definite direction or course, either continuously or intermittently, or which has a definite channel, bed and banks, and includes any area adjacent thereto subject to inundation by reason of overflow or floodwater.

Water-dependent uses: Those uses that require, for their primary purpose, location on submerged lands or that require direct access to, or location in, coastal or inland waters and which cannot be located away from these waters.

Wetlands associated with shoreland zones: a freshwater or coastal wetland.

Wetlands: Those areas which have two (2) or more of the following:

Attachment C - Chapter 6 Ordinance Language

**ARTICLE VI. ~~DISCLOSURE OF BUILDING OWNERSHIP~~ Residential Rental
Unit Registration Requirements**

Sec. 6-150. Purpose.

The proliferation of real estate proprietorships, partnerships, and trusts having undisclosed, anonymous or otherwise unidentifiable principals, owning large numbers of residential rental properties, sometimes managed through unresponsive property management companies, has impeded the proper enforcement of this chapter, chapter 12 and other ordinances of the city. This article is intended to require the disclosure of the ownership of such property, the regulation of renting of property within the City, and to make owners and persons responsible for the maintenance of property more accessible and accountable with respect to the premises, and to ensure that owners and tenants comply with chapters 6 and 10 of the City Code.

(Ord. No. 443-89, 6-7-89; Ord. No. 53-89, 7-17-89; Ord. 298-14/15, 7-6-2015)

Sec. 6-151. Definitions.

The definitions in 6-106 apply to this Article. The following words and phrases, when used in this article, shall have the meanings respectively ascribed to them:

Island Short Term Rental shall mean a short term rental located on one of the following islands in the City of Portland: Peaks Island, Great Diamond Island, Cushing Island, Little Diamond Island, House Island, and/or Cliff Island.

Long Term Rental shall mean the letting of a rental unit in whole or in part for thirty (30) days or more.

Mainland Short Term Rental shall mean a short term rental located within the limits of the City of Portland, but not on Peaks Island, Long Island, Great Diamond Island, Cushing Island, Little Diamond Island, House Island and/or Cliff Island.

Multi-Unit shall mean a single, detached building in common ownership interest containing more than one (1) residential or commercial unit, as determined by the Director of the Permitting and Inspections Department.

Owner-Occupied shall mean a rental unit owned and occupied by the registrant as his or her primary residence.

Owner shall mean each individual person or entity including, without limitation, all partners, officers, or trustees of any real estate trust; all members or managers of a limited liability company; and all officers and directors of a corporation; that is the record owner of a building or property.

Primary Residence shall mean the dwelling in which a person resides as his or her legal residence for more than one half of a year and registers as his or her address for tax and government identification purposes.

Registrant shall mean the owner of a rental unit, or a tenant, with permission from the owner, seeking to register a rental unit.

Rental unit is a portion of any residential structure that is rented or available for rent to any individual or individuals for any length of time. Any portion of a Single-Family Home, Condominium, or Apartment that is rented or available to be rented to an individual or individuals who are not the owner or owners shall be considered a rental unit. Dwelling units and rooming units as defined in §6-106 are, without limitation, rental units. A Single-Family Home, Condominium, or Apartment that is occupied by the owner or owners, and of which no portion is rented or available for rent, is not a rental unit.

Short Term Rental is the letting of a rental unit, in whole or in part, for less than thirty (30) days.

Single Family Home shall mean a detached residential dwelling or a single condominium unit containing one dwelling unit.

Tenant-Occupied shall mean a rental unit in which the registrant is not the record owner of the rental unit, but lawfully occupies the rental unit as his or her primary residence.

Sec. 6-1521. Registration required.

~~(a) For purposes of this Article, a rental unit is a portion of any residential structure that is rented or available for rent to any individual or individuals for any length of time. A Single-Family Home, Condominium, or Apartment that is occupied by the owner or owners, and of which no portion is rented or available for rent, is not a rental unit. Any portion of a Single-Family Home, Condominium, or Apartment that is rented to or available to be rented to an individual or individuals who are not the owner or owners is a rental unit. Dwelling units and rooming units as defined in §6-106 are, without limitation, rental units.~~

(a) Registration of Ownership.

1. Rental units must be registered in accordance with this Article by January 1st of each year. Registration must be renewed annually, on or before January 1st, including updating all changes in previously submitted registration information.
2. If a rental unit is rented as both a short term and long term rental, it must be separately registered for each type of rentals.
3. Each owner, manager, or person/entity otherwise responsible for the rental unit, such as a property manager, shall be obligated under this Article. Any new owner, manager, or responsible person/entity must register within thirty (30) days of purchase of the rental unit or transfer of management or responsibility.
4. A rental unit shall not be considered registered until all information and fees are provided to the satisfaction of the City's Permitting and Inspections Department or its designee.
5. As a condition of registration, all owners must allow onsite inspections of their property including, without limitation, all rental units.

(b) Information/Documentation Required. Registration must be completed on forms supplied by the City's Permitting and Inspections Department or their designee and must provide, at a minimum, the following information:

1. The street address of the building;

2. The unit number of the rental unit;
3. The tax assessor's chart, block and lot of the property on which the building is located;
4. The owner of the property, including the owners' name, address, telephone number, and email address. If the owner is anything other than a natural person, the following information must also be included:
 - a. Each individual person that has an ownership interest in any entity that is the record owner. This includes, without limitation, all partners, officers, or trustees of any real estate trusts; any members or managers of a limited liability company; and all officers and directors of a corporation; and
 - b. The residential street address, e-mail address and home phone number of at least one (1) such individual person;
5. The manager of the property or the person or persons responsible for its regular maintenance or repair, as well as a name, address, telephone number, and email address for that person or entity.
6. The person designated as the agent of the owner or owners for the service of notices and civil process by the city, as well as their name, address, telephone number, and e-mail address. Service of notice and process upon the person so designated shall be deemed conclusive service upon the owner or owners.

(c) Additional Information Required for Short Term Rentals.
A short term rental shall not be considered registered unless and until the registrant has submitted a complete application together with all information required by this article, paid the fee required by Sec 6-153, and a registration number has been issued.

In addition to the information required in Section 6-152(5)(b), a Short Term Rental registrant must provide at a minimum the following information and any other information requested by the City's Permitting and Inspections Department or their designee::

1. A short term rental application;
2. Whether the rental unit is owner-occupied, tenant-occupied, or non-owner occupied;
 - a. For Short Term Rental units that are owner-occupied, the registrant must provide a notarized primary residence affidavit, on forms provided by the City.
 - b. For Short Term Rental units that are tenant-occupied, the registrant must provide a notarized primary residence affidavit, a notarized statement of permission by his/her landlord, both on forms supplied by the City.
3. The address and tax assessor's chart, block, and lot number of all other short term rentals in the City in which the registrant has an ownership interest;

(d) Display of Short Term Rental Registration Number Required. Once registration is approved by the City, each short term rental shall be given a registration number, which much be displayed in the rental unit and in any and all advertisements for the rental unit.

(e) Upon request by the City, at any time, all registrants and/or agents of short term rental units must provide the City with their registration information, rental history, and upcoming reservation information. Failure of short term rental unit owners, tenants, and/or their representatives to adequately respond to inquiries by the City within a forty-eight (48) hour period shall be considered a violation under this ordinance.

~~(b) Registration of ownership. The owner or owners of all buildings containing one (1) or more rental units within the~~

~~city shall register their ownership interest, address, telephone number, and e-mail address, as well as the name, address and telephone number of the person or entity responsible for managing the property with a housing safety official designated by the city manager as provided in section 6-152 by January 1, 2016 or within thirty (30) days of purchase of the property and/or building, whichever occurs later.~~

~~(c) Fee for Registration. The owner or owners shall pay to a housing safety official designated by the city manager a fee of \$35 per rental unit at the time of registration. Failure to pay this fee by January 1, 2016 shall constitute a violation pursuant to section 6-153.~~

~~(d) Annual Renewal and Fee. The owner or owners shall renew their registration annually by updating the information provided in their initial registration and by payment to the City through a housing safety official designated by the City Manager of a fee of \$35 per rental unit. Failure to update information or pay the annual renewal fee by January 1 shall constitute a violation pursuant to section 6-153.~~

~~(e) Registration of management companies. Any individual, firm, corporation or purchaser under a land installment contract pursuant to Title 13 M.R.S.A. § 481 et seq. as may be amended from time to time, managing property subject to the registration requirements of subsection (a) shall register with the building authority its management responsibility by January 1, 2016 or within thirty (30) days of assuming management responsibility. Any filing shall be updated, at least annually, if there are any changes whatsoever with regard to the information supplied. Failure to register management responsibility or update the information supplied regarding such management responsibility shall constitute a violation pursuant to section 6-153.~~

6-153. Registration Fees.

(a) Annual Registration Fee. Upon initial registration and by January 1st of each year, registrants shall pay the City a registration fee for each rental unit, in the amounts set forth below. A rental unit shall not be considered registered unless and until this fee is paid in full.

(b) Long Term Rental Registration Fee. The registrant of a

long term rental shall pay thirty five dollars (\$35.00) to the City by January 1st of each year.

(c) Short Term Rental Registration Fee Structure. The registrant of a short term rental shall pay the fee specified in the chart below. All fees will be cumulative and will increase based on the number of total units registered by the owner. The fee total will accumulate first by counting any short term rental units operating in a single family home or owner occupied multi-family buildings and then fees will be attributed at the higher rate for any units located in non-owner occupied buildings. If an owner registers units in both owner occupied and non-owner occupied buildings then the owner occupied fees will be considered the first unit under the fee structure starting with the 1st unit fee as described in the chart below regardless of the order in which the units are registered.

<u>Owner Occupied Single Family Home , or Tenant Occupied</u>	<u>\$100</u>
<u>Multi-Unit Owner Occupied Building Island Short Term Rentals</u>	<u>1st Unit - \$100</u> <u>2nd Unit - \$250</u> <u>3rd Unit - \$500</u> <u>4th Unit - \$1,000</u> <u>5th Unit - \$2,000</u>
<u>Multi-Unit Non-Owner Occupied Building</u>	<u>1st Unit - \$200</u> <u>2nd Unit - \$500</u> <u>3rd Unit - \$1,000</u> <u>4th Unit - \$2,000</u> <u>5th Unit - \$4,000</u>

(d) Registration and Renewal Fee Discounts. In recognition that there are certain actions that owners of rental units may take that reduce the safety risk and decrease the financial burden upon the City, the following discounts shall apply to the registration fee and renewal fees are available:

- (1) \$10 discount for each rental unit within a fully-sprinkled building as verified by a testing report, maintenance report or a maintenance contract, which shall be provided at the time of registration and upon each registration renewal;

- (2) \$7.50 discount for each rental unit within a building with a centrally-monitored fire alarm as verified by Fire Department logs or an alarm contract, which shall be provided at the time of registration and upon each registration renewal;
- (3) \$5.00 for a rental unit that has been subject to and has passed a Housing and Urban Development Housing Quality Standard (HQS) inspection within the preceding year as verified by the HQS inspection report, which shall be provided at the time of registration and upon each registration renewal;
- (4) \$10.00 for a rental unit that has been subject to and has passed a Housing and Urban Development Uniform Physical Condition Standard (UPCS) inspection within the preceding year as verified by the UPCS inspection report, which shall be provided at the time of registration and upon each registration renewal;
- (5) \$2.50 for a rental unit that is subject to a signed lease which prohibits smoking by tenants as verified by a copy of the current lease, which shall be provided at the time of registration and upon each registration renewal. The existence of and enforcement of ~~such this~~ provision may ~~also be~~ verified through an inspections ~~or upon spot checks~~ of ~~the each~~ rental unit.

The total amount of discounts from the annual registration or renewal fee as described above shall not exceed \$20.00, and the minimum annual fee for registration or renewal shall be \$15.00 per unit.

(Ord. No. 443-89, 6-7-89; Ord. No. 53-89, 7-17-89; Ord. No. 246-97, 4-9-97; Ord. 298-14/15, 7-6-2015; Ord. 69-15/16, 10/5/2015)

Sec. 6-154. Limitations on Short Term Rentals.

- (a) Occupancy Limit. Overnight short term rental guest occupancy in each rental unit will be limited to two (2) guests per bedroom plus no more than two (2) additional guests.
- (b) Limitation on Total Number of Short Term Rentals. No more than 300 non-owner occupied mainland short term rental units shall be registered in any one calendar year.

(c) Limitations on number of Short Term Rentals an Individual or Entity May Register. An individual or entity may only register up to five (5) short term rentals in the City, including the Islands, in any one (1) calendar year. For purposes of this section, short term rentals registered by an entity in which the registrant has an ownership interest shall be counted towards this limit.

(d) No individual or entity may register a short term rental in any single family home unless it is owner-occupied; tenant-occupied with permission of the owner; or located on an Island.

(e) The number of short term rental units that may be operated in a multi-unit building are as follows:

<u>Total # of Units in a Building</u>	<u># of Short Term Rental Units Allowed in a Building</u>	
	<u>Owner Occupied</u>	<u>Non-Owner Occupied</u>
2	2	1
3	3	2
4	4	2
5	5	2
6-9	5	4
10+	5	5

Tenant-occupied units, where the tenant is the registrant, shall not be counted towards these limits.

Sec. 6-155. Allocation of Short Term Rentals.

The limitations on the allocation of short term rental units identified in section 6-154(b) shall be allocated each year on a first come, first registered basis. Once the total number of units identified in section 6-154(b) has been reached a waitlist will be formed to help gauge market demand. The City Manager or his/her designee, may institute a lottery process at his/her discretion.

Sec. 6-156. Violations.

Specific violations of this article, subject to the provisions of § 6-1, include, but are not limited to:

- (a) Any person, business entity, or other organization failing to timely register a rental unit, including providing all required information and paying the required registration fee.
- (b) Any person, business entity, or other organization providing false information with respect to registration. Notwithstanding the provisions of § 6-1, the penalty for such violation shall be \$1,000.00.
- (c) Any person, business entity, or other organization renting any rental unit that is not registered under this article, or to permit the occupancy of such premises without registration.
- (d) Failure of short term rental unit owners, tenants, and/or their representatives to adequately respond to inquiries by the City pursuant to 6-152(e) within a forty-eight (48) hour period.

(Ord. No. 443-89, 6-7-89; Ord. No. 53-89, 7-17-89; Ord. 298-14/15, 7-6-2015)

~~Sec. 6-152. Registration form; information.~~

~~A housing safety official designated by the city manager shall provide forms to be completed by the owners and managers of properties subject to registration under this article and shall maintain a file containing all registrations made under this article.~~

- ~~(a) The registration form for owners shall include, at a minimum, the following:~~
 - ~~1. The street address of the building;~~
 - ~~2. The assessor's chart, block and lot of the property on which the building is located;~~
 - ~~3. The names, addresses, telephone numbers, and e-mail addresses of all individual persons having~~

~~any ownership interest in the property including, without limitation, all partners, all officers or trustees of any real estate trusts; and including the residential street address, e-mail address and home phone number of at least one (1) such individual person;~~

~~4. The name, address and telephone number of the manager of the property or the person or persons responsible for its regular maintenance or repair;~~

~~5. The name, address, and e-mail address of a person designated as the agent of the owner or owners for the service of notices and civil process by the city. Service of notice and process upon the person so designated shall be deemed conclusive service upon the owner or owners designating that person in any litigation pertaining to the premises.~~

~~(b) The registration form for managers of property shall include, at a minimum, the following:~~

~~1. The name, address, e-mail address and local telephone number of the management company and of at least one (1) such individual, including the residential street address, e-mail address and home telephone number of that individual; and~~

~~2. A list of all buildings for which the person or firm is responsible, including the street address and chart, block and lot description of the property and the name of the owner of that building.~~

(Ord. No. 443-89, 6-7-89; Ord. No. 53-89, 7-17-89; Ord. 298-14/15, 7-6-2015)

Sec. 6-153. Violations.

~~(a)~~ (e) Any person business entity or other organization failing to timely file the required registration or failing to timely pay, in full, the registration fee or annual renewal fee, or failing to timely file any required update to the registration shall be in violation of this Article for which a fine of \$100.00

per day each day the violation continues shall be assessed.

~~(b)~~ (f) Any person providing false information with respect to registration shall be in violation of this article for which a fine of \$1,000.00 shall be assessed.

~~(e)~~ (g) It shall be a violation of this article for which a fine of \$100.00 per day each day the violation continues shall be assessed for any owner or manager to rent any apartment or other portion of any building subject to registration, not registered under this article, or to permit the occupancy of such premises.

(d) No certificate of occupancy shall be issued for property subject to the registration requirements which is not registered in accordance with this article.

(Ord. No. 443-89, 6-7-89; Ord. No. 53-89, 7-17-89; Ord. 298-14/15, 7-6-2015)

Sec. 6-157. Enforcement.

(a) The building authority as defined in section 6-1 or his/her designee is authorized to institute, or cause to be instituted by and through the office of the corporation counsel, in the name of the city, any and all actions, legal or equitable, that may be appropriate or necessary for the enforcement of the provisions of this article.

(b) No certificate of occupancy shall be issued for property that is subject to the registration requirements of this article, but is not registered in accordance with this article.

(c) Any short term rental at a property that is designated by the City as a disorderly house and fails to meet the requirements of section 6-202, shall, at the discretion of the City Manager or this/her designee, have its registration revoked and be ineligible for registration for a period of twelve (12) months. Any registration after revocation shall be considered a new registration and not a renewal.

(d) Fines may be attributed to Property Management firms found operating short term rental units in violation of this article. These

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finances may be in addition to fines levied against owners of property.

Sec. 6-158. Revenue Allocation.

Notwithstanding § 6-1(b), all revenue generated from short term rental registration fees and penalties shall be used to first fund short term rental related administrative costs. Any remaining revenue shall be deposited in the Housing Trust Fund, as defined in Sec. 14-489.

~~Sec. 6-154. Reserved.~~
~~Sec. 6-155. Reserved.~~
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~~Sec. 6-158. Reserved.~~
Sec. 6-159. Reserved.
Sec. 6-160. Reserved.
Sec. 6-161. Reserved.
Sec. 6-162. Reserved.
Sec. 6-163. Reserved.
Sec. 6-164. Reserved.

ARTICLE VI. Residential Rental Unit Registration Requirements

Sec. 6-150. Purpose.

The proliferation of real estate proprietorships, partnerships, and trusts having undisclosed, anonymous or otherwise unidentifiable principals, owning large numbers of residential rental properties, sometimes managed through unresponsive property management companies, has impeded the proper enforcement of this chapter, chapter 12 and other ordinances of the city. This article is intended to require the disclosure of the ownership of such property, the regulation of renting of property within the City, and to make owners and persons responsible for the maintenance of property more accessible and accountable with respect to the premises, and to ensure that owners and tenants comply with chapters 6 and 10 of the City Code.

(Ord. No. 443-89, 6-7-89; Ord. No. 53-89, 7-17-89; Ord. 298-14/15, 7-6-2015)

Sec. 6-151. Definitions.

The definitions in 6-106 apply to this Article. The following words and phrases, when used in this article, shall have the meanings respectively ascribed to them:

Island Short Term Rental shall mean a short term rental located on one of the following islands in the City of Portland: Peaks Island, Great Diamond Island, Cushing Island, Little Diamond Island, House Island, and/or Cliff Island.

Long Term Rental shall mean the letting of a rental unit in whole or in part for thirty (30) days or more.

Mainland Short Term Rental shall mean a short term rental located within the limits of the City of Portland, but not on Peaks Island, Long Island, Great Diamond Island, Cushing Island, Little Diamond Island, House Island and/or Cliff Island.

Multi-Unit shall mean a single, detached building in common ownership interest containing more than one (1) residential or commercial unit, as determined by the Director of the Permitting and Inspections Department.

Owner-Occupied shall mean a rental unit owned and occupied by the

registrant as his or her primary residence.

Owner shall mean each individual person or entity including, without limitation, all partners, officers, or trustees of any real estate trust; all members or managers of a limited liability company; and all officers and directors of a corporation; that is the record owner of a building or property.

Primary Residence shall mean the dwelling in which a person resides as his or her legal residence for more than one half of a year and registers as his or her address for tax and government identification purposes.

Registrant shall mean the owner of a rental unit, or a tenant, with permission from the owner, seeking to register a rental unit.

Rental unit is a portion of any residential structure that is rented or available for rent to any individual or individuals for any length of time. Any portion of a Single-Family Home, Condominium, or Apartment that is rented or available to be rented to an individual or individuals who are not the owner or owners shall be considered a rental unit. *Dwelling units* and *rooming units* as defined in §6-106 are, without limitation, *rental units*. A Single-Family Home, Condominium, or Apartment that is occupied by the owner or owners, and of which no portion is rented or available for rent, is not a rental unit.

Short Term Rental is the letting of a rental unit, in whole or in part, for less than thirty (30) days.

Single Family Home shall mean a detached residential dwelling or a single condominium unit containing one dwelling unit.

Tenant-Occupied shall mean a rental unit in which the registrant is not the record owner of the rental unit, but lawfully occupies the rental unit as his or her primary residence.

Sec. 6-152. Registration required.

(a) Registration of Ownership.

1. Rental units must be registered in accordance with this Article by January 1st of each year. Registration must be renewed annually, on or before January 1st, including updating all changes in previously submitted registration information.
2. If a rental unit is rented as both a short term and long term rental, it must be separately registered for each type of rentals.
3. Each owner, manager, or person/entity otherwise responsible for the rental unit, such as a property manager, shall be obligated under this Article. Any new owner, manager, or responsible person/entity must register within thirty (30) days of purchase of the rental unit or transfer of management or responsibility.
4. A rental unit shall not be considered registered until all information and fees are provided to the satisfaction of the City's Permitting and Inspections Department or its designee.
5. As a condition of registration, all owners must allow onsite inspections of their property including, without limitation, all rental units.

(b) Information/Documentation Required. Registration must be completed on forms supplied by the City's Permitting and Inspections Department or their designee and must provide, at a minimum, the following information:

1. The street address of the building;
2. The unit number of the rental unit;
3. The tax assessor's chart, block and lot of the property on which the building is located;
4. The owner of the property, including the owners' name, address, telephone number, and email address. If the owner is anything other than a natural person, the following information must also be included:

- a. Each individual person that has an ownership interest in any entity that is the record owner. This includes, without limitation, all partners, officers, or trustees of any real estate trusts; any members or managers of a limited liability company; and all officers and directors of a corporation; and
 - b. The residential street address, e-mail address and home phone number of at least one (1) such individual person;
5. The manager of the property or the person or persons responsible for its regular maintenance or repair, as well as a name, address, telephone number, and email address for that person or entity.
 6. The person designated as the agent of the owner or owners for the service of notices and civil process by the city, as well as their name, address, telephone number, and e-mail address. Service of notice and process upon the person so designated shall be deemed conclusive service upon the owner or owners.

(c) *Additional Information Required for Short Term Rentals.*
A short term rental shall not be considered registered unless and until the registrant has submitted a complete application together with all information required by this article, paid the fee required by Sec 6-153, and a registration number has been issued.

In addition to the information required in Section 6-152(5)(b), a Short Term Rental registrant must provide at a minimum the following information and any other information requested by the City's Permitting and Inspections Department or their designee::

1. A short term rental application;
2. Whether the rental unit is owner-occupied, tenant-occupied, or non-owner occupied;
 - a. For Short Term Rental units that are owner-occupied, the registrant must provide a

notarized primary residence affidavit, on forms provided by the City.

- b. For Short Term Rental units that are tenant-occupied, the registrant must provide a notarized primary residence affidavit, a notarized statement of permission by his/her landlord, both on forms supplied by the City.

- 3. The address and tax assessor's chart, block, and lot number of all other short term rentals in the City in which the registrant has an ownership interest;

(d) *Display of Short Term Rental Registration Number Required.* Once registration is approved by the City, each short term rental shall be given a registration number, which much be displayed in the rental unit and in any and all advertisements for the rental unit.

(e) Upon request by the City, at any time, all registrants and/or agents of short term rental units must provide the City with their registration information, rental history, and upcoming reservation information. Failure of short term rental unit owners, tenants, and/or their representatives to adequately respond to inquiries by the City within a forty-eight (48) hour period shall be considered a violation under this ordinance.

6-153. Registration Fees.

(a) *Annual Registration Fee.* Upon initial registration and by January 1st of each year, registrants shall pay the City a registration fee for each rental unit, in the amounts set forth below. A rental unit shall not be considered registered unless and until this fee is paid in full.

(b) *Long Term Rental Registration Fee.* The registrant of a long term rental shall pay thirty five dollars (\$35.00) to the City by January 1st of each year.

(c) *Short Term Rental Registration Fee Structure.* The

registrant of a short term rental shall pay the fee specified in the chart below. All fees will be cumulative and will increase based on the number of total units registered by the owner. The fee total will accumulate first by counting any short term rental units operating in a single family home or owner occupied multi-family buildings and then fees will be attributed at the higher rate for any units located in non-owner occupied buildings. If an owner registers units in both owner occupied and non-owner occupied buildings then the owner occupied fees will be considered the first unit under the fee structure starting with the 1st unit fee as described in the chart below regardless of the order in which the units are registered.

Owner Occupied Single Family Home , or Tenant Occupied	\$100
Multi-Unit Owner Occupied Building Island Short Term Rentals	1 st Unit - \$100 2 nd Unit - \$250 3 rd Unit - \$500 4 th Unit - \$1,000 5 th Unit - \$2,000
Multi-Unit Non-Owner Occupied Building	1 st Unit - \$200 2 nd Unit - \$500 3 rd Unit - \$1,000 4 th Unit - \$2,000 5 th Unit - \$4,000

(d) *Registration and Renewal Fee Discounts.* The following discounts shall apply to the registration and renewal fees:

- (1) \$10 discount for each rental unit within a fully-sprinkled building as verified by a testing report, maintenance report or a maintenance contract, which shall be provided at the time of registration and upon each registration renewal;
- (2) \$7.50 discount for each rental unit within a building with a centrally-monitored fire alarm as verified by Fire Department logs or an alarm contract, which shall be provided at the time of registration and upon each registration renewal;
- (3) \$5.00 for a rental unit that has been subject to and has passed a Housing and Urban Development Housing

Quality Standard (HQS) inspection within the preceding year as verified by the HQS inspection report, which shall be provided at the time of registration and upon each registration renewal;

- (4) \$10.00 for a rental unit that has been subject to and has passed a Housing and Urban Development Uniform Physical Condition Standard (UPCS) inspection within the preceding year as verified by the UPCS inspection report, which shall be provided at the time of registration and upon each registration renewal;
- (5) \$2.50 for a rental unit that is subject to a signed lease which prohibits smoking by tenants as verified by a copy of the current lease, which shall be provided at the time of registration and upon each registration renewal. The existence of and enforcement of this provision may be verified through an inspections of each rental unit.

The total amount of discounts from the annual registration or renewal fee as described above shall not exceed \$20.00, and the minimum annual fee for registration or renewal shall be \$15.00 per unit.

(Ord. No. 443-89, 6-7-89; Ord. No. 53-89, 7-17-89; Ord. No. 246-97, 4-9-97; Ord. 298-14/15, 7-6-2015; Ord. 69-15/16, 10/5/2015)

Sec. 6-154. Limitations on Short Term Rentals.

- (a) *Occupancy Limit.* Overnight short term rental guest occupancy in each rental unit will be limited to two (2) guests per bedroom plus no more than two (2) additional guests.
- (b) *Limitation on Total Number of Short Term Rentals.* No more than 300 non-owner occupied mainland short term rental units shall be registered in any one calendar year.
- (c) *Limitations on number of Short Term Rentals an Individual or Entity May Register.* An individual or entity may only register up to five (5) short term rentals in the City, including the Islands, in any one (1) calendar year. For purposes of this section,

short term rentals registered by an entity in which the registrant has an ownership interest shall be counted towards this limit.

- (d) No individual or entity may register a short term rental in any single family home unless it is owner-occupied; tenant-occupied with permission of the owner; or located on an Island.

(e) The number of short term rental units that may be operated in a multi-unit building are as follows:

Total # of Units in a Building	# of Short Term Rental Units Allowed in a Building	
	Owner Occupied	Non-Owner Occupied
2	2	1
3	3	2
4	4	2
5	5	2
6-9	5	4
10+	5	5

Tenant-occupied units, where the tenant is the registrant, shall not be counted towards these limits.

Sec. 6-155. Allocation of Short Term Rentals.

The limitations on the allocation of short term rental units identified in section 6-154(b) shall be allocated each year on a first come, first registered basis. Once the total number of units identified in section 6-154(b) has been reached a waitlist will be formed to help gauge market demand. The City Manager or his/her designee, may institute a lottery process at his/her discretion.

Sec. 6-156. Violations.

Specific violations of this article, subject to the provisions of § 6-1, include, but are not limited to:

- (a) Any person, business entity, or other organization failing to timely register a rental unit, including providing all required information and paying the required registration fee.

- (b) Any person, business entity, or other organization providing false information with respect to registration. Notwithstanding the provisions of § 6-1, the penalty for such violation shall be \$1,000.00.
- (c) Any person, business entity, or other organization renting any rental unit that is not registered under this article, or to permit the occupancy of such premises without registration.
- (d) Failure of short term rental unit owners, tenants, and/or their representatives to adequately respond to inquiries by the City pursuant to 6-152(e) within a forty-eight (48) hour period.

(Ord. No. 443-89, 6-7-89; Ord. No. 53-89, 7-17-89; Ord. 298-14/15, 7-6-2015)

(Ord. No. 443-89, 6-7-89; Ord. No. 53-89, 7-17-89; Ord. 298-14/15, 7-6-2015)

Sec. 6-153. Violations.

- (e) Any person business entity or other organization failing to timely file the required registration or failing to timely pay, in full, the registration fee or annual renewal fee, or failing to timely file any required update to the registration shall be in violation of this Article for which a fine of \$100.00 per day each day the violation continues shall be assessed.
- (f) Any person providing false information with respect to registration shall be in violation of this article for which a fine of \$1,000.00 shall be assessed.
- (g) It shall be a violation of this article for which a fine of \$100.00 per day each day the violation continues shall be assessed for any owner or manager to rent any apartment or other portion of any building subject to registration, not registered under this article, or to permit the occupancy of such premises.
- (d) No certificate of occupancy shall be issued for property subject to the registration requirements which is not registered in accordance with this

article.

(Ord. No. 443-89, 6-7-89; Ord. No. 53-89, 7-17-89; Ord. 298-14/15, 7-6-2015)

Sec. 6-157. Enforcement.

(a) The building authority as defined in section 6-1 or his/her designee is authorized to institute, or cause to be instituted by and through the office of the corporation counsel, in the name of the city, any and all actions, legal or equitable, that may be appropriate or necessary for the enforcement of the provisions of this article.

(b) No certificate of occupancy shall be issued for property that is subject to the registration requirements of this article, but is not registered in accordance with this article.

(c) Any short term rental at a property that is designated by the City as a disorderly house and fails to meet the requirements of section 6-202, shall, at the discretion of the City Manager or this/her designee, have its registration revoked and be ineligible for registration for a period of twelve (12) months. Any registration after revocation shall be considered a new registration and not a renewal.

(d) Fines may be attributed to Property Management firms found operating short term rental units in violation of this article. These fines may be in addition to fines levied against owners of property.

Sec. 6-158. Revenue Allocation.

Notwithstanding § 6-1(b), all revenue generated from short term rental registration fees and penalties shall be used to first fund short term rental related administrative costs. Any remaining revenue shall be deposited in the Housing Trust Fund, as defined in Sec. 14-489.

Sec. 6-159. Reserved.

Sec. 6-160. Reserved.

Sec. 6-161. Reserved.

Sec. 6-162. Reserved.

Sec. 6-163. Reserved.

Sec. 6-164. Reserved.

City of Portland
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Buildings and Building Regulations
Chapter 6
Rev. 4-4-2011

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*~~
Tab 25 3-20-17
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 - 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
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
Feb 13-3-6-17
Feb 26 3-20-17*

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 3D36	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

FY18 CIP - Sewer Fund

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~~
Tab 27 3-20-17

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
<u>Total</u>	<u>\$64,260,000</u>

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: Finance Committee, Nicholas M. Mavodones, Jr., Chair

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, 9-0 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, Title1, 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?

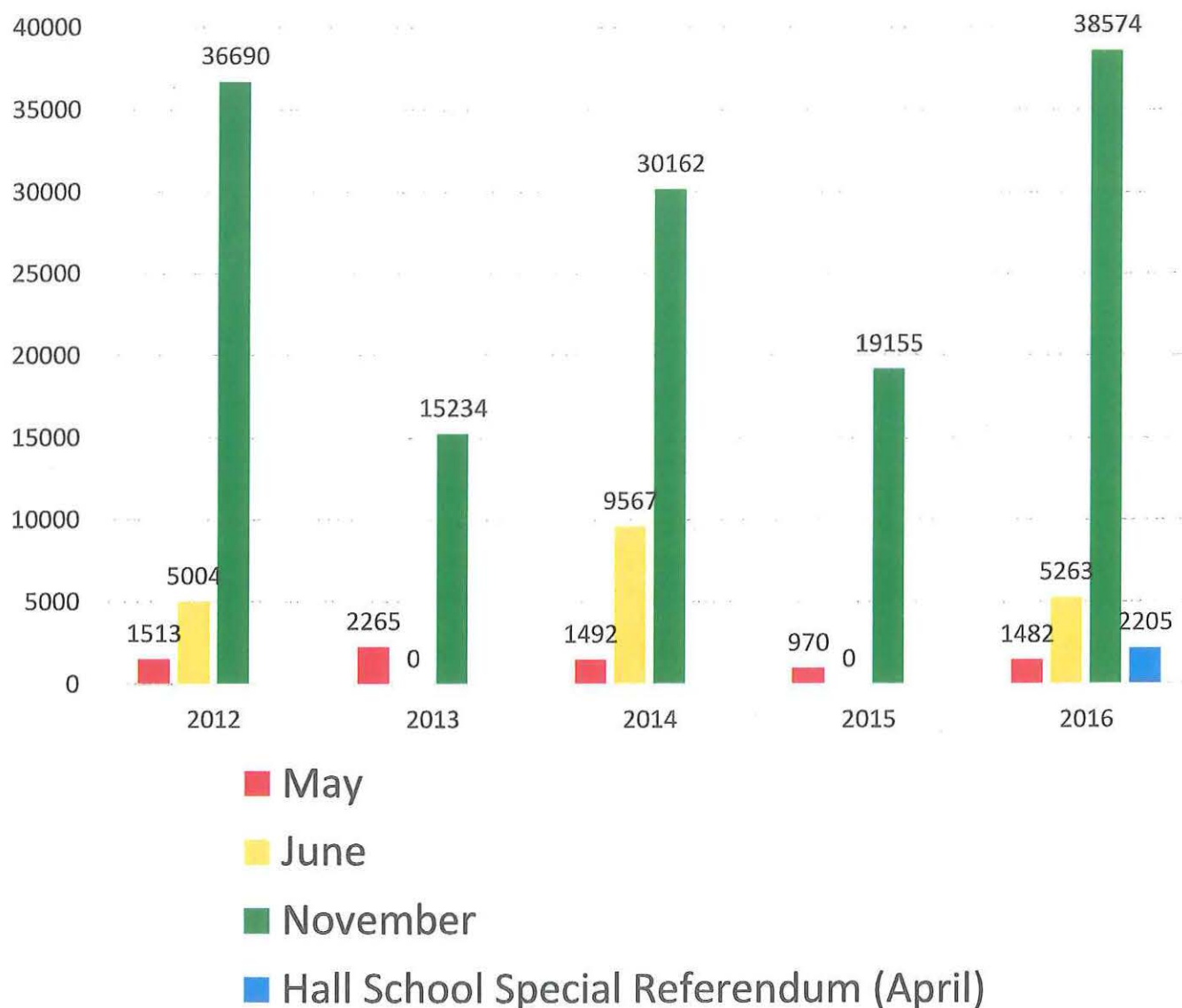
Excerpt from the facilities assessment noting Year 0-5 needs is attached below. As noted by the external engineers, only approximately \$0.89M of work is recommended at Presumpscot in the next five years compared to \$13.63M as proposed by the School Board. Approximately \$1.94M is being recommended 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 state 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	Years 0-5 TOTAL
	Year 0 2017	Years 1 - 5 2018 - 2022	
Elementary Schools			4 Schools in \$64M bond \$2,922,566 \$1,942,896 \$889,456 \$2,881,050 \$8,135,968
Cliff Island	\$78,260	\$184,923	
East End Community	\$59,600	\$394,626	
Longfellow	\$132,597	\$2,789,969	
Lyseth	\$6,023	\$1,936,873	
Ocean Avenue	\$0	\$96,241	
Peaks Island	\$88,795	\$675,474	
Presumpscot	\$755	\$888,701	
Reiche	\$33,905	\$2,347,145	
Riverton	\$940	\$1,215,099	
Elementary Schools Subtotal	\$400,875	\$10,529,051	
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



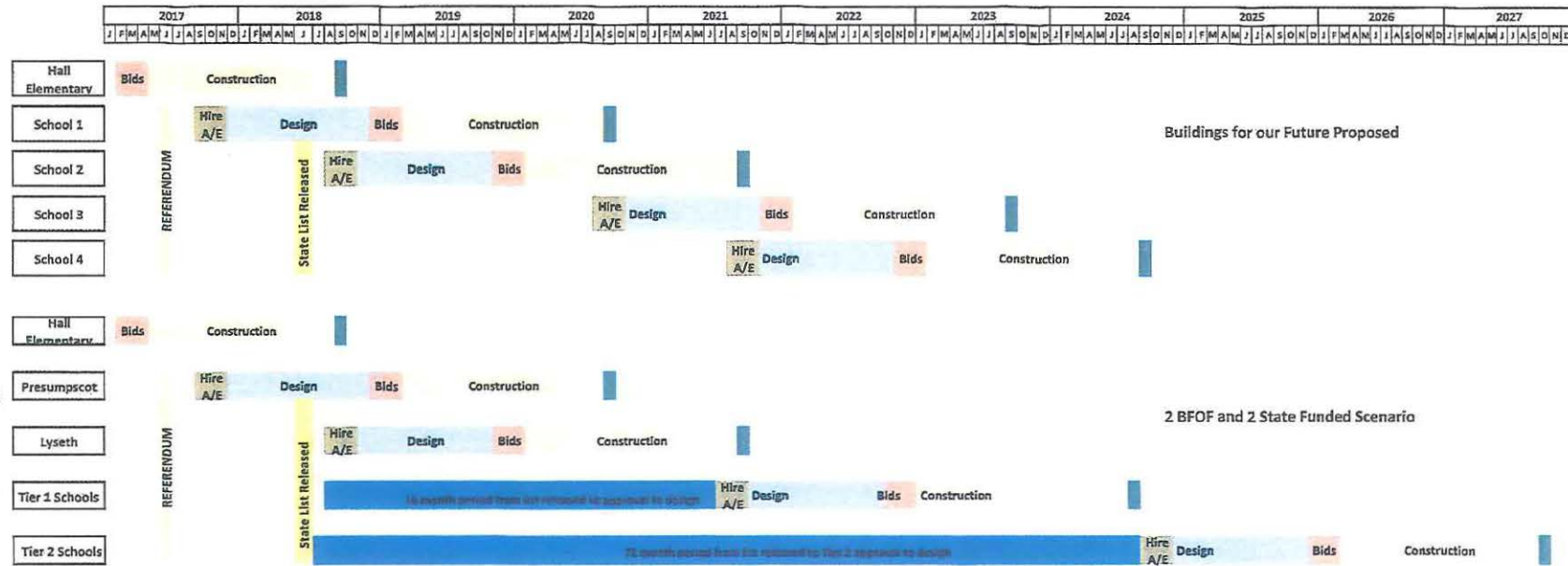
**Major Capital Improvement Program
Summary of Last Three State Rating Cycles**

	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
2 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	10,635,995	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	

FY18

FY26

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 Councilors 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	Osborn	Presumpscott	Reliance	Total
A CONSTRUCTION					
1 Construction Estimate					
Renovation/Reconfiguration					
Structural/Architectural	\$2,347,330	\$1,694,550	\$1,194,543	\$3,257,532	\$8,593,954
Mechanical/Plumbing/Sprinkler	\$2,162,112	\$1,605,689	\$883,160	\$3,489,176	\$8,120,946
Electrical	\$1,342,928	\$533,057	\$599,972	\$2,417,651	\$5,893,618
Renovation non-equity model	\$1,539,254	\$533,512	\$424,113	\$2,691,806	\$5,188,725
New Construction/Addition	\$3,232,078	\$7,533,816	\$7,500,988	\$1,235,621	\$19,002,503
Demolition	\$0	\$50,744	\$0	\$0	\$50,744
Built-in Equipment	\$599,444	\$594,097	\$570,678	\$481,236	\$2,265,555
Site Development	\$1,135,151	\$2,555,216	\$1,319,435	\$904,796	\$5,914,600
Elevator (CIP Project)	\$0	\$0	\$0	\$800,000	\$800,000
Subtotal	\$12,558,306	\$19,791,342	\$12,493,085	\$13,658,317	\$58,441,221
B ADMINISTRATIVE COSTS & RESERVES					
2 Land Purchase and Related Costs	\$0	\$0	\$0	\$0	\$0
3 Moveable Equipment	\$1,028,064	\$1,159,232	\$1,005,628	\$1,780,835	\$4,973,759
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	\$1,255,831	\$1,373,151	\$1,249,309	\$1,365,852	\$5,444,143
Subtotal	\$2,373,915	\$2,662,483	\$2,344,937	\$2,636,687	\$10,017,922
C FEES AND SERVICES					
8 Architect/Engineer Basic Services	\$1,112,237	\$1,255,410	\$999,319	\$1,288,669	\$4,655,635
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	\$18,760	\$18,760	\$18,760	\$18,760	\$75,040
13 Survey and Soils	\$39,500	\$39,500	\$39,500	\$39,500	\$158,000
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	\$1,508,897	\$1,641,822	\$1,390,979	\$1,698,229	\$6,240,927
D TOTAL PROJECT COST	\$15,441,119	\$20,034,577	\$16,229,001	\$17,992,855	\$70,668,225
E PROPOSED ADJUSTMENTS FROM BFOF					
19 Proposed adjustments (see individual project budgets)	-\$2,657,474	-\$4,004,312	-\$2,600,822	-\$747,256	-\$10,010,065
F PROPOSED TOTAL PROJECT COSTS	\$13,783,644	\$16,030,265	\$13,628,178	\$17,245,599	\$60,658,160

2/1/17

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)

Councilor Ray Amendment
(amends and replaces original bond order)

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 LYSETH ELEMENTARY SCHOOL RENOVATION PROJECT AND
OTHER MISCELLANEOUS IMPROVEMENTS AT REICHE, OCEAN AVENUE, PEAKS
ISLAND AND RIVERTON ELEMENTARY SCHOOLS, LYMAN MOORE AND KING
MIDDLE SCHOOLS, AND DEERING HIGH SCHOOL
WITH TOTAL PROJECT COSTS NOT TO EXCEED \$24,000,000
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 Lyseth elementary school and other miscellaneous school improvements with total project costs not to exceed \$24,000,000 (the "School Projects"), as follows:

Lyseth	Substantially renovated and rehabilitated	\$16,362,275
Lyseth	Bus Loop, Field Work, and Drainage Issues	\$1,450,000
Lyseth & Lyman Moore	Moore Parking Improvements	\$247,489
Lyman Moore	Fire Alarm Installation and Upgrades	\$270,000
King	Fire Alarm Installation and Upgrades	\$270,000
Ocean Avenue	Four Classrooms	\$1,500,000
Reiche Elementary	New Brackett Street Entrance	\$2,400,106
Peaks Island & Riverton	Energy Efficiency Upgrades (Peaks: ceiling & lighting upgrades; Riverton: heat piping in new wing, replace original rooftop AC)	\$170,000
Deering High	Sprinklers & Fire Alarm Installation and Upgrades	\$1,330,130
TOTAL:		\$24,000,000

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 \$24,000,000 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 \$24,000,000 (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 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 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 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 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 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 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.

\$24 Million School Bond Proposal

sponsored by Councilor Belinda Ray

Facility	Description of Work	Amount
Lyseth Elementary	Modulars eliminated and classroom space added. Pre-K, Kindergarten and Gifted & Talented space created. 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.	\$16,362,275
Lyseth	Bus Loop, Field Work, and Drainage Issues	\$1,450,000
Lyseth & Lyman Moore	Moore Parking Improvements	\$247,489
Lyman Moore	Engineering for Fire Alarm + Fire Alarm Install	\$270,000
King	Engineering for Fire Alarm + Fire Alarm Install	\$270,000
Ocean Avenue	Four Classrooms	\$1,500,000
Reiche	New Brackett Street Entrance (Engineering & Construction)	\$2,400,106
Peaks Island & Riverton	Energy Efficiency Upgrades (Peaks: ceiling & lighting upgrades; Riverton: heat piping in new wing, replace original rooftop AC)	\$170,000
Deering High	Sprinklers & Fire Alarm Upgrades	\$1,330,130
TOTAL BOND PROPOSAL		\$24,000,000

Tax Impact over life of bonds: 1.2% increase (vs. 3.1% increase for \$64 million bond)

Tax Increase on \$240,000 property over life of bonds: \$1010 (vs. \$2707 for \$64 million bond)

Overall Cost (Principal + Interest): \$34 million (vs. \$92 million for \$64 million bond)

Q & A on the \$24 Million School Bond Proposal

Q: Why Lyseth?

A: Multiple reasons.

1. **Of the four elementary schools being proposed for renovations, Lyseth is the least likely to qualify for state funding.** This was true in the 2010-2011 application cycle when it placed 43rd on the state list—last of the five school applications Portland submitted—and it is true according to the most recent analysis completed by Sebago Technics, in which Lyseth placed 4th of the four elementary schools that were scored.

The schools that were deemed to have the best chance of receiving state funding by Sebago Technics are as follows (in order of points earned):

1. Reiche & Longfellow Elementary (tied at 56 points)
3. Presumpscot Elementary (54)
4. Lyseth Elementary (53)
5. PATHS (52)
6. Portland High School (51)
7. Casco Bay High School (46)
8. Deering High School (44)

By working on Lyseth first, we will preserve the possibility of obtaining state funding for one or more of the other three elementary schools being considered in the larger bond.

2. As city operations staff have pointed out, the **site plans and permitting for Lyseth are at 65% completion.** With this preliminary work already underway, construction could start in early spring of 2018.
3. **Lyman Moore, which is situated on the same campus as Lyseth, has the capacity to create a 5th grade wing during the construction project,** so we have a place to put the students without great disruption.
4. The completion of Lyseth will add capacity and **eliminate the use of modulars** at the school.

Q: Ocean Ave is relatively new. Why would we add classrooms there?

A: As is State practice, Ocean Avenue was designed in such a way that four classrooms could easily be added at a later date if the extra capacity became necessary. It is necessary now.

The construction of these four classrooms must take place before we can begin construction on the other elementary schools.

At present, with the \$64 million bond, there is no plan for housing students dislocated by the construction—and students will be displaced by the construction. So before construction can begin on the other elementary schools, swing space must be added within the district. With these four classrooms added, that swing space will be created.

The engineering has already been done for this work, which means it can be completed very quickly.

Again, without this added swing space in the system, we cannot begin renovating the other elementary schools without serious disruption to the educational programs of their students.

Additionally, with this added capacity in the system, schools which are at or above capacity can find some relief through enrollment management.

* Hall School is being designed with the ability to add eight classrooms at a future date.

Q: You're including a new entry at Reiche. Won't that make it ineligible for state funding?

A: No. This project will not affect Reiche's application for state funding.

While the state would not consider an application for a school that has been locally bonded for large scale renovations or capital construction, there is a hold harmless clause in the law that assures school districts they will not lose points in the application process if they do work that relates to the health and safety of the students.

The Reiche ramp on the Brackett Street side of Reiche represents such a project. It is in need of repair, and it doesn't make sense to wait several years to address this issue.

For this project, the ramp will come down and a new entrance and staircase will be installed. The second story will be enclosed, further separating the community from the school.

When this plan was explained to Scott Brown, who oversees the Major School Capital Construction application process, he said he didn't hear anything that would cause concern.

Q: How did you choose the other projects to include in this bond proposal?

A: The other projects included in this bond address short-term needs identified by both the 20-Year Draft Capital Plan created by Sebago Technics and city staff. They address basic safety, energy, and structural concerns at multiple buildings.

Q: If we adopt this bond proposal, when will we get to Reiche, Longfellow, and Presumpscot? Or for that matter, Peaks, Cliff, Casco Bay, PATHS, Portland High, and other buildings that need work?

A: This bond makes great strides toward tackling immediate needs at 8 schools: Lyseth, Lyman Moore, Ocean Avenue, Reiche, Peaks Island, Riverton, and Deering High. Passing this bond will put us in an excellent position to continue addressing the pressing needs at our other school facilities through our annual Capital Improvement Plan.

By the summer of 2018, we'll know which of our schools will receive state funding, and once we have that information, we can create a plan that makes the best use of local tax dollars and state funding to address our system's longer term needs, including large scale renovations at some schools.

The system wide facilities analysis that was drafted in November of 2016, and which is nearing completion now after several rounds of back and forth between Sebago Technics engineers and city operations staff, will be incredibly helpful as we make this plan. It will lay out for us year by year what we must tackle in order to keep our buildings safe, healthy, and structurally sound, so that we can continue prioritizing and completing projects.

It is likely that in order to complete the necessary work at all of our schools, we will have to seek a second bond package at some point in the future. But it would be premature (and fiscally irresponsible) to bond the schools that have the best chance for state funding when we know that our system wide needs are so great.

Q: Why are you so focused on state funding? I've heard there's no chance we're going to get any.

A: That is not true. We have an excellent chance of getting one or more schools funded in this application cycle.

In December, Superintendent Xavier Botana testified before the State Board of Education that Reiche and Longfellow both stood an excellent chance at receiving state funding in the current application cycle (2017-2018).

Superintendent Botana was before the State Board of Education in an attempt to obtain a guarantee of state funding for Longfellow and Reiche in advance of the new application cycle. He included the following statements in his testimony. (Superintendent Botana's full testimony is appended to the end of this document as Attachment 1.)

"Past history suggests that the chances are good for schools in Longfellow and Reiche's position to receive state funding in the next round. A review of the 2001 list shows that out of the 5 schools just below the funding cut off, 3 of those schools received funding in the subsequent round. Of the remaining two schools, Peru Elementary School was consolidated with another school in Canton and SAD 28, Rockport came off the list because it became a locally funded project. Of the 5 schools just below the funding cut off for the 2004 list, 4 out of the 5 received funding in the 2010 round."

"In other words, it is reasonable to expect that these schools, given their past trajectory and given the pressing needs (remember: 21 million in the next 10 years) as determined by our recent engineering report, will likely be funded in the next round."

"In short, Portland is not asking the state to relieve it of its own obligations. On the contrary, Portland stands ready to invest tens of millions of local dollars to our elementary school renovations. All we ask is that the State help provide the certainty to allow us to pick a path and move forward. But no responsible stewards of public funds could finalize plans without knowing whether they needed to stretch available resources over 4 projects or concentrate on 2. And no responsible planners could forego the opportunity to advocate for State support knowing that history suggests a high likelihood that our projects will soon be funded by the state, knowing that there may not be enough local funds available to fully address the needs of 4 separate schools without state funding."

Q: The state will never fund more than one school in a single district. Shouldn't we just apply for the high schools and take care of the elementary schools locally?

A: No. First, the state funds schools according to their scores—not by town or region. And yes, sometimes that results in more than one school being funded in a single town or district.

- In the 2004-05 funding cycle, both Mallett Elementary (\$14.5 million) and Mt. Blue High School/Foster Vocational Center (\$56.6 million) were fully funded by the state. Both schools are in the Mt. Blue Regional School District.
- In the 2010-2011 funding cycle, three Sanford schools were chosen for funding by the state: Sanford High/Vocational Center (\$100.2 million), Emerson Elementary School, and Lafayette Elementary School (bond figures not yet determined).
- In the 2010-2011 funding cycle, two Newport schools were funded: Nokomis High School and Newport Elementary School (\$69 million for both schools).

Second, we don't know which of our schools will be the best candidate for state funding.

Our schools have occasionally shifted in terms of which of them have placed highest on the state list from year to year (Figure 1, next page), so we don't always know which school will be ranked highest on the list.

Despite this "internal shifting," however, it is important to note that our schools have consistently moved up on the state list (Figure 2, next page), getting closer and closer to state funding with each cycle.

Fig. 1: *A history of our schools' positions on the state list. The highlighted schools received state funding.*

	1 st	2 nd	3 rd	4 th	5 th	6 th	7 th
2001-2002	Jack Elementary (9 th)	Nathan Clifford (31 st)	Lyseth (51 st)	Hall (58 th)	Presumpscot (62 nd)	Reiche (67 th)	Longfellow (73 rd)
2004-2005	Nathan Clifford (1 st)	Reiche (23 rd)	Longfellow (48 th)	Lyseth (53 rd)	Hall (55 th)	Presumpscot (61)	
2010-2010	Hall School (12 th)	Longfellow (18 th)	Reiche (21 st)	Presumpscot (33 rd)	Lyseth (43 rd)		

If we eliminate the schools that received funding in this time period, you can see that in 2001, Lyseth presented our best chance for receiving state funding, followed by Presumpscot. In 2004 and 2010, Reiche and Longfellow ranked highest, although in 2004, Reiche was ahead of Longfellow on the list, and in 2010, Longfellow was three places ahead of Reiche.

Because we can't be sure which school will rank highest, we must apply for as many of the recommended schools as possible, so that we can take advantage of the maximum amount of state funding.

Fig. 2: *Rankings on the state list by school, by year. As you can see, they continue to move up the list.*

	Jack	Nathan Clifford	Hall	Reiche	Longfellow	Presumpscot	Lyseth
2001-2002	9 th	31 st	58 th	67 th	73 rd	62 nd	51 st
2004-2005		1 st	55 th	23 rd	48 th	61 st	53 rd
2010-2011			12 th	21 st	18 th	33 rd	43 rd

Despite their jockeying for position on the list, our schools have continued to move up the list each year, getting closer and closer to receiving state funding.

Q: But we can't wait! Our schools are crumbling. Don't we need to address the "significant deferred maintenance" I keep hearing about?

A: As Deputy City Manager Anita La Chance wrote:

There is no doubt that the four elementary schools included in the BFOF plan have deferred maintenance, as is the case with virtually every City and School asset.

However, Oak Point Associates, who developed the BFOF [Buildings For Our Future plan for the four elementary schools being considered for a \$64 million bond], identified a little under \$5.5 million in deferred maintenance in the four schools. That accounts for around 8.5% of the \$64 million project.

To add weight to that data, the recently completed school facilities assessment identified less than \$175,000 in immediate needs at the four schools and \$8.1 million over the next 5 years. It is very clear that deferred maintenance is NOT driving the BFOF proposal.

In fact, Superintendent Botana requested that Emily Figdor, a leader of Protect Our Neighborhood Schools, stay away from the "significant deferred maintenance" language when they were working together to craft the flyer that went home in students backpacks earlier this year. In an email* commenting on a draft of the flyer Figdor had provided, he wrote:

I would prefer to eliminate the language about "significant investments" not being made. "Significant" is fairly subjective. At both Presumpscot and Lyseth the principals went out of their way to talk about the many improvements in their physical plant in recent years (mechanics, new windows, etc.).

[...]

Note that we just received a facility assessment for all of our buildings and the four schools have differing levels of needs (i.e., Reiche has large needs, Presumpscot not so much) and non-BFOF schools have much larger needs than most of the BFOF schools. So, focusing on delayed investments in those four schools begs the question about the other delayed investments. So, I would prefer to steer away from the delayed needs/upkeep and focus on the 21st Century Learning needs.

So while there is maintenance to be performed at all of our schools, the depiction that they are crumbling or that the \$64 million bond must be passed in order to address deferred maintenance is false.

*This email is appended to the end of this document as Attachment 2.

ATTACHMENT 1:

Remarks by Xavier Botana, Portland Public Schools Superintendent to the Maine State Board of Education Construction Committee

December 2, 2016

Mr. Geiger, members of the State Board of Education Construction Committee, my name is Xavier Botana and I am the Superintendent of the Portland Public Schools. I am grateful for the opportunity to speak to you today about the district's request for approval of the construction projects for the Longfellow and Reiche elementary schools.

First, a little bit of background... The Portland Public Schools has 15 schools, including 9 elementary schools, three middle schools and three high schools. Last Spring, after years of consideration and planning, the Portland Board of Public Education advanced a proposal to the Portland City Council to have 4 elementary schools, Longfellow and Reiche, along with Lyseth and Presumpscot schools updated to 21st Century learning standards at an estimated cost of just over \$70 million. The intent was for the Portland Council to approve a voter referendum for these projects.

This past summer, a week into my tenure, the City Council created an adhoc committee in collaboration with the Board to review all of the four schools' needs, project details, and overall financial impact to make a recommendation to move these schools forward. It became apparent early in the committee's work that while everyone understands the dire circumstances at these schools, as stewards of the public trust, our elected officials hesitate to take on these projects when the possibility exists for state funding for at least two of the schools. In fact, as you know, Longfellow and Reiche stand at #2 and #3 on the list of schools that have not been funded from the 2010-2011 state approved construction project list.

In September DOE announced that they would no longer fund projects from that list and that they would proceed with the development of a new list of projects. Based on the projected timeline for the development of a new list, new projects would be approved no earlier than Fall of 2018. With customary design and reviews, the earliest any project would break ground would likely be the Spring of 2022.

We realize that the September decision was a well-intended effort to address the projected shortfall in room under the state's debt ceiling in 2022. Given those projections (which, I believe are accurately reflected in our October 26th letter to DOE and November 9th letter to the State Board) it made sense for the DOE to determine it was time to develop a new list. After all, DOE could not recommend additional schools; and, as time has gone by in the six year's since that list was developed, schools throughout the state, including in Portland, that were not on the 2010 list have developed urgent needs and the relative position of schools on the list may have changed.

So, then, you may ask, why did we take the unusual step that brings us here today?

Portland's needs are acute. I have with me a recent facilities assessment commissioned by the City and district to review the current state of all of our buildings. As you can see, this is an extensive document. It projects 20 year capital needs in the neighborhood of 300 million—over 140 million in the next ten years. I have included with my packet, a copy of the summary of those needs. As you can see, the two schools we are proposing you approve—Reiche and Longfellow—are estimated to require nearly \$5 million in repairs in the next 5 years and over \$21 million in the next 10 years. It is important to note that these estimated costs are just for repairs to existing plant and systems and not for bringing those schools up to 21st Century Learning standards.

Reiche and Longfellow have been on State Construction lists for over 15 years. In 2001, Longfellow was #73 of 92 and Reiche #67 of 92. In the 2004 list, Longfellow was 48 of 66 and Reiche 23 of 66. In this past list, as you know, they were 18 and 21 respectively.

Past history suggests that the chances are good for schools in Longfellow and Reiche's position to receive state funding in the next round. A review of the 2001 list shows that out of the 5 schools just below the funding cut off, 3 of those schools received funding in the subsequent round. Of the remaining two schools, Peru Elementary School was consolidated with another school in Canton and SAD 28, Rockport came off the list because it became a locally funded project. Of the 5 schools just below the funding cut off for the 2004 list, 4 out of the 5 received funding in the 2010 round. Only Portland's Reiche didn't get funded, in spite of having improved its position from the previous list.

In other words, it is reasonable to expect that these schools, given their past trajectory and given the pressing needs (remember: 21 million in the next 10 years) as determined by our recent engineering report, will likely be funded in the next round.

So, you might ask, why not wait our turn?

Portland's situation is fairly unique. As I noted at the beginning, we are engaged in a process to undertake a large infrastructure project—Buildings for our Future-- to bring our aging elementary schools to 21st Century learning standards. Knowing that you added these two schools to the Approved Projects List — with or without the interest only financing component — will enable the adhoc committee to move forward with the renovations of our other two schools, Lyseth and Presumpscot. Our community can continue the dialogue about having great schools, befitting a great city, knowing that they will not have to pit the needs of one school community against the other. Rather, we can move forward assured that the vision for high quality 21st Century learning settings in all of Portland's elementary schools can come to fruition.

I would now like to ask Dick Spencer to discuss the value added proposition that we advanced using the Interest Only Interim Local Financing process.

Dick Spencer

I want to be clear that we believe our proposal is a creative option that can be a bonus for the taxpayers at the state and district level. I also feel confident assuring you that Portland Public Schools

would be satisfied with being added to the Approved Projects List, even with a delayed implementation of the State's funding obligation so that Portland can proceed with the planning and implementation for the rest of its capital needs. The assurance of future funding, would influence the order in which we tackle our four projects, but would still allow us to move forward with locally funded projects at the remaining two schools while we wait for state funding for Longfellow and Reiche. It will allow us to bring a viable proposal to Portland's taxpayers that includes the assurance that all four projects will get done.

In short, Portland is not asking the state to relieve it of its own obligations. On the contrary, Portland stands ready to invest tens of millions of local dollars to our elementary school renovations. All we ask is that the State help provide the certainty to allow us to pick a path and move forward. But no responsible stewards of public funds could finalize plans without knowing whether they needed to stretch available resources over 4 projects or concentrate on 2. And no responsible planners could forego the opportunity to advocate for State support knowing that history suggests a high likelihood that our projects will soon be funded by the state, knowing that there may not be enough local funds available to fully address the needs of 4 separate schools without state funding.

Chris Hall, President of the Portland Regional Chamber wanted to be here to speak on our behalf. Chris, better than anyone, understands the importance of great schools to the viability of Portland. He also understands the importance of smart stewardship of taxpayers' resources and the impact of escalating local tax rates. Chris could not be here today because he is attending Glenn Cummings' installation as President at USM. He provided the letter which I've included in your packet and which he asked me to read for the record.

Read Chris' letter

In closing, I would like to thank you for taking the time to listen to our request and consider its merits. We understand that this is an unusual request and believe that we are offering a compelling win-win proposition. I look forward to answering your questions.

ATTACHMENT 2: Email exchange between Superintendent Xavier Botana and Emily Figdor

On December 15, 2016 at 9:25:54 PM, Xavier Botana (botanx@portlandschools.org) wrote:

I would prefer to eliminate the language about "significant investments" not being made.

"Significant" is fairly subjective. At both Presumpscot and Lyseth the principals went out of their way to talk about the many improvements in their physical plant in recent years (mechanics, new windows, etc.).

I would prefer to focus on the fact that in 40-60 years, how schools are structured has changed greatly. Students have more differentiated needs which requires frequent regrouping a small group instruction, teachers are asked to collaborate with each other, we place a premium on presentations and other exhibitions of student performance... none of the four schools can accommodate that.

Note that we just received a facility assessment for all of our buildings and the four schools have differing levels of needs (i.e., Reiche has large needs, Presumpscot not so much) and non-BFOF schools have much larger needs than most of the BFOF schools. So, focusing on delayed investments in those four schools begs the question about the other delayed investments. So, I would prefer to steer away from the delayed needs/upkeep and focus on the 21st Century Learning needs.

Beyond that, I'm comfortable with the examples you provide and with the overall approach. Please share the final copy so that I can give principals the heads up that their PTO is going to come with the flyer for distribution in backpacks.

Thanks,

Xavier

On Fri, Dec 16, 2016 at 2:57 PM, Emily Figdor <emilyjfigdor@gmail.com> wrote:

Terrific, thank you! I made the edits you suggested, and the final is attached. I'm coordinating with the PTOs at the four schools.

Also, is the facility assessment a public document? If so, I'd love to see it.

Thanks for all you're doing, and good to work with you on this!

Best,

Emily

Emily Figdor

c: [207-408-0295](tel:207-408-0295)

Gchat: emilyjfigdor

Skype: emilyfigdor

Councilor Mavodones/Councilor Duson Amendments
(amends and replaces original bond order)

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 LYSETH AND PRESUMPCOT ELEMENTARY SCHOOL
RENOVATION PROJECTS WITH
TOTAL PROJECT COSTS NOT TO EXCEED \$31,626,000
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 Lyseth and Presumpscot elementary schools with total project costs not to exceed \$31,626,000 (the “Elementary School Projects”), as follows:

Lyseth Elementary	\$17,998,000
Presumpscot Elementary	13,628,000
Total	\$31,626,000

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 \$31,626,000 to finance the costs of such Elementary School Projects.

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 \$31,626,000 (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.

BE IT FURTHER ORDERED THAT if this Order is approved and becomes effective as provided in the foregoing paragraph and either or both of Longfellow and Reiche Elementary Schools (the "Additional Elementary Schools") are not included in the Department of Education's State subsidy Approved Projects List for school construction projects, expected to be finalized in 2018, such that such school construction projects, in the reasonable judgment of the City Council, would have a high

likelihood of being completed by 2025, then the City Council will make good faith efforts to submit the question of school construction projects for the Additional Elementary Schools to the voters.

Order 1577-16/17
~~Tab 16-3-6-17~~
Tab 29 3-20-17

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?

Councilor Ray Amendment
(replaces original referendum order)

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 renovation, furnishing and equipping of Lyseth elementary school and other miscellaneous school improvements with total project costs not to exceed \$24,000,000 (the "School Projects"), and further authorizing issuance of the City's bonds in an amount not to exceed \$24,000,000 to finance the costs of the School Projects (the "School Order") and

WHEREAS, Article VII, Section 16 of the City Charter requires that the School Order be submitted to the voters of the City following a public hearing;

WHEREAS, the City Council held a public hearing on the School Order at its meeting held [REDACTED], 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 the 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 6, 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 School Order before the voters at such election.

Question __: Shall the Order entitled "ORDER APPROVING LYSETH ELEMENTARY SCHOOL RENOVATION PROJECT AND OTHER MISCELLANEOUS IMPROVEMENTS AT REICHE, OCEAN AVENUE, PEAKS ISLAND AND RIVERTON ELEMENTARY SCHOOLS, LYMAN MOORE AND KING MIDDLE SCHOOLS, AND DEERING HIGH SCHOOL WITH TOTAL PROJECT COSTS NOT TO EXCEED \$24,000,000 AND AUTHORIZING GENERAL OBLIGATION BONDS THEREFORE", with provisions for early redemption as set forth in said Order be Approved?

Councilor Mavodones/Councilor Duson Amendment
(replaces original referendum order)

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 Lyseth and Presumpscot elementary schools with total project costs not to exceed \$31,626,000 (the "Elementary School Projects"), and further authorizing issuance of the City's bonds in an amount not to exceed \$31,626,000 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 meeting held [REDACTED], 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 the 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 6, 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 LYSETH AND PRESUMPCOT ELEMENTARY SCHOOL RENOVATION PROJECTS WITH TOTAL PROJECT COSTS NOT TO EXCEED \$31,626,000 AND AUTHORIZING GENERAL OBLIGATION BONDS THEREFORE", with provisions for early redemption as set forth in said Order be Approved?

order 156-16/17
~~Tab 153617~~
Tab 28 320-17

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.

Councilor Ray Amendment
(amends and replaces original appropriation order)

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 \$24,000,000 OF BOND PROCEEDS

IT IS HEREBY ORDERED THAT:

1. Subject to paragraph 2 below, the sum of \$24,000,000 hereby is appropriated to finance the renovation, furnishing and equipping of Lyseth elementary school and other miscellaneous improvements at Reiche, Ocean Avenue, Peaks Island and Riverton Elementary Schools, Lyman Moore and King Middle Schools and Deering High School with total project costs not to exceed \$24,000,000 (the "School Projects"), as follows:

Lyseth	Substantially renovated and rehabilitated	\$16,362,275
Lyseth	Bus Loop, Field Work, and Drainage Issues	\$1,450,000
Lyseth & Lyman Moore	Moore Parking Improvements	\$247,489
Lyman Moore	Fire Alarm Installation and Upgrades	\$270,000
King	Fire Alarm Installation and Upgrades	\$270,000
Ocean Avenue	Four Classrooms	\$1,500,000
Reiche Elementary	New Brackett Street Entrance	\$2,400,106
Peaks Island & Riverton	Energy Efficiency Upgrades (Peaks: ceiling & lighting upgrades; Riverton: heat piping in new wing, replace original rooftop AC)	\$170,000
Deering High	Sprinklers & Fire Alarm Installation and Upgrades	\$1,330,130
TOTAL:		\$24,000,000

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 School Project differs from the estimated cost set forth herein, whether due to completion, delay or abandonment of said 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 School Project.

Councilor Mavodones/Councilor Duson Amendment
(amends and replaces original appropriation order)

ETHAN K. STRIMLING (MAYOR)
BELINDA S. RAY (1)
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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 \$31,626,000 OF BOND PROCEEDS

IT IS HEREBY ORDERED THAT:

1. Subject to paragraph 2 below, the sum of \$31,626,000 hereby is appropriated to finance the renovation, furnishing and equipping of Lyseth and Presumpscot elementary school with total project costs not to exceed \$31,626,000 (the "Elementary School Projects"), as follows:

Lyseth Elementary	\$17,998,000
Presumpscot Elementary	13,628,000
Total	\$31,626,000

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.